Municipalities, special assessments

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Subject:
Municipalities, special assessments

Ms. Lourdes Alfonsin Ruiz
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City of Coral Gables
Post Office Box 141549
Coral Gables, Florida 33114-1549

RE: MUNICIPALITIES – BUSINESS IMPROVEMENT DISTRICT – SPECIAL ASSESSMENTS – LOCAL IMPROVEMENTS – method of making local municipal improvements. Ch. 170, Fla. Stat.

Dear Ms. Ruiz:

On behalf of the City of Coral Gables, you have asked for my opinion on substantially the following questions:

1. Pursuant to Chapter 170, Florida Statutes, what procedure must the City of Coral Gables use to impose a special assessment in an expanded geographic area of the city's business improvement district?

2. Pursuant to Chapter 170, Florida Statutes, what procedure must the City of Coral Gables use to change the formula currently used in the business improvement district to levy special assessments on benefited property?

Your questions are related and will be answered together. You have not advised this office and no comment or consideration is given to the effect on these matters of any bond issue by the district.

According to your letter, the City of Coral Gables approves and provides the financing mechanism for a business improvement district in the city's central business district pursuant to the provisions of Chapter 170, Florida Statutes. The business improvement district will be extended for a third five-year term in the near future. As a result of economic investment and commercial development, the central business district has grown substantially in the past five years. The business improvement district is reviewing the formula used to assess property within the district and, together with the city, seeks to change the assessment to more accurately capture properties and portions of properties that receive the actual and most direct benefit. The city is also considering expanding the geographic boundaries of the business improvement district. You request direction on how to make these changes.

Florida courts have recognized that municipalities have home rule powers to levy special

assessments.[1] In addition, a number of legislative schemes authorize the imposition of special assessments by governmental bodies.[2] You have specifically framed your questions in terms of Chapter 170, Florida Statutes.

Chapter 170, Florida Statutes, provides a supplemental and alternative method for making local improvements.[3] Section 170.01(3), Florida Statutes, states that

"[a]ny municipality, subject to the approval of a majority of the affected property owners, may levy and collect special assessments against property benefited for the purpose of stabilizing and improving:
(a) Retail business districts,
(b) Wholesale business districts, or
(c) Nationally recognized historic districts,
or any combination of such districts, through promotion, management, marketing, and other similar services in such districts of the municipality. This subsection does not authorize a municipality to use bond proceeds to fund ongoing operations of these districts."

Special assessments imposed pursuant to Chapter 170 may be levied only for the purposes set forth in section 170.01, Florida Statutes, and only "on benefited real property at a rate of assessment based on the special benefit accruing to such property from such improvements when the improvements funded by the special assessment provide a benefit which is different in type or degree from benefits provided to the community as a whole."[4]

Section 170.02, Florida Statutes, provides the method of prorating special assessments. The statute requires that these charges "shall be assessed upon the property specially benefited by the improvement in proportion to the benefits to be derived therefrom[.]" Special benefits are to be determined and prorated using the foot frontage of the respective properties specially benefited by the improvement "or by such other method as the governing body of the municipality may prescribe."[5]

When the governing authority of the municipality determines to make any of the public improvements authorized in section 170.01, Florida Statutes, and defray the expense of those improvements by the imposition of a special assessment, section 170.03, Florida Statutes, requires that the municipality pass a resolution making certain findings. The resolution must

"stat[e] the nature of the proposed improvement, . . . the location of the retail or wholesale business districts or nationally recognized historic districts to be improved, and the part or portion of the expense thereof to be paid by special assessments, *the manner in which said assessments shall be made*, when said assessments are to be paid, what part, if any, shall be apportioned to be paid from the general improvement fund of the municipality; and said resolution shall also designate the lands upon which the special assessments shall be levied . . . Such resolution shall also state the total estimated cost of the improvement. Such estimated cost may include the cost of construction or reconstruction, the cost of all labor and materials, the cost of all lands, property, rights, easements, and franchises acquired, financing charges, interest prior to and during construction and for 1 year after completion of construction, discount on the sale of special assessment bonds, cost of plans and specifications, surveys of estimates of costs and of revenues, cost of engineering and legal services, and all other expenses

necessary or incident to determining the feasibility or practicability of such construction or reconstruction, administrative expense, and such other expense as may be necessary or incident to the financing herein authorized."

Section 170.03, Florida Statutes, recognizes the discretion allowed municipal governing bodies in determining the terms of a special assessment such as the manner in which these assessments are made, that is, the calculation of the assessments.[6]

Section 170.05, Florida Statutes, requires that a municipality, after adopting a resolution providing for the special assessment, publish the resolution in a local newspaper. A preliminary assessment roll must be prepared, to show the lots and lands assessed and the amount of the benefit to and the assessment against each lot or parcel of land.[7] If the assessment is to be paid in installments, the number of annual installments in which the assessment is divided must be shown on the assessment roll.[8] When the preliminary assessment roll is completed, the governing authority of the municipality must set a time and place for the owners of the assessed property or any other interested persons to appear before the governing body to express themselves as to "the propriety and advisability of making such improvements, as to the cost thereof, as to the manner of payment therefor, and as to the amount thereof to be assessed against each property so improved."[9] The owners of assessed property must be given 30 days notice in writing of the time and place of this meeting. The notice must include the amount of the assessment and shall be served by mailing a copy to each of the property owners at his or her last know address. In addition, notice of the time and place of the hearing must be given twice by publication, a week apart, in a newspaper of general circulation. The notice must describe the streets or other areas to be improved and advise all interested persons that the description of each property to be assessed and the amount of the assessment may be determined at the municipal clerk’s office.[10]

