

Best Practices In Planned Communities Design, Implementation & Financing

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S. ELISE BATSEL
Stearns Weaver Miller



VINETTE D. GODELIA
Stearns Weaver Miller



JONATHAN T. JOHNSON
Kutak Rock



ALYSSA C. WILLSON
Kutak Rock

STEARNS WEAVER MILLER



KUTAKROCK

What is a Planned Development, Community Today?

- Comprehensive Development Plan
- Provides flexibility in design and building placement
- Permits local government to condition the approval
- Large master planned communities or innovative urban infill projects

Purchase and Sale

Due Diligence

- Inspection Period
- Governmental Approval Period

Development Rights

- Assignment of Density/Intensity
 - Representations or No representations
- Allocation of EDUs

Important Legislative Considerations

- School Concurrency
- Greywater Bonus



Entitlements

Know the Jurisdiction

- Type of PUD/PD
 - Bubble Plan versus detailed plan
- Plan for Delays
- Overlay Districts

Don't Neglect Application

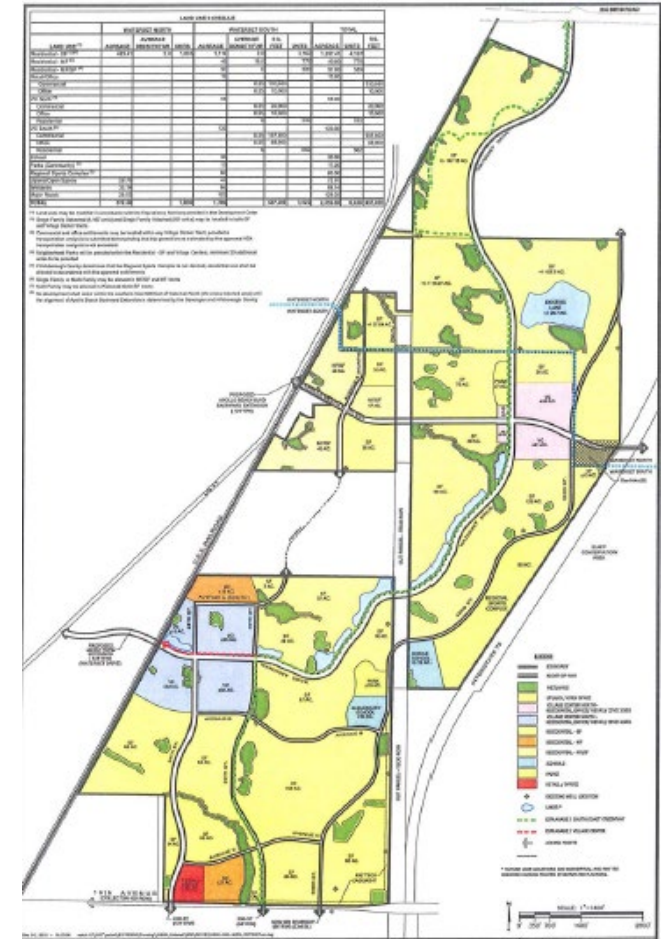
- Create a Detailed Project Narrative

Engage Staff Early and Often

- Importance of Pre-App
- Maintain personal relationships with staff

Engage Elected Officials

- Understand ex-parte communication rules



Organizing Support

Create Allies Not Opposition

Have a Plan But Keep It Close

Know the Community Agenda

Be Willing to Pivot

Hire a Public Relations Professional



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Creating the Record

Hearing Notebook

- Know Rules for Submission of Evidence

Competent Substantial Evidence

- Distinguish expert testimony on technical matters

Experts

- Qualify Experts: resumes/CVs

Importance of Rebuttal

- Limited Time
- Address opposition testimony



Types of Decisions

Legislative

Quasi-Judicial

Executive

Factors:

Character of the hearing

Policy Formulation or Application of Policy

Quasi-Judicial Decisions

Burden of Proof

- Typically falls to Applicant
- Evidence of Standing
- Decision must be supported by competent & substantial evidence

Hearing Considerations

- Due Process – Notice & opportunity to be heard
- Swearing in of Witnesses
- Cross Examination
- Some jurisdictions allow limited discovery but public records requests are always an option



- Rezoning
- Variance
- Plat Approval
- Site Plans

Quasi-Judicial Decisions – Appeal

Petition for Writ of Certiorari

- Circuit Court Filing

Standard of Review

- Competent & Substantial Evidence
- Procedural Due Process
- Application of Correct Law/Essential Requirements of Law

Exceptions

- F.S. 163.3215 Comprehensive Plan Consistency – De Novo Review
- Florida Land Use and Environmental Dispute Resolution Act – §70.51.F.S.

Quasi-Judicial Decisions - Practical Implications



- Evidence must be submitted before the decision is issued. Otherwise, it cannot be considered on appeal.
- Witnesses are subject to quasi-trial with relaxed rules of evidence and generally must be sworn. Cross examination by parties must be permitted and witnesses should be prepared.
- The party seeking to challenge must preserve the record by ensuring that the proceedings are either transcribed by a court reporter or recorded for later transcription. Evidence must be submitted into the record.
- Issues must be raised to be preserved.

