

Special Service Areas in Illinois

By DEAN M. FRIEDERS, Partner
Mickey, Wilson, Weiler, Renzi & Anderson, P.C., Aurora

Part One of Three

I. MONEY, THAT'S WHAT UNITS OF LOCAL GOVERNMENT WANT.

Municipalities in the State of Illinois have a variety of means of taxation available to financially support themselves when undertaking the roles historically performed by units of local government. As time progresses, municipalities find it to be advantageous to provide a wider variety of services to residents; in many ways, some municipalities are undertaking roles that have previously been performed privately. The reasons for this are many but can most easily be categorized as occurring for one of two reasons: necessity and efficiency.

Necessity has become a consideration as private citizens and organizations that formerly performed or agreed to perform certain services fail to actually adhere to their promises. For example, in the past, many subdivisions were created with the express, written understanding that the subdivision homeowners' association would undertake maintenance of water retention and detention ponds and other common areas. As time has progressed, some associations have, for a variety of reasons, failed to actually perform these jobs. Municipalities expect to perform and plan on performing a variety of expanded services when a new subdivision is constructed; these services are expected to be funded by traditional taxing methods. Improvements in a given subdivision are expected to be paid for out of the general tax roll, or out of special assessments where necessary.¹ When a municipality suddenly finds itself not only performing the expected expanded services, but also has to perform services that it had expected someone else to perform, the need for an additional source of revenue becomes apparent. Not only does it make sense to pay for a special, localized service with a special, localized tax, when government budgets get tight, the need for additional revenue adds to the practical appeal of a specialized tax.

Units of government have a wide range of finance tools that are not available to private citizens. Principal amongst these tools include the financial flexibility inherent in public bodies. Units of government can perform tasks with complete tax exemption and can fund tasks with public dollars and low interest rate, guaranteed, municipal bonds. However efficient a municipality might be at performing a given task, the task cannot be performed unless the funding is available. Bonds can be sold, but must eventually be

repaid. Even with the savings inherent in tax exempt transactions, there is still a need to pay for the actual materials or services being purchased. Where the efficiency of government in performing a given role collides with the necessity to perform that role, arriving at a method of funding is of great importance.²

This month's edition of the *Illinois Municipal Review* includes the first part in a three-part series detailing one of the funding mechanisms available to municipalities: Special Service Areas ("SSAs"). SSAs are a powerful and flexible tool in the financing arsenal of Illinois municipalities, and can play an important role in the provision of public services to property owners, in the annexation and development of property, and in the efficient operation of units of local government. Next month's article will cover the operation of SSAs and the following month will explore how SSAs have changed in response to litigation and the pressures of private development.

II. THE LAW CREATING SPECIAL SERVICE AREAS.

A. Provisions of the State of Illinois Constitution.

The Illinois Constitution provides the solution that municipalities seek to the problem of funding specialized local projects. The solution is in the form of Special Service Areas (SSAs). Under Illinois law, SSAs can be created both for home-rule units and non-home-rule units of local government. For home-rule municipalities, the Constitution provides that they can "levy or impose additional taxes upon areas within their boundaries in the manner provided by law for the provision of special services to those areas and for the payment of debt incurred in order to provide those special services." *Illinois Constitution, Article 7, §6 (1)(2)*.

Non-home-rule municipalities are far more limited in their actions as compared to home-rule municipalities in that non-home-rule municipalities "shall have only powers granted to them by law." *Illinois Constitution, Article 7, §7*. However, like home-rule municipalities, non-home-rule municipalities have the power to impose additional taxes on areas for the provision of special services to those areas. *Id. at (6)*. Again, that power must be exercised in the manner provided by law. *Id.* As that implies, there are a set of Illinois statutes controlling the creation, imposition and management of SSAs.³

<ul style="list-style-type: none">■ Sewer Cleaning■ Sewer TV Inspection■ Manhole Rehabilitation■ Sewer System Studies■ Catch Basin Cleaning■ Wet/Dry Vacuuming <p>All Work Guaranteed!</p>	<p>NATIONAL POWER RODDING CORP.</p> <p><i>The Environmental Protection Specialists</i> 2500 W. Arthington St. • Chicago, IL 60612</p> <p>1-800-621-4342</p> <p><small>A Carylton Company</small></p>	
--	--	---

