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New Community Districts Provide Opportunities to Finance Infrastructure Improvements That Stimulate Economic Development

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New Community Districts (an “NCD”) provide a creative way for municipalities to finance infrastructure improvements necessary to facilitate a development or redevelopment project. NCDs are authorized by Chapter 349 of the Ohio Revised Code for the purpose of encouraging the orderly development of well-planned, diversified and economically sound new communities. NCDs may also provide a mechanism for a municipality to finance infrastructure improvements needed as a result of economic development without exposing the municipality to “development risk” or tying up its own borrowing capacity. The financing structure employed using an NCD may be viewed as an alternative to special assessments with the distinct advantages that (1) with an NCD, the developer may construct the needed infrastructure improvements and is not required to competitively bid the construction contracts, and (2) an NCD structure does not pose the same risk of challenge from property owners that a special assessment project may involve.

Creating New Community Districts

In order to establish an NCD, a developer (who may be either a private person who owns or controls the land within the NCD or a municipality, county or port authority that owns the land within the NCD or has the ability to acquire such land either by voluntary acquisition or eminent domain) must file a petition proposing a “new community development program” with the “organizational board

of commissioners,” which is typically the board of commissioners in the county where the proposed NCD will be located. The area of the NCD must be at least 1,000 acres unless the NCD is wholly contained within one or more municipalities. The petition must contain detailed information concerning the development including the name and address of the proposed new community authority, a map with a description of the NCD’s boundaries, and a statement setting forth the proposed zoning regulations or existing regulations. The petition must be signed by the developer and may be signed by each “proximate city” (the most populous city of the county in which the NCD is located, or the most populous city of any adjoining county that is located within five miles of the development). If a proximate city does not sign the petition, each proximate city must approve the petition within 90 days following the date of the first publication of the notice of the hearing described below or the hearing will be canceled and proceedings to establish the NCD must be terminated.

The organizational board of commissioners next must determine whether the petition “sufficiently” complies with the requirements described above. At a separate hearing, the organizational board of commissioners finally determines whether the proposed NCD will be conducive to the public health, safety, convenience, and welfare, and is intended to result

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New Community, continued

in the development of a new community. If the organizational board of commissioners finds in the affirmative, then the board passes a resolution creating the NCD. After the NCD has been established, the organizational board of commissioners must appoint an initial board of trustees. The organizational board of commissioners and the developer appoint an equal number of board members (each appoints at least three, but not more than six), and the organizational board of commissioners appoints one additional member as a representative of local government. These appointed board members will be replaced by residents of the NCD as the development builds out.

The new community authority (referring to the political subdivision that governs the NCD) has many of the traditional powers of other political subdivisions, but its powers are limited to those specifically granted by statute (i.e., NCDs do not have "home rule" authority). A new community authority's powers are subordinate, however, to already existing political subdivisions within and surrounding the authority.

An NCD's powers are specifically designed to promote and conduct the "new community development program," including land acquisition, land development, community facilities and related services. Land acquisition includes the acquisition

of real property and any interests therein as part of a new community development program. Land development includes, but is not limited to, basic infrastructure such as roads, water system improvements and sewer system improvements. Community facilities include public buildings (including recreational, cultural, educational and hospital facilities), pedestrian walkways and bikeways, lighting facilities, design amenities, and the list goes on.

NCDs have the power to lease, purchase, sell, maintain, improve and dispose of real and personal property. Land within the NCD may be appropriated by the NCD as required for community facilities. An NCD may enter into agreements with municipal, county or regional planning commissions to perform or obtain planning services for the NCD. This grant of power, however, does not remove the municipal, county or regional planning commissions jurisdiction within the NCD. The NCD may provide or sponsor recreational, educational, cultural and other activities and related services primarily for the residents of the NCD. User fees, rental charges and other charges may be imposed to support all costs of carrying out the new community development program. Managers, administrative officers, architects, engineers and other professionals and employees may be employed by the NCD to carry

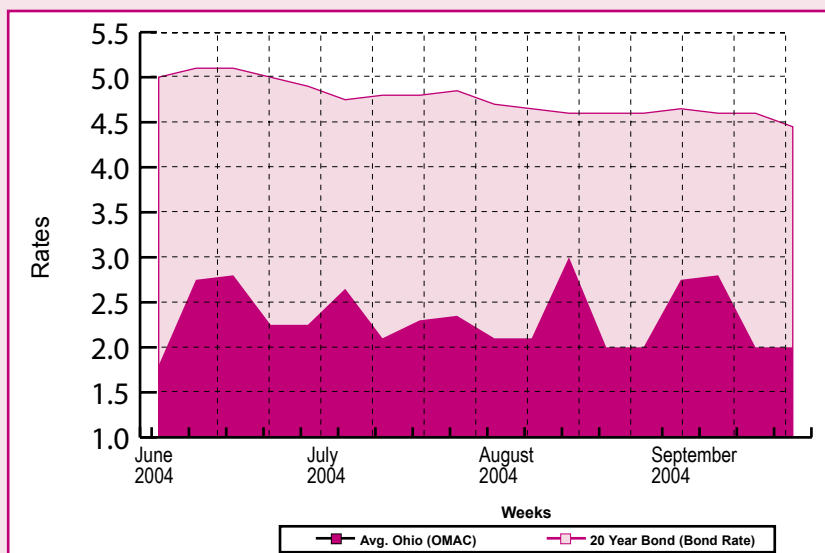
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MARKET UPDATE

