

Storm-water Utility Assessments Doubled

THEY SAY, "HE WHO CALLS THE TUNE PAYS THE PIPER" BUT MOST HI-RISERS CAN'T EVEN HEAR THE PIPER!

(Opinion by John Thompson ©, Reprinted from *By-the-Sea Times*, November 4, 2005)

Storm-water utility maintenance and improvements (along with garbage collection, sewer improvements, solid waste disposal, street upgrades and fire protection, including **first response** medical aid) are among the services the State of Florida has determined provide a direct benefit to properties, and may therefore properly be funded by special (non-*ad valorem*) assessments of the properties receiving the benefits. Unfortunately, that concept is currently being misused in Lauderdale-by-the-Sea (LBTS) to fund, by flat-rate square-footage assessment of all property owners, a major new capital investment mainly benefiting properties in one small part of Town.

Even worse, it appears that **most hi-rise condos and many single-family homes east of State Route A-1-A are being required to contribute to a Storm Water Utility Fund from which those properties derive NO DIRECT BENEFIT WHATSOEVER!**

Before a previously unincorporated barrier-island area between Sea Ranch Lakes and Pompano Beach was annexed to LBTS in 2001, a political group claiming to represent all residents in that area made an "agreement" with the LBTS Town Commission that any surplus of revenues from the area exceeding their fair share of municipal expenses would be used for capital improvements (construction of sewers and storm-drains, burying of overhead utilities, lighting, etc.) in that area, to be proposed by that political body, the South Beach Civic Association (SBCA).

The former SBCA Chair, now an LBTS Commissioner, has publicly admitted that "agreement" is not legally enforceable. But he claims it is "morally binding" on the LBTS commission members who voted for it. Not surprisingly, those LBTS commission members continue to support the "agreement" and the SBCA (since renamed NORTH Beach Civic Association -- NBCA) continues to urge residents of that area to vote for those members at election time. True reciprocity!

Unfortunately, the anticipated surplus never fully materialized, but not to worry -- the LBTS Commission borrowed \$10 million from the bank to get on with sewer construction, including sewers in one private, gated community, the Palm Club, and along one private road, Sunset Lane. (Of course, property owners south of Sea Ranch Lakes paid for **THEIR** sewers by a bond issue retired about ten years ago, and condo owners paid all necessary capital sewer expenses as part of the initial cost of **THEIR** units.) The debt service on that \$10 million loan currently comes to nearly \$1.4 million annually, which this year equates to 0.8 mills, or over 17 percent of total Town millage -- about \$160 a year or more for typical single-family homeowners.

But the question of storm drains remained. Only one small LBTS community lacks drains, and that is Terra Mar Island. All other areas of the Town have storm drains, which **THEY** have all paid for in one way or another. But our Town Manager, Robert Baldwin, and commission members (including **three who signed the 2000 "agreement"** and two others **WHO OWN HOMES ON TERRA MAR ISLAND**) apparently decided they had a "moral obligation" to pay for Terra Mar storm drains with Town funds, and decided to do so thru a Storm Water Utility Fund.

But since that Fund was only recently established, and had virtually no funds, they decided to borrow **ANOTHER** \$1 million from a bank to get a quick start on storm-drain construction. The debt service on that **NEW** loan comes to about \$90,000 a year, so the Commission also decided to raise storm-water assessments from \$3.50 to \$7.00 a month for all single-family residences, and proportionally more for multi-family properties. That comes to \$84 a year per single-family homeowner, of which about \$37 goes to pay the debt service on the new \$1 million loan.

The Commission agreed to double the assessment at a special meeting September 14, 2005, based on false information from Mayor Parker as to the need for increased revenue and the amount of revenue the higher assessment would generate. "I've looked at the budget," Parker asserted, "\$7.00 per month will raise \$102,000.... \$84,000 of the \$102,000 goes immediately to repair or maintain what we've already got and the remaining \$18,000 -- which is a miniscule sum -- goes towards a sinking fund to help replace the [existing] system when it comes time..."

