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Merging Public and Private Governance: How Disney's Reedy Creek Improvement District "Re-Imagined" the Traditional Division of Local Regulatory Powers

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MERGING PUBLIC AND PRIVATE GOVERNANCE:
HOW DISNEY'S REEDY CREEK IMPROVEMENT DISTRICT
"RE-IMAGINED" THE TRADITIONAL DIVISION
OF LOCAL REGULATORY POWERS

Chad D. Emerson

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MERGING PUBLIC AND PRIVATE GOVERNANCE: HOW DISNEY'S REEDY CREEK IMPROVEMENT DISTRICT "RE-IMAGINED" THE TRADITIONAL DIVISION OF LOCAL REGULATORY POWERS

CHAD D. EMERSON*

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I. INTRODUCTION

On November 22, 1963, one airplane flight changed the course of Central Florida—and in many ways the entire nation.¹ Aboard the plane was Walter Elias Disney,² the creative genius who had ushered in a new era of American entertainment through his animated fea-

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1. See RICHARD E. FOGLESONG, *MARRIED TO THE MOUSE* 14 (2001).

2. *Id.*

tures and Disneyland theme park in Anaheim, California. From his window seat, Disney looked down on acreage of undeveloped land,³ including rural swampland and citrus groves⁴—a physical environment that hardly seemed ripe for what would soon become one of the largest private developments in the United States. Yet, as was his skill, Disney saw an opportunity where others did not—so much so that a small team of Disney confidants soon began acquiring 27,000 of these isolated acres for what would ultimately become the iconic Walt Disney World Resort.⁵

This Article analyzes the legal and regulatory events that enabled Disney's vision to become a reality. This series of events uniquely melded public governance with private enterprise to create a system designed to facilitate Disney's massive project without resorting to a large public investment.

Indeed, when the Florida Legislature created the Reedy Creek Improvement District (the "District" or "Reedy Creek" or "Improvement District"), it empowered the District with authority "typically reserved for municipal and county governments."⁶ The Legislature accomplished this through use of a special district.⁷ While Reedy Creek was certainly not the first special district, Disney's version was unique in the broad scope of its authority.

This Article examines the history of special districts generally and the Reedy Creek Improvement District specifically. It then analyzes the positive benefits that both Disney and the general public have realized since the Florida Legislature empowered the District with authority normally vested in public governments. In doing so, the Article concludes that under certain circumstances, such as the case at hand, granting public powers to private parties can result in a more effective and efficient method of governing.

This is the lesson—and the story—of the Reedy Creek Improvement District.

II. PRIVATIZING TRADITIONAL PUBLIC AREAS OF GOVERNANCE

Historically, most regulatory functions in this country have been divided among the federal, state, and local governments. However, since the World War II era, another form of government—the special

3. See Robert N. Jenkins, *How One Man, and One Mouse, Changed Us*, ST. PETERSBURG TIMES, Dec. 12, 1999, http://www.sptimes.com/News/121299/news_pf/Travel/How_one_man_and_one_shtml.

4. STEVE MANNHEIM, WALT DISNEY AND THE QUEST FOR COMMUNITY 68 (2002).

5. FOGLESONG, *supra* note 1, at 46.

6. OFFICE OF PROGRAM POLICY ANALYSIS & GOV'T ACCOUNTABILITY, FLA. LEG., CENTRAL FLORIDA'S REEDY CREEK IMPROVEMENT DISTRICT HAS WIDE-RANGING AUTHORITY, Rep. No. 04-81, at 3 (2004) [hereinafter REEDY CREEK IMPROVEMENT DISTRICT REPORT].

7. See *id.*

district—has grown increasingly popular.⁸ The United States Census Bureau defines special districts as follows:

Special district governments are independent, special-purpose governmental units (other than school district governments), that exist as separate entities with substantial administrative and fiscal independence from general-purpose local governments. As defined for census purposes, the term “special district governments” excludes school district governments.⁹

Special districts are distinguished from more conventional forms of government in that they typically serve a “limited purpose” compared to the “general purpose” of states, cities, counties, and the like.¹⁰ The “limited” distinction refers to the fact that most special districts are established with a narrower scope of regulatory authority than conventional forms of government.¹¹ To understand why special districts have grown in use, a consideration of their history is informative.

A. The History of Special Districts

The historical development of special districts in the United States has consisted of three major chronological phases. First, in the early- to mid-1800s, states encountered an increased demand for infrastructure improvements because of a more mobile and industrial population.¹² To address these specific needs without burdening the general purpose government, states established special districts and gave the districts the authority to issue bonds to pay for the improvements.¹³ This strategy permitted states to increase the spending capacity for such projects while avoiding the need to dramatically increase taxes on the overall population.¹⁴

Unfortunately, some states imbibed in too much of a good thing. As one commentator explained, “[t]he profligate creation of special districts and issuance of debt were blamed, in part, for the financial panic of 1837, which led to the passage of the first limits on state leg-

8. Sara C. Galvan, *Wrestling with MUDS to Pin Down the Truth About Special Districts*, 75 *FORDHAM L. REV.* 3041, 3043 (2007).

9. 1 U.S. CENSUS BUREAU, U.S. DEP'T OF COMMERCE, 2002 CENSUS OF GOVERNMENTS, INDIVIDUAL STATE DESCRIPTIONS, at vi (2005) [hereinafter *INDIVIDUAL STATE DESCRIPTIONS*], available at <http://www.census.gov/prod/2005pubs/gc021x2.pdf>.

10. *See id.*

11. *See id.*

12. Barbara Coyle McCabe, *Special Districts: An Alternative to Consolidation*, in *CITY-COUNTY CONSOLIDATION AND ITS ALTERNATIVES* 142-43 (Jered B. Carr & Richard C. Feiock eds., 2004).

13. *Id.* at 132; *see id.* at 142-43. One example of this strategy is the series of canals throughout the state that the New York Legislature approved after the success of the Erie Canal. *Id.* at 143. Rather than pay for these from the state's general fund, the Legislature created a series of special districts to finance and administer this specific-purpose enterprise. *Id.*

14. *See id.* at 142-43.

islative power.”¹⁵ These events resulted in decreased use of special districts.¹⁶ That is, until another financial crisis reversed that trend.¹⁷

As the 1930s began, the Great Depression struck the United States with severe economic turmoil. To help counter the effects, President Roosevelt, in part, turned back to special districts.¹⁸ Roosevelt viewed these types of entities as an efficient governmental form for accomplishing specific tasks.¹⁹ As a result, “he promoted the use of public authorities and special districts to accomplish many public aims”—one of the most significant being the creation of the Tennessee Valley Authority, which was essentially an expansive special district centered on resource management and services.²⁰

By the 1950s, another shift occurred as “the chief proponents of special districts began to shift from national leaders to state and local executives and private entrepreneurs.”²¹ This represented a return to the nineteenth century trend where states viewed special districts—and their financing authority—as a tool for large infrastructure projects. Former New York Governor Nelson Rockefeller represented a prime example of this shift. During his term from 1959 to 1974, the Governor established over twenty special district-type entities.²²

This trend continued into the 1980s as general purpose governments, faced with reduced federal aid, sought to increase infrastructure and development capacity without raising taxes or directly going into debt.²³ To do this, municipalities created a form of special district, the business improvement district, to administer and finance the revitalization of certain smaller segments within the larger city²⁴—a strategy which, again, distributed the cost (and risk) of such efforts more narrowly than would the general purpose government acting directly on the matter.

As the twentieth century passed into the twenty-first century, the trend toward creating special districts in the United States continued. By 2002, the U.S. Census Bureau calculated that there were more than 85,000 “governmental units” in the United States.²⁵ Roughly 38,000 of this total were general purpose forms of local gov-

15. *Id.* at 143.

16. *See id.* at 143-44.

17. *Id.* at 144.

18. Jerry Mitchell, *Public Enterprises in the United States*, in PUBLIC ENTERPRISE MANAGEMENT: INTERNATIONAL CASE STUDIES 68, 69 (Ali Farazmand ed., 1996).

19. *Id.*

20. *Id.*

21. McCabe, *supra* note 12, at 145.

22. *Id.*

23. *Id.* at 146.

24. *Id.* at 146-47.

25. INDIVIDUAL STATE DESCRIPTIONS, *supra* note 9, at v.

ernment.²⁶ The remaining number was comprised of school districts and special districts, with special districts numbering slightly more than 35,000.²⁷

For historical context, the Census Bureau notes that “the number of special district governments reported in 2002 [was] almost three times the number of special district governments reported in 1952.”²⁸ This means that, as time goes by, the total number of special districts continues to creep near the total of conventional local forms of government. This trend indicates that the interest in this special form is increasing as an alternative approach to governance. One likely reason for this is the flexibility that special districts offer in their legal and regulatory operations.

B. *The Legal Operation of Improvement Districts*

A common feature among most special districts is their independence from existing forms of government.²⁹ As one commentator has explained, this means that “the parent government neither serves as nor appoints the special district’s governing board.”³⁰ As a result, “[s]pecial districts’ work plans and budgets are not subject to the approval of other local governments.”³¹ This autonomy and actual legislative capacity elevates a special district from merely an advisory board (such as a Board of Zoning Adjustment) to the level of the parent government (such as a City Council) serving in an actual legislative capacity.

Interestingly, though, while the Reedy Creek Improvement District possesses broad powers, the majority of special districts are single-purpose in nature.³² The U.S. Census Bureau compiled a list of these limited functions—with activities such as fire protection, water service, waste management, natural resource management, and power generation representing typical examples.³³ This finding is significant in terms of Reedy Creek constituting an innovative form of special district. In particular, the Reedy Creek Improvement District’s innovation is that, while acting as a special district, it eschews

26. *Id.*

27. *Id.*

28. 1 U.S. CENSUS BUREAU, U.S. DEP’T OF COMMERCE, 2002 CENSUS OF GOVERNMENTS, GOVERNMENT ORGANIZATION, at vii (2002), available at <http://www.census.gov/prod/2003pubs/gc021x1.pdf>. This report includes detailed statistical analysis comparing general purpose and limited purpose governments within the United States. See *id.* at 4-16.

29. McCabe, *supra* note 12, at 131-32.

30. *Id.* at 132.

31. *Id.*

32. INDIVIDUAL STATE DESCRIPTIONS, *supra* note 9, at vi.

33. *Id.* app. A.

the typical singular nature and instead compiles many of these separate functions into a larger whole.³⁴

The result is a special district with a broad and diverse set of powers—the exact equation needed to facilitate what would become one of the world’s largest private projects and, in doing so, would dramatically alter the face of Florida. The following Parts detail the historical origins of the Reedy Creek Improvement District while analyzing its legal and regulatory effect.

III. THE HISTORY OF DISNEY’S REEDY CREEK IMPROVEMENT DISTRICT

As one of the country’s most popular tourist destinations, “Walt Disney World” is known to almost every American vacationer. Yet, this famous Orlando-area destination has not always been known by that popular moniker. Indeed, before it was Disney World, the project name alternated among a series of names that seemed more like code words.

