

Cost Apportionment for Special Assessments – Think Out of the Box



Background

- **Special Assessments are a Diversified Funding Source**
 - Special non-ad valorem assessments are often used to recover all, or a part, of the costs of programs or activities that specially benefit parcels within their jurisdiction.
 - Special Assessment in Florida include...
 - Fire Assessments
 - Stormwater or drainage,
 - Street lighting,
 - Entertainment districts,
 - Beach re-nourishment
 - Canal Dredging
 - Other

Cost Apportionment

- **How should the costs to be recovered be apportioned to the parcels being assessed?**
 - This presentation will focus on cost apportionment methodologies and the flexibility that local governments have regarding the cost apportionment method used.
 - Often a local government that is considering a special non-ad valorem assessment will look at other similar assessments that have been done and simply copy the methodology.

Think Out of The Box...

- **The Benefit/Burden Nexus...**
 - This presentation will discuss how “thinking out of the box” and evaluating alternative methodologies may result in a better matching of the burden that the assessment places on properties with the benefit received.
 - However, it is critical to comply with the legal requirements for Special Non-ad Valorem Assessments
 - Florida Statutes – due process
 - Case law:
 - special benefit
 - apportionment

The Two Pronged Test

- **The first prong**
 - The service for which the assessment is being levied must provide a special benefit to the parcels assessed,
- **The second prong**
 - The costs to be recovered by the assessment must be fairly apportioned among the parcels receiving benefit from the services for which the assessment is being levied.

State Statutes: Apportionment

- **Section 170.201, Florida Statutes**

“ ... The governing body of a municipality may apportion costs of such special assessments based on:

- (a) The front or square footage of each parcel of land; or
- (b) An alternative methodology, so long as the amount of the assessment for each parcel of land is not in excess of the proportional benefits as compared to other assessments on other parcels of land.”

Case Law: Apportionment

- ***Boca Raton v. State***

- Home rule authority for assessments
- **Fair and reasonable** standard for apportionment
- “The manner of the assessment is **immaterial** and may vary ..., as long as the amount of the assessment for each tract is not in excess of the **proportional benefits** as compared to other assessments on other tracts.”
- “No system of appraising benefits or assessing costs has yet been devised that is not open to some criticism. “ => *perfection not required*
- Deference to local findings re fair apportionment
- Generally upheld unless arbitrary

Cost apportionment for fire assessments

- **The historical standard – the Demand Approach**
 - Calls-for-service
- **An alternative approach – The Availability Approach**
 - Availability

Cost apportionment for fire assessments

- **The historical standard – the Demand Approach**
 - Basis for cost apportionment is calls-for-service
 - Cost are apportioned to property classes based on the proportion of calls to parcels in each property class
 - Residential class
 - Equal per parcel
 - Non-residential classes
 - Based upon ranges of square feet of developed space

Cost apportionment for fire assessments

- **An alternative approach – The Availability Approach**
 - Basis for cost apportionment is availability of fire service
 - Costs are apportioned in two tiers...
 - Tier one – assessed to all parcels equally, developed and vacant
 - Tier two – assessed to developed parcels based upon the replacement cost value of structures on the parcel.

Fire Assessment Case Study

- **The following pages present a case study...**
 - City - Cape Coral
 - Type of Assessment - Fire assessment
 - Cost Apportionment Method - Availability method of cost apportionment
 - Court Findings - Ultimately was upheld by the Florida Supreme Court
 - Result - The Availability Method is now a legal cost apportionment method for fire assessments in Florida.

Cost Apportionment

Revenue Requirement at
38% Cost Recovery...

Allocation to Tier 1 and
Tier 2

FY 2014 REVENUE ALLOCATION

ASSESSMENT REVENUE

100% COST RECOVERY REVENUE REQUIREMENT FOR FIRE/
RESCUE ASSESSMENT - NET OF EMS COSTS

\$ 32,061,328

FIRE/RESCUE ASSESSMENT % COST RECOVERY

38.0%

TOTAL FIRE/RESCUE ASSESSMENT REVENUE REQUIREMENT

\$ 12,183,305

TIER 1 ASSESSMENT REVENUE REQUIREMENT ALLOCATION

\$ 8,528,313

70.0%

TIER 2 ASSESSMENT REVENUE REQUIREMENT ALLOCATION

\$ 3,654,991

30.0%

Tier 1 Rate

Tier 1 Revenue
Requirement

TIER 1 ALLOCATION: \$ 8,528,313

<i>Rate Class Description</i>	<i># of PARCELS</i>
Residential	75,634
Non-Residential	3,588
Vacant/Agriculture	58,279
TOTAL ASSESSABLE PARCELS:	137,501
TIER 1 RATE PER PARCEL:	\$ 62.02

