

Sunny Hills MSBU District 2018

28 sq. miles in district; ; 200 miles paved Streets; 634 paved named streets;
900 intersections and crossroads; 16,000 properties pay the Assessment Fee, to receive the
Special Benefits to help increase the value of their property and the enjoyment using that property.

County Ordinance 2001-4:

Special Benefits that are listed to be provided to the **MSBU District**.

Emergency fire service; Road Beautifications; Lighting; to all "common areas" in the District.

SHVFD, SH Civic Association, Washington County, State of Florida.

SUNNY HILLS FACT SUMMARY

Acreage in Master Plan:	17,743 acres
Initial Acquisition Year:	1968
Year Opened:	1971
Estimated Current Population:	2,200
Platted Lots and Tracts in Master Plan:	26,251
Unsold Platted Lots and Tracts:	
Improved:	696
Unimproved:	12,457

*Excluded from these lots and tracts are improved and unimproved lots that are required for drainage and cannot be sold or that have been removed from sale for encumbrances or additional site development, which can only be sold when these issues are resolved. Also excluded are amenities as well as tracts reserved for community usage such as greenbelts, buffer areas, church and school sites. Also excluded 3,829 acres of unplatted natural reserve in Washington County restricted for recreational open space/park use which can only be sold subject to the underlying land use restrictions.

The community is located approximately 35 miles North of Panama City via State Road #77, which intersects the property, and 22 miles South of Chipley. The minimum single-family residential lot is 7,500 square feet. To date, the company has sold approximately 13,000 lots on the installment basis or as house and lot packages. Sunny Hills is a planned community containing single-family and multi-family residential lots and tracts, commercial sites, community service sites, and church, greenbelt, park, and recreational areas. Plat maps for all units were recorded in the Public Records of Washington County.

In its natural state, the land at Sunny Hills is rolling to hilly and is predominately covered by pine and oak trees. The elevations range between 56 to 305 feet above sea level. The natural drainage pattern has been incorporated in the development as far as possible. Sunny Hills goes through the four seasons throughout the year.

ORDINANCE NO. 2001 4

AN ORDINANCE OF WASHINGTON COUNTY, FLORIDA TO BE KNOWN AS THE SUNNY HILLS/OAK HILLS MUNICIPAL SERVICES BENEFIT UNIT (MSBU) ORDINANCE; CREATING THE SUNNY HILLS/OAK HILLS MUNICIPAL SERVICES BENEFIT UNIT; DESIGNATING THE BOUNDARIES OF SAID MSBU; DESIGNATING A GOVERNING BOARD OF SAID MSBU; PROVIDING FOR AN ADVISORY COMMITTEE; PROVIDING DEFINITIONS; ESTABLISHING THE PROCEDURES BY WHICH THE MSBU SHALL OPERATE; PROVIDING FOR THE FINANCING OF THE OPERATIONS OF SAID MSBU BY THE IMPOSITION OF A NON AD VALOREM ASSESSMENT UPON THE REAL PROPERTIES WITHIN SAID MSBU; PROVIDING FOR THE COLLECTION OF THE ASSESSMENTS; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HERewith; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Section 125.01 (1) (q) of the Florida Statutes grants the Board of County Commissioners of a non-chartered county the power to establish a municipal services benefit unit for any part or all of the unincorporated areas of the County within which may be provided certain community services from assessments on the real property within such unit; and

WHEREAS, the Board of County Commissioners of Washington County, Florida has received petitions from the Sunny Hills/Oak Hill Residents showing that a majority of the owners of real property within the proposed boundaries of the Sunny Hills Municipal Services Benefit Unit request the creation of the same; and

WHEREAS, it is necessary and desirable for the public benefit, safety, and general welfare of the County and its citizens that provisions be made within the boundary of the unit to perform certain community services defined and for financing the costs of such projects.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF WASHINGTON COUNTY, FLORIDA:

SECTION 1. Definitions. For the purpose of this Ordinance, the definitions contained in this section shall apply unless otherwise stated:

- A. Annual Assessment. The annual charge to be imposed upon each Parcel commencing with the 2001 Real Estate Tax year.
- B. Acreage. All properties that have not been designated as residential properties that may include but are not limited to buffers, natural preserves, park sites, commercial tracts, school sites, utility sites, institutional sites and other properties of such type defined in the Master Plan of the subdivision.
- C. Benefit Unit. All parcels defined within the boundaries of Exhibit A Pages 1 thru 21.
- D. Board. The Board of Commissioners of Washington County, Florida.
- E. Capital Acquisition Fund. A fund established in the budget of the Benefit Unit for such expenditures for Community Services as the Advisory Committee deems appropriate requiring capital funds.
- F. Civic Association. The Sunny Hills Civic and Improvement Association, Inc.
- G. Clerk. The Clerk of Circuit Court of Washington County, Florida.
- H. Crime Watch. The Sunny Hills Crime Watch, Inc.
- I. Commercial Property. Commercial property to be assessed consists of property classified as commercial by the original plat or by the Committee to include but not be limited to: vacant commercial, stores (one story), mixed use (store and office combined), department stores, supermarkets, community shopping centers, office buildings (single-story), office buildings (multi-story), professional service buildings, marinas, piers, restaurants, cafeterias, drive-in restaurants, financial institutions (bank, savings and loan companies, mortgage companies, credit services), insurance company offices, repair service shops (excluding automotive), laundries, Laundromats, service stations, auto sales, auto repair and storage, auto service shops, auto rental, wholesale outlets, manufacturing outlets, florist, green houses, enclosed theaters, nightclubs, cocktail lounges, bars, bowling alleys, pool halls, golf courses, driving ranges, hotels, motels, mailing & packing services, bakeries, medical clinics (doctor, dentist, etc.), recreational vehicle storage, swimming pools, tennis courts, and veterinary clinics.

