



New Community Authorities

Governments and private developers are increasingly working together through a public/private partnership called a New Community Authority (NCA, also referred to by some as a Community Development Authority or CDA) to accomplish their development or redevelopment projects. NCAs have recently been used to transform the formerly vacant Lazarus Department Store building in downtown Columbus into one of the largest LEED certified office buildings in the country and construct a sewage treatment facility to support a 3,300 acre, 2,500+ home development northeast of Cincinnati. More than a dozen other NCAs across the state now help finance roadway improvements or contribute to local public schools. An NCA has provided needed infrastructure, including a new public high school, to residents of the Village of New Albany for more than 15 years.

An NCA is a well-planned, diversified and economically sound community, or an addition to an existing community, that includes facilities for the conduct of industrial, commercial, residential, cultural, educational and/or recreational activities. It is designed in accordance with planning concepts for the placement of utility, open space and other supportive facilities. An NCA is a separate public body governed by a board of trustees that may oversee, coordinate, construct and finance public infrastructure improvements and community facilities. Ohio Revised Code Chapter 349 provides the authority and procedures for forming and governing an NCA.

Formation by Petition

Formation of an NCA is initiated by a petition signed by all of the owners of the real property to be included within the boundaries of the NCA. The boundaries of an NCA not wholly within a municipality must include at least 1,000 acres while an NCA wholly within a municipality has no minimum acreage requirement. The petition must be approved by the NCA's "organizational

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Squire Sanders continues to be one of the leading public finance firms in the nation, ranked fourth nationally as bond counsel for 2008 by Thomson Financial, with issues totaling more than \$11.8 billion.

In addition to bond counsel services, Squire Sanders also provides many other legal services to Ohio public sector clients, including economic development, tax increment financing, legislative counseling, special assessments, intergovernment and development agreements, real estate, construction and contracting, brownfields, environmental, litigation, labor, tax and employee benefits. For more information about Squire Sanders, [click here](#).

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board of commissioners," which generally consists of the board of county commissioners for each county in which the NCA is located. The petition must also be approved by the most populous city of the county in which the NCA is located (and in some cases the most populous city of a neighboring county) even if no part of the proposed NCA is within that city. If more than half of the proposed NCA is located within the most populous city of a county, the city council, and not the board of county commissioners, serves as the "organizational board of commissioners" and must approve the petition.

Board of Trustees

NCAs are governed by a board of trustees with seven to 13 members as established in the petition. Initially, trustees are appointed by the organizational board of commissioners and the developer, with the organizational board of commissioners appointing the majority of trustees. Appointed trustees are eventually replaced by elected trustees as the NCA area is developed. Developer appointed trustees must constitute the minority of any quorum for board of trustee actions.

Community Development Program

The petition for an NCA establishes its community development program. Community development programs set forth the land development activities (e.g., constructing roads, sanitary and storm sewers, water distribution systems, sidewalks and other public improvements) and community facilities (e.g., public buildings, parks, and educational, cultural and recreational facilities) the NCA will construct, operate or maintain. Community development programs may be adjusted by amending the petition or, if permitted by the petition, by resolution of the NCA board of directors.

Powers

NCAs have broad statutory powers to implement their community development program. These powers include the ability to acquire and dispose of property, enter into agreements with governments, developers or other parties (without competitive bidding, but subject to prevailing wage) for land development activities, and to construct community facilities (such as community and recreation centers, auditoriums, parks, day care centers, schools, hospitals and utilities), levy and enforce community development charges, hire employees and issue bonds. Chapter 349 also provides NCAs and governmental entities or agencies the power to cooperate with each other to carry out the community development program. NCAs do not have zoning or subdivision regulation powers or the power to provide fire or police protection. NCAs may only supply water or sewage treatment and disposal services if they cannot be obtained from existing political subdivisions.

Community Development Charges

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An NCA can levy a "community development charge" within its boundaries to pay for its community development program if permitted by its petition and real property instruments encumbering land within its boundaries. Community development charges can be determined on the basis of real property assessed valuation, the income of residents of the NCA, the profits of businesses within the NCA, a uniform fee per parcel or any combination of the foregoing. Community development charges can be collected by the NCA or certified to the county auditor for collection with real property taxes.

