

Town of Longboat Key Town Commission

Town Hall
501 Bay Isles Road
Longboat Key, FL 34228

(941) 316-1999
(FAX) 316-1942
INFOLINE: 361-6411

- AGENDA -

SPECIAL MEETING WORKSHOP

1:00 PM

October 8, 1998

Pledge of Public Conduct

- We may disagree, but we will be respectful of one another.
- We will direct all comments to issues.
- We will avoid personal attacks.

Call to Order

Notice is hereby given that the Mayor of Longboat Key has called a Special Meeting on Thursday, October 8, 1998 at 1:00 PM in the Commission Chambers located at 501 Bay Isles Road, Longboat Key, Florida, for the purpose of discussing the following item:

Canal Dredging Discussion

The Manager and Consultant Dr. Cliff Trull, along with Coastal Planning & Engineering Consultant Doug Mann, will present the Commission with a report on canal dredging. The public has been encouraged to attend and voice their concerns at this meeting. Recommended action: Pending discussion, give direction to Manager on canal dredging project.

Public to be Heard

Town Attorney Comments

Town Manager Comments

Town Commission Comments

Press to be Heard

Adjournment

If any person decides to appeal any decision made by the Commission with respect to any matter considered at this meeting, a record of the proceedings will be needed. For such purpose that person may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.

/dhs

Hal Lenobel, Mayor; John R. Redgrave Vice-Mayor
Kennedy Legler, District 1; Gordon Haglund, District 3; Raymond W. Metz, District 5
Jim Patterson, At Large; Ron Johnson, At Large

OCT. 2.1998 2:56PM HANKIN PERSSON DARNELL 365 3259

NO. 765 P. 2

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Lawrence M. Hankin

David P. Persson

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October 2, 1998

The Honorable Hal Lenobel, Mayor
and Town Commissioners
Town of Longboat Key
501 Bay Isles Road
Longboat Key, Fl 34228

Re: Canal Dredging

Gentlemen:

Enclosed is a memorandum sent to Mr. St. Denis from Andrew Cohen of this office concerning the various funding mechanisms for canal dredging.

In essence, if you decide to move forward, you need to determine who is going to pay for it. The options appear to be: town-wide, the individual property owner, or a combination of both.

A second issue is what should be the method of assessment? Should the assessment be an ad valorem tax or a non-ad valorem special assessment?

I think ad valorem assessments are self-explanatory. The cost of the project becomes part of the tax rate, whether town-wide or within a special dependent taxing district.

A special assessment can be levied and held valid when the governing body can demonstrate that (1) the property assessed derives a special benefit from the improvement or service provided; and (2) the assessment is fairly apportioned among properties which receive the special benefit.

OCT. 2.1998 2:56PM HANKIN PERSSON DARNELL 365 3259

NO.765 P.3

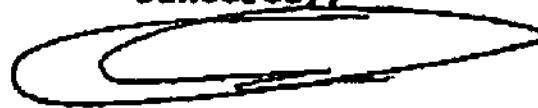
The Honorable Hal Lanobel, Mayor
and Members of Town Commission
October 2, 1998
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Special assessments would be more expensive to the property owner because (1) if the project requires a bond, the bond's interest rate will be higher than an ad valorem based bond; (2) administrative costs associated with the establishment of special assessments are higher; and (3) special assessments are not tax deductible.

Regardless of the mechanism chosen, fairness of the assessment will be a significant issue.

I would be pleased to discuss these options with you individually or during your canal dredging workshop.

Sincerely,




David P. Persson

DPP:awg
Attachment
cc: Mr. Bruce F. St. Denis

MEMORANDUM

DATE: October 2, 1998

TO: Town Commission
FROM: Bruce St. Denis, Town Manager 
SUBJECT: Dredging Study

Approximately eighteen months ago, discussion regarding the dredging of the Town's canals were discontinued. Earlier this year the Town Commission were asked if they wished to resume activities on the subject. As a result of their affirmative response, staff has worked with the Town Attorney and our consultants to update the earlier information and to find ways to get around issues that had earlier been considered obstacles.

The presentation that will be made to the Town Commission on October 8th is essentially the next step towards developing a solution for the canal maintenance program.

This most recent effort increases the information that we have regarding canal dredging in several ways:

1. It looks at the "control depth" of all canals. In other words, it determines what is the maximum draft that can access the Bay from that canal. For example, if a canal has a uniform depth of six feet but there is a three foot shoal that needs to be cleared before you can get to the Bay, the controlling depth of that canal has been determined to be three feet.
2. It studies what is needed to bring the control depth of all canals to -5 NGVD including looking at what dredging would need to be done in the Bay as well as the canal.
3. It narrows the list of feasible disposal sites and determined which canals would be serviced by those sites.
4. It updates the bathymetric studies to determine current depth conditions.
5. Cost estimates for dredging of canals, bay access areas, and disposal of spoil have been separately calculated.

