

Memorandum

To: Commissioner Abbott and County Commission

From: Al Hadeed, County Attorney

Re: Daytona North Service District Front Foot Assessment

Date: July 29, 2009

Commissioner Abbott, you asked me to recap the standards governing the front foot assessment. You correctly recalled that the assessment amount cannot be changed unless certain statutory procedures are followed.

As you know, the assessment has been fixed at 58¢ per front foot since 1992. If an increase is in fact to be recommended by the Advisory Council to the Board of County Commissioners, there are substantial, mandatory noticing requirements before any increase can be formally considered by the Commission.

Because the front foot assessment is a non-ad valorem special assessment, any assessment increase cannot be handled through the typical public hearing process like one might expect for an increase in ad valorem millage. Instead, any assessment increase must follow a precise procedure under Section 197.3632, Florida Statutes. Assuming hypothetically that an increase in the assessment is desired for the budget year that begins on October 1, 2009, the County Commission would have to consider adopting an assessment roll and any increase by September 15, 2009, at a public hearing. Twenty (20) days prior to the hearing to consider such adoption, the County must have mailed notice of the proposed increase to each property owner in the Daytona North Service District. The notice must not only include the time of the hearing but it also must identify the purpose of the increase, the time for filing objections and other information related to the increase. While I cannot speak for County Administration, I believe it is too late to do all things necessary to complete this process by September 15, if an increase is to be considered this year. However, there obviously is plenty of time for the following year to consider a plan for an increase, if that is the wish of the Advisory Council.

Let me make clear that the Advisory Council is not responsible for implementing the mailed notice requirements of the law. That is the County's job although the mailing costs are chargeable to the District. Please note that the County cannot meet its obligations under the law unless the Advisory Council acts with sufficient time to allow County Administration to perform all of the functions under the statute. (Please note as stated in prior opinions from this office, the procedure that occurred in September 2006 did not follow the law for enacting an increase in the assessment. If hypothetically an assessment had been enacted by the Commission, the revenue collected would have had to be returned to the property owners even if the County had already spent the revenue. So the consequences are unforgiving financially if the statute is not followed.)

To assure this issue is fully understood, please also note that the recommendation of the Advisory Council is not binding on the Commission. This principle can go the other way too. That is, the Commission can determine to increase the assessment without the recommendation of the Advisory Council. While I doubt the Commission would act without the Council's input, I am obligated to point out this technicality of the law.

Finally, again to complete the legal picture, I also need to point out the final judgment by the Circuit Court in 1977 in the case between the County and the developer of the Daytona North subdivision. The Court ruled that Flagler County is not obligated to either the developer or "any purchasers of the lots in the subdivision to construct or maintain streets or other improvements in [the] Daytona North subdivision..." This final judgment means that the County Commission is given discretion about how to handle the provision of roads and certain other improvements through the front foot assessment as opposed to using general ad valorem revenue or gas tax. This result was because of the way the developer chose to proceed with its subdivision and not following the County's land use rules.

If you have any questions, please do not hesitate to let me know.

Copies: Craig Coffey; Sally Sherman; Tom Klinker; Jennifer Bennett