GENERAL OBLIGATION

Note and Bond Interest Rates for June thru September

The following graph compares Ohio short-term note rates with the Bond Buyer's 20 year bond index. The short-term rates represent actual rates reported to OMAC by Ohio purchasers and reported on OMAC's weekly calendar.



out such program. The powers granted to the NCD do not invalidate any municipal corporation's powers and an NCD must rely on municipal corporations or other governmental entities for police, fire and water and sewer services.

The new community authority must work with the developer to finance and construct public improvements within the NCD pursuant to the new community development program provided in the petition.

Financing Improvements with NCDs

An NCD has the power to issue bonds and notes to finance community facilities. One of the distinct advantages of an NCD is that the developer can contract directly with the NCD to construct the community facilities on behalf of the NCD and need not engage in a competitive bidding process. It appears, however, that the developer must comply with the "prevailing wage" laws with respect to the payment of workers under the construction contracts.

The costs of land development, community facilities, and other services provided by the new community authority are paid by levying a "community development charge" on all property located within the NCD. A community development charge can be a dollar charge based on assessed value of real property within the NCD (like a property tax), a uniform charge, an income-based charge (like an income tax), or any combination of these methods. The community development charge is not a property tax, but has first lien status like a property tax and is collected by the county auditor. The community development charge is placed on the property within the NCD by a covenant running with the land created by a declaration of covenants and restrictions filed by the developer. The community development charge can be used to pay debt service on bonds and notes issued to finance the community facilities.

Typically a new community authority issues notes or bonds to finance the land development and community facilities, and such financing is supported by the community development charge. The structure of the community development charge

is important to consider when putting together the financing for the land development and community facilities. A millage-based community development charge would typically require a letter of credit or other credit support for the bonds. At the outset of the development, a millage-based charge will produce a lower amount of revenue than it will as the property in the NCD develops. As a result, the development risk at the outset of the project may make the bonds unmarketable without some additional security, such as a letter of credit. On the other hand, the use of a uniform charge that remains at a constant level and is not dependent on development value may eliminate the need for such additional security. Under a uniform fee structure, the developer would still likely have financial exposure with respect to the community development charge because the developer would own the majority of the property when the community development charge goes into effect. In either situation the developer must be committed to support the new community development program.

Conclusion

NCDs provide many opportunities for communities to develop new facilities and improve upon their infrastructure. By creating NCDs, developers and local governments can ensure the development of financially sound new communities. ❖

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² If the NCD is located in more than one county, then the entity that acts on the petition is a special board consisting of the members of the board of county commissioners of each of the counties in which the district is located, provided that action of such board shall require a majority vote of the members of each separate board of county commissioners. If the more than half of the NCD is located within the boundaries of the most populous municipality of a county, then the entity that acts on the petition is the legislative authority of such municipality.



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CALENDAR

Calendar of Issuer Conferences & Outings for 2004

NAME	EVENT	DATE	LOCATION
CCAO	Winter Conference	Nov. 28 – Dec. 1	Hyatt Regency – Columbus, Ohio
OSBA	Conference	November 7 - 10	Hyatt Regency - Columbus Convention Center
CAAO	Winter Conference	November 16 - 18	Embassy Suites - Dublin, Ohio

CCAO – County Commissioners Association of Ohio – (614) 221-5627
 GFOA – Government Finance Officers Association – (614) 221-1900
 MFOA – Municipal Finance Officers Association of Ohio – (614) 221-4349
 NACO – National Association of Counties – (614) 221-5627
 OASBO – Ohio Association of School Business Officials – (614) 431-9116
 OMCA – Ohio Municipal Clerks Association – (614) 221-4349

OSBA – Ohio School Boards Association – (614) 540-4000
 OAPT – Ohio Association of Public Treasurers – (440) 885-8812
 CAAO – County Auditor’s Association of Ohio – (614) 228-2226
 OPFOTP – Ohio Public Finance Officers Training Program – (330) 672-7148
 BMA – Bond Market Association – (212) 440- 9429
 OPEC – Ohio Public Expenditure Council – (614) 221-7738

If you would like your event highlighted, contact Chris Scott at 1-800-969-6622, or by email at Chris@ohiomac.com