Legislative Decisions

Generally

- Policy formulation by governing body (i.e., Comprehensive Plans, Ordinances)

Due Process/Procedures

- Limited Protections
- Reasonable Opportunity to be Heard, s. 286.0114, F.S.
- Separate Ch. 163 process for adoption/amendment Comprehensive Plans

Judicial Review

- De Novo Review (not limited to record)
- Deference to Local Governments, “Fairly Debatable”
- Circuit Court or Division of Administrative Hearings



- LDR Text Amendments
- Comprehensive Plan Amendments

Executive Decisions

Building Permit Issuance

City of St. Pete Beach v. Sowa, 4 So. 3d 1245 (Fla. 2d DCA 2009).

Decision to deny permit application for “adult oriented business”

Pleasures II Adult Video v. City of Sarasota, 833 So. 2d 185, 189 (Fla. 2d DCA 2002).

Decision to approve freestanding emergency room

Braden Woods Homeowners Association v. Mavard Trading LTD, 44 Fla. L. Weekly D1592 (Fla. 2d DCA June 21, 2019)



- Administration of Code
 - Cannot go straight to Writ of Certiorari
 - Administrative Remedies must be exhausted before court action
 - Local Code may provide Appeal Process

What is a CDD? (Community Development District)

- Independent, special purpose unit of local government
- Governed by Chapter 190, Florida Statutes, among others
- Established by Governor and Cabinet or City/County, depending on size (+/- 2,500 acres), but always with landowner consent
- Utilized to finance, construct, acquire, operate and maintain public infrastructure improvements

*Note Ch. 189, Florida Statutes, stewardship/improvement districts also exist!

Why Would a Developer Consider Establishing a CDD?

- Cheaper non-recourse financing of infrastructure
- Externalization of project debt
- Long-term maintenance obligation stability
- Preferred by environmental permitting agencies: “fellow” government entity
- Ability to provide amenities “up front”
- Ability to phase in construction and financing

Process for CDD Establishment

Two Methods:

1. < 2,500 acres - local county/municipality
2. > 2,500 acres - Florida Land and Water Adjudicatory Commission

*Stewardship districts created by local bill adopted by Florida Legislature

Florida's Top Ranked Communities by Homes Sold (2021)

Ranking	Community	# of Homes Sold	District Type
1	Villages	4,004	Multiple CDDs
2	Lakewood Ranch	2,574	CDDs/Stewardship District
3	Wellen Park	1108	Improvement District
4	On Top of the World	832	Multiple CDDs
5	Nocatee	738	Single CDD by Merger
6	Viera	732	CDD/Stewardship District Stewardship District
7	Babcock Ranch	714	
9	Lake Nona	685	Multiple CDDs
10	Ave Maria	646	Stewardship District

Source: RCLO Real Estate Advisors Top Selling Master-Planned Communities Year-End 2021



What Powers Does A CDD Have?

- Sections 190.011 and 190.012, Florida Statutes
- Construct or acquire public infrastructure serving development
- Sell tax-exempt bonds
- Assume maintenance responsibilities
- Levy non-ad valorem special assessments for
 1. Repayment of construction bonds
 2. Annual operation and maintenance costs

What Improvements Can a CDD Construct, Acquire or Maintain?

Section 190.012(1)

- Stormwater management and drainage infrastructure
- Utility infrastructure - water, wastewater, irrigation, utility undergrounding
- Bridges and culverts
- Roadways and street lighting
- Investigation/remediation costs for environmental contamination clean up
- Conservation areas, mitigation areas, and wildlife habitats
- Other project in development order
- Project contemplated by interlocal agreement between CDD and governmental entity

What Improvements Can a CDD Construct, Acquire or Maintain?

Section 190.012(2)

- Parks and facilities for indoor and outdoor recreation
- Fire prevention and control facilities
- School buildings and related structures
- Security Improvements
- Mosquito elimination and control
- Waste collection and disposal


What can a CDD Cannot Do:


- Enforce deed restrictions, except in extremely limited circumstances.
- Take any action inconsistent with comprehensive plans, ordinances, and regulations of City/County
 - Must comply with all applicable City/County laws, rules, regulations, and policies governing planning and permitting
 - Can't adopt own comprehensive plan, building code or land development code – not a zoning authority
- Require City/County/State to repay CDD debt
- Special assessments levied by CDD do not impact millage caps of City/County, School Board or any other government