<p>PGAVURBANCONSULTING</p> <p>Urban Consulting • Destination Consulting • Architecture</p>	
<p>314-231-7318 1 800 231 7428 314-231-3158 (fax)</p>	<p>200 North Broadway, Suite 1000 St. Louis, MO 63107 www.pgav.com</p>

B. Illinois Statutes on SSAs.

The Illinois statutes on SSAs are found in the Special Service Area Tax Law, 35 ILCS 200/27-5, *et. seq.*⁴ §27-5 provides some of the most important information available: the definition of SSA and special services. According to that section, a SSA

means a contiguous area within a municipality or county in which special governmental services are provided in addition to those services provided generally throughout the municipality or county, the cost of the special services to be paid from revenues collected from taxes levied or imposed upon property within that area. Territory shall be considered contiguous for purposes of this Article even though certain completely surrounded portions of the territory are excluded from the special service area.⁵ A county may create a special service area within a municipality or municipalities when the municipality or municipalities consent to the creation of the special service area. A municipality may create a special service area within a municipality and the unincorporated area of a county or within another municipality when the county or other municipality consents to the creation of the special service area.

While it might seem advantageous to have a clear definition of what exactly constitutes a special service that can be funded by the creation of a SSA, the legislature unfortunately chose to deprive the public of such a definition. Rather, the statute simply specifies that special services are “means all forms of services pertaining to the government and affairs of the municipality or county.” *Id.* Those services include “weather modification...and improvements permissible under Article 9 of the Illinois Municipal Code, and contracts for the supply of water as described in Section 11-124-1 of the Illinois Municipal Code which may be entered into by the municipality or by the county on behalf of a county service area.” The statute specifically indicates, however, that this short list of services is not to be considered all-inclusive; in short, any services that relate to the municipality or the “affairs” of the community are suitable for funding by SSA.^{6,7} It is important to recognize, however, that the benefit provided by the SSA should be *special* and *specific to the special service area*, whenever possible. It would be ill-advised to pass an SSA and use the funding to pay for services provided outside the defined service area, or to pay for general municipal services which, outside the service area,

are paid for with traditional funding mechanisms (e.g. property taxes).

1. **Imposing an SSA.**

As the constitution requires, so too do the statutory provisions relating to SSAs require a municipality providing special services or imposing an SSA to do so only in the manner provided for by law. 35 ILCS 200/27-10. The imposition of an SSA begins with one of two parties: the public or the government. Private individuals can submit a proposal to their local government requesting the imposition of an SSA.⁸ 35 ILCS 200/27-20. Such a proposal must be filed with the chief elected official of the local municipality by a landowner of record within the proposed SSA and must include: 1) the name and legal status of the applicant; 2) the services to be provided; 3) the proposed boundaries; 4) the amount of funding required; and, 5) the stated need and local support for the proposal. *Id.* Corporate authorities may accept or reject such applications.

The slightly more usual way that SSAs come about is when one is proposed by the government itself. When an SSA is proposed by a municipality, or when a privately suggested SSA is approved by a municipality, an extensive system of notice and hearing must be followed to afford those who own property within the proposed area adequate due process.

2. **Notice of Hearing.**

The initial notice required to be given must include the time and place of the hearing to be held, a description of the SSA (both legal description and street location), an indication that all interested persons will have both an opportunity to be heard and an opportunity to object to any levies upon their property, and the maximum levy under and duration of the proposed SSA. 35 ILCS 200/27-25.

This notice must be provided either before, or within 60 days after the adoption of an ordinance proposing the creation of a new SSA. 35 ILCS 200/27-30. It is designed to provide those who will be affected by the SSA of the basic proposal and to inform them of a public hearing to be held to give them an opportunity to provide feedback on the proposal. Notice must be by publication and mailing.⁹ The publication must be done at least once, not less than 15 days prior to the hearing. *Id.* The notice by mailing must be sent to the person who appears on the latest tax rolls as the landowner of record of property to be affected; this notice must be mailed not less than 10 days prior to the hearing.¹⁰ *Id.* The notice can be sent ordinary United States mail.

