

Hopping Green & Sams

Attorneys and Counselors

An Introduction to Community Development Districts and Stewardship Districts

Q: What is a community development district?

A: A community development district (“CDD”) is an independent special-purpose unit of local government, most often established at the request of a developer or landowner with governmental approval. CDDs offer an attractive and cost-effective means of providing for the financing and management of major infrastructure systems and services to support the development of new communities.

Q: Why consider establishing a CDD?

A: Establishment of a CDD can help address the need to provide basic infrastructure for new development, whether residential, non-residential or mixed use. A CDD can finance, construct and/or maintain public infrastructure required by growth. In addition, permitting agencies require long-term assurances that infrastructure will be maintained even after the developer's involvement in a project has ended. When used effectively, CDDs can help spread out infrastructure costs, meet the concerns of permitting agencies with respect to long-term maintenance of infrastructure and address the need for new public infrastructure.

Q: How can a CDD help spread infrastructure costs?

A: Depending upon the nature of the project and type of infrastructure to be financed, a CDD may be able to issue long-term tax exempt bonds for certain facilities. This will enable the development of infrastructure at a lower overall cost of debt. In addition, when bonds are repaid through annual special assessments on the land, costs will be shared by future residents/landowners.

Q: What kinds of infrastructure can a CDD finance, construct, acquire, operate, and/or maintain?

A: CDDs are empowered by general law to finance, construct, acquire, operate and/or manage, among other infrastructure: water and sewer facilities; water management and control facilities; roads; streetlights; landscaping; hardscaping; the undergrounding of utilities; bridges; remediation costs; conservation and mitigation areas; projects within or outside a district's boundaries required by a local government development order; projects required by a development approval, interlocal agreement, zoning condition, or permit; etc. With permission of the local government with jurisdiction, CDDs may also provide such things as parks, recreational amenities, security, waste collection and mosquito control.

Q: What kinds of bond financing are available to a CDD?

A: In order to finance capital improvements, CDDs commonly issue revenue bonds, which are secured by the pledge of non-ad valorem special assessments. Additionally, a CDD may issue revenue bonds secured by the pledge of other revenues, such as rates, fees or other charges, to be collected from the users of any facility, from any revenue-producing activity of the CDD, or from any other source or pledged security. Further, subject to referendum approval, a CDD may issue general obligation bonds that are repayable through the CDD's ad valorem taxing power. A CDD may also issue refunding bonds, in order to "refinance" a prior bond issuance.

Q: Why not just use a homeowners' association?

A: A homeowners' association established under Chapter 720 of the Florida Statutes may be adequate to address certain issues, but it does not have a CDD's broad range of powers and options to effectively finance and manage major capital improvements. For example, a homeowners' association does not have: a CDD's authority to finance, acquire, construct, operate and/or maintain all of the infrastructure outlined above; a CDD's ability to issue tax-exempt bonds; a CDD's sovereign immunity protection; or a CDD's ability to levy and collect special assessments on the tax roll.

Of course, the suitability of a CDD for a project depends upon a number of variables, such as the size and nature of the project, the on-site and off-site infrastructure needed to accommodate development, the local political environment, and other factors. Many projects use a homeowners' association for some purposes (e.g., architectural control) and a CDD for other purposes.

Q: How are CDDs established?

A: The law contemplates establishment of CDDs of less than 1,000 acres in size by county (or municipal) ordinance. CDDs of more than 1,000 acres are established by adoption of administrative rule of the Florida Land and Water Adjudicatory Commission ("FLWAC"). The powers and abilities of all CDDs, regardless of their method of creation, is the same, namely, Chapter 190, Florida Statutes.

Q: How are CDDs governed?

A: Chapter 190 provides that CDDs are governed by a five person Board of Supervisors. In the initial years of a CDD, and generally stated, the Board of Supervisors is elected on a one-acre/one-vote basis with elections being held every two years after establishment. After six or ten years, depending on the size of the CDD, and depending on whether certain population thresholds are attained, voting begins to transition to voting on a one-person, one-vote basis. Through that process, residents of the CDD begin to comprise the Board of Supervisors.

Q: Are CDDs really government?

A: Yes. CDDs are units of *special purpose* local governments, in contrast to *general purpose* local governments (e.g., city or county). One key difference is that the special districts do not have all of the regulatory power of a city or county. Still, CDD board meetings must be noticed and open to the public. Board members are considered local elected officials for purposes of financial disclosure and the Sunshine Law. CDDs must make records available for public inspection during normal business hours. Competitive bidding requirements may attach to certain types of contracts. Annual financial reports must be filed with the state. It is these elements of accountability and transparency that have given cities, counties, and the legislature a certain level of “comfort” to grant CDDs the governmental powers they enjoy.

Q: How are ongoing operations of the CDD funded?

A: In the early years, the CDD's operating fund is usually funded through an agreement between the CDD and the landowner/developer, and then, in later years, is funded through the levy of annual operations and maintenance assessments. CDDs are required to be audited annually and are subject to the oversight of the Auditor General. For this reason, competent CDD management is a must to safeguard district assets and insure that appropriate accounting and administrative procedures are in place. A CDD should also retain a district engineer, legal counsel, and a financial advisor. To the degree staffing activities are related to specific capital projects, certain amounts may be ultimately reimbursable from bond proceeds.

