



LEGISLATIVE MEMORANDUM

TO: Honorable Mayor and Members of the City Council

FROM: Gregg Lynk, City Manager

DATE: August 2, 2018

RE: Unit 32 Water Initial Assessment Resolution

A handwritten signature in blue ink, appearing to read "Gregg Lynk".

The Utilities Department is requesting the adoption of the Unit 32 Water Initial Assessment Resolution. The revenue derived from the assessment will be used to make City water service available to parcels in Unit 32. The assessment insures an equitable and efficient method of allocating and apportioning water service costs among benefited properties.

REQUESTING DEPARTMENTS:

Public Works Department, Utilities Department, City Attorney's Office, City Manager's Office

FISCAL IMPACT:

The Brevard County Tax Collection office can place up to a 2% fee for processing our Stormwater Utility service fees.

RECOMMENDATION:

Motion to approve the Unit 32 Water Initial Assessment Resolution.

Attachments: 1) Stantec Final Report
 2) Copy of Unit 32 Water Initial Assessment Resolution



City of Palm Bay, FL

Unit 32 Water Assessment – 3rd Revised Final Report

July 27, 2018





July 27, 2018

Mr. Edward Fontanin, P.E.
City of Palm Bay
Utilities Director
250 Osmosis Drive
Palm Bay, FL 32909

Re: Unit 32 Water Assessment
– Revised Final Report

Dear Mr. Fontanin

Stantec is pleased to present this Final Report of the Unit 32 Water Assessment that we have performed for the City of Palm Bay (The City).

We appreciate the fine assistance provided by you and all of the members of City staff who participated in the analysis.

If you or others at the City have any questions, please do not hesitate to call me at (904) 923-1466 or email me at michael.burton@stantec.com. We appreciate the opportunity to be of service to the City and look forward to working with you again in the near future.

Sincerely,

A handwritten signature in blue ink, appearing to read "Michael Burton".

Michael Burton
Vice President

200 Business Park Circle, Suite 101
St. Augustine, FL 32095
michael.burton@stantec.com

Enclosure

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1. INTRODUCTION

Stantec Consulting Services Inc. has conducted a Non-Ad Valorem Assessment Study (Study) to develop a Non-Ad Valorem Assessment for the City of Palm Bay (the City) to fund capital improvements to extend water service (Water Assessment Program) to and within Port Malabar Unit 32 (Unit 32) and several connecting areas bordering Unit 32 (Assessment Area) within the City. This report presents the objectives, approach, methodologies, source data, assumptions, as well as the findings and recommendations of the Study.

Pursuant to Section 6.02 of the City Charter, the City has the authority to impose special assessments for the construction, reconstruction, repair and related maintenance of all water mains and water laterals. As such, the City desires to create a Water Assessment Program that would recover the full capital costs to provide potable water to the Assessment Area. The methodology utilized within this study relies upon current property and cost data to create a fair and equitable assessment.

1.1 STUDY OBJECTIVE & PROCEDURE

The objective of this Study is to calculate a non-ad valorem assessment program that will recover the full capital cost requirements of making potable water available to properties within the Assessment Area. The costs associated with these improvements must be recovered in proportion to the benefit received from these services provided by the City.

The Study first identifies the recommended improvements as provided by the City and their associated cost requirements, recognizing the high level of service traditionally provided by the City.

The revenue requirement was then apportioned to vacant and improved residential and non-residential property classes based upon property data obtained from the Brevard County Property Appraiser's Office (Property Appraiser) and Graphical Information System (GIS) data provided by the City. Once the allocations were complete, Assessment rates were developed, the results of which are presented herein.

2. PROJECT DESCRIPTION

2.1 ASSESSMENT AREA

The Assessment Area consists of 1,876 parcels within Unit 32 and 25 parcels outside of the boundary of Unit 32 fronting the north side of Gates Rd. between Happiness Avenue and LaBelle Avenue, on Almeria Lane, and along the western border of Unit 32 along Garvey Road as recorded by the Property Appraiser and reviewed by the City. Appendix A provides a map of the Assessment Area indicating the location of the project and proposed potable water improvements.

2.2 PROJECT COSTS OF PROPOSED IMPROVEMENTS

The City has defined the project and identified the probable costs for the installation of potable water improvements throughout the Assessment Area.