Bel Air resident Jerry McIntee questioned the \$102,000 figure, having calculated that, based on the number of properties in out Town, \$7.00 a month would raise much more than that. But three Town officials promptly told him the \$7.00 monthly fee was not "per property", but per "equivalent storm-water unit (ESU)," defined as 4,472 square feet of impervious area.

In fact, however, **THE FEE IS \$7.00 PER PROPERTY FOR SINGLE-FAMILY HOMES**. An ESU calculation applies only to multi-family and commercial properties. **McIntee was therefore on the right track**. As later confirmed by Town staff, the \$7.00 fee will actually generate revenue of approximately \$204,000 a year -- **TWICE** the figure quoted by the Mayor as a basis for the Commission vote on the fee. **We are not sure which is worse, Parker's misrepresentation of a highly material fact**, or failure of Town Manager, Town Attorney and Finance Director (all of whom promptly "corrected" McIntee) also to correct Parker's budget data they should have known were false, but central to the Commission vote on doubling the storm-water utility fee.

It would have been much more accurate to admit the **ADDITIONAL** \$102,000 raised by doubling the fee was needed to cover nearly \$90,000 in recurring annual debt service on the \$1 million loan taken to fund the budgeted \$1¼ million cost of installing storm drains on Terra Mar Island. Then Commissioners might not have voted for that loan, in light of the serious questions raised as to the propriety under Florida law of the special assessment intended to service the loan.

As we reported recently in the context of a questionable special "Fire Department" assessment, more than half of which actually funds emergency medical services, special assessments are justified based on direct benefits to properties assessed. The State has adopted two clear rules governing special assessments, deriving from a 1994 ruling by the 2nd District Appeals Court:

- 1) the **REAL PROPERTY** assessed must derive a special benefit from the service provided, and;
- 2) the assessment must be **FAIRLY AND REASONABLY APPORTIONED** among the assessed properties **ACCORDING TO THE BENEFITS RECEIVED**.

According to the Town's Proposed Annual Budget for FY 2005-06, there are only two budgeted capital expenditures from the Storm Water Utility Fund this year: Installation of storm drains on Terra Mar island -- \$1,233,355 (94%), and "Clean & repair existing drainage outfalls in the existing Town" -- \$79,117 (6%). Looking at budgeted capital expenses for the **NEXT FOUR YEARS**, Terra Mar storm-drain installation cost is still 65 percent of the total, compared to only 35 percent for the rest of the Town. It therefore defies logic to claim that those expenses are "fairly and reasonably apportioned among the assessed properties according to the benefits received" when **ALL** properties throughout the Town are being assessed **AT THE SAME RATE**.

One compelling argument made during previous commission discussion of the Terra Mar storm-drain project was that installing drains on Terra Mar would benefit the entire Town by reducing the possibility of water-borne pestilence (cholera, typhus, etc.) spreading throughout the Town from cesspools on Terra Mar Island. But the Florida courts have addressed that concept, as well, ruling that public health benefits are benefits to **PEOPLE**, not to **PROPERTIES**, and must therefore be publicly funded -- if at all -- by **AD VALOREM** taxes, **NOT** special assessments.

But it gets even worse! The condo where we live -- and, we assume, also most other condos east of A-1-A -- has its own "French-well" drainage system, bought when the condo was built and cleaned and maintained since then from our condo fees. Water that does not find its way into that drainage system drains either into the ocean or onto S.R. A-1-A, drainage of which is maintained by the State, **NOT** the Town. With rare exceptions like our own building's partial frontage along Pine Avenue, therefore, those LBTS condos would appear to derive **NO BENEFIT WHATSOEVER** from the Storm Water Utility Fund, for which they are all assessed \$7.00 a month per "equivalent storm-water unit (ESU)." (For our building, that comes to about \$380 a month or about \$4,550 a year.)

When we brought those facts to the attention of the Commission at their October 11 meeting, and questioned the propriety of taking out a \$1 million loan secured by revenue from a special assessment of questionable legality, we were, as usual, ignored, except for Commissioner Wessels' call for "a workshop to look into the matter." But that did not deter even him, or any other commission member, from voting unanimously to conclude the \$1 million loan.