

M E M O R A N D U M

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FROM: Heather Encinosa

DATE: August 11, 2014

RE: Residential Properties within the Miracle Mile and Giralda Avenue Assessment Programs

ISSUE

Will residential properties within the Miracle Mile and Giralda Avenue Assessment Areas receive a special benefit from the proposed Improvement Projects?

ANALYSIS

A special assessment is imposed pursuant to the sovereign power of government and is an enforced contribution from a property owner in exchange for a special benefit provided to the assessed property. See Klemm v. Davenport, 129 So. 904 (Fla. 1930).

As established by case law, two requirements exist for the imposition of a valid special assessment: (1) the property assessed must derive a special benefit from the improvement or service provided; and (2) the assessment must be fairly and reasonably apportioned among the properties that receive the special benefit. See City of Boca Raton v. State, 595 So. 2d 25 (Fla. 1992).

The test to be applied in evaluating whether a special benefit is conferred on property by the provision of a service or facility is "whether there is a 'logical relationship' between the services provided and the benefit to real property." Lake County v. Water Oak Management Corp., 695 So. 2d 667, 669 (Fla. 1997), citing Whisnant v. Stringfellow, 50 So. 2d 885 (Fla. 1951).

This logical relationship to property test defines the line between those services and facilities that can be funded by special assessments and those failing to satisfy the special benefit test. General governmental functions such as indigent health care, general law enforcement activities and the general provision of government fail to bear a logical relationship to property and thus are required to be funded by taxes.

Many assessed services and improvements have been upheld as providing the requisite special benefit to both residential and non-residential property uses. Such services and improvements include, but are not limited to: landscaping, signage, and lighting improvements, City of Winter Springs v. State, 776 So. 2d 255 Fla. 2001); street improvements, Atlantic Coast Line R. Co. v. City of Gainesville, 91 So. 118 (Fla. 1922) and Bodner v. City of Coral Gables, 245 So. 2d 250 (Fla. 1971); parking facilities, City of Naples v. Moon, 269 So. 2d 355 (Fla. 1972); downtown redevelopment, City of Boca Raton v. State, 595 So. 2d 25 (Fla. 1992); stormwater management services, Sarasota County v. Sarasota Church of Christ, 667 So. 2d 180 (Fla. 1995); and utility extensions, Murphy v. City of Port St. Lucie, 666 So. 2d 879 (Fla. 1995).

The City's two proposed assessment areas are Miracle Mile and Giralda Avenue. The Miracle Mile Improvement Project is defined to include the following:

the design, acquisition, construction and installation of the following streetscape project and improvements along Miracle Mile from LeJeune Road to Douglas Road: utility improvements, storm water improvements, roadway and parking improvements, sidewalks, signage, striping, signalization, street lighting, landscaping, irrigation, and associated beautification improvements, as more fully detailed in that certain "Assessment Report Miracle Mile Streetscape Improvements," dated as of June 2014, prepared by Fishkind & Associates, Inc. and that certain report entitled "Coral Gables Downtown Streetscape Improvements," dated as of December 2013, prepared by Stantec.

Initial Assessment Resolution for Miracle Mile Improvement Project, June 2014.

Similarly, the Giralda Avenue Improvement Project is defined to include the following:

the design, acquisition, construction and installation of the following streetscape project and improvements along Giralda Avenue from Ponce De Leon to Galiano: utility improvements, storm water improvements, roadway and parking improvements, sidewalks, signage, striping, signalization, street lighting, landscaping, irrigation, and associated beautification improvements, as more fully detailed in that certain "Assessment Report Giralda Streetscape Improvements," dated as of April 2014, prepared by Fishkind & Associates, Inc. and that certain report entitled "Coral Gables Downtown

Streetscape Improvements," dated as of December 2013, prepared by Stantec.

Initial Assessment Resolution for Giralda Avenue Improvement Project, June 2014.

Thus, Florida case law clearly supports the general principle that the types of improvements to be provided in the Miracle Mile and Giralda Avenue Assessment Areas will provide a special benefit to property that is sufficient to legally support the imposition of a special assessment against those properties to fund the improvements.

More specifically, as outlined in the assessment reports prepared for both projects by Fishkind & Associates, all properties abutting the proposed improvements and within ½ block of the proposed improvements will be benefited by the projects. This includes all residential and non-residential uses. The only properties removed are government owned parcels which will be covered by the City's contribution to the overall project costs. As stated by the City's expert, Hank Fishkind, the residential properties within these areas will benefit by having their property values protected and likely enhanced by the projects. Additionally, the projects will provide the owners and occupants of these residential properties with greater use and enjoyment of their property by improving and enhancing (1) the boundaries, character and neighborhood identity of the Assessment Area; (2) the safety and overall aesthetics of the Assessment Area; (3) utility services, reliability and safety for those properties within the Assessment Area; (4) establishing improved ingress and egress for pedestrian and vehicles within the Assessment Area which will increase both the residential attractiveness and development or redevelopment potential of all properties therein; and (5) storm water drainage within the Assessment Area, which assists in reducing flooding and responsibly managing the burden of storm water produced by all developed properties within the Assessment Area.

Accordingly, it seems certain based upon established case law and the City's expert that the residential properties within the Assessment Areas will receive a special benefit from the planned improvement projects.