



AGENDA

REGULAR MEETING OF TOWN COUNCIL

CHRISTIANSBURG TOWN HALL

100 EAST MAIN STREET

APRIL 18, 2017 (rescheduled from APRIL 11, 2017)

REGULAR MEETING

I. CALL TO ORDER

- A. Moment of Reflection
- B. Pledge of Allegiance

II. ADJUSTMENT OF THE AGENDA

III. PUBLIC HEARINGS

- A. Conditional Use Permit request for a public amusement center (trampoline park and fun center) in the B-3 General Business zoning district at 200 Midway Plaza Drive, NW. (rescheduled for April 25, 2017)

IV. CONSENT AGENDA

- A. Meeting Minutes of March 28, 2017

V. CITIZEN COMMENTS

VI. INTRODUCTIONS AND PRESENTATIONS

- A. Proclamation recognizing April 9 – 15, 2017 as National Public Safety Telecommunicators Week.
- B. Resolution recognizing Christiansburg Rescue Squad's 70 years of service.
- C. Sue Farrar, Director of the Montgomery Museum and Lewis Miller Regional Art Center, to address Council regarding Junior Appalachian Musicians (JAM), which will teach heritage music to students in grades 4-8 after school.

VII. OLD BUSINESS

- A. Action to repeal *Christiansburg Town Code Section 22-1, “Aggressive Solicitation”* (Fontana/Sisson).
- B. Adoption of proposed ordinance *Christiansburg Town Code Section 34-26, “Interference with Traffic Prohibited”* (Fontana/Sisson).
- C. Recommendation of award for wayfinding sign design service contract. (Powell).

- [D. Discussion of budgetary community support requests \(special appropriations\).](#)
- [E. Request by Sue Farrar, Executive Director of Montgomery Museum and Lewis Miller Regional Art Center, for street closures for 2017 museum-sponsored downtown events.](#)

VIII. NEW BUSINESS

- [A. Request by Downtown Christiansburg, Inc. for street closures for a Wine & Artisans event on May 19, 2017.](#)
- [B. Report on a petition to establish a Community Development Authority \(CDA\).](#)

IX. COMMITTEE REPORTS

- [A. Street Committee Report/Recommendation on:
 - 1. Plat of Subdivision of Tax Parcel 496-\(A\)-1E creating 3 lots at 670 Scattergood Drive, N.W.](#)

X. STAFF REPORTS

- [A. Town Manager](#)
- [B. Town Attorney](#)
- [C. Other Staff:](#)

XI. COUNCIL REPORTS

XII. OTHER BUSINESS

XIII. ADJOURNMENT

The next regular Town Council meeting will be held at Christiansburg Town Hall on Tuesday, April 25, 2017 at 7:00 P.M.



**TOWN OF CHRISTIANSBURG
TOWN COUNCIL
AGENDA COVER SHEET**

AGENDA LOCATION:
CONSENT AGENDA

Meeting Date:
April 11, 2017

ITEM TITLE:
Meeting Minutes of March 28, 2017

DESCRIPTION:
Meeting minutes of last Town Council meeting

POTENTIAL ACTION:

DEPARTMENT:
Administration

PRESENTER:
Michele Stipes, Town Clerk

ITEM HISTORY:

Date: **Action Taken:**

Information Provided:

Date: **Action Taken:**

Information Provided:

**CHRISTIANSBURG TOWN COUNCIL
CHRISTIANSBURG, MONTGOMERY CO., VA.
REGULAR MEETING MINUTES
MARCH 28, 2017 – 7:00 P.M.**

A REGULAR MEETING OF THE CHRISTIANSBURG TOWN COUNCIL, MONTGOMERY COUNTY, CHRISTIANSBURG, VA. WAS HELD AT CHRISTIANSBURG TOWN HALL, 100 EAST MAIN STREET, CHRISTIANSBURG, VIRGINIA, ON MARCH 28, 2017 AT 7:00 P.M.

COUNCIL MEMBERS PRESENT: Mayor D. Michael Barber; Vice-Mayor Samuel M. Bishop; Harry Collins; R. Cord Hall; Steve Huppert; Henry Showalter; Bradford J. Stipes. ABSENT: None.

ADMINISTRATION PRESENT: Town Manager Steve Biggs; Assistant Town Manager Randy Wingfield; Clerk of Council Michele Stipes; Town Attorney Theresa Fontana; Planning Director Andrew Warren; Finance Director/Treasurer Valerie Tweedie; Director of Public Relations Melissa Powell; Director of Aquatics Terry Caldwell; Building Official Jerry Heinline; Director of Engineering Wayne Nelson; Director of Public Works Jim Lancianese.

I. CALL TO ORDER

- A. Moment of Reflection
- B. Pledge of Allegiance

II. ADJUSTMENT OF THE AGENDA

- A. Add a Proclamation Proclaiming April as Child Abuse Prevention Month as item VI.A.
- B. Add the Introduction of New Employees as item VI.B.

III. PUBLIC HEARINGS

- A. Proposed Amendment to the Annual Budget for FY 2016 – 2017.

Council was provided a copy of the proposed amendment to the Annual Budget for FY 2016-2017 in the agenda packet, and it was reviewed and discussed at the March 14, 2017 council meeting. Finance Director/Treasurer Valerie Tweedie reported that the proposed amendment had been advertised in the newspaper and on the Town's website. No citizen comments were received.

IV. CONSENT AGENDA

- A. Meeting Minutes of March 14, 2017

- B. Schedule a Public Hearing for May 9, 2017 for a Conditional Use Permit request for a game room at 77 Scattergood Drive, N.W. in the B-3 General Business District.

- C. Authorize Treasurer Department employee to sign Town checks.

- D. Monthly Bills

Councilman Hall made a motion to approve the consent agenda, seconded by Councilman Huppert. Council was polled on the motion as follows: Bishop – Aye; Collins – Aye; Hall – Aye; Huppert – Aye; Showalter – Aye; Stipes – Aye.

V. CITIZEN COMMENTS

A. Stacy Martin, owner of Adventure Hobbies at 1645 N. Franklin Street, introduced to Council a new local business coalition known as *BURG*, which he created in partnership with Marie March, who operates Due South Bar-B-Que at 1465 Roanoke Street and Fatback Soul Shack at 2440 Roanoke Street, to assist the Town in promoting small businesses. Mr. Martin said *BURG* would like to work with Christiansburg to meet the goals outlined in its Destination 2022 pertaining to working with local businesses. Mr. Martin invited Council to attend a round table to meet with local small business owners, which would be scheduled within the next couple of months. Council thanked Mr. Martin for his presentation and requested ample notification of the meeting date to allow for public advertisement.

VI. INTRODUCTIONS AND PRESENTATIONS

A. Proclamation Proclaiming April as Child Abuse Prevention Month. Dionne Harrison and Julie Dellorso of NRV Cares were present to receive a Proclamation Proclaiming April as Child Abuse Prevention Month presented by Mayor Barber. Mrs. Harrison and Ms. Dellorso thanked the Town for its support of NRV Cares and talked about the organization's efforts to bring awareness to the issue of child abuse, and to promote child abuse prevention through the annual pinwheel fundraiser and the *Wear Blue Day* on April 7. Councilman Hall commended NRV Cares for its efforts and involvements in serving the community and families affected by child abuse through community outreach and social programs designed to strengthen families. Councilman Hall reminded those present that child abuse awareness and prevention programs were scheduled for April 6, 6:00 p.m. at Pulaski County Courthouse, and April 27, 6:00 p.m. at Montgomery County Courthouse. The programs are open to the community and everyone was welcome to attend. In closing, Julie Dellorso, Executive Director of NRV Cares, announced that April 26 was designated "GiveBigNRV", which is a day of fundraising to benefit nonprofit organizations in the New River Valley. Mayor Barber noted that he would present a proclamation for that event at an upcoming council meeting.

B. Introduction of New Employees

1. Introduction by Scott Coppock, Customer Service Supervisor:
- Ivy Cobb, full-time housekeeping staff.

C. Presentation by Building Official Jerry Heinline regarding property maintenance.

Building Official Jerry Heinline provided an overview of the Virginia Property Maintenance Code, noting that enforcement was optional, and talked about property maintenance violations in Christiansburg. He reviewed the definition of *condemnation* as presented in the Virginia Property Maintenance Code and explained the meaning of blighted buildings and structures, as well as impacts on surrounding properties. Mr. Heinline then called attention to the goals of the Building Inspections Department that provide a proactive approach to property maintenance, which was recently featured by WSLS and WDBJ. Mr. Heinline explained the differences between property maintenance and the Code Enforcement Program, which is handled by the Planning Department, and he used photographs to show examples of blighted properties in Christiansburg and talked about the different approaches in addressing the needs of each property. He noted that the Town made every effort to hold the property owner responsible in cases of demolition. Mr. Heinline announced that the Town recently hosted the 2012 Virginia Rehabilitation Code training, which he, Mayor Barber, Councilman Collins, and Town Manager Biggs, attended. The training seminar was given by the State and was designed to educate localities on strategies to manage/prevent areas of blight. Mr. Heinline then talked about the challenges of enforcing property maintenance and the often-lengthy process of bringing resolution to active cases. Mr. Heinline then offered to answer questions of Council. Councilman Huppert expressed support for the efforts of the Town in addressing areas of blight, and spoke about the need for trash placement regulations during Spring/Fall Clean-up. Councilman Hall said that while he supported personal property rights, he also supported the Building Department's effective program that focused on properties that were a direct threat, and he expressed appreciation for the department's proactive approach to deterring blight. Councilman Collins noted that vacant/unused properties were a concern of his when he ran for Council, and he expressed appreciation for the policies in place that address blight. Councilman Showalter asked what type of plan was in place to assist property

owners who financially were unable to maintain their property. Mr. Heinline said in those cases the Town refers the property owner to organizations and groups that can help them through funding and personal assistance. Councilman Stipes expressed support for the proactive approach outlined by Mr. Heinline, and while he cautioned against aggression in some cases, he noted the importance of addressing properties that have become a threat to public welfare. Council thanked Mr. Heinline for his presentation.

VII. OLD BUSINESS

A. Discussion on appointment to the Montgomery Regional Solid Waste Authority.

Mayor Barber announced that former Town Manager Barry Helms had agreed to serve on the Montgomery Regional Solid Waste Authority. Councilman Hall made a motion to appoint Barry Helms to the Montgomery Regional Solid Waste Authority effective June 1, 2017. Councilman Showalter seconded the motion and Council voted as follows: Bishop – Aye; Collins – Aye; Hall – Aye; Huppert – Aye; Showalter – Aye; Stipes – Aye. Council thanked Mr. Helms for his willingness to serve as a representative of the Town and requested that he keep Council informed of important matters discussed by the authority.

B. Consideration of VML Policy Committee nominations.

Town Manager Biggs inquired if Council was interested in making nominations to the VML Policy Committees prior to the April 14 deadline. Council expressed concern with possible difficulties in attending meetings that were typically held in Richmond on weekdays. Mayor Barber offered to request a tentative meeting schedule from VML for Council to review prior to making a decision.

VIII. NEW BUSINESS

A. Professional Design Services Contract for the Quin W. Stuart Boulevard Intersection Improvement Project.

Director of Engineering Wayne Nelson reported on the proposed contract for Professional Design Services for the traffic signal project at the intersection of Quin W. Stuart Boulevard and Peppers Ferry Road, NW. The contract included project design and construction, and would be funded by a private donor and a VDOT 50/50 Revenue Sharing program. Construction services would begin immediately upon approval by Council. Town Attorney Fontana has reviewed and approved the contract as written. Councilman Hall made a motion to approve the contract as presented, seconded by Councilman Stipes. Council voted on the motion as follows: Bishop – Aye; Collins – Aye; Hall – Aye; Huppert – Aye; Showalter – Aye; Stipes – Aye. Council expressed appreciation for Mr. Nelson's efforts in bringing this matter to fruition.

IX. COMMITTEE REPORTS

X. STAFF REPORTS

A. Town Manager Steve Biggs:

1. Request for Council action on the proposed amendment to the Annual Budget for FY 2016-2017. Councilman Hall made a motion to add the item to the agenda under Other Business, seconded by Councilman Collins. Council voted as follows: Bishop – Aye; Collins – Aye; Hall – Aye; Huppert – Aye; Showalter – Aye; Stipes – Aye.

B. Town Attorney:

C. Other Staff:

XI. COUNCIL REPORTS

- A. Councilman Collins reported that Christiansburg High School has requested the Town postpone the celebration in honor of the wrestling program until the fall. Councilman Collins said he was continuing to work with the high school to establish a program for students interested in becoming involved with Town Council.
- B. Councilman Bishop – No report.
- C. Councilman Hall reported on continuing efforts to partner with Christiansburg High School in developing a program that would allow for student representation/involvement on Town Council. He then reported that the next Recreation Advisory Meeting was scheduled for April 3 at 6:00 p.m., and gave a reminder of the child abuse prevention programs to be held at the courthouses in Pulaski and Montgomery County in April.
- D. Councilman Stipes expressed his condolence Marty Gordon on the recent loss of his father.
- E. Councilman Showalter reported on the recent NRV Regional Commission meeting where concerns were discussed regarding the possible impact of the new federal budget on the region. The group heard a presentation on a proposed I-81 traffic management program, and appointed a Go Virginia Commission. Councilman Showalter said he learned so much about the region by attending the meetings, and he invited Council and the community to also attend.
- F. Councilman Huppert reported on recently held swim meets and upcoming summer programs at the aquatic center.
- G. Mayor Barber said he was working on proclamations for GiveBigNRV, Volunteerism, and recognition of the Rescue Squad, for presentation in April. He and Director of Public Relations Melissa Powell planned to visit the three Christiansburg elementary schools for Local Government Education Week in early April.

XII. OTHER BUSINESS

- A. Council action on:
 - 1. Proposed amendment to the Annual Budget for FY 2016-2017. Councilman Huppert made a motion to approve the budget amendment as proposed, seconded by Councilman Collins. Council voted on the motion as follows: Bishop – Aye; Collins – Aye; Hall – Aye; Huppert – Aye; Showalter – Aye; Stipes – Aye.

XIII. ADJOURNMENT

There being no further business to bring before Council, Mayor Barber adjourned the meeting at 8:20 P.M.

Michele M. Stipes, Clerk of Council

D. Michael Barber, Mayor



**TOWN OF CHRISTIANSBURG
TOWN COUNCIL
AGENDA COVER SHEET**

AGENDA LOCATION:
INTRODUCTIONS AND PRESENTATIONS

Meeting Date:
APRIL 11, 2017

ITEM TITLE:
Proclamation for National Public Safety Telecommunicators Week

DESCRIPTION:
A proclamation recognizing April 9-15, 2017 as National Public Safety Telecommunicators Week.

POTENTIAL ACTION:
Council to accept proclamation

DEPARTMENT:
Administration

PRESENTER:
D. Michael Barber, Mayor

ITEM HISTORY:

Date: **Action Taken:**

Information Provided:

Date: **Action Taken:**

Information Provided:

TOWN OF CHRISTIANSBURG

Established November 10, 1792

Incorporated January 7, 1833



PROCLAMATION NATIONAL PUBLIC SAFETY TELECOMMUNICTORS WEEK

WHEREAS, emergencies can occur at any time requiring police, fire, or emergency medical services; and

WHEREAS, the prompt response of police officers, firefighters and emergency medical personnel is critical in such emergencies for the protection of life and preservation of property; and

WHEREAS, the safety of our responders is dependent upon the quality and accuracy of information obtained from citizens who telephone the New River Valley Emergency Communications Regional Center; and

WHEREAS, Public Safety Communication Officers are the first contact our citizens have with emergency services; and

WHEREAS, Public Safety Communication Officers also serve our law enforcement personnel and first responders by providing critical incident information and dispatching appropriate resources to emergencies; and

WHEREAS, Public Safety Communication Officers of the New River Valley Emergency Communications Regional Authority contribute substantially to the apprehension of criminals, the suppression of fires, and the treatment of patients; and

WHEREAS, each Public Safety Communication Officer exhibits compassion, understanding, and professionalism every day during the performance of his or her job.

NOW, THEREFORE, BE IT PROCLAIMED that the Town Council of the Town of Christiansburg declares the week of April 9 through 15, 2017 to be National Public Safety Telecommunicators Week in the Town of Christiansburg, in honor of the men and women whose dedication, diligence, and professionalism keep our town and citizens safe.

Signed this _____ day of _____, 2017.

By: _____
D. Michael Barber, Mayor, on behalf of the Town of Christiansburg, Virginia



**TOWN OF CHRISTIANSBURG
TOWN COUNCIL
AGENDA COVER SHEET**

AGENDA LOCATION:
INTRODUCTIONS AND PRESENTATIONS

Meeting Date:
APRIL 11, 2017

ITEM TITLE:
Resolution for Christiansburg Rescue Squad

DESCRIPTION:
A resolution recognizing Christiansburg Rescue Squad's 70 years of service.

POTENTIAL ACTION:
Council to approve resolution

DEPARTMENT:
Administration

PRESENTER:
D. Michael Barber, Mayor

ITEM HISTORY:

Date: **Action Taken:**

Information Provided:

Date: **Action Taken:**

Information Provided:

TOWN OF CHRISTIANSBURG

Established November 10, 1792

Incorporated January 7, 1833



RESOLUTION COMMENDING THE CHRISTIANSBURG RESCUE SQUAD

WHEREAS, the Christiansburg Rescue Squad, founded as the Christiansburg Life Saving and First Aid Crew, will celebrate 70 years of outstanding service to the citizens of the Town of Christiansburg and Montgomery County in 2017; and

WHEREAS, on April 3, 1947, at a meeting at Harrison-Hancock Hardware, Lions Club member Evans L. King suggested to the club's board of directors that they should cosponsor a first aid crew with the Christiansburg Fire Department; and

WHEREAS, the formal name of the crew became the Christiansburg Life Saving and First Aid Crew and the new organization was served by two medical advisors, Dr. Lee Cole and Dr. R. H. Grubbs, and S.C. Richardson was elected president to assist in organizational matters; and

WHEREAS, at the Christiansburg Life Saving and First Aid Crew's first organizational meeting, J. Cullen Murray was elected captain, and the other officers chosen were Hugh Edwards as secretary, Frank Robinson as first lieutenant, Clyde King as second lieutenant, Edwin Chrisman as sergeant, and Frank Lawrence as treasurer; and

WHEREAS, in June 1947, the Christiansburg Life Saving and First Aid Crew joined the Virginia Association of Volunteer Rescue Squads, and the Christiansburg Fire Department loaned the crew an ambulance and lighting equipment, which began the close working relationship that still endures between the rescue squad and the fire department; and

WHEREAS, in 1950, the Ladies Auxiliary of the Christiansburg Life Saving and First Aid Crew was established, providing much needed support to the crew as well as assistance in many projects; and

WHEREAS, in the early years, emergency calls were handled by Richardson's Funeral Home; with the support of the community, the Christiansburg Life Saving and First Aid Crew was able to purchase a Packard ambulance, a one-ton panel truck, two boats for water rescues, and a crash truck to respond to the scenes of automobile accidents; and

WHEREAS, the Christiansburg Life Saving and First Aid Crew operated out of the old fire department quarters on Pepper Street until 1963, when the crew purchased a lot on Stone Street and built a new facility with meeting, office, and sleeping quarter; and

WHEREAS, over the years, the Christiansburg Life Saving and First Aid Crew, now operating as the Christiansburg Rescue Squad, has become a vital partner with the community, teaching first aid classes, assisting with blood donations, and working every day to ensure the safety and security of the Town of Christiansburg; and

WHEREAS, the Christiansburg Rescue Squad moved into its current home on Depot Street on May 1, 1997; and

WHEREAS, today, the Christiansburg Rescue Squad has many hardworking and well-trained volunteer members and paid employees led by Chief Joe Coyle, and the crew continues its long tradition of exemplary public service and commitment to saving lives and promoting health and safety.

NOW, THEREFORE, BE IT RESOLVED that the Council of the Town of Christiansburg, Virginia hereby approves this resolution for presentation to Joe Coyle, chief of the Christiansburg Rescue Squad, as an expression of the General Assembly's admiration for the squad's commitment to the citizens of the Town of Christiansburg and Montgomery County.

Upon a call for an aye and nay vote on the foregoing resolution at a regular meeting of the Council of the Town of Christiansburg, Virginia held April 11, 2017, members of the Council stood as indicated opposite their names as follows:

AYE NAY ABSTAIN

Samuel M. Bishop

Harry Collins

R. Cord Hall

Steve Huppert

Henry D. Showalter**

Bradford J. Stipes

D. Michael Barber, Mayor*

*Votes only in the event of a tie.

D. Michael Barber, Mayor

ATTEST:

Michele M. Stipes, Clerk of Council



**TOWN OF CHRISTIANSBURG
TOWN COUNCIL
AGENDA COVER SHEET**

AGENDA LOCATION:
OLD BUSINESS

Meeting Date:
April 11, 2017

ITEM TITLE:

AN ORDINANCE REPEALING SECTION 22-1, "AGGRESSIVE SOLICITATION AND SALES; DEFINITIONS; PROHIBITED ACTS AND PENALTIES," OF CHAPTER 22, "MISCELLANEOUS OFFENSES," CHRISTIANSBURG TOWN CODE; PROVIDING FOR AN EFFECTIVE DATE.

DESCRIPTION:

It has been determined that the current ordinance is unconstitutional. Following the repeal of this said ordinance a new ordinance will be presented to Town Council. The newly proposed ordinance has been vetted by our legal advisor and found to be constitutional and valid for future enforcement.

POTENTIAL ACTION:

The Christiansburg Police Department and our legal advisor are requesting Council vote to repeal Section 22-1 of the Christiansburg Town Code.

DEPARTMENT:

Legal
Police Department

PRESENTER:

Theresa Fontana, Legal
Mark Sisson, Chief of Police

ITEM HISTORY:

The Christiansburg Police Department has routinely utilized Municipal Code 22-1 to control aggressive solicitation within our community. It was brought to our attention approximately 6 months ago that our current ordinance as written, may be restricting certain 1st amendment protections of our citizens. With this notice we opened discussions with our legal advisor to draft an ordinance that would provide us the tools to control aggressive solicitation and that is constitutionally neutral.

Date: **Action Taken:**

Information Provided:

Municipal Code 22-1, with attorney revisions and a request to repeal said ordinance.

Date: **Action Taken:**

Information Provided:

AN ORDINANCE REPEALING SECTION 22-1, "AGGRESSIVE SOLICITATION AND SALES; DEFINITIONS; PROHIBITED ACTS AND PENALTIES," OF CHAPTER 22, "MISCELLANEOUS OFFENSES," CHRISTIANSBURG TOWN CODE; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town Attorney has advised Council that Sec. 22-1 of the *Christiansburg Town Code* entitled, "Aggressive solicitation and sales; definitions; prohibited acts and penalties," may be subject to challenge under the First Amendment of the Constitution of the United States of America; and

WHEREAS, the Town Council has found that it is in the interests of its citizens to repeal Sec. 22-1 of the *Christiansburg Town Code* as set forth herein;

NOW, THEREFORE, BE IT ORDAINED by the Town Council of the Town of Christiansburg that Sec. 22-1, "Aggressive solicitation and sales; definitions; prohibited acts and penalties" of Chapter 22, "Miscellaneous Offenses," of the *Christiansburg Town Code* is hereby repealed in its entirety as follows:

Chapter 22 - MISCELLANEOUS OFFENSES

Sec. 22-1. - Aggressive solicitation and sales; definitions; prohibited acts and penalties.Reserved.

~~(a) The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:~~

Aggressive manner means and includes any of the following:

- ~~(1) Intentionally or recklessly making any physical contact with or touching another person in the course of the solicitation without the person's consent;~~
- ~~(2) Following the person being solicited, if that conduct is:~~
 - ~~a. Intended to, or is likely to, cause a reasonable person to fear imminent bodily harm or the commission of a criminal act upon property in the person's possession; or~~
 - ~~b. Intended to, or is reasonably likely to, intimidate the person being solicited into responding affirmatively to the solicitation;~~
- ~~(3) Continuing to solicit the person being solicited after the person has made a negative response, if continuing the solicitation is:~~
 - ~~a. Intended to, or is likely to, cause a reasonable person to fear imminent bodily harm or the commission of a criminal act upon property in the person's possession; or~~
 - ~~b. Intended to, or is reasonably likely to, intimidate the person being solicited into responding affirmatively to the solicitation;~~

~~(4) Intentionally or recklessly blocking the safe or free passage of the person being solicited or requiring the person, or the driver of a vehicle, to take evasive action to avoid physical contact with the person making the solicitation;~~

~~(5) Intentionally or recklessly using obscene or abusive language or gestures:~~

- ~~a. Intended to, or likely to, cause a reasonable person to fear imminent bodily harm or the commission of a criminal act upon property in the person's possession; or~~
- ~~b. Words intended to, or reasonably likely to, intimidate the person into responding affirmatively to the solicitation;~~

~~(6) Approaching the person being solicited in a manner that is:~~

- ~~a. Intended to, or is likely to, cause a reasonable person to fear imminent bodily harm or the commission of a criminal act upon property in the person's possession; or~~
- ~~b. Intended to, or is reasonably likely to, intimidate the person being solicited into responding affirmatively to the solicitation.~~

Automated teller machine means a device, linked to a financial institution's account records, which is able to carry out transactions, including, but not limited to: account transfers, deposits, cash withdrawals, balance inquiries and mortgage and loan payments.

Bank means any banking corporation authorized by statute to accept deposits and hold itself out to the public as engaged in the banking business in the Commonwealth of Virginia.

Public area means an area to which the public, or a substantial group of persons, has access, and includes, but is not limited to, alleys, bridges, buildings, driveways, parking lots, parks, playgrounds, plazas, sidewalks and streets open to the general public, and the doorways and entrances to buildings and dwellings, and the grounds enclosing them.

Solicit means to request an immediate donation of money or other thing of value from another person, regardless of the solicitor's purpose or intended use of the money or the thing of value. The solicitation may be, without limitation, by the spoken, written or printed word, or by other means of communication.

~~(b) The following will be construed as prohibited acts and it shall be unlawful for any person to solicit money or other things of value, or to solicit the sale of goods or services:~~

- ~~(1) In an aggressive manner in a public area;~~
- ~~(2) In any public transportation vehicle, or bus station or stop, provided, however, that this subsection shall not apply to services rendered in connection with such transportation services;~~
- ~~(3) Within 15 feet of any entrance or exit of any bank during the hours of operation of such bank;~~
- ~~(4) Within 15 feet of any automated teller machine during the hours of operation of such automated teller machine;~~
- ~~(5) On private property if the owner, tenant or lawful occupant has asked the person not to solicit on the property, or has posted a sign clearly indicating that solicitations are not welcome on the property;~~
- ~~(6) From any operator or passenger of a motor vehicle that is in traffic on a public street, whether in exchange for cleaning the vehicle's windows, or for blocking,~~

~~occupying or reserving a public parking space, or directing the occupant to a public parking space; provided, however, that this subsection shall not apply to services rendered in connection with emergency repairs requested by the operator or passengers of such vehicle;~~

~~(7) While standing on, or going into, any street or highway, including medians, on ramps and exit ramps.~~

~~(e) Penalties. Any person violating the provisions of this section shall be guilty of a Class 2 misdemeanor.~~

This ordinance shall become effective upon adoption. If any part of this ordinance is deemed unlawful by a court of competent jurisdiction all remaining parts shall be deemed valid.

Upon a call for an aye and nay vote on the foregoing ordinance at a regular meeting of the Council of the Town of Christiansburg, Virginia held _____, 2017, the members of the Council of the Town of Christiansburg, Virginia, present throughout all deliberations on the foregoing and voting or abstaining, stood as indicated opposite their names as follows:

	<u>Aye</u>	<u>Nay</u>	<u>Abstain</u>	<u>Absent</u>
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Mayor D. Michael Barber*

Samuel M. Bishop

Harry Collins

Cord Hall

Steve Huppert

Henry Showalter

Bradford J. Stipes

*Votes only in the event of a tie vote by Council.

SEAL:

Michele M. Stipes, Town Clerk

D. Michael Barber, Mayor



**TOWN OF CHRISTIANSBURG
TOWN COUNCIL
AGENDA COVER SHEET**

AGENDA LOCATION:
OLD BUSINESS

Meeting Date:
April 11, 2017

ITEM TITLE:

AN ORDINANCE ADOPTING SECTION 34-26, "INTERFERENCE WITH TRAFFIC PROHIBITED," OF CHAPTER 34, "TRAFFIC AND MOTOR VEHICLES," CHRISTIANSBURG TOWN CODE; PROHIBITING PEDESTRIANS AND MOTOR VEHICLE OPERATORS FROM EXCHANGING ITEMS AND INTERFERING WITH TRAFFIC WHILE A MOTOR VEHICLE IS IN THE TRAVEL LANE OF A ROAD OR HIGHWAY; PROVIDING FOR AN EFFECTIVE DATE.