Q: What requirements govern a CDD's implementation of a particular project?

A: In implementing a particular project, a CDD must follow the requirements of federal, state, and local laws, including but not limited to any DRI development order and applicable permit conditions. Additionally, if a CDD has issued bonds to finance a particular project, the CDD must abide by all bond covenants and related project agreements.

Q: Are there disclosure requirements for CDDs?

A: Yes. CDDs are required by statute to take affirmative steps to provide full disclosure of information relating to the public financing and maintenance of improvements to real property undertaken by the CDD. This information must be made available to developers within the CDD (e.g., individual home builders), to all existing residents, and to all prospective residents. In addition, disclosure language must be included in contracts for the sale of land within the CDD. Further, as a condition of most bond financings, certain disclosures must be made to bondholders and the public relating to, generally speaking, the status of the project. Additionally, CDDs typically must make certain disclosures through an annual audit process.

Q: Will a CDD continue indefinitely?

A: Ordinarily, a CDD will remain in existence indefinitely unless it is merged with another CDD, is dissolved, or all of the specific community development services it has been authorized to perform are transferred to a general-purpose unit of local government. A transfer of services may be accomplished by adoption of an ordinance demonstrating the ability of the

local general-purpose government to provide the service as efficiently and economically as the CDD, and at a level of quality equal to or higher than the level of quality actually delivered by the CDD.

Q: When is a CDD feasible? Are CDDs workable for unusually large projects?

A: The feasibility of a CDD depends on a variety of factors, including the size and scope of the proposed project, the type of infrastructure necessary for the project, market conditions, local political considerations, and other factors. That said, a CDD should at least be large enough to be able to support assessments sufficient to carry the minimum operating costs of a CDD. For larger projects with multiple phases, it may be appropriate to establish more than one CDD, all of which could potentially be merged later if appropriate. This strategy makes sense when the project encompasses multiple uses and a large site, or when the project involves multiple phases that would be implemented over a relatively long term.

Q: Is a CDD the only viable strategy for a “CDD-type” financing for a larger project?

A: No. Recognizing that very large tracts of land have a longer build out period, and in cases where there has been a desire to preserve large portions of the property for conservation purposes, the Florida legislature has created several “stewardship districts” by special act. It has been recognized that projects of this type are better served by a single independent special district over the entire area to allow for a more thoughtful, coordinated, and long-term financing and management of horizontal development and environmental conservation or preservation. It avoids any concerns about possible fragmented responsibility for district lands among multiple CDDs or other special purpose entities.

Q: How are stewardship districts established?

A: The Florida legislature establishes stewardship districts by special act (which is, like other legislation, also signed into law by the Governor). The local legislative delegation sponsors the special act, after considering the same at meetings held in the local area. As these are “local bills”, the establishment of such districts follows a strict procedural and noticing time line that occurs well in advance of the regular legislative session (which generally runs 60 days in March and April).

Q: How are stewardship districts governed?

A: Each stewardship district established to date has been tailored to the specific needs of a particular community and local jurisdiction. Landowners generally elect the board (which is usually five members) for a specific period of time, and the transition to residents sitting on the board is usually much longer than with CDDs, reflecting the extended duration of development and build out. In some cases, the transition to residents may begin after specified population triggers are reached; in others, it may be at specific dates.

Q: Do CDDs and stewardship districts have different powers?

A: To some extent. CDD powers are all set out in general law, Chapter 190. The powers of each stewardship district are contained within each special act. However, it is often the case that powers found in Chapter 190, as well as those found in Chapter 298 (drainage districts), form the starting place for the drafting of such special acts. Still, special powers needed for the particular land area within the stewardship district are possible and have been included.

Q: How common are CDDs in Florida? How many stewardship districts are there?

A: According to state records, there are more than 550 CDDs spread throughout Florida, ranging in size from 100 acres to more than 10,000 acres. Lake Nona, in Orlando, Celebration in Osceola County, and Baldwin Park in Orlando are examples where one or more CDDs have been used to provide and maintain infrastructure. As for stewardship districts, the first ones established were Ave Maria and Big Cypress in Collier County in 2004. Others include Lakewood Ranch Stewardship District created in 2005; and the Viera Stewardship District created in 2006. In 2007, the legislature passed the Babcock Ranch Community Independent Special District, which has many similarities to the other stewardship districts.

Q: How active is Hopping Green & Sams in the special district practice?

A: We have been Florida's most active law firm in the field of CDDs since the late 1980s. Our firm's lawyers have established and served as district counsel for more CDDs than any other law firm, and do so in all parts of the state, whether under landowner or resident control. In addition, we have assisted clients on more special acts to create stewardship districts than anyone else, and also serve as district counsel to several.

For more information, please contact Hopping Green & Sams at (850) 222-7500, or visit our website at www.hgslaw.com.