

MEMORANDUM

TO: John Szerlag, City Manager, City of Cape Coral
Dolores Menendez, City Attorney, City of Cape Coral

FROM: Chris Roe, Bryant Miller Olive

DATE: May 7, 2019

SUBJECT: Special Assessments to Fund Sidewalks and Related Improvements

Summary: Cities are authorized by Chapter 170, Florida Statutes, to levy special assessment to fund sidewalks and related improvements, and cities may alternatively impose such assessments pursuant to home rule powers. Any capital improvement project funded by special assessments must provide a special benefit to the parcels subject to the assessment, and the benefit and costs of the improvement must be fairly apportioned among those parcels. While parcels adjacent to or abutting road and sidewalk projects are presumed to benefit from sidewalk improvements, non-adjacent property may also benefit. To the extent that non-adjacent parcels benefit but to a lesser degree than parcels abutting the sidewalk, the lesser benefit would be reflected in the apportionment methodology such that parcels which benefit more are assessed proportionately more of the overall cost.

Background: Approximately 3% of local roadways and 46% of major streets in the City of Cape Coral have sidewalks. Over the last twelve years, the City has constructed sidewalks utilizing mostly state and federal grant funding, receiving approximately \$10 million from 2007-2018 which paid for approximately 30 miles of sidewalk. The City has been awarded an additional \$8 million in grants for 2019-2023. While new commercial and most planned development projects require sidewalk installation by the developer, the City is considering special assessments as a potential funding source for the installation of sidewalks and related street features (which may include curbs and gutters, street lights and benches) to address all or some portion of the 101 miles of major roads and 1,176 of local roads which currently do not have such features.

Discussion: Section 170.01, Florida Statutes, expressly authorizes the imposition of special assessments to pay for sidewalks and related improvements.¹ Chapter 170 is by its terms an additional source of authority and procedure for imposing assessments which is

¹ "Any municipality of this state may ... provide for ... grading, regrading, leveling, laying, relaying, paving, repaving, hard surfacing, and rehard surfacing of sidewalks; for constructing or reconstructing permanent pedestrian canopies over public sidewalks; and in connection with any of the foregoing, provide related lighting, landscaping, street furniture, signage, and other amenities ..." Section 170.01(1)(a), Florida Statutes.

supplemental to home rule authority. All special assessments, whether imposed pursuant to statute or home rule power, are subject to the requirements that (1) the improvement funded by the assessment must convey a special benefit to the assessed parcels, and (2) the benefits and costs of the improvement project are fairly and reasonably apportioned among the assessed parcels.

There is a presumption in law, reflected by the authorization to assess for improvements under Chapter 170, that properties adjacent to or abutting a road or sidewalk project are specially benefitted by the improvements for assessment purposes. Non-adjacent parcels may also be assessed, provided such parcels are specially benefitted by the improvements.²

For example, non-adjacent parcels may realize an increase in value and marketability through various economic, social, environmental and health benefits resulting from proximity to or presence of sidewalks and related improvements in the wider neighborhood such as minimized traffic congestion, improved conditions for ingress and egress resulting from associated drainage facilities, improved pedestrian safety, enhanced sense of place and community identity, and reduced vehicle emissions resulting in cleaner air for all parcels in the neighborhood.

To the extent that non-adjacent parcels benefit but to a lesser degree than adjacent parcels, the lesser benefit could be reflected in the apportionment methodology such that parcels which benefit more are assessed proportionately more of the overall cost. Conceivably, the methodology could include a tiered approach which recognizes a common benefit to all properties in the neighborhood and additional benefits conveyed to parcels immediately adjacent or in close proximity to the sidewalks.

Additional Considerations:

- Methodology Consultant. If the City is interested in further exploring a potential sidewalk assessment program, it would be helpful to engage an assessment methodology consultant and to seek input from a traffic or transportation engineering perspective, both with respect to describing the special benefits and for developing an apportionment methodology. The conclusions of the consultant(s) are typically summarized in a report or study which can be utilized

² For instance, section 170.01 includes a long list of improvements which may be paid for with assessments and authorizes cities to provide "... for the payment of all or any part of the costs of any such improvements by levying and collecting special assessments on the abutting, adjoining, contiguous, or other specially benefitted property."

by the City in developing the assessment program and a fair and reasonable method for allocating costs among all benefitted parcels.

- Phased Approach: The City may wish to consider a phased approach to special assessment funding whereby discrete regions or assessment areas are established over a period years, similar to the City's utility expansion program (UEP). Among other benefits, a phased approach would ensure that the costs and benefits of providing sidewalks in a given area are isolated to that area.

- Plan of Finance:
 - There is no requirement that special assessments fully fund a given improvement project, and assessments can be one component of an overall plan of finance which may also include state and federal grants or other sources of funding.

 - If the City intends to borrow funds with which to finance all or some portion of the cost of sidewalk installation projects, the lending entity may consider the total amount of assessments imposed against affected property (i.e. sidewalk assessments, UEP assessments, etc.). Since assessments are typically collected in annual installments over a period of years, the primary focus may be on the aggregate annual installment payments rather than total assessment load, such that an extended repayment term may not only ease the annual expense faced by landowners but may also facilitate financing of a given project.