DESCRIPTION:

The proposed ordinance has been drafted by legal counsel and presented for review. The ordinance has been vetted and found to be constitutional and valid for future enforcement.

POTENTIAL ACTION:

The Christiansburg Police Department and our legal representative are requesting Council vote to adopt Section 34-26 of the Christiansburg Town Code, as presented.

DEPARTMENT:

Legal
Police Department

PRESENTER:

Theresa Fontana, Legal
Mark Sisson, Chief of Police

ITEM HISTORY:

The Christiansburg Police Department has routinely utilized Municipal Code 22-1 to control aggressive solicitation within our community. It was brought to our attention approximately 6 months ago that our current ordinance as written, may be restricting certain 1st amendment protections of our citizens. With this notice we opened discussions with our legal counsel to draft an ordinance that would provide us the tools to control aggressive solicitation and that was constitutionally neutral. We feel that the presented ordinance is consistent with legal recommendations and will be an effective tool for us moving forward.

Date: **Action Taken:**

Information Provided:
Municipal Code 34-26 as drafted and presented by legal counsel.

Date: **Action Taken:**

Information Provided:

AN ORDINANCE ADOPTING SECTION 34-26, "INTERFERENCE WITH TRAFFIC PROHIBITED," OF CHAPTER 34, "TRAFFIC AND MOTOR VEHICLES," CHRISTIANSBURG TOWN CODE; PROHIBITING PEDESTRIANS AND MOTOR VEHICLE OPERATORS FROM EXCHANGING ITEMS AND INTERFERING WITH TRAFFIC WHILE A MOTOR VEHICLE IS IN THE TRAVEL LANE OF A ROAD OR HIGHWAY; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, *Code of Virginia* § 15.2-2028, authorizes a locality to regulate and control the operation of motor and other vehicles and the movement of vehicular and pedestrian travel and traffic on streets, highways, roads, alleys, bridges, viaducts, underpasses, and other public rights-of-ways and places; and

WHEREAS, *Code of Virginia* § 46.2-931, authorizes a locality to prohibit certain interactions between pedestrians and motorists on highways and public roadways within its boundaries; and

WHEREAS, the Town Council has reviewed the issue of pedestrian interference with vehicle operators, considered the impact on traffic flows, and the danger that such interference presents to the pedestrians interacting with operators of vehicles while the vehicle is in the traffic/travel lane of a road or highway; and

WHEREAS, the Town Council has found that it is in the public health and safety interests of its citizens to prevent pedestrian interference with traffic as set forth herein;

NOW, THEREFORE, BE IT ORDAINED by the Town Council of the Town of Christiansburg that Chapter 34, "Traffic and Motor Vehicles," of the *Christiansburg Town Code* is hereby amended by the adoption and enactment of Sec. 34-26, "Interference with traffic prohibited," as follows:

Chapter 34 – TRAFFIC AND MOTOR VEHICLES

* * *

Sec. 34-26. – Interference with traffic prohibited.

(1) *Intent of section.* The intent of this section is to protect the public health, safety, and general welfare of the citizens and visitors of the Town of Christiansburg, and enable the free, orderly, undisrupted movement of motor vehicles on public roadways within the town by limiting interactions between pedestrians and motor vehicles located within the traffic or travel lane of town roadways.

(2) *Definitions.* For purposes of this section, the following definitions apply:

(a) "Roadway" includes all public roads, streets, highways, and ramps, open to vehicular traffic within the town. This definition excludes private roads and private property. This definition also excludes public parking areas in the town.

- (b) "*Motor Vehicle*" means every self-propelled or designed for self-propulsion device by which any person or property is or may be transported or drawn on a highway, except devices moved by human power. For example, cars, trucks, motorcycles, and mopeds are motor vehicles. A bicycle moved by human power is not.
- (c) "*Item*" includes any physical object.

(3) *Findings.* The town council hereby finds the following: a) allowing transactions in which items are exchanged between pedestrians and the operators of motor vehicles operating in the traffic/travel lane of town roadways is inherently dangerous, is distracting to both pedestrians and motorists, threatens the safety and wellbeing of the pedestrian and vehicle operator, interferes with the free flow of traffic, and potentially threatens nearby third parties; (b) the traffic/travel lane of town roadways in which motor vehicles are present and operating is not designed for and is not an appropriate location for anything other than travel; (c) the prohibition against interfering with traffic as set forth herein is narrowly tailored to serve the town's substantial interest in protecting the public health, safety, and welfare of town citizens and visitors; and d) this prohibition leaves open many alternative channels for interaction in the town which do not disrupt traffic flows and create a dangerous situation on roadways.

(4) *Prohibition.* It shall be unlawful to violate the following:

- (a) No pedestrian and the operator of a motor vehicle shall exchange or attempt to exchange any item while the operator's motor vehicle is located in a traffic or travel lane on town roadways.

(5) *Exceptions.* This section does not apply to the following:

- (a) This section shall not apply to the distribution, receipt, or exchange of any item with the occupant of a motor vehicle parked on private property or parked in a public parking area.
- (b) This section shall not apply to any law enforcement officer acting in the scope of his/her official duty.
- (c) This section shall not apply to the distribution, receipt, or exchange of any item with the occupant of a motor vehicle located in the roadway after a motor vehicle accident, or to assist the occupant of a disabled motor vehicle, or to assist a pedestrian or motor vehicle occupant experiencing a medical emergency.

(6) *Penalties.* Any pedestrian or operator of a motor vehicle in violation of this section shall be guilty of a traffic infraction.

This ordinance shall become effective upon adoption. If any part of this ordinance is deemed unlawful by a court of competent jurisdiction all remaining parts shall be deemed valid.

Upon a call for an aye and nay vote on the foregoing ordinance at a regular meeting of the Council of the Town of Christiansburg, Virginia held _____, 2017, the members of the Council of the Town of Christiansburg, Virginia, present throughout all deliberations on the foregoing and voting or abstaining, stood as indicated opposite their names as follows:

	<u>Aye</u>	<u>Nay</u>	<u>Abstain</u>	<u>Absent</u>
Mayor D. Michael Barber*				
Samuel M. Bishop				
Harry Collins				
Cord Hall				
Steve Huppert				
Henry Showalter				
Bradford J. Stipes				

*Votes only in the event of a tie vote by Council.

SEAL:

Michele M. Stipes, Town Clerk

D. Michael Barber, Mayor



**TOWN OF CHRISTIANSBURG
TOWN COUNCIL
AGENDA COVER SHEET**

AGENDA LOCATION:

Old Business

Meeting Date:

April 11, 2017

ITEM TITLE:

Wayfinding Design Award Recommendation

DESCRIPTION:

Recommendation to award the wayfinding design bid contract to KMA Design, the lowest bidder at \$38,906.10. The awarded contract will be for design development and construction document creation for gateway, area, wayfinding, monument, digital and parking signage, as well as banners and information kiosks. Following the completion of construction documents, the Town will issue a RFP for construction and implementation of the signs.

POTENTIAL ACTION:

Nod of approval.

DEPARTMENT:

Public Relations

PRESENTER:

Melissa Powell, Public Relations Director

ITEM HISTORY: After presenting to Town Council on Jan. 24, 2017, on the status of the Town's wayfinding and branding initiatives, the Public Relations Department issued a Request for Proposals (RFP) for wayfinding design on Feb. 17, 2017. Bids were received March 10, and the Public Relations Director and Town Manager reviewed the proposals together.

Date:

Action Taken:

Information Provided: The Public Relations Director and Town Manager agree that professional creative assistance is needed for this project in order to establish a universal and cohesive design standard for wayfinding and location signage that is reflective of the Town's identity and brand and establishes a sense of place, destination and community in Christiansburg.

Date:

Action Taken:

Information Provided:



April 11, 2017

To: Mayor Mike Barber
Vice Mayor Sam Bishop
Councilman Harry Collins
Councilman Cord Hall
Councilman Brad Stipes
Councilman Henry Showalter
Councilman Steve Huppert

From: Melissa Powell, Public Relations Director

Wayfinding Design Award Recommendation

Background

After presenting to Town Council on Jan. 24, 2017, on the status of the Town's wayfinding and branding initiatives, the Public Relations Department issued a Request for Proposals (RFP) for wayfinding design on Feb. 17, 2017. Bids were received March 10, and the Public Relations Director and Town Manager reviewed the proposals together. The awarded contract will be for design development and construction document creation for gateway, area, wayfinding, monument, digital and parking signage, as well as banners and information kiosks. Following the completion of construction documents, the Town will issue a RFP for construction and implementation of the signs.

Considerations

KMA Design, based out of Pittsburgh, Penn., submitted the lowest bid in the amount of \$38,906.10. KMA is proposing a phased approach, beginning with design development and including an analysis, two site visits and survey. The second phase is the creation of construction documents and includes two additional site visits, presentation of three design concepts, full-scale mockups and, ultimately, the final deliverable of a completed construction document package.

KMA has more than 20 years of experience in signage, wayfinding and branding projects with clients including Walt Disney World; Johns Hopkins University; the City of Manassas, Virginia; the Borough of Carnegie, Pennsylvania; the City of Kennesaw, Georgia; and several others. KMA is proposing a 9-month schedule from beginning analysis to presentation of final construction documents.

KMA has experience with each sign type included in the Town's RFP – gateway, area, wayfinding, monument, digital and parking, as well as banners and information kiosks. After reviewing the lowest-priced bids (the second lowest was \$41,570, followed by \$53,000), the Public Relations Director and Town Manager were most impressed by KMA's unique designs and creative style.



Memo: Wayfinding Design Award Recommendation

Conclusions

The Public Relations Director and Town Manager agree that professional creative assistance is needed for this project in order to establish a universal and cohesive design standard for wayfinding and location signage that is reflective of the Town's identity and brand and establishes a sense of place, destination and community in Christiansburg. KMA Design was not only the lowest bidder, but the company also submitted an impressive proposal with a detailed scope of work and comprehensive list of previous experience and examples. We recommend awarding the bid to KMA Design.

Grading Criteria	Total Points	AB Design	Axia Creative	Corbin Design
Expertise and Experience	30	25	23	25
Design quality	40	38	30	30
Conformance with RFP Requirements	5	4	4	4
References	15	15	15	15
Price	10	8 (\$41,570)	5 (\$53,000)	1 (\$80,360)
Total	100	90	77	75

Frazier Associates	KMA Design	Merje	Comments
28	28	28	In addition to general experience, reviewed whether or not company provided examples of all sign types referenced in RFP.
38	40	38	Determined based on Town's preference and needs.
3	5	5	Were all RFP requirements met, including a fee schedule and examples of all design styles?
15	15	15	
N/A (Did not provide)	10 (\$38,906.10)	2 (\$74,000)	
84	98	88	



**TOWN OF CHRISTIANSBURG
TOWN COUNCIL
AGENDA COVER SHEET**

AGENDA LOCATION:
OLD BUSINESS

Meeting Date:
April 11, 2017

ITEM TITLE:
Community Support Special Appropriations

DESCRIPTION:
To discuss Community Support (Special Appropriations) to be included in the FY 2017-2018 budget

POTENTIAL ACTION:
Give direction for items and amounts to be included in the 2017-2018 Budget presentation to Council

DEPARTMENT:
Administration

PRESENTER:
Randy Wingfield, Acting TM

ITEM HISTORY:
Package of requests was provided to Council on March 9th via email for review. The documents are also included in this agenda packet for discussion with Summary Pages and the addition of a request for ACCE.

Information Provided:
Summary of requests for Community support and member organizations, compliance list for applications, and summary descriptions of each request for support as well as additional information provided by Ms. Covey regarding the ACCE request.

Date: **Action Taken:**

Date: **Action Taken:**

Information Provided:

TOWN OF CHRISTIANSBURG
BUDGET FOR THE FISCAL YEAR ENDING JUNE 30, 2018
COMMUNITY SUPPORT SPECIAL APPROPRIATIONS

DRAFT
 4/4/2017

DEPARTMENT	DESCRIPTION	AMOUNT 2018	2017
COMMUNITY SUPPORT SPECIAL APPROPRIATIONS			
Free Clinic		12,000	12,000
Literacy Volunteers		1,500	-
Chamber of Commerce		1,500	1,500
NRV CARES childrens advocacy		5,000	5,000
Homeless Intervention		7,512	7,154
Brain Injury		1,500	1,500
Christiansburg Institute		10,000	-
Alliance for Better Child Care		13,500	13,500
Christiansburg Community Center		35,000	35,000
Safe Haven Home visitation NRV WITHDRAWN			1,500
Childrens Trust		5,000	5,000
Montgomery Museum		18,000	18,000
Boys and Girls Club NO REQUEST RECEIVED			7,500
Good Samaritan Hospice		5,000	-
Christmas Store		10,000	-
VTBusiness Technology Center		4,000	4,000
NRV Competitive Center		8,000	7,500
Christiansburg Library		15,000	15,000
Area on Aging		4,076	3,882
ACCE FUNDING FOR COMM COLLEGE CHS SEE ADDITIONAL INFO		25,000	-
TOTAL COMMUNITY GRANT SUPPORT		<u>181,588</u>	<u>138,036</u>

TOWN OF CHRISTIANSBURG
BUDGET FOR THE FISCAL YEAR ENDING JUNE 30, 2018
COMMUNITY DEVELOPMENT

DRAFT

4/3/2017

DEPARTMENT	DESCRIPTION	AMOUNT	
		2018	2017
COMMUNITY DEV.			
8104-8109	NRV PLANNING DISTRICT COMMISSION & METROPOLITAN PLANNING ORGANIZATION	34,407	33,143
PAGE 85	NRV AIRPORT COMMISSION	22,140	18,270
	ECONOMIC DEVELOPMENT ALLIANCE	5,000	5,000
	PASSENGER RAIL	5,000	5,000
	VT AIRPORT	50,000	50,000
	JOINT TOURISM BOARD (85% OF 1%)	152,056	140,722
	TOURISM MARKETING (15% OF 1%)	26,833	24,833
		<hr/> <u>295,436</u>	<hr/> <u>276,969</u>

Valerie Tweedie

From: Valerie Tweedie
Sent: Thursday, March 16, 2017 7:11 PM
To: Steve Biggs
Subject: Fwd: RE: ACCE presentation to

Here is what Ms. Covey sent regarding the 300,000 as to how it is divided up.

Valerie L Tweedie CPA CFE CGFM
Director of Finance/Treasurer
Town of Christiansburg, VA

----- Original Message -----

From: "Angie E. Covey" <acovey@nr.edu>
Date: Thu, March 16, 2017 6:35 PM -0400
To: Valerie Tweedie <vtweedie@christiansburg.org>
Subject: RE: ACCE presentation to

Valerie,

Below is an estimate for year one. Year two could double. Year three should not exceed year two. Please do not hesitate to call me if you have additional questions. My cell is 540-230-3268. Thank you very much for your time. Angie

	Seniors 2016	3yr avg attending NRCC	% attending NRCC	% of 300,00 Year One
AHS	85	28	19%	\$57,000
BHS	250	44	30%	\$90,000
CHS	230	63	43%	\$129,000
EMHS	60	12	8%	\$24,000
Total	625	147	100%	\$300,000

From: Valerie Tweedie [mailto:vtweedie@christiansburg.org]

Sent: Wednesday, March 15, 2017 4:59 PM

To: Angie E. Covey <acovey@nr.edu>

Subject: ACCE presentation to

Hi we were wondering if we could get additional information from you regarding the ACCE presentation you made last night to the Town Council of Christiansburg. In particular we are wondering if there is any formula or calculations that you could share with us with respect to how you arrived at the \$300,000 number and what the distribution of those students are within the county. For example how many are in county, Blacksburg and Christiansburg, what is the anticipated need in year 2 versus year 1 and going forward. We are deep into budget right now so would need this information pretty quickly. Hope you can help us out with that. Thanks much.

Valerie L. Tweedie CPA CFE CGFM

Director of Finance/Treasurer
Town of Christiansburg
100 E. Main Street

Town of Christiansburg
 Donation and Community Support Requests
 For Fiscal Year ending June 30, 2018

summary of application requirements

Organization name	Application cover and signature page included	organization indicated on application they are a 501 c 3 org	501 c 3 letter	current financials or 990	Questions 3 adequately addressed	Question 4 adequately addressed	Question 5 adequately addressed	Submitted Timely	Cash Amount requested
Alliance for Better Childcare	Yes	Yes	Yes	Yes	Yes	No - not addressed	No-not addressed	Yes	13,500
NRV Agency on Aging	Yes	N/A - Govt Entity	N/A - Govt Entity	Yes	Yes	Yes	Yes	Yes	4,076
Brain Injury Services	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	1,500
Childrens' Trust	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	5,000
Christiansburg Community Center	Yes	Yes	Yes	Yes-990N	Yes	Yes	Yes	Yes	35,000
Christiansburg Institute	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	10,000
Community Health Center (Formerly Free Clinic)	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	12,000
Good Samaritan Hospice	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	5,000
Literacy Volunteers of the NRV	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	1,500
Montgomery Christmas Store	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	10,000
Montgomery Regional Library	Yes	N/A - Govt Entity	N/A - Govt Entity	Yes	Yes	Yes	Yes	Yes	15,000
Montgomery Museum	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	18,000
NRV Cares Childrens advocacy	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	5,000
Homeless Intervention	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	7,512
Safe Haven Child Visitation Centers of the NRV	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	1,500
VT BUSINESS TECHNOLOGY CENTER SUBSIDIARY OF VTFUNDATION	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	4,000
NRV COMPETITIVE BUSINESS CENTER	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	8,000
Organizations of which we are members with annual support or dues requirements no application required just letter regarding budget year amount									
NRV PLANNING DISTRICT COMMISSION									28,307
NRV METROPOLITAN PLANNING ORGANIZATION									6,100
NRV AIRPORT COMMISSION									22,140
ECONOMIC DEVELOPMENT ALLIANCE									5,000
VT AIRPORT									50,000
Chamber of Commerce									1,500
PASSENGER RAIL									5,000

withdrawn

Summary of organizations requesting support in our community 2018:

NEW Requests

Good Samaritan Hospice

Good Samaritan Hospice (GSH) is the only community-based, non-profit providing specialized hospice care in the NRV. In the early 2000's, GSH's patient case load had grown so substantially that an office location was officially established in Christiansburg to better accommodate the needs of the region. In 2007, GSH acquired separate licensure for the Christiansburg office due to the steadily increasing patient census and to better comply with regulations. Since then, GSH has served approximately 1,600 patients in the NRV who were coping with life limiting illness and grief.

A donation from the Town of Christiansburg to support GSH's "Hospice Care Services in the NRV" would primarily benefit the citizens of the NRV, including the Town of Christiansburg who are coping with terminal illness and grief.

Current Request \$5,000

Montgomery County Christmas Store

The Montgomery County Christmas Store is an all-volunteer, community-wide nonprofit organization serving low-income families during the Christmas season by providing shopping experiences characterized by choice and dignity. Serving families with children is our first priority.

The Christmas Store was founded in 1982 and is open one week each December. All applicants are pre-screened and must meet income and other criteria.

Eligible applicants earn less than 125% of the federal poverty level, live in Montgomery County and have a child, a senior, or a disabled adult living in the home. The number of Christiansburg residents expected to be serviced: In 2016 the store served 674 households in Christiansburg which amounted to 51% of the total families served.

We rely on community donations and volunteers to serve hundreds of our neighbors in need each year.

Current Request \$10,000

Previously Funded

Alliance for Better Childcare Strategies

The Alliance for Better Childcare Strategies (ABCs) is a partnership between local governments, universities, philanthropic organizations, and businesses with the mission of building collaborative partnerships which improve the availability, affordability and quality of early care and education in Blacksburg, Christiansburg, and Montgomery County, Virginia.

Led by partners at Virginia Tech, New River Community College, Smart Beginnings NRV, the Virginia Tech Corporate Research Center, local governments and many more, this initiative sees affordable, high quality childcare as an essential component of successful economic development in Montgomery County. Funds are being sought to launch this organization, supporting staff and operations, to pursue three broad strategies:

1) Increasing access to existing high-quality care through central information and referral systems, scholarships for families, and parent co-ops; 2) Increasing the capacity of our region to offer high quality care through expansion of existing centers; and 3) Strengthening the early childhood education workforce by offering appropriate professional development opportunities for teachers and scholarships to encourage entrance into the early childhood workforce.

ABC's has successfully incorporated and is currently pursuing 501c3 status through the Internal Revenue Service. The Community Foundation of the New River Valley, a partner in this initiative with over 20 years of experience in responsible financial management and community support, is serving as the fiscal agent for ABC's as it awaits 501c3 status.

Prior Funding FY 17 \$13,500

Current Request is for \$13,500

Christiansburg Community Center Inc.

The purpose of the Christiansburg Community Center shall be to establish, renovate maintain and operate, a community Center at the Old Hill School located at 570 High St. in Christiansburg, Montgomery County, Virginia.

We further propose to enhance the social, economic, educational and spiritual life of families and individuals in the NRV. To be a resource to the community by providing space for community meetings, Social gatherings and access to technology. We will strive to collaborate with other agencies operation in the area that are in harmony with the above objectives.

Any current year donation received will be used to supplement building renovations which include repairing walls, flooring and updating the kitchen/basement area which will ensure that building is suitable for use by various community groups.

Prior Funding FY 17 \$35,000

Current Request is for \$35,000

VT Business and Technology Center

The Virginia Tech Business Technology Center activity is a resource that is available to entrepreneurs and emerging and evolving technology-based businesses in the local region. We provide one-on-one confidential strategic planning and business development assistance to individual entrepreneurs and businesses seeking to establish/enhance their competitive position in the marketplace. Our activities focus on the Roanoke Valley, the New River Valley and Southwest Virginia; and, thus, we are part of the economic development activities within the region.

Funded for past 12 years at \$4000 per year

Current request is \$4000.

Literacy Volunteers of the NRV

Literacy Volunteers of the NRV is requesting support for its Skill-Up NRV program which will support the literacy needs of 8 to 10 Christiansburg residents. Specific activities included in the Skill-Up program are computer literacy, digital literacy, financial literacy, and personal effectiveness (ie soft skills). Target populations included returning citizens, non-native English speakers, individuals on public assistance and individuals with disabilities.

As these individuals advance their literacy skills, their employability increases as well as their ability to support their family members' educational development. Citizens who are gainfully employed are consumers and contribute to the tax base of the local economy.

Funded in 2015 \$1,000

Current request is \$1,500.

Community Health Center of the NRV (Formerly Free Clinic of the NRV)

In January 2014, the Free Clinic of the New River Valley transitioned from a Free Clinic to a Community Health Center. Although this means we have grown and expanded our service, our core Mission remains the same as when we were a Free Clinic: To provide affordable and high quality medical, dental, behavioral and preventive health services to people of all ages and circumstances, regardless of ability to pay or insurance status.

Our Community Health Center has three sites: Christiansburg, Pearisburg and Pulaski. The financial support from the Town of Christiansburg will support medical and dental services provided at the Christiansburg site to residents of the Town of Christiansburg.

Currently, 53 percent of our patients are medically uninsured, and are at or below 200 percent of the Federal Poverty Guidelines. Low-income, uninsured patients pay according to a sliding fee scale, typically \$10-\$20 per visit. Yet, our cost of providing a medical, dental or behavioral health visit averages \$160.00. Clearly, we must continue to rely on the support of our community, including local governments, to keep our doors open and to serve those who have no other options for health care.

This grant from the Town of Christiansburg will enable us to continue to operate a clinic where no one is turned away due to an inability to pay. This includes an estimated 750 Christiansburg residents who are uninsured and low income and will visit our clinic this year. Many of these 750 residents will have serious and chronic health conditions which need ongoing attention. Healthy residents in turn create a productive community with a high quality of life for all.

Funded past 7 years at \$12,000 per year.

Current Request is for \$12,000

NRV Cares Children's Advocacy

Located on West Main Street in Christiansburg, NRV CARES is the only agency in the New River Valley whose sole focus is to provide child abuse/neglect prevention services to the community. As an agency working closely with the non-profit, legal, and social services communities in providing services, NRV CARES is an important component in the continuum of services offered to the Valley as a whole.

In 2016, 7.7 per 1,000 children in Montgomery County experienced maltreatment compared to the state rate of 3.51 per 1,000 (statistics are not available for Christiansburg alone). 116 incidences of child abuse/neglect occurred in Montgomery County in 2016 consisting of 7 incidences of child sexual abuse, 3 incidences of medical neglect, 51 of physical abuse, 2 of emotional abuse, and 96 incidences of physical neglect (in some cases, more than one type of maltreatment occurred to one child).

NRV CARES provides a cohesive, purposeful response to this situation through its programs by providing prevention services which address the community as a whole, to families with risk factors contributing to child abuse/neglect, and to those who have experienced abuse (primary, secondary, and tertiary prevention, respectively). This request, supporting Community Education, addresses the need for comprehensive prevention “strategies that coordinate resources across the entire continuum, from primary to secondary to tertiary prevention”* as well as the need to “target interventions at multiple levels: the individual, the family, the community, and society.”**

Funded past 6 years FY 17 \$5,000 FY 16 \$3,000; FY 15 \$3,000; FY14 \$3,000; FY13 \$3,000; FY12 \$1,500; FY11 \$1,000

Current request \$5,000

Homeless Intervention

Since 1994, New River Community Action's Homeless and Housing Programs (HHP) has assisted homeless individuals and families, and those at risk of homelessness. The objective of NRCA's programs is to provide temporary rental assistance and supportive services related to housing for individuals and families experiencing a crisis. The end result is to prevent and alleviate homelessness by helping these households maintain stable housing. To achieve this goal, NRCA provides free housing counseling to individuals and families, financial assistance through state and federal grants to prevent homelessness and house homeless individuals and families, and renter education workshops to educate them on housing issues.

NRCA operates area offices located in each of the five localities in the NRV where households can seek housing assistance. At each office, households are screened for financial assistance and those most urgent are referred for eligibility determination. All others are referred for Housing Counseling, which assists through budgeting, landlord advocacy, referrals to community resources, and housing search assistance, among other services.

In the Town of Christiansburg, HHP served 44 households (90 individuals) through all our services. Demand has almost exceeded capacity, with 363 households throughout the NRV referred for services FY 16.

Funded since 2006; 2010 to 2014 funded at \$6,180; FY15 \$6,489; FY16 \$6,813, FY 17 \$7,154
Current year request \$7,512

Brain Injury Services

Through comprehensive Case Management, the services offered by Brain Injury Services of SWVA are designed to meet the unique needs of brain injury survivors. Case Managers and Community Support Services Specialists focus on assisting clients with medical services, individual and family counseling, cognitive re-training, recreational activities, positive behavioral training, and life skills training.

Funded since 2009 at \$1,500 per year
Current Request is for \$1,500

Christiansburg Institute

Historic Preservation: Christiansburg Institute shares its 100 year history with the Town of Christiansburg and is recognized in the Town's Comprehensive Plan as a Christiansburg Historic Site.

Generations of students – residents of Christiansburg and beyond – attended and graduated from CII.

The last remaining structure, the Edgar A. Long Building is in need of restoration to serve Christiansburg again as a monument to its rich history and center for multicultural events and programs.

Community Development: On an ongoing basis, Christiansburg Institute's leadership engages leaders and planners in envisioning the future of our renovated site. To this end, we have worked with local universities, public schools, and afterschool programs as an educational resource, and in recent years have engaged intensively with area planners and nonprofit development corporations to pursue partnerships to preserve the unique educational and cultural history of our region. This continued and active involvement with our community, accomplished largely by volunteers, is integral to defining and fulfilling the full potential of the renovated campus.

In the 21st century, Christiansburg Institute, Inc. expands upon the legacy of this historic school. The mission of Christiansburg Institute, Inc. (CII), is to preserve the remaining facilities and archives of Christiansburg Institute and to extend the mandate of the former school through serving the multi-cultural needs of today's New River Valley. We envision the preservation and renovation of the Edgar A. Long building as the only local historical site named for an African American leader, which when complete will be a focal point for community building, public forums, and multi-cultural events, as the New River Valley encounters a future that is radically changing from its past. The African American communities and other racial and ethnic communities throughout the region are important resources for the cultural life and leadership in the Valley, which the legacy of our school can nurture and provide. This proposal addresses preservation, planning, and utilization of Christiansburg Institute as a historic, economic, and cultural resource, and a unique community asset. The role played by the historic school as a community center created by and for African American residents is as needed today as it was three generations ago, and Christiansburg Institute, Inc. presses on to fill that vacuum. The Christiansburg Institute Alumni Association still maintains a network for former students, those living in the New River Valley and beyond, who will convene this July to celebrate the school's 150th anniversary. These former students are carriers of an invaluable, yet largely hidden, cultural history of the NRV. The Virginia Tech Department of History remains an active supporter and avid partner in our preservation efforts, having recently completed a digital history project to educate area public school students about the school. Christiansburg Institute, Inc. actively works to develop its traditions into an annual array of programs. As we make progress in the coming year, we will continue our educational and cultural programming with current organizational funds. Our request to the town will focus solely on obtaining professional consultation to convene alumni, board members, and local partners to advance our renovation plan and develop a strategic capital campaign for the restoration and programming of the Edgar A. Long building.

