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Memorandum 21-218

TO: Mayor Castner and City Council
THROUGH: Rob Dumouchel, City Manager
FROM: Janette Keiser, PE, Director of Public Works
DATE: December 9, 2021
SUBJECT: Bunnell Avenue/Charles Way Water & Sewer Special Assessment Districts

Issue: The purpose of this Memorandum is to request additional time to refine our recommendation regarding the method of assessment for the Bunnell Avenue/Charles Way Water/Sewer Special Assessment Districts, to consider the Developable Land areas.

Background:

On May 10, 2021, the City Council adopted Resolution 21-030 initiating the process for creating Special Assessment Districts to bring City water and sewer to the Bunnell Avenue/Charles Way neighborhood. The time has come for the City Council to take action regarding the sufficiency of the districts. We previously recommended that the Benefitted Area method of assessment be used. Now, we further recommend the assessment computation be applied to the *Developable* portions of the Benefitted Areas only.

As you may recall, the HCC provides for three possible methods of computing assessments: Equal Share, Frontage Foot and Benefitted Area. Usually, the Equal Share method is used, unless there is a compelling reason for a different method. For example, one of the properties in the Alder Lane Water Assessment District was three-four times larger than the other lots. With the Equal Share method that property would have been assessed the same as the smaller lots, which wasn't equitable. So, we recommended, and the City Council adopted, the Benefitted Area method. With the Ocean Drive Seawall Special Assessment District, the benefit to each property was directly proportional to the length along the Seawall, so the Frontage Foot method was used.

Multiple people commented at the Neighborhood Meeting for the Charles/Bunnell Special Assessment Districts that the Benefitted Area method would be most equitable because it would account for the benefit to Bishop's Beach, one of the City's most popular parks. Thus, we computed the proposed assessments using the Benefitted Area Method. The computations for the larger lots only included the first 200 feet of the lot, as allowed in HCC 17.01.010, so long as this approach is approved by Council. This notwithstanding, owners of the larger properties objected, stating that while their lots were

larger, much of their properties was not developable for multiple reasons. We've researched the legislative history and found the following:

1. The definition of the Benefited Area Method specifies that the *“square footage in the calculation shall exclude undevelopable land”*. HCC 17.01.010.
2. *“Undevelopable Land means land that cannot be practicably developed due to natural characteristics, which may include, but are not limited to, steep grade, ravines, and wetlands.* HCC 17.01.010.
3. The intent of these definitions was to *“give the Public Works Director discretion to calculate and apply the benefited area method. It balances flexibility with oversight. While the Public Works Director uses his discretion, his methodology will be subject to review by Council...”* Memorandum 19-125.
4. Memorandum also explains, *“[a] definition is added for “developable land,” which also provides the Public Works Director discretion to determine what property can be reasonably developed for uses permitted within the property’s zoning district to ensure the most accurate proportion of an assessment.”* Memorandum 19-125.

Thus, the Public Works Director clearly has the authority to exercise discretion when applying the Benefited Area Methodology and determining how much “Developable Land” is involved. Viewed from this perspective, the objections of the larger lot owners have merit. While the entire area of Bishop’s Beach Park is fully usable as a park, much of the other large lots is not developable because of geographical constraints, such as wetlands, tidelands or beach.

We are in the process of recalculating the proposed assessments by using wetland delineations, our knowledge of what can be done within a wetland and the probable erosion potential of the beach area, to evaluate the Developable Land areas. This will significantly reduce the area of the larger lots, which is subject to assessment. We recommend postponing action on the sufficiency of the Special Assessment Districts until next Council meeting, to give us time to do this analysis.