- J. Committee. The Sunny Hills/Oak Hill Municipal Services Benefit Unit Advisory Committee.
- K. Common Areas. Those areas as designated by the original plat or from time to time by the Committee lying within the Benefit Unit or which consist of any of the following: right-of-way along Benefit Unit Roads, landscaped areas, buffers, park sites and dedicated environmental preservation areas within the Benefit Unit. The Committee shall not designate as Common Area the private property of any Person, other than Civic Association, Fire Department, Crime Watch, Washington County or State of Florida, unless the use thereof has been dedicated to the residents of the Benefit Unit, the public or permanently dedicated as an environmental preservation area.
- L. Community Services. Services including, but not limited to: the repair and maintenance of grounds, landscaped areas, signage and streetlights in the Common Areas. Community Services does not include the repair or replacement of the Merchants Way road surface not dedicated to the County. In addition, Community Services are intended to supplement and to improve upon those services normally provided by Washington County or The State of Florida within the Benefit Unit and it is not intended that the County or State be relieved from providing services within the Benefit Unit that are generally provided to areas of Washington County outside the Benefit Unit.
- M. Developed Residential Lot Amount. The amount of the Annual Assessment applied to each residential parcel and used to compute the commercial, institutional and acreage parcel assessment.
- N. Developed Residential Lot. Any residential platted lot with a paved road.
- O. Development Plan. Is an overall collection of plans that includes the engineered drawings of the road plans, deeds, deed restrictions, plat, aeriels, vegetation covers, topos, buildings and structures, flood elevations, parking, lighting, garbage service, storm water runoff, plans for signs, homeowners association agreements, soil maps, percolation tests, utilities, culverts, permits required by other agencies.
- P. Fire Department. The Sunny Hills Volunteer Fire Department, Inc
- Q. Fiscal Year. The fiscal year applicable to Washington County government
- R. Institutional Property. Institutional property to be assessed consists of property classified as institutional by the original plat or the Committee to include but not limited to: vacant institutional, privately owned hospitals, homes for the aged, clubs, lodges, union halls, cultural organizations facilities, convalescent and rest homes.
- S. Owner. Any person owning real property within the Benefit Unit.
- T. Parcel. Each individual Parcel of real property within the Benefit Unit as established on the rolls of the Property Appraiser of Washington County.
- U. Person. An individual, firm, partnership, corporation, association, executor, administrator, trustee or other legal entity, whether singular or plural, masculine or feminine, as the context may require.
- V. Plat. A map or drawing depicting a parcel of land or the division of lands into lots, blocks, parcels and containing a legal description of such lands. May include the terms "re-plat," "amended plat," or "revised plat."
- W. Private Road. Any property and improvements located within a designated right-of-way which right-of-way is not owned by a governmental entity, but not including any portion of a Private Road that is also a Benefit Unit Road as defined herein.
- X. Project. A Community Service effort undertaken within the Benefit Unit.
- Y. Property Appraiser. The Property Appraiser of Washington County, Florida
- Z. Public Subdivision Roads. The property and improvements located within the designated right-of-way of any road within the Benefit Unit which right-of-way is dedicated to the public in accordance with a declaration or plat filed in the Official Records of Washington County but not including any portion of a Public Subdivision Road that is also a Benefit Unit Road as defined herein.
- AA. Residential Property. Residential property to be assessed consists of all property which is not commercial, institutional and governmental, or Common Area to include but not be limited to vacant residential, single family homes, multi-family units (10 units or more), condominium, multi-family units (less that 10 units).
- BB. Tax Collector. The Tax Collector of Washington County, Florida.
- CC. Undeveloped Residential Lot. Residential platted lot without a paved road.

SECTION 2. Creation of Sunny Hills/Oak Hill Municipal Services Benefit Unit. There is hereby created and established the Sunny Hills/Oak Hill Municipal Services Benefit Unit under the authority of Section 125.01, Florida Statutes. The Benefit Unit shall consist of all Parcels within the boundary of the community known as Sunny Hills/Oak Hill in unincorporated Washington County, the area of which is defined in [exhibit A Pages 1 thru 21]. Said Benefit Unit is being created for the purpose of providing Community Services; including but not limited to, emergency services, road improvements, street and security lighting, acquisition and improvements to common areas, beautification and other services deemed necessary by the Benefit Unit within the Benefit Unit. The purpose of these services is to maintain the quality of life of the Owners of Parcels in the Benefit Unit at the level of quality they desire. Community Services are intended to

supplement and to improve upon the level of services provided by Washington County or State of Florida in the Benefit Unit and are not intended to relieve Washington County or State of Florida from providing services within the Benefit Unit that they generally provide to areas of Washington County outside the Benefit Unit.