We respectfully request a grant of \$10,000 in support of a professional staff person to develop programs and initiatives as a partner in the coalition recently formed with the Christiansburg Community Center. This position will provide oversight and management of our existing community programs while helping to coordinate the development of a capital campaign for the renovation of the Edgar A. Long building and development of the campus property as part of a comprehensive community asset celebrating the Christiansburg Industrial Institute's legacy and local heritage. The level of experience and dedicated hours needed in order to sustain this work are beyond what we can supply with volunteers. It is critical that we gain a professional able to

fulfill the plans made so far and expand our capacity to be a vital resource for the Christiansburg and New River Valley communities.

Funding since 2009 to 2015 \$10,000

Current request \$ 10,000

Safe Haven Child Visitation Centers of the NRV

Our mission: To provide children with opportunities for safe, conflict-free access to both parents. Provides supervised Visitation Centers provide families a safe, neutral and family-friendly environment to exchange and visit with their children. The goals of the center are to offer assistance to parents in maintaining contact with their children and to assist the Court by providing supervised visitation and monitored exchange services when the Court feels that it is in the best interests of both children and parents. In September 2007 a group of area professionals from the fields of law, social services, education, women's resources, law enforcement and child advocacy came together to form a coalition to address a growing problem in the New River Valley, that being, child visitation exchange and/or supervised visitation between children and their estranged parents. These cases involve children that the courts or social services have deemed to be at risk for mental or physical abuse, or when their estranged parents do not have adequate facilities to provide for visitation, such as being homeless. It allows the children to maintain a relationship with both of their parents, something that is generally found to be an important factor in the positive adjustment to family dissolution. It allows them to anticipate the visits without stress of worrying about what is going to happen and to enjoy them in a safe, comfortable environment without having to be put in the middle of their parents' conflict and/or other problems.

Funding since FYE 2012 at \$1,500 per year

Current request is \$1,500

Montgomery Museum

The Montgomery Museum and Lewis Miller Art Center has as its mission the preservation of past history and the presentation to all the citizens of this county. It is a repository for and conservation of area history, artifacts and genealogy; a gallery for education and promotion of local arts and exposure of local artists; the area high schools exhibit work of the art students and they are honored with a reception to introduce their abilities to the public. The mission is to give children a glimpse into what life was like in years past and is presented at the annual Heritage Day Festival. This festival is designed for families and the attendance in 2014 was in excess of 400 people. Crafts people, farm implements and animals, artists, civil war paraphernalia and antique quilts were displayed at this festival. There are approximately 100 volunteers that assist with planning and executing Heritage Day. The Museum maintains, with the assistance of volunteer Master Gardeners gardens that are typical to the period and age of the Museum. Many visitors come to view the array of plants and flowers. The garden has been included in the New River Valley Garden Tour. Funding is used for the maintenance and plantings in this garden. The beneficiaries of the Montgomery Museum and Lewis Miller Art Center are all of the present and past citizens of Montgomery County and also New River Valley. The Museum is open to the public five days a week hosting in excess of 1700 visitors. These visitors are local citizens, travelers on 1-81 from all areas of the State of Virginia and out of state travelers, and inquiries are made from people with families in the area and/or their family ancestors. The effectiveness of the programs is deemed by the number of citizens who participate in the activities including art workshops who, visit the

museum for information and make donations. There is an active Board of Directors who represents local business, education and the art sector. The support of the citizens by attending the functions and/or financial support shows the effectiveness of the programs. The mission and work of the Museum is funded by membership dues, monetary contributions from supporters, fund raisers, sales of history books and gifts, Montgomery County Board of Supervisors, and Town of Christiansburg. Local government support being one arm of income is necessary to continue with the mission of the Museum. Denied donations would cause staff hours to be cut which would put in jeopardy the preservation of artifacts. Exhibits of art, local history and textiles as well as the maintenance of the building and hours open to the public would be curtailed.

The Museum strives to preserve and promote the rich history of Montgomery County. We believe younger generations will come to appreciate the past when they can witness, first hand, what the past years were like.

Funding 2007= \$7,500; 2008=\$7,500; 2009=\$10,000; 2010=\$12,500; 2011=\$12,000; 2012=\$15,000; 2013=\$12,000 2014=\$15,000 2015 =\$18,000 2017 =\$18,000

Current Funding request is \$18,000

NRV Development Corporation

The New River Valley Business Center (NRVBC), as a small business incubator, is a 54,000 square foot facility designed as a gateway to the New River Valley and is an example of innovative planning to incorporate a mix of uses. It serves as an initial seeding location for entrepreneurs and manufacturing/industrial companies wishing to set-up new business opportunities. The incubator provides support services to those wishing to start new businesses, including loan funds, mentoring, training and technical assistance. The original concept of the need for a small business incubator was developed as a result of the large number of industrial closings that the New River Valley experienced in the 1990's. During that time the region as a whole lost thousands of jobs in that sector. In the late 1990's, the original incubator building was constructed and a building expansion was constructed in 2003. This program is at the foundation of the mission of the New River Valley Development Corporation (NRVDC). In addition to the regional revolving loan fund, the business incubator is the main project of the NRVDC. The primary beneficiaries will be the residents of the New River Valley region, particularly those that wish to create new business opportunities. The majority of the operational budget is funded through lease payments from the facility's tenants. The addition funding that is provided by localities goes largely toward filling in the operational gaps as well as capital needs of the facility. For the first decade of existence, the incubator was a self-sufficient facility without outside subsidies. However, during those years, some of the ongoing maintenance needs were also not addressed, thus the need to invest in capital needs at the building, both short-term and long-term.

Funding SINCE FYE 2012 \$7,500 PER YEAR

Current Funding Request \$ 8,000

NRV Agency on Aging

The primary purpose of the Agency on Aging is to provide services, information and advocacy to older citizens, citizens with disabilities and their caregivers in order to assist them to remain safely with dignity and with as much independence as possible in their homes and communities for as long as possible, preventing inappropriate costly institutionalization and promoting better health outcomes. As an Aging and Disability Services Connection, we provide a point of contact for information on resources and services for older and disabled adults and work with other public and private human services providers to simplify and streamline access to services. Additionally, we work with other stakeholders in the localities to identify and address issues and needs that promote a more livable community for all ages.

Funding FY 11 \$3,100 Fy 12 and FY 13 \$3,193 FY 14 \$ 3,353 FY 15 \$3,521 FY 16 \$3,697
FY 17 \$3,882

Current funding request \$4,076

Montgomery Regional Library

Montgomery-Floyd Regional library is responsible for public library services for Montgomery and Floyd counties. We provide books, large type books, DVDs, CDs, books on CD, eReaders, downloadable audio, eBooks, computer games, genealogy material and programs for adults, teens and children. We have databases that may be used from home, community space for groups to use, public computers and wireless access. Our libraries are open 7 days a week, 62 hours. We provide reference and have story times for children and book clubs for all ages, educational programming and classes, summer reading programs, movies and computer classes. Area residents are able to reserve items, renew items and change their address remotely. They are able to use anyone of our 4 libraries and we will move material from one branch to another for them. We are primarily funded by Montgomery and Floyd Counties, but depend on donations from the three towns and State Aid to augment what the counties are able to provide.

Previous Funding. Funded since 2000 and for the last six years, has given \$15,000 each year.

Current Funding Request \$15,000

Children's Trust

The Children's Advocacy Center of the New River Valley provides intervention and investigative response to ensure the child, and the non-offending caregivers receive the needed services to begin the healing process. Using a Multidisciplinary Team Model (MDT), we bring all those involved with a case together reducing the number of times a child is interviewed. Teams include representatives from Law Enforcement, Social Services, Commonwealth's Attorney, Medical and Mental Health and CAC staff including the forensic interviewer and family advocate. Our center provides a warm, safe, child-friendly place for the child to share their story.

Child abuse continues to be a chronic problem across the New River Valley. Since adopting the Children's Advocacy Center NRV (CACNRV) in 2012, we have seen an average increase of 30% in the number of cases being referred to our center. In the Va. Child Protection Services Accountability and Referral Report for July 1, 2015 - June 30, 2016, Montgomery County was the second highest in the Western Region with founded cases of child abuse with 79. For three years, Pulaski County and Giles County have reported the highest rate per 1000 children of abuse/neglect in the state. For the past three years, the Children's Advocacy Center NRV has provided services on average to 12 Christiansburg children.

Prior Funding FY 17 \$5,000

Current Request \$5,000



**TOWN OF CHRISTIANSBURG
TOWN COUNCIL
AGENDA COVER SHEET**

AGENDA LOCATION:
NEW BUSINESS

Meeting Date:
APRIL 11, 2017

ITEM TITLE:
Report on a petition to establish a Community Development Authority (CDA).

DESCRIPTION:
Mr. Parke Lammerts of Core Property Capital is the redeveloper of the former K-Mart site. He has submitted a petition requesting establishment of a Community Development Authority (CDA) to support site infrastructure at the project.

POTENTIAL ACTION:
Review of the information provided and instruction to the staff on the matter going forward.

DEPARTMENT:
Administration

PRESENTER:
Randy Wingfield, Acting TM

ITEM HISTORY:

Date:
April 11, 2017

Action Taken:
Review

Information Provided:
Petition, Memo from Town Attorney, Research and canned presentation.

Date: **Action Taken:**

Information Provided:

MEMORANDUM

TO: Steve Biggs, Town Manager

FROM: Theresa J. Fontana, Guynn & Waddell, P.C., Town Attorneys

DATE: March 24, 2017

SUBJECT: Community Development Authorities

We recently received a copy of a petition from CPC Christiansburg, LLC and CPC Christiansburg II, LLC (“Petitioners”) to the Board of Supervisors of Montgomery County (“Board”) requesting that the Board consider Petitioners’ request to establish a community development authority (“CDA”) pursuant to Va. Code § 15.2-5152. The purpose of the proposed CDA is to facilitate the financing of roads, water/sewer lines, stormwater facilities, lighting, and similar infrastructure at the former Kmart property located on N. Franklin and Laurel Streets, Tax I.D. #030715 (“Kmart Property”).

A CDA is a political subdivision that serves as a special taxing district. It is created by ordinance upon petition of one or more landowners. Before a locality may consider a petition to create a CDA, it must, by ordinance, elect to assume the power to do so in accordance with Va. Code § 15.2-5152, *et seq.* To date, neither Montgomery County nor the Town of Christiansburg has adopted such an ordinance. However, should the Town decide to adopt such an ordinance, it could consider a petition for the Kmart Property without action by the County because the boundaries of the proposed CDA district are wholly located in the Town (of course the petition we received would have to be revised and addressed to Town).

The powers of a CDA are carried out by a CDA Board that is appointed by the locality. There are five members on the Board or a number equivalent to the local legislative body. The members may be landowners, developers, community representatives, officials, etc. The CDA has a 50 year lifespan.

CDAs can assist in financing a variety of infrastructure improvements through the issuance of revenue bonds, which are not considered a debt or liability of the locality. A CDA may request that the locality levy and collect a special tax on the property within the CDA district to finance the infrastructure and services provided by the CDA. CDA bonds are generally paid over 20-30 years in one of three ways: a) special taxes; (b) special assessments; and (c) TIF (tax increment financing). Additional powers of a CDA are listed in Va. Code § 15.2-5158.

CDAs should generally be limited to projects which advance community development and be consistent with the Comprehensive Plan. There is some concern that the CDA debt “may” count for rating agencies even if it is not considered the debt of a locality. Prudent policies need to be in place to address procedure, control, and liability in the case of a default. There should be debt limits. Consideration should be given to the location of the CDA district and generally, it should be a strong and central location. Realistic forecasts should be in place that account for cyclical downturns.

MEMORANDUM

March 24, 2017

Page 2 of 2

The following lists include some of the pros and cons associated with establishing a CDA.

Pros:

- A CDA can shift infrastructure costs to private sector
- It is useful for infrastructure development
- A CDA shifts costs to those who benefit from the infrastructure/services
- It provides upfront financing
- It allows for faster delivery of infrastructure
- The costs of creating a CDA may be financed

Cons:

- A CDA's debt may be calculated as underlying debt of jurisdiction by rating agencies
- A CDA is more vulnerable to default
- It may incentivize urban sprawl
- It can be risky if there are few controls and oversight
- Property owners may balk at additional taxes/assessments
- A creation of a CDA can require a significant amount of staff time
- The additional taxes/assessments will be an additional line item on tax bills
- Creating a CDA can be complex and costly

Finally, Virginia has several CDAs in place at this time. Examples include: the Mosaic District CDA for the Mosaic-Merrifield Town Center Development in Fairfax County; the Dulles Town Center CDA in Loudoun County; the Farms of New Kent CDA in New Kent County; the Peninsula Town Center CDA in the City of Hampton; and the Bell Creek CDA in Hanover County.

I hope you find this information useful. Please let me know if you need additional information.

Community Development Authorities: An Overview

Fauquier County Planning Commission
August 28, 2014

*Andrew A. Painter
Walsh, Colucci, Lubeley & Walsh, P.C.*

*Christopher Sheehan
Stifel, Nicolaus & Company, Incorporated*



WALSH COLUCCI
LUBELEY & WALSH PC

STIFEL

What is a CDA?

- A form of political subdivision that serves as a special taxing district
- Authorized by Va. Code Article 6, Chapter 51, Title 15.2 (§§15.2-5152 et seq.) as part of Water and Waste Authorities Act
- Can help fund a variety of infrastructure improvements and special services **up-front**
 - a. Different from Special Service Districts
 - b. Different from Proffered Improvements
- Can finance, fund, establish, acquire, construct, equip, operate and maintain infrastructure improvement made necessary by development within the CDA district

What is a CDA?

(cont'd)

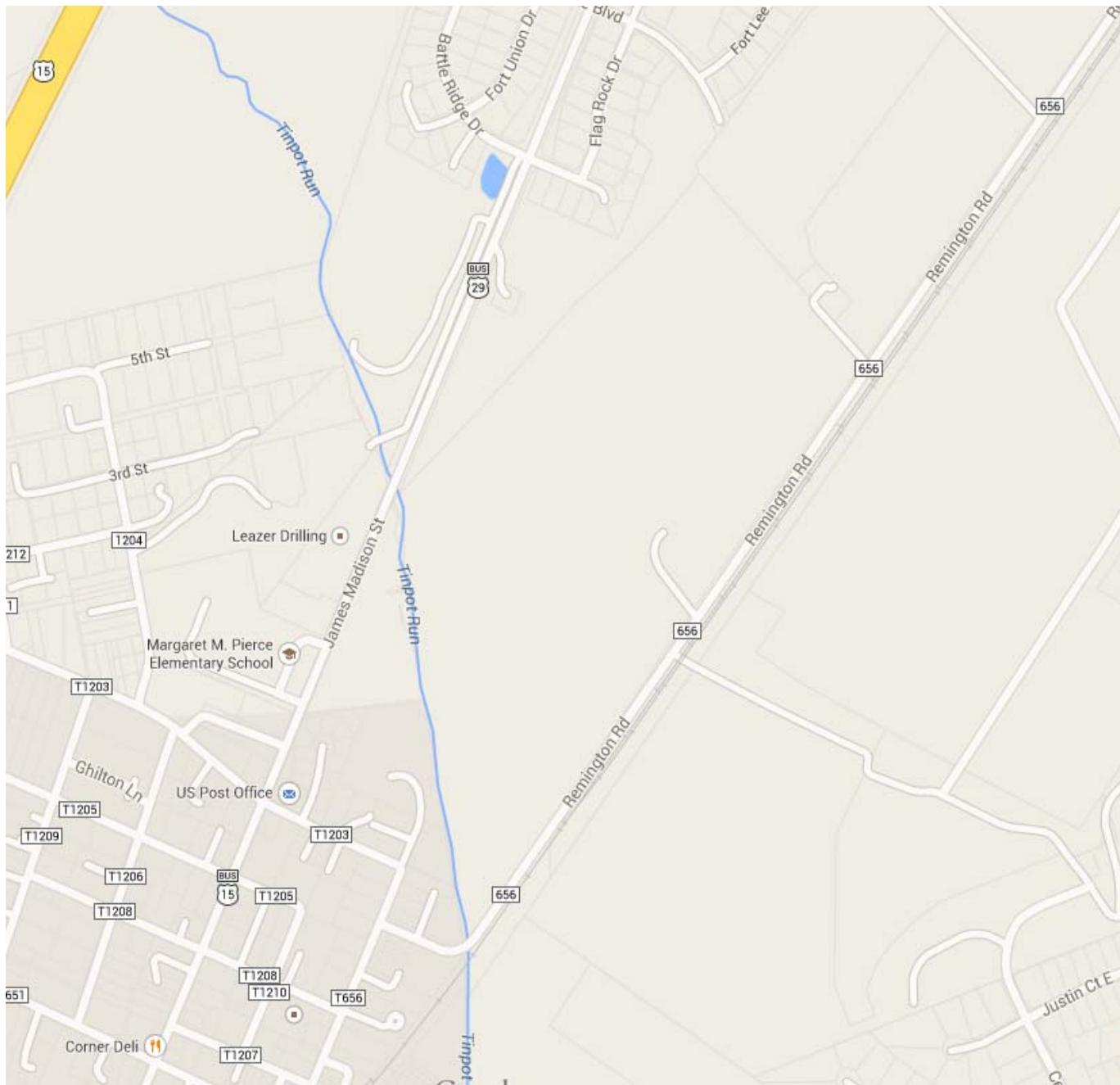


What is a CDA? (cont'd)

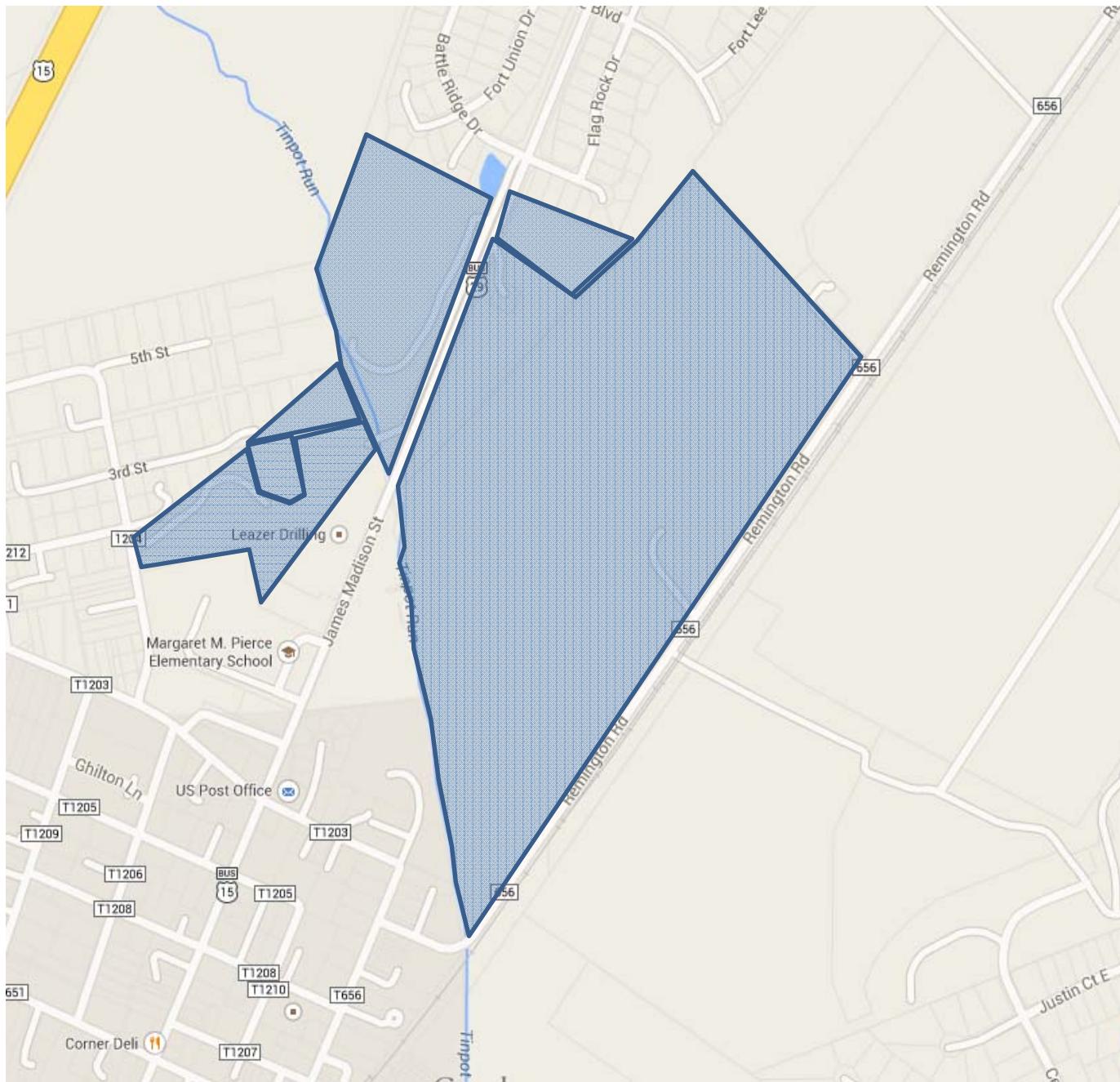
- The CDA issues bonds for purposes of financing CDA improvements
- CDA bonds are repaid over 20 to 30 years in one of three ways:
 - a) Special Taxes
 - b) Special Assessments
 - c) TIF (Tax Increment Financing)

(or some combination of the above)
- **Constant Refrain: CDA Debt is NOT the debt / liability / obligation of the locality!!! ***

