

CDD 101



KILINSKI | VAN WYK

**Saddle Creek
Preserve of Polk
County Community
Development District**

General Background



What is a Community Development District (CDD)?

- **CDDs are local units of special purpose government**
- Established under the Uniform Community Development Act of 1980 (Chapter 190, Florida Statutes)
- Primary functions:
 - Provide a mechanism to finance, construct and maintain high-quality improvements and amenities
 - Issue tax-exempt bonds to finance costs of public infrastructure
 - Maintain public improvements owned and/or operated by the District
 - Collect revenues and pay operating expenses
 - Levy assessments on lands benefitted by improvements



Powers of CDDs



Allowed by Chapter 190

- Construct and maintain public infrastructure
- Issue bonds
- Levy and collect non-ad valorem assessments for debt service
- Levy and collect operation and maintenance assessments
- Contract for services
- Provide security/recreational services



Not allowed by Chapter 190

- Regulate land use/zoning
- Issue building permits
- Issue development orders
- Provide police services
- Enforce code compliance
- Enforce traffic regulations

Unit of Government

As a unit of government, a CDD is:

Subject to the Government in the Sunshine Law

Subject to Public Records laws

Subject to certain reporting and disclosure requirements

Subject to public bidding requirements for certain projects

Able to issue tax-exempt bonds to finance public improvements

Able to enjoy the protections of sovereign immunity

Exempt from sales tax

CDDs vs HOAs

CDDs:

- Unit of government
- Subject to open government and public records laws
- CDD assessments are co-equal with County taxes, making them very secure.
- Able to finance large improvements through bonds, resulting in less financial burden on homeowners
- Required to hold public hearings for certain actions
- Tax-exempt

HOAs:

- Private entity (not-for-profit corporation)
- Financing limited to annual assessments, shorter-term loans, and other private financing
- Required to hold homeowner votes for certain decisions
- Turnover to resident control usually occurs over a longer period (based on percentages of sold lots)
- Has control over deed restrictions on private lots



Saddle Creek Preserve of Polk County CDD

CDD:

- Public Roadways
- Stormwater Management System
- Utilities (Lift Stations)
- Irrigation and Landscaping (common areas)
- Amenities
- Entryway monuments and signage

HOA:

- Deed restriction enforcement
- Community architectural control
- Irrigation and Landscaping (private property)
- Homeowners' driveways and lawns



Key Legal Considerations for Supervisors



Chapter 190, Florida Statutes



Sets forth all powers and responsibilities of CDDs



If Chapter 190, F.S., does not grant the power, the CDD cannot do it.

Comply with the Law – Sunshine Law

The Government in the Sunshine Law, Ch. 286, F.S. ,& Art. I, s. 24, Fla. Const.

Constitutional and statutory right of public access to governmental proceedings, at state and local level

Applies to any gathering of two or more members of the same Board to discuss some matter which may foreseeably come before that Board for action

- Includes phone calls, text messages, emails, and social media posts and direct messages
- Applies to conversations with other Board members, not with District staff

Such discussions can only take place at a meeting that is (1) noticed, (2) open to the public, and (3) where minutes are taken.

A quorum (3/5 Supervisors) must be physically present to hold a Board meeting and make any decisions.

Other Sunshine Law Considerations

Do not use other individuals (District staff, your neighbors, etc.) as a conduit to have a conversation between Supervisors.

Reasonable notice is required for all Board meetings. This means notice must be published in the newspaper and an agenda must be posted on the District's website at least 7 days in advance.

An opportunity for public comment is required before the Board takes action.

The public must be allowed to attend meetings, but the District is not required to provide a means for electronic attendance for the public.

Secret voting is not allowed.

Minutes do not have to be a verbatim transcript.

Committees may be subject to the Sunshine Law if they have decision-making authority.

Narrow Exceptions to Sunshine Law



Pending litigation



Security and fire safety system details



These can be discussed in a private session of the Board outside of the public attendance.

Penalties for Violation of Sunshine Law

Criminal penalties:

A knowing violation is a 2nd degree misdemeanor (up to 60 days imprisonment and fine of up to \$500)

Civil fines up to \$500

Civil lawsuits:

Must pay attorneys' fees (can be in your individual capacity)

Removal from office

Action is considered invalid (but can be cured).

Comply with the Law – Public Records

With limited exceptions, documents related to District business must be preserved as public records and produced when requested.

- Supervisors are advised to use a separate email address for all District business and to keep all hard copy files in a separate and easy-to-access place.

All public records requests should be directed to the District Manager for processing as soon as possible upon receipt.

Comply with the Law: Ethics Law



Supervisors are subject to many of the same ethics laws as county and city officials.



Make required financial disclosures. The District Manager will provide links to the required forms (Form 1).



Do not accept a bribe.



Avoid conflicts of interest.

If there is ever an item before you for a vote that would provide a special benefit to you, a business associate, or a close family member, notify District Counsel so proper steps may be taken.