For instance, as early as 1964, the resort concept was known as Project Winter.³⁵ This was part of a series of other proposed Disney projects to be located in St. Louis, Missouri (Project Fall), Niagara Falls, New York (Project Summer), and Monterey, California (Project Spring).³⁶ These “seasonal” projects were part of a wave of proposed Disney projects during the 1960s. While some, like “Riverboat Square”—the proposed indoor Disney theme park near the St. Louis waterfront—were located in cold weather climates,³⁷ from the beginning, the State of Florida was the most likely location for an expansion of the Disney amusement park enterprise.

By June 1965, Disney officials had renamed the proposed resort Project Future.³⁸ Shortly thereafter the resort underwent another name change with Disney now referring to it as Project Florida,³⁹

34. MANNHEIM, *supra* note 4, at 106-07.

35. Economics Research Associates, Preliminary Investigation of Available Acreage for Project Winter (Jan. 16, 1964) (unpublished report, on file with the Special Collections and University Archives, University of Central Florida) [hereinafter ERA Preliminary Investigation].

36. Economics Research Associates, Summary of Disney-Oriented Projects (Oct. 18, 1963) (on file with the Special Collections and University Archives, University of Central Florida) [hereinafter ERA Summary of Disney-Oriented Projects]. The company also researched the possibility of locating an East Coast resort in New Jersey. *Disneyworld Amusement Center with Domed City Set for Florida*, N.Y. TIMES, Feb. 3, 1967, at 38.

37. See FOGLESONG, *supra* note 1, at 3; JASON SURRELL, *THE DISNEY MOUNTAINS: IMAGINEERING AT ITS PEAK 60* (2007).

38. See Summary of Project Future Seminar (June 14, 1965) (on file with the Special Collections and University Archives, University of Central Florida) [hereinafter June 14 Summary]. This same document also refers to the resort as “Project X” when comparing its potential ten-year impact to that of Disneyland. *Id.* at 3.

39. Inter-Office Communication from Jack Sayers to Florida Committee 1 (June 6, 1966) (on file with the Special Collections and University Archives, University of Central Florida).

Project X,⁴⁰ and Disneyland-East.⁴¹ Ultimately, the company would officially announce the project in November 1965,⁴² with Roy Disney finally settling on the name of “Walt Disney World Resort” following his brother Walt’s death in December 1966.⁴³

The story behind the creation of the Disney Corporation’s massive eastern resort is more than just one of name changes. The history of the Reedy Creek Improvement District is a tale of unconventional political and regulatory strategies aimed at securing positive results for both public and private interests.

A. *The Early Planning Years*

One of the earliest indications of Disney’s interest in a Florida resort occurred in the late 1950s.⁴⁴ Disney commissioned Economics Research Associates (ERA) to conduct “A Study of the Market for an Eastern Disneyland,” dated June 16, 1959.⁴⁵ Soon thereafter, rumors of a potential Disneyland park in Florida began to spread so rampantly that, by January 1962, several officials organized a meeting to brief then Florida Governor Cecil Farris “concerning the establishment of a Disneyland in the State of Florida.”⁴⁶ While the 1962 meeting was ultimately cancelled,⁴⁷ Disney’s plans for a Florida resort continued forward.⁴⁸

On November 22, 1963, Walt Disney flew over the future Disney World site as part of a larger tour of various Florida properties in contention for the resort.⁴⁹ The tour also consisted of stops in St. Louis, Niagara Falls, and the Washington D.C. area, where the Disney entourage toured potential sites and met with proponents of a Disney project in their area.⁵⁰ It was at the end of this lengthy plane trip—after the group had stopped in New Orleans and then began the flight home to California—that Walt Disney announced to those on board the plane that Central Florida appeared to be their location.⁵¹

40. June 14 Summary, *supra* note 38, at 3.

41. *Disneyworld Amusement Center with Domed City Set for Florida*, *supra* note 36.

42. FOGLESONG, *supra* note 1, at 49-51.

43. *Id.* at 64-65.

44. *Disney Dollars*, FORBES MAG., May 1, 1971, at 20 (stating that “Walt and Roy [Disney] began plotting out a Disney World in 1958”).

45. ERA Summary of Disney-Oriented Projects, *supra* note 36, at 1.

46. Memorandum from James Kynes, Office of the Gov. of Fla. (Jan 1, 1962) (on file with Florida State Archives).

47. Letter from Fred O. Dickinson, Jr., Chairman, The Florida Council of 100, to James Kynes, Office of the Gov. of Fla. (Jan. 10, 1962) (on file with Florida State Archives).

48. *See Disney Dollars*, *supra* note 44.

49. FOGLESONG, *supra* note 1, at 14.

50. Jenkins, *supra* note 3.

51. *Id.* (“On the quiet return flight to California the next day, [Walt] Disney announced, simply: ‘Well, that’s the place -- Central Florida.’”).

With Central Florida now the likely location, the company once again hired ERA—this time to research prospective properties for Disney World.⁵² One of the “primary objectives” of this 1964 report was “to evaluate in greater detail the location advantages offered by Ocala versus Orlando.”⁵³

The debate between these locations had started two years earlier with another Disney-commissioned ERA report, which concluded that “the Ocala area was the optimum geographic location for such a project because of the large number of out-of-state visitors . . . that passed through or near the city annually.”⁵⁴ However, by the time the 1964 report was finished, two new major highways (the interstate between Orlando and Tampa and the extension of the Florida Turnpike to Orlando) were nearing completion.⁵⁵ These new highways meant that Orlando’s drive-through exposure could compete with that of Ocala.⁵⁶ As a result, the ERA report focused more attention on the Orlando area as it “offer[ed] greater potentials for the development of Project Winter than . . . the Ocala area” since “Orlando has a large, growing, and healthy economic base to help sustain” a project of this magnitude.⁵⁷ During this time, Thomas DeWolf—a Miami attorney whose firm would serve as local counsel—surveyed potential locations throughout the state along with others; from the trip, the group would identify four possibilities: Port St. Lucie, New Smyrna, St. Augustine, and the Orlando area.⁵⁸ Ultimately, the Project Winter team concurred with ERA and recommended Orlando.⁵⁹

Still, the idea of operating a year-round theme park resort in Central Florida was not without potential concerns. Issues such as the area’s insect problems, hurricane threats, regular thunderstorms, and occasional cold winter days (mixed with a consistently hot and humid summer season) meant that the area compared much less favorably than the more temperate conditions at Disneyland in South-

52. ERA Preliminary Investigation, *supra* note 35, at 1.

53. *Id.* The other assigned objectives were:

(2) to review the present status of the Florida Interstate Highway System and what effect the new freeway system is having on tourist travel; (3) to investigate possible locations within the major geographic region described earlier which would be suitable for Project Winter; (4) to obtain data on properties currently available for sale and those that might be potential acquisitions; and (5) to determine present land values for these large acreages.

Id.

54. *Id.* at 2.

55. *Id.*

56. *Id.*

57. *Id.* at 5.

58. Interview with Thomas DeWolf (Aug. 8, 2007) (on file with author).

59. See FOGLESONG, *supra* note 1, at 37-40.

ern California.⁶⁰ Yet, Disney seemed undeterred and continued forward with Central Florida as its next resort destination.⁶¹

With the location of Project Winter focused on the Orlando vicinity, the ERA team investigated fifty different properties, with twenty-five of those researched in detail.⁶² One of the primary requirements was that the accumulated land comprise between 3,000 and 12,000 acres.⁶³ This led ERA to exclude many parcels located in the western, northwestern, and northern parts of the city, as these areas were dominated by citrus groves whose value exceeded \$4,000 per acre—much too expensive for accumulating such a large amount of land.⁶⁴

Fortunately, the study found that large, single-owner land holdings and the paths of the new highways made the southern parts of Orlando the best option for the project.⁶⁵ In particular, the report identified nine prospective parcels in this area for the development:

- A 300,000-plus acre parcel controlled by the Mormon Church;⁶⁶
- An approximately 6,000-acre parcel near East Tohopekaliga Lake;⁶⁷
- A roughly 3,000-acre parcel owned by Major Realty Company—one of the largest landholders in Florida;⁶⁸
- A 4,550-acre parcel known as the “University Tract” due to its proximity to an even larger parcel that Florida State University was considering for a new campus in Orlando;⁶⁹
- A 6,000-acre parcel known as the “Highway Hub Tract,” also near the proposed university location;⁷⁰
- The 6,000-acre Lawson Ranch;⁷¹
- The Acorn River Ranch property located sixteen miles east of the city;⁷²
- An 8,200-acre area known somewhat cryptically as “Parcel 18”;⁷³ and
- A 12,440-acre parcel known as the “Expressway Tract.”⁷⁴

The 1964 ERA report analyzed each property with a focus on the proximity to highways, per acre cost, topography, size, and number of

60. In 1970, a New York Times reporter noted these concerns, together with an ongoing economic slump, as the resort neared completion. Jon Nordheimer, *New Disney World Is Rising*, N.Y. TIMES, Dec. 29, 1970, at 27.

61. *See id.*

62. ERA Preliminary Investigation, *supra* note 35, at 11.

63. *Id.* at 12.

64. *Id.*

65. *Id.*

66. *Id.* at 12, 14.

67. *Id.* at 14.

68. *Id.* at 17.

69. *Id.* at 18.

70. *Id.*

71. *Id.* at 19.

72. *Id.* at 20.

73. *Id.* at 19.

74. *Id.* at 20.

owners.⁷⁵ Eventually, the report would rank the East Tohopekaliga Property, the Expressway Tract, the Major Realty Property, and the University Tract as the top four options (in that order).⁷⁶

Before compiling the land, though, Disney found itself in the middle of a whirlwind of legal negotiations cloaked in measures of extreme secrecy, designed to avoid a rash of land speculation.⁷⁷

To shepherd the project from land acquisition to legislative approval, Disney relied heavily on the Miami-based law firm of Helliwell, Melrose & DeWolf.⁷⁸ The firm's prominent role in the project resulted from peculiar circumstances. Paul Helliwell, namesake of the Miami firm, received his law degree prior to joining the United States Army during World War II.⁷⁹ Eventually, Helliwell was assigned to the Office of Strategic Services (OSS)⁸⁰—the U.S. intelligence agency formed during the war as a predecessor to the CIA.⁸¹ During Helliwell's tenure in the OSS, the agency was headed by another lawyer, William Donovan.⁸² Later, Donovan and Helliwell became close,⁸³ and Helliwell was eventually tapped to lead the OSS's intelligence operations in Europe.⁸⁴

Donovan founded the law firm of Donovan, Leisure, Newton & Irvine based in New York.⁸⁵ When the time came to hire Florida counsel for the effort, Donovan turned to his former OSS associate, Paul Helliwell.⁸⁶

Not surprisingly—especially when one considers the intelligence backgrounds of both Donovan and Helliwell—the Florida effort soon

75. *Id.* at 14-21.

76. *Id.* at 21. Other parcels were eliminated because of cost (an asking price of \$1,650 per acre for the Highway Hub Tract), topography (extensive swamp property on the Lawson Ranch), and the lack of proximity to major highways (Acorn River Ranch). *Id.* at 18-20.