SECTION 3. Legislative Determination of Benefit. It is hereby declared and determined by the Board of County Commissioners of Washington County, Florida, that the Community Services defined herein constitute a benefit to each Parcel within the Benefit Unit.

SECTION 4. Determination of Cost of Services. The Committee shall determine for each fiscal year and recommend to the Board the level, extent and type of Community Services and their estimated cost, including administrative costs and expenses (including Property Appraiser and Tax Collector, as required by law) and any fees for services of professional personnel, technicians or consultants deemed necessary by the Committee for the effective provision of the Community Services. The cost of Community Services shall then become the proposed budget for the Benefit Unit for the ensuing fiscal year and shall be submitted to the Board for its approval.

SECTION 5. Sunny Hills/Oak Hill Services Benefit Unit Governing Body. The Board of County Commissioners of Washington County, Florida, shall, in accordance with Florida Statutes, be the governing body of the Benefit Unit. The Board shall review and approve the annual budget as determined, established and recommended by the Committee and the Board shall review and approve an annual resolution setting forth the amount of the resulting Annual Assessment. The Board shall be the final authority with respect to all aspects of the Community Services to be provided within the Benefit Unit and shall have the power to review any actions undertaken by the Committee on behalf of the Benefit Unit.

SECTION 6. Sunny Hills/Oak Hill Municipal Services Benefit Unit Advisory Committee. Concurrent with the passage of the Ordinance, an eleven (11) member Advisory Committee, to be known as The Sunny Hills/Oak Hill Municipal Service Benefit Unit Advisory Committee (hereinafter, referred to as Committee) is hereby created. Simple majority of the residents/property owners voting each year will elect nine (9) officers to the Sunny Hills Civic Association Board whom automatically become members of the Committee. The elected members of the Committee must be residents/property owners in the benefit unit they are to represent. One member will be appointed to this committee from the Fire Department by the Fire Dept. Board and one member will be appointed to this committee from the Crime Watch by The Crime Watch Board. Election of Advisory Committee Members will be conducted by The Sunny Hills Civic Association as established in it's by laws.

A. Term of Office. The initial terms of office of the Committee shall be as follows: In conjunction with the Civic Association's election schedule;

1. four (4) members will serve for two (2) years and four (4) members will serve for two (2) years in alternating years.
2. One (1) member elected as a MSBU coordinator will serve a four (4) year term. (This elected position will be an appointed position by the Washington County Board for the first term.)
3. two (2) positions one (1) each, appointed by the Fire Dept and Crime Watch will be for 3 years. Appointments by the Advisory Committee to fill vacancies on the Committee shall be for the remainder of the unexpired term of office.

B. Removal from Office. Failure to Attend Meetings. 1) Any member of the Committee may be removed from office by a majority vote of the Committee. 2) If any member of the Committee fails to attend two (2) consecutive Committee meetings without a satisfactory excuse, or if a member is absent from more than one-half of the Committee's meetings in a given fiscal year, the Committee shall declare the member's seat to be vacant and the vacancy shall be filled by the Advisory Committee.

C. Officers; Quorum; Rules of Procedure. The MSBU coordinator shall become Chairman of the Committee with the members of the Committee selecting a Vice-Chairman from among its members. In addition, an affirmative vote of six (6) or more members shall be necessary in order to take actions, even if only six (6) or more members of the Committee are present at a meeting. The Committee shall adhere to Florida Sunshine laws and shall keep records of meetings, resolutions, findings and determinations.

D. Compensation of Members. Members of the Committee shall serve without compensation except for the MSBU coordinator. The Civic Association sets this position's compensation and job description with the Board's recommendations and approval.

- E. Operating Procedures.** This committee is responsible to establish operating policies and procedures for the committee's operations; to be approved by The Board. These (policies and procedures) will change and revise from time to time and will be approved by the Board. This committee will also provide oversight for policies and procedures of other organizations within the Unit that would be eligible for funds from this assessment. The Committee will then make their recommendation to the Board for final approval before any funds are allocated.

SECTION 7. Determination, Effect, and Collection of the Annual Assessment. Board's Resolution Establishing Assessment.

The Board, after its approval of a resolution adopting the budget, does hereby levy and impose an Annual Assessment against all parcels. The amount of the assessment (see Method of Assessment below for determination) shall be authorized by resolution during each year. The Board's action shall be reduced to writing and a copy of such resolution shall forthwith be forwarded to the Tax Collector and Property Appraiser of Washington County. The Committee and the Board shall comply with all state laws relative to the notification and levy of the Annual Assessment, it being the intent of this Ordinance to allow Community Services to include the maximum amount of self government to all residents of the Benefit Unit permissible pursuant to state law. Upon enactment of this Ordinance the initial Annual Assessment for financing the operation of the Benefit Unit shall not exceed \$25.00 per developed residential lot for the first five (5) years. The developed residential lot amount cannot increase by more than 5% from the previous year commencing in year six (6).