See Chapter 112, Florida Statutes, for other ethical considerations.

District Finance Basics

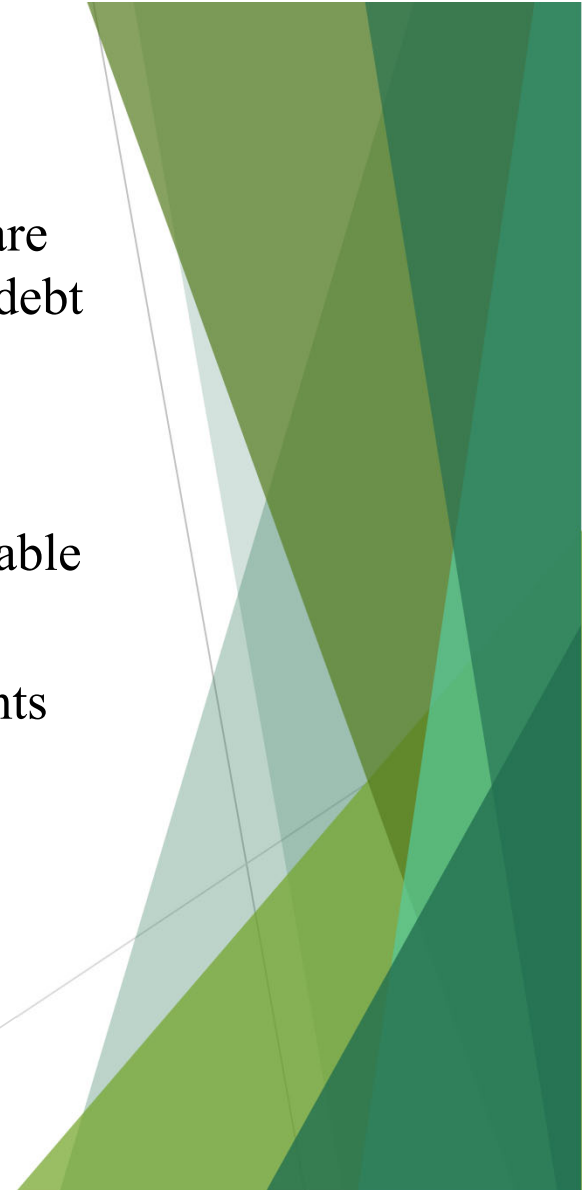


Annual Budget

- Fiscal Year runs from October 1 to September 30.
- Proposed budget must be adopted before June 15 each year.
- Final budget must be adopted after a public hearing before October 1 each year (or earlier if required by the County for assessment collection).
- Describes anticipated expenditures and sources of funds.
- Available on the District's website:
<https://saddlecreekpreserveccd.com/>
- Funds may be moved amongst line items by motion, but large changes may require an amendment by resolution.

What are Bonds?

- Long term, tax-exempt financing available to CDDs because they are units of government with authority to issue long-term, tax-exempt debt
- Must be validated by a court and comply with Florida law
- Usually repaid over a term of 30 years
 - Spreading costs over a longer period makes costs more manageable for residents.
 - Costs are only paid at the time you own your house – assessments run with the land, not the property owner.
 - District may refund the bonds to obtain better interest rates.



What are Assessments?



Debt Assessments

Levied to repay bonds

One-time mailed and published notices
+ public hearing required

Usually collected on the County tax roll



Operations & Maintenance Assessments

Levied to pay annual administrative,
operational, and general maintenance costs of
the District – adopted annually with budget

Includes reserves and amounts for
maintaining current infrastructure

Mailed and published notices + public hearing
required to increase above last noticed amount

Usually collected on the County tax roll

Annual Audit



Required by statute



Must be completed by June 30 each year (unless an earlier deadline applies for bonds)



Available on the Florida Department of Financial Services website

Management and Control of the District



Staff Roles and Responsibilities

- **District Manager**
 - Receives authority from Florida Statutes, District policies, plus the agreement between the District and the management company.
 - The Board makes policy, and the District Manager implements the Board's policies.
 - Has “charge and supervision of the works of the District” and is responsible for preserving, operating and maintaining improvements, facilities, and equipment and for performing such other duties as may be prescribed by the Board. Section 190.007(1), *Florida Statutes*.
 - May hire and fire professional, supervisory, and clerical employees as may be necessary and authorized by the Board. Section 190.007(1), *Florida Statutes*.

Staff Roles and Responsibilities (continued)

- **District Engineer**
 - Assists in the acquisition and conveyance of infrastructure and improvements
 - Assists with permit compliance
 - Assists with maintenance of infrastructure
- **District Counsel**
 - Works for the Board, not the District Manager or any Board member
 - Works with the District Manager and District staff to help protect the District from legal perils and achieve its goals

Board of Supervisors

- The CDD is controlled by an elected 5-member Board of Supervisors.

Phase 1: Landowner Elections

- Initially, Supervisors are elected on an at-large basis by those owning property within the CDD.
- 1 acre of land = 1 vote (partial acres are rounded up).
- Candidates must be Florida residents and U.S. citizens.