77. FOGLESONG, *supra* note 1, at 35, 40-44.

78. MANNHEIM, *supra* note 4, at 70, 105.

79. For an interesting (though somewhat conspiratorially tinged) biography of Paul Helliwell, see Spartacus Educational, <http://www.spartacus.schoolnet.co.uk/JFKhelliwell.htm> (last visited Apr. 11, 2009) [hereinafter Spartacus Educational].

80. FOGLESONG, *supra* note 1, at 44; Spartacus Educational, *supra* note 79.

81. Melody Petersen, *Donovan, Leisure, Old-Line Law Firm, to Shut Its Doors*, N.Y. TIMES, Apr. 20, 1998, <http://www.nytimes.com/1998/04/20/business/donovan-leisure-old-line-law-firm-to-shut-its-doors.html>.

82. *Id.*; Spartacus Educational, *supra* note 79.

83. See FOGLESONG, *supra* note 1, at 40.

84. Spartacus Educational, *supra* note 79.

85. Petersen, *supra* note 81. Disney's ties with the Donovan firm continued well after the Florida project. For instance, former Disney Vice Chairman Sanford M. Litvack once served as managing partner for the firm. *Litvack Takes New Post*, N.Y. TIMES, Dec. 12, 1986, available at <http://www.nytimes.com/1986/12/12/business/litvack-takes-new-post.html>; Sanford "Sandy" M. Litvack, Hogan & Hartson, <http://www.hhlaw.com/slitvack> (last visited Apr. 11, 2009). Joe Shapiro, one of the key Disney attorneys involved in the creation of the Disneyland Paris resort, also came to the company from the Donovan firm. See Dana Harris, *Dis Lawyer Joe Shapiro Dies*, HOLLYWOOD REP., Sept. 27, 1999.

86. FOGLESONG, *supra* note 1, at 40.

established policies designed to safeguard the secrecy of the project.⁸⁷ For instance, calls between Disney and the Miami firm would generally be routed through the Donovan firm.⁸⁸ This reduced the chance that an errant message or curious employee might make a direct connection between Disney and the land acquisition efforts headed by the Helliwell firm.

B. *The Decisionmaking Period*

By June 1965, Disney had acquired actual title or options for over 27,000 acres of land, comprising roughly forty-three square miles.⁸⁹ Amazingly, Disney had been able to obtain all of this land for slightly more than \$5 million⁹⁰—a figure that worked out to be under \$200 per acre. Title to the property was held by five Florida corporations, and the stock for each was owned by a Disney-controlled Delaware corporation known as Compass East Corporation.⁹¹ Disney established the Florida corporations—Reedy Creek Ranch, Inc., Bay Lake Properties, Inc., Tomahawk Properties, Inc., Ayefour Corporation, and Latin American Development and Management Corporation⁹²—in an effort to maintain the secrecy of its involvement during the purchase process.⁹³

1. *The Project Future Seminar*

Following two years of land acquisition, the project entered a new phase: the decisionmaking period where the company would, among other things, select a corporate and governing strategy for this massive new development. The week of June 14, 1965, marked a key event in this process. During this week, the expanded group of key Disney officials convened for a four-day seminar to discuss implementation strategies related to “Project Future”—the working name at the time for the Disney efforts in Florida.⁹⁴ Officials at the meeting

87. FOGLESONG, *supra* note 1, at 40-45, 49; Alecia Swasy, *Off the Shelf; When Disney Winked, Florida Swooned*, N.Y. TIMES, July 8, 2001, available at <http://www.nytimes.com/2001/07/08/business/off-the-shelf-when-disney-winked-florida-swooned.html> (“Disney emissaries checked into a Tampa hotel under assumed names. . . . Mr. Donovan procured business cards, letterhead and phone numbers in the name of Burke & Burke as a cover.”); Interview with Thomas DeWolf, *supra* note 58.

88. FOGLESONG, *supra* note 1, at 44; Swasy, *supra* note 87; Interview with Thomas DeWolf, *supra* note 58.

89. WALT DISNEY PROD., ANNUAL REPORT TO SHAREHOLDERS AND EMPLOYEES (1965) (confirming in October of 1965 that Disney had acquired the land).

90. *Id.*

91. Summary of Project Future Seminar 11 (June 17, 1965) (on file with the Special Collections and University Archives, University of Central Florida) [hereinafter June 17 Summary].

92. *Id.*

93. See *id.* at 11-12.

94. June 14 Summary, *supra* note 38, at 1.

estimated that the overall investment for infrastructure and facilities would exceed \$100 million.⁹⁵

One major issue related to the importance of Florida counties, as this level of government controlled many tax structures. During the seminar, Disney officials considered how Orange and Osceola counties would assess and tax the property during its development stages.⁹⁶ In particular, the group was keen on having the large undeveloped portions of the property classified as agricultural as opposed to having the entire property taxed at the higher commercial rates.⁹⁷ The effect of this classification was that the counties would refrain from assessing taxes based on the prospective value of the property as a resort.⁹⁸

Attorney Helliwell also discussed how Florida law treated land as unimproved for tax purposes until it reached seventy-five percent completion as of January 1st of a given year.⁹⁹ He suggested that county tax authorities would not tax an improvement until that improvement was actually used¹⁰⁰—an important possibility for a phased project like this one where a single improvement might be completed but not operational for as long as a year.¹⁰¹ To increase the likelihood of these results, Helliwell floated the idea of seeking an Attorney General opinion on the issue as such opinions carried significant weight in Florida at the time.¹⁰²

Other legal and regulatory issues arose during the seminar:

- Protection of the Disney trademark within Florida;¹⁰³
- The possibility of an involuntary annexation of the project by the city of Orlando or another area city;¹⁰⁴
- The liability and tax benefits of establishing Disney's own drainage district;¹⁰⁵
- The applicability of local planning and zoning ordinances to the site;¹⁰⁶ and
- The issue of whether the waterways within the property would be classified as navigable for control purposes.¹⁰⁷

95. June 17 Summary, *supra* note 91, at 12.

96. Summary of Project Future Seminar 1-5 (June 15, 1965) (on file with the Special Collections and University Archives, University of Central Florida) [hereinafter June 15 Summary].

97. *Id.* at 2-3.

98. *Id.* at 3.

99. *Id.*

100. *Id.*

101. *See id.*

102. *Id.* at 4.

103. *Id.* at 9.

104. *Id.* at 10. The likelihood of this occurring was apparently dismissed by Helliwell as almost impossible. *Id.*

105. *Id.* at 11-14.

106. *Id.* at 16. At the time of the seminar, Orange County had adopted land use regulations but Osceola had not and was not anticipated to do so before the project began. *Id.*

In addition, during the seminar, Walt Disney expressed concern that the lack of permanent residents in Orlando would make operating the Florida resort much different than Disneyland, which had its large Los Angeles local population center.¹⁰⁸

Even more significant was Walt Disney's strong emphasis on the importance of "control[ing] the area, so that it does not become the jungle of signs, lights and fly-by-night operations that have 'fed' on Disneyland's audience."¹⁰⁹ The theme of "control" would serve as one of the leading factors in most decisionmaking related to the project. It was during this meeting that Helliwell would make one of the earliest suggestions that Disney should create its own municipality for the project so that it could "control [its] own destiny."¹¹⁰ However, Disney officials expressed some concern that creating a city could force the company to cede authority to the newly created municipality.¹¹¹ In response, Helliwell explained that Disney could form the municipality using a special act approved by the State Legislature¹¹²—a strategy that would give the company much more control over the municipality's operating charter.¹¹³ Thus, Disney could craft specific regulations for its unique circumstances.

Considering all of these factors, the municipality idea appeared to gain support among the members of the group. In particular, the increased amount of control resonated with them—so much so that it was noted that "[i]f a municipality is not formed the controls which would otherwise be granted to it would be vested in the county (over which we would have no control)."¹¹⁴

While the idea of creating a municipality piqued the group's interest, at least one Disney official suggested that, if established, the cities should exclude residential properties as this could dilute the company's influence.¹¹⁵ Once again, Helliwell offered a possible legal solution: limit voting rights within the municipalities to landown-

107. *Id.* at 14-15. Indeed, Helliwell would recommend that the company take steps to "isolate" the waterways within the property as a further guard against them being classified as navigable and thus subject to external regulations. *Id.* at 15.

108. June 14 Summary, *supra* note 38, at 4.

109. *Id.* (emphasis omitted).

110. *Id.* at 7.

111. Summary of Project Future Seminar 3 (June 16, 1965) (on file with the Special Collections and University Archives, University of Central Florida) [hereinafter June 16 Summary]. Even Helliwell recognized that Disney should not be too aggressive in creating its municipal corporations. He was particularly concerned that the company should not cross county lines with the municipal boundaries. This was a "pioneer[ing]" act that, in his opinion, should be avoided. *Id.* at 4.

112. *Id.* at 3-4.

113. *See id.*

114. *Id.* at 4.

115. *Id.*

ers.¹¹⁶ This would allow for leased residential units without the company diluting its control via voting rights. To further the strategy, Helliwell pointed to three Florida cases that provided precedent for the approach.¹¹⁷

Alternatively, meeting participants considered an idea that would establish separate municipalities for the proposed residential areas and the proposed commercial/amusement components of the project.¹¹⁸ This approach would allow the company to include potentially lucrative residential sales in the project without giving the prospective residents any control beyond that component.¹¹⁹

The meeting attendees set December 1966 as the date for completing a proposed charter for the cities.¹²⁰ The charter would address the proposed structure for managing the cities as well as the scope of power granted to them, with land use, taxation, and bonding authority being among the company's chief interests in establishing its own city.¹²¹

Yet, while numerous concerns were identified, the Project Future seminar also took on a positive tone in many respects. For instance, Helliwell suggested that the project would not need much in the way of state legislation¹²² (a claim that would eventually prove quite premature) and legislation that it might need would be aided by a positive political climate for the project¹²³ (a prediction that would, in turn, prove extraordinarily accurate). Meanwhile, Disney's business consultant, Roy Hawkins, explained that Florida's State Development Commission would likely be eager to cooperate in making the proposal a reality, similar to the support that it had recently provided for the Pratt-Whitney, General Electric, and Aerojet projects in the state.¹²⁴ Indeed, Hawkins would go so far as to proclaim that, from a business development perspective, the "potential is unlimited" for Project Future.¹²⁵

The four-day meeting would conclude with the attendees having considered a broad spectrum of other issues, including the creation of an atomic energy facility, banks, an insurance company, and even an

116. *Id.* at 5.

117. *Id.* The seminar notes reveal that Helliwell cited the following cases in support of this position: *State v. Dillon*, 14 So. 383 (Fla. 1893); *Town of Jupiter Island v. Gautier*, 157 So. 2d 868 (Fla. 2d DCA 1963); and *Hisgen v. Raleigh*, 115 So. 2d 715 (Fla. 2d DCA 1959).

118. June 16 Summary, *supra* note 111, at 5.

119. Presumably, even the residents' control over that part of the project could be limited by private covenants.

120. *Id.* at 6.

121. *See id.* at 3-6.