A. Assessments.

All assessments to be levied, preliminary estimate and final, will be computed by the Benefit Unit and provided to the Board in the format prescribed by law. The Board will enter this on to the non ad valorem assessment roll. The Tax collector will provide the final billing notice to owners.

B. Assessments to be Collected by Tax Collector.

All assessments levied by the Board and collected pursuant hereto shall be due and collected by the Tax Collector of Washington County in the same manner as municipal property taxes of the various municipalities in Washington County, Florida.

C. Assessment Modification After Final Tax Notice Sent by County.

The Benefit Unit designates the Board or it's designate to act as agent for the Benefit Unit to modify the final assessment if changes are made to the assessment roll after final assessment notification is sent to property owners. Assessment to Constitute a Lien. The Annual Assessment hereby authorized to be levied, assessed, imposed, and collected (Uniform Collection Method) shall thereupon become a lien upon each Parcel within the Benefit Unit and shall accrue interest and be enforced in the same manner as liens for ad valorem taxes, including fees for costs of collection. Such lien for the Annual Assessment shall be a first lien superior in dignity to all other liens except ad valorem tax liens.

D. Method of Assessment.

The developed residential lot is the standard for imposing the Annual Assessment. The Annual Assessment on a Parcel shall be determined by dividing the approved budget by the total number of residential lots and commercial and institutional residential lot equivalents to determine the Residential Lot Amount, not to exceed the maximum amount as established in this section, then applying that amount to each residential, commercial, institutional parcel and acreage as defined below. The cost of Community Services as set forth in the approved budget shall be allocated as follows among the Parcels:

1. Residential:

- (A) Each developed residential parcel, whether built on or not will be assessed the same, one Residential Lot Amount.
- (B) Tracts of land intended for residential parcels but not yet improved will be assessed zero (0) Residential Lot Amount per lot until improved then assessed as in (A) above.
- (C) When constructed and offered for sale, each townhouse unit, condominium unit, or other property division intended as a residential dwelling or rental unit shall be assessed one Residential Lot Amount.
- (D) Any acreage not permanently dedicated to the public will be assessed one quarter (1/4) Residential Lot Amount per acre (rounded to the nearest tenth acre), not to be less than \$25 (twenty five) or greater than \$300 (three hundred) then to follow the maximum 5% increase cap in year 6.

2. Commercial:

(A) Commercial property will be assessed one quarter (1/4) Residential Lot Amount per one-thousand (1000) square feet of building space constructed (Property Appraiser adjusted square footage figures will be used), not to be less than \$25 (twenty five) or greater than \$300 (three hundred), then to follow the maximum 5% increase cap in year 6.

(B) Commercial property in use but without a building will be assessed one (1/4) Residential Lot Amount per acre (rounded to the nearest tenth acre), not to be less than \$25 (twenty five) or greater than \$300 (three hundred), then to follow the maximum 5% increase cap in year 6.

(C). Property intended for commercial use but not yet developed will be assessed zero (0) Residential Lot Amount per acre (rounded to the nearest tenth acre). When built on or placed into commercial use the property will be assessed as per (A) or (B) above.

3. Institutional:

(A) Institutional property will be assessed 1/4 Residential Lot Amount per one-thousand (1000) square feet of building space constructed (Property Appraiser adjusted square footage figures will be used), not to be less than \$25 (twenty five) or greater than \$300 (three hundred), then to follow the maximum 5% increase cap in year 6.

(B) Institutional property in use but without a building will be assessed one quarter (1/4) Residential Lot Amount per acre (rounded to the nearest tenth acre), not to be less than \$25 (twenty five) or greater than \$300 (three hundred), then to follow the maximum 5% increase cap in year 6.

(C). Property intended for institutional use but not yet developed will be assessed zero (0) Residential Lot Amount per acre (rounded to the nearest tenth acre). When built on or placed into commercial use the property will be assessed as per (A) or (B) above.

SECTION 8. Disposition of Proceeds from Levy of Annual Assessment. Those funds obtained from the levy of the Annual Assessment on the Parcels shall be maintained in a separate account on deposit with the Clerk of Circuit Court of Washington County and used solely for funding the costs in the Benefit Unit's approved budget.

SECTION 9. Expenditure of Funds. Neither the Board nor anyone else acting on behalf of the Benefit Unit shall be permitted to contract for the expenditure of funds in any fiscal year in excess of the sum total of the amount of Annual Assessments levied against all Parcels within the Benefit Unit for that fiscal year. Funds obtained from the levy of the Annual Assessment shall not be used to finance any project outside of the Benefit Unit. All funds collected by the Annual Assessment for a specific fiscal year need not be expended by the end of that fiscal year if actual costs do not meet the estimated amount. Any funds remaining at the end of the fiscal year shall be carried forward to the next fiscal year. Subject to approval of the Board, the Committee may recommend an amendment to the budget for the fiscal year in order to add Projects for which funds may be available. Subject to approval of the Board, the Committee may delete Projects from an existing budget so that their allocated funds can be transferred to other Projects already approved.