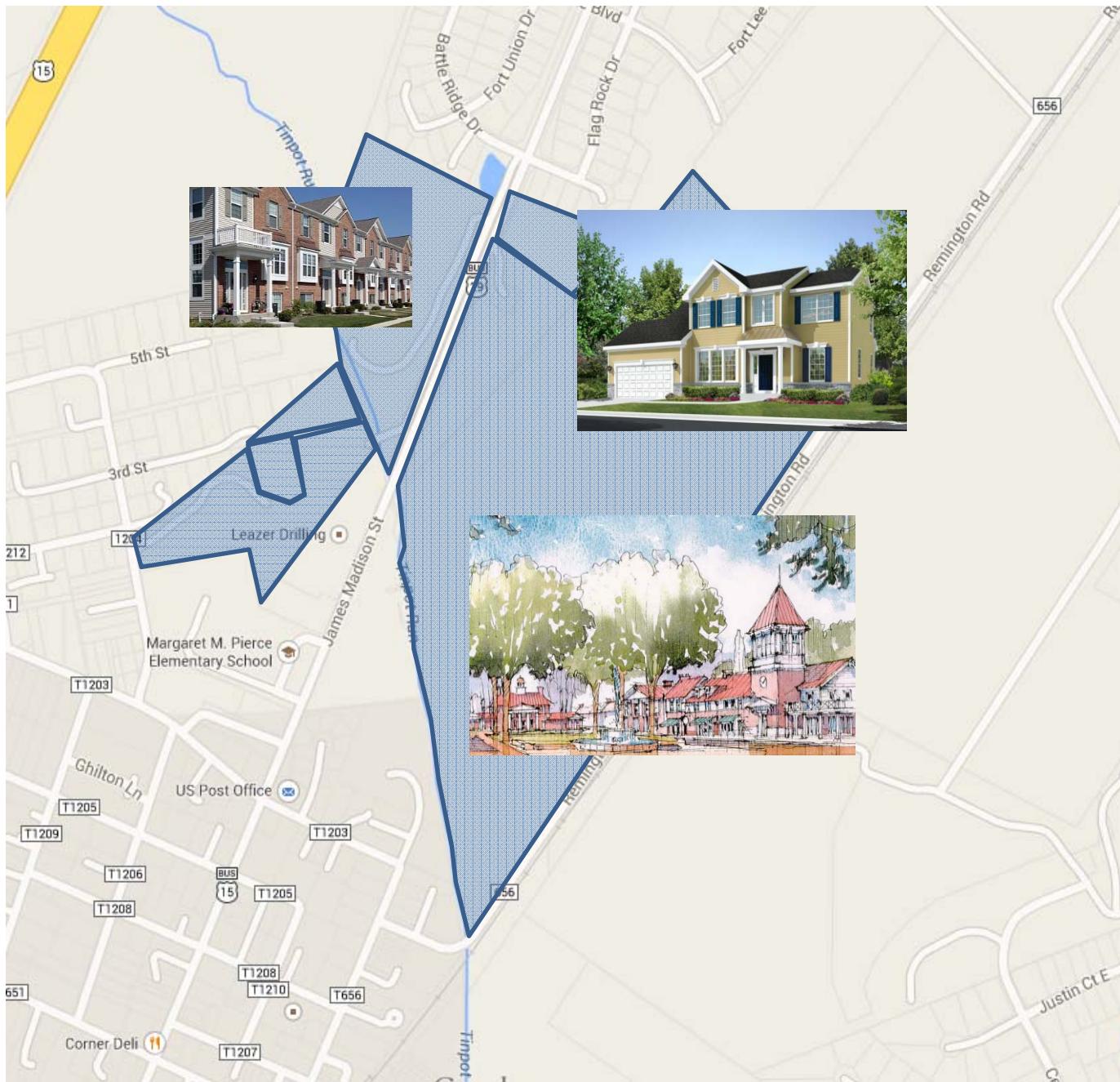
Standard Procedure to Create a CDA



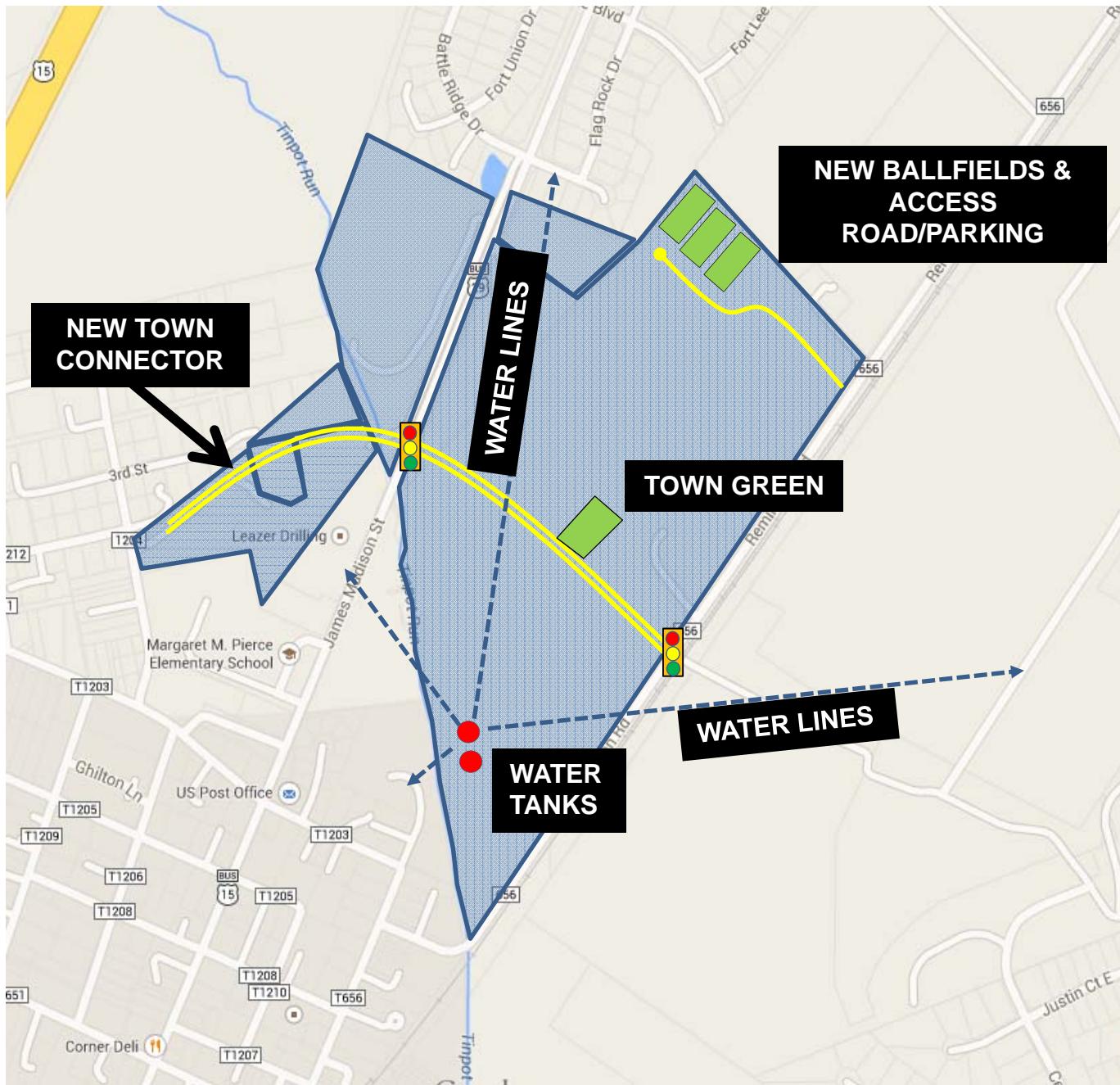
Standard Procedure to Create a CDA



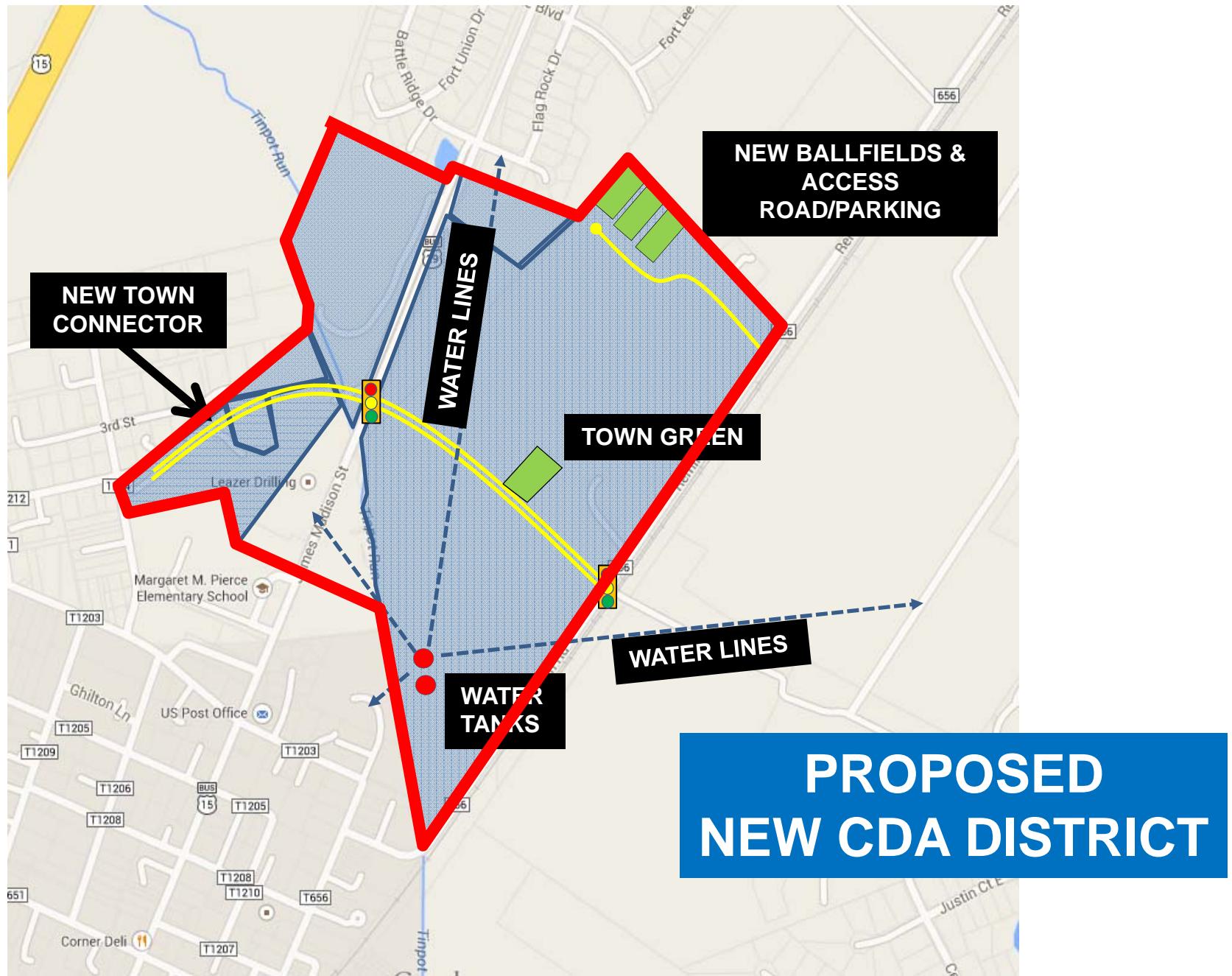
Standard Procedure to Create a CDA



Standard Procedure to Create a CDA



Standard Procedure to Create a CDA



Standard Procedure to Create a CDA

STEP 1: Developer meets with staff to review proposal

STEP 2: Submit petition meeting requirements

- Any landowner may submit
- Signatures of 51 percent of landowners required
- Counties & towns must first adopt and ordinance to consider CDA petitions
- Contents of Petition
 - Parties
 - Area/Parcels/Ownership
 - Public benefits of infrastructure to be funded
 - Financing plan & request for financing authority
 - Proposed CDA Board members

Standard Procedure to Create a CDA

STEP 3: CDA Ordinance Drafted

- Kept simple, referencing the specific mechanics / authorization agreements

STEP 4: Public Hearing on CDA Ordinance

- Publication for three consecutive weeks with the hearing to be held not sooner than 10 days after completion of publication of notice.
- Mailing to property owners in certain instances
- Adoption 30 days later

Standard Procedure to Create a CDA

STEP 5: Ordinance Adoption

- Copy filed in land records
- CDA Board Appointed
- Articles of Incorporation Filed

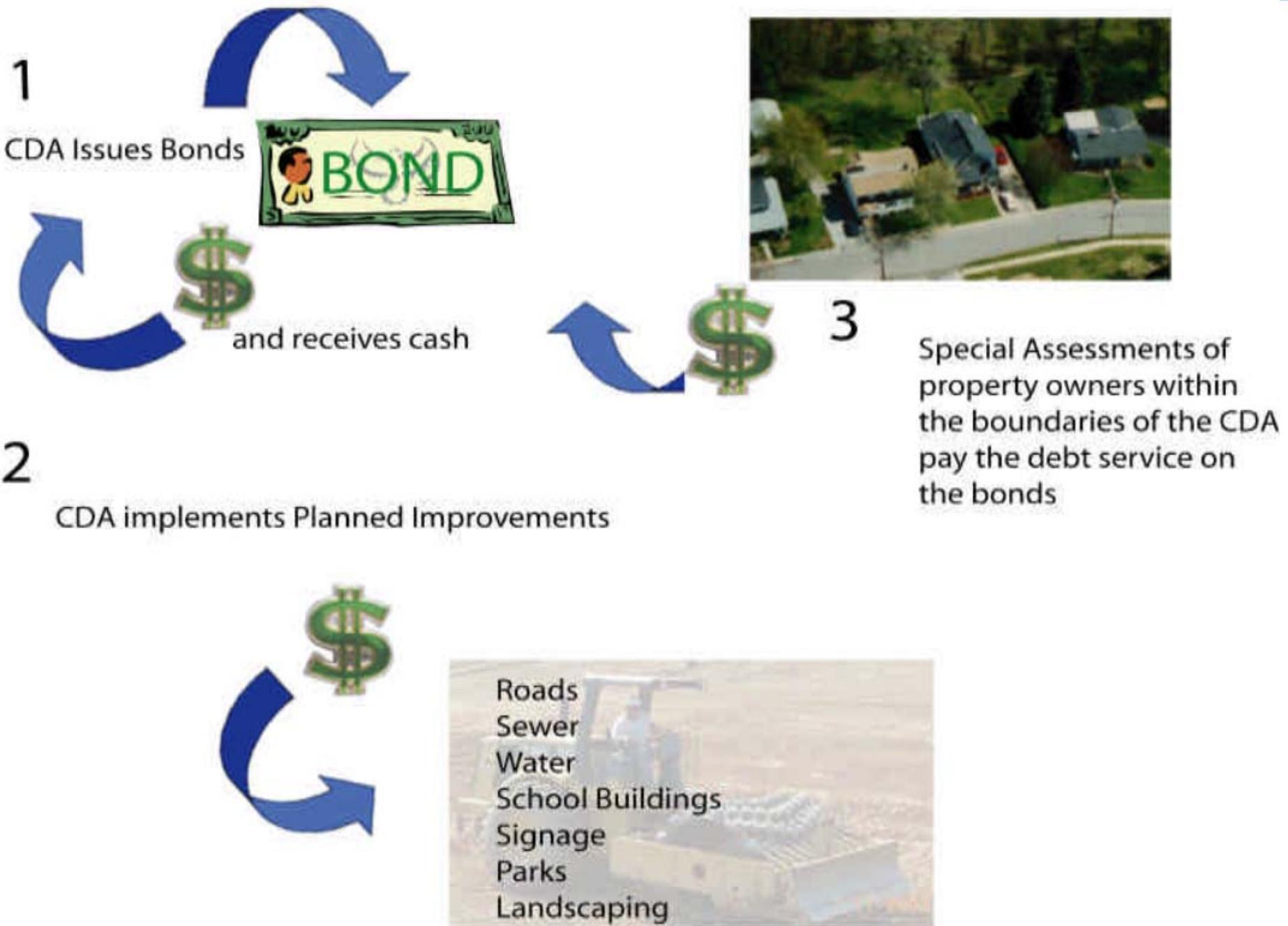
STEP 6: Drafting/Execution of Authorization Agreements

- Detailed, multilateral agreements
- Memorandum of Understanding (“MOU”)
- Collection Agreement
- Rate & Method of Apportionment of Taxes (“RMA”)

STEP 8: Obtain Pricing Estimates for Infrastructure

STEP 9: Issuance of Bonds

Standard Procedure to Create a CDA



Who Serves on the CDA Board?

- CDA Board is appointed by the local legislative body
- 5 members (or a number equivalent to the local legislative body)
- May be landowners, developers, community representatives, officials, etc.
- Varies between jurisdictions and between CDAs

What Are The CDA Board's Powers?

- CDA is a body corporate and politic and serves as a political subdivision of the commonwealth which is separate and apart from its parent jurisdiction
- 50-year lifespan
- Powers
 - a) General corporate powers
 - b) Provide special services
 - c) Purchase development rights
 - d) Own land
 - e) Limited condemnation for utilities
 - f) Issue Bonds
 - g) Provide and manage infrastructure

CANNOT COLLECT TAXES/ASSESSMENTS

What Are The CDA Board's Powers?

Provide & Manage Infrastructure

- a) At least 30 kinds of infrastructure
- b) Most commonly financed infrastructure
 - roads (acquisition, construction, bridges, curbs, gutters, sidewalks, signals),
 - public water/sanitary sewer lines / SWM,
 - parking,
 - streetscape, landscaping, and signage.
- a) Broad legislative discretion, but a nexus must exist:

“necessary to meet the increased demands placed on a locality as a result of development or redevelopment within or affecting the district.”

CDA Bonds

- 1) Limited obligations issued by the CDA and secured only from CDA revenue
- 2) Bonds are typically not rated
- 3) 20- to 30-year amortization
- 4) Savvy Investors/Private Placements/Limited Offerings
- 5) Generally requires a loan to value ratio about 1 to 3 for undeveloped property; 1 to 10 ratio for developed property
 - Can be combined with tax increment revenues
- 6) Bond validation

CDA Debt

- 1) Generally: Cannot legally be the debt/liability/obligation of any locality, impact its debt capacity or be on the jurisdiction's books.
- 2) A locality can, however, elect to back the bonds in order to successfully market them (unlikely)
- 3) Disclosure Statement: To inform investors that the CDA debt is not the debt of the locality often appears in the Petition, CDA Ordinance, MOU, and on the cover and within the bond offering memo.

CDA Debt

- Reputation Concerns: Debt “may” count for rating agencies
- Need prudent policies which address procedure, control, and liability in event of default:
 - a) Backstop ordinance provision
 - b) Collection Agreement between CDA and locality
 - c) Adopt debt limits

Hanover County & Ashland News

\$37.6M BOND ISSUE

Winding Brook development land value ‘under water’

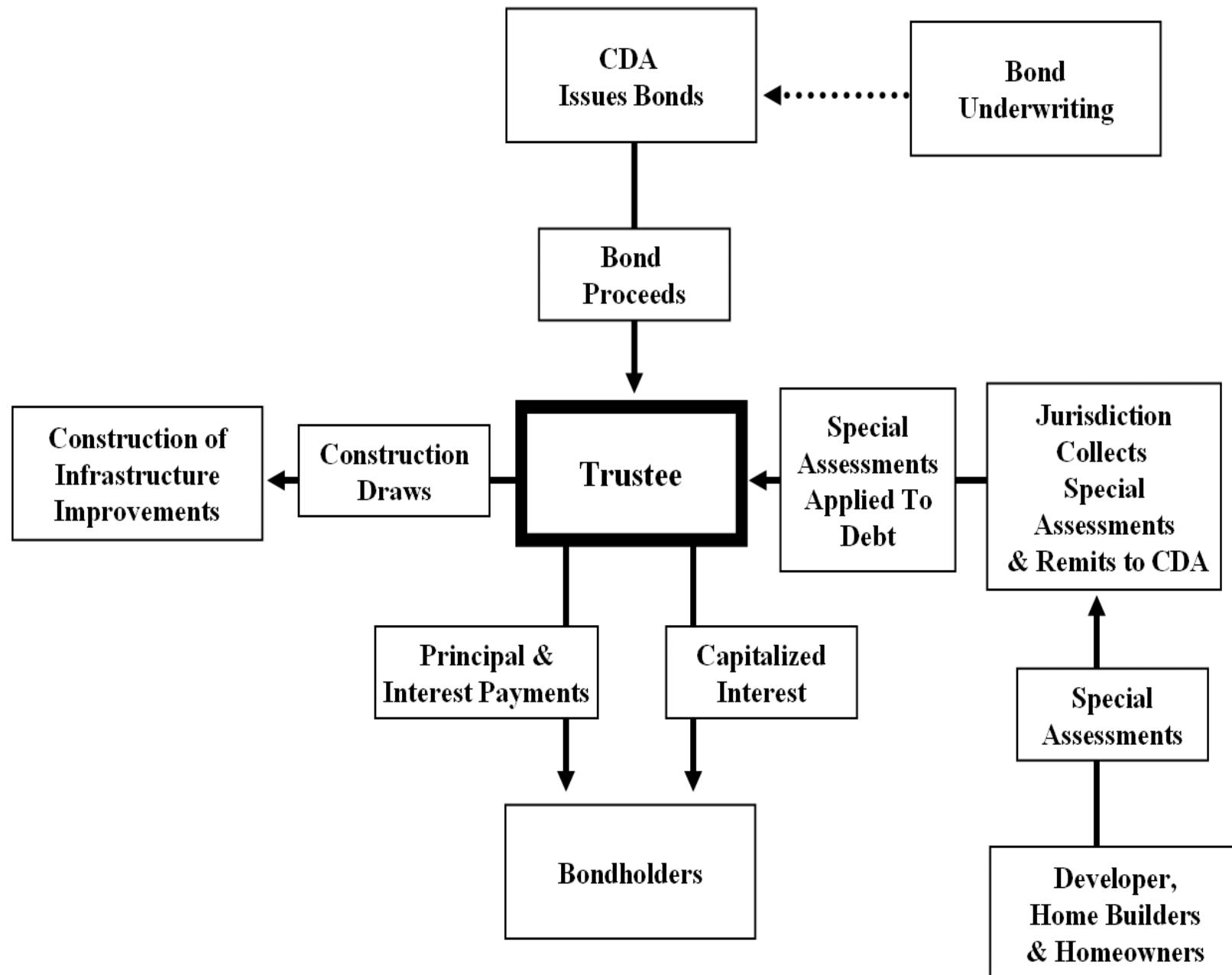
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How to Retire Bonds



How to Retire Bonds

Special Taxes

- 1) Ad valorem assessment limited to \$0.25 of every \$100 of assessed value
- 2) Different rates for different uses/intensities
- 3) Exists as a tax lien against the properties

How to Retire Bonds

Special Assessments

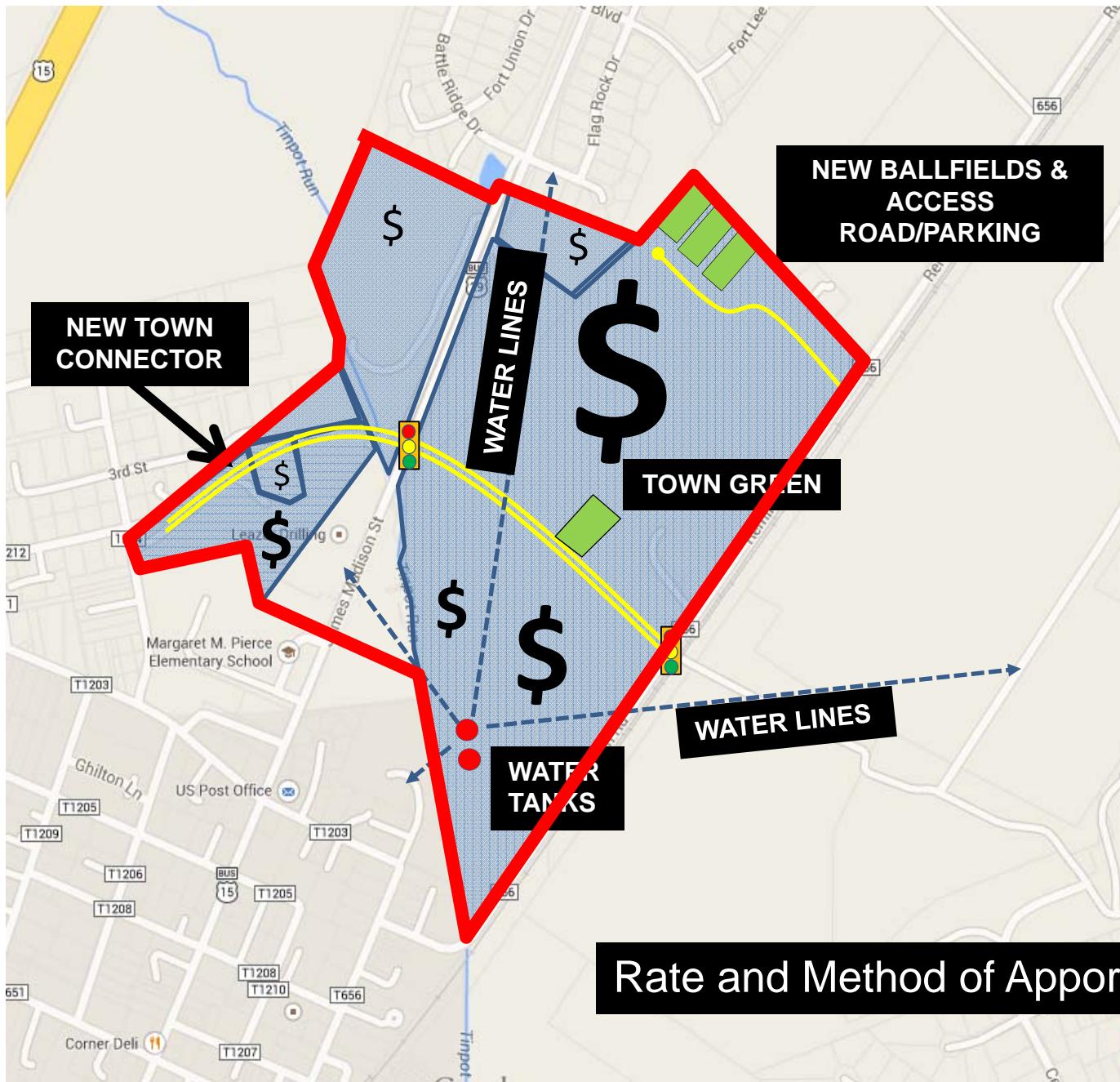
- 1) Not an *ad valorem* tax
- 2) Usually levied as a one-time, up-front cost, but may be paid over 40 years.
- 3) Prepayment permitted (sometimes preferred)
- 4) Seen as more secure than special taxes
- 5) Exists as a tax lien against the properties until satisfied

How to Retire Bonds

Special Assessments: How much to pay?

- 1) Property being specially assessed:
 - a) Must abut a portion of a system of improvements; and
 - b) Not exceed benefits of the improvements to the assessed property or full cost of improvements being financed.
- 2) May be different assessments for different parcels based on use, development intensity, or relationship to improvement.
- 3) Should be set forth in a “Rate and Method of Apportionment” document

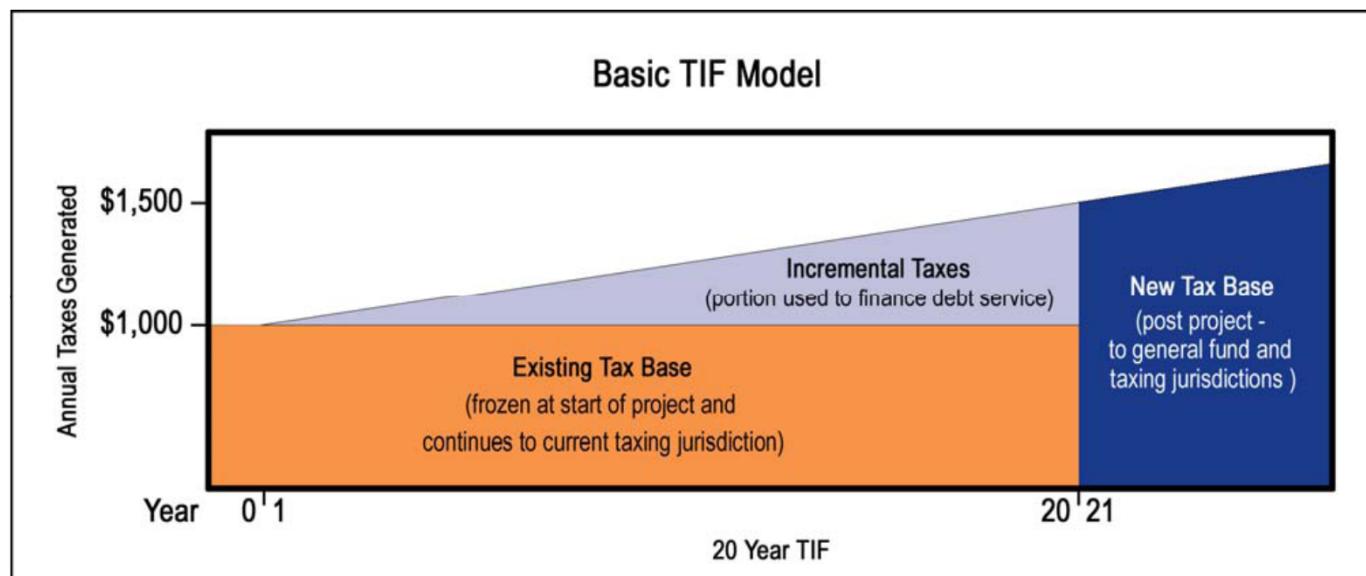
How to Retire Bonds



How to Retire Bonds

Incremental Tax Revenues

- 1) CDA and jurisdiction can enter into agreement to provide TIF funding
- 2) Provides an additional source of CDA revenue and security for bond purchasers can come from a variety of sources
- 3) Does not involve the levy of new taxes/assessments



Residential Development & Proffers

- 1) No CDA has yet been approved for a typical large, predominantly market-rate residential PUD
- 2) Some jurisdictions exclude residential development when evaluating CDAs
- 3) Proffers can be used to pay down CDA debt
- 4) May be best not to mix proffered commitments with CDAs

What Are Other Jurisdictions Doing?

Prince William & Loudoun Counties

- CDAs Should be Limited to Projects Which Advance Community Development
- Must be consistent with the Comprehensive Plan
- Provide assurances
- Must not have a negative effect on the jurisdiction's debt capacity or credit rating.
- Usually not to exceed 0.75% to 1% of overlapping debt of total value of taxable property.

What Are Other Jurisdictions Doing?

Prince William & Loudoun Counties

- Background Check: Jurisdiction will confirm applicant's information concerning developer's reputation and financial wherewithal
- Due Diligence: Jurisdiction will conduct independent financial and land use analysis paid for by the petitioner in advance
- No liability to the jurisdiction
- Limit by ordinance of the size and timing of CDA debt

What Are Other Jurisdictions Doing?

Fairfax County

- 1) CDAs can only be filed in designated Commercial Revitalization Districts with the Office of Revitalization.
- 2) Two-Tiered Review Process
- 3) 16 Principles for redevelopment/CDA evaluation
 - Redevelopment area must be strategically located
 - Use of public funds shall be directed to “pioneer projects”
 - Comprehensive Plan and Zoning Ordinance consistency

What Are Other Jurisdictions Doing?

Fairfax County

- Public funding mechanisms/CDAs should only be used for public facilities
- No negative impact on bond rating
- No direct/indirect liability to the county; must provide a level of surety acceptable to county
- The debt service shall not exceed 20 years

Lessons Learned

Pros

- CDAs can shift capital infrastructure costs to private sector and free up local revenue for other services
- Useful for infrastructure development when combined with other economic development initiatives
- Supports the “user pays” concept and shifts the costs to those who benefit the most
- Provides up-front financing and in a uniform manner
- Provides faster delivery of infrastructure
- Costs of creating the CDA may be financed

Lessons Learned

Cons

- CDA debt may be calculated as underlying debt of jurisdiction by rating agencies
- CDA debt is more vulnerable to default, especially during the initial phases of construction
- Incentivizes urban sprawl
- Especially risky where there are few controls and limited oversight
- Homeowners may balk at additional taxes/assessment
Requires clear, upfront and ongoing disclosure

Lessons Learned

Cons (cont'd)

- Expediency vs. Efficiency
 - Requires a significant amount of time from County staff
 - Additional line item on the County tax bills
 - Complexity and costliness

Tips for Success

- 1) Need careful, deliberative negotiations between private sector and locality
- 2) Need to have a mutually-beneficial partnership with clearly delineated rights
- 3) Need a well-capitalized, experienced builder
- 4) Need a strong, central location
- 5) Need realistic forecasts that account for cyclical downturns
- 6) Need reasonable tax/assessment rates
- 7) Need tight, well-drafted authorization documents
- 8) Continuous oversight by locality

Case Study: Dulles Town Center

LOUDOUN COUNTY, VA

\$29,480,000

Dulles Town Center Community Development Authority
Special Assessment Refunding Bonds, Series 2012

Location	Loudoun County, VA - Northern Virginia, 25 miles west of Washington, D.C. and five miles north of Washington Dulles International Airport
Development	1.4 million square feet mixed-use development comprised of: <ul style="list-style-type: none"> • Anchored by J.C. Penney, Dick's Sporting Goods • Macy's, Lord & Taylor, Nordstrom and Sears • Over 200 restaurants, office, and specialty stores
Developer	Lerner Enterprises Limited Partnership
Use of Proceeds	Public infrastructure improvements include roads (bridges, curbs, gutters, sidewalks, and traffic signals) and public water and sewer lines and facilities.
Primary Security	Special Assessment Revenues
Special Features	<ul style="list-style-type: none"> • First Community Development Authority established in Virginia • Bonds were Not Rated • Yield of 4.28% on Bonds maturing in 2026, or MMD + 236 basis points • Value-to-Bonds at time of sale was 12:1 • Debt service coverage was 1.02x (inclusive of Reserve Fund earnings)



Case Study: Mosaic District

FAIRFAX COUNTY, VA

\$65,650,000

Mosaic District Community Development Authority
Revenue Bonds, Series 2011

Location	Merrifield section of Fairfax County	
Development	1.9 million square feet mixed-use development comprised of: <ul style="list-style-type: none">• 500,000 square feet of retail anchored by Target• 1,000 residential units; 112 LEED townhomes• 148-room boutique hotel• 73,000 square feet of Class-A office space• 4,000 parking spaces as well as two parks and additional open space	
Developer	EDENS	
Use of Proceeds	Spine roads, off-site road improvements, sewer lines and related public facilities	
Primary Security	Incremental ad valorem property taxes along with a backup special assessment to cover any shortfalls	
Special Features	<ul style="list-style-type: none">• Development just under way at time of issuance; first openings were over a year away• Only 74% was leased or committed to be sold at time of issuance• Interest rate of 6.93% for final maturity – in market where most comparables were in high 7% range• Sale to 17 different institutional investors; Value-to-Lien at the time of sale was 1.5:1• Bonds are Not Rated	

Case Study: Farms of New Kent

NEW KENT COUNTY, VA

\$85,666,000

The Farms of New Kent Community Development Authority Special Assessment Bonds, Series 2006 A, B & C

Location	New Kent County, VA - Approximately 30 miles east of Richmond on I-64	
Development	<ul style="list-style-type: none"> 1,450 age-restricted units 300 estate lots 450 single family homes 100 resort cottages 830,000 sq. ft. of commercial space 18-hole Rees Jones Golf Course Winery, vineyards, polo complex, farmer's market 	
Developer	Boddie-Noell Enterprises, Republic Land and K. Hovnanian	
Use of Proceeds	Public infrastructure improvements include roads (bridges, curbs, gutters, sidewalks, and traffic signals) and public water and sewer lines and facilities.	
Primary Security	Special Assessment Revenues	
Special Features	<ul style="list-style-type: none"> Second largest non-rated special district financing in Virginia. Unique bond structure in which prepayments used first to call Series A Bonds, then the Series B Bonds and finally the Series C Bonds. Alleviated County's problem of limited existing wastewater treatment capacity restraining development in County. Developer and County are in foreclosure negotiations; failure of Developer to pay special assessments. 	