Project Description

The water extension project consists of potable water improvements to provide service to the Assessment Area. The City will install 14,239 linear feet of 8" PVC and 94,380 linear ft of 6" PVC potable water distribution mains and facilities within the public rights-of-way, and road/sidewalk/driveway repairs within the Assessment Area.

Probable Costs

Probable costs for these improvements are shown in Table 1. The City's proposed financing plan for the project consists of the issuance of a debt instrument to be issued and repaid through this Assessment.

Table 1 – Unit 32 Water Assessment Probable Costs

Description	Water Improvements
Cost	\$7,518,135
Mobilization and Permitting	\$563,860
Contingency	\$751,814
Construction Subtotal	\$8,833,809
Administration	\$265,014
Construction Engineering and Inspection	\$132,507
Total	\$9,231,330

3. SPECIAL ASSESSMENT METHODOLOGY

The development of a non-ad valorem assessment to fund potable water improvements requires that the improvements for which properties are to be assessed confer a special benefit upon the property burdened by the special assessment. Simply stated, there must be a logical relationship between the services and facilities provided and the benefit to real property assessed.

In addition to the special benefit requirement, the costs associated with providing the services and facilities must be reasonably apportioned to the properties that receive a benefit from the improvements in proportion to the benefit received. Therefore, the recommended assessments calculated in this study were developed such that the costs incurred by the City in providing potable water service will be recovered through assessments to properties in proportion to the benefit received by the availability of potable water to all properties within the Assessment Area.

This section describes the assessment methodology used to develop the Water Assessment. The first sub-section discusses relevant Florida Law regarding special non-ad valorem assessments, followed by sections discussing how Florida Law has been applied to the determination of special benefit and the apportionment of revenue requirements of the assessment to benefitting properties.

3.1 FLORIDA LAW GOVERNING SPECIAL ASSESSMENTS

This section discusses relevant Florida Law regarding special non-ad valorem assessments as it relates to the proposed Water Assessment. The discussion covers how Florida law relates to special benefit.

Special assessments are a revenue source available to local governments in Florida to fund operations and maintenance expenses and capital improvements for essential services such as roads, drainage, fire protection services, utilities, etc.

Pursuant to Florida case law, two requirements must be satisfied for the imposition of a valid non-ad valorem special assessment. These two requirements have become known as the two-pronged test. They are 1) the property assessed must derive a special benefit from the services or assets provided, and 2) the assessment must be fairly and reasonably apportioned among the properties that receive the special benefit.

In considering special benefit, the following question must be considered: “Can a special benefit be derived from the improvements by all properties within the Assessment Area to meet the first prong of the two-pronged test, even if all properties are not yet improved?”. The answer is yes, based in part upon the Florida Supreme Court determination in Meyer v. City of Oakland Park where the Court upheld a sewer assessment on both improved and unimproved property, stating that the benefit need

not be direct or immediate but must be substantial, certain and capable of being realized within a reasonable time¹. Water and sewer line extensions were also found to provide a special benefit in Murphy v. City of Port St. Lucie². In City of Hallandale v. Meekins³ the Court indicated that the proper measure of benefits accruing to property from the assessed improvement was not limited to the existing use of the property but extended to any future use which could reasonably be made.

It is well settled under Florida law that local governments are afforded great latitude regarding legislative determinations of special benefit and reasonable apportionment of costs. Specifically, the Florida Supreme Court has held that in cases where valid alternative methods of apportionment exist, the legislative body's determination should be upheld, unless that determination was arbitrary, and a court should not substitute its judgment for that of the local legislative body. In City of Boca Raton v. State of Florida⁴ the Florida Supreme Court stated that the apportionment of benefits is a legislative function, and if reasonable persons may differ as to whether the land assessed was benefitted by the local improvement, the findings of the City officials must be sustained. Further, in City of Boca Raton v. State of Florida the Florida Supreme Court also determined that the manner of the assessment is immaterial and may vary within the City, if the amount of the assessment for each tract is not in excess of the proportional benefits as compared to other assessments on other tracts. A local government can assign to each property, which is subject to the assessment, a different category designation with each category having a different assessment rate.⁵

Special Benefit – The First Prong of the Two-Pronged Test

All tax parcels, developed and undeveloped, are benefitted by the mere availability of potable water infrastructure. Such benefit is independent of whether the property is developed or not. The benefits include:

- Continuous access to clean drinking water.
- Enhanced fire protection.
- Enhanced property and rental value, marketability of and/or ability to develop property.
- Increased use and enjoyment of the parcel derived from continual and immediately available potable water availability.

