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An Introduction to Community Development and Stewardship Districts

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Q. *What is a community development district?*

A. A community development district (“CDD”) is an independent special-purpose unit of local government established by a developer or landowner with government 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 should we consider establishing a CDD?*

A. Because Florida is behind the pace of population growth in providing basic infrastructure, developers face more pressure to provide those facilities and at a faster pace. In part, these demands are fueled by intense political pressure to not raise taxes. Permitting agencies also demand long-term assurances that infrastructure will be maintained even after the developer's involvement in a project has ended.

Establishment of a CDD can help address all these pressures. Although CDDs are independent local special-purpose governments that may levy taxes and assessments and issue bonds, the landowner-developer can remain in control of the CDD in its early years. When used effectively, CDDs help spread out development costs, utilize tax-free financing methods, meet the concerns of permitting agencies with respect to long-term maintenance of infrastructure and address the concerns about politically unpopular property tax increases.

Q. *Why not just use a homeowners' association?*

A. A homeowners' association established under Chapter 720, Florida Statutes, as a special type of not-for-profit corporation may be adequate to address certain issues, however, it does not have a CDD's range of powers and options to effectively finance major capital improvements. CDDs are empowered by general law to finance, construct, operate and/or manage water and sewer facilities, water management and control facilities, roads and streetlights, and bridges.

With permission of the local government with jurisdiction, by general law a CDD also may provide parks, recreational amenities, security, schools, waste collection and mosquito control. Conversely, a CDD is not authorized to perform many of the duties that a homeowners' association may perform. Although CDDs recently were given the authority to enforce architectural controls, for several reasons we typically recommend that CDDs not exercise that power.

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 and a CDD for other purposes.

Q. *Are CDDs established elsewhere in Florida?*

A. Yes, many new communities are developed in conjunction with establishment of a CDD. A CDD is initially established through a petition and hearing process, but the establishing entity depends upon the size and location of the proposed district. The Governor and Cabinet establish districts of more than 1,000 acres while districts of 1,000 acres or less are established by the city or county in which they are located.

There are many examples of new master-planned communities in Florida that rely upon a CDD for infrastructure financing and operations. Lake Nona in Orlando, developed by the Lake Nona Land Company, and Celebration in Osceola County, developed by the Disney interests, are two prominent examples in Central Florida. In North Florida, the St. Joe Company uses CDDs for its master-planned communities at River Town in St. Johns County, Southwood in Tallahassee, Windmark Beach in Port St. Joe and Watersound in South Walton County.

CDDs can be valuable for redevelopment projects, too. Examples are the Pier Park CDD serving the infrastructure needs for that new urban entertainment center in the heart of the Panama City Beach tourist district, and the Baldwin Park project on the site of the former Orlando Naval Training Center. Our firm established and/or serves as District Counsel for all these and many other CDDs.

Q. *Do CDDs fit well within the DRI process?*

A. Although CDDs have been set up for many projects below DRI thresholds, CDDs fit well into the DRI process. CDDs can enhance the appeal of a DRI to local officials because CDDs are one of the most efficient and politically palatable ways to provide basic services and infrastructure for large new communities. Conversely, the existence of a DRI development order will enhance the prospects for approval of a CDD during the establishment process. If the role of the CDD has been clearly defined in the project's development order, local concerns about the CDD can be minimized.

Q. *How does a CDD help spread development costs?*

A. Depending upon the nature of the development and the type of infrastructure needed, a CDD may be able to issue long-term tax-exempt bonds to finance certain facilities. Such bonds will enable the developer-landowner to enjoy a lower overall cost of debt. In addition, because bonds are paid off over many years through special assessments on the land, costs will be passed along to the people who will use those facilities, the future residents and landowners.

Q: *How can the developer be sure a CDD will carry out plans for her project?*

A. In the initial years of a CDD, the Board of Supervisors is elected on a one-acre, one-vote basis, a procedure that the Florida Supreme Court has upheld as constitutional as presently written and enforced. Since the developer-landowner usually controls a majority of the land, he or she will choose the board members during the project's critical early years. Thereafter, elections are held every two years and landowners are allowed to vote on a one-acre, one-vote basis. After 6 or 10 years, depending on the size of the CDD, and once certain population thresholds are attained, the district begins the transition to voting on a one-person, one-vote basis. Through that process, the residents of the district take control of the district board.

In a DRI project, the CDD must follow the requirements of the DRI development order even after residents assume full control of the board. In addition, the CDD is bound by conditions in permits obtained by the developer and transferred to the CDD.

Finally, during the initial 6- or 10-year period, the CDD will usually issue bonds. The CDD is required to abide by all bond covenants and agreements. To the extent those bond covenants require or prohibit action by the CDD during the term of the bonds, a future CDD board elected by the residents is similarly bound.