Case Study: Peninsula Town Center

CITY OF HAMPTON, VA
\$92,850,000
Peninsula Town Center Community Development Authority
Special Obligation Bonds, Series 2007

Location	Hampton, VA - Southeast Virginia, near Norfolk, located off I-64
Development	<p>1.2 million square feet mixed-use development comprised of the following:</p> <ul style="list-style-type: none"> • Anchored by J.C. Penney, Macy's, and Target • Over 120 restaurants specialty stores • 105,000 sq. ft. office • 160 residential units • 2,250 parking spaces
Developer	Mall Properties, Inc. and Steiner + Associates
Use of Proceeds	Public infrastructure improvements including roads, water and wastewater improvements, landscaping, parking structure, sidewalks, parks and acquisition of land.
Primary Security	Incremental tax revenues (including real property, sales, meals and amusement taxes), special retail assessment, special property tax and back-up special assessment
Special Features	<ul style="list-style-type: none"> • Largest non-rated special district financing in Virginia. • First special retail assessment (sales tax within district) in Virginia. • Unique blend of pledged revenues • Bank foreclosed on developer-owned CDA property in 2013; bondholders continue to receive payments



Case Study: Bell Creek

HANOVER COUNTY, VA

\$15,980,000

Bell Creek Community Development Authority
Special Assessment Bonds, Series 2003A, B

Location	Hanover County, VA - Central Virginia, 10 miles north of City of Richmond's central business district	
Development	325 acre mixed-use development comprised of the following: <ul style="list-style-type: none"> • 535 residential units • 200,000 square feet of commercial retail • 157 acre light industrial development 	
Developer	The Shield Company	
Use of Proceeds	Public infrastructure improvements include roads, water and sewer, storm water and other public improvements.	
Primary Security	Special Assessment Revenues	
Special Features	<ul style="list-style-type: none"> • Expansion of Hanover County's tax base. • Provided utility service for 260 contiguous acres planned for business development. • Increased employment opportunities while preserving property with unique ties to Colonial, Revolutionary, and Civil War history • Development has been fully built-out • Portion of the bonds was retired early due to prepayments 	

Questions?

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COMMUNITY DEVELOPMENT AUTHORITIES

*Andrew A. Painter **

I. INTRODUCTION

Governed under current Virginia Code section 15.2-5152 *et seq.*¹ (jointly, “CDA Statutes”), Community Development Authorities (“CDAs”) were first authorized by the General Assembly in 1993 under the provisions of the Virginia Water and Waste Authorities Act (“WWAA”) “to provide an additional method for localities to finance infrastructure associated with development and redevelopment in an authority district.”² Given that Virginia’s localities have increasingly considered CDAs as a way to cope with revenue shortfalls and growing infrastructure demands,³ and considering that many jurisdictions have yet to enact policies concerning their use,⁴ this article endeavors to provide an over-

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1. VA. CODE ANN. §§ 15.2-5152 to -5159 (Repl. Vol. 2008 & Cum. Supp. 2010).

2. 2006 Op. Va. Att’y Gen. 89, 90; Act of Mar. 29, 1993, ch. 850, 1993 Va. Acts 1234 (codified as amended in scattered sections of VA. CODE ANN. tit. 15.1 (Cum. Supp. 1993)). Stafford County established Virginia’s first CDA in 1997 to finance transportation improvements associated with planned development along the Widewater Peninsula. Cf. Stafford County, Va., Ordinance O97-16 (Apr. 1, 1997). Loudoun County created the first bond-issuing CDA in 1998 to provide roads and road improvements around the planned Dulles Town Center Shopping Mall. See LOUDOUN COUNTY, VA., CODIFIED ORDINANCES tit. 10, § 260.03 (2009); Kenneth E. Powell, Managing Dir., Stone & Youngberg, Presentation to the VGFOA Fall Conference: CDAs: The Good, The Bad, and the Opportunity 6 (Oct. 31, 2008), <http://www.vgfoa.org/2008%20Fall%20Conference/powerpoints/powell.pdf> (indicating that Loudoun County was the first to issue bonds in 1998).

3. See Rob Walker, *Mass Construction Projects Are Going Up with the Help of Tax-Exempt Bonds*, VA. BUS., Mar. 1, 2008, <http://www.virginiabusiness.com/index.php/news/article/mass-construction-projects-are-going-up-with-the-help-of-tax-exempt-bonds/>.

4. See, e.g., *infra* note 164 and accompanying text (identifying only five counties that have enacted such policies).

view of the current status of CDA law in Virginia, including attendant considerations as to CDA legislative development, establishment, governance, and powers.

Much has changed in the nearly two decades since CDAs were first authorized by the General Assembly, and several advancements have been made in response to a variety of legal and practical deficiencies encountered since that time. As discussed below, CDA governing documents have become increasingly standardized; many localities have formalized administrative procedures related to the evaluation of CDA proposals, while others have adopted policies seeking to preserve their financial reputations and to establish priorities for the use of CDAs.⁵

Additionally, the CDA Statutes themselves have undergone significant revisions with a trend toward expansion of CDA powers and easing of the procedural requirements for their establishment.⁶ Early CDA statutory provisions were obscurely included in several existing WWAA statutes that were more generally applicable to waste and water authorities, with intermittent carve-outs for the establishment of CDAs and their powers.⁷ Many of these provisions were relocated in 1997 to title 15.2 during the General Assembly's recodification of Virginia Code title 15.1⁸ and, by 1998, CDAs enjoyed increasing statutory separation within a separate article at the end of the WWAA.⁹ Impor-

5. *See infra* Part II.

6. The CDA Statutes have been amended in nine of the past seventeen years. *See* Act of Mar. 27, 2009, ch. 473, 2009 Va. Acts 756 (codified in scattered sections of VA. CODE ANN. tit. 15.2 (Supp. 2009)); Act of Mar. 22, 2005, ch. 547, 2005 Va. Acts 728 (codified as amended at VA. CODE ANN. §§ 5.1-5152, -5153, -5158 (Cum. Supp. 2005)); Act of Apr. 12, 2004, ch. 637, 2004 Va. Acts 925 (codified as amended at VA. CODE ANN. § 15.2-5158 (Cum. Supp. 2004)); Act of Mar. 19, 2003, ch. 712, 2003 Va. Acts 950 (codified as amended at VA. CODE ANN. §§ 15.2-5152, -5155 (Repl. Vol. 2003)); Act of Apr. 8, 2000, ch. 747, 2000 Va. Acts 1551 (codified as amended at VA. CODE ANN. § 15.2-5158 (Cum. Supp. 2000)); Act of Apr. 8, 2000, ch. 724, 2000 Va. Acts 1461 (codified as amended at VA. CODE ANN. § 15.2-5150 (Cum. Supp. 2000)); Act of Apr. 1, 1998, ch. 188, 1998 Va. Acts 304 (codified as amended at VA. CODE ANN. § 15.2-5156 (Cum. Supp. 1998)); Act of Mar. 20, 1997, ch. 587, 1997 Va. Acts 976 (codified as amended in scattered sections of VA. CODE ANN. tit. 15.2 (Repl. Vol. 1997)); Act of Apr. 10, 1996, ch. 897, 1996 Va. Acts 1667 (codified as amended at VA. CODE ANN. § 15.1-1241 (Cum. Supp. 1996)); Act of Mar. 18, 1995, ch. 402, 1995 Va. Acts 576 (codified as amended at VA. CODE ANN. §§ 15.1-1241, -1250.03 (Cum. Supp. 1995)); Act of Mar. 29, 1993, ch. 850, 1993 Va. Acts 1234 (codified as amended in scattered sections of VA. CODE ANN. tit. 15.1 (Cum. Supp. 1993)).

7. *See, e.g.*, VA. CODE ANN. § 15.1-1241 (Cum. Supp. 1996).

8. Act of Mar. 20, 1997, ch. 587, 1997 Va. Acts 976, 1333-35 (codified as amended at VA. CODE ANN. §§ 15.2-5152 to -5158 (Repl. Vol. 1997)).

9. *See* §§ 15.2-5152 to -5158 (Repl. Vol. 1997 & Cum. Supp. 1998). Further compre-

tantly, the legal status of CDAs as political subdivisions was clarified in 2003 in response to a Virginia Supreme Court case when the General Assembly amended Virginia Code section 15.2-5155(A) to state that CDAs exist as “a public body politic and corporate and political subdivision of the Commonwealth.”¹⁰

Today, CDAs of varying sizes and purposes have been authorized by at least fourteen Virginia localities, and approximately twenty have issued bonds.¹¹ Despite progress, CDAs occupy an area of Virginia law largely in its infancy. Case law directly related to their use remains limited, and many localities remain uncertain about their use since the unique marriage of private development and public power inherent in the CDA process has, at times, fostered controversy and apprehension.¹² While this article does not directly address the public policy implications of using CDAs to finance infrastructure, the author hopes this review will generate further ideas for policies governing CDAs, with an eye toward ensuring their success for all entities involved in their creation.

hensive changes were made to the CDA Statutes during the 2009 legislative session. *See* Act of Mar. 27, 2009, ch. 473, 2009 Va. Acts 756 (codified as amended at VA. CODE ANN. §§ 15.2-5152 to -5155, -5158, -5159 (Supp. 2009)).

10. Act of Mar. 19, 2003, ch. 712, 2003 Va. Acts 950 (codified as amended at VA. CODE ANN. § 15.2-5155(A) (Repl. Vol. 2003)); *see* Short Pump Town Ctr. Cmty. Dev. Auth. v. Hahn, 262 Va. 733, 742–46, 554 S.E.2d 441, 445–47 (2001) (invalidating a bond issued by a CDA because the enabling statute lacked “political subdivision” in its grant of authority).

11. Because CDAs are continually being created, and because some have not issued bonds, calculating their exact number is imprecise. *See generally* Jesse E. Todd Jr., *Community Development Authorities: Financing Tool Gaining Popularity*, VA. TOWN & CITY, May 2008, at 6, 10, available at http://www.vml.org/VTC/08VTC-PDF/VTC08May_Web.pdf; Mary M. Bathory Vidaver, A Brief Summary of the Status of Community Development Authorities in Virginia 1 (Apr. 21, 2010) (unpublished manuscript), <http://www.loudoun.gov/Default.aspx?tabid=312&fmpath=Press%20Releases/Supervisor%20Burton/> (follow “CDA’s—A Primer” hyperlink; then follow “CDA Summary Sheet” hyperlink).

12. Among other things, controversy may sometimes be driven by real or perceived concerns over the method of CDA financing, failure to comply with a locality’s land use plan, transparency in the CDA establishment process, dislike over surcharges for retail goods, etc. *See* Doug Craig, *Something Smells Bad in Spotsylvania County*, FREE-LANCE STAR (Fredericksburg), Nov. 30, 2008, <http://fredericksburg.com/News/FLS/2008/112008/News/FLS/2008/112008/11302008/426333> (discussing homeowners’ concerns over having to pay a tax to cover the developers’ re-zoning proffers); Kim Douglass, *Widewater Worries Pour Out at Hearing*, FREE-LANCE STAR (Fredericksburg), Feb. 19, 1997, at C1 (discussing homeowners’ concerns over having to pay a fee to subdivide their lots); Cody Lowe, *Real Estate Tax Rates Won’t Rise in Roanoke County*, ROANOKE TIMES, Feb. 24, 2010, <http://www.roanoke.com/news/roanoke/wb/237682> (discussing the boards’ skepticism of a CDA Petition’s twenty-year term and heavy reliance on taxes).

II. ESTABLISHING A CDA: PROCEDURAL CONSIDERATIONS

Establishing a new bond-issuing authority through a CDA requires negotiations between private parties and local government.¹³ While most proposals to establish a CDA tend to occur in conjunction with the zoning entitlement process,¹⁴ the special manner in which infrastructure improvements associated with land development are proposed to be funded subjects CDAs to additional evaluation involving a host of actors not typically involved in the traditional land use process.¹⁵ These actors include a locality's budget personnel, attorney, and economic development staff, as well as outside financial advisors, bond counsel, underwriters, appraisers, and others.¹⁶ Though CDA creation is a relatively straightforward process from a statutory perspective, the use of supplemental authorization agreements to address a host of intricate structural considerations has also gained notoriety in recent years as the complexity of CDA transactions has increased.¹⁷ Given the political, financial, and deliberative realities of CDA negotiation and formation, the time between CDA proposal and CDA establishment may take more than a year.¹⁸

13. *See generally* STONE & YOUNGBERG, *Foreword* to THE STONE & YOUNGBERG GUIDE TO LAND-SECURED FINANCE i (2004 & Supp. 2008), available at http://www.syllc.com/Templates/media/userfiles/2008%20rev.%20Land-Secured%20Guide_11-08.pdf ("This Guide is intended to assist elected officials, managers of local government agencies, developers, lenders, and others as they consider the benefits and costs of land-secured municipal debt for financing infrastructure.").

14. *See* Janice C. Griffith, *Recent Developments in Public Finance Law: Special Tax Districts to Finance Residential Infrastructure*, 39 URB. LAW. 959, 960–61 (2007) ("The enabling legislation often calls for the filing of a petition by landowners in the geographical area of the proposed district to originate it, but the formation of a special district may also be instituted by a local entity on its own initiative").

15. STONE & YOUNGBERG, *supra* note 13, at 9–21.

16. *Id.*

17. *See infra* Part II.B.

18. The Loudoun County Board of Supervisors approved its "Kincora" CDA on July 12, 2010, three years after it was initially proposed in April 2007. *See* Erika Jacobson Moore, *Kincora Village Approved by Divided Board*, LEESBURG TODAY, July 13, 2010, <http://www.leesburg2day.com/articles/2010/07/13/news/9644kincora071310.txt>; Memorandum from Mike Scott, NA Dulles Real Estate Investor L.L.C., to John Merrithew, Loudoun Cnty. Dep't of Planning (Apr. 23, 2007) (on file with author).

A. *Statutory Procedure*

1. Beginning the Process: Petitions for Creation of a CDA

CDAs may exist for a single term of fifty years as a corporation, and for further periods as subsequent resolutions by the jurisdiction(s) which created the authority provide.¹⁹ They may only be established upon the request—in the form of a petition (“CDA Petition”—of at least 51% of the landowners of a proposed district, as measured by land area or by assessed value.²⁰ Parcels of land within a proposed district need not be contiguous, but at least 51% of the landowners in each noncontiguous tract must sign the CDA Petition.²¹ Landowners must submit CDA Petitions to the locality or localities in which the parcels of land proposed to comprise the CDA are located.²² If the proposed CDA is located wholly within a town’s corporate limits, landowners must petition the town—rather than the county in which the town is situated—to create the CDA, and the town may do so without any action by the county.²³

While the Virginia Code previously placed significant restrictions on the categories of local governments that were eligible to establish CDAs, in 2005 the General Assembly removed many of the limitations placed on counties.²⁴ Today, cities may automatically consider CDA Petitions; however, counties and towns may consider petitions only after adopting an ordinance permitting the locality to assume the power to do so.²⁵

19. VA. CODE ANN. § 15.2-5114(1) (Cum. Supp. 2010).

20. *Id.* §§ 15.2-5152 to -5154 (Cum. Supp. 2010). To gauge initial local government reaction, property owners (usually developers) typically submit a CDA proposal to a jurisdiction and/or conduct initial exploratory meetings with staff to review the concept. *See, e.g.*, Memorandum from Mike Scott, *supra* note 18.

21. § 15.2-5153 (Cum. Supp. 2010).

22. *Id.*

23. *Id.* § 15.2-5155(A) (Cum. Supp. 2010).

24. Act of Mar. 22, 2005, ch. 547, 2005 Va. Acts 728 (codified as amended at Va. Code Ann. §§ 15.2-5152, -5153, -5158 (Cum. Supp. 2005)). Virginia Code section 15.2-5152 previously distinguished eligibility based on minimum and maximum population and whether an interstate highway passed through the jurisdiction. *See* § 15.2-5152 (Repl. Vol. 2003).

25. § 15.2-5152(A)–(B) (Cum. Supp. 2010). Spotsylvania County has adopted such an ordinance. *See, e.g.*, SPOTSYLVANIA COUNTY, VA., CODE art. XIV, § 21-350 (Supp. 2010).

Virginia Code section 15.2-5154 sets forth the minimum contents of CDA Petitions,²⁶ and though they vary in length depending on the complexity of the proposal, drafters frequently opt to include only the minimum information required by the CDA Statutes.²⁷ Standard sections include: (1) recitals introducing the proposed CDA,²⁸ (2) delineation of the CDA's geographical limits,²⁹ (3) an acknowledgment of standing and jurisdiction to file the CDA Petition,³⁰ (4) a brief review of the proposed plan for financing improvements (including which entity will issue bonds and whether the locality requests any financing assistance),³¹ (5) general statements concerning the anticipated public benefits of the CDA,³² and (6) information about the lifespan of the authority.³³

CDA Petitions also include information concerning the CDA's structural composition, and typically reference an attachment that includes a description of the infrastructure, facilities, and/or services the proposed authority will undertake.³⁴ The CDA Petition may also provide information concerning any additional authority of the CDA (i.e., right-of-way acquisition, easement acquisition, permitting, relocation of public utilities, etc.).³⁵ There exists no requirement that CDA Petitions include signatures from the owners of all parcels proposed to be located within a district as long as the requisite fifty-one percent of the landowners signed the CDA Petition.³⁶

26. § 15.2-5154 (Cum. Supp. 2010).

27. *See, e.g.*, Petition for the Creation of the Dulles Town Ctr. Cnty. Dev. Auth. Assessment Dist. to the Bd. of Supervisors of Loudoun Cnty., Va. (Nov. 5, 1997) [hereinafter DTC Petition] (on file with author); York County, Va., Ordinance 06-34, Exhibit C: Petition for the Creation of the Marquis Cnty. Dev. Auth. (Oct. 30, 2006), (Dec. 19, 2006) [hereinafter Marquis Petition] (on file with author).

28. *See* DTC Petition, *supra* note 27, at 1; Marquis Petition, *supra* note 27.

29. *See* DTC Petition, *supra* note 27, at 2–3; Marquis Petition, *supra* note 27, at Exh. A-1.

30. *See* DTC Petition, *supra* note 27, at 2; Marquis Petition, *supra* note 27.

31. *See* DTC Petition, *supra* note 27, at 3–4; Marquis Petition, *supra* note 27.

32. *See* DTC Petition, *supra* note 27, at 6; Marquis Petition, *supra* note 27.

33. *See* DTC Petition, *supra* note 27, at 5.

34. *See id.* at 3; Marquis Petition, *supra* note 27.

35. *See* DTC Petition, *supra* note 27, at 3.

36. *See* VA. CODE ANN. § 15.2-5153 (Cum. Supp. 2010). Failure to procure the support of owners whose lands are included within a proposed CDA may lead to opposition or, in some cases, legal challenges. *See* Tait v. Board of Supervisors, CL08-1422 (Cir. Ct. May 27, 2010) (Spotsylvania County) (dismissed with prejudice). In *Tait*, a nonpetitioning property owner whose lands were included in a CDA challenged the validity of an

2. Ordinance Establishing the CDA

Upon receipt of the CDA Petition, those localities wishing to proceed must hold a public hearing to consider the passage of an ordinance or resolution (“CDA Ordinance”) creating the proposed CDA.³⁷ Notice of the public hearing must be publicized at the expense of the petitioners for three consecutive weeks in a local newspaper.³⁸ The locality must hold a hearing at least ten days following the final publication of notice.³⁹ A CDA district proposed to be located within more than one locality may be formed by concurrent ordinances of each locality following the requisite public hearings in each jurisdiction.⁴⁰

As with CDA Petitions, CDA Ordinances vary in length. Some, including the CDA Ordinance establishing Fairfax County’s Mosaic District CDA, are remarkably short;⁴¹ others, such as the CDA Ordinance forming Lancaster County’s Hill’s Quarter CDA, incorporate a wide range of provisions and multiple exhibits.⁴² In-

approved CDA Ordinance that permitted the Board of Supervisors to release or exclude district parcels from the CDA after the CDA Ordinance’s adoption. *See* Dan Telvoock, *Suit Attempts to Stop Mall Road Project*, FREE-LANCE STAR (Fredericksburg), Nov. 25, 2008, <http://fredericksburg.com/News/FLS/2008/112008/11252008/427462>; *see also* Craig, *supra* note 12 (discussing Spotsylvania homeowners’ concerns over being designated as part of a CDA Ordinance for which they received no notice).

37. § 15.2-5156(A) (Repl. Vol. 2008). Such hearings have been mandated since 1996 when the General Assembly amended former Virginia Code section 15.1-1241 to require hearings prior to the adoption of an ordinance creating the authority. *See* Act of Apr. 10, 1996, ch. 897, 1996 Va. Acts 1667, 1669 (codified as amended at VA. CODE ANN. § 15.1-1241 (Cum. Supp. 1996)). Because the CDA Statutes use the term “ordinance” more frequently than “resolution,” (sixteen versus twenty-three times, respectively), some CDA document drafters prefer CDA establishment by ordinance rather than resolution. *See* §§ 15.2-5152 to -5159 (Repl. Vol. 2008 & Cum. Supp. 2010); John D. O’Neill, Jr. & Martha A. Warthen, *Economic Development Incentives*, in *HANDBOOK OF VIRGINIA LOCAL GOVERNMENT LAW* § 11-5.02(b), at 11-11 n.1 (Randi Hicks Rowe ed., 6th ed. 2009) [hereinafter HANDBOOK].

38. § 15.2-5156(A) (Repl. Vol. 2008).

39. *Id.* It is unclear whether WWAA notice provisions under Virginia Code section 15.2-5104 also apply to CDAs. *See* John D. O’Neill, Jr. & Martha A. Warthen, *Economic Development Incentives*, in *HANDBOOK*, *supra* note 37, at 11-11.

40. § 15.2-5155(A) (Cum. Supp. 2010). Localities may contract with one another for administration of the authority. *Id.* At the time of this writing, such issues are being considered in the proposed “Blenheim Park” project to establish a CDA straddling the Virginia Beach/Chesapeake city border. *See* Sandra J. Pennecke, *Metroplex Adds Office Space Near Regent University*, VIRGINIAN-PILOT, Mar. 1, 2009, at P7; Mike Gruss, *Robertson, CBN Plan Massive Retail Housing Project Near I-64*, VIRGINIAN-PILOT, July 19, 2006, at A1.

41. FAIRFAX COUNTY, VA., CODE app. P (Supp. 2010).

42. LANCASTER COUNTY, VA., CODE OF ORDINANCES ch. 2, art. II (Supp. 2009).

creasingly, however, such ordinances are relatively simple enactments that include only the minimum information necessary to meet statutory requirements.⁴³ An examination of multiple CDA Ordinances illustrates a tendency to include the CDA's public purpose,⁴⁴ verification that the jurisdiction has complied with public hearing and notice requirements,⁴⁵ the name of the authority,⁴⁶ facilities and services to be financed,⁴⁷ a reference to the CDA's articles of incorporation,⁴⁸ capital cost estimates,⁴⁹ membership of the CDA board,⁵⁰ and a plan of finance.⁵¹

Frequently, CDA Petitions include either a statement waiving the petitioners' right to withdraw their signatures from the CDA Petition, or a statement that a waiver will be provided subsequent to the submission of the CDA Petition.⁵² If all petitioning landowners waive their right to withdraw their signatures, then the jurisdiction may adopt the CDA Ordinance immediately following the public hearing.⁵³ However, if any of the petitioning landowners have not previously waived their right to withdraw, then, following the public hearing—but prior to the adoption of the proposed CDA Ordinance—the locality must mail a copy of the ordinance to all petitioning landowners.⁵⁴ The Virginia Code does not require the locality to provide additional or particularized notice to nonpetitioning landowners whose properties may

43. §§ 15.2-5152 to -5159 (Repl. Vol. 2008 & Cum. Supp. 2010); *see, e.g.*, HAMPTON, VA., CODE § 2-377 (2008); LOUDOUN COUNTY, VA., CODIFIED ORDINANCES tit. 10, § 260.03; Prince William County, Va., Ordinance 05-28 (Apr. 19, 2005).

44. HAMPTON, VA., CODE § 2-377(a); LOUDOUN COUNTY, VA., CODIFIED ORDINANCES tit. 10, § 260.03(c).

45. HAMPTON, VA., CODE § 2-377(a).

46. *Id.*; LOUDOUN COUNTY, VA., CODIFIED ORDINANCES tit. 10, § 260.03(a).

47. HAMPTON, VA., CODE § 2-377(d); LOUDOUN COUNTY, VA., CODIFIED ORDINANCES tit. 10, § 260.03(c).

48. HAMPTON, VA., CODE § 2-377(e); LOUDOUN COUNTY, VA., CODIFIED ORDINANCES tit. 10, § 260.03(k).

49. HAMPTON, VA., CODE § 2-377(f).

50. *Id.* at § 2-377(g); LOUDOUN COUNTY, VA., CODIFIED ORDINANCES tit. 10, § 260.03(e).

51. HAMPTON, VA., CODE § 2-377(h); LOUDOUN COUNTY, VA., CODIFIED ORDINANCES tit. 10, § 260.03(h).

52. *See, e.g.*, Petition Pursuant to Va. Code section 15.2-5153 for the Creation of the Mosaic Dist. Cmtys. Dev. Auth. to the Bd. of Supervisors of the Cnty. of Fairfax, Va. (Feb. 10, 2009) [hereinafter Mosaic Petition].

53. VA. CODE ANN. § 15.2-5156(B) (Repl. Vol. 2008). The General Assembly approved this expedited process in 1998. Act of Apr. 1, 1998, ch. 188, 1998 Va. Acts 304, 304 (codified as amended at VA. CODE ANN. § 15.2-5156(B) (Cum. Supp. 1998)).

54. § 15.2-5156(B) (Repl. Vol. 2008).

be included in the district.⁵⁵ If, within thirty days of the mailing of the proposed CDA Ordinance, any petitioning landowners' signatures are withdrawn, then the locality may approve the CDA Ordinance only upon certification by the petitioners that the petition continues to meet the minimum land area and value requirements of Virginia Code section 15.2-5152.⁵⁶

Insofar as a CDA's geographic limits are concerned, the General Assembly amended section 15.2-5155(A) in 2009 to permit a locality, subsequent to the adoption of the CDA Ordinance, to exclude certain land from the CDA.⁵⁷ This may occur provided that the CDA Petition and the initial CDA Ordinance permitted such changes and upon the condition that those owners who initially petitioned for the CDA's creation comprised at least fifty-one percent of the land area or assessed value of land remaining in the CDA district following the boundary adjustment.⁵⁸ This change was precipitated by a 2008 Spotsylvania County Circuit Court case and a related opinion of the Attorney General, the latter of which concluded that jurisdictions were prohibited from enacting ordinances "that permit[ted] the subsequent release or withdrawal of land from the [CDA] district" under the version of section 15.2-5155 then in effect.⁵⁹

3. Post-Ordinance Activities

Following the adoption of the CDA Ordinance and creation of the CDA, the locality must file a copy of the CDA Ordinance in the land records for each tax map parcel included in the newly

55. *Id.* Failure to provide additional notice to landowners whose properties are proposed to be included within a CDA can lead to opposition. *See* Craig, *supra* note 12.