122. June 14 summary, *supra* note 38, at 7.

123. *See id.* at 6-7.

124. *Id.* at 8.

125. *Id.* (internal quotation marks omitted).

airport for the project—to name just a few.¹²⁶ Ultimately, the Project Future seminar set the stage for Disney's next legal and regulatory steps as it continued to refine strategies for retaining control over many aspects of the massive project. Indeed, by the end of the meeting, the official announcement that Disney was coming to Central Florida was just months away.

During this time, not only would the company engage in creative and business planning, but it would also consider another novel governance strategy—one whose structure had existed for years but that had never been tried on such a large scale and with such a large scope of authority.

2. *The Improvement District Strategy*

In 1965, Florida counties were a powerful governing entity because of their taxing authority. Yet, Disney officials quickly realized that creating their own county would essentially be impossible.¹²⁷ Therefore, the company opted to consider an alternative form of governance. One possibility was to utilize a special district.

The special district could represent a win-win for both the company and the counties in which the Disney property resided. The company could retain more control over the project governance than if it only created a municipality; meanwhile, Orange and Osceola counties would avoid the debt involved with installing the massive infrastructure for the project.

Special districts in Florida have a long and varied history. The first such districts trace their origins back to the Road, Highway, and Ferry Act of 1822, passed by the Territorial Legislature to facilitate the construction of transportation routes throughout the wet and swampy lands of this southern outpost.¹²⁸ After Florida became a state in 1845, the Legislature passed an act that created Florida's first legislative special district;¹²⁹ the act foreshadowed the Reedy Creek Drainage District as it empowered the financing of wetland reclamation through special assessments upon landowners.¹³⁰ In 1989, the Florida Legislature passed the Uniform Special District Accountability Act of 1989.¹³¹

126. June 16 Summary, *supra* note 111, at 9-13.

127. June 15 Summary, *supra* note 96, at 4.

128. Florida Special District Handbook Online, Section 1-1: Introduction, <http://www.floridaspecialdistricts.org/Handbook/1-1Introduction.cfm> (last visited Apr. 11, 2009) (providing a history of special districts in Florida).

129. *Id.*

130. *Id.*

131. *Id.*; see also Uniform Special District Accountability Act of 1989, ch. 89-169, 1989 Fla. Laws 603.

3. *Maintaining Legal Control of Reedy Creek*

While the improvement district approach would provide a novel framework for organizing the project, Disney's desire to control the environment competed with the desire to develop the massive land holdings. One major problem area involved residential housing.

Walt's original vision for the project included private housing for residents of the Florida project. By 1971, this vision began to first take shape when the Buena Vista Land Company, a subsidiary of Walt Disney Productions, started construction on a 3,800-acre portion of the property that would include private residences such as houses, apartments, and townhomes.¹³² In a 1971 interview, Roy Disney explained the rationale for this effort: "This gets us into developing, building up the lots; from there we gradually move into the whole EPCOT idea."¹³³

However, early on, Disney officials realized that private housing within the Florida project could dilute their control over the overall development.¹³⁴ If Disney wanted to maintain quality control, the company would have to find a way to limit the voting power of the private residents.¹³⁵ This challenge was exacerbated by *Avery v. Midland County*, a case that was proceeding through the court system at this time, which sharply restricted the ability to limit an individual's right to vote based on external factors such as amount of land owned.¹³⁶ In *Avery*, the Court overturned an electoral process for the Midland County Commissioners Court on the grounds that it violated the Equal Protection Clause.¹³⁷ The Commissioners Court was composed of five members, including a county judge whose voting power was generally limited to breaking tie votes.¹³⁸ While the judge was elected county-wide, the remaining four regularly-voting commissioners were elected from four districts.¹³⁹ In order to tilt the voting power in favor of rural residents, the single urban district included over 67,000 of the county's 70,000 residents while the remaining three districts maintained populations of 828, 852, and 414 residents.¹⁴⁰ Because Midland County centralized over ninety-five percent of the population into a single district, the Court found that the county had violated the "one man, one vote principle" associated with the Fourteenth Amendment's Equal Protection Clause in that barely

132. *Land Speculators Play Disney's Money Machine*, BUS. WK., Sept. 11, 1971, at 80 [hereinafter *Land Speculators*].

133. *Disney Dollars*, *supra* note 44.

134. MANNHEIM, *supra* note 4, at 113; *see also* FOGLESONG, *supra* note 1, at 61-63.

135. *See id.*

136. *See Avery v. Midland County*, 390 U.S. 474, 476 (1968).

137. *Id.* at 484-86.

138. *Id.* at 476.

139. *Id.*

140. *Id.*

2,000 rural residents would end up electing a majority of the commissioners.¹⁴¹ The Court ruled that the Equal Protection Clause required that local governing bodies “with general governmental powers over an entire geographic area not be apportioned among single-member districts of substantially unequal population.”¹⁴²

The *Avery* Court’s application of the Fourteenth Amendment to a local government was an extension of one person, one vote beyond its previous limitations to federal and state bodies.¹⁴³ Local governments would now also be required to equally distribute voting powers among the local electorate.¹⁴⁴ However, the Court was careful to note that this was not an absolute requirement for all forms of local governing bodies; indeed, the Court specifically explained that

[w]ere the Commissioners Court a special-purpose unit of government assigned the performance of functions affecting definable groups of constituents more than other constituents, we would have to confront the question whether such a body may be apportioned in ways which give greater influence to the citizens most affected by the organization’s functions.¹⁴⁵

This unanswered question placed Disney in a precarious situation because the ability to control “voting” within the District was a key requirement for the company.¹⁴⁶ To do this, Disney intended to limit the ability of prospective Reedy Creek residents to participate in the governance of the District through voting powers.¹⁴⁷ One method for accomplishing this goal would be to allocate voting power by land ownership.¹⁴⁸ With Disney as the predominant land owner, the company would be able to control votes related to the District.

However, in light of the *Avery* decision, if Disney chose to allow individuals to reside within the District or its municipalities, doing so could require that the company extend to them voting powers in order to comply with the Equal Protection Clause. While the Court would ultimately limit the application of the *Avery* holding in the context of certain special districts,¹⁴⁹ Disney had no way of knowing that this would occur—and, even so, whether the unique structure of the District could avoid judicial scrutiny under the Fourteenth Amendment.

141. *See id.* at 476, 480.

142. *Id.* at 485-86.

143. Richard Briffault, *Who Rules at Home?: One Person/One Vote and Local Governments*, 60 U. CHI. L. REV. 339, 345-46 (1993).

144. *See id.* at 345.

145. *Avery*, 390 U.S. at 483-84.

146. *See* FOGLESONG, *supra* note 1, at 61-63.

147. *See id.*

148. *See id.*

149. Briffault, *supra* note 143, at 360.

However, even with these uncertain issues swirling around this unprecedented project, the company's Florida efforts were about to enter a new phase as a local reporter was prepared to break the big news: The mystery industry entering Central Florida was none other than the Disney Company.¹⁵⁰

C. *The Legal and Legislative Years*

Soon after rumors of Disney's involvement in Central Florida were confirmed, property values in the area increased at a phenomenal rate.¹⁵¹ Before anything could be built, however, Disney had to shepherd its regulatory package through the State Legislature.

1. *The Creation of the Reedy Creek Drainage District*

Before submitting the legislative package, Disney commenced a small, local legal process that would play a disproportionately large role in bringing the project to fruition. On May 13, 1966, the Circuit Court of the Ninth Judicial District created the Reedy Creek Drainage District pursuant to Chapter 298 of the Florida Statutes.¹⁵² This allowed Disney to begin the time-consuming effort of draining and reclaiming much of the land so that actual site construction would be possible. However, this initial legal victory was tempered by growing legislative problems—none of which were caused by Disney but each of which could conceivably derail the project.

2. *A Shakeup in the State Legislature*

On June 22, 1964, the Supreme Court of the United States decided *Swann v. Adams*; the practical effect of this decision was to require the Florida Legislature to reapportion the State House and State Senate districts.¹⁵³ The State Legislature responded in the 1965 legislative session by adopting a new reapportionment plan.¹⁵⁴ However, this solution was short lived as the Supreme Court again overturned the plan in 1966.¹⁵⁵

150. FOGLESONG, *supra* note 1, at 48-49.

151. For an analysis of land speculation and appreciation during that time, see *Land Speculators*, *supra* note 132. "So feverish has the competition for land become that property that went for peanuts in 1965 now goes for \$75,000 an acre and more." *Id.*

152. Minutes of the Board of Supervisors of Reedy Creek Drainage District 3 (June 6, 1966) (on file with author).

153. *Swann v. Adams*, 385 U.S. 440, 441-42 (1967) (citing *Swann v. Adams*, 378 U.S. 553 (1964)). The first sentence of the Court's opinion demonstrated its apparent frustration with the inability of the Florida Legislature to correctly apportion its districts: "This case presents still another development in the efforts of the State of Florida to apportion its legislature in accordance with the requirements of the Federal Constitution." *Id.* at 441.

154. *Id.* at 442.

155. *Id.* (citing *Swann v. Adams*, 383 U.S. 210 (1966)).

3. *The Unexpected Death of Walt Disney*

On December 15, 1966, Walt Disney died, and the impact of his death would stress the creative bearings of the entire project.¹⁵⁶ After all, he had been the strategic and inspirational leader for not just the effort to build another theme park, but to craft an entire “City of Tomorrow.”¹⁵⁷

After an intense period of evaluation, Roy Disney took over the company’s decisionmaking and quickly resolved that the project would go forward.¹⁵⁸ As biographer Bob Thomas recounts, Roy gathered the company’s major executives and insisted that the Florida project continue: “We’re going to finish this park, and we’re going to do it just the way Walt wanted it. Don’t you ever forget it. I want every one of you to do just exactly what you were going to do when Walt was alive.”¹⁵⁹

4. *The Creation of the Reedy Creek Improvement District and Its Two Cities*

The Governor signed three pieces of legislation that represented the privatization of many traditional local regulatory responsibilities. Each piece of legislation, in its own respect, enabled Walt Disney’s dream to become reality.

(a) *Chapter 67-784: Creating the Reedy Creek Improvement District*

The legislation creating the actual Reedy Creek Improvement District exceeds a hefty one hundred pages in length.¹⁶⁰ However, even more impressive than the length is the scope of the District’s authority.

In a technical sense, to create the improvement district, the Florida Legislature essentially codified the May 13, 1966, circuit court decree that established the Reedy Creek Drainage District and then expanded the scope of the District’s authority.¹⁶¹ Section 9 of the legislation sets forth the various powers of the District—a wide-ranging grant of authority that included typical tasks such as the right to own property and maintain a corporate seal and expansive powers such as extraterritorial eminent domain.¹⁶² Other powers granted to

156. BOB THOMAS, *BUILDING A COMPANY: ROY O. DISNEY AND THE CREATION OF AN ENTERTAINMENT EMPIRE* 300 (1998).

157. MANNHEIM, *supra* note 4, at 67.

158. THOMAS, *supra* note 156, at 300.

159. *Id.* (internal quotation marks omitted).

