

**Alternatives for the Provision of Public
Infrastructure to the
Plum Creek Property
in Alachua County, Florida**

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Introduction and Background

A request is before the Alachua County Board of County Commissioners to authorize a development in eastern Alachua County known as Plum Creek. This property has limited existing public infrastructure and will require investment in the construction of public facilities and ongoing costs for the operation and maintenance of those facilities after they have been provided. There are different ways to meet the future needs for infrastructure, and these methods are discussed herein.

A development with inadequate infrastructure will be an unsatisfying place to live, work, or play and perhaps also destructive to the environment. The infrastructure of relevance includes (in no particular order):

- Streets and roads
- Electric power
- Open and green spaces
- Parks and recreational areas
- Public safety facilities; police, fire suppression, and emergency medical services
- Potable water sources, and treatment and distribution facilities
- Wastewater collection, treatments and disposal facilities
- Solid waste collection and disposal facilities
- Public school facilities, and libraries
- Places for governance and public assembly.

Some places might make additions to this list, as what is needed infrastructure varies from community to community. The matter of importance is the existence of needed infrastructure when and where it is needed.

The convention is to divide the subject of infrastructure into a) the initial funding of public infrastructure capital improvements, and b) the operation and maintenance of those capital facilities. The first matter of concern is the initial funding of the capital improvements. After the improvements have been financed and made, and the community served by those improvements has undergone some development, operations and maintenance become primary concerns.

The Plum Creek development in eastern Alachua County does not presently exist. It is a proposal being considered by Alachua County. Whether the proposed Plum Creek development will be an asset or a detriment to Alachua County will depend, in large part, on the provision of adequate public infrastructure. In order for the Plum Creek development to have adequate infrastructure a plan for financing, operating and maintaining those improvements must be devised and implemented.

There have two general types of infrastructure funding programs. The first is the public assumption of the costs of capital facilities with some type of general funding used to pay those costs. This had been the traditional means of infrastructure funding. However, this approach has fallen into disfavor as the need for and cost of infrastructure increased and the means to bear those costs, primarily property taxes, were limited.¹ Over time jurisdictions turned to some type of special finance, as distinct from local government general finance. The major shift has been toward the creation of some type of governmental special district. There is also what may be called a *que sera sera*² approach to infrastructure, which has been used all too often, but is rejected herein and attention is directed toward active means of infrastructure finance.

Special districts are very common in the United States and Florida. The most common form of local government is special (57%), which means limited purpose. Independent school districts were and still are a common form of limited purpose special districts. In 1942 over 90% of local governments in the nation

**Local Governments in the United States
2012**

| | United States | | Florida | |
|-------------------|---------------|--------|---------|--------|
| Total | 90,107 | 100.0% | 1,650 | 100.0% |
| Counties | 3,031 | 3.4% | 67 | 4.1% |
| Cities* | 35,554 | 39.5% | 410 | 24.8% |
| Special Districts | 51,146 | 56.8% | 1,174 | 71.2% |
| Schools | 12,880 | 14.3% | 95 | 5.8% |
| Other Special | 38,266 | 42.5% | 1,079 | 65.4% |

SOURCE: Bureau of the Census, American FactFinder,
<http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=bkmk>
 *Includes municipalities, towns and townships.

were school districts, and 40% of Florida local governments were school districts.³ The dramatic decline in the number of school districts has reversed this situation. While the number of school districts has declined, other special dis-

¹ The historic means of local government finance was the property tax. Local government property tax receipts have been limited by legislative actions and constitutional limitations. In Alachua County property (ad valorem) tax receipts make up only 32.8% of all county revenues. Alachua County Budget FY 2014-15, page 27.

² “What will be will be?” This approach to infrastructure is to leave everything to the future in hopes that it will work itself out.