56. § 15.2-5156(B) (Repl. Vol. 2008).

57. Act of Mar. 27, 2009, ch. 473, 2009 Va. Acts 756, 762 (codified as amended at VA. CODE ANN. § 15.2-5155(A) (Supp. 2009)).

58. *Id.*

59. 2008 Op. Va. Att'y Gen. 73, 77; Complaint, Tait v. Bd. of Supervisors, No. CL08-1422 (Cir. Ct. Nov. 19, 2008) (Spotsylvania County). While not directly related to the exclusion of land, the 2009 amendment was also preceded by a 2005 legal dilemma faced by Prince William County concerning a proposed expansion of the existing Virginia Gateway CDA boundaries in the absence of statutory guidance. Faced with two competing procedural alternatives, Prince William opted to follow the standard public hearing and notice provisions as though a new CDA was being formed. *See* Prince William County, Va., Ordinance 05-42 (June 28, 2005); Prince William County, Va., Agenda Item 4-J for the Regular Meeting of the Prince William County Board of County Supervisors, May 17, 2005, available at <http://www.pwcgov.org/documents/bocs/agendas/2005/0517/4-J.pdf>.

adopted district.⁶⁰ Additionally, the locality typically makes appointments to the CDA's Board of Directors ("CDA Board"), finalizes and executes any supplemental authorization documents,⁶¹ and an authorized agent files the approved CDA's articles of incorporation with the State Corporation Commission.⁶² Additionally, the CDA must obtain final pricing estimates for the infrastructure that it will finance and must issue the necessary bonds.⁶³

B. *Supplemental Authorization Documents*

While CDA Petitions and CDA Ordinances have remained relatively uncomplicated as to form and substance since the 1990s, the structural minutiae of CDAs have largely been relegated to a variety of supplemental authorization agreements used expansively in recent years.⁶⁴ CDA Ordinances frequently reference these agreements, and they are typically executed between bond pricing and bond closing.⁶⁵ They have grown increasingly sophisticated; this is perhaps a reflection of both the evolution of CDAs as well as local governments' increased reluctance to establish new bond-issuing authorities without imposing appropriate control or oversight by the locality.

The relative ease of modification makes these supplemental agreements particularly advantageous to petitioning landowners and government officials alike.⁶⁶ Though CDA Ordinances and CDA Petitions must be approved and amended through a statutorily governed legislative review process, most modifications to

60. § 15.2-5157 (Repl. Vol. 2008).

61. *See infra* Part II.B.

62. § 15.2-5107 (Repl. Vol. 2008).

63. *Id.* §§ 15.2-5108, -5158(A) (Cum. Supp. 2010).

64. *See, e.g.*, HAMPTON, VA., CODE § 2.377(h)(4) (incorporating a memorandum of understanding into the CDA Ordinance for the purpose of addressing issues that may arise regarding financial obligations).

65. *See* Ken Powell, Stone & Youngberg, L.L.C., et al., Virginia Community Development Authorities/Tax Increment Financing Webinar 14 (Apr. 27, 2010), http://www.syllc.com/Templates/media/userfiles/file/CDATIFWebinarSession2_4.27.10.pdf [hereinafter Stone & Youngberg Webinar].

66. *See, e.g.*, Memorandum of Understanding Between the Cnty. of Fairfax, Eskridge L.L.C., and the Mosaic Dist. Cnty. Dev. Auth. 18 (May 12, 2010) [hereinafter Mosaic MOU]; Memorandum of Understanding Between the City Council of the City of Hampton, Va., Hampton Mall Assocs., and the Peninsula Town Ctr. Cnty. Dev. Auth. 8 (Apr. 25, 2006) [hereinafter Peninsula MOU].

supplemental agreements require endorsement by signature of the parties.⁶⁷

1. Memorandum of Understanding (“MOU”)

Approval of most CDAs today entails a corresponding “Memorandum of Understanding” (“MOU”). While MOUs were initially used to evidence landowners’ consent to special *ad valorem* property taxes or assessments or both, they have developed into complex, critically important documents that serve as repositories for a variety of CDA covenants, powers, and restrictions.⁶⁸ MOUs set forth multilateral agreements, address competing interests, and memorialize the expectations of the CDA, its governing jurisdiction, and any other entities involved in the project (e.g., developers, treasurers, and commissioners of revenue).⁶⁹

Development of an MOU typically includes a tedious negotiating process.⁷⁰ Though an MOU’s content varies with the factors and players involved in each CDA, most include detailed commitments related to bond issuance and revenue development, ultimate ownership of improvements, debt service, descriptions of the infrastructure to be financed, and more.⁷¹ From a financial transparency and stability perspective, MOUs may require the appointment of fiscal agents and counsel to a CDA.⁷² They tend to obligate the CDA and developer to comply with Securities and Exchange Commission continuing disclosure requirements (re-

67. *See* § 15.2-5102 (Repl. Vol. 2008 & Cum. Supp. 2010); *see, e.g.*, Mosaic MOU, *supra* note 66, at 18. Some agreements may also permit the ratification of immaterial amendments or interpretations administratively. *See* VA. CODE ANN. § 15.2-5114(2) (Cum. Supp. 2010).

68. *See generally* Mosaic MOU, *supra* note 66; Peninsula MOU, *supra* note 66; Memorandum of Understanding Between the Cnty. of New Kent, New Kent Partners, L.L.C., and the New Kent Cnty. Dev. Auth. (2006).

69. *See* Stone & Youngberg Webinar, *supra* note 65, at 14–18. Due to the proliferating up-front costs associated with planning and proposing a major land development project that incorporates a CDA, some CDA practitioners predict a further evolution of the use of MOUs that include a preliminary MOU between the locality and the developer prior to the establishment of a CDA, as well as a subsequent MOU between the jurisdiction and the CDA following establishment. *See id.* at 19–20.

70. *See* Author Notes to Stone & Youngberg Webinar, *supra* note 65 (on file with author).

71. *See, e.g.*, Mosaic MOU, *supra* note 66, at 7–9.

72. *See, e.g.*, *id.* at 8–9.

gardless of any applicable exemption),⁷³ and they can require the establishment of debt service reserve funds to assist the CDA and developer during stress periods.⁷⁴ Additionally, some localities concerned about the physical design characteristics of a planned CDA project may desire the inclusion of an MOU provision requiring the developer to deliver a “quality project” by referencing desirable projects located elsewhere,⁷⁵ specifying the timeframe for development,⁷⁶ referencing minimum square footage for various uses, or other project-specific design requirements.⁷⁷

2. Rate and Method of Apportionment

A “Rate and Method of Apportionment” document (“RMA”) may be prepared detailing the apportionment of the CDA’s costs to individual properties within the CDA district.⁷⁸ The constitutional and judicial limitations of such apportionment are described below.⁷⁹ RMAs may also discuss the manner of imposing and collecting the annual assessment, as well as the rights of landowners to appeal administratively their annual assessment to the CDA Board.⁸⁰ Calculations for such things as road and utility improvements, as well as miscellaneous engineering and other “soft costs” associated with project construction, are typically based upon the best-known estimates of other public improvements and

73. *See, e.g.*, *id.* at 16; Peninsula MOU, *supra* note 66, at 7. 17 C.F.R. § 240.15c2-12 exempts certain primary offerings of municipal securities from continuing disclosure rules. Municipal Securities Disclosure Rule, 17 C.F.R. § 240.15c2-12 (2010).

74. *See, e.g.*, Mosaic MOU, *supra* note 66, at 12–13.

75. Often, these provisions are concerned about things other than infrastructure. Participants in a CDA project may also desire the crafting of a “Development Agreement,” executed between the CDA, developer, and locality concerning commitments related to a project’s quality and construction. *See Dev. and Acquisition Agreement Between the City of Chesapeake, Va., the S. Norfolk Belharbour Waterfront Cnty. Dev. Auth., and Truxton Dev., L.L.C.* 2, 12 (Jan. 22, 2008) [hereinafter Truxton Agreement].

76. *Id.* at 19.

77. *Id.* at 11.

78. *See, e.g.*, Loudoun County, Va., Dulles Town Ctr. Cnty. Dev. Auth., Rate and Method of Apportionment of Assessments (Jan. 28, 1998) [hereinafter DTC RMA]; New Kent County, Va., Ordinance O-03-06, Exhibit A: Rate and Method of Apportionment of Special Assessment (May 9, 2006) [hereinafter New Kent RMA]; Henrico County, Va., Ordinance Establishing a Special Assessment for the Short Pump Town Center Community Development Authority and Authorizing Certain Agreements, Exhibit A: Rate and Method of Apportionment of Special Assessments (Oct. 24, 2000) [hereinafter Henrico RMA].

79. *See infra* section IV.C.2.

80. New Kent RMA, *supra* note 78, at 7–8.

costs at the time CDA bonds are issued.⁸¹ Financing that involves contributions of sales tax revenue to the CDA, or an assessment based on retail sales that adheres to the guidelines of an RMA, may require the disclosure of otherwise confidential retail sales information maintained by commissioners of revenue.⁸² It may be necessary for CDA district property owners and tenants to waive their right to confidentiality, or to provide sales tax information to the locality.⁸³

III. CDA GOVERNANCE

A. *CDA Board*

Once the CDA is established, the locality's governing body appoints the CDA Board, which exercises the powers of a CDA, pursuant to the more general provisions for establishing authority boards under the WWAA.⁸⁴ The role of a CDA Board varies depending on the complexity of the CDA, but it generally encompasses safeguarding the use of CDA bond proceeds as well as serving as a liaison between a jurisdiction's officials and staff, the developer, and bondholders.⁸⁵ From an administrative perspective, the CDA Board may, among other things, adopt and amend bylaws, rules, and regulations; adopt an official seal; maintain an office; enter into contracts; and sue and be sued.⁸⁶ A resolution of the locality's governing body fixes the compensation for CDA Board members and establishes that CDA Board members are to be "reimbursed for any actual expenses necessarily incurred in the performance of their duties."⁸⁷

81. *See, e.g., id.* at 4.

82. VA. CODE ANN. § 58.1-3(D) (Cum. Supp. 2010).

83. *See* Stone & Youngberg Webinar, *supra* note 65, at 18; Author Notes to Stone & Youngberg Webinar, *supra* note 65 (on file with author); *see also* § 58.1-3(E) (Cum. Supp. 2010) (requiring a locality to disclose information to the Tax Commissioner in order to fulfill the Tax Commissioner's duties required by the Department of Taxation).

84. §§ 15.2-5114, -5154 (Cum. Supp. 2010).

85. *See* Author Notes to Stone & Youngberg Webinar, *supra* note 65 (on file with author).

86. § 15.2-5114 (Cum. Supp. 2010).

87. *Id.* § 15.2-5113(C) (Cum. Supp. 2010).

1. Membership

While a CDA Board consisting of five members governs a CDA located within one jurisdiction, the CDA Ordinance often specifies the number of members; however, the Virginia Code permits counties to provide for additional membership that mirrors the number of positions on the county's board of supervisors.⁸⁸ Additionally, pursuant to legislation passed by the General Assembly in 2008, any CDA Board created by the City of Richmond shall consist of seven members.⁸⁹ For CDAs located within two or more localities, the CDA's articles of incorporation should specify the number and membership, but a CDA Board must include a minimum of five members, with at least one appointee from each participating locality.⁹⁰

CDA Petitions, which frequently make recommendations for appointments to the CDA Board, may propose that members consist of a majority of the petitioning landowners or their designees.⁹¹ Because Virginia Code section 15.2-5113(A), which speaks to the powers and appointment of authorities under the WWA, is silent as to residency requirements, CDA Board members need not reside within the CDA district, nor must a CDA Board's membership encompass one or more signatories of the CDA Petition.⁹² Additionally, one or more members of the locality's governing body, local economic development authority, or industrial authority may be appointed to the CDA Board.⁹³ Indeed, members of the jurisdiction's governing body may appoint themselves as the sole members of a CDA Board.⁹⁴ CDA Board members are subject

88. *Id.* § 15.2-5113(A) (Cum. Supp. 2010); *see, e.g.*, HAMPTON, VA., CODE § 2-377(g)(1) (2008) (specifying that the CDA Board will consist of five members).

89. Act of Mar. 27, 2008, ch. 730, 2008 Va. Acts 1296 (codified at VA. CODE ANN. § 15.2-5152 note (Repl. Vol. 2008)).

90. § 15.2-5113(A) (Cum. Supp. 2010); *see also* Lee Cnty. v. Town of St. Charles, 264 Va. 344, 348-49, 568 S.E.2d 680, 683 (stating that Virginia Code section 15.2-5113(A) requires "at least one person from each participating locality [to] be included among the appointees to such an authority board").

91. § 15.2-5154 (Cum. Supp. 2010); DTC Petition, *supra* note 27, at 4.

92. *See* § 15.2-5113(A) (Cum. Supp. 2010). "When the General Assembly has intended to impose a residency requirement for service on boards, authorities, and commissions in the Commonwealth, it has done so explicitly." *Lee Cnty.*, 264 Va. at 349, 568 S.E.2d at 683 (citing VA. CODE ANN. § 15.2-4203(B) (Repl. Vol. 2008)) (holding that the WWA did not require that each person appointed to a water and sewer authority board reside within that authority's service area).

93. § 15.2-5113(A) (Cum. Supp. 2010).

94. *See* Wilkie Chaffin, *P.E. Supervisors Stop Appointment of Citizens to Citizens'*

to the Virginia State and Local Government Conflict of Interests Act.⁹⁵

Once appointed, CDA Board members must elect a chairman, secretary, and treasurer.⁹⁶ CDA Board members may serve for a maximum term of four years, though the CDA Ordinance or other governing document may provide for a shorter time.⁹⁷ CDA Board members “hold office until their successors have been appointed and may succeed themselves.”⁹⁸ In the event “of the death, disqualification, or resignation of a [CDA Board] member, the governing body . . . shall appoint a successor to fill the unexpired term.”⁹⁹

Alternate CDA Board members may be selected in the same manner and with the same qualifications as regular members.¹⁰⁰ The terms of alternate members mirror those of the regular members “for whom each serves as an alternate; however, the alternate’s term shall not expire because of the board member’s death, disqualification, resignation, or termination of employment with the member’s political subdivision.”¹⁰¹

2. Meetings

The Virginia Code does not place a limitation on the frequency or location of CDA Board meetings, though the CDA Ordinance or other governing documents may specify both.¹⁰² A majority of a CDA Board constitutes a quorum, and a majority vote by board members is necessary for the CDA Board to take any action.¹⁰³ Vacancies on the CDA Board do not impair the right of a quorum

Committee, SOUTHSIDE MESSENGER (Keyesville), Jan. 15, 2010, http://www.southsidemesenger.com/articles/2010/01/15/news/top_stories/ts2.txt.

95. §§ 2.2-3100 to -3131 (Repl. Vol. 2008 & Cum. Supp. 2010).

96. *Id.* § 15.2-5113(A) (Cum. Supp. 2010). “The offices of secretary and treasurer may be combined.” *Id.*

97. *Id.*

98. *Id.*

99. *Id.* § 15.2-5113(C) (Cum. Supp. 2010).

100. *Id.* § 15.2-5113(D) (Cum. Supp. 2010).

101. *Id.*

102. See *id.* § 5113 (Cum. Supp. 2010); see, e.g., LOUDOUN COUNTY, VA., CODIFIED ORDINANCES tit. 10, § 260.03(l) (2009) (indicating that the CDA must provide seven days’ notice prior to conducting any meeting).

103. § 15.2-5113(B) (Cum. Supp. 2010). “An authority may, by bylaw, provide a method to resolve tie votes or deadlocked issues.” *Id.*

to exercise any rights or duties of a CDA.¹⁰⁴ If a member is not present at a meeting of the authority, the member's alternate is vested with all rights of the absent regular member and "shall be counted for purposes of determining a quorum."¹⁰⁵ Activities of the CDA Board are subject to the provisions of the Virginia Freedom of Information Act ("FOIA").¹⁰⁶ While "authorities" as a category have long been included in the definition of "public body" under Virginia Code section 2.2-3701, the General Assembly's 2003 declaration that CDAs constitute "political subdivisions" only strengthened the inclusion of CDAs within the context of FOIA.¹⁰⁷

B. *CDA Administrator*

The CDA Board may appoint an administrator to "serve at the pleasure of the board members. He shall execute and enforce the orders and resolutions adopted by the board members and perform such duties as may be delegated to him by the board members."¹⁰⁸ CDA Boards often charge administrators with the task of overseeing the authority's financial affairs, preparing an annual financial report for bondholders, performing an annual audit, determining annual revenue requirements, fulfilling responsibilities called for in the bond indenture, as well as informing the locality of the amount to be billed to each parcel in the CDA.¹⁰⁹ A CDA director may enter into contracts on behalf of the CDA only when a majority vote of its members authorize the director to do so.¹¹⁰

104. *Id.* § 15.2-5113(C) (Cum. Supp. 2010).

105. *Id.* § 15.2-5113(D) (Cum. Supp. 2010).

106. *Id.* §§ 2.2-3700 to -3714 (Repl. Vol. 2008 & Cum. Supp. 2010).

107. *Id.* § 2.2-3701 (Cum. Supp. 2010); Act of Mar. 19, 2003, ch. 712, 2003 Va. Acts 950 (codified as amended at VA. CODE ANN. §§ 15.2-5152(A), -5155(A) (Repl. Vol. 2003)). While the Virginia Freedom of Information Advisory Council has not issued an advisory opinion specifically concerning CDAs as of the date of this writing, it has discussed whether a committee established by a board of supervisors to review a CDA proposal must comply with FOIA. *See* Advisory Op. Va. Freedom of Info. Advisory Council 10 (2007).

108. § 15.2-5113(E) (Cum. Supp. 2010).

109. *See, e.g.*, Mosaic MOU, *supra* note 66, at 16–17; New Kent RMA, *supra* note 78, at 1, 6.

110. *See* Cnty. of Campbell v. Howard, 133 Va. 19, 59, 112 S.E. 876, 888 (1922) (holding that a board of supervisors could obligate a county "only at authorized meetings duly held, and as a corporate body, by resolution duly adopted").

IV. CDA POWERS

CDA Boards may exercise a variety of powers in addition to those accorded to waste and water authorities under the WWAA.¹¹¹ The WWAA vests in authorities established pursuant to its provisions certain powers specifically related to the operation of water and waste systems, and such powers are to be “liberally construed to effect the purposes” of the WWAA.¹¹² The 2009 amendments to the WWAA clarified that most powers of waste and water authorities—including eminent domain in certain instances—are available to CDAs with respect to CDA facilities as well.¹¹³ The General Assembly also expanded the definition of “system” to include CDA facilities as well as water and waste facilities.¹¹⁴

A. Power to Finance Infrastructure Improvements and Provide Certain Services

The General Assembly has permitted CDAs to fund, acquire, and operate at least thirty kinds of public infrastructure improvements under a nonexclusive, broadly construed list in Virginia Code section 15.2-5158.¹¹⁵ The most popular infrastructure that CDAs finance includes roads (i.e., acquisition, construction, bridges, curbs, gutters, sidewalks, signals, etc.), public water/sanitary sewer lines, storm water management, parking, streetscape, landscaping, and signage.¹¹⁶ Additionally, CDAs may

111. §§ 15.2-5110 to -5124 (Repl. Vol. 2008 & Cum. Supp. 2010); *id.* § 15.2-5158 (Cum. Supp. 2010). The exercise of such powers by the CDA Board is a legislative function. *See, e.g.*, *Mayor of Lexington v. Indus. Dev. Auth.*, 221 Va. 865, 867, 871, 275 S.E.2d 888, 891 (1981) (holding that an industrial development authority was considered a legislative body); *Indus. Dev. Auth. v. La France Cleaners & Laundry Corp.*, 216 Va. 277, 281, 217 S.E.2d 879, 883 (1975) (holding that an industrial development authority’s “powers are legislative powers and [its] exercise is a legislative function”).

112. § 15.2-5100 (Repl. Vol. 2008).

113. Act of Mar. 27, 2009, ch. 473, 2009 Va. Acts 756 (codified as amended at scattered sections of VA. CODE ANN. § 15.2 (Supp. 2009)); *see* VA. CODE ANN. §§ 15.2-5110 to -5124, (Repl. Vol. 2008 & Cum. Supp. 2010); John D. O’Neill, Jr. & Martha A. Warthen, *Economic Development Incentives*, in HANDBOOK, *supra* note 37, at 11-13.

114. Ch. 473, 2009 Va. Acts at 757 (codified as amended at VA. CODE ANN. § 15.2-5101 (Supp. 2009)).

115. Act of Mar. 29, 1993, ch. 850, 1993 Va. Acts 1234, 1235 (codified at VA. CODE ANN. § 15.1-1250.03 (Cum. Supp. 1993)); Act of Mar. 18, 1995, ch. 402, 1995 Va. Acts 576, 577 (codified as amended at VA. CODE ANN. § 15.1-1250.03 (Cum. Supp. 1995)).

116. *Id.*; *see, e.g.*, Mosaic Petition, *supra* note 52, at 2. Additionally, CDAs may fund infrastructure for active adult-restricted communities with a population of at least one

provide certain special management services related to the operation of the district, including garbage collection, street cleaning, security, grounds keeping, etc.¹¹⁷ The CDA Ordinance must enumerate any infrastructure or services that the CDA proposes to undertake or provide.¹¹⁸

1. Public Purpose of CDA Infrastructure

Virginia's localities enjoy broad discretion in determining whether or not a proposed improvement satisfies the public purpose hurdle of Virginia Code section 15.2-5158.¹¹⁹ Establishing the public purpose of CDA infrastructure and creating a public entity "end user" following completion of the improvements may also be beneficial in distinguishing CDA bonds from "private activity bonds" and permit the exclusion of interest on CDA bonds from the gross income of bondholders.¹²⁰

Economic development has long been recognized as a legitimate public purpose, and there exists a series of Virginia cases that hold that incidental private uses will not necessarily negate an otherwise valid public purpose.¹²¹ Additionally, infrastructure items and services specifically listed under Virginia Code section 15.2-5158 represent an express declaration by the General Assembly that such items constitute a public use, and as such, it

thousand, including security systems. *Id.* § 15.2-5158(A)(1)(e) (Cum. Supp. 2010).

117. *Id.* § 15.2-5158(A)(4) (Cum. Supp. 2010). The author is unaware of CDAs which have constructed school facilities.

118. *Id.* § 15.2-5111 (Repl. Vol. 2008); *id.* § 15.2-5158(A)(1) (Cum. Supp. 2010).

119. See *Short Pump Town Ctr. Cnty. Dev. Auth. v. Taxpayers*, 54 Va. Cir. 501, 509–12 (2001) (construing VA. CODE ANN. § 15.1-5158 (Cum. Supp. 2010)), *vacated sub. nom. on other grounds*, *Short Pump Town Ctr. Cnty. Dev. Auth. v. Hahn*, 262 Va. 733, 554 S.E.2d 441 (2001). Although the circuit court recognized the broad discretion of Virginia localities to define what constitutes a valid public purpose, it acknowledged that the proposed improvement must also be necessary to qualify for public financing under Virginia Code section 15.2-5158. *Id.*

120. See 26 U.S.C. §§ 103 & 141 (2006).

121. See, e.g., *Taxpayers*, 54 Va. Cir. at 508–09; *City of Charlottesville v. DeHaan*, 228 Va. 578, 585–86, 323 S.E.2d 131, 134–35 (1984) (holding that private benefit is irrelevant so long as the jurisdiction's animating purpose is to encourage economic development); *Fairfax Cnty. Indus. Dev. Auth. v. Coyner*, 207 Va. 351, 357, 150 S.E.2d 87, 93 (1966) (holding that industrial development and creating jobs is a public purpose which is not destroyed by incidental private benefit); *Harrison v. Day*, 202 Va. 967, 974, 121 S.E.2d 615, 620 (1961) (citations omitted) (holding that private benefit does not destroy a public purpose); *Hunter v. Norfolk Redev. Hous. Auth.*, 195 Va. 326, 337, 78 S.E.2d 893, 900 (1953) (same).

may not be necessary for local governments to make individual findings that those improvements are “public” in nature.¹²²

In recent years, the General Assembly has reduced the statutorily limitations governing the public purposes of CDA infrastructure projects. Prior to 2009, improvements to be financed by CDAs were limited to those which were “necessary to meet the increased demands placed upon the locality as a result of development within the [CDA] district.”¹²³ While this generally had been viewed as a fairly broad expression, the General Assembly expanded Virginia Code section 15.2-5158 in 2009 to also include those improvements which are “desirable for development or redevelopment within or affecting the district.”¹²⁴

Virginia’s courts generally give weight to legislative determinations that a proposed improvement satisfies a public purpose.¹²⁵ Reasonable doubts as to the constitutionality of legislative enactments have historically been resolved in favor of their legality, and local legislative declarations that a contemplated use is a public one are presumed to be correct by courts.¹²⁶ Further, a court will not substitute its judgment for that of the locality unless the action is arbitrary, unreasonable, and without a “substantial relation to the health, safety, morals or general welfare.”¹²⁷ As noted above in Section II.A.1 and as mandated by Virginia Code section 15.2-5154, a statement of public benefit is often included in the CDA Petition and Ordinance to document

122. § 15.2-5158 (Cum. Supp. 2010); *see Stanpark Realty Corp. v. City of Norfolk*, 199 Va. 716, 719–20, 101 S.E.2d 527, 530 (1958); *see, e.g.*, *Andrews v. Warren Cnty. Bd. of Supervisors*, 37 Va. Cir. 128, 133 (Cir. Ct. 1995) (Warren County) (finding that municipality does not need to own infrastructure to issue public purpose bonds).

123. § 15.2-5158(A)(1) (Repl. Vol. 2008).

124. Act of Mar. 27, 2009, ch. 473, 2009 Va. Acts 756, 762 (codified as amended at VA. CODE ANN. § 15.2-5158(A)(1) (Supp. 2009)).

125. *Taubman Regency Square Assocs., L.L.C. v. Bd. of Supervisors*, No. CH00-1304, at 12 (Cir. Ct. May 10, 2002) (Henrico County).

126. *See Hoffman Family, L.L.C. v. City of Alexandria*, 272 Va. 274, 287, 634 S.E.2d 722, 729 (2006) (citing *Infants v. Va. Hous. Dev. Auth.*, 221 Va. 659, 669, 272 S.E.2d 649, 655 (1980); *City of Richmond v. Dervishian*, 190 Va. 398, 405, 57 S.E.2d 120, 123 (1950)).

127. *Infants*, 221 Va. at 671, 272 S.E.2d at 656 (citing *W. Bro. Brick Co. Inc. v. Alexandria*, 169 Va. 271, 288, 192 S.E.2d 881, 888 (1937)). In *Infants*, the court discusses the legislative actions of the General Assembly, but its holding presumably applies to all legislative bodies. *Cf. id.* at 669, 192 S.E.2d at 655 (“[L]egislative judgment may not be vetoed by the judicial branch” (citing *Mumpower v. Housing Auth.*, 176 Va. 426, 444, 11 S.E.2d 732, 738 (1940))).

the public benefits which will accrue from the financed improvements.¹²⁸

2. Deciphering the Necessity of CDA Infrastructure through the *Short Pump Town Center* Cases

Often, the pertinent question in deciphering the acceptability of CDA-financed infrastructure has been whether the proposed improvements are actually necessary to meet increased demands placed on a locality by new development. This was a major issue in the *Short Pump* line of cases—to date the only family of CDA-related cases to be heard by the Supreme Court of Virginia.¹²⁹

In *Short Pump Town Center Community Development Authority v. Taxpayers*, the Short Pump Town Center CDA brought a 2001 bond validation proceeding (discussed below in Section IV.A.2) in the Henrico County Circuit Court under Code section 15.2-2651.¹³⁰ Several taxpayers—including the owner of a competing shopping center—filed grounds of defense to oppose the issuance of bonds, alleging that the CDA statutes did not authorize the financing arrangement for the proposed improvements.¹³¹ While the circuit court rejected some of the taxpayers' claims, it determined that the proposed improvements, with two exceptions, were only useful in meeting the needs of the developer.¹³² Accordingly, the circuit court ruled that the CDA's planned bond issue did not meet the public purpose requirements of Virginia Code section 15.2-5158, and was therefore invalid.¹³³

The Short Pump Town Center CDA, joined by the Henrico County Board of Supervisors and the Henrico County Economic Development Authority, subsequently appealed the circuit court's decision to the Supreme Court of Virginia.¹³⁴ In *Short Pump Town Center Community Development Authority v. Hahn*, the supreme

128. § 15.2-5154 (Cum. Supp. 2010); LOUDOUN COUNTY, VA., CODIFIED ORDINANCES tit. 10, § 260.03(d) (2009); *see* DTC Petition, *supra* note 27, at 3; Marquis Petition, *supra* note 27.

