

CDD 101

Baytree CDD
December 1, 2020



WELCOME TO CDD 101

- Overview of CDDs
- Benefits of CDDs
- Establishment
- Financing
- Assessments
- Elections & Turnover
- Reporting Requirements
- Public Records, Sunshine Laws & Ethics

Overview of Community Development Districts



What is a Community Development District?

- ◆ Local unit of special purpose government
- ◆ Established under the Uniform Community Development Act of 1980 (Chapter 190, F.S.)
- ◆ Provides a mechanism to finance, construct and maintain high quality improvements and amenities
- ◆ Separate from, and NOT an arm of, the County or City

What Can a Community Development District Do?

- A CDD's powers are generally derived from Sections 190.011 and 190.012, Florida Statutes.
- CDD have several broad powers for a special district:
 - Sue and be sued
 - Contract for services
 - Borrow money & issue bonds
 - Adopt rules
 - Maintain an office
 - Eminent domain
 - Charge fees
 - Levy, collect & enforce special assessments
 - Exercise all the powers necessary, convenient, incidental, or proper in connection with any of the powers, duties, or purposes authorized by this act.

What Can a Community Development District Do?

- Pursuant to Section 190.012(1), a CDD can finance, construct and acquire the following improvements:
 - Water management and control structures
 - Water supply, sewer, and wastewater management, reclamation, and reuse
 - Bridges or culverts
 - Roadways; street lights; alleys; landscaping; hardscaping; and the undergrounding of electric utility lines
 - Buses, trolleys, transit shelters, ridesharing facilities and services, parking improvements, and related signage
 - Environmental investigation and remediation costs
 - Conservation areas, mitigation areas, and wildlife habitat
 - **Any other project within or without the boundaries of a district pursuant to a development order or interlocal agreement**
 - **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**

What Can a Community Development District Do?

- ◆ Pursuant to Section 190.012(2), a CDD can obtain these certain additional powers:
 - ◆ Parks and facilities for indoor and outdoor recreational, cultural, and educational uses.
 - ◆ Fire prevention and control, including fire stations, water mains and plugs, fire trucks, and other vehicles and equipment.
 - ◆ 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.
 - ◆ 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.
 - ◆ Control and elimination of mosquitoes and other arthropods of public health importance.
 - ◆ Waste collection and disposal.

What a Community Development District Can Not Do

- ◆ A CDD is a limited purpose unit of special government, with limited powers.
- ◆ A CDD cannot take any action which is inconsistent with the comprehensive plans, ordinances and regulations of the City/County.
- ◆ A CDD does not have the power to adopt its own comprehensive plan, building code or land development code – it is not a zoning authority.
- ◆ All of the CDD's powers must comply with all applicable City/County laws, rules, regulations, and policies governing planning and permitting of the development.

Benefits of CDDs

- ◆ Developers/builders have increasing demands placed on them by cities and counties to provide infrastructure
- ◆ CDDs provide access to less expensive infrastructure through tax exempt financing
- ◆ The CDD debt is secured by assessments and the CDD can foreclose on those assessments b/c the assessments are liens on the land (i.e., non-recourse debt)
- ◆ Spread infrastructure costs over time, as opposed to building all costs into home up front
- ◆ CDDs therefore have a more stable stream of revenue b/c the assessments are paid along with property taxes
- ◆ Allows CDD to handle procurement of contracts and development of public works
- ◆ Allows for enhanced amenity levels and recreation options making community more attractive and livable – allows homeowners to ultimately determine their own level of service
- ◆ CDDs are long term maintenance entities, which provide for stable, long term property values

CDDs v. HOA/POA

- ◆ Governmental entity
 - ◆ Sunshine Laws / Open Records / Sovereign Immunity / Eminent Domain / Public Accounting
- ◆ Issues tax exempt bonds
 - ◆ High quality infrastructure and amenities
- ◆ Revenue collection and enforcement
- ◆ Public procurement
- ◆ Typically no architectural review
- ◆ Elected Board of Supervisors – turnover period differs

CDDs v/ HOA/POA

	<u>CDD COMMUNITY</u>	<u>NON-CDD COMMUNITY (HOA OR POA)</u>
Access/Records	Public (budgets, audits, contracts, minutes etc)	Private
Accountability	More public accountability to County/City, DEO, Auditor General and bondholders	Much less accountability
Hurricane Recovery	More self sustaining	Less self sustaining
Self Reliant Maintenance	Ability to refinance, maintain; less reliant on County/City, because of bankable nature of entity	Lesser abilities, more likely to need County/City assistance
Environmental	Preferred entity for storm-water and habitat maintenance by Water Management District	Less preferred entity
Turnover to Homeowners	Guaranteed turnover in 6 years (250 voters residing in project)	Longer turnover period often at 80-90% build out
Assurance of Funding	Funding for improvements and amenities assured, held in trust on day one by independent trustee	Funding for improvements dependent on project revenues, held privately

Establishment



Considerations for Establishment

- Nature of project (location, size, type, land ownership, etc.)
- Timing and delivery of improvements
- Private v. public infrastructure
- Need to finance off-site improvements
- Numerous other considerations

Establishment Criteria

The City/County is responsible for considering the following factors and making a determination to grant or deny a petition for the establishment of a community development district:

1. Whether all statements contained within the petition have been found to be true and correct.
2. Whether the establishment of the district is inconsistent with any applicable element or portion of the state comprehensive plan or of the effective local government comprehensive plan.
3. Whether the area of land within the proposed district is of sufficient size, is sufficiently compact, and is sufficiently contiguous to be developable as one functional interrelated community.
4. Whether the district is the best alternative available for delivering community development services and facilities to the area that will be served by the district.
5. Whether the community development services and facilities of the district will be incompatible with the capacity and uses of existing local and regional community development services and facilities.
6. Whether the area that will be served by the district is amenable to separate special-district government.