Assessable Parcels

Tier 1 Rate

Tier 2 Rate

Tier 2 Revenue
Requirement

Assessable EBUs

TIER 2 ALLOCATION:	\$ 3,654,991
TOTAL APPLICABLE STRUCTURE EBU's:	2,492,599
TIER 2 RATE PER STRUCTURE EBU:	\$ 1.46

Tier 2 Rate

*EBU is the Equivalent Benefit Unit, representing each property's Structure Value rounded down to the nearest \$5,000, divided by 5,000. For example, a structure valued at \$165,712 is rounded down to \$165,000; then divided by 5,000 for 33 EBU's. 33 EBU's multiplied by the rate of \$1.46 will result in a Tier 2 - Structure/Loss Assessment of \$48.18.

Rate Summary

Tier 1 Rates

Tier 2 Rates

PROPERTY TYPE	Tier 1 - Response Readiness Rate per Parcel		Tier 2 - Structure/Loss Rate per EBU*	
Improved Parcels:				
Residential	\$	62.02	\$	1.46
Non-Residential	\$	62.02	\$	1.46
Unimproved Parcels:				
Vacant/Agriculture	\$	62.02	\$	-

Property Impact Analysis

RESIDENTIAL PROPERTY IMPACTS	Bldg Value	Bldg EBU's	Tier 1 Response Readiness	Tier 2 Protection from Structure/Loss	Total Assessment
Typical SF Residential Property	\$165,712	33	\$62.02	\$48.18	\$110.20
Vacant SF Residential Property	N/A	N/A	\$62.02	\$0.00	\$62.02

NON-RESIDENTIAL PROPERTY IMPACTS	Bldg Value	Bldg EBU's	Tier 1 Response Readiness	Tier 2 Protection from Structure/Loss	Total Assessment
Small Retail	\$314,500	62	\$62.02	\$90.52	\$152.54
Home Store - Big Box	\$4,691,401	938	\$62.02	\$1,369.48	\$1,431.50
Professional Office	\$4,608,000	921	\$62.02	\$1,344.66	\$1,406.68
Large Retail - Big Box	\$5,581,282	1116	\$62.02	\$1,629.36	\$1,691.38
Vacant Non-Residential Property	N/A	N/A	\$62.02	\$0.00	\$62.02

Other Alternative Cost Apportionment examples

- **Stormwater Assessments**

- The typical cost apportionment method for stormwater assessments is impervious surface.
 - Impervious surface is an indicator of runoff after development compared to runoff before development.
- However, in Fort Lauderdale, a jurisdiction that has little elevation change and the primary purpose of the stormwater system is to keep the roads open, an alternative method is being considered.

Stormwater Assessments

- **Stormwater Assessments**

- High-rise residential and commercial buildings have a small footprint relative to the number of residents and businesses that benefit from the clear roadways provided by the stormwater system during storm events.
- In this case, the use of impervious surface would result in very low assessments to these residents and businesses relative to the benefit they receive from the stormwater system

Stormwater Assessments

- **Stormwater apportionment bases upon trip generation rates**
 - In this case trip generation rates are being considered as they are a reasonable representation of the benefit received by property classes of a clear roadway network.
 - Trip generation rates have long been used as a cost apportion criteria for roadway impact fees.

Stormwater Assessments

- **Stormwater apportionment bases upon trip generation rates**
 - Trip generation rates are published in the 9th Edition ITE Trip Generation Manual
 - Pass-by rates are also published in the 3rd Edition ITE Trip Generation Handbook
 - Net trips are generated trips less pass-by trips
 - Net trips for a Single Family parcel are used to establish the trips per ERU.

Stormwater Assessments

- **FSA Paper, Establishing a Stormwater Utility, Chapter 4.2.1; Step One - Cost Apportionment**
 - The issue here not that such road surface related costs can not be recovered through a user charge, but rather whether the typical basis for charging – impervious area - is a defensible way to apportion road surface costs to parcels where the point of the maintenance is to keep the road open during storm events. Impervious area has little if anything to do with determining a “fair share” of road usage; a more equitable basis for apportioning road related maintenance costs would be trip generation.

Stormwater Assessments

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The Conclusion

- **Do not always accept the traditional way of apportioning costs**
 - Consider the configuration of the system to be assessed and the rational nexus between the benefit received and the basis for the apportionment.
- **If you meet all points of the legal requirements...**
 - There is a special benefit, and
 - The costs are reasonably apportioned...
 - The methodology should be defensible