¹ Meyer v. City of Oakland Park, 219 So.2d 417 (Fla. 1969)

² Murphy v. City of Port St. Lucie, 666 So.2d 879 (Fla. 1995)

³ City of Hallandale v. Meekins, 237 So.2d 318 (Fla. 4th DCA 1970), aff'd, 245 So.2d 253 (Fla 1971)

⁴ City of Boca Raton v. State of Florida, 595 So.2d 25 (1992)

⁵ Workman Enterprises, Inc. v. Hernando County, 790 So.2d 598 (Fla. 5th DCA 2001); Desiderio Corp. v. City of Boynton Beach, 39 So. 3d 487, 498 (Fla. 4th DCA 2010)

- Enhanced marketability and value of the parcel when compared to a similarly situated parcel for which potable water service is not available.
- Protection of the health and safety of the owners and occupants of assessed Tax Parcels.

The mere availability of potable water benefits each parcel because each property owner will have access to potable water on their parcel whether already developed or currently undeveloped but with the potential to be developed in the future.

Therefore, the first prong of the two-pronged test (the property burdened by the assessment must derive a special benefit from the service provided by the assessment) is met because each parcel will receive a special benefit from the availability of potable water provided by the City.

Fair and Reasonable Apportionment – The Second Prong of the Two-Pronged Test

In considering the assessment methodology, the second prong of the two-pronged test requires that the costs of the assessment must be fairly and reasonably apportioned among the properties that receive the special benefit. In this Study we have developed an apportionment methodology based upon the availability of potable water to all parcels that will have potable water service available to them because of the water extension project, improved and un-improved.

Apportionment of Benefits to Properties

Our analysis of the Assessment Area is based upon an Equivalent Assessment Unit (EAU) which was determined by an evaluation of the parcels within the Assessment Area and their current and potential property use based upon the allowable development for their zoning category under the City's Land Development Code. Properties within the Assessment Area (which includes all parcels that will receive a special benefit from the proposed improvements described herein) were classified as either (1) Non-Residential or (2) Residential based upon the property type and use code description. Parcels who already have access to potable water services within Unit 32 have been identified by the City and excluded from this Assessment Program. For purposes of this Assessment Program a Residential EAU was determined to reflect a level of service of 225 gallons per day (gpd)⁶ per single-family dwelling unit, which represents the approximate water demand of the typical single-family lot within the Assessment Area. A Non-Residential EAU was determined to be equal to 1,500 gpd per acre, or 6.66667 EAUs as provided by City of Palm Bay Utilities.

- Non-Residential zoned parcels (Zoning Classification IU and NC):
 - Non-Residential properties were apportioned based upon the acreage of the parcel and 1,500 gallons per day per acre which is equivalent to 6.66667 EAUs per acre.
- Residential zoned parcels (Zoning Classifications RS-2, SRE, RS-1, RE, and RR):

⁶ Per Palm Bay Utilities' Water Master Plan dated, October, 2017.

- Developed residential parcels were assigned one dwelling unit per platted lot and apportioned one EAU equal to 225 gpd per dwelling unit. In circumstances where a parcel consists of two or more lots, a visual analysis was performed to determine the potential future development capability of said parcel in terms of buildable dwelling units. In these instances, the determined development potential was determined to be no greater than the maximum allowable density based upon their zoning classification in the City's LDC.
- Undeveloped platted residential parcels were assigned the number of benefitting dwelling units based on the number of platted lots within the parcel and apportioned one EAU equal to 225 gpd per dwelling unit.
- Undeveloped unplatted residential parcels were assigned the number of benefitting dwelling units based on the acreage that their LDC zoning classification allows and apportioned one EAU equal to 225 gpd per dwelling unit.
 - Zoning Classification RS – 2: minimum lot size = 7,500 square feet or approximately 0.17 acres (i.e. maximum allowable density for a 1 acre parcel is 5 single-family lots)
 - Zoning Classification SRE: minimum lot size = 8,000 square feet or approximately 0.18 acres (i.e. maximum allowable density for a 1 acre parcel is 5 single-family lots)
 - Zoning Classification RS – 1: minimum lot size = 8,000 square feet or approximately 0.18 acres (i.e. maximum allowable density for a 1 acre parcel is 5 single-family lots)
 - Zoning Classification RE: minimum lot size = 12,000 square feet or approximately 0.28 acres (i.e. maximum allowable density for a 1 acre parcel is 3 single-family lots)
 - Zoning Classification RR: minimum lot size = 1 acre (i.e. maximum allowable density for a 1 acre parcel is 1 single-family lot)