At the public hearing held (pursuant to the notice), any interested person, including but not limited to affected landowners, can file written objections with the municipal



clerk and may be heard orally as to any of the information in the notice (such as the SSA description, maximum levy, purpose, etc.). 35 ILCS 200/27-35.¹¹ The municipality hears all objections and protests at the hearing¹² and can, at that hearing or the next regularly scheduled meeting of the municipality, delete area from the SSA.¹³ *Id.*

Landowners who find themselves subject to any change in an SSA that requires public notice and hearing, be it creation, expansion, levy or increase of a tax to finance the SSA, or issuance or modification of SSA bonds, have the power to individually object at the public hearing. Such objections are considered in the discretion of the municipality. A far more powerful form of objection is a written objection signed by at least 51% of the electors¹⁴ and 51% of the landowners of record¹⁵ living within the SSA in question. 35 ILCS 200/27-55. If such an objection is filed within 60 days of the public hearing on the SSA, the contemplated SSA action is automatically rejected and cannot be repropounded relative to any of the objection signatories for at least two years. *Id.*¹⁶

For property owners facing the imposition of an SSA, it would be important to recognize that under certain circumstances, they may be obligated to accept the creation of the SSA and waive any objection which they may otherwise have. For example, if they seek to redevelop their property and local law requires the creation of an SSA (e.g. the Kane County Stormwater Ordinance, which requires the creation of a backup SSA to provide for the maintenance of stormwater drainage and detention basins), or if they are developing their property pursuant to an annexation agreement that requires one or more SSAs, the property owners may be forced to forego any objection which they otherwise might have.

3. Recording and Effectiveness.

Once the SSA is approved by the municipality, it must be recorded with the county recorder¹⁷ before it can be assessed and collected. 35 ILCS 200/27-40. A certified copy of the ordinance establishing the SSA must be recorded within 60 days of the passage of the ordinance; failure to comply with this requirement causes invalidity of the SSA. *Id.* The ordinance must detail the specifications of the SSA, most importantly including a clear description of the territory affected.

4. Comparison to Special Assessments.

Unlike Special Assessments, SSAs cannot be created over landowner objection. Also, there is no provision in the SSA tax laws to permit a new tax levy (other than the SSA charge, itself) to be levied against properties in order to pay the municipality's portion of the costs incurred in the project to be funded. However, SSAs do not require the same series of resolutions and estimates of cost as do special assessments, and require neither a board of local improvements nor a court approval process. Accordingly, where landowner objections are not an issue (e.g. when property is under common ownership, as in a large development prior to sale of individual lots), SSAs are far simpler to create than special assessments. ■

- ¹ In the case of a municipality expanding and providing additional services to the newly expanded areas, using traditional taxes assessed against the entire municipality to pay for services provided in only one small, discrete area can cause distress amongst residents. Using an SSA or other localized taxation process to provide the localized benefit, on the other hand, can be a more popular, and reasonable, means of taxation.
- ² While SSAs can be imposed either by local municipalities or by county governments, this article will focus on the availability of SSAs to municipalities and not counties.
- ³ Special Service Areas, or SSAs, are unlike Special Assessments in a number of ways, with the most important differences including: 1) SSAs do not require a board of local improvements; 2) SSAs do not require engineering estimates of probable cost; 3) SSAs do not require court approval. However, a Special Assessment, once approved by Court, can be established in the face of landowner opposition (this oversimplifies the process in some aspects; Special Assessments are subject to potential legal challenges regarding the validity of the Special Assessment and the fashion in which it is proposed to be created). SSAs are, at the time of creation, subject to a property owner veto if a majority of property owners respond negatively.
- ⁴ While the statutes provide definition to the constitutional provisions, it is the Constitution, and not the statutes, that bestows the power to create an SSA upon municipalities. *People ex rel Zaher v. Village of Burr Ridge*, 155 Ill.App.3d 526, 529 (1st Dist. 1987).
- ⁵ As will be seen in later sections of this article, individual landowners retain the ability to protest the imposition of an SSA. Due to this unique provision that SSAs can completely surround, but not include, a given piece of area, a municipality seeking to impose a SSA could conceivably redraw a proposed SSA map to exclude one parcel of property with an objecting landowner.
- ⁶ In the case of SSAs created for weather modification, a specialized referendum process exists that supplements the standard SSA

MICKEY, WILSON, WEILER, RENZI & ANDERSSON, P.C.