Q. *Are CDDs really government?*

A. Yes. A CDD is a unit of local government like a county or a city, although it does not have the regulatory and many other powers of a county or city. Board meetings must be noticed in a local newspaper and are always conducted in public. CDDs must make district records available for public inspection during normal business hours. Supervisors are subject to the same financial disclosure requirements as other local officials. Thus, CDDs can be particularly visible. Indeed, the fact that CDDs are subject to public scrutiny provides other local governments and permitting agencies with a level of comfort for the governmental powers that CDDs have been given by the Legislature.

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

A. CDDs commonly issue revenue bonds, which are secured by the pledge of revenues from any district facility. That would include the rates, fees or other charges to be collected from the users of any facility, from any revenue-producing activity of the district, from special or non-ad valorem assessments, or from any other source or pledged security. The issuance of revenue bonds does not require a referendum.

CDDs also may issue general obligation bonds and levy and assess ad valorem taxes, subject to referendum approval. Issuance of general obligation bonds is limited to financing or refinancing capital facilities or to refinancing outstanding bonds. Ad valorem taxes are subject to variable millage requirements. If a CDD imposes ad valorem taxes, landowner election of supervisors is no longer allowed, so all board members thereafter must be elected by residents of the district. For these reasons, CDDs commonly avoid issuance of general obligation bonds in their initial years.

Q. *So a CDD can be established for a non-residential development?*

A. Yes. We established and now serve as District Counsel for the Pier Park CDD, serving the 1 million GSF Pier Park urban entertainment complex in Panama City Beach. We also serve as District Counsel for the Enterprise CDD in Osceola County, which includes the non-residential components of Celebration. If the project is entirely non-residential in nature, the property owner continues to control the board.

Q. *If the developer utilizes a CDD, are there disclosure requirements?*

A. 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 district. This information must be made available to developers within the district (such as individual homebuilders), to all existing residents of the district, and to all prospective residents. In addition, disclosure language must be included in contracts for the sale of land within the CDD.

Q. *Will a CDD continue indefinitely?*

A. Ordinarily, a CDD will remain in existence indefinitely unless it is merged with another district, 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 is 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 district, and at a level of quality equal to or higher than the level of quality actually delivered by the district.

Q. *If a project is quite large, can the developer establish more than one CDD?*

A. Yes. It is possible to have more than one CDD in a new community. For example, Disney's Celebration has one CDD for the predominantly residential part of the community and another CDD for a non-residential area. This strategy makes sense when the project encompasses many years, multiple uses and a large site.

One reason to consider multiple districts, particularly for long-term projects, is that control of a CDD may begin to transfer to residents, through election of the Board of Supervisors by residents rather than landowners, before the necessary infrastructure has been implemented throughout the entire community. Therefore, it may be wise to have more than one CDD to ensure that the developer-landowner retains control longer than would be possible if only one CDD were utilized.

Q. *Is that the only viable strategy for CDD-type financing for a large project?*

A. No. In recent years the Legislature has created a handful of “stewardship districts” by passing special acts sponsored by local legislative delegations. Each stewardship district is tailored to meet the needs of a particular planned community and a particular local jurisdiction, but all of them must meet certain requirements of general law. All are independent special districts like a CDD.

Q. *Why have those developers chosen a stewardship district over a CDD?*

Those developers elected to seek creation of a stewardship district either because their planned community would be located in more than one county (which by law a single CDD may not serve), and/or they had unusually large areas of land for conservation and development over unusually long periods of build-out.

A single independent special district over the entire area of an unusually large project ensures more thoughtful, coordinated and long-term financing and management of horizontal development. It also avoids the fragmented responsibility for district lands among multiple special purpose entities. But – just as CDDs are not appropriate for every project – a stewardship district is not a suitable alternative to a CDD for every project that intends to utilize CDD for infrastructure financing and management.

Q. *What are some of the planned communities that have won legislative approval for a stewardship district?*

A. The first were Ave Maria and Big Cypress in Collier County, created by the Legislature in 2004. Others are the Lakewood Ranch Stewardship District (23,000 acres in Manatee and Sarasota counties), created in 2005; and the Viera Stewardship District (14,000 acres in Brevard County), created in 2006. All of them were granted the same basic powers as a CDD, but each has a unique turn-over requirement for transition to resident control based on that project’s specific build-out period.

In each case, the local legislative delegation agreed to sponsor the special act only after local county commissioners expressed their support following public hearings. In addition, each of these special acts was drafted to contain unique provisions tailored to meet local political requirements and the developer’s needs. Strong local political support is an unwritten pre-requisite for creation of a stewardship district.

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

A. We have been Florida’s most active law firm in the emergence of CDDs since 1990. 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 developer or resident control. In addition, we have assisted clients on more special acts to create stewardship districts than anyone else.

Please contact us at (850) 222-7500 if you have further questions.

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