

When land is designated for development, certain “public” infrastructure services are needed – roads, water, sewer, sidewalks, recreational areas, storm water management, street lighting, etc. In many cases and in particular with a small development in a rural community, some of these services such as roads and storm water management are required under the subdivision ordinance. Water and sewer may be provided on single lots, e.g. “well and septic” or as community or a public systems. The manner in which these services are provided will generally be controlled through the subdivision ordinance or the utilities ordinance.

The costs of the infrastructure improvements are generally borne by the developer and passed on to the future purchaser in the purchase price. There are many situations, however, when such up-front costs will make a particular project cost prohibitive (such as affordable housing developments) or the developer can not due to competitive market conditions make the project work unless these costs are not passed to future property owners over time, and preferably in a tax deductible manner (such as property taxes and assessments).

Outside the jurisdictions which have public utilities servicing all property within the jurisdiction, there are four types of districts that may be created to provide certain if not all infrastructure improvements: a service district, a sanitary district, a public service authority, or a community development authority. Although they are very similar as to their powers and abilities to recover costs for the improvements, the dissimilarities may be determinative.

## **A. Types of Districts**

### **1. Service Districts**

Service districts are created by ordinance after a public hearing. (§ 15.2-2400) They may be created to serve an area within the jurisdiction or may be created to serve more than one jurisdiction. As the Code of Virginia states “Service districts may be created to provide additional more complete, or more timely services of government than are desired in the locality or the localities as a whole.” § 15.2-2400. Service districts have broad powers to construct, maintain, and operate such facilities as may be necessary or desirable including but not limited to water, sewer disposal, garbage, lighting, security, fire fighting and recreation, improvements and/or provide services for economic development, promotion of business and retail development, and beautification and landscaping, shoreline management, snow removal, refuse collection, transportation services, and pest control. (This list is not complete) See §15.2-2403 of the Code of Virginia. The construction and maintenance of roads may also be included if 50% of the property owners who own not less than 50% of the land within the district, petition for such services.

The ordinance creating the district must describe the boundaries of the district, the proposed services and facilities, the proposed plan for providing these services and facilities, and the benefits that will be derived. See §15.2-2402 of the Code of Virginia. Once the service district is

created, the Board of Supervisors oversees its operation and has the power to construct, maintain, and operate facilities and equipment in order to provide more complete to timely governmental services. In order to provide these services, the Board has the authority to require owners or tenants of property within the district to connect with any system and be assessed an annual tax for such services. Any tax so levied, must be segregated and spent only on services within the district. Va. Code § 15.2-2403.

## **2. Community Development Authority Districts**

If a county has allowed itself by ordinance the power to consider a petition for the establishment of a community development authority, the landowners of 51% of the land area, or landowners of 51% of the assessed value of the land may petition the Board of Supervisors for the creation of a community development authority. Va. Code § 15.2-5153. The petition must describe the boundaries of the district, the proposed services and facilities, the proposed plan for providing these services and facilities, the benefits to be derived, and how the board members of the authority will be selected Va. Code § 15.2-5154 . After the receipt of the petition and after a public hearing (notice must run for three successive weeks) the Board may create the community development authority. Va. Code §§ 15.2-5155 and 15.2-5156 The ordinance or resolution must be recorded in the land records. Va. Code § 15.2-5157. The CDA may provide the following services infrastructure improvements, roads, bridges, parking facilities, curbs, gutters, parks and indoor or outdoor recreational facilities, fire prevention, schools buildings and related structures, infrastructure for age restricted communities, and provide for special services such as street cleaning, garbage collection, and snow removal. Va. Code § 15.2-5158. The CDA may issue revenue bonds and request that the Board to levy an annual tax on real property within the district. Id. Services may also be provided to abutting property owners by special assessment. Id.

