

Special Service Areas in Illinois

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Part Two of Three

Last month's issue of the *Illinois Municipal Review* contained part one of a three part series on Special Service Areas from Dean M. Frieders of Mickey, Wilson, Weiler, Renzi & Andersson, P.C., covering their history and creation. This month's edition covers the operation of SSAs; next month's edition will explore how SSAs have changed in response to litigation and the pressures of private development.

III. SSAs IN OPERATION.

Once an SSA is created and operational, "the corporate authorities of the municipality or county shall be the governing body of the special service area." 35 ILCS 200/27-15. The SSA levy may be changed without notice and hearing, provided that the maximum amount of the levy specified in the SSA documents and initial notice isn't exceeded. 35 ILCS 200/27-25.18 Of course, if the maximum time the SSA was to exist for lapses, a new SSA must be created to supplant the old SSA, should that continue to prove necessary. *Id.*

A. SSA Bonds.

Specialized projects in an SSA may require a large initial capital investment that cannot reasonably be provided through collection of the levy. For such projects, bonds, secured by the SSA levy, can be issued. 35 ILCS 200/27-45. Prior to issue, there must be notice and hearing akin to that required for the creation of an SSA; the notice must include all of the SSA descriptions, and must also describe the maximum amount of bonds to be issued, the maximum interest rate, and the repayment period. *Id.* None of the bond descriptions contained in the notice can be exceeded without holding additional public hearings. Once issued, the county collector is obligated to collect taxes from all properties within the county and the SSA in amounts to pay the maturing principal and interest on the bonds, in addition to all other taxes levied on the property. If the SSA funding mechanism has a unique or uncommon way of being levied against individual properties, it would be advisable to contact the collector in advance of passing the SSA, to confirm that they will appropriately spread the tax. Ultimately, the collection of the SSA levy retires the bonds that are issued. *Id.* In this way, a short term, intensive expenditure can be paid for by long-term slow recapturing of the costs.

B. SSA Expansion.

In the event that an existing SSA proves insufficient to accomplish the underlying goals to be served, an existing

SSA can be expanded to include additional territory. 35 ILCS 200/27-50. Contemplated expansion of an SSA must be accomplished as though the entire SSA were being created from scratch, with completely new notice and hearings to all landowners in the SSA. *Id.* The only exception to this rule is, if the proposed expansion is determined by the county clerk to be less than 5% of the entire original SSA valuation, the notice by mailing must only be sent to the landowners in the proposed expansion (although notice by publication remains the same). *Id.* Once the expansion is completed, the recording requirements of 35 ILCS 200/27-40 must be complied with, and then the expanded territories are subject to all SSA taxes and become additional security for bonded indebtedness.19

C. Petition for Disconnection.

Not only can SSAs be expanded, they can also be downsized. If a majority of the resident electors and landowners of record within a specified territory in a SSA so desire, they can file a petition with the circuit court of the county in which the territory is located, requesting disconnection from the SSA. 35 ILCS 200/27-60.20 The petition must contain: 1) a "definite description" of the territory proposed for disconnection; 2) a factual recital that, as of the date of filing, the territory has not, is not, and is not intended to be benefited or served by existing or authorized services under the SSA and that the territory represents less than 1.5% of the total assessed valuation of the SSA. *Id.* Once the petition is filed, the court must set the matter for hearing within 60 days. 35 ILCS 200/27-65. The court must publish a notice of the hearing at least 45 days prior to the hearing, and the notice must refer to the petition filed, indicate the prayer for relief found in the petition and the time and place of the public court hearing on the petition, describe the territory proposed for disconnection, and indicate that the municipality that created the SSA and anyone living in or owning property in the SSA will have the opportunity to be heard at the hearing. *Id.* The court is also obligated to mail a notice specifying this same information to the presiding officer of the municipality that controls the SSA from which disconnection is sought. *Id.* As with the hearings creating the SSA, the court can continue the hearing from time to time by adjourning a hearing and continuing the hearing to a specified time. Once the court has heard all interested persons, if it finds the petition to be true, it is obligated to enter and order the disconnection sought. A certified copy of the order is then sent by the court clerk to the clerk of the municipality that created the SSA.21 Predictably, if the court finds the petition to be untrue, it dismisses the petition.

