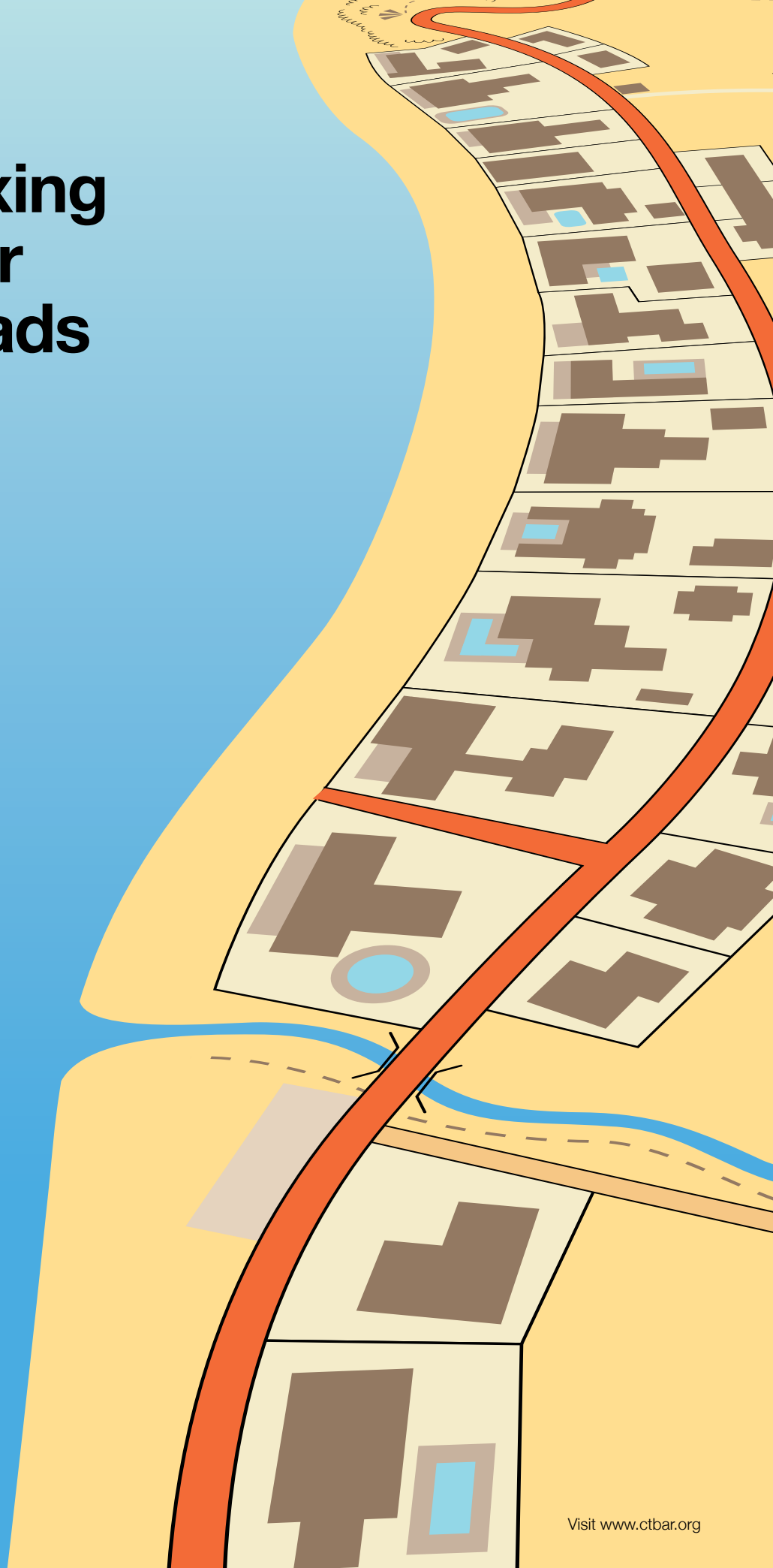


Special Taxing Districts for Private Roads

By Eugene E. Cederbaum

Background

In 2014, the Connecticut General Assembly passed a law, Public Act 14-67, providing that all owners of residential property having easements or rights-of-way for access over property owned by another, are each responsible for the cost of maintaining them. Examples of “access” easements or rights-of-way include the right pass over another’s property to a public road or a public beach as well as for the use of driveways. The act contemplates that such property owners will enter into written agreements setting forth the financial obligation of each owner for maintenance and repair. In the absence of such an agreement, the law states that costs are to be shared “in proportion to the benefit received by each such property.” Unfortunately, no guidance is given for determining proportional benefits.