Community Development Bonds

An NCA can issue bonds to fund its community development program. These bonds can be paid for and secured by community development charges or other income sources (e.g., rentals, user fees, sale proceeds, grants, gifts, etc.). The bonds are a debt of the NCA and not a debt of any county, township, municipality or other subdivision.

Squire Sanders has counseled governments and private developers establishing NCAs throughout Ohio. We have also served as counsel to numerous NCAs, providing general public law counseling and advice on all aspects of implementing community development programs, including negotiating construction contracts and cooperative agreements, levying community development charges and serving as bond counsel.

Recent Legislation of Interest

Stimulus Act

We have sent out numerous alerts in the last few months on various aspects of the American Recovery and Reinvestment Act of 2009 (ARRA), generally referred to as the Economic Stimulus Act. These alerts are available through the [publications page](#) of our website.

Highway Reauthorization Bill – Deadline Fast Approaching

This summer Congress is expected to reauthorize the federal surface transportation program which is currently set to expire September 30, 2009. The so-called highway reauthorization bill is scheduled to be marked up and reported out of the House Transportation and Infrastructure Committee by the end of May, with floor time reserved to consider the bill the first week in June. Under the budget resolution just adopted by Congress, \$324 billion has been identified as a budget baseline for federal highway and transit spending over the next six years. Members of Congress are required to submit any requests for projects to be included in the reauthorization bill to the Transportation and Infrastructure Committee by close of business May 8, 2009. A [questionnaire](#) must be submitted by a member to support each request.

Squire Sanders publishes on a number of other topics. To see a list of options and to sign up for a mailing, visit our [subscription page](#).

The bill will be a five year authorization, so projects not included will not be funded until the next reauthorization in 2014. Anyone having an interest in having a surface transportation project authorized should contact their congressional representative immediately and be prepared to furnish the information required by the questionnaire. Local support for a proposed project is imperative as well. Please contact any Squire Sanders lawyer with whom you work if you would like to engage [Squire Sanders Public Advocacy, LLC](#) to assist you in developing proposals and facilitating communications with congressional offices.

Recent Decisions of Interest

In mandamus action to compel compliance with R.C. 149.43, Ohio's Public Records Act, writ is granted to compel the board of county commissioners to provide requested emails, to recover deleted emails and to use reasonable efforts to make the recovered emails promptly available for inspection. The expense for providing the records, including the cost of recovering deleted emails, is to be borne by the board of county commissioners. *State ex rel. Toledo Blade Co. v. Seneca Cty. Bd. of Commrs.*, 120 Ohio St.3d 372

Writ of mandamus to compel municipality to institute appropriation proceedings is granted where evidence proved a taking because the municipality's pump station had repeatedly overflowed and caused raw sewage to be deposited onto landowners' property. Since that taking involved a physical invasion of land, as opposed to a regulatory taking, landowners did not have to prove denial of all economically viable use of the land. *State ex rel. Gilbert v. Cincinnati*, 2009-Ohio-1078 (Ohio App. 1st Dist.)

Those portions of a municipality's residential building code (the municipality's regulation of residential home construction since 1980 was found by the trial court to be an exercise of the police power) which conflict with the statewide residential building code (H.B. 175 was passed in 2005 and found by the trial court to be a general law) are not protected by the Home Rule Amendment (Section 3 of Article XVIII of the Ohio Constitution). *Dublin v. State*, 2009-Ohio-1102 (Ohio App. 10th Dist.)

A county sheriff who operates a public service answering point as part of a countywide 911 system has no authority to charge the board of county commissioners, which operates an emergency medical service organization, a fee for dispatching the organization's ambulances. 2009 Op. Att'y General No. 2009-004

A person may serve simultaneously as a member of the legislative authority of a city and member of the governing board of a community improvement corporation that has been designated pursuant to R.C. 1724.10 as the agency of the city for the industrial,

commercial, distribution and research development in the city. *2009 Op. Att'y General No. 2009-005*

A person may serve simultaneously in the positions of director of a countywide emergency management agency and member of a charter city legislative authority, provided no local charter provision, resolution, ordinance or departmental regulation prohibits such simultaneous service and the person, as a member of the legislative authority, abstains from participating in any deliberations, discussions, negotiations or votes concerning the making of contributions of public moneys to the countywide emergency management agency. *2009 Op. Att'y General No. 2009-010*

The contents of this update are not intended to serve as legal advice related to individual situations or as legal opinions concerning such situations. Counsel should be consulted for legal planning and advice.

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