160. *See* Act effective May 12, 1967, ch. 67-764, 1967 Fla. Laws 256.

161. *Id.* § 1, 1967 Fla. Laws at 263.

162. *Id.* § 9, 1967 Fla. Laws at 290-96. The legislation did limit extraterritorial condemnation power to drainage issues, though the territorial powers were essentially any purpose of the District. *Id.* § 9, 1967 Fla. Laws at 291-92.

the District included many that were typically held by a municipality: land reclamation, water and flood control, waste collection and disposal, pest control, fire protection, issuance of bonds, land use,¹⁶³ and building regulations.¹⁶⁴

In several cases, the legislation empowered the District to engage in less typical acts such as operating an airport and heliport (for both passenger and freight service).¹⁶⁵ On October 17, 1971, the resort debuted one of the country's first short-length airstrips (known as a STOLport for Short Take-Off and Landing).¹⁶⁶ During its operation, two airlines, Shawnee and Executive, operated passenger flights from the main airports in Orlando and Tampa directly to Disney World on small passenger turbo-prop planes.¹⁶⁷ The resort also maintained an Ultralight Flightpark near Epcot Center for private purposes.¹⁶⁸ While these landing strips were eventually abandoned,¹⁶⁹ at least one helipad remains in the nonpublic area of Epcot near the Living Seas Pavilion—a continuing legacy of the original 1967 legislation.

One of the recurrent themes within this legislation was to grant the District broad powers for experimental technologies. For instance, when the Legislature provided the District with authority to operate transportation systems, the statutory language contemplated systems “whether now or hereafter invented or developed including without limitation novel and experimental facilities.”¹⁷⁰ Similarly, the legislation authorized the District to operate “new and experimental public utilities” and “new and experimental sources of power and energy.”¹⁷¹ In fact, the goal of enabling the District to govern outside conventional norms was further demonstrated by a separate section within the legislation directly on point:

[I]n order to promote the development and utilization of new concepts, designs and ideas in the fields of recreation and community living, the District shall have the power and authority to examine

163. *Id.* § 9, 1967 Fla. Laws at 291-96.

164. *Id.* § 23(3), 1967 Fla. Laws at 313.

165. *Id.* § 3(1), 1967 Fla. Laws at 279-80; *id.* § 9, 1967 Fla. Laws at 294.

166. FAA HISTORICAL CHRONOLOGY, 1926-1996, available at <http://www.faa.gov/about/media/b-chron.pdf> (last visited Apr. 11, 2009).

167. VEHICLE TECHNOLOGY FOR CIVIL AVIATION: THE SEVENTIES AND BEYOND 4-5 (1971), available at http://ntrs.nasa.gov/archive/nasa/casi.ntrs.nasa.gov/19720016324_1972016324.pdf. For additional details related to Disney's former STOLport, see Paul Freeman, Abandoned & Little-Known Airfields: Florida: Southwestern Orlando Area, http://www.airfields-freeman.com/FL/Airfields_FL_OrlandoSW.htm (last visited Apr. 11, 2009).

168. For details related to the former Epcot Center Ultralight Flightpark, see Freeman, *supra* note 167.

169. *Id.*

170. Act effective May 12, 1967, ch. 67-764, § 9(16), 1967 Fla. Laws 256, 295.

171. *Id.* § 9(17), 1967 Fla. Laws at 295. It was within this section that the Legislature also granted the District the authority to generate power through nuclear fission. *Id.*

into, develop and utilize new concepts, designs and ideas, and to own, acquire, construct, reconstruct, equip, operate, maintain, extend and improve such experimental public facilities and services . . . as the Board may from time to time determine.¹⁷²

Clearly, both the Legislature and Disney conceived a project that, while in many respects operated as a conventional municipality, also possessed a broad scope of enabling authority to approach governance from a more novel perspective. This was the very type of authority that Walt Disney himself had anticipated would be necessary in order to accomplish such a unique project.¹⁷³

For governing purposes, the legislation created a five-person Board of Supervisors, all of whom had to own land within the District and a majority of which had to be residents of Osceola, Orange, or an adjoining county.¹⁷⁴ To elect the Board, the legislation provided that “each landowner shall be entitled to one (1) vote in person or by written proxy for every acre of land and for every major fraction of an acre owned by him in the District.”¹⁷⁵ This interesting provision meant that prospective, nonlandowner residents of the District (such as renters) or landowners owning less than one-half acre would not be entitled to vote in Board elections.

(b) The Legislation Creating the City of Reedy Creek and the City of Bay Lake

In addition to establishing the Reedy Creek “Super District,” Disney also received legislative approval for two new municipalities within the District, the City of Bay Lake¹⁷⁶ and the City of Reedy Creek.¹⁷⁷ A review of this legislation reveals a grant of somewhat typical municipal powers. What is atypical, however, is the fact that Disney essentially controlled the governance of both cities by limiting their populations to small groups of Disney employees and their families.¹⁷⁸ Essentially, the cities operated much like the District—as a regulatory tool for governing the Florida project. Indeed, many of the

172. *Id.* § 9(20), 1967 Fla. Laws at 296.

173. *See generally* MANNHEIM, *supra* note 4, at 105-25.

174. Ch. 67-764, § 4(1), 1967 Fla. Laws at 284.

175. *Id.* § 4(5), 1967 Fla. Laws at 285.

176. The City of Bay Lake was established on May 12, 1967, by Chapter 67-1104 of the Florida Special Acts. Act effective May 12, 1967, ch. 67-1104, pmbl., 1967 Fla. Laws 200, 200. A review of Google Maps aerial imagery to scale shows that residents of Bay Lake maintain the distinction of living within two miles of Disney’s Magic Kingdom park—an address that many Disney fans can only dream about.

177. The City of Reedy Creek was established on May 12, 1967, by Chapter 67-1965 of the Florida Special Acts. Act effective May 12, 1967, ch. 67-1965, pmbl., 1967 Fla. Laws 3769, 3769.

178. FOGLESONG, *supra* note 1, at 6.

powers held by the District were concurrently held by the two municipalities.¹⁷⁹

However, there were several interesting exceptions to this general rule, with the cities possessing some powers that the District did not. These included the following:

- Authority to issue business and professional licenses as well as collect related fees;¹⁸⁰
- Authority to build and maintain health care facilities, including hospitals and health care research facilities;¹⁸¹
- Authority to provide police services;¹⁸²
- Authority to regulate the manufacturing and sale of alcohol;¹⁸³ and
- Authority to establish and operate a municipal court, including appointment of a municipal judge and city prosecutor.¹⁸⁴

Indeed, in *Sipkema v. Reedy Creek Improvement District*, the Florida Fifth District Court of Appeal indicated that the District did not directly possess law enforcement authority.¹⁸⁵ However, even though the Legislature did not provide the District directly with these powers, both the city legislation and the District's legislation provided for a system where the cities could provide these services within the unincorporated areas of the District upon agreement of the entities.¹⁸⁶ The effect of the arrangement was that, since the company controlled all of the entities, it maintained the power to provide police services, hospital services, municipal court services, and the like within the entire boundaries of the District.

And, though the District has not elected to offer some of these services (such as operating a police force¹⁸⁷ or municipal court system¹⁸⁸), the 1967 legislative package nevertheless reserved almost all local

179. See Ch. 67-1104, § 5, 1967 Fla. Laws at 210-17; ch. 67-1965, § 5, 1967 Fla. Laws at 3779-87.

180. Ch. 67-1104, § 5(7), 1967 Fla. Laws at 212; ch. 67-1965, § 5(7), 1967 Fla. Laws at 3780.

181. Ch. 67-1104, § 5(14), 1967 Fla. Laws at 213-14; ch. 67-1965, § 5(14), 1967 Fla. Laws at 3782.

182. Ch. 67-1104, § 5(15), 1967 Fla. Laws at 214; ch. 67-1965, § 5(15), 1967 Fla. Laws at 3782.

183. Ch. 67-1104, § 5(24), 1967 Fla. Laws at 216; ch. 67-1965, § 5(24), 1967 Fla. Laws at 3784.

184. Ch. 67-1104, § 63, 1967 Fla. Laws at 249; *id.* § 68, 1967 Fla. Laws at 253-54; ch. 67-1965, § 63, 1967 Fla. Laws at 3816-17; *id.* § 68, 1967 Fla. Laws at 3821.

185. *Sipkema v. Reedy Creek Improvement Dist.*, 697 So. 2d 880, 881-82 (Fla. 5th DCA 1997) (Harris, J., concurring specially) (rejecting the appellants' argument that Disney security records should be subject to same public record disclosures as law enforcement agencies under Florida law).

186. See ch. 67-764, § 57, 1967 Fla. Laws at 348-49; ch. 67-1104, § 12, 1967 Fla. Laws at 223-25; ch. 67-1965, § 12, 1967 Fla. Laws at 3790.

187. See MANNHEIM, *supra* note 4, at 107.

188. See Reedy Creek Improvement District, Departments, http://www.rcid.org/Dept_main.cfm (last visited Apr. 11, 2009).

governance responsibilities for either the cities or the District.¹⁸⁹ The uniquely broad scope of this authority was soon tested within the Florida courts to determine whether the District and the cities, novel as they were, comported with the requirements of Florida's Constitution.¹⁹⁰

5. *A Legal Challenge to Disney's New Improvement District*

By November 1968, the project had encountered the threshold legal challenge of whether the Florida Supreme Court would uphold the constitutionality of this unique privatization of governance. The case, *State v. Reedy Creek Improvement District*,¹⁹¹ centered on the propriety of allowing the District to issue drainage bonds as part of the overall project development.¹⁹² The bond revenue would be used to drain and reclaim submerged land within the District, and the bond maturity dates ranged from 1970 until 2004.¹⁹³

The matter represented a somewhat odd procedural situation as the State, which had previously created the District through the 1967 legislation, was challenging the very scope of authority that it had granted to the District. The exercise was an important one, though, because it provided an opportunity for all parties to essentially test the legality of the District's unique structure within the Florida courts. Indeed, according to DeWolf, the lawsuit did not represent an effort by the State to overturn the Legislature's creation; rather it was a vehicle by which Disney could bring legal finality to whether the District would remain.¹⁹⁴

Ultimately, the Florida Supreme Court upheld not only the trial court's validation of the drainage bonds, but also the very structure of the District itself.¹⁹⁵ In doing so, the Court found the State's challenge to the validity of the bonds to be "untenable."¹⁹⁶

For instance, it disposed of the State's first argument that the bonds represented an unlawful issuance of public funds for a private

189. One noted exception to this related to the filing of plats where the legislation provided that plats within Bay Lake "shall be recorded in the public records of Orange County." Ch. 67-1104, § 57(1), 1967 Fla. Laws at 242-43.

190. In July 1969, the Florida Legislature passed additional legislation (which became law without the Governor's signature) that related to administrative changes for both municipalities. See Act effective July 3, 1969, ch. 69-836, pmb., 1969 Fla. Laws 107, 107-08 (City of Bay Lake); Act effective July 3, 1969, ch. 69-1527, pmb., 1969 Fla. Laws 2630, 2630-31 (City of Reedy Creek). These changes covered new municipal boundaries, the purchase of insurance products for municipal employees, and matters involving municipal elections. Ch. 69-836, pmb., 1969 Fla. Laws at 107-08; ch. 69-1527, pmb., 1969 Fla. Laws at 2630-31.