SECTION 10. Completion of Projects. This Ordinance shall be in effect until revoked by the Board upon consultation with the Committee. If revoked, any excess funds remaining shall be divided and disbursed to the property owners on a pro rata basis according to the number of Residential Lot Amounts assessed on each parcel shown on the latest non ad valorem rolls in accordance with the direction of the Tax Collector of Washington County, Florida.

SECTION 11. Ratification of Acts. Previously, various activities were engaged in to facilitate the preparation of the ordinance, the planning and development of the proposed expenditures and notification to the property owners of the proposed assessment. The Board of County Commissioners expressly ratifies each and every one of such acts as if it had been specifically authorized prior to their occurrence.

SECTION 12. Numbering of Ordinance. This Ordinance may be renumbered or re-titled for inclusion into the Washington County Code of Ordinances.

SECTION 13. Validity. If any section, subsection, sentence, clause, or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate,

distinct, and independent provision and such holding shall not effect the validity of the remaining positions of this ordinance.

SECTION 14. Effective Date. This Ordinance shall take effect on September 4th, 2001 or upon receipt of official acknowledgment from the Department of State of the State of Florida that it has been filed and does hereby repeal all Ordinances or provisions in conflict herewith.

ENACTED in Special Session this 4 day of Sept., 2001.

BOARD OF COUNTY COMMISSIONERS
OF WASHINGTON COUNTY, FLORIDA,

ATTEST:

Linda Cook
Clerk

(SEAL) BY:

Tom Brown
Chairman

FILE DATE: 09/05/2001 FILE TIME: 08:43
WASHINGTON CO. FL. LINDA HAYES COOK - CLERK

BOOK: 417 PAGE: 14
INST#: 2001 4728

OFF REC 0417 REC 0014

CHAPTER 3

HOME RULE REVENUE SOURCES: SPECIAL ASSESSMENTS

Another home rule revenue source which a local government may choose to fund local improvements or essential services is the special assessment. Like fees, special assessments have their own legal requirements to be valid; but, the requirements for special assessments are more stringent than for fees.

The greatest challenge in imposing a valid special assessment is to avoid classification as a tax. As previously mentioned, under the Florida Constitution, no tax, other than ad valorem taxes, may be levied without general law authorization. However, counties and municipalities require no similar specific general authorization for special assessments. City of Boca Raton v. State, 595 So.2d 25 (Fla. 1992).

Special assessments and taxes are distinguishable because no requirement exists that taxes provide a specific benefit to property; rather, taxes are levied for the general benefit of residents and property. As established by case law, two requirements exist for the imposition of a valid special assessment: (1) the property assessed must derive a special benefit from the improvement or service provided and (2) the assessment must be fairly and reasonably apportioned among the properties which receive the special benefit. City of Boca Raton v. State, 595 So.2d at 29. If a special assessment ordinance withstands the special benefit and fair apportionment tests, the assessment is not a tax and the judicial focus is then on whether the methods prescribed by the home rule ordinance were substantially followed and whether the assessed costs were

fairly and reasonably apportioned among the properties that receive the special benefit. See Madison County v. Foxx, 636 So.2d 39 (Fla. 1st DCA 1994).

Special assessments are "charges assessed against the property of some particular locality because that property derives some special benefit from the expenditure of the money. . . ." Atlantic Coast Line R. Co. v. City of Gainesville, 91 So. 118, 121 (Fla. 1922). An assessment may provide funding for either capital expenditures or the operational costs of services, provided that the property which is subject to the assessment derives a special benefit from the improvement or service. Madison County v. Foxx, 636 So.2d 39 (Fla. 1st DCA 1994).

Many assessed services and improvements have been upheld as providing the requisite special benefit. Such services and improvements include: garbage disposal, Harris v. Wilson, 656 So.2d 512 (Fla. 1st DCA 1995) and Charlotte County v. Fiske, 350 So.2d 578 (Fla. 2d DCA 1977); sewer improvements, City of Hallandale v. Meekins, 237 So.2d 318 (Fla. 4th DCA 1970) and Meyer v. City of Oakland Park, 219 So.2d 417 (Fla. 1969); fire protection, South Trail Fire Control Dist., Sarasota County v. State, 273 So.2d 380 (Fla. 1973) and Fire Dist. No. 1 of Polk County v. Jenkins, 221 So.2d 740 (Fla. 1969); fire and rescue services, Sarasota County v. Sarasota Church of Christ, 20 Fla. L. Weekly S600 (Fla. Dec. 21, 1995), rev'd, 641 So.2d 900 (Fla. 2d DCA 1994); street improvements, Atlantic Coast Line R.R. v. City of Gainesville, 91 So. 118 (Fla. 1922) and Bodner v. City of Coral Gables, 245 So.2d 250 (Fla. 1971); parking facilities, City of Naples v. Moon, supra; downtown redevelopment, City of Boca Raton v. State, 595 So.2d 25 (Fla. 1992); and stormwater management services, Sarasota County v. Sarasota Church of Christ, Inc., 20 Fla. L. Weekly S600 (Fla. Dec. 21, 1995), rev'd, 641 So.2d 900 (Fla. 2d DCA 1994).