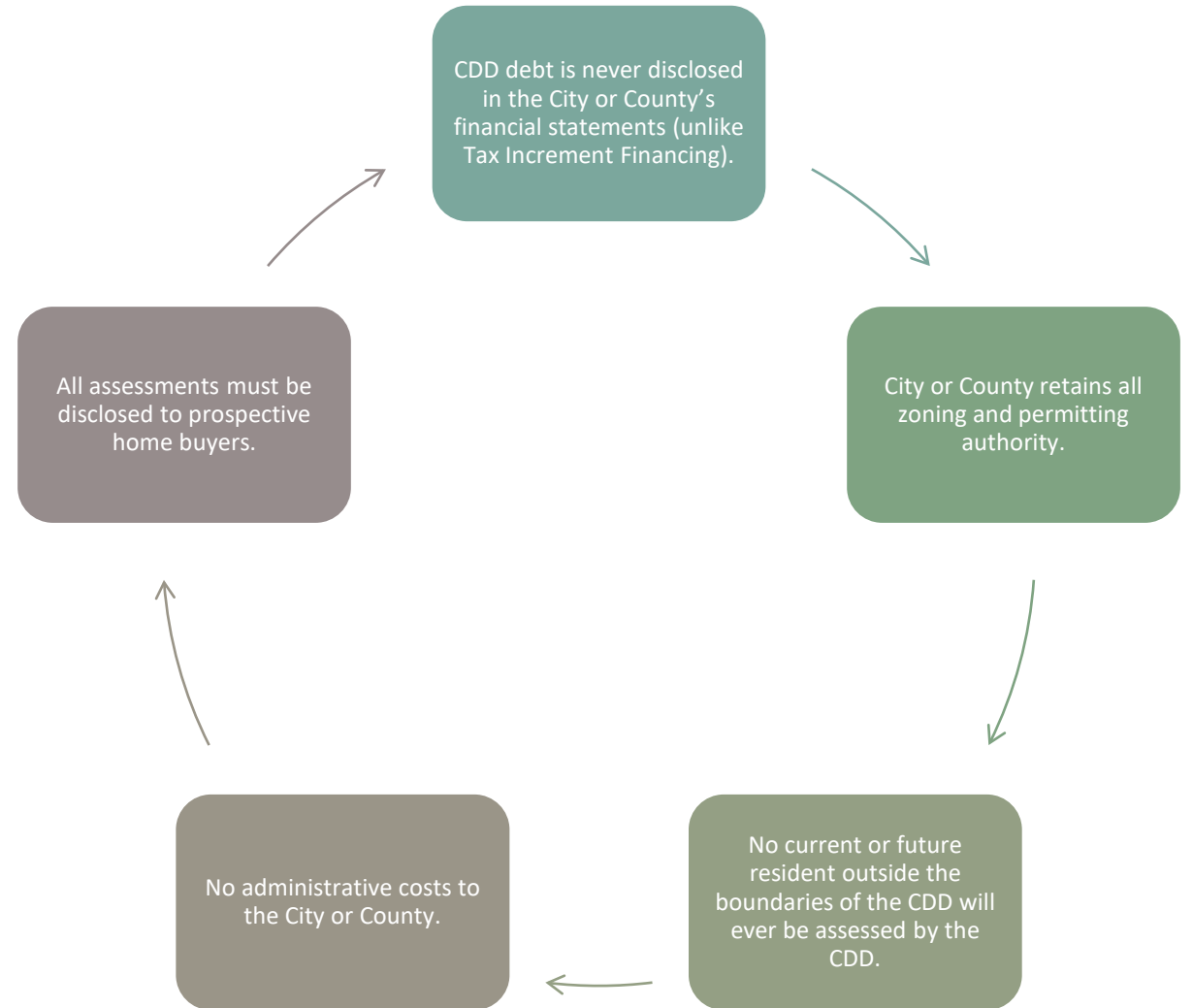
Benefits and protections for the County or City

 Allows new infrastructure to be built without the use of County or City funds or bonding capacity.

 No financial burden on residents outside of the CDD.

 Assures project is funded because bond proceeds are provided up front and deposited into a trust account.

 More stable maintenance entity to ensure continuation of project after the developer is gone.



CDD Finances

- Fund construction/acquisition public infrastructure through sale of tax-exempt bonds
 - Repaid by Debt Service Assessments. Can also be repaid by
 - Public Infrastructure Fees;
 - Utility rate, fees and charges, or
 - Other fees (bridge tolls, recreation fees, etc.)
- Fund maintenance of infrastructure through imposition of annual budget
 - O&M Assessments, User Fees or directly by landowner

Recognizing A Special District Opportunity

- Unique project financing needs
 - Stadiums
 - Habitat mitigation
 - Significant development exactions
 - Recreation
 - Public art
 - Marina infrastructure
 - Solid waste infrastructure
 - Water, wastewater and irrigation utility systems not regulated by Public Service Commission

Thank You! Questions?



S. ELISE BATSEL
Stearns Weaver Miller
813-222-5057
ebatsel@stearnsweaver.com



JONATHAN T. JOHNSON
Kutak Rock
850-264-6882
jonathan.johnson@kutakrock.com



VINETTE D. GODELIA
Stearns Weaver Miller
813-222-5070
vgodelia@stearnsweaver.com



ALYSSA C. WILLSON
Kutak Rock
850-661-9973
alyssa.willson@kutakrock.com