³ Florida consolidated its school districts in 1941.

tricts have seen dramatic growth. The result is that other special districts, primarily those that deal with infrastructure, are the most common form of local government in the nation and in Florida. This is in response to the continued

Special Districts by Type 1942 - 2012

| | United States | | Florida | |
|--------------------------|----------------------|--------|----------------|--------|
| Special Districts | | | | |
| 1942 | 116,779 | 100.0% | 168 | 100.0% |
| 2012 | 51,146 | 100.0% | 1,174 | 100.0% |
| Change | -65,633 | | 1,006 | |
| School Districts | | | | |
| 1942 | 108,579 | 93.0% | 67 | 39.9% |
| 2012 | 12,880 | 25.2% | 95 | 8.1% |
| Change | -95,699 | | 28 | |
| Other Special | | | | |
| 1942 | 8,200 | 7.0% | 101 | 60.1% |
| 2012 | 38,266 | 74.8% | 1,079 | 91.9% |
| Change | 30,066 | | 978 | |

SOPURCE: Bureau of the Census, American FactFinder,
<http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=bkmk>

urbanization of the United States, and thus the need for extensive infrastructure investment, together with the evolution of local government finance resulting in infrastructure investments being increasingly difficult to finance by general means. Therefore, states and local governments increasingly turned to the creation of limited purpose units of local government that could structure improvement programs that meet the needs of limited areas for infrastructure and impose the cost of those improvements on the property benefitted.

There are two general types of special districts; dependent and independent. A dependent special district is one created by a local government and is governed by that local government. By contrast, an independent special district is one that is governed by a board not controlled by the host local government regardless of how the district is created. The special districts shown in the above tables are all independent special districts. There are no known estimates of the number of dependent special districts in the United States or in Florida.

The infrastructure needed to serve the Plum Creek development could be provided, operated and maintained by either an independent or a dependent district. The question is, which of these options best suit the needs Alachua County, the property owner and, most importantly, the future residents and property owners of the Plum Creek development.

Dependent Special District

A. Dependent Special Districts

The Florida County Powers Act⁴ authorizes counties to engage in a number of activities. Among the authorized functions is the authority to:

(q) Establish, and subsequently merge or abolish . . . municipal service taxing or benefit units for any part or all of the unincorporated area of the county, within which may be provided fire protection; law enforcement; beach erosion control; recreation service and facilities; water; alternative water supplies, including, but not limited to, reclaimed water and water from aquifer storage and recovery and desalination systems; streets; sidewalks; street lighting; garbage and trash collection and disposal; waste and sewage collection and disposal; drainage; transportation; indigent health care services; mental health care services; and other essential facilities and municipal services from funds derived from service charges, special assessments, or taxes within such unit only. . . . This paragraph authorizes all counties to levy additional taxes, within the limits fixed for municipal purposes, within such municipal service taxing units under the authority of the second sentence of s. 9(b), Art. VII of the State Constitution.

This provision of the County Powers Act authorizes Alachua County to create a dependent district or districts to undertake the planning, financing, operations and maintenance of infrastructure in and for Plum Creek. Additionally, as Alachua County is a charter county, it could use its own charter as the basis of authority to establish service districts if that was the County's wish.

Thus Alachua County could establish a Municipal Services Taxing Unit (MSTU) for the area or areas of the Plum Creek development. This district would be under the authority of and governed by Alachua County. The County, presumably in consultation with the property owner, could plan for, raise funds for, authorize the construction of, authorize the maintenance of, and operate any services or facilities that are deemed to be in the public interest. Alachua County can pay for these facilities and services by imposing service charges, special assessments or taxes within the boundaries of the Plum Creek development served. In this manner the availability of needed public facilities can be assured and the costs of those facilities and services will be borne exclusively by property owners and occupants of Plum Creek. Alachua County could elect to pro-

⁴ Chapter 125, *Florida Statutes*, 125.01(5)(a)

vide an expansive or a limited set of services and facilities as deemed appropriate, for the Board of County Commissioners would be the governing body of the district or districts if multiple units were desired.