SPECIAL BENEFIT REQUIREMENT

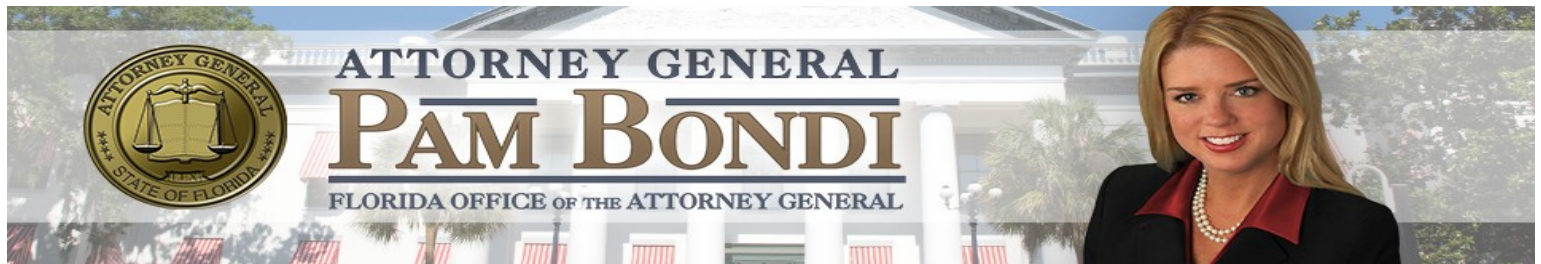
The benefit required for a valid special assessment consists of more than simply an increase in market value, and includes both potential increases in value and the added use and enjoyment of the property. Meyer v. City of Oakland Park, 219 So.2d 417 (Fla. 1969). In Meyer, the Supreme Court upheld a sewer assessment on both

improved and unimproved property, stating that the benefit need not be direct nor immediate but must be substantial, certain and capable of being realized within a reasonable time. Furthermore, the benefit need not be determined in relation to the existing use of the property. See City of Hallandale v. Meekins, 237 So.2d 318 (Fla. 4th DCA 1970), aff'd, 245 So.2d 253 (Fla. 1971).

Although the benefit derived need not be direct and immediate, the benefit must be special and peculiar to the property assessed and not a general benefit to the entire community. Thus, services which are provided by a government may be essential to the public welfare but fail to provide the special benefit necessary for the imposition of a valid assessment. For example, Crowder v. Phillips, 146 Fla. 428, 1 So.2d 629 (Fla. 1941), a special assessment for the establishment and maintenance of a hospital was found to not afford a special or peculiar benefit to the real property assessed. The court reasoned that the hospital provided benefits to the entire community because of its availability to any person but that no logical relationship existed between the construction and maintenance of the hospital and the assessed property. Additionally, in Whisnant v. Stringfellow, 50 So.2d 885 (Fla. 1951), an assessment for the county health unit was also held to be invalid in that it benefited everyone in the county, regardless of their status as property owners.

FAIR AND REASONABLE APPORTIONMENT REQUIREMENT

An improvement or service which specially benefits the assessed properties must also be "fairly and reasonably apportioned among the benefited properties." City of Boca Raton v. State, 595 So.2d 25 (Fla. 1992); Parrish v. Hillsborough County, 123 So. 830 (Fla. 1929). For example, in South Trail Fire Control District, Sarasota County v. State, 273 So.2d 380 (Fla. 1973), the Court upheld the apportionment scheme which assessed business and commercial property on an area basis while other property was assessed on a flat rate basis. The Supreme Court held that the manner of the assessment's apportionment is immaterial and may vary provided that the amount of the assessment for each property does not exceed the proportional benefits it receives as compared to other properties.



Advisory Legal Opinion - AGO 82-103——

Special assessments for funding county services

RE: COUNTIES--Levy of special assessments on real property to fund general county services unauthorized

QUESTION:

May the Board of County Commissioners of Marion County levy and collect special assessments pursuant to s. 125.01(1)(r), F.S., in lieu of or in addition to ad valorem taxes for the purpose of funding county services such as the property appraiser's office, county jail and tax collector's office?

SUMMARY:

Unless and until judicially determined otherwise, it is my opinion that the Board of County Commissioners of Marion County may not lawfully levy and collect special assessments pursuant to s. 125.01(r), F.S., in lieu of or in addition to ad valorem taxes for the purpose of funding the maintenance and operation of the county jail and the operation of the offices of the county property appraiser and tax collector.

According to your letter, the board of county commissioners is considering levying a special assessment on each parcel of real property in the county, presumably on a countywide basis, to defray the expenses of providing the above described "county services," the amount of which is to be determined by the type of parcel.

