



APR 15 2009

INTEROFFICE MEMORANDUM

**Department of Engineering
and Public Works**
P.O. Box 21229
West Palm Beach, FL 33416-1229
(561) 684-4000
www.pbcgov.com

DATE: April 15, 2009
TO: Commissioner Jeff Koons, Chairman
and Members of the Board of County Commissioners
FROM: George T. Webb, P.E. *g T. Webb*
County Engineer
RE: Palm Beach Ranchette Community
Agenda Item 5-C-1 on the April 7th BCC meeting

**Palm Beach County
Board of County
Commissioners**

- Jeff Koons, Chairman
- Burt Aaronson, Vice Chairman
- Karen T. Marcus
- Shelley Vana
- Jess R. Santamaria
- Addie L. Greene

County Administrator

Robert Weisman



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The Board adopted a two part motion for this item. Part One had staff, including the County Attorney's Office, review the approach of assessing the entire neighborhood for the paving of the remaining unpaved roads in the neighborhood and determine if the approach met the legal basis for assessing properties. Part Two of the motion directed staff to petition Fargo residents if Part One could not be done. As referenced in the legal opinion previously issued regarding the Palm Beach Ranchette Community paving improvements (see attached), the County is legally prohibited from assessing the costs of the paving on those properties that do not benefit from the paving. Therefore, Part One cannot be satisfied.

As per Part Two of the motion, the Engineering staff will begin the petition process for the eight benefitting properties on Fargo Avenue from El Paso Drive to Yearling Drive to determine if more than 50% will accept a \$15,000 assessment. If five or more of those properties are in favor of paving, then staff will start the process to design, permit and construct the road. If fewer than five petitions favoring the paving are received, then no further action will be taken. These petitions will be sent to the homeowners on April 22.

If you have any questions or comments, please contact me.

GTW:cs
Attachment

cc: Robert Weisman, P.E., County Administrator
Tanya McConnell, Deputy County Engineer
Marlene Everitt, Assistant County Attorney



Denise M. Nieman
County Attorney

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Board of County
Commissioners**

Jeff Koons, Chairman
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Karen T. Marcus
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MEMORANDUM

DATE: April 14, 2009

TO: John F. Koons, Chairman and
Members of the Board of County Commissioners

FROM: Marlene R. Everitt, Assistant County Attorney *ME*

RE: Palm Beach Ranchette Community

STATEMENT OF FACTS

The Palm Beach Ranchette Community (Community) is an older, formerly rural neighborhood that developed without paved roads, water or sewer. The Community consists of approximately 425 lots with the majority being at least one acre in size. In the last few years water and sewer service has been provided and many of the roads have been paved under the Municipal Service Taxing Unit Special Assessment Ordinance (MSTU Ordinance). Approximately 152 lots are on unpaved, private roads, located at the perimeter of the Community and used mostly by the residents fronting these roads. There is no need for other residents to use these unpaved roads to reach their homes or to get into or out of the Community. Some of the residents on the unpaved roads want their roads paved, but are unable to bear the entire cost of a project associated with the paving. Please note that this legal opinion does not address the assessment issues associated with Fargo Avenue.

QUESTION PRESENTED

In order to reduce the paving costs to the property owners fronting on all unpaved roads in the Community, can the cost of paving be divided among and assessed to all 425 lots within the Community?

BRIEF ANSWER

No under the facts presented, the costs of the paving must be assessed to properties that will benefit from the paving and cannot be divided among and assessed to those properties that do not front on the roads to be paved.

DISCUSSION

At the April 7, 2009 meeting, the Board of County Commissioners directed the Engineering Department to estimate the cost of implementing a MSTU street improvement project for all the unpaved roads in the Community. In order to reduce the cost to the residents fronting on the unpaved roads, the Board set a \$7500 assessment on the fronting property and directed the County Attorney's Office to determine if the amount of the project costs not covered by the \$7500 could be divided among all 425 lots in the Community.

The County is authorized to levy assessments dealing with the type of improvement described above under Section 26.16-30 of the Palm Beach County Code known as the MSTU Ordinance. Section 26-26. Method of Assessment requires that, in keeping with state law, properties specifically benefitted by the improvements shall be assessed in proportion to the special benefits received. Generally, this is determined and prorated according to the abutting footage of the respective properties to the improvement, but the Board may prescribe other lawful methods and has in the past. However, when doing so, the assessments have met the two requirements that must exist for a valid assessment to be imposed:

1. The assessed property must receive a special benefit from the improvement;
2. The assessment must be fairly and reasonably apportioned among the properties that derive the special benefit. Boca Raton v State, 595 So. 2d 25 (Fla.1992).

Property receives a special benefit when it can be determined that a logical relationship exists between the services and the property to be assessed. Whisnant v. Stringfellow, 50 So.2d 885 (Fla.1951).

In a prior street improvement involving this Community, all 425 lots were assessed for the paving of two roads regardless of whether the property fronted on the road to be paved because the two roads provided the only access into and out of the Community. It was determined that these roads were used by every property owner in the Community. Therefore, a logical relationship existed between the improved roads and the assessed property.

It is well settled that road paving confers a special benefit on the fronting property. The difficulty here is in trying to determine the special benefit, if any, to the properties in the Community that do not front on the unpaved street. According to the Engineering Department, the unpaved streets are all on the perimeter of the Community. There are no through streets or any outlets. With the exception of the 152 property owners fronting the unpaved streets, no

other property owner in the Community needs to use the unpaved roads to get to or from their homes. In evaluating this information, and in light of the two requirements addressed above, a valid assessment can be imposed only on the lots fronting on roads to be improved. The remaining properties receive no benefit from the road paving.

CONCLUSION

In an attempt to achieve paving continuity in the Community, the Board expressed a desire to pave the roads through a special assessment process as provided in the Ordinance. As a result of concern over the paving cost and the potentially large assessments on the property on unpaved roads, the Board requested that in addition to the \$7500 assessment on the fronting property, a specific assessment method involving all properties in the community be analyzed. Unfortunately, no special benefit could be identified that would allow the County to impose an assessment on properties on the paved roads because no logical relationship exists between the improvements and the benefit to the properties on paved roads. Therefore, any road improvement located in the perimeter of the Community will have to be paid for by property owners fronting the unpaved roads through the normal assessment method.

cc: Denise M. Nieman, County Attorney
Robert Weisman, County Administrator
George T. Webb, County Engineer
Maureen E. Cullen, Chief Assistant County Attorney

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