Process for Establishment

- Districts over 1000 acres in size are established at the state level via administrative rulemaking.
- Districts less than 1000 acres are established by ordinance of the city or county where the land is located.
- Criteria for establishment and contents of the petition are identical. In both cases, a local hearing must be held in the vicinity of the proposed CDD. No referendum required.
- In all cases, consent of 100% of the landowners is required for establishment.

CDD Financing



Process

- ◆ PART 1 – Levy Assessments
 - ◆ Prepare a capital improvement plan
 - ◆ Prepare an assessment methodology report
 - ◆ Notice & Hearing
- ◆ PART 2 – Bond Validation
- ◆ PART 3 – Bond Issuance

Financing Parties

- District Manager
- District Engineer
- District Counsel
- Financial Advisor
- Investment Banker
- Bond Counsel

Key Developer Financing Documents

- Acquisition Agreement
- Construction Funding Agreement
- Completion Agreement
- True-Up Agreement
- Continuing Disclosure Agreement

Special Assessments



Special Assessments

- Special Assessments
 - First priority liens, co-equal with taxes
 - On-roll v. off-roll collection methods
- There are two requirements for the imposition of a valid special assessment
 - The property assessed must derive a special benefit from the service provided.
 - The special assessment must be fairly and reasonably apportioned among the properties that receive the special benefit.

Debt Special Assessments

💧 Process

- 💧 Improvement Plan / Methodology
- 💧 Hearing
- 💧 Notice (Lender's perspective)

💧 Methodology

- 💧 Benefit
- 💧 Fairly & Reasonably Allocated
 - 💧 Per Unit v. EAUs

O&M Special Assessments

- Adopted in connection with annual budget
- Used to pay for administrative costs and costs of operating and maintaining District improvements
- Process similar to debt service
 - No cap on increases, but notice may be required
- Methodology typically follows debt assessment methodology

Elections & Turnover



How are CDDs governed?

- ◆ Board of Supervisors – 5 Members
- ◆ Early years, landowner elections
 - ◆ Majority of acreage / units control
- ◆ After 6 years (depending on size, etc.), resident electors begin to gain seats
- ◆ Can't be removed (absent abuse)

Reporting Requirements



What are the CDD's Reporting Requirements?

- ◆ Must follow all applicable procedural and reporting rules required of municipal governments under Florida Statutes including:
 - ◆ Elections
 - ◆ Bidding and awarding of contracts
 - ◆ Advertising of meetings and holding meetings in the “Sunshine”
 - ◆ Preparation and distribution of minutes to appropriate governmental agencies
 - ◆ Maintenance of official records
 - ◆ Reporting and filing of financial information
 - ◆ Must establish and administer internal accounting controls
 - ◆ Must disclose to potential landowners the existence of the CDD and the amount of the special assessments levied by the CDD for both debt service and operation and maintenance

CDD Disclosures

- Notice of Establishment
- Notice of Special Assessments (common practice)
- Sales Contracts – Meeting Requirement of FS 190.048
- Disclosure of Public Financing
- Bond Market Disclosures / Continuing Disclosure Agreement Obligations
- Audits; filings with DEO

Public Records, Sunshine & Ethics Laws



- ◆ The Sunshine Law is set forth in Chapter 286.011, Florida Statutes, and contains the following three basic requirements:
 - ◆ Meetings of public boards must be open to the public;
 - ◆ The public must have reasonable public notice of all such meetings; and
 - ◆ Minutes must be taken at all such meetings.

- ◆ Similarly, Supervisors are subject to Florida's Public Records laws. Florida's Constitution provides that citizens have a Constitutional right of access to "any public record made or received in connection with the official business of any public body, officer or employee of the state, or persons acting on their behalf..." Art. 1, § 24(a), Fla. Const. The Florida Statutes implement this right and define "public record" very broadly:
 - ◆ "Public records" means all documents, papers, letters, emails, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.

- ◆ Florida's ethics laws governing public officials also apply to CDD Supervisors, and include both prohibitions and disclosure obligations

- ◆ Prohibitions:
 - ◆ Don't use public office for personal gain or benefit
 - ◆ Don't vote on measures that would benefit your private gain, or the private gain of an employer, relative or relative's employer (EXCEPTION though for landowner seats)
 - ◆ Don't accept or solicit gifts (on your behalf or on behalf of family) for a vote
 - ◆ Don't disclose or use information not available to the general public that was obtained because of your official position
 - ◆ Don't employ, appoint, promote or advance relatives into a position in the CDD
 - ◆ Don't do business with the CDD

- ◆ Disclosures
 - ◆ Statement of Financial Interests
 - ◆ Voting Conflicts – must be filed by a special district local officer when they abstain from voting on measures that: (1) inures to his or her special private gain or loss; (2) inures to the special gain or loss of a principal by whom he or she is retained; (3) could result in special private gain or loss to a relative; (4) could result in special private gain or loss to a business associate.
 - ◆ Gifts – Disclose any gift worth more than \$100 from someone who is not a relative

Baytree Community Development District

- ❖ Capital Improvements, Ownership and Maintenance
- ❖ FY 21 Assessment Levels



Capital Improvements, Maintenance, and Ownership

- All Common Area Infrastructure
 - Security
 - Recreation
 - Roads/Sidewalks
 - Lakes
 - Landscaping

Assessment Levels

Assessment Type	FY 2021 Assessment
Operations and Maintenance	\$1,884.67/home

Questions?