To access a public road from a private road, owners require an easement or right-of-way over those portions of the road owned by others. Therefore, Public Act 14-67 applies and partially addresses the obligation to pay for the costs of maintenance and repair. However, this is only one of the problems faced by property owners on private roads, as the act alone is inadequate.

In addition to payment for maintenance and repair, issues that arise on private roads include the following: governance, voting by rights of property owners, effective tax collection, capital improvements, damage caused by “teardowns” followed by the construction of “McMansions,” road safety, signage, storm drains construction and/or maintenance, and even refuse collection.¹

In view of the limitations of Public Act 14-67, it’s even more important for property owners to understand and address the above issues in a comprehensive manner.

Enter the Special Taxing District²

Formation of a special taxing district is relatively simple and can be accomplished within three months or so. If the statutory scheme is followed, boards of selectmen or city councils *must* approve formation. Once formed, district members meet annually to pass budgets for the upcoming year. (The first budget covers the period from the date of formation to the following June 30th). In the same manner as municipal taxes are determined, once the budget is passed, a mill rate is determined with reference to the district’s “grand list” and multiplied by the assessed value of each property. Tax bills are then prepared and delivered.

The formation process is begun by the submission of a petition to the municipality. The petition describes the proposed geographic boundaries and purposes of the proposed district. It must be signed by at least 15 registered voters residing within the proposed district. If the petition is properly filed, the board or council must schedule a meeting to consider the petition within 30 days. At the scheduled meeting, a minimum of 15 registered voters resid-

ing within the proposed district must be in attendance. At least two-thirds of those actually in attendance must vote in favor of formation. As previously noted, if all of the foregoing prerequisites are met, the board or council must approve formation.

Once formed, the district meets to elect officers, sets a date for annual meetings, passes formation ordinances, and adopts an interim budget. District taxes are determined in the same manner as municipal taxes. Should payment not be received in a timely manner, a lien may be filed automatically without the need to commence legal proceedings. Interest on unpaid district taxes accrues at the rate of 18 percent per annum. In sharp contrast, other forms of private road governance require a court order authorizing the lien. District taxpayers are thus clearly motivated to pay taxes when due to avoid the filing of a lien, the accrual of interest, and possible foreclosure.

The district should also address the possibility of liability faced by individual property owners and/or the district. This writer recommends that each property owner insure against personal injury and other claims either by obtaining coverage under homeowner policies or through an umbrella policy, or both. Districts should also obtain a general liability insurance policy in its own name. Lastly, the officers and directors should also be indemnified for claims against them through appropriate insurance coverage.

Almost as icing on the cake, there are at least three additional benefits unique to special taxing districts:

1. Taxes paid to a district are *deductible on income tax returns* to the extent permitted by law. It should be noted, however, that the IRS periodically and critically reviews the tax deductibility of district taxes.
2. Some years ago, Connecticut passed a law *exempting special taxing districts from paying sales tax*. Given that the costs associated with maintenance and repair, particularly repaving, has grown significantly, the sales tax exemption is significant.

3. *Unanimous votes are not required* to pass annual budgets, assess taxes, or take other actions.

There is no “downside” to forming a special taxing district. Connecticut has simply passed legislation that levels the playing field for road maintenance and repair on both public and private roads. **CL**



Eugene E. Cederbaum practices law in Westport with a focus on taxing districts. He is a former president of the Westport Bar Association, and has served on the Westport Representative Town Meeting

Notes

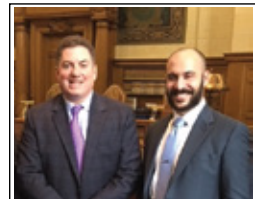
1. Conn. Gen Stat. § 7-326 contains a comprehensive list of purposes for which districts may be formed. Note, only those purposes set forth in the petition for formation apply to any particular district.
2. See, generally, Conn. Gen. Stat. § 7-324, *et seq.*



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Barry, Barall & Spinella, LLC
is pleased to announce that

Nico J. Piscopo
has joined the firm.



Atty. Ryan P. Barry (left), Atty. Nico J. Piscopo (right).

Atty. Piscopo graduated with honors from Clarke University and is an honors graduate from the University of Connecticut School of Law. He practices Personal Injury and Employment law.

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