Discussion of the Apportionment Methodology

The methodology is a benefit-based approach, which is the legal requirement for a non-ad valorem assessment and focuses on benefit to the property based upon the availability of potable water service which is an appropriate matching of benefit received and recognizes the benefit to all properties regardless of whether or not potable water service is actually yet used by any class of properties or individual properties. This methodology recognizes two important facts:

- First and foremost, the potable water improvements to be made by the City will be ready and available to property within the Assessment Area.

- The projects to be funded from this assessment result in potable water improvements that are “local” or primarily exist for the purpose of providing access to potable water by these parcels for the benefit property owners.

Therefore, the second prong of the two-pronged test is met by the recommended fair apportionment of costs based upon benefit embodied in this cost apportionment approach.

4. ASSESSMENT CALCULATION

This section presents the results of the Assessment calculations and our recommendations based upon those results.

4.1 NET REVENUE REQUIREMENT

The Net Revenue Requirement (NRR) will be the basis for the Assessment calculations. The projection of costs is used to identify the assessment rates necessary to fully fund the improvements and associated annual debt service payments (the Maximum Assessment Rate). The NRR and projected costs are based upon the proposed project costs as provided by the City at the time of this analysis.

Projection of the Net Revenue Requirement

To calculate the NRR, the probable costs were developed by City Staff. In addition, associated legal and consulting fees related to the development and implementation of this Assessment were included. The projection of the NRR for each option is presented in Table 2 while Table 3 summarizes the sources and uses of funds. The financing terms are assumed to include the following and are based upon the assumption that the debt issued will be in the form of a revenue bond⁷:

- Term of 20 years consisting of 40 semi-annual interest payments
- Interest rate equal to 4.0%
- Debt service reserve fund equal to one year of debt service
- Costs of issuance equal to 2% of the par amount

The NRR is the 100% Cost Recovery for the assessments calculated herein.

Table 2 – Net Revenue Requirement Calculation

Water Capital Costs	\$ 9,231,330
Consulting Fees	\$ 15,994
Legal Fees	\$ 80,000
Total Capital Costs	\$ 9,327,324
Cost Recovery	100%
Adjusted Capital Costs	\$ 9,327,324

⁷ Financing terms are based upon assumptions as stated herein and will be finalized when debt issuance occurs.

Table 3 – Sources and Uses

Proceeds		\$	9,327,324
Cost of Issuance	2.0%	\$	205,806
Debt Service Reserve		\$	757,179
Par Amount		\$	10,290,309

4.2 PROPERTY DATA AND ASSESSMENT UNITS

The basis for creating the Assessment calculations and associated assessment roll is the parcel database as provided by the Property Appraiser. The property database includes 1,876 parcels within Unit 32 and an additional 25 parcels located outside of Unit 32 that are included in the Assessment Area as receiving benefit. Each parcel was assigned a number of EAUs for purposes of the assessment calculations based upon the type of property, acreage, and other factors as described herein.

Exempt and Excluded Properties

There is a distinction between exempt and excluded parcels. Certain tax parcels are exempt by State statutes or case law from non-ad valorem assessments such as this Assessment even those that benefit. Such exempt parcels are included in the cost apportionment but will not be billed an assessment. The unrecovered revenue will be funded through other City general revenues. To identify the exempt parcels, the use codes assigned to each property by the Property Appraiser were utilized.