191. 216 So. 2d 202 (Fla. 1968).

192. *Id.* at 204.

193. *Id.*

194. See Interview with Thomas DeWolf, *supra* note 58.

195. *Reedy Creek*, 216 So. 2d at 206-07.

196. *Id.* at 205.

purpose by noting that “the promotion and development of tourism and recreation” serve as “valid public purposes” as determined both by the State Legislature and affirmed by numerous Florida cases:

Successful completion and operation of the District no doubt will greatly aid the Disney interest and its contemplated Disneyworld project. However, it is obvious that to a lesser degree the contemplated benefits of the District will inure to numerous inhabitants of the District in addition to persons in the Disney complex.¹⁹⁷

The duality of this benefit persuaded the court that the bond issuance would attain the level of advancing a general public purpose within the state.¹⁹⁸ Of course, one might note that the court’s holding appeared to be based in part on “inhabitants” ultimately residing in the District.¹⁹⁹ And, while even today, that does occur as discussed herein, Disney’s plans for an extensive residential component never materialized.

Would that have altered the court’s opinion had it known this? Obviously, any proposed answer is simply founded on speculation. However, in this instance, the court’s emphasis on the project’s extensive tourism benefits would seem to indicate that—even without residents—the District’s activities would have risen to the level of a “public purpose.” Indeed, the court itself noted that “the integrated plan or workings of the District . . . are essentially and primarily directed toward encouraging and developing tourism” for both residents and nonresidents of the state.²⁰⁰

This is significant as Florida law has consistently held that a “public purpose”²⁰¹ may still result even if a private entity has realized a distinct benefit.²⁰² Generally, courts have held that the private benefit should be only “incidental” in scope.²⁰³ Exactly when the “incidental” threshold is cleared does not lend itself to a bright-line rule. For instance, the Florida Supreme Court held that issuing industrial bonds worth \$9 million for purchasing land and constructing a private television station violated this threshold.²⁰⁴ The court held this to be the case if “the benefits to a private party are themselves the

197. *Id.*

198. *Id.* at 205-06.

199. *See id.* at 205 (“[I]t is obvious that to a lesser degree the contemplated benefits of the District will inure to numerous inhabitants of the District in addition to persons in the Disney complex.”).

200. *Id.* at 205-06.

201. According to Florida case law, bonds which do not pledge any state or local funds must merely serve a “public purpose,” as opposed to pledges of public funds that require a “paramount public purpose.” *Jackson-Shaw Co. v. Jacksonville Aviation Auth.*, 33 Fla. L Weekly S972, 2008 WL 5245640, at *17 (Fla. Dec. 18, 2008) (explaining the difference between the two tests).

202. *State v. Orange County Indus. Dev. Auth.*, 417 So. 2d 959, 962 (Fla. 1982).

203. *See, e.g., State v. Osceola County*, 752 So. 2d 530, 538-39 (Fla. 1999) (citing cases).

204. *Orange County Indus. Dev. Auth. v. State*, 427 So. 2d 174, 176, 179 (Fla. 1983).

paramount purpose of a project, then the bonds will not be validated even if the public gains something therefrom.”²⁰⁵

Florida law seems to be especially lenient when considering “public purpose” issues related to tourism and entertainment matters,²⁰⁶ which is not surprising considering the significant role that these industries play in the state’s overall economy. As a result, the court’s expansive definition in *Reedy Creek* hardly fell outside the norm of both past and future jurisprudence on the issue.

Next, the court dealt with the State’s threshold argument which was that the District’s enabling act was a “mere subterfuge” to avoid creating a new municipality.²⁰⁷ The gist of this contention was that the creation of a unique “multi-county, multi-purpose special improvement district with numerous and diverse powers” violated the Florida Constitution.²⁰⁸ The court appeared to agree that the District was a unique vehicle for governing;²⁰⁹ however, uniqueness alone is not a fatal flaw as long as it does not violate constitutional parameters.²¹⁰ The court concluded that it did not violate the Florida Constitution, noting that “[s]o long as specific constitutional provisions are not offended, the Legislature in the exercise of its plenary authority may create a special improvement district encompassing more than one county and possessing multi-purpose powers essential to the realization of a valid public purpose.”²¹¹

Finally, the court disposed of several arguments related to the technical nature of how the District was created and the scope of its authority, and in each instance it found the State’s arguments unpersuasive.²¹² With that, the legality of the Legislature’s experiment in bestowing public governance powers upon a private entity was affirmed. This holding validated the years of legal and regulatory planning that ultimately produced the Reedy Creek Improvement District. The legality of Disney’s expansive, multipurpose special district was now official.

205. *Id.* at 179.

206. *See* *Poe v. Hillsborough County*, 695 So. 2d 672, 679 (Fla. 1997) (validating the construction of an NFL football stadium as sufficiently within the scope of “public purpose”).

207. *State v. Reedy Creek Improvement Dist.*, 216 So. 2d 202, 206 (Fla. 1968).

208. *Id.*

209. *See id.*

210. *Id.* (“So long as specific constitutional provisions are not offended, the Legislature in the exercise of its plenary authority may create a special improvement district encompassing more than one county and possessing multi-purpose powers essential to the realization of a valid public purpose.”).

211. *Id.*

212. *Id.* at 206-07.

IV. THE RATIONALE FOR ESTABLISHING THE REEDY CREEK IMPROVEMENT DISTRICT

“The big difference between [Disney World] and Disneyland in California is that this is a real estate venture for us. The amusement park is just a catalyst that will draw other investments here.”

— Roy Disney (1970)²¹³

Disney could have created amusement parks and an innovative mixed-use development without resorting to court-approved drainage districts and newly-enabled cities and improvement districts, but it chose not to do so. This leads to an important question: *Why opt for such a complex and novel approach toward developing the Florida project when other large private developments (including Disneyland) succeeded without such a unique regulatory framework?*

The answer is multifaceted and complex, but it clearly centers on the issue of legal control over the physical and regulatory environment that would shape the massive project. Unfortunately, the term “control,” especially in a land development context, can cause a visceral reaction centered on the idea of a Big Brother-like entity wildly exercising suppressive powers. And, even in cases with less of a reaction, the idea of assigning governing powers to a private entity may give some pause.

Increased private control over governance is not itself an inherent danger. Rather, it is the granting of that control to a potentially abusive entity that can result in problems. In the case of Disney in the 1960s, the Florida Legislature had little reason to question the motives of the company’s request. In fact, Disney’s reasoning for the request demonstrated otherwise: it sought private powers not to govern and enforce its will on other landowners, but instead to strictly limit this governance to its own land holdings. For instance, when it developed Disneyland, the company failed to acquire much of the surrounding land. The result was that, as the project became popular, a slew of cheap motels and shops built up around the theme park.²¹⁴ This created a visual blight, which was an especially troubling problem because Disney invested so much into the appearance of Disneyland.²¹⁵

Therefore, it was hardly surprising that Disney feared a similar result in Florida if the project was developed without the buffer Disneyland lacked. Indeed, this fear would turn out to be well-founded as the Florida project would soon be surrounded by less immersive

213. Nordheimer, *supra* note 60.

214. FOGLESONG, *supra* note 1, at 46, 59; MANNHEIM, *supra* note 4, at 5.

215. See FOGLESONG, *supra* note 1, at 46, 59; MANNHEIM, *supra* note 4, at 5.

commercial developments, as motels, hotels, and other retail establishments “rac[ed] against the clock” to acquire land and build.²¹⁶ The difference in Florida was that the company had enough buffer land to keep these businesses away from its project.

While the buffer alone might have been sufficient to keep away undesirable businesses, it alone did not empower Disney to make final development decisions related to the property. Were Disney to have proceeded under the existing structures of governance, those decisions would have remained in the hands of county commissioners, building departments, fire chiefs, and other regulators. The net effect of this would be to saddle Disney’s progressive visions of new building techniques, water management, and land uses with the decidedly conventional regulations of what were, at the time, relatively underdeveloped counties in Central Florida.²¹⁷ Quite simply, it is unlikely that the existing counties would have had the personnel and financial resources to govern such a massive and complex project.

Another factor in the issue of control was that Walt Disney reached his creative and most influential apex at the very same time that disorder was disrupting American cities.²¹⁸ This was a time of urban upheaval and distress, with riots and crime disrupting the nation.²¹⁹ Walt Disney seemed intent on countering these problems.²²⁰

Rather than seeking to impose order on existing institutions, Walt Disney sought to create new institutions to further this goal.²²¹ In doing so, Disney implicitly recognized that the national flux of the 1960s was not something he had to destroy. He did not seem intent to force his ideals on the public as a whole. Rather, he sought increased control over a project that would never have existed but for his investment in the effort. The result was the multibillion dollar Reedy Creek project.

V. THE POSITIVE IMPACT OF THE REEDY CREEK IMPROVEMENT DISTRICT ON STATE AND LOCAL INTERESTS

The improvement district format furthered Disney’s efforts to maintain control over many governance aspects of the project. However, the appropriateness of this approach is obviously not measured merely by how it benefits the private corporation. Since it acquired

216. *Land Speculators*, *supra* note 132.

217. See MANNHEIM, *supra* note 4, at 108-09; cf. Elliott McCleary, *Will 10,000,000 People Ruin All This?*, NAT’L WILDLIFE, June-July 1971, at 5 (“Under customary codes, . . . Disney World just couldn’t have been built. But Disney World has been allowed to formulate its own building code – a model that is already exciting national interest.”).

218. See MANNHEIM, *supra* note 4, at xiv.

219. See *id.*

220. See FOGLESONG, *supra* note 1, at 58-59; MANNHEIM, *supra* note 4, at xiv-xv.

221. MANNHEIM, *supra* note 4, at xv-xvi, 81.

many of the regulatory powers that the counties would have otherwise maintained, a complete analysis of the Reedy Creek Improvement District also requires consideration of how the District affected state and local interests.

The Florida Legislature's decision to create the District demonstrated a willingness to engage in novel regulatory strategies in order to secure the Disney project. This leads to another important question: *Was the Legislature's decision to privatize much of the governing authority within Reedy Creek a wise one?*

To fully answer that question, one must first consider the state of rural Orange and Osceola counties prior to Disney's Florida project. This provides context to the massive change that the project would bring. The first key issue is whether the large-scale development of this area was inevitable or whether it was uniquely provoked by the Disney effort. If the answer is the former, then Disney's effect on the region is not nearly as significant as if the latter were true; if Disney did not develop, it would have been someone else. However, if the answer is the latter—that the development was uniquely provoked by Disney—then there is little doubt that the Disney project caused a massive change in this area that otherwise would not have occurred. According to one commentator, the latter answer is the much more plausible one:

Try to imagine a swath of our state that had more citrus trees than people, more marsh than development, more cattle pasture than parking lot. In 1965 it was [sic] that way. And hardly anyone was envisioning much other than more of the same for Orange and Osceola counties.