B. Benefits of a Dependent Special District

1. To the Developer

The benefit of a dependent district governed by Alachua County is that a legal and responsible entity would exist and would be responsible for the provision, operation and maintenance of the facilities and services that will make the property saleable and habitable. The existence of such an entity would result in facilities that would make the lands usable for residential, commercial, and industrial purposes and thus increase the value of the land. Any cost incurred by such a district would relieve that developer from paying that costs, although the developer would still pay a *pro rata* share of costs as a property owner.

2. To Alachua County

The benefit to Alachua County of a dependent district would be that necessary facilities and services would be provided and also that this provision would be consistent with the plans and policies of Alachua County. The decisions with respect to what services and facilities were to be provided, operated and maintained would be made by the Board of County Commissioners. Additionally, the Board would decide the level of services provided.

Alachua County currently has three MSTUs; the Unincorporated Area MSTU, the Law Enforcement MSTU, and the Fire Services MSTU. These existing districts do not provide services to any particular area or development. Presumably the Plum Creek properties would continue to be within and served by these MSTUs. If it is the wish of the County, a Plum Creek MSTU could be created that would provide for the needs of that community above and beyond the services provided by the existing three units.

If the County is not interested in assuming these responsibilities, an independent special district is the alternative. In Florida independent special districts are governed by the Uniform Community Development District Act. These Community Development Districts are commonly abbreviated as CDD.

3. To Future Plum Creek Residents

The benefit to Plum Creek residents and property owners is that their need for the provision, operation and maintenance of necessary public facilities and services would be assured. A responsible legal entity would exist and future electors within Plum Creek could have governance by elected representatives.

C. Disadvantages of a Dependent Special District

1. To the Developer

Perhaps the most important disadvantage to the developer of a dependent special district is that the control of infrastructure provision is turned over to the county.

2. To Alachua County

The disadvantage to Alachua County of a dependent district of the type discussed here is that it would, in effect, make the Board of County Commissioners a quasi-homeowners association. Some counties prefer this role while others avoid what is seen as an inappropriate role for a Board of County Commissioners. Only Alachua County can decide if this is an appropriate role for the Board.

3. To Future Residents of Plum Creek

There are no apparent disadvantages to future residents of Plum Creek resulting from the provision of infrastructure by means of a dependent special district. Whether a servicing district is dependent or independent, the costs associated with that district will be borne by the property owners.

Dependent Special Districts

In Florida all independent special districts fall under the scope of Chapter 190, 190, *Florida Statutes*, the “Uniform Community Development District Act of 1980.”

A. Community Development Districts

A Community Development District (CDD) can be created on properties of 1,000 acres or more by the Florida Land and Water Adjudatory Commission⁵ after petition by the property owners. A CDD can be created on properties of less than 1,000 acres by the Board of County Commissioners after petition by the property owners.⁶ The initial governance of a CDD is by the property owner(s) and control is subsequently turned over to the electorate. Upon establishment of a CDD, a governing board is elected by the property owner(s) on the basis of one vote for each acre of property owned.⁷ For CDDs of less than 5,000 acres, an election must be held of qualified electors to elect a board that will govern the CDD in six years. For CDDs with more than 5,000 acres, the election of a board by qualified electors must occur after 10 years.⁸ Which of these would apply in the case of Plum Creek would depend on the nature of the district or districts created.⁹

A CDD may have the authority to provide the following:

1. Water management and control for the lands within the district.
2. Water supply, sewer, and wastewater management, reclamation, and reuse or any combination thereof, and to construct and operate connecting intercepting or outlet sewers and sewer mains and pipes and water mains, conduits, or pipelines in, along, and under any street, alley, highway, or other public place or ways, and to dispose of any effluent, residue, or other byproducts of such system or sewer system.

⁵ 190.001 (1), *Florida Statutes*.

⁶ 190.001 (2), *Florida Statutes*

⁷ 190.006 (2)(a), *Florida Statutes*.