Parcels that are excluded from this assessment because they receive no benefit from water improvements, are lake bottoms, marshes, and other property types that will likely never develop. The excluded properties are identified by the property use codes contained in the Property Appraiser's database.

This study has assumed the required exemptions for City, County, State, and Federal properties. For purposes of this assessment it is assumed that the City will not impose any elective exemptions for properties coded as Not-for-profit in the Property Appraiser's database.

In addition, 204 parcels within the Assessment Area who either already have access to potable water service through improvements previously made by the City or that will otherwise not be benefitted from the Assessment Program have been excluded from this Assessment.

4.3 ASSESSMENT RATE CALCULATION

Identification of Assessment Units

The following steps were taken to populate assessment units for the assessment rate calculations:

1. All parcels identified as not receiving any benefit (either due to property use type or already have access to potable water service) from the proposed improvements were excluded from the EAU calculation.

2. All remaining parcels exempt or otherwise located within the Assessment Area were identified by the full parcel database and were included in the determination of the number of EAUs to be included for each parcel and in total.

Table 4 presents the total parcels within the Assessment Area and provides the excluded parcels (not benefitted or otherwise excluded), exempt parcels, and determination of total EAUs within the Assessment Area by their corresponding use code and LDC zoning classification.

Table 4 – Equivalent Assessment Units

Code	UseCodeDesc	Exempt	Total Parcels	Not Benefitted Parcels	Benefiting Parcels	Assessment Methodology	(Less: Excluded) Apportioned EAUs	(Less:Exempt) Billed EAUs	
7100	C-CHURCH	N	1	1	-	Acreage	-	-	
8910	C-MUNICIPALLY OWNED LAND - IMPROVED (THAT DOES NOT QUALIFY IN ANOTHER I	Y	1	1	-	Acreage	-	-	
1000	C-VACANT COMMERCIAL LAND	N	2	2	-	Acreage	-	-	
7000	C-VACANT LAND - INSTITUTIONAL	N	1	-	1	Acreage	9	9	
8080	C-VACANT MUNICIPALLY OWNED LAND - (THAT DOES NOT QUALIFY IN ANOTHER C	Y	5	-	5	Acreage	142	-	
164	R-RESIDENTIAL IMPROVEMENT NOT SUITABLE FOR OCCUPANCY	N	-	-	-	N/A	-	-	
132	R-RESIDENTIAL RELATED AMENITIES	N	2	2	-	N/A	-	-	
113	R-SINGLE FAMILY - MODULAR	N	2	1	1	DU	1	1	
110	R-SINGLE FAMILY RESIDENCE	N	481	76	405	DU	455	455	
819	R-TWO RESIDENTIAL UNITS - NOT ATTACHED	N	1	-	1	DU	2	2	
10	R-VACANT RESIDENTIAL LAND (SINGLE FAMILY, PLATTED)	N	1,396	119	1,277	DU	1,423	1,423	
9	R-VACANT RESIDENTIAL LAND (SINGLE FAMILY, UNPLATTED) - LESS THAN 5 ACRES	N	1	1	-	Acreage	-	-	
9600	C-WASTE LAND	N	1	1	-	N/A	-	-	
9909	R-VACANT RESIDENTIAL LAND (SINGLE-FAMILY, UNPLATTED) - 5 ACRES OR MORE	N	7	-	7	Acreage	381	381	
			1,901	204	1,697		-	2,414	2,272

Land Development Code Zoning Classification		Total Parcels	Not Benefitted Parcels	Benefiting Parcels	(Less: Excluded) Apportioned EAUs	(Less:Exempt) Billed EAUs
IU	IU - Institutional Use District	2	1	1	9	9
NC	NC Neighborhood Commercial District	2	2	-	-	-
RR	RR - Rural Residential District	27	3	24	96	96
RS-2	RS-2 - Single-family Residential District	1,867	198	1,669	2,039	1,896
RE	RE - Estate Residential District	1	-	1	1	1
RS-1	RS-1 - Single-family Residential District	1	-	1	70	70
SRE	SRE - Suburban Residential Estate Category	1	-	1	200	200
		1,901	204	1,697	2,414	2,272

Unity of Title

Property owners of a parcel which consists of more than one lot/unit may elect to declare a “Unity of Title” which would voluntarily legally restrict or limit the use of additional lots/units within the parcel. For example, a parcel with three combined lots may make a declaration of “Unity of Title” on either one or two of the lots/units, therefore, reducing the assigned EAUs and amount of assessment, but also limiting the ability of the property owner to further develop said parcel beyond the lots/units declared in the unity of title declaration.