## **3. Sanitary Districts**

Upon the petition of 50 qualified voters of a proposed district (or 50% of the voters in the proposed district if the district has less than 100 voters), the circuit court after a hearing on the question of whether a sanitary district should be created may order the creation of a sanitary district. At the hearing before the court, persons opposed to inclusion in the district or to the benefits to be derived, may appear and object to the creation of the district. Va. Code §§21-114 through 115. Once created, sanitary districts can be enlarged, merged, altered, and abolished by order of the circuit court. Va. Code § 21-116 through 21-117.1. The Board of Supervisors controls the operation of the sanitary district once it is created. Broad authority is given to sanitation districts; among the powers is the power to construct, maintain, and operate water supply, sewerage, garbage removal, heat, light, fire fighting equipment and power, gas systems, and sidewalks for the use and benefit of the people within the district. Va. Code § 21-118 The governing body may require property owners to connect to the systems by adoption of an ordinance. A public hearing is required before the Board may fix or change rates; by ordinance, the Board may provide for the reduction or deferral of garbage charges for low income elderly or disabled. Va. Code § 21-118.4 Bonds, including special revenue bonds may not be issued without a referendum of the voters within the district. Va. Code §§ 21-122 and 21-122.1.

#### **4. Public Service Authority**

A Public Service Authority is created by ordinance by the Board of Supervisors of one or more counties. Va. Code § 15.2-5102. The ordinance must contain the articles of incorporation. If there is substantial opposition to the creation of the authority, the Board may request the circuit court to order a referendum on the issue.<sup>1</sup> If the ordinance is approved, the State Corporation Commission issues a charter to create the authority. There is a five member board that governs the authority. Each board member serves a term no longer than four years. The board members are selected in the manner set forth in the ordinance. Va. Code § 15.2-5113 Among the powers granted to such an authority are (1) ability to issue revenue bonds, (2) borrow money and issue notes, bonds, and other obligations, and (3) fix, charge, and collect rates, fees and charges. Va. Code § 15.2-5114 The authority may mandate connections to the system only if the Board approves; those persons having a private septic system or domestic sewer system that meets the requirements of the Virginia Department of Health can not be required to connect. Va. Code § 15.2-5137. Money owed to the Authority is a lien on the property on the same superiority as a lien for unpaid property taxes. Va. Code § 15.2-5139

#### **B. Financing Options**

The sewer improvements may be financed by the Board of Supervisors through the issuance of revenue bonds as in the case of a sanitary or service district or may be financed through bonds issued by the authority (public service authority or a community development authority). There are also sources of low interest loans through state and federal agencies, such as the Rural Development Authority, the Virginia Resource Authority, or the Water Facilities Revolving Fund.

The Virginia Public Private Educational Act may also be a potential vehicle for the financing and construction of the sewer improvements. To utilize this act, the Board of Supervisors must adopt an ordinance that sets forth the requirements that it would impose for its consideration of public facilities and improvements designed, constructed and financed by private individuals.

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<sup>1</sup> If ten percent of the voters file a petition at the hearing, the Board must get approval through a referendum. See Va. Code § 15.2-5105.

## Comparison Special Financing Districts

<b><u>Type</u></b>	<b><u>Formed</u></b>	<b><u>Governed By</u></b>	<b><u>Powers</u></b>	<b><u>How Service Provided</u></b>	<b><u>Cost Reco</u></b>
Sanitary District	Petition of 50 voters; court hearing; court sets boundaries	Board of Supervisors	Construct, operate, maintain utility service, sewer, garbage, heat, light, recreation, etc.; may mandate connection to system	By county directly or by contract with another entity	Service and connection rates; levy taxes under certain conditions
Service District	By ordinance after public hearing	Board of Supervisors or by a Development Board created by ordinance	Construct, operate, maintain governmental services; water sewer, garbage, transportation, recreation, etc.; may mandate connection to system	By county directly or by contract with another entity	Taxes on all property subject to local taxation, connection and service rates
Public Service Authority	By ordinance after public hearing or by referendum	Five member board created by ordinance	Construct, operate and maintain stormwater, water, sewer systems; may only mandate connection to the system with approval of Board of Supervisors	By PSA or by contract with another entity	Taxes, rates, fees, charges
Community Development Authority	Petition a 51% of landowners in a district of 3,000 acres within 2 miles of an interstate or 100 acres commercially zoned; ordinance of the Board of Supervisors accepting CDA	Authority board	Construct, operate, maintain infra-structure improvements including gas, electric roads, bridges, recreation, fire and rescue, school, age restricted facilities, and may purchase conservation rights	Established in the ordinance creating CDA	Tax assessment property request annually