Section 125.01(1)(r), F.S., among other things, provides that the legislative and governing body of a county shall have the power to carry on county government, which, to the extent not inconsistent with general or special law, shall include the power to "[l]evy and collect taxes, . . . and special assessments, . . . which power shall be exercised in such manner, and subject to such limitations, as may be provided by general law." (Emphasis supplied.) (I am not aware of any general law which empowers a county to levy special assessments for purposes of funding general county governmental functions or facilities such as the county jail and the operations of the offices of the county property appraiser and tax collector or that prescribes the manner of exercising any such power.) Cf. s. 153.05, F.S., which authorizes any county to provide for the construction or reconstruction of certain facilities, as defined by s. 153.02(7), F.S., and for the levying of special assessments upon benefited property under the provisions of that section and pursuant to the procedures prescribed therein. [Special assessments are charges assessed against the property of some particular locality because that property derives some special benefit from the expenditure of the money collected by the assessment in addition to the general benefit accruing to all property or citizens. See 29A, Fla. Jur. Special Assessments ss. 2 and 18 (1967); 70 Am. Jur.2d Special or Local Assessments ss. 1 and 18 (1967); 14 McQuillin, Municipal Corporations ss. 38.02, 38.32, and 38.124 (1970). Special assessments place a special or local charge on the land involved on the basis that the property derives a special benefit in addition to the general benefit to the public; such assessments are imposed on the theory that the portion of the community being assessed receives some special or peculiar benefit which enhances the value of the property in proportion to the special assessment. See 29A Fla. Jur. Special Assessments ss. 3 and 20 (1967). The power to make special assessments can be exercised only for special improvements, it cannot be exercised to burden particular property and the owners thereof with the cost of general and governmental benefits and expenditures. Special assessments cannot be imposed to pay for an improvement which is primarily of general public benefit.

See 70 Am. Jur.2d Special Assessments s. 20 (1967). Cf. City of St. Cloud v. Carlson, 82 So. 616, 618 (Fla. 1919) in which the court stated that "[s]pecial assessments can only be levied to pay for an improvement local in character, as distinguished from general ... and the proceeds thereof cannot be used to augment the general revenue fund nor to finance a separate and distinct improvement project, nor to create a sinking fund for the payment of bonds." See also 14 McQuillin, Municipal Corporations s. 38.02 (1970).

If the primary benefit is to the public, and only incidental benefit results to the property improved, to require such property to bear the entire expense would amount to an unwarranted servitude that cannot be imposed. See 29A Fla. Jur. Special Assessments ss. 19 and 22 (1967). The exaction of an assessment of benefits against property which there was no power to impose is an unconstitutional taking of property without due process of law. See 70 Am. Jur.2d Special or Local Assessments s. 10. If the money collected from a special assessment, or any part of it, is used for some purpose other than as a direct benefit to the land assessed, it is a tax. Id., s. 1, at 844. My research has not disclosed any Florida appellate decision sanctioning the levy and collection of special assessments by a local government for the purpose of funding or augmenting the funding of general governmental functions and operations such as those here involved. See 70 Am. Jur.2d Special or Local Assessments s. 24, stating that "[o]n the ground that such construction serves the public generally and does not benefit particular real estate in the area of construction, it has been held that authority to make local improvements by special assessments does not include the construction of a public library; the erection of school buildings; and the construction of a courthouse or a convention hall." See also 14 McQuillin, Municipal Corporations s. 38.29.

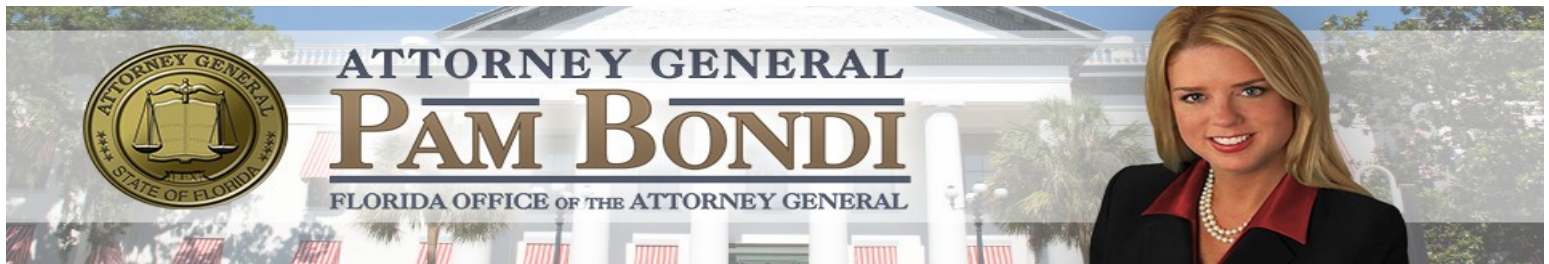
It would seem axiomatic that the maintenance (see s. 125.01[1][c], F.S., and s. 138.09, F.S.) and operation (see s. 30.49, F.S.) of the county jail and the assessment and collection of taxes (see Chs. 192, 193 and 197, F.S.) are integral or constituent parts of general county government. In the performance of these vital functions of county government, no special benefit or service is furnished or extended to a particular area or property or to a portion or segment of the county or its citizens. Nor would the value of the properties assessed in order to fund such general county governmental functions or operations be enhanced. In light of the authorities and principles of law cited above, I am constrained to conclude that the board of county commissioners may not lawfully levy and collect special assessments under the provisions of s. 125.01(1)(r), F.S., against real property in the county on a countywide basis to fund the operations of the county jail and the offices of the county property appraiser and tax collector.

Sincerely,

Jim Smith
Attorney General

Prepared by:

Craig Willis
Assistant Attorney General



Number: AGO 92-60

Date: August 17, 1992

Subject: Non-ad valorem or special assessment/personal property

RE: COUNTIES--TAXATION--NON-AD VALOREM ASSESSMENTS--SPECIAL ASSESSMENTS-REAL PROPER-
TY-imposition of special assessments against tangible personal property.