As such, for purposes of calculating a maximum assessment rate, assumptions have been made herein regarding assumed “Unity of Title” declarations that may be made by affected property owners. The assumptions made are that all parcels with 5 or fewer lots/units will elect a unity of title to one lot/unit, and all parcels with greater than 5 units will elect a unity of title to one half of the original lots/units. Therefore, the assessments presented herein represent a reasonable maximum assessment amount and to the extent that fewer parcels make a unity-of-title election, the final assessments will be less than presented here.

Full Cost Recovery Rate Calculation

Property owners have two options for payment of the assessment; 1) prepay their apportioned costs, or 2) make annual assessment payments over 20 years. To calculate the full cost recovery assessments, we utilized the apportioned costs and total assessable units per property classification as identified in the previous sub-sections of this report. While the full cost is apportioned to all non-excluded properties, exempted property is included in the apportionment but will not be billed/assessed. The costs were divided by the number of EAUs identified to compute the Assessment per EAU as shown in Table 5.

Table 5 – Full Cost Recovery ⁸

Unit 32 Pre-Payment Assessment Calculation		
Adjusted Capital Costs	\$	9,327,324
Assessment Units		1,992
Pre-payment Assessment per Unit	\$	4,682

Property owners have the option to pay their apportioned costs for the project as shown in Table 5 or to pay the assessment through the non-ad-valorem assessment portion of their Brevard County property taxes. In this case, certain costs are borne related to the acquisition of debt financing to pay for the project and the administration of the annual assessment including:

- Costs related to the issuance of debt and associated interest,

⁸ EAUs adjusted based upon assumed “Unity of Title” declarations.

- Collection costs of 5% for administration, billing, collection, and a non-collection contingency,
- Statutory discount of 4% for early payments of Brevard County taxes.

Table 6 presents the estimated annual assessment at full cost recovery for the assessment.

Table 6 – Annual Assessment⁹

Unit 32 Annual Assessment Calculation			
Proceeds		\$	9,327,324
Cost of Issuance	2.0%	\$	205,806
Debt Service Reserve		\$	757,179
Par Amount		\$	10,290,309
	Interest	Term	
	4.0%	20	
Annual Debt Service Component		\$	757,179
Collection Cost Component	5.0%	\$	37,859
Statutory Discount Amount	4.0%	\$	30,287
Total Annual Project Costs		\$	795,038
Assessment Units			1,992
Annual Assessment per Unit		\$	399

Assessment Roll

The complete assessment roll will be provided to the City electronically.

⁹ EAUs adjusted based upon assumed “Unity of Title” declarations.

Disclaimer

This document was produced by Stantec Consulting Services, Inc. (“Stantec”) for the City of Palm Bay and is based on a specific scope agreed upon by both parties. Stantec’s scope of work and services do not include serving as a “municipal advisor” for purposes of the registration requirements of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) or the municipal advisor registration rules issued by the Securities and Exchange Commission. Stantec is not advising the City of Palm Bay, or any municipal entity or other person or entity, regarding municipal financial products or the issuance of municipal securities, including advice with respect to the structure, terms, or other similar matters concerning such products or issuances.

In preparing this report, Stantec utilized information and data obtained from City of Palm Bay or public and/or industry sources. Stantec has relied on the information and data without independent verification, except only to the extent such verification is expressly described in this document. Any projections of future conditions presented in the document are not intended as predictions, as there may be differences between forecasted and actual results, and those differences may be material.

Additionally, the purpose of this document is to summarize Stantec’s analysis and findings related to this project, and it is not intended to address all aspects that may surround the subject area. Therefore, this document may have limitations, assumptions, or reliances on data that are not readily apparent on the face of it. Moreover, the reader should understand that Stantec was called on to provide judgments on a variety of critical factors which are incapable of precise measurement. As such, the use of this document and its findings by City of Palm Bay should only occur after consultation with Stantec, and any use of this document and findings by any other person is done so entirely at their own risk.