That area had fewer than 370,000 residents then, and they were making their unremarkable living mainly from the land -- raising cattle, growing oranges, building small subdivisions. A few folks were selling pecan logs and painted coconut heads to the tourists passing on their way to beaches east and west. Maybe those visitors would detour to play golf or take photos of the water-skiing acts and lovely flowers at Cypress Gardens. But they didn't have much reason to make Orlando their destination.

True, lots of folks were continuing the trend, begun after World War II, of moving to Florida for jobs or retirement. But the dull, flat landscape of Central Florida lacked the allure of its coastline.²²²

Of course, the mere fact that the endeavor brought significant change of an unanticipated scale does not necessarily mean that the region and state benefited from the change. However, in this instance, both historical and contemporary research reveals that

222. Jenkins, *supra* note 3.

the Disney effort would serve as a boon to both the state and local economies.

A. *The 1967 ERA Report*

In 1965, the East Central Florida Regional Planning Council, which included both Orange and Osceola counties, produced a detailed report on the regional economy and development.²²³ The report outlined some seemingly incongruous results. For instance, while it touted that between 1950 and 1963 the region's economy "underwent one of the most rapid and drastic changes ever to take place in a U. S. region in peacetime,"²²⁴ the report also noted that the region "contributed significantly" to Florida's overall nation-leading mortgage defaults.²²⁵

The fact that the Council offered its analysis for this robustly conflicted economy in May 1965 is interesting in that, though little known to the Council, one of the largest economic forces ever to shape the region was just months from being officially announced. Indeed, the November 1965 announcement of Disney's Florida project would add a significant new variable to the area's economy and development.

To help quantify this variable, a Disney-commissioned study from ERA in January 1967 focused on the prospective economic impact that the Disney project would generate for the state and Central Florida.²²⁶ The report concluded that, from the start of construction through the first decade of operation, the project would generate more than \$6.6 billion in "new wealth."²²⁷ In particular, the report estimated new visitor expenditures exceeding \$3.9 billion, new payrolls reaching \$2.2 billion, and more than \$400 million in construction-related expenditures.²²⁸

The study also estimated that the state government would realize \$243 million in sales tax receipts from new visitors and new residents resulting from the project, while local governments would obtain more than \$100 million in additional tax revenues.²²⁹ Ultimately, the report concluded that the estimated 19.5 million additional visitors coming to the Disney project in the first ten years would make a significant impact on the entire state.²³⁰

223. E. CENT. FLA. REG'L PLANNING COUNCIL, KEY FINDINGS 1965 RESEARCH SERIES (1965).

224. *Id.* at 5.

225. *Id.* at 51.

226. ECON. RESEARCH ASSOCS., ECONOMIC IMPACT OF DISNEYWORLD, FLORIDA (1967).

227. *Id.* at I-1.

228. *Id.*

229. *Id.* at I-2, I-3.

230. *Id.* at I-1, II-2.

The clear result was that ERA anticipated a major net gain for both the state and local governments and an opportunity for Florida to define itself more broadly in terms of tourist attractions. For instance, according to the ERA Report, "In 1965 only 8 percent of all activities which visitors looked forward to on a trip to Florida consisted of commercial attractions."²³¹ This low number likely resulted from the state's primary attraction as a destination for beach vacations. Adding a nonbeach tourist option of Disney's magnitude would provide a compelling reason to visit Florida for those vacationers not interested in a beach trip.²³²

The extension of these benefits to the local communities and the state as a whole was seconded by those such as the East Central Florida Regional Planning Council, which subsequently predicted that, because of the project, "there would be a \$500-million investment in tourist-related activities outside of Disney World by 1980 and a need for 27,000 more hotel and motel rooms, and 70,000 new jobs. We see all this investment transforming tourism in Florida."²³³

Moreover, the announcement of the project increased area land values more than thirty percent.²³⁴ Even before construction was completed, all of the Disney World convention dates for 1972 (the first year that on-property conventions would start in earnest) were booked in advance,²³⁵ which was yet another indication that ERA's prediction of Disney's economic success was well supported.

Indeed, by 1972, Disney World's first full year of operation, the area's unemployment rate was two percent lower than the national average and the area's tax receipts, construction projects, and bank deposits had reached all-time highs.²³⁶ Clearly, the massive Disney project was bearing fruit for the region.

The economic impact will be felt in all parts of the state, primarily in terms of increased tourist volume and the facilities and service employment it will require. The impact in terms of new construction, employment, wages, and retail sales generated by Disneyworld, however, will be most apparent in the Orlando metropolitan area and surrounding counties of Central Florida.

Id.

231. *Id.* at II-5.

232. This is not to suggest that nonbeach options did not exist before Disney World. Indeed, several such as Cypress Gardens and Silver Springs served as popular destinations. However, none even slightly approached the scope of the Florida Disney project, with its theme park, on-property lodging, and variety of recreational activities.

233. Nordheimer, *supra* note 60 (internal quotation marks omitted).

234. *See id.*; *see also* FOGLESONG, *supra* note 1, at 48-49.

235. Nordheimer, *supra* note 60.

236. *Disney World Triggers Trouble for Orlando*, BUS. WK., Apr. 1, 1972, at 60. Interestingly, the same article points out some alleged negative social results from the Disney project. *Id.* These include an increase in indigent individuals, plus claims of increased drug use. *Id.* However, the article did not provide a direct connection to these issues and the de-

B. *The 1983 Disney World Effect Study*

The early positive effects of the project would be revisited a decade later in another economic impact study. In particular, the Orlando-located Rollins College produced a 1983 study entitled “The Disney World Effect,” which used statistical data to analyze the impact of the resort on the State of Florida.²³⁷ The report used government statistics to reach several important conclusions related to the time period from 1970 to 1980, roughly the first decade of Disney World’s operation:

- In 1980, the United States population growth rate was 11% while Florida’s rate was 43.55%, and the three county area surrounding Disney World was even higher at 54.45%.²³⁸
- From 1970 to 1980, the wage level for the three county area decreased by 6% while the wage level for Florida decreased by 3.5% and the national average decreased by 0.62%—though the study found that service industry per capita income increased for this period.²³⁹ Moreover, overall employment in the region expanded with a shift from manufacturing jobs to more service industry positions.²⁴⁰ Air transportation also dramatically grew with an increase greater than 2,000%.²⁴¹ This led the study to conclude that “[w]hile individuals [sic] real incomes have fallen for the central Florida area, production has still greatly increased. This is evident by the sharp increase in newly established industrial units, total employee payrolls, and the number of employees.”²⁴²
- The travel patterns of vacationers to Florida had changed dramatically. Whereas many once traveled to Florida for its beaches, by the 1980s, Disney World accounted for roughly 40% of Florida vacationers.²⁴³ The counties of Orange and Osceola received the lion’s share of these new guests as their tourist arrivals from 1970 to 1981 increased 648.3% while statewide the increase was 46.1%.²⁴⁴
- With the increase in tourists came increased spending. Indeed, during this time period, the entire state realized a 141.6% growth in expenditures while the three-county Orlando area experienced a 188.8% increase.²⁴⁵
- State expenditures in response to the growth varied widely with education spending increasing while highway spending lagged be-

velopment of Reedy Creek other than the implication that the increased population resulting from the project led to more homeless people and drug users. *See id.*

237. FRANCES NOVAK-BRANCH, *THE DISNEY WORLD EFFECT* (1983). Ms. Novak-Branch developed the report as part of an independent study as a university student. *See id.*

238. *Id.* at 14. The three county area included Orange, Osceola, and Seminole counties. *Id.* at 9.

239. *Id.* at 24-25.

240. *Id.* at 27.

241. *Id.* at 53.

242. *Id.* at 28.

243. *Id.* at 53.

244. *Id.*

245. *Id.* at 53-54.

hind.²⁴⁶ “[T]he state of Florida, with priority placed on public protection, has tried to maintain the quality of life, without great expense to the taxpayer.”²⁴⁷

Ultimately, the study concluded the following:

The development of Disney World has served as a learning aid for the central Florida area, illustrating how radically the establishment of one industry can change an area’s growth, and also, how important effective community planning is. The area has succeeded in dealing with the rapid changes and has thus served, with Disney World, to enhance Florida’s attractiveness as a vacation destination for tourists, while maintaining the quality of living for the growing number of Florida residents.²⁴⁸

From the 1983 study, it became increasingly clear that ten years after Disney World opened to the public, both Florida and the Orlando metro area were realizing the positive impacts projected in the 1967 ERA study. That is, of course, not to say that negative impacts did not exist. Indeed, the aforementioned transportation problem highlighted just the opposite. However, those negative effects continued to be outweighed by positive effects as the project wrapped up its first decade of operation.

Nearly twenty years later, another economic impact study concluded that the state and region were still realizing positive impacts from the unique Disney World and Reedy Creek structure.

C. *The 2004 Fishkind Study*

In 2004, a study by Dr. Hank Fishkind & Associates concluded that Reedy Creek and the resort continued to generate positive economic results.²⁴⁹ The report included a finding that the company’s

246. *Id.* at 65.

247. *Id.*

248. *Id.* at 80. The report based its positive impact conclusions on the statistical realities:

There has been a change in the central Florida area. Orlando is no longer a quiet little town known only to Floridians. The growing population, traffic congestion, and tourism will clarify that point. But, the growth has been good for the area. There are more jobs available and a wider variety for those seeking employment. Wages have fallen, but real family incomes and real personal per capita incomes have increased, which has not only benefited the individual, but has also increased the level of tax revenues for the government as well.

Id.

249. *Study: Disney Still Drives C. Fla. Economy*, ORLANDO BUS. J., May, 28, 2004, available at <http://orlando.bizjournals.com/orlando/stories/2004/05/31/story3.html> (“A new economic and fiscal impact analysis by Fishkind & Associates Inc., an Orlando-based financial consulting firm, shows that Walt Disney World’s huge work force, payroll and massive expenditures to local businesses for products and services are what make Central Florida’s tourist industry what it is today.”); Press Release, Walt Disney World Public Affairs, Tourism Recovery Brings Savings to Central Florida (May 27, 2004) [hereinafter Disney Press Release] (on file with author) (“The [Fishkind] study found that the compa-

annual \$5.1 billion gross fiscal output in Central Florida equaled more than 8% of the region's total output.²⁵⁰ The report also found that the company maintained a \$1.3 billion annual payroll while it fostered over \$1.5 billion in other direct and indirect payroll earnings for workers in the region.²⁵¹ Ultimately, the study concluded the following:

All of these economic activities, combined with Guest and employee spending locally, provide a huge fiscal surplus of \$350 million annually - \$295 million per year in Orange County; \$52 million per year in Osceola County; and more than \$1 million per year in Brevard County. These surpluses result in a major reduction in the per year tax burden that residents otherwise would be compelled to pay for services.²⁵²

In fact, if not for the tourism generated by Disney, households in Central Florida would pay \$476 more in local taxes each year.²⁵³

The result was that, over the course of three decades, Disney World continued to provide direct and indirect benefits to the local and state economies in a proportion that easily outweighed its negative impacts.