QUESTION:

1. Is a municipal service taxing unit which provides fire and rescue service limited to imposing a non-ad valorem assessment or special assessment against real property or may such assessments be imposed on tangible personal property?
2. If such assessments may be levied against tangible personal property may such assessment be placed on the tangible personal property assessment roll and tangible personal property tax bill?

SUMMARY:

1. The Lake County Municipal Taxing Unit for Fire Protection is not authorized to impose a non-ad valorem assessment or special assessment against tangible personal property within the geographical boundaries of the taxing unit.
2. In light of my answer to Question One, no response to Question Two is necessary.

According to your letter, the Board of County Commissioners of Lake County enacted an ordinance creating the Lake County Municipal Service Taxing Unit for Fire Protection. I would note that the ordinance itself limits the levy and collection of special assessments for fire protection to real property.[1] However, you have requested and my comments are limited to a discussion of state legislative authority for the imposition of special assessments.

Pursuant to s. 125.01(1)(q), F.S., a county is authorized to:

"Establish, and subsequently merge or abolish those created hereunder, municipal service taxing or benefit units for any part or all of the unincorporated area of the county, within which may be provided fire protection . . . and other essential facilities and municipal services from funds derived from service charges, special assessments, or taxes within such unit only. . . ."[2]

Subsection (r) of the statute provides, in part, that a county may:

"Levy and collect taxes, both for county purposes and for the providing of municipal services within any municipal service taxing unit, and special assessments . . . which power shall be exercised in such manner, and subject to such limitations, as may be provided by general law."

Thus, the statutes authorize the imposition and collection of special assessments for fire protection.

Pursuant to s. 197.3632, F.S., non-ad valorem assessments,[3] such as the special assessment imposed by Lake County for fire protection, may be collected pursuant to the methods described therein.[4] The information you have submitted indicates that Lake County has chosen this method of collecting the special assessments for fire protection.

The Supreme Court of Florida has recently recognized that a special assessment is not a tax. In *City of Boca Raton v. State*, [5] a 1992 case, the Court stated that:

"Taxes and special assessments are distinguishable in that, while both are mandatory, there is no requirement that taxes provide any specific benefit to the property; instead, they may be levied throughout the particular taxing unit for the general benefit of residents and property. On the other hand, special assessments must confer a specific benefit upon *the land* burdened by the assessment." [6] (e.s.)

According to the Court there are two requirements which must be met to assure the validity of a special assessment: the property assessed must derive a special benefit from the service provided; and the assessment must be fairly and reasonably apportioned among the properties that receive the special benefit. [7]

Thus, a special assessment is an enforced contribution from the property owner imposed on the theory that the property assessed derives some special or peculiar benefit in the enhancement of value as a result of the improvement or service that is made with the proceeds. [8] It is the general rule that only real property, not personal property, may be assessed for local improvements because only real property can be benefitted by the improvement. [9]

Finally, as noted above, the Lake County Ordinance creating the Lake County Municipal Taxing Unit for Fire Protection specifically provides that the special assessment is to be levied and collected on real property within the taxing unit. The general rule is that any material departure from the express authority conferred by statutes, ordinances, or other enactments providing for special assessments is fatal to the validity of the special assessment. [10] Thus, attempts to impose this special assessment on other than real property may subject the assessment to challenge.

Sincerely,

Robert A. Butterworth
Attorney General

[1] See s. 6, Lake County Ordinance No. 1990-24.

[2] The statute also authorizes the county to levy ad valorem taxes as provided therein. However, you have asked that this discussion be limited to non-ad valorem taxes.

[3] "Non-ad valorem assessments" are defined as "only those assessments which are not based upon millage and which can become a lien against a homestead as permitted in s. 4, Art. X of the State Constitution." See s. 197.3632(1)(d), F.S.

[4] And see AGO 90-39 (a solid waste assessment which applies to all improved residential property within a municipal service benefit unit created by ordinance for waste collection and which is assessed after the county commission has determined

waste collection and which is assessed after the county commission has determined that the subject property receives a special benefit from the expenditure of the collected funds in addition to the general benefit accruing to all property owners, may be collected as a non-ad valorem assessment under s. 197.3632, F.S.).

[5] *City of Boca Raton v. State*, 595 So.2d 25 (Fla. 1992).

[6] *Id.* at 29.

[7] *Id.*

[8] See 48 Fla. Jur.2d *Special Assessments* s. 1; AGO's 86-32, 84-48, and 82-103.

[9] 63 C.J.S. *Municipal Corporations* s. 1325. And see *Lybass v. Town of Ft. Myers*, 47 So. 346 (Fla. 1908) (All private rights and interests in real property in a municipality are subject to the statutory powers of the municipality to levy assessments for local improvements pursuant to its governmental functions; and the Legislature may by statute create liens upon private property in favor of a municipality for local improvements, and make such liens superior to other liens acquired subsequent to the enactment of the statute.)

[10] See 48 Fla. Jur.2d *Special Assessments* s. 3.