129. *Short Pump Town Ctr. Cmty. Dev. Auth. v. Taxpayers*, 54 Va. Cir. 501 (Cir. Ct. 2001) (Henrico County), *vacated sub nom. on other grounds*, *Short Pump Town Ctr. Cmty. Dev. Auth. v. Hahn*, 262 Va. 733, 554 S.E.2d 441 (2001).

130. 54 Va. Cir. at 505–06.

131. *Id.* at 506–07.

132. *Id.* at 511–12.

133. *Id.* at 507, 512.

134. *Hahn*, 262 Va. at 740, 554 S.E.2d at 444.

court vacated the judgment of the Henrico Circuit Court, holding that a CDA was not entitled to bring a bond validation suit under Virginia Code section 15.2-2651 of the Virginia Public Finance Act.¹³⁵ At that time, CDAs were not classified as “political subdivisions”—one of the specifically defined entities then entitled to bring such a suit under that statute.¹³⁶ Rather, the parties should have used the bond validation procedure contained in the WWAA.¹³⁷ The court’s decision acknowledged that it left many questions unanswered regarding the nature of infrastructure improvements permitted to be financed by a CDA as the case was vacated and dismissed on technical grounds.¹³⁸

In a separate action filed two days after the original filing of the Short Pump Town Center CDA bond validation suit, the owner of a competing shopping mall, Taubman Regency Square Associates, separately contested the issuance of Short Pump Town Center CDA’s bonds in *Taubman Regency Square Associates, L.L.C. v. Board of Supervisors*.¹³⁹ The court consolidated and stayed this action pending the outcome of the CDA’s bond validation suit.¹⁴⁰ Heard by the Henrico County Circuit Court in 2002 following *Hahn*, Taubman relitigated most of the issues heard earlier in *Short Pump Town Center Community Development Authority v. Taxpayers*.¹⁴¹ This time, however, the circuit court ruled in favor of the Short Pump Town Center CDA, finding that the proposed improvements were within the scope of the authorizing statute.¹⁴² The court rejected the plaintiff’s request that it take a narrow view of the purposes for the creation of a CDA.¹⁴³ Taubman subsequently appealed the decision to the Supreme Court of Virginia, which declined to grant the appeal.¹⁴⁴

135. *Id.* at 736, 554 S.E.2d at 441.

136. *Id.* at 745–46, 554 S.E.2d at 447.

137. *Id.* at 748, 554 S.E.2d at 448–49.

138. *Id.* at 748–49 & n.15, 554 S.E.2d at 449 & n.15.

139. No. CH00-1304, at 2 (Cir. Ct. May 10, 2002) (Henrico County).

140. *Id.*

141. Compare *id.*, with *Short Pump Town Ctr. Cnty. Dev. Auth. v. Taxpayers*, 54 Va. Cir. 501 (Cir. Ct. 2001) (Henrico County).

142. *Taubman*, at 8–10.

143. *Id.* at 10.

144. *Taubman Regency Square Assocs., L.L.C. v. Bd. of Supervisors*, No. 022024 (Va. Apr. 18, 2003) (appeal refused Feb. 10, 2003). In separate actions, Taubman also sued federal agencies and Henrico County in 2002 and 2003 in the Eastern District of Virginia and the United States Court of Appeals for the Fourth Circuit. See *Taubman Realty Group v. Mineta*, 320 F.3d 475 (4th Cir. 2003), aff’g 198 F. Supp. 2d 744 (E.D. Va. 2002).

3. Contracting for Construction and Services: Public Procurement Limited Exemption

Since 1996, CDAs have enjoyed a limited exemption from the Virginia Public Procurement Act for contracts in which special *ad valorem* taxes or assessments authorized pursuant to Virginia Code section 15.2-5158 are used for payment.¹⁴⁵ Accordingly, for contracts using these forms of payment, CDAs may enter into noncompetitive contracts when exercising any powers permitted by section 15.2-5158.¹⁴⁶ This automatic exemption, however, does not apply to the awarding of contracts where any form of public funds not contemplated by section 15.2-5158—including, for example, tax increment financing¹⁴⁷—are involved.¹⁴⁸ Accordingly, CDAs or localities wishing to award CDA-related contracts making use of these funds without competitive negotiation or sealed bidding must make an advanced factual written determination that competitive sealed bidding is not practicable or fiscally advantageous to the public, and “that there is only one source practically available for” improvements or services needed by the locality.¹⁴⁹

145. See Act of Apr. 10, 1996, ch. 897, 1996 Va. Acts 1667, 1667 (currently codified as amended at VA. CODE ANN. § 2.2-4344(C) (Cum. Supp. 2010)); *id.* §§ 2.2-4300 to -4342 (Repl. Vol. 2008 & Cum. Supp. 2010); *see also* Mary M. Bathory Vidaver, CDAs: A Primer 2 (Apr. 21, 2010) (unpublished manuscript), <http://www.loudoun.gov/Default.aspx?tabid=312&fmppath=/Press%20Releases/Supervisor%20Burton/> (follow “CDA’s-A Primer” hyperlink; then follow “CDA Primer1” hyperlink) (stating that Virginia Code section 15.2-5158 requires annual *ad valorem* assessments).

146. § 2.2-4344(C) (Cum. Supp. 2010).

147. See discussion *infra* Section IV.C.4.

148. § 2.2-4344(C) (Cum. Supp. 2010); *see also* Author Notes to Stone & Youngberg Webinar, *supra* note 65 (on file with author).

149. § 2.2-4303(E) (Cum. Supp. 2010); *see also* 1984 Op. Va. Att’y Gen. 291 (analyzing whether or not a “public body” can award a contract without a competitive bidding process under the Virginia Public Procurement Act, VA. CODE ANN. § 11-35 to -80 (Cum. Supp. 1983)).

B. *Power to Incur Debt*

CDAAs may issue limited obligation bonds.¹⁵⁰ Except where approval by the locality is specifically required by the provisions of the CDA's governing documents or by the trust agreement securing the bonds, bond issuance by the CDA does not require the consent of the locality.¹⁵¹ CDA bonds are typically issued pursuant to a trust indenture and are secured over a maximum maturation period of forty years from specifically identified CDA revenues.¹⁵² To date, approximately twenty CDAs have issued debt, ranging from approximately \$6.6 million to more than \$92 million.¹⁵³

1. Local Obligations to Support CDA Bonds

One of the determining factors governing a locality's receptivity to a CDA proposal is whether a CDA's potential default on bond repayments, and a diffusion of debt-issuing authority, will have a negative impact on a jurisdiction's credit rating.¹⁵⁴ Indeed,

150. § 15.2-5101 (Cum. Supp. 2010); *id.* § 15.2-5103(C) (Repl. Vol. 2008); *id.* §§ 15.2-5125, -5158(A)(2) (Cum. Supp. 2010). Note that local governments sometimes question whether the expediency in using CDA bonds to finance improvements and provide services is outweighed by the efficiency of the usually lower borrowing rates of a locality. *See Memorandum from Kirby M. Bowers, Cnty. Adm'r, to Fin. & Gov't Servs. Comm. A2-4* (May 5, 2005), <http://www.loudoun.gov/Default.aspx?tabid=313&fmpath=/Board%20Standing%20Committees> (follow "Finance-Gov't Services" hyperlink; then follow "2005" hyperlink; then follow "05-09-05 CDA" hyperlink; then follow "Fiscal Policy Amendment Special Assessment District Policy.pdf" hyperlink).

151. § 15.2-5158(A)(2) (Cum. Supp. 2010). This provision was added to the CDA Statutes in 2004. *See Act of Apr. 12, 2004, ch. 637, 2004 Va. Acts 925* (codified as amended at VA. CODE ANN. § 15.2-5158 (Cum. Supp. 2004)).

152. §§ 15.2-5125, -5133 (Cum. Supp. 2010). "Bond maturities of approximately 30 years are typical for long-term CDA financing. . . ." Presentation to the Loudoun County Finance & Government Services Committee: A Summary of Community Development Authorities, <http://www.loudoun.gov/Default.aspx?tabid=313&fmpath=/Board%20Standing%20Committees> (follow "Finance-Gov't Services Committee" hyperlink, then follow "Special FGS Committee Meetings Jan-Feb 04" hyperlink; then follow "Special FGS Committee Meetings Jan-Feb 04" hyperlink; then follow "Presentation" hyperlink; then follow "B-CDA Overview for Loudoun.pdf" hyperlink) (last visited Oct. 30, 2010).

153. Todd, *supra* note 11, at 10; Powell, *supra* note 2, at 6.

154. *See, e.g.*, Informal Worksession Presentation to the Prince William Cnty. Gov't: Cnty. Dev. Auths. 5 (Feb. 15, 2005), <http://www.pwcgov.org/docLibrary/PDF/003230.pdf>; Loudoun County, Va., Action Item No. 4 for the Meeting of the Bd. of Supervisors Fin./Gov't Servs. & Operations Comm., 2-3, Apr. 28, 2010, <http://www.loudoun.gov/Default.aspx?tabid=312&fmpath=/Board%20Standing%20Committees> (follow "Finance-Gov't Services-Operations Committee" hyperlink; then follow "2010" hyperlink; then follow "4-28-10" hyperlink; then follow "4-28-10 PDF" hyperlink); Loudoun Cnty., Va., Agenda Item 15h for the Regular Meeting of the Loudoun Cnty. Bd. of Supervisors, July 15, 2009, *available at*

Virginia's localities were hesitant to explore the use of CDAs until 1997, when major amendments to the Virginia Code clarified that CDA debt would not be considered a debt of the locality.¹⁵⁵ The amendments further stated that no amount of CDA bonds may be included in a jurisdiction's financial statements as a contingent obligation, and that jurisdictions that did not elect to provide in their CDA Ordinances to back CDA bonds financially were precluded from doing so.¹⁵⁶

Today, any ordinance, agreement, or resolution adopted pursuant to the CDA Statutes must provide that bonds issued by a CDA are the debt of the authority rather than of the local government.¹⁵⁷ Moreover, localities are prohibited from assisting in the repayment of CDA bonds unless specifically contemplated in the CDA Ordinance or pursuant to a subsequent ordinance authorizing additional improvements.¹⁵⁸ In the CDA Ordinance, a locality may elect to offer support where it perceives that doing so is fiscally prudent.¹⁵⁹ Alternatively, a jurisdiction may fashion a CDA Ordinance provision that preserves its ability to intervene without making a moral or legal commitment to stand behind the bonds.¹⁶⁰

<http://www.loudoun.gov/Default.aspx?tabid=312&fmpath=BOS%20Minutes> (follow "Business Meeting Minutes 2009" hyperlink; then follow "07-21-09 BOS Minutes final" hyperlink); Mike DiCicco, *Board Denies Kincora Development*, CASCADES CONNECTION (Alexandria), Nov. 20, 2007, <http://www.connectionnewspapers.com/article.asp?article=310712&paper=83&cat=104>.

155. Act of Mar. 15, 1997, ch. 363, 1997 Va. Acts 535, 535 (codified as amended at VA. CODE ANN. § 15.1-1242(C) (Spec. Supp. & Repl. Vol. 1997)). These amendments were later recodified at Virginia Code section 15.2-5103(C) (Repl. Vol. 1997).

156. *Id.*, 1997 Va. Acts at 537 (codified as amended at VA. CODE ANN. § 15.1-1257(B)-(C) (Spec. Supp. & Repl. Vol. 1997)). These amendments were later recodified at Virginia Code section 15.2-5131(B)-(C) (Repl. Vol. 1997). The General Assembly solidified these protections in 2004. Act of Apr. 12, 2004, ch. 637, 2004 Va. Acts 925, 925 (codified as amended at VA. CODE ANN. § 15.2-5158 (Cum. Supp. 2004)).

157. § 15.2-5103(C) (Repl. Vol. 2008).

158. *Id.* § 15.2-5131(B) (Repl. Vol. 2008). While counties may give or advance funds to authorities under Virginia Code section 15.2-1205, and though section 15.2-5114(9) permits all political subdivisions to provide such funds, their ability to do so in relation to CDA bond repayment appears to be superseded by the express provisions of section 15.2-5131(B). *Id.* § 15.2-1205 (Repl. Vol. 2008); *id.* § 15.2-5114(9) (Cum. Supp. 2010); *id.* § 15.2-5131(B) (Repl. Vol. 2008).

159. For example, a locality may elect to back CDA bonds to assist with their marketing, or because it may feel its interests are best served by agreeing to assume debt in event of default. See John O. O'Neill, Jr. & Martha A. Warthen, *Economic Development Incentives*, in HANDBOOK, *supra* note 37, at 11-12, -15.

160. For example, 2009's economic woes hurt the ability of the City of Richmond's Broad Street CDA to repay bonds, and the CDA was forced to seek assistance from the

While the issuance of CDA bonds cannot count towards a locality's debt capacity from a statutory perspective, rating agencies, private lenders, and potential purchasers of debt instruments may take CDA bonds into account when reviewing a locality's debt burden.¹⁶¹ Local governments have adopted a range of responses to minimize the potential for default and to guard against real or perceived risks to a jurisdiction's fiscal reputation. For example, some localities have established debt service reserve funds or require continuing municipal securities disclosure compliance or both.¹⁶² Almost all localities have required that CDA bonds be sold in \$100,000 denominations to avoid sales to unsophisticated investors.¹⁶³ Several jurisdictions, beginning with Prince William County in 1997, have adopted policies specifically governing the procedures for evaluating CDA proposals.¹⁶⁴ Most notably, many

Richmond City Council, which had previously assumed the obligation to assist in the payment of debt service of up to \$3 million if needed. *See* Richmond City, Va., Ordinance No. 2003-107-92, Attachment: Memorandum of Understanding 8, (Apr. 14, 2003); Will Jones, *Richmond Budget Plan Has No Cuts in Services*, RICH. TIMES-DISPATCH, Mar. 23, 2010, at A1.

161. *See* Todd, *supra* note 11, at 8, 10. Some jurisdictions remain disconcerted with what they have interpreted as vagueness on the part of rating agencies as to how CDA debt would be calculated. *See* *Kincora Village Center Rezoning Gains Planning Commission Support*, LOUDOUN NEWSLETTER (Virginia Newsletters, L.L.C., Herndon, Va.), Apr. 28, 2010, at 3. For an additional review of rating agencies and bond market perspectives related to CDAs, see Nathan S. Betnun, Legg Mason Wood Walker, Inc., Presentation to the Loudoun Cnty. Bd. of Supervisors Fin. Comm.: Rating Agencies/Bond Markets (May 9, 2005), <http://www.loudoun.gov/Default.aspx?tabid=313&fmpath=/Board%20Standing%20Committees> (follow "Finance-Govt. Services Committee" hyperlink; then follow "2005" hyperlink; then follow "05-09-05 CDA" hyperlink; then follow "Fiscal Policy Amendment Special Assessment District Policy" hyperlink).

162. *See* Mosaic MOU, *supra* note 66, at 12–13.

163. *See* Loudoun County, Va. Board of Supervisors, Fiscal Policy, E-63 to E-64 (1984 & Supp. 2008), <http://www.loudoun.gov/Default.aspx?tabid=326> (follow "Budget" hyperlink; then follow "FY 2010" hyperlink; then follow "Adopted FY10 Budget" hyperlink; then follow "Executive Summary" hyperlink; then follow "19 FY10 Fiscal Policy.pdf" hyperlink [hereinafter Loudoun Fiscal Policies]; Bonnie France, Partner, Williams Mullen L.L.C., Presentation to Joint Subcom. Established under House Joint Resolution 178/Senate Joint Resolution 70: Cnty. Dev. Auths. 8 (Jan. 13, 2009), <http://dls.state.va.us/GROUPS/dlut/MEETINGS/011309/CDAs.pdf> [hereinafter France Presentation].

164. Prince William's policies have served as an example for several jurisdictions. *See* Prince William County, Va., Resolution 97-979 (Dec. 2, 1997). The guidelines were subsequently amended and reinstated in 1998 and again in 2005. Prince William County, Va., Resolution 98-1069 (Dec. 15, 1998); Prince William County, Va., Resolution 05-226 (Mar. 15, 2005); *see also* Roanoke County, Va., Resolution 0921308-1 (Sept. 23, 2008), available at www.roanokecountyva.gov/Departments/BoardofSupervisors/CommunityDevelopmentAuthorityCDA.htm (setting forth guidelines from the petitioning stage to the issuance of bonds); Fairfax County, Va., Principles for Public Investment in Support of Commercial Redevelopment, (July 21, 2008) (providing requirements for the use of public funds in a CDA); Loudoun Fiscal Policies, *supra* note 163, at E-60 to E-64 (setting forth minimum criteria in order for the locality to support a CDA).

localities require that a disclosure statement inform investors of the limitations on the revenues securing the CDA bonds.¹⁶⁵

2. Bond Validation

To shield localities from the consequences of the authorization of illegal securities and to provide additional assurance to prospective bond purchasers, the General Assembly permits CDAs to make use of two judicial bond validation proceedings to ensure conclusively the validity of bonds and the legality of all related proceedings before their authorization or issuance. First, under Virginia Code section 15.2-5126, a CDA may file its CDA Ordinance with the circuit court and await challenges for thirty days, during which any person in interest may contest the validity of bonds issued by the CDA.¹⁶⁶ If no challenges are filed, the bonds and all proceedings related to their authorization are presumed legal and may not be challenged.¹⁶⁷ However, only interested parties may utilize this procedure in challenging—not establishing—the validity of bonds.¹⁶⁸ This section is similar to that of section 15.2-2627, which similarly does not permit a CDA to establish the validity of its bonds.¹⁶⁹

Pursuant to Virginia Code section 15.2-2651, part of Virginia's Public Finance Act, a bond-issuing CDA may also bring a motion for judgment in any court of the jurisdiction in which it is located to establish the validity of the bonds.¹⁷⁰ Any interested party—including taxpayers, property owners, and citizens of the jurisdiction—are named defendants.¹⁷¹ Because legislative actions related to bond issuance enjoy a strong presumption of validity, a

165. *See, e.g.*, Prince William County, Va., Resolution 05-226 (Mar. 15, 2005); Peninsula MOU, *supra* note 66, at 2. Such a statement may assert that the CDA debt is not the debt of the locality, that the locality has no legal or moral obligation to assist the CDA in the event of a default, and that the jurisdiction's full faith and credit will not be pledged to any CDA bonds. *See* VA. CODE ANN. § 15.2-5158(A)(2) (Cum. Supp. 2010).

166. § 15.2-5126 (Repl. Vol. 2008).

167. *Id.*

168. *Id.*; *see* Short Pump Town Ctr. Cmty. Dev. Auth. v. Hahn, 262 Va. 733, 747, 554 S.E.2d 441, 448 (2001).

169. *Compare* § 15.2-2627 (Repl. Vol. 2008 & Cum. Supp. 2010), *with id.* § 15.2-5126 (Repl. Vol. 2008). *See Hahn*, 262 Va. at 747, 554 S.E.2d at 448, for a comparison of the two code sections.

170. § 15.2-2651 (Repl. Vol. 2008).

171. *Id.*

bond issue is to be upheld unless there are substantial defects, material errors, or omissions in it.¹⁷²

As noted above in relation to *Hahn*, prior to 2003, CDAs had neither been legislatively declared nor judicially determined to be political subdivisions and, as such, were prohibited from using Virginia Code section 15.2-2651 for bond validation purposes.¹⁷³ Following *Hahn*, however, the General Assembly amended section 15.2-5155 in 2003 to state that CDAs are “a public body politic and corporate and political subdivision of the Commonwealth” and, accordingly, CDAs may now use the method provided by section 15.2-2651.¹⁷⁴ Regardless of the method of bond validation, CDA bonds are presumed to be valid and legal obligations and are enforceable by law.¹⁷⁵ All proceedings taken in connection with the “authorization, issuance, sale, execution, delivery, and repayment of [CDA] bonds” enjoy a similar presumption of validity.¹⁷⁶

C. Power to Generate Revenue

The CDA Statutes contemplate that CDAs may generate revenue in three main ways: special *ad valorem* taxes, special assessments, and special rates or fees.¹⁷⁷ While CDAs have no access to a jurisdiction’s general fund revenues and do not possess the ability to independently levy special taxes or special assessments, CDAs have traditionally serviced bond debt via special taxes or special assessments levied and collected on the

172. *Id.* § 15.2-2658 (Repl. Vol. 2008); *see* *Harper v. City Council*, 220 Va. 727, 740, 251 S.E.2d 560, 568 (1980) (“Code § 15.1-221 is a codification of the general principle that the validity of a bond issue will be sustained by the courts”). At the time of this decision, Virginia Code section 15.2-2568 was codified at section 15.1-221 (Repl. Vol. 1973 & Cum. Supp. 1980).

173. *Hahn*, 262 Va. at 746, 748, 554 S.E.2d at 447, 449.

174. Act of Mar. 19, 2003, ch. 712, 2003 Va. Acts 950 (codified as amended at VA. CODE ANN. § 15.2-5155(A) (Repl. Vol. 2003). Presumably, this amendment also counteracts a portion of a June 2002 ruling of the Virginia Tax Commissioner, which held that because a CDA was not a political subdivision, CDAs do not qualify for government exemption from retail sales and use taxes for “tangible personal property for use or consumption.” *See* VA. DEP’T OF TAXATION, PUB. DOC. 02-89 (June 11, 2002), *available at* <http://www.policylibrary.tax.virginia.gov/OTP/policy.nsf> (follow “Rulings of the Tax Commissioner” hyperlink; then follow “2002” hyperlink; then follow “PD 02-89” hyperlink).

175. § 15.2-5159 (Cum. Supp. 2010).

176. *Id.*

177. *Id.* § 15.2-5158(A)(3), (5), (6) (Cum. Supp. 2010).

CDAs' behalf by the locality.¹⁷⁸ Many localities have also pledged certain incremental increases in tax revenues to the CDA.¹⁷⁹ Each of these four methods, frequently referenced in the CDA Ordinance, is briefly discussed below.¹⁸⁰ Notably, the imposition of special assessments, taxes, and other fees and rates charged by a CDA can be met with surprise and/or disfavor by landowners, customers, and potential purchasers of property.¹⁸¹

1. Characteristics of Special *Ad Valorem* Taxes

CDAs may request that the locality charge an annual *ad valorem* real estate tax ("special *ad valorem* tax") based upon the assessed fair market value of the taxable real property within the CDA district.¹⁸² Special *ad valorem* taxes are limited to twenty-five cents of every \$100 of assessed value per parcel, unless all landowners within the CDA district request more.¹⁸³ A locality collects the special *ad valorem* tax and maintains the proceeds in a separate account, which may only be used for assisting the

178. *Id.* § 15.2-5125 (Cum. Supp. 2010); *see* John D. O'Neill, Jr. & Martha A. Warthen, *Economic Development Incentives*, in HANDBOOK, *supra* note 37, at 11-12.

179. *See, e.g.*, Mosaic MOU, *supra* note 66, at 13. While tax increment financing ("TIF") is authorized under Virginia Code section 58.1-3245 through -3245.5, many practitioners could rely on the locality's general authority to appropriate to the CDA pursuant to section 15.2-1205 (for counties) or section 15.2-5114(9) (for towns and cities). § 15.2-1205 (Repl. Vol. 2008); *id.* § 15.2-5114(9) (Cum. Supp. 2010); *id.* §§ 58.1-3245 to -3245.5 (Repl. Vol. 2009). Information regarding TIF agreements is often referenced in the MOU and CDA Ordinance. *See* Stone & Youngberg Webinar, *supra* note 65, at 19; *see also* CITY OF CHESAPEAKE, VA., CODE OF ORDINANCES §§ 30-550 to -562 (2010); PATRICIA A. PHILLIPS, DEPT' OF FIN., REPORT ON TAX INCREMENT FINANCING DISTRICTS AND SPECIAL SERVICE DISTRICTS IN THE CITY OF VIRGINIA BEACH, VIRGINIA (Nov. 21, 2008), http://www.vbgov.com/file_source/dept/mcg/WebPage/HotTopics/Town%20Center/Documents/admin_nl_2008_tif_report_final.pdf.

180. Failed legislation in recent years would have allowed CDAs to request annually its respective locality impose additional sales, transient occupancy, and food and beverage taxes within a CDA district. *See* H.B. 359, Va. Gen. Assembly (Reg. Sess. 2010); H.B. 343, Va. Gen. Assembly (Reg. Sess. 2010); H.B. 2662, Va. Gen. Assembly (Reg. Sess. 2009).

181. *See, e.g.*, Shannon Humphrey, *Peninsula Town Center Purchases Come with an Unexpected Charge*, DAILY PRESS (Newport News), Jan. 15, 2010, at A1, available at http://articles.daily press.com/2001-01-15/news/1001140192_1_mall-properties-bond-issue-hampton-city-coun cil; Nikita Stewart, *Cherry Hill Might Levy Special Taxes*, WASH. POST, Jan. 15, 2006, at T01.

182. § 15.2-5158(A)(3) (Cum. Supp. 2010).

183. *Id.*

CDA.¹⁸⁴ As discussed below,¹⁸⁵ special *ad valorem* taxes are treated as tax liens under Virginia Code section 58.1-3340.¹⁸⁶

2. Characteristics of Special Assessments

a. In General

At the request of the CDA, a special assessment may be imposed by the governing body on property within the district, apportioned to each parcel based upon benefits conferred by the planned improvements.¹⁸⁷ Similarly to special *ad valorem* taxes, special assessments receive the same treatment as tax liens, may be used solely for CDA purposes, and are annually appropriated to the CDA.¹⁸⁸ While a special assessment is a species of a tax and represents an exercise of the locality's general taxing powers, it is distinguishable from the special *ad valorem* tax and a locality's general taxes in that it is based upon benefits conferred only on favored properties.¹⁸⁹

CDA special assessments are subject to statutory and constitutional restrictions. Because Virginia's localities enjoy only those powers of assessment expressly conferred on them by the General Assembly, the power to assess must be exercised strictly within such restrictions.¹⁹⁰ Article X, section 3 of the Virginia Constitu-

184. *Id.*

185. *See infra* Section IV.C.2-3.

186. § 58.1-3340 (Cum. Supp. 2010).

187. *Id.* § 15.2-5158(A)(5) (Cum. Supp. 2010); *see also* 1978 Op. Va. Att'y Gen. 504 (stating that a property owner is required to pay a special assessment "unless that amount would exceed the 'peculiar benefits' to the property").

188. § 15.2-5158(A)(5) (Cum. Supp. 2010); *see also id.* § 58.1-3340 (Cum. Supp. 2010). The amount of the annual appropriation is in the amount needed to meet the principal and interest demands of bonds on an annual basis. *Id.* § 15.2-5158(A)(5) (Cum. Supp. 2010).

189. *See Norfolk v. Ellis*, 67 Va. (26 Gratt.) 224, 230 (1875) ("[A]ssessments, as distinguished from general taxation, rest solely upon the idea of equivalents, a compensation proportioned to the special benefits derived from the improvement"). For a related discussion, *see* 64 C.J.S. *Municipal Corporations* § 1117 (1999); 16 MICHIE'S *JURISPRUDENCE Special Assessments* §§ 2, 8, 10, 13 (Repl. Vol. 2010).

190. *S. Ry. Co. v. City of Richmond*, 175 Va. 308, 313, 8 S.E.2d 271, 273 (1940); *see also* *Hicks v. City of Bristol*, 102 Va. 861, 864-65, 47 S.E. 1001, 1002 (1904) (discussing how a state, through constitutional provision, may void permission to levy special assessments); *Violett v. City Council of Alexandria*, 92 Va. 561, 579, 23 S.E. 909, 915 (1896) (stating how localities must keep closely within the provisions delegated by the legislature to levy special assessments). Prior to the adoption of the 1971 Constitution, localities were prohibited from levying special assessments for local improvements on abutting property owners by

tion—which authorizes the General Assembly to permit localities to levy special assessments—imposes two basic limitations on such assessments in relation to the improvements they finance.¹⁹¹ First, any special assessment must “abut” an improvement, and second, any special assessments imposed may not exceed the “peculiar benefits” resulting from the improvements to abutting property owners.¹⁹² A discussion of these two requirements follows.

b. Abutting Improvements

Prior to 2006, statutory and constitutional interpretations of the term “abutting” as they related to the permissibility of special assessments were generally more restrictive than the statute or provision being interpreted.¹⁹³ The Supreme Court of Virginia previously addressed the issue of abutment in the context of highway improvements in *Taylor v. Board of Supervisors*.¹⁹⁴ There, the court held that the term “abutting” limited levying special assessments “to owners of land bordering upon, and not merely adjacent or in close proximity to, the portion of the street that is being improved.”¹⁹⁵ This decision accorded with a 1980 At-

section 170 of the Constitution of 1902. Exceptions to this limitation included cities and towns that improved sidewalks, paved alleys, and constructed sewers. While amendments in 1927 modestly expanded the use of assessments, and further amendments in 1966 were proposed, most constitutional limitations were removed by the inclusion of article X, section 3 in the 1971 Constitution, which granted to the General Assembly the power to determine the legitimacy of special assessments. *See JOHN DINAN, THE VIRGINIA STATE CONSTITUTION: A REFERENCE GUIDE* 195–196 (2006); 2 A.E. DICK HOWARD, *COMMENTARIES ON THE CONSTITUTION OF VIRGINIA* 1060–61 (1974). The 1902 provision ended the practice of localities charging and enforcing payment of special assessments as authorized on an individual basis by charter. *See* 16 MICHIE’S JURISPRUDENCE *Special Assessments* § 9.