D. Other Economic Impacts of Reedy Creek

Beyond specific studies and reports, the Reedy Creek project has also benefited the Orlando metropolitan area in other ways. Indeed, as early as 1970, "Disney World spawn[ed] a need for business and financial services" in greater Orlando.²⁵⁴ This included large new bank branches, financial service institutions, and insurance interests, such as a new nineteen story building for CNA Financial Corporation and a \$4.5 million headquarters for The Hartford

ny's fiscal strength benefits Central Floridians by providing needed jobs, engaging thousands of area businesses in commerce and generating taxes that significantly funds local government and education, while helping keep taxes low for area residents.").

250. Disney Press Release, *supra* note 249.

251. *See id.*

252. *Id.* Some commentators have noted that these figures may not tell the whole story of Disney's positive and negative impacts in the region. *Study: Disney Still Drives C. Fla. Economy*, *supra* note 249. For instance, Professor Foglesong suggests that the overall positive impact is reduced by the actual quality of that impact:

Foglesong points out that Disney and the entire industry support large numbers of relatively low-paying hourly jobs. Thus, he says, the two biggest negative impacts generated by the attractions are the cost of building and maintaining a highway system to service the region and the cost of social services, such as a need for free or low-cost health care services, food pantries and rent assistance.

Id. While the topic is certainly one open to debate, these concerns are not backed by the type of empirical numbers that the Fishkind conclusions rely upon.

253. Disney Press Release, *supra* note 249.

254. *Disney World Wakes Sleepy Orlando*, BUS. WK., Nov. 14, 1970, at 42.

Insurance Group.²⁵⁵ The benefits derived from the creation of the District were not limited to only financial matters, though.

E. Noneconomic Impacts of Reedy Creek

One complaint about Reedy Creek is that its approach to development harmed the environment.²⁵⁶ Most of the criticism centers on Disney World's effect on the existing ecosystem, and particular concern is directed toward Disney's treatment of wetlands.²⁵⁷

An independent case study concluded that the environmental management systems for Disney World and Reedy Creek were effectively managed and operated.²⁵⁸ Indeed, both facilities earned awards for extensive environmental accomplishments in a wide range of areas, including natural resource management, pest control, water and energy conservation, and recycling.²⁵⁹ Moreover, multiple Disney hotels within the District also received the Florida Department of Environmental Protection's "Green Lodging Certification," a voluntary state program designed to "encourag[e] hotels and motels to adopt cost-saving 'green' practices that reduce waste and conserve natural resources."²⁶⁰

Despite the unique structure of Reedy Creek, Disney World continues to comply with, if not exceed, environmental practices.²⁶¹ This is a strong indication that the public-private dichotomy at work in the District has not led to standards lower than if Disney World were regulated under a more traditional form of governance. This may be due to extensive federal, regional, and state environmental regulation from authorities such as the Army Corps of Engineers, U.S. Fish and Wildlife Service, Florida Department of Environmental Protection, and the South Florida Water Management District.²⁶²

In the mid-1960s, Disney entered into a U.S. Geological Survey cooperative program designed "to monitor the quantity and quality of surface and ground water in and adjacent to the [District] as an aid in the continuing management of the [District]'s water resources,

255. *Id.*

256. William W. Buzbee, *Accountability Conceptions and Federalism Tales: Disney's Wonderful World?*, 100 MICH. L. REV. 1290, 1303-04 (2002).

257. *Id.*

258. BETH E. LACHMAN ET AL., INTEGRATED FACILITY ENVIRONMENTAL MANAGEMENT APPROACHES: LESSONS FROM INDUSTRY FOR DEPARTMENT OF DEFENSE FACILITIES 223-78 (2001).

259. *Id.* at 227-29. This is not to say that the case study was without criticism. Indeed, it noted that at times the system can be "complex and confusing to understand" as a result of the program's less formal documentation and reporting structure. *Id.* at 232.

260. See Press Release, Fla. Dep't of Env'tl. Prot., Sixth Disney Hotel Receives Green Lodging Certification (Mar. 6, 2006), available at http://www.dep.state.fl.us/secretary/news/2006/03/0306_03.htm.

261. See LACHMAN ET AL., *supra* note 258, at 277-78.

262. See *id.* at 241-42.

and in evaluating the effects of urban activities on the hydrologic system.”²⁶³ The effect is that the environmental practices within the District have historically been regulated by a wide variety of state and federal agencies in addition to internal District regulations.

Moreover, as early as 1971, the National Wildlife Federation recognized that the Reedy Creek project “contains many innovations designed to solve a host of current environmental problems.”²⁶⁴ These included the following:

- Seventeen dams and an extensive dike system to protect the project’s conservation area;²⁶⁵
- A compressed-air trash removal system that delivered trash to a central management area;²⁶⁶
- A storm water and waste water system developed in conjunction with University of Florida experts designed to “render sewage harmless and even profitable”;²⁶⁷
- Power generation techniques designed to reduce thermal pollution;²⁶⁸ and
- Alternative pest control methods designed to limit the use of certain chemicals.²⁶⁹

These efforts led the group to conclude that “Walt Disney’s successors have done just about everything that time, talent, good will and money can provide to nurture the high hopes their late boss had for Disney World.”²⁷⁰

Of course, this is not to say that environmental concerns were nonexistent. Indeed, at the time, several specific concerns included increases in traffic, loss of plant life, and negative impacts upon area citrus groves and the water supply.²⁷¹ However, while the development has certainly affected the area (if for no other reason than due to its sheer size), the resulting impact has not generated the negative impacts predicted by some.

This is especially true when one considers that the most realized problem, increased traffic congestion, may have been affected by the Florida project but was also in part attributable to interstate, turn-pike, and other road construction planned before the project. The

263. A.L. PUTNAM, U.S. GEOLOGICAL SURV., SUMMARY OF HYDROLOGIC CONDITIONS AND EFFECTS OF THE WALT DISNEY WORLD DEVELOPMENT IN THE REEDY CREEK IMPROVEMENT DISTRICT, 1966-73, at 3 (1975).

264. McCleary, *supra* note 217, at 5.

265. *Id.* at 7.

266. *Id.* at 8.

267. *Id.*

268. *Id.* at 9.

269. *Id.*

270. *Id.* at 5.

271. *Id.* at 6.

planned road network is one of the reasons the company selected the site.²⁷²

Those who propose that Florida erred in creating the Reedy Creek Improvement District because of negative environmental impacts lack a persuasive body of facts in support of this argument. Moreover, the proposition ignores the reality that Reedy Creek remains regulated by state, regional, and federal environmental agencies. Thus, to whatever extent the Reedy Creek format privatized some local legislative functions, those functions did not include environmental oversight.

F. Opportunities to Repeal the District's Regulatory Powers

One final note remains pertinent to this discussion: had the Florida State Legislature believed that the District was not governing in an effective manner, it could have repealed the District's authority at any time and reassigned it to existing public governance entities like Orange and Osceola counties. Indeed, in several instances, the State Legislature chose to do the exact opposite—that is, to specifically exempt the District from additional governance by those local general-purpose bodies.

For example, when the State Legislature passed a law that provided that “[e]ach independent special district shall submit to each local general-purpose government in which it is located a public facilities report and an annual notice of any changes,”²⁷³ it specifically excluded the District from this requirement.²⁷⁴ Similarly, when the State Legislature passed a law requiring local governments to prepare comprehensive plans for future growth and development,²⁷⁵ rather than give Orange and Osceola counties authority over property within the District, the Legislature assigned this responsibility directly to the District “for the total area under its jurisdiction.”²⁷⁶

A cynical observer may suggest that these exceptions resulted from Disney's strong lobbying power within the state, but there is no evidence that any untoward influence was ever exerted to obtain these provisions. The reality is that, when confronted with subsequent opportunities to reduce or expand the scope of the District's governance authority, the State Legislature opted for the latter.

The Legislature evidenced its attention to the District's unique governance authority when, in February 2004, the Comcast Corporation commenced efforts to acquire Disney, including its Florida prop-

272. FOGLESONG, *supra* note 1, at 39.

273. FLA. STAT. § 189.415(2) (2008).

274. *Id.* § 189.415(9).

275. *Id.* § 163.3167(1).

276. *Id.* § 163.3167(9).

erties.²⁷⁷ While Comcast's efforts were ultimately unsuccessful, the State Legislature commissioned a report on the effects of a change in ownership.²⁷⁸

The December 2004 report by the State's Office of Program Policy Analysis & Government Accountability (OPPAGA) concluded that "in general, current accountability mechanisms are sufficient to ensure that if primary landownership changed, [the District] would continue to meet the public purpose expressed in its special act and in other legislation."²⁷⁹ This conclusion followed a review of the District's existing laws and regulations as well as consideration that the District was also subject to additional layers of governance by a variety of other state and federal agencies.²⁸⁰ Ranging from the U.S. Environmental Protection Agency to the South Florida Water Management District, the report determined that "[t]hese agencies provide monitoring and enforcement mechanisms that would tend to discourage and prevent a new primary landowner from violating federal and state law and/or making rapid or major changes in district operations and services."²⁸¹

In addition, the report catalogued not only the agencies that the District must report to, but also the nearly twenty interlocal governmental agreements that the District has entered into with either Orange or Osceola County.²⁸² Finally, even though it concluded that sufficient safeguards existed, the report identified two primary statutory changes that the Legislature could implement to enhance these safeguards.²⁸³ These involved providing further criteria for preventing the District's board members from being replaced by a new owner without cause and placing the District within the state's regional growth management program.²⁸⁴

In the end, even though it was presented with these specific proposals, the State Legislature did not choose to implement them. This means that, although presented with a mechanism to repeal or restrict the District's authority, the State Legislature did not elect to do so. This is significant as it is very reasonable to believe that, if the original experiment of assigning traditional public governance authority to the Reedy Creek "Super District" had not achieved stability and success over its thirty-plus years, the State Legislature would have intervened and ended this unique situation. The fact that

277. REEDY CREEK IMPROVEMENT DISTRICT REPORT, *supra* note 6, at 6.

278. *See id.*

279. *Id.* at 1.

280. *Id.* at 5-6.

281. *Id.* at 6.

282. *Id.* at 8, 13-14.

283. *Id.* at 9.

284. *Id.*

the Legislature did not do so strongly endorses the overall propriety of the District's regulatory structure.

VI. CONCLUSION

Little known to the millions of guests who visit the Walt Disney World Resort each year, the Reedy Creek Improvement District is the engine that has driven this wildly successful project from an idea in Walt Disney's mind to one of the world's largest development projects.

In the process, novel ideas—legal, engineering, legislative, and many others—enabled an effort of this scope to develop. Naturally, innovation, which by its very nature invokes the unknown, generated questions and concern among those who had come to rely upon a well-established framework. Yet, those questions have, by and large, been based on concerns not founded on quantitative problems, but rather speculative anxiety. Indeed, more than providing a regulatory framework for a theme park resort, the Reedy Creek Improvement District has demonstrated that unique allocations of public and private governance can promote visionary efforts.

This is the lesson—and the story—of the Reedy Creek Improvement District.