Shaping the Future of Illinois Land Development Agreements

CONCENTRATING IN LAND DEVELOPMENT LAW FOR MUNICIPALITIES INCLUDING:

■ Annexation Agreements ■ Boundary Line Agreements ■ Land Use Planning & Regulation

Contact Steven Andersson, Dean Frieders or Peter Wilson, Jr.

For More Information – 630.801.9699

2111 Plum Street, Suite 201, Aurora, IL 60506

www.mickeywilson.com



- establishment procedures. 35 ILCS 200/27-80. Once created, such SSAs are also subject to specialized rules for dissolution. 35 ILCS 200/27-85.
- 7 In addition to specialized rules existing for the imposition of a weather modification SSA, special procedures also exist for the creation of a SSA to care for and maintain privately maintained or owned roads. 35 ILCS 200/27-90. Such SSAs can only be established if: 1) at least 30% of the streets in the municipality are privately owned, 2) these private streets provide access for emergency vehicles, and 3) at least 51% of the total number of parcel owners in the proposed SSA agree to the imposition of the SSA by signing a written petition filed with the municipal authority. Even more specialized procedures exist for the imposition of an SSA to pay for maintenance of privately owned roads in unincorporated areas. 35 ILCS 200/27-95.
 - 8 While it may seem unlikely that a landowner would make such a request since it *de facto* constitutes a request for additional taxation, in some circumstances, a landowner may face a necessary cost that could benefit other nearby properties or more efficiently be shared by a number of people and may be unable or unwilling to create a private partnership or other organization to spread the cost. Requesting an SSA can allow a landowner to seek the advantages of sharing costs, while avoiding the personal hassle of administering a private organization.
 - 9 If the SSA is for weather modification, notice by mailing is not required. *Id.*
 - 10 In the event the latest year's taxes have not been paid, the notice must be sent to the person in whose name taxes were last paid for parcels to be affected by the SSA. *Id.*
 - 11 The extent to which individuals must be heard at the hearing is a decision within the discretion of the municipality. Adherence to general principals of due process is obviously advisable; given the

- expense involved in litigating an SSA protest, affording extra due process to interested persons at the hearing stage is most likely far less burdensome than holding a short hearing but having an angered landowner file a suit to block the SSA. Much has been written on the appropriate amount of due process to afford persons at municipal hearings; for one of the clearest Illinois court decisions on this issue, see *Klaeren v. Village of Lisle*, 202 Ill.2d 164 (2002).
- 12 In the event the hearing cannot be closed in one meeting (i.e. the meeting runs longer than expected), it can be adjourned to another date without having to complete the public notice procedures again. Rather, all that need be done is have a motion to adjourn and reconvene at a specified time and place be entered and passed in open session at the public hearing. *Id.*
 - 13 The revised SSA must still comply with all of the statutory requirements; the statute specifically warns of the need to continue to comply with the contiguity requirement after deletion of any portion of the SSA. *Id.*
 - 14 Any person registered to vote who lives in the affected area is considered to be an elector. *Id.*
 - 15 Owners of record are determined at the time the public hearing was held; a parcel owned by more than one person in a trust, corporation, estate or partnership is deemed to have one owner and only requires one signature. *Id.*
 - 16 Any such petition is effective as signed at the time of its filing, and after filing cannot be made ineffective because of the withdrawal of any signatories. *Beghr Willowbrook Venture v. Village of Willowbrook*, 217 Ill.App.3d 614 (2nd Dist. 1991).
 - 17 If the SSA has properties in more than one county, it must be recorded with the county recorder of each county. *Id.*

Illinois Municipal League Legislative Bulletin by E-MAIL

The IML wants to expand the distribution of the **Legislative Bulletin** to as many municipal officials as possible. Historically, time constraints related to preparation, printing and mailing have limited circulation primarily to Mayors and Municipal Clerks. **By utilizing e-mail**, it is possible to provide the Legislative Bulletin to **all member elected and appointed officials** who have an e-mail address.

Please complete and return this form if you would like to receive the Legislative Bulletin by e-mail and are an IML member elected or appointed official.

*Return to: Illinois Municipal League
PO Box 5180
Springfield, IL 62705-5180
or fax to: 217-525-7438*

Name:

Title:

Municipality:

City Hall Address:

E-Mail Address:

PLEASE PRINT CLEARLY