Canal Dredging Study
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6. It looks at strategies that could be used to dredge the Tarawitt/Jungle Queen/Companion Way/St. Jude canals to some degree.

The previous study recommended that these canals not be included in the project.

7. There has also been a review of all known funding mechanisms which has had the result of reducing the number of options that are considered viable for this project.

8. The updated report discusses cost impacts to the Town and to canal front property owners of the various alternatives.

Copies of the graphics to be used in the presentation will be available at the meeting.

Attached is a memo from Town Attorney David Persson that discusses the viability of various funding mechanisms that could apply to this project.

Please contact me if you have any questions.

BSD:dhs

MEMORANDUM

TO: Bruce St. Denis, Town Manager

FROM: Andrew H. Cohen, Esq.

RE: Longboat Key -- Canal Dredging

Issue:

What are some possible mechanisms for the Town's efforts to institute a program to fund the dredging of canals on Longboat Key and what are the advantages, disadvantages and possible pitfalls regarding the funding possibilities?

Discussion

The Town has three main choices regarding the funding of a canal dredging project. First, the Town may institute a program which is Town wide and charge all residents. Second, the Town has the ability to establish a special district within which only the respective property owners of that district may be charged additional funds which will be applied to the canal dredging project. Third, the Town could pay for part of the canal dredging project and charge the residents of the district for the remainder of the dredging fees via either of the above two options.

Once the Town establishes the framework for funding the dredging project, it then has the choice of what type of funding will be applied within that framework. The Town may choose to levy an ad valorem tax, or assess a non-ad valorem special assessment. A special assessment will be apportioned on the basis of benefit.

Should the Town choose to fund the canal dredging project via a Town wide framework, the Town could state a goal to its residents of improving canal access for everyone concerned. The Town could then have a bond issued and levy ad valorem taxes to each Town resident over a period of time necessary to pay back the sums owed.

The advantage of charging all residents for the canal dredging project is that no one resident has to pay more than his/her neighbor. Further, by using a larger base of people, each resident pays less than if only residents in a special district paid the tax.

The disadvantage to assessing every Town resident is that those who are not on canals or who live in high rise condominiums are going to be upset that they have to pay for dredging a canal which may not even benefit them directly. The potential disagreement may be minimal, though, due to the fact that the dredging project is relatively low in cost. Any increase to a residents' tax bill would likely be negligible and hardly noticeable by the particular resident.

Should the Town choose to establish a special district for the funding of the canal dredging project, the first issue which the governing body would have to consider is what type of district to establish. There are a variety of choices to consider. First, there is the possibility of establishing a Municipal Service Benefit Unit (MSBU) or Municipal Service Taxing Unit (MSTU). A MSBU or MSTU is a special district governed by Chapter 125, Fla. Stat., within which the Town may levy additional fees to cover a special benefit which those property owners within the unit may receive.

If the Town of Longboat Key desired an MSBU or MSTU to be established, the unit would have to be set up by the County and the Town would have to consent to the unit being applied to the boundaries of the municipality. If the MSBU or MSTU were in Sarasota and Manatee counties, both counties would have to be involved in the establishment of the respective districts.

The major disadvantage of establishing an MSBU or MSTU is the necessity for the involvement of the respective counties. This requirement presents many potential problems and the involvement of huge bureaucracies.

There is a type of district which can be created solely by the Town without the involvement of any County government. The Town could choose to create an "independent special district" or "dependent special district" as further defined in Chapter 189, Fla. Stat.

Creation of the "independent special district" requires the authorization of the state legislature. The task of involving the legislature is a major disadvantage and necessitates the involvement of even more bureaucracies than dealing with the County government.

A "dependent special district" can be created without the involvement of the legislature or any other governing body except that of the Town. Like MSBUs and MSTUs, the purpose of a dependent special district is to allow governing bodies to designate a limited geographical area as a special taxing district and thereby permit that limited geographical area to pay for its own improvements. Special taxing districts are essentially financing vehicles rather than full-fledged political entities *State v. Sarasota County*, 372 So. 2d 1115 (Fla. 1979). However, unlike a MSBU or MSTU, a dependent special district may be created by a county or a municipality.