⁸ There are exceptions to the turn over to electors. See 190.006 (2)(b).

⁹ Some have preferred the creation of a single large CDD that would be responsible for the entirety of the area while others prefer multiple districts serving smaller areas. Usually such multiple districts are tied together by contract and/or conditions in the creation of the districts.

3. Bridges or culverts that may be needed across any drain, ditch, canal, floodway, holding basin, excavation, public highway, tract, grade, fill, or cut and roadways over levees and embankments, and to construct any and all of such works and improvements across, through, or over any public right-of-way, highway, grade, fill, or cut.
4. District roads equal to or exceeding the applicable specifications of the county in which such district roads are located; roads and improvements to existing public roads that are owned by or conveyed to the local general-purpose government, the state, or the Federal Government; street lights; alleys; landscaping; hardscaping; and the undergrounding of electric utility lines. Districts may request the underground placement of utility lines by the local retail electric utility provider in accordance with the utility's tariff on file with the Public Service Commission and may finance the required contribution.
5. Buses, trolleys, transit shelters, ridesharing facilities and services, parking improvements, and related signage.
6. Investigation and remediation costs associated with the cleanup of actual or perceived environmental contamination within the district under the supervision or direction of a competent governmental authority unless the covered costs benefit any person who is a landowner within the district and who caused or contributed to the contamination.
7. Conservation areas, mitigation areas, and wildlife habitat, including the maintenance of any plant or animal species, and any related interest in real or personal property.
8. Any other project within or without the boundaries of a district when a local government issued a development order pursuant to approving or expressly requiring the construction or funding of the project by the district, or when the project is the subject of an agreement between the district and a governmental entity and is consistent with the local government comprehensive plan of the local government within which the project is to be located.
9. Any other project, facility, or service required by a development approval, interlocal agreement, zoning condition, or permit issued by a governmental authority with jurisdiction in the district.
10. After the local general-purpose government within the jurisdiction of which a power is to be exercised consents to the exercise of

such power by the district, the district shall have the power to plan, establish, acquire, construct or reconstruct, enlarge or extend, equip, operate, and maintain additional systems and facilities for:

- a. Parks and facilities for indoor and outdoor recreational, cultural, and educational uses.
- b. Fire prevention and control, including fire stations, water mains and plugs, fire trucks, and other vehicles and equipment.
- c. School buildings and related structures and site improvements, which may be leased, sold, or donated to the school district, for use in the educational system when authorized by the district school board.
- d. Security, including, but not limited to, guardhouses, fences and gates, electronic intrusion-detection systems, and patrol cars, when authorized by proper governmental agencies; except that the district may not exercise any police power, but may contract with the appropriate local general-purpose government agencies for an increased level of such services within the district boundaries.
- e. Control and elimination of mosquitoes and other arthropods of public health importance.
- f. Waste collection and disposal.

B. Benefits of a CDD

1. To the Developer

The single most important benefit of a CDD to the developer is that there will be a legal entity responsible for the provision, operation and maintenance of the facilities and services that will make the property saleable and habitable. Additionally, the cost of infrastructure improvements will be borne by the district. The district will, typically, issue bonds so that the cost of these improvements may be paid over an extended period of time. An additional benefit to the developer is that the interest rates of this debt are at a tax exempt or "municipal" rate, which is substantially lower than the standard interest rates if the developer was to finance the improvements.

Another significant benefit is that the developer controls the CDD at the outset, when plans are being made and financing programs adopted.¹⁰

At the outset the developer usually owns or otherwise controls all or a substantial portion of the land, so all costs associated with a district, including interest, will fall on the developer. As properties are sold and title transferred, the obligation to pay the accumulated debt, including interest, is also transferred. In typical instances, the majority of the debt is transferred to future purchasers. In this manner the developer is able to enjoy the value or price appreciation that will occur from the provision of basic infrastructure while shifting a substantial portion of the cost of provision to others, namely purchasers, who benefit from the existence and operations of facilities. Any negative capitalization resulting from the existence of the CDD assessments on the land will be borne by the developer as lower land prices.