191. VA. CONST. art. X, § 3; *see* 1981 Op. Va. Att’y Gen. 91.

192. VA. CONST. art. X, § 3. These requirements are similar to those established under Virginia Code sections 15.2-2400 through -2413 for local public improvement service districts generally. §§ 15.2-2400 to -2413 (Repl. Vol. 2008 & Cum. Supp. 2010); *accord* *Norwood v. Baker*, 172 U.S. 269, 279 (1898) (holding that an assessment “in substantial excess of the special benefits accruing to [the property owner] is . . . a taking [] under the guise of taxation”).

193. *See* 2006 Op. Va. Att’y Gen. 89, 92.

194. 243 Va. 409, 412, 416 S.E.2d 433, 435 (1992); *see also* 2006 Op. Va. Att’y Gen. 89, 92.

195. *Taylor*, 243 Va. at 412, 416 S.E.2d at 435. The term “abut” is defined as “to reach or touch.” *BALLENTINE’S LAW DICTIONARY* 8 (3d ed. 1969); *see also* *State Highway & Transp. Comm’r v. Creative Displays of Norfolk, Ltd.*, 236 Va. 352, 355, 374 S.E.2d 30, 32 (1988) (quoting *Holston Salt & Plaster Co. v. Campbell*, 89 Va. 396, 398, 16 S.E.2d 274, 274 (1892) (“What is adjacent . . . may be separated by the intervention of some other ob-

torney General's opinion, which narrowly construed the definition of "abutting property" to mean "property touching, contacting or bordering on [an] improvement," and required "an immediate physical connection between the improvement and the property assessed."¹⁹⁶

While no Virginia court has defined the term "abutting" as it pertains to CDAs or the WWAA specifically, the Attorney General revisited the definition of "abutting" in 2006, this time providing a slightly expanded definition as the term relates to levying a special assessment, but noting the unison between the 1980 Attorney General interpretation and *Taylor*.¹⁹⁷ Asked to opine upon the permissibility of assessments levied against properties that only abutted a portion of an improvement, the Attorney General noted that abutting property owners "are not necessarily limited to owners of property with fee simple frontage on the improvement[.]" but that properties merely abutting only a *portion* of an integrated system of improvements "may be taxed or assessed . . . to pay its allocable share of the cost of the entire system of improvements."¹⁹⁸ Furthermore, the Attorney General concluded that multiple parcels under the same ownership "may all be considered to abut an improvement when at the time the assessment is levied at least one such parcel abuts the improvement, each parcel adjoins another such parcel, and each parcel derives some benefit from the infrastructure improvements."¹⁹⁹ Arguably, the nature of improvements that a CDA is authorized to undertake (including school buildings, recreational facilities, bridges, parking facilities, and fire prevention systems) suggests a more liberal interpretation of the "abutting" requirement.²⁰⁰

c. Peculiar Benefits of Improvements

As noted in Article X, section 3 of the Virginia Constitution, the amount of assessment may not exceed the "peculiar benefits" of the improvements to any assessed property.²⁰¹ Apportioning the

ject; what is contiguous must touch on one side."").

196. 1981 Op. Va. Att'y Gen. 91, 91.

197. See 2006 Op. Va. Att'y Gen. 89, 92–93.

198. *Id.* at 90, 94.

199. *Id.* at 92–93.

200. See VA. CODE ANN. § 15.2-5158(A)(1) (Cum. Supp. 2010).

201. VA. CONST. art. X, § 3. This rule was in existence prior to the adoption of the 1971

benefit of improvements to particular parcels has long been held to be a legislative function,²⁰² and an assessment may not exceed the full cost of improvements being financed plus any incidental administrative costs required in establishing the CDA and said improvements.²⁰³ In *Southern Railway Co. v. City of Richmond*, the Supreme Court of Virginia interpreted the term “peculiar benefits” to mean “the difference [in] the value of the lot with and without [improvements]” and “the full amount of the enhanced value” of each lot resulting from the construction of improvements.²⁰⁴ And in *City of Richmond v. Eubank*, the court further held that “the maximum amount which may be charged or taxed is measured by the value of the [improvement] to the abutting lots.”²⁰⁵

Multiple parcels within a CDA have previously been assessed differently based on their relationship to the improvements, their use, or development intensity.²⁰⁶ In no event, however, is an “abutting property owner required to pay an assessment in excess of” the advantages accruing to the property as a result of the proposed improvements.²⁰⁷ If multiple contiguous parcels owned by one landowner are subsequently sold and no longer exist under a unified ownership, such a sale does “not affect the validity of the assessment” and it may be apportioned to the new owners.²⁰⁸

constitution. *See* *Violett v. City Council of Alexandria*, 92 Va. 561, 576, 23 S.E. 909, 914 (1896) (discussing how assessments upon abutting lots levied according to benefits are not in violation of article X, section 1 of the Virginia Constitution).

202. *See* *Norfolk v. Ellis*, 67 Va. (26 Gratt.) 224, 228 (1875) (“[C]ourts are not authorized to interfere [in assessments] merely because they may consider the taxation impolitic, or even unjust and oppressive.”).

203. Calculation of such costs are discussed in Virginia Code section 15.2-5158(A) (5)(i) (Cum. Supp. 2010).

204. *S. Ry. Co. v. City of Richmond*, 175 Va. 308, 315-16, 8 S.E.2d 271, 274 (1940); *see also* *City of Richmond v. Eubank*, 179 Va. 70, 75, 18 S.E.2d 397, 400 (1942) (discussing a tax assessment on sewers in light of “the peculiar benefits”). For CDAs with multiple parcels, the special assessment must be proportionate to the specific benefit of the proposed improvements to each individual parcel. The method of apportionment will be upheld unless “palpably arbitrary and a plain abuse.” *Roberts v. Richland Irrigation Dist.*, 289 U.S. 71, 74-75 (1933) (citing *Fallbrook Irrigation Dist. v. Bradley*, 164 U.S. 112, 176 (1896)); *see also* 1981 Op. Va. Att'y Gen. 91, 92 (discussing the distinction between apportionment of costs and assessment of peculiar benefits).

205. *Eubank*, 179 Va. at 75, 18 S.E.2d at 400; *see also* *Asberry v. City of Roanoke*, 91 Va. 562, 565, 22 S.E. 360, 361 (1895) (stating that where a benefit is deficient or non-existent, the special element “loses its foundation”).

206. *See* DTC RMA, *supra* note 78, at 3; Henrico RMA, *supra* note 78, at 4; New Kent RMA, *supra* note 78, at 5.

207. 1978 Op. Va. Att'y Gen. 504, 505.

208. 2006 Op. Va. Att'y Gen. 89, 92-93.

However, the assessment for each of the properties in aggregate may not “exceed the peculiar benefits of the improvements to the abutting land as subdivided.”²⁰⁹

3. Collection of Special *Ad Valorem* Taxes & Assessments

A CDA’s special *ad valorem* taxes and assessments levied are in the nature of a tax²¹⁰ and exist as a “personal liability upon the owner against whom the taxes are assessed.”²¹¹ They are treated as tax liens against real property and are superior in dignity to all other liens imposed against the property, including judicial liens, vendor’s liens, or any other lien created by act of the property owner.²¹² Accordingly, local governments may pursue collection of delinquent CDA charges for up to twenty years from the original date of nonpayment by utilizing any methods contemplated by the enforcement provisions of Virginia Code title 58.1.²¹³

Additionally, because foreclosure is often the only remedy for delinquent special *ad valorem* taxes and assessments, a locality may establish a collection agreement on behalf of the bondholders within the MOU or by a separate writing to pursue collection of delinquent payments (or foreclosure) “with the same diligence and in the same manner as it employs” when pursuing delinquent general *ad valorem* taxes.²¹⁴ Additional MOU provisions or CDA governing documents may require the developer to provide disclosure to any subsequent purchaser of land whose property is subject to an outstanding special *ad valorem* tax or assessment, and to disclose that the locality will collect special *ad valorem*

209. VA. CODE ANN. § 15.2-5158(A)(5)(ii) (Cum. Supp. 2010).

210. John D. O’Neill, Jr. & Martha A. Warthen, *Economic Development Incentives*, in HANDBOOK, *supra* note 37, at 11-12.

211. City of Richmond v. Monument Ave. Dev. Corp., 184 Va. 152, 157, 34 S.E.2d 223, 225 (1945); *see also* §§ 58.1-3919 to -3938 (Repl. Vol. 2009) (discussing collection of delinquent taxes).

212. § 58.1-3340 (Cum. Supp. 2010); *see* Monument Ave. Dev. Corp., 184 Va. at 157, 34 S.E.2d at 224; City of Richmond v. Williams, 102 Va. 733, 744, 47 S.E. 844, 847 (1904); Thomas v. Jones, 94 Va. 756, 758–59, 27 S.E. 813, 814 (1897).

213. *See* § 58.1-3341 (Repl. Vol. 2009); *id.* tit. 58.1, ch. 39 (Repl. Vol. 2009 & Cum. Supp. 2010). There exists no provision indicating prioritization of tax lien sale proceeds between a locality’s outstanding general taxes or other taxes in arrears. *See* John D. O’Neill, Jr. & Martha A. Warthen, *Economic Development Incentives*, in HANDBOOK, *supra* note 37, at 11-14.

214. Mosaic MOU, *supra* note 66, at 11. Notably, the signatories to the Mosaic MOU have agreed that the county will not expend resources collecting *de minimis* amounts of outstanding payments. *Id.*

taxes and assessments at the same time and in the same manner as general real estate taxes.²¹⁵

For special assessments in particular, property owners may either elect to prepay the full amount of the assessment up front or in installments for up to forty years, if provided for by the CDA and the locality.²¹⁶ If paid at one time, the property subject to the assessment may be released from the lien; if paid in installments, any assessment lien will be reduced for the principal portion of the annual assessment.²¹⁷

4. Characteristics of Tax Increment Financing

A CDA and a jurisdiction may enter into an agreement whereby the locality dedicates the incremental taxes above a specified base level, generated by economic activity within a designated geographic area, to fund CDA improvements.²¹⁸ This practice, commonly known as “tax increment financing” (“TIF”), does not involve the charging of new taxes, and the sources of tax revenues and amounts may be negotiated.²¹⁹ For example, the locality may pay all or a portion of the net revenues of a development project to a CDA, as well as any other taxes or anticipated revenues that the jurisdiction may lawfully pledge, including real property taxes, personal property taxes, BPOL taxes, sales taxes, transient occupancy taxes, meals taxes, and more.²²⁰

215. *Id.* at 13. Interestingly, the Mosaic MOU also stipulates that failure to provide disclosure has no effect on one's obligation to pay the special assessment or special tax. *Id.* at 13–14.

216. § 15.2-5158(5)(iii) (Cum. Supp. 2010). Property owners in Prince William County's Cherry Hill CDA, for example, will pay annual assessments in installments over 30 years. See Stewart, *supra* note 181.

217. This is often contemplated in the RMA. See, e.g., New Kent RMA, *supra* note 78, at 6, 9. In the event the outstanding amount of a special assessment is permanently paid, most supplemental agreements for CDAs will require the CDA to release the lien and/or provide a recordable notice of payment to the owner. See, e.g., *id.* at 8.

218. See France Presentation, *supra* note 163, at 13; *supra* note 179.

219. See France Presentation, *supra* note 163, at 13. For a general discussion of TIF financing, see COUNCIL OF DEVELOPMENT FINANCE AGENCIES & INTERNATIONAL COUNCIL OF SHOPPING CENTERS, TAX INCREMENT FINANCE BEST PRACTICES REFERENCE GUIDE (2007) [hereinafter BEST PRACTICES GUIDE], available at <http://www.mrsc.org/artdocmisc/CDFA.pdf>.

220. § 58.1-3245.4 (Repl. Vol. 2009); see Powell, *supra* note 2, at 4; Davenport & Co., Presentation to the Spotsylvania Cnty. Bd. of Supervisors: Cnty. Dev. Auths. & Tax Increment Fins. 12 (Dec. 2008), http://www.spotsylvania.va.us/onlineservices/agendas/compositeagendas/Board_of_Supervisors_Meeting_2008-12-09.pdf (follow "R07-0012 Summit

Combining TIF with special *ad valorem* taxes and assessments can make CDA projects more feasible for both local governments and developers and may provide additional security for bond purchasers.²²¹ Bonds are frequently structured so that incremental tax revenues pay the debt service, while special taxes or assessments are used to make up any deficiencies.²²² In conjunction with the powers of industrial and economic development authorities under the Industrial Development and Revenue Bond Act, TIF assists with providing private economic development incentive payments and financing improvements in relation to CDA projects.²²³

5. Characteristics of Rates and Fees

In 2009, the General Assembly amended the CDA Statutes to permit CDAs to set and charge user fees for the use or benefit derived from services and/or facilities provided, owned, operated, or financed by the CDA.²²⁴ Unlike other levies collected by the locality and subsequently appropriated to the CDA, the CDA may directly assign responsibility for collecting user fees to any owner, tenant, or customer of property served by, contracted for, or benefited from CDA services or improvements.²²⁵ The City of Hampton's Peninsula Town Center CDA, for example, has imposed a special retail sales assessment on landowners and retailers equal to 0.5% of all taxable retail sales transactions that are subject to

Crossing" hyperlink).

221. See Powell, *supra* note 2, at 4; see also Davenport & Co., *supra* note 220, at 12.

222. Davenport & Co., *supra* note 220, at 12.

223. See § 15.2-4900 to -4908 (Repl. Vol. 2008 & Cum. Supp. 2010). This financing scheme, utilized in the Short Pump Town Center CDA, was upheld in *Taubman Regency Square Associates, L.L.C. v. Board of Supervisors*, and has more recently been utilized in Prince Edward County's Granite Falls CDA. No. CH00-1304 (Cir. Ct. May 10, 2002) (Henrico County); see Economic Dev. Grant Agreement Between Prince Edward Dev., Prince Edward Cnty. Bd. of Supervisors, and Prince Edward IDA 25-26 (2009), available at http://www.co.prince-edward.va.us/Agendas/AS/AS_01122010_18b.pdf.

224. Act of Mar. 27, 2009, ch. 473, 2009 Va. Acts 756, 763 (codified as amended at VA. CODE ANN. § 15.2-5158(A)(6) (Cum. Supp. 2010)). This amendment, which appears to have been in response to uncertainty as to whether certain WWAA powers applied to CDAs, mirrors the language of Virginia Code section 15.2-5114(10) (Cum. Supp. 2010); France Presentation, *supra* note 163, at 18. Presumably, CDAs may collect such fees without prior authorization by the locality.

225. § 15.2-5158(A)(6) (Cum. Supp. 2010).

the Virginia retail sales and use tax.²²⁶ The Virginia Tax Commissioner has ruled that if a CDA imposes a retail sales tax based upon a percentage of taxable retail sales within a CDA district, revenues generated by the charge are includable within “the sales price of tangible personal property or taxable services sold within the CDA district.”²²⁷

D. Additional Incidental Powers

CDAs are authorized to “[p]urchase development rights that will be dedicated as easements for conservation, open space or other purposes pursuant to [Virginia’s] Open-Space Land Act.”²²⁸ They may also finance the acquisition of land within a CDA district, subject to authorization by the local governing body and other agencies having jurisdiction within the CDA district.²²⁹

V. CONCLUSION

While CDAs remain relatively new to many Virginia jurisdictions, several revisions have been made to the original 1993 CDA Statutes to clarify formerly obscure provisions.²³⁰ Statutes related to establishing CDAs, their proper legal characterization, and governance structure are now more comprehensible, while the confines of CDA powers have been further developed by a handful of cases and interpretations as well as the practical experiences of developers and localities.

Looking ahead, further legislative changes may be warranted. For example, the General Assembly could clarify the notice provisions for nonpetitioning landowners whose properties are included in CDA proposals. Additionally, the legal characterization of supplemental authorization agreements, including what provisions may be included therein, deserves review, as does the over-

226. BEST PRACTICE GUIDE, *supra* note 219, at 48; *see, e.g.*, HAMPTON, VA., CODE § 2-377(h)(1) (2008).

227. VA. DEPT OF TAXATION, PUB. DOC. 10-22 (March 26, 2010), *available at* <http://www.policylibrary.tax.virginia.gov/OTP/policy.nsf> (follow “Rulings of Tax Commissioner” hyperlink; then follow “2010” hyperlink; then follow “PD10-22” hyperlink).

228. § 15.2-5158(A)(7) (Cum. Supp. 2010); *see id.* § 10.1-1700 to -1705 (Repl. Vol. 2006 & Cum. Supp. 2010).

229. *Id.* § 15.2-5158(A)(8) (Cum. Supp. 2010).

230. *See supra* note 6 and accompanying text.

arching interplay between the WWAA and CDA Statutes. With the benefit of hindsight and the condition of the economy seventeen years since the CDA statutes were first enacted, the time may be ideal to revisit the underlying purpose of CDAs and determine whether they provide the beneficial, viable, and long-term alternative to public infrastructure financing that was originally envisioned.

**PETITION PURSUANT TO VIRGINIA CODE SECTION 15.2-5153
FOR THE CREATION OF
CHRISTIANSBURG COMMUNITY DEVELOPMENT AUTHORITY
TO THE BOARD OF SUPERVISORS OF
THE COUNTY OF MONTGOMERY, VIRGINIA**

WHEREAS, CPC CHRISTIANSBURG, LLC, a Delaware limited liability company and CPC CHRISTIANSBURG II, LLC, a Delaware limited liability company (collectively, "CPC") (the "Developer") is the holder of a contractual right to purchase certain other real property from RWK, LLC ("RWK") located in Montgomery County, more particularly described on Exhibit A attached hereto and incorporated herein by this reference (collectively, the "Property"); and incorporated herein by this reference (collectively, the "Property"); and

WHEREAS, the Developer is undertaking the development of the Property into a retail development (the "Project"), which is in the public interest of the County and its environs and which benefits the Commonwealth of Virginia (the "Commonwealth") and its citizens by facilitating the public purpose of economic development and revitalization in the County; and

WHEREAS, the Board of Supervisors of the County (the "Board") is authorized, pursuant to § 15.2-5152 of the Code of Virginia of 1950, as amended (the "Virginia Code"), to consider petitions for the creation of local community development authorities; and

WHEREAS, Developer (the "Petitioner") desires to join with the Board to create a mechanism for the funding of certain infrastructure improvements, facilities and services, including, among others, public roads, public parks and plazas, landscaping, public open spaces, public utilities, parking facilities, public school improvements, wetlands mitigation and storm water management to be located in and around the area in which the Property is located, and that are necessary to meet the increased demands placed on the County as a result of the development of the Project; and

WHEREAS, Petitioners have determined that a community development authority (the "CDA") affords the best mechanism for providing all or a portion of such infrastructure improvements and services in and around the area in which the Project is located; and

WHEREAS, the provision of such infrastructure improvements and services will facilitate the successful expansion of the County's tax base through increased real property tax revenues, personal property tax revenues, retail sales tax revenues and business and license fee revenues from the expansion of the tax base contemplated within the proposed community development authority district; and

NOW, THEREFORE, the undersigned Petitioners, pursuant to Virginia Code § 15.25153, do hereby petition the Board to establish, by ordinance pursuant to Virginia Code § 15.25155, the CDA. In support of this Petition, Petitioners state as follows:

1. Petitioners and District. Petitioner is (i) the holder (or an affiliate or subsidiary thereof) of a purchase right to acquire one hundred percent (100%) of the value and acreage of the real property proposed to be included within the geographic boundaries of the CDA (such real property, which is located within the boundaries of the Property, is herein referred to collectively as the "CDA District"). A list of the parcels to be included within the CDA District is attached to this Petition as Exhibit B and is incorporated herein by this reference. All parcels within the CDA District are located exclusively within Montgomery County, Virginia. The CDA District boundaries are shown on the map attached to this Petition as Exhibit C and incorporated herein by this reference, but may be

expanded by the Board by subsequent ordinance upon petition filed pursuant to the Virginia Code. Petitioners request that the CDA be called the "Christiansburg Community Development Authority."

2. Description of Infrastructure, Facilities and Services. The CDA shall be formed for the purposes of, among other things, acquiring, financing, demolition, constructing, equipping and providing the installation, operation, maintenance (unless dedicated to and accepted by the appropriate governmental entity other than the CDA), replacement, relocation and alteration of all or portions of the public infrastructure, facilities and services identified on Exhibit D, including, without limitation, (a) sanitary sewer mains and lines; (b) water mains and lines, pump stations and water storage facilities; (c) storm sewer mains and lines; (d) landscaping and related site improvements; (e) parking facilities; (f) sidewalks and walkway paths; (g) storm water management and retention systems (including best management practices, water quality devices and erosion and sediment control); (h) lighting (including street and decorative lights in public rights of way); (i) street and directional signage; (j) wetlands mitigation; (k) roads, curbs and gutters (inclusive of rights of ways and easements related thereto); (l) public park and plaza facilities; (m) open space areas; (n) public school improvements; and (o) any and all facilities and services appurtenant to the above including the acquisition of land (collectively, all such existing and new public roads, utilities, facilities and services hereinafter, the "Infrastructure"). The CDA may contract for and incur all necessary expenses to accomplish the above and all related purposes, and all such operating expenses of the CDA, including, without limitation, administrative, underwriting, accounting, engineering and legal (all collectively hereinafter "the Operation of the CDA"), may be included within the scope of any bonds issued by the CDA. The CDA may perform or cause to be performed all work necessary to accomplish these purposes, including, without limitation, right-of-way and easement acquisition, permitting, and/or relocation of existing utilities.

3. Description of Provision and Financing of Infrastructure and Operation of the CDA. The Infrastructure shall be constructed by the CDA upon availability of funding. As set forth in paragraph 2 above, the CDA may contract for all services required for the Operation of the CDA and provision of the Infrastructure. The County and the CDA may contract with each other and with other parties necessary or desirable for the Operation of the CDA and provision of the Infrastructure or services directly related to the Operation of the CDA.

The proposed plan for the Operation of the CDA and for the provision of the Infrastructure within the CDA District is as follows:

(a) The CDA or, in part or in whole and at the option of the Board and the CDA, the Montgomery County Economic Development Authority, may issue revenue bonds, in one or more series, for the Operation of the CDA and for the provision of the Infrastructure or any portion thereof, and for the administrative and other authorized costs and expenses of issuing such bonds and performing the work necessary to provide the Infrastructure or any portion thereof. The bonds will be payable solely from revenues received by the CDA and shall be sufficient in an aggregate principal amount to produce amounts available for public improvement costs equaling \$1,396,720, subject to and in accordance with the terms of a Memorandum of Understanding between the Developer, the County and the CDA (the "Memorandum of Understanding"), a copy of which is attached hereto as Exhibit E.

(b) Petitioners propose that the Board to establish a special assessment upon taxable real property within the CDA District to finance all or a portion of the Infrastructure

and the Operation of the CDA as described in and in accordance with the terms of the Memorandum of Understanding.

(c) Petitioners propose that the Board authorize a special tax on taxable real property within the CDA District in the event the special assessment described in (b) above is determined to be legally unenforceable in a final decree by a court of competent jurisdiction as described in and in accordance with the terms of the Memorandum of Understanding. Each Petitioner requests that, if necessary, any such special tax be at a rate in excess of the limit set forth in Virginia Code Section 15.2-5158(A)(3) as described in, and in accordance with, the terms of the Memorandum of Understanding.

(d) Petitioners propose that the Board approve a plan to make certain advances of County funds to the CDA using certain increased real property tax revenues generated by the development of the property within the CDA District, to finance a portion of the cost of the Infrastructure and the Operation of the CDA as described in and in accordance with the terms of the Memorandum of Understanding.

4. Expected Benefits from the Provision of Proposed Infrastructure and the Operation of the CDA. The provision of the Infrastructure and the Operation of the CDA will facilitate the County's efforts to attract new business and economic development to the County in furtherance of the County's business development and revitalization strategies. The Infrastructure and the Operation of the CDA are necessary to meet the increased demands placed upon the County as a result of the development of the Project. The development of the Project, which would be enabled by the Infrastructure and the Operation of the CDA, will enhance the County's tax base by increasing tax revenues and by increasing the value of the real property within the CDA District.

5. Members of the CDA. The CDA shall have five members appointed by the Board pursuant to Virginia Code § 15.2-5113. Members shall serve four-year staggered terms.

6. Duration/Abolition of the CDA. The CDA may be abolished at any time by appropriate action of the Board, provided that no such abolition shall occur while any CDA obligation remains outstanding. In addition, Petitioners request that prior to the issuance of any CDA bonds, the CDA be abolished if the Developer does not complete its purchase of the real property within the CDA District. Furthermore, it is contemplated that the CDA shall continue to exist beyond the retirement of all of its obligations to the extent necessary and/or appropriate for the continued operation of the CDA.

7. Waiver. Each Petitioner intends to provide a waiver of the thirty (30) day period to withdraw its signature from this Petition as provided in Virginia Code § 15.2-5156B; provided, however, NAI, intends to withdraw its signature unless the ordinance establishing the CDA pursuant to this Petition provides, in substance, that the CDA will be abolished as a result of the Developer's failure to consummate the acquisition of the real property owned by NAI subject to this Petition.

ACCORDINGLY, for the reasons above, and in reliance upon the assurances and covenants set out herein, Petitioners respectfully request that the Board establish the Mosaic District Community Development Authority for the purposes set forth in this Petition.

IN WITNESS WHEREOF, Petitioners have executed this Petition pursuant to due authority this _____ day of _____, 2017.

CPC CHRISTIANSBURG, LLC,
a Delaware limited liability company

By: _____
Name: _____
Title: _____

CPC CHRISTIANSBURG II, LLC,
a Delaware limited liability company

By: _____
Name: _____
Title: _____

Exhibits:

- Exhibit A - Description of Property**
- Exhibit B - List of Parcels by Tax Map Number**
- Exhibit C - Map of CDA District**
- Exhibit D - Description of Proposed Infrastructure**
- Exhibit E - Draft of Memorandum of Understanding**

EXHIBIT A
TRACT A

All those certain lots, pieces or parcels of land, situate, lying and being in the County of Montgomery, Virginia, and more particularly described as follows:

PARCEL 1

ALL of Parcel 2A, containing , containing 10.1794 acres, as shown on the map entitled "Plat of Survey Showing the Subdivision of 10.1794 acres for RWK, LLC," prepared by Douglas R. Meredith, L.S., of LMW, P.C., dated 28 June 2004, Comm. 2825C, a copy of which map is recorded in the Clerk's Office, Circuit Court, Montgomery County, Virginia in Plat Book 24, Page 344 and to which plat reference is hereby made for a more particular description of the property hereby conveyed.

TOGETHER WITH all rights and duties appurtenant to the property herein conveyed, specifically including, without limitation, those rights and duties of Grantor pursuant to any lease, reciprocal easement, operations agreement or other document related to use of the property herein conveyed.

BEING the same real estate conveyed to Whitethorne Plantations, Inc., a Virginia corporation, and RWK, LLC, a Virginia limited liability company, dated August 11, 2004, recorded August 17, 2004 in the Clerk's Office, Circuit Court, Montgomery County, Virginia as Instrument No. 04011200.

EXHIBIT B
LIST OF PARCELS BY TAX MAP NUMBER

Tax I.D. #030715

EXHIBIT C
MAP



EXHIBIT D
DESCRIPTION OF PROPOSED INFRASTRUCTURE

Christiansburg Projected Public Improvements

Sitework

Phase 1 Sitework	\$772,720
Phase 2 Sitework	\$312,000

Parking

Repair, Resealing & Restriping of Parking Lot	\$234,000
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Other Improvements

Property Landscaping Improvements	\$78,000
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Total Estimated Cost of Improvements	\$1,396,720
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EXHIBIT E

MEMORANDUM OF UNDERSTANDING