At the public hearing on the preliminary assessment, the governing body of the municipality must meet and hear testimony from affected property owners as to "the propriety and advisability of making the improvements and funding them with special assessments on property."[11] The governing body must then make a final decision on whether to levy the special assessments. As provided in section 170.08, Florida Statutes:

"Thereafter, the governing authority shall meet as an equalizing board to hear and consider any and all complaints as to the special assessments and shall adjust and equalize the assessments on a basis of justice and right. When so equalized and approved by resolution or ordinance of the governing authority, a final assessment roll shall be filed with the governing authority of the municipality, and such assessments shall stand confirmed and remain legal, valid, and binding first liens upon the property against which such assessments are made until paid; however, upon completion of the improvement, the municipality shall credit to each of the assessments the difference in the assessment as originally made, approved, and confirmed and the proportionate part of the actual cost of the improvement to be paid by special assessments as finally determined upon the completion of the improvement, but in no event shall the final assessments exceed the amount of benefits originally assessed."

The statute provides that these special assessments constitute a lien until they are paid.[12]

In light of the scheme provided in Chapter 170, Florida Statutes, it is my opinion that the City of Coral Gables must utilize the procedure set forth in Chapter 170, Florida Statutes, to impose a special assessment on an expanded area of the business improvement district. Because such expansion will potentially alter the rates of assessment and otherwise affect the properties in the current district, the district must proceed as it would for imposition of a new special assessment, that is, the city must pass a resolution, publish, prepare a preliminary assessment roll, hold a public hearing, etc., covering the entire district to be included within the new district boundaries. In addition, as it appears that this special assessment is imposed pursuant to section 170.01(3), Florida Statutes, the approval of a majority of the affected property owners is also required.[13]

Further, nothing in Chapter 170, Florida Statutes, provides a separate or abbreviated procedure for recalculating the special assessment after its original imposition. Thus, based on the provisions of Chapter 170, Florida Statutes, it appears that the City of Coral Gables may change the method of calculating the special assessments levied and collected in the business improvement district by following the same procedures established for the initial determination, levy and collection of a special assessment.

Sincerely,

Charlie Crist
Attorney General

CC/tgh
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[1] *See e.g., Boca Raton v. State,* 595 So. 2d 25 (1992).

[2] *See e.g.,* s. 125.01(1)(r), Fla. Stat., authorizing counties to levy and collect special assessments; s. 298.305, Fla. Stat., authorizing water control districts to levy certain non-ad valorem assessments; and s. 418.304(4), Fla. Stat., granting mobile home park recreation districts the power to levy and assess a special assessment known as a "recreation district tax."

[3] Section 170.21, Fla. Stat., provides that "[t]his chapter . . . shall be deemed to provide a supplemental, additional, and alternative method of procedure for the benefit of all cities, towns, and municipal corporations of the state, whether organized under special act or the general law, and shall be liberally construed to effectuate its purpose."

[4] Section 170.01(2), Fla. Stat. *And see*, s. 170.201, Fla. Stat., providing additional authority for the imposition of special assessments for certain capital improvements and municipal services; and *City of Boca Raton v. State*, 595 So. 2d 25 (Fla. 1992) (statute authorizing municipalities to impose special assessments on certain conditions did not preempt authority of municipalities to impose special assessments under other circumstances and it is not the only method by which municipalities may levy special assessment).

[5] Section 170.02, Fla. Stat.

[6] *See* Op. Att'y Gen. Fla. 01-70 (2001).

[7] Section 170.06, Fla. Stat.

[8] *Id*.

[9] Section 170.07, Fla. Stat.

[10] *Id*. *And see* s. 170.04, Fla. Stat., requiring that the municipality file with the city clerk an assessment plat "showing the area to be assessed, with plans and specifications, and an estimate of the cost of the proposed improvement, which assessment plat, plans and specifications and estimate shall be open to the inspection of the public."

[11] Section 170.08, Fla. Stat.

[12] Section 170.09, Fla. Stat.

[13] Following your initial request, the city submitted a further question for consideration. You have asked whether the language of the statute "approval of a majority of the affected property owners" refers to "a majority of the affected property owners based on the number of properties to be benefited by the special assessments or merely by a majority of property owners to be affected by the change." The statue makes specific reference to "a majority of the affected property owners" and contains no qualification relating to the number of properties to be benefited by the special assessment. The language of the statute does not appear to be ambiguous and, the operative rule of statutory construction is that where the language of a statute is plain, definite in meaning and without ambiguity, it fixes the legislative intention and interpretation and construction are not needed. *See Osborne v. Simpson*, 114 So. 543, 544 (Fla. 1927); *and see Gilmore v. Civil Service Board*, 528 So. 2d 1271, 1272 (Fla. 1st DCA 1988), *Carson v. Miller,* 370 So. 2d 10 (Fla. 1979). Thus, it appears that the statute requires that a majority of the affected property owners must approve the special assessment.