2. To Alachua County

Alachua County would be relieved of any cost or obligation for providing, operating or maintaining basic infrastructure to the properties that are within any proposed Plum Creek development. At the same time, the County will be assured of the actual provision of necessary infrastructure and the protection of health, safety and welfare that will accompany that provision.

Any debt issued by a CDD would not be an obligation of Alachua County. During the recent "Great Recession" there were a number of defaults by CDDs on debt service. None of these defaults have resulted in costs to the host local governments and there are no known instances where a default has led to a foreclosure.

3. To Future Plum Creek CDD Residents

The most significant benefit to the CDD residents is that the basic infrastructure will be provided, operated and maintained. Of course, if the basic infrastructure was not provided there could be no residents of or within the CDD. Be that as it may, the provision of infrastructure makes areas habitable and therefore of benefit to the inhabitants.

The major benefit to future residents is that the CDD would undertake the operation and maintenance of the facilities. When improved facilities are provided by the developer and turned over to a local government, that government would have to operate and maintain those facilities. When facilities are held privately and not turned over to the local government, operations and maintenance can

¹⁰ See 190.06(2), *Florida Statutes*.

be a problem. In such situations it is common for facilities to be turned over to homeowners associations. Unfortunately, homeowners associations have poor records when it comes to some types of operations and maintenance. It is not that a CDD is better intended than homeowners associations. Rather, CDDs are readily approachable public entities that can be compelled to carry out assigned responsibilities if there has been less than full exercise of those responsibilities.

C. Dis-Advantages of a CDD

1. To the Developer

Perhaps the most important disadvantage to the developer of a CDD is that the control of infrastructure provision is turned over to some other entity, an entity that has public responsibilities. Additionally, the developer will eventually lose control of the CDD and be bound to abide by its rules.

2. To Alachua County

Alachua County will lose some degree of control over the area within a CDD because a CDD will be governed by an independent board. This independent board has the authority to perform many of the same functions as the Board of County Commissioners¹¹ and there is a possibility of conflict when two independent governmental entities have the responsibility for the same items in the same area. It is possible to mitigate this potential conflict by limiting the authority of the district in its charter to those that are consistent with Alachua County policies.

Another area of concern has arisen about areas that are self-served and thereby lose interest in the provision of general public services.¹² The basic theory of local government is that a group of people have come together to provide certain public services to themselves. The decisions of what services will be provided and how those services will be funded are made through the electoral process. When other entities exist that provide the same or similar services, such as CDDs, the commitment to the broader public may wane.

3. To future CDD Residents and Property Owners

¹¹ However, the board of a CDD has no authority to exercise police powers and may exercise only those powers authorized in the CDD charter.

¹² See E. J. Blakley and Mary Gail Snyder, *Fortress America: Gated Communities in the United States*, Washington: Brookings Institute, 1998, pp. 152-154 and 172-177.

The main dis-advantage to future CDD residents and property owners would be the existence of an additional unit of government and an additional taxing authority. If the alternative is a dependent district, there would be little to no difference in costs and there would still be an additional unit of government, the dependent district.

Whether residents will enjoy any benefits from any cost savings resulting from CDD improvement provision will depend on whether any savings are passed on to the purchasers. A purchaser of land acquires the benefit of all facilities and services available to that land and also any obligations attached to that land. The existence of infrastructure will be positively capitalized into the value of the land and the obligation to pay for those facilities will be negatively capitalized into the price of that land. Whether these counter influences result in a net positive or net negative effect is an argument that has a long history, without resolution. There is a requirement to disclose the existence of a CDD and associated costs,¹³ so purchasers are provided with the information to be effective consumers. Whether this is effective in the usual process of a real estate closing may be questioned. Furthermore, there is little empirical support for negative capitalization of encumbrances.

¹³ There is no corresponding obligation to disclose the existence of a dependent special district.