Phase 2: General Qualified Electors

- Beginning six years after the initial appointment of Supervisors and once the CDD has at least 250 qualified electors, Supervisors begin to be elected through the general election process.
- Supervisors elected through the General Election process must be qualified electors (residents of the District who are at least 18 years old and registered to vote in Polk County) and serve four-year terms with staggered expiration dates.

Role of the Board

Role of the Board:

- Adhere to Chapter 190, Florida Statutes
- Policy making
- Retention of staff to implement policy
- Holding staff accountable for policy implementation
- Making material business decisions for the District (ex. whether to issue bonds or enter into significant contracts)

NOT the role of the Board:

- Directing on-site staff
 - Individual Supervisors generally are not authorized to operate the District, unless delegated some limited authority by the Board.

Role of Individual Supervisors

Receive	Receive input from constituents
Propose	Propose new policies or policy changes
Vote on	Vote on proposals brought before the Board at meetings

District Officers' Roles and Responsibilities

Chair

Appointed by the Board.

Has certain powers to sign documents, convene meetings, authorize emergency expenditures, and take other actions permitted by law/rule/policy.

Vice Chair / Assistant Secretaries

Vice Chair fulfills the duties of the Chair when the Chair is absent.

Assistant Secretaries who are Board members can fulfill the role of Chair when the Chair and Vice Chair are both absent.

Assistant Secretaries who are not Board members have certain signing/attestation authority.

Treasurer

Statutory position.

Has charge of the funds of the District.

Required to provide a bond and/or insurance.

Does not need to be a Board member.

Secretary

Does not need to be a Board member.

Responsible for maintaining minutes, retaining records, coordinating certain disclosures.

Required to provide a bond and/or insurance.



Meeting Procedures

- Call meeting to order
 - Roll Call
 - Public Comment (3 minutes, not a Q&A)
 - District Business
 - Decisions are made by a majority vote of the Supervisors present (may vote by phone if a physical quorum is present)
 - Motion, second, all in favor
 - District has not adopted Robert's Rules of Order but does follow procedures to maintain decorum.
- Public hearings (rules, assessments, etc.)
- Separate published notice
 - Separate public comment opportunity

Best Practices for Supervisors



Social Media

- Because of the Sunshine Law, once a Supervisor posts on social media, another Supervisor should not respond to the post.
- Our recommendation is to avoid using social media for District business on an individual level.
- If you do post on a social media page, create a copy of that page, and submit it promptly to the District Manager's office.
- DO NOT delete posts.
- If in doubt about the accuracy of any planned posts, please consult with the District Manager first or direct residents to the District Manager for follow-up.
- If you want to set up your own Facebook or other account where District business will be discussed, please consult further with the District Manager and District Counsel first. There will be technological requirements the Board needs to consider.
- Use person-to-person contact, e-mail and telephone as your primary, or sole, means of communication with your constituents.

Prepare for Board Meetings, Workshops, and Conference Calls

- Anticipate questions regarding your positions on issues that are on the agenda.
- Make sure others are prepared. For example, if you have an engineering question, give the District Engineer notice before the meeting.
- Meeting time is limited and valuable. All questions on the materials in the agenda package should be raised to Staff in advance of the meeting.
- Identify issues that may need input from District Counsel or the District Engineer in advance. We can help you be proactive in preventing future problems and creating efficient agenda items for Board action.

Be Organized

- Avoid requesting last minute agenda items unless time is of the essence.
- Avoid audio and/or visual issues. Let staff know in advance if you have a PowerPoint or electronic presentation.
- Be consistent with treatment of the audience and do not perpetuate bad habits. For example, it is “audience comments,” not “audience questions.” Do not invite questions from the audience unless the Board has a formal policy to do so.
- While it may seem awkward to tell your neighbor to wait until audience comments to provide input, that is how effective governments operate.

Respect Fellow Board Members and Staff

Board Members

- In a meeting, on social media, or in conversations in the community
- Rarely will commenting negatively on another Board member help the community
- Keep criticism to “positions,” not “people”

Staff

- If you have concerns with a Staff member (other than the District Counsel or District Engineer who report directly to the Board), speak to the District Manager. If not resolved, bring it to the Board’s attention for discussion.
- If you have concerns with the District Counsel or District Engineer, speak to them. If not resolved, bring it to the Board’s attention for discussion.

Avoid Micromanagement

The most successful Boards do not micromanage Staff or engage in the day-to-day operation of the District.

Micromanagement is problematic for many reasons:

- It creates potential liability for the individual Board member.
- It creates potential liability for the District.
- It waters down the protections the District bargained for when it hired an independent contractor.
- It creates uncertainty with Staff as to who Staff should take direction from.
- It is inefficient governance.
- It causes friction with other Board members who may not feel the same way.

QUESTIONS?



For additional information, please contact Kilinski | Van Wyk PLLC at:

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