Pursuant to Section 189.403(2), the dependent special taxing district is a special district that meets at least one of the following criteria: (a) The membership of its governing body is identical to that of the governing body of a single county or single municipality. (b) All members of its governing body are appointed by the governing body of a single county or a single municipality. (c) During their unexpired terms, members of the special district's governing body are subject to removal at will by the governing body of a single county or a single municipality. (d) The district has a budget that requires

approval through an affirmative vote or can be vetoed by the governing body of a single county or a single municipality.

As mentioned, a dependent special district may be created by a County or municipality. The creation of such a district is effected by the adoption of an ordinance which includes a number of requisites more particularly described in Section 189.4041(4), Fla. Stat.

Once the financing vehicle is created, the next challenge is to determine what type of funding mechanism will be utilized within that financing vehicle. The Town of Longboat Key must decide whether to levy a tax or special assessment.

If the Town chooses to levy a tax, the tax would be an ad valorem tax. Under the Florida Constitution, no tax, other than ad valorem taxes, may be levied without general law authorization. If the Town chose to levy a non-ad valorem tax, the involvement of the legislature would be a necessity.

However, there is no similar requirement of general law authorization for special assessments. Special assessments may be created and levied by the municipality without the need for involvement by any other political entity or governing body. Special assessments and taxes are distinguishable because no requirement exists that taxes provide a specific benefit to the property; rather, taxes are levied for the general benefit of residents and property.

The levying of a special assessment is based upon a benefit/tax nexus. A special assessment cannot be levied or held valid unless the governing body can demonstrate that (1) the property assessed derives a special benefit from the improvement or service provided and (2) the assessment is fairly apportioned among the properties which receive the special benefit. City of Boca Raton v. State, 595 So. 2d 25 (Fla. 1992).

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. The special benefit need not be direct and immediate, but must be substantial, certain and capable of being realized within a reasonable time. Meyer v. City of Oakland Park, 219 So. 2d 417 (Fla. 1969).

Whether the Town decides to levy an ad valorem tax or a special assessment, the next task involves the means of collection. Ad valorem taxes are collected on the tax bill. There are three primary means to collect the dredging charges for non-ad valorem assessments. The first means is to place the charge on the ad valorem tax bill for each property owner located within the district. The chief benefit to this collection method is that the enforcement mechanism is already in place. Pursuant to tax collection procedures, delinquencies are collected through the tax certificate process and sale of tax deeds. The tax certificate process allows the Town the advantage of always getting paid and avoids the difficulties of the traditional lien foreclosure methodology.

There are various disadvantages to placing the charges on the tax bill. One disadvantage is that the property owner has to pay annually and the charge appears a great deal larger than if it were spread out on a monthly basis. Another disadvantage to placing the charges on the tax bill is the difficult process which needs to be followed in order to set up the collection method. Pursuant to Section 197.3632, Fla. Stat., a whole process needs to be complied with. In order to have the charges on next year's tax bill, the Town would need a decision by about October so that the requisite advertising could occur and a resolution of intent could be filed before January 1, 1999 public hearing adopting the process. Further, the Town would need to create a database used to calculate assessments which could also tie into the property appraiser database.

The second means of collecting the dredging charges is to place the charge on the monthly utility bills. The advantage of charging in this manner is that there is flexibility in billing in that the bills may be done monthly, quarterly or via another period tied to the customers of the utility. The disadvantage is that the enforcement mechanisms are not as strong as with placing the charge on the tax bill.

The third means of collecting the dredging charges is the direct billing method. The direct billing method lends the Town a great deal of flexibility in how to collect the charges and it avoids statutory requirements of tax billing process. However, the disadvantages of direct billing are the cost of mailing as well as the lack of an enforcement mechanism other than the traditional lien and foreclosure process.

Conclusion

In sum, the Town must choose whether to institute a Town wide program or establish a special district in which only those particular property owners are assessed a higher charge to cover the costs of dredging. If the Town chooses to establish a special district, the "dependent special district" has the distinct advantage of not requiring the involvement of the legislature. Within the dependent special district, the Town can levy the dredging charges either via an ad valorem tax or a special assessment. If the Town chooses a special assessment, it must meet the requirements that the assessment lend a special benefit to the respective property owner and be apportioned fairly. Any special assessment can be apportioned on an ad valorem basis or non-ad valorem basis without any involvement by any other governing body. Once the Town decides which way to levy the charge, either by tax or assessment, the next task involves collection. Collection may be done either by means of the tax roll, utility bills, or separate billing, depending upon whether the Town opts for an ad valorem or non-ad valorem revenue source.