If a property is disconnected from an SSA, the practical effect is that it ceases to be subject to the SSA levies, and ceases to be a security for any SSA indebtedness.³⁵ ILCS 200/27-70. The other effect of disconnection is that the court ordering the disconnection is authorized to respread the SSA levy lost from the disconnection against properties remaining in the SSA. *Id.* This respread of the SSA levy cannot be done so as to charge a given parcel for more than the amount that it benefits from the SSA.

IV. SSA TAX LEVIES.

An SSA is of little value to a municipality until a tax authorized by the creation process is levied and collected (except, perhaps, as a threat to those over whose head a “dormant” or “back-up” SSA hangs). To effectuate any levy assessed under an SSA, the municipality must work with the county clerk in the county that the SSA exists. 35 ILCS 200/27-75. The municipality has to file a certified copy of the SSA ordinance and accurate map of the SSA to the county clerk, and may then levy taxes in the SSA area through the county clerk. *Id.* In the year of the first levy, the municipality is required to file a certified copy of the ordinance authorizing the issuance of bonds and establishing the property tax levy with the county clerk by December 31. In any year a levy exists, the municipality is required to file a certified copy of the ordinance levying taxes in the SSA before the last Tuesday of December. The clerk then collects the tax as prescribed in the remainder of the tax code, based on equalized assessed property values. *Id.*

A. Special SSA Taxes.

As an alternative to, or in addition to, such ad valorem taxes, other special taxes can be levied on SSAs. These specialized taxes must be assessed based on any basis “that provides a rational relationship between the amount of tax levied against the [parcel] and the special service benefit rendered.” *Id.* If such specialized taxes are assessed, a special tax roll must be prepared that states: 1) the method of spreading the tax; 2) a list of parcels in the SSA; and 3) the amount assessed against each parcel. This roll is incorporated into the ordinance establishing the levy and, along with that ordinance, is filed in certified copy with the

county clerk. The clerk then levies the tax according to the roll. *Id.* Traditional lien and foreclosure principles apply to both standardized SSA tax levies and specialized SSA tax levies. *Id.*

B. SSA Refunds.

From time to time, no matter how much care a municipality exercises in creating an SSA and levying SSA taxes, excess revenue may exist in an SSA. The taxes levied for an SSA may not be used for any purpose other than the purpose for which the SSA was levied. If excess revenue exists at the end of the SSA’s life, the municipality is obligated to refund the excess to landowners of record for all parcels in the SSA as of the date of the refund, on a pro-rata basis calculated on each parcel’s proportionate share of the entire SSA valuation. 35 ILCS 200/27-93. When a municipality issues such a refund, it can withhold up to 5% of the total refund as a processing charge. *Id.* ■

- 18 Due to this provision, a municipality may choose to impose an SSA when one is not needed at that time but may be needed in the future. The SSA can be created, with a maximum levy specified but not actually charged at the time of imposition. Later, when the funds are necessary, the previously created SSA can be put into effect and the levy actually charged and collected. When an SSA is created, the complexity of the notice and hearing requirement is proportional to the number of landowners affected. Thus, if a single landowner is proposing to develop his property into a subdivision or other similar development, it may make sense for the SSA to be created before the development is begun for several reasons. First, the SSA can be created with only one (or a few) landowner(s) owning a large parcel of land, as compared to many landowners owning many small parcels of land. Second, the SSA can be included with the subdivision documentation as part of the initial give-and-take exchange between municipality and landowner relating to zoning, housing densities, PUD status, public improvements, and other related questions.
- 19 The statute specifies that the expanded territories become additional security for bonded indebtedness that existed at the time the expanded territories are added. 35 ILCS 200/27-50. In this way, the statute makes it clear that the expanded SSA territory is not only security for after-acquired debt, but rather is security for previously acquired debt. Landowners who are informed a municipality seeks to expand an existing SSA to include their property would thus be well advised to adequately research the state of the existing SSA and its indebtedness.
- 20 Such petitions are ineffective against SSAs created only for weather modification purposes.
- 21 Presumably, a certified copy is also recorded relative to the disconnected properties at the county recorder’s office, although this is not required by statute.

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