

NABORS, GIBLIN & NICKERSON, P.A.
ATTORNEYS AT LAW

SUITE 200
1500 MAHAN DRIVE
TALLAHASSEE, FLORIDA 32308

TELEPHONE (850) 224-4070
TELECOPY (850) 224-4073

THE POINTE, SUITE 1060
2502 ROCKY POINT DRIVE
TAMPA, FLORIDA 33607
(813) 281-2222
TELECOPY (813) 281-0129

SUITE 500
37 NORTH ORANGE AVENUE
ORLANDO, FLORIDA 32801
(407) 426-7595
TELECOPY (407) 236-0430

August 26, 2004

VIA ELECTRONIC TRANSMISSION

Francine L. Ramaglia
Director of Administrative and Finance Services
Village of Wellington
14000 Greenbriar Blvd.
Wellington, Florida 33414

Re: Village of Wellington (Village) Neighborhood Wall Projects (Work Order No. 04-04)

Dear Francine:

The Village of Wellington (Village) has engaged Nabors, Giblin & Nickerson, P.A. (NG&N) pursuant to the existing Retainer Agreement between NG&N and the Village to provide specialized services in the review of proposed programs to fund various capital costs and maintenance services including:

- Basin A and B Drainage Projects (Work Order No. 04-01)
- Neighborhood Parks capital and maintenance costs (Work Order No. 04-02)
- Privately-owned golf course acquisition (Work Order 04-03)
- Neighborhood Wall capital costs (Work Order 04-04)

NG&N has subcontracted with Government Services Group, Inc. (GSG) to assist in the analysis of these programs. GSG specializes in government finance and taxation issues by working with cities, counties, special districts and state agencies to develop unique funding and service delivery solutions for critical infrastructure and service needs.

This document is the memorandum summarizing the findings and recommendations regarding the Village's neighborhood wall programs (Memorandum), which is the project deliverable specified in the scope of services that is incorporated in Work Order No. 04-04. The objective of this analysis is to review the legality of using special assessments to fund the capital costs to provide neighborhood wall projects. Specifically, GSG and NG&N were requested to analyze the anticipated benefits and proposed apportionment methodologies for each neighborhood to determine if each meets the case law requirements for a valid special assessment. In addition, GSG and NG&N were to

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assist in developing recommendations for the structure of the Village's neighborhood wall assessment programs, including property owner consent and collection alternatives.

**PROJECT
BACKGROUND**

Under the Beautiful Wellington Grant Program developed in 2002, the Village of Wellington has matching grant programs available to Wellington residents and entities domiciled within the Village of Wellington for the purpose of neighborhood enhancement projects prior to construction. There are three grant amounts available depending on the size of the proposed enhancement. Matching grants are available for public thoroughfare improvement projects on Village thoroughfares and entranceways to various subdivisions and/or other public property in which the Village has interest. The grant funds are for non-commercial purposes and must be used for beautification improvements.

The grants require a minimum of a 50% matching funds by applicants; the matching funds may come from other governmental agencies or private companies. The use of in-kind services, including donated material and labor, may be applied toward the applicants' matching fund requirements. The grant requirements outline eligible and ineligible costs and the applicants must provide a commitment for the on-going maintenance of installed projects after the contractor's warranty period.

Qualification requirements for the grants are as follows:

- Projects must have neighborhood approval prior to submittal to the Village for consideration. Approval must be in writing by at least two-thirds of all affected residents and 100% by all property owners adopting the proposed project.
- Projects consisting of structures or large signs in the rights of way require easement deeds from property owners abutting the improvement.
- Landscape projects require property owners abutting the improvement to sign letters of consent and agreement to maintain the improvement.

**DESCRIPTION OF
PROPOSED
PROJECTS**

For Fiscal Year 2004-05, the Village has received five grant applications for matching funds under the Beautiful Wellington Grant Program. These projects include the following areas:

- Lakepoint
- Georgian Courts
- Farmington
- Lynton
- Amesbury

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NG&N and GSG were requested to review three of these proposed projects: Farmington, Lynton and Amesbury.

Farmington - The Farmington Area is proposing a thoroughfare wall along Big Blue Trace between Lipton Canal and Wiltshire Village Drive consisting of approximately 1,953 lineal feet. The wall will be constructed at the only entrance to the Farmington neighborhood. The original project cost was \$163,900; however, the bid cost is \$210,130.10. Farmington is comprised of 21 exterior (abutting) lots and 67 interior lots. Proposed assessment amounts for the original construction costs provided by the property owners are \$1,500 for exterior lots and \$715 for interior lots based on a \$75,000 contribution from the Village. This produces a ratio of exterior lots paying over 2.0 times the assessment amount of the interior lots. The rates proposed by the Village staff differ from the neighborhood's proposed rates due to the increase in the construction costs. Preliminary analysis by Village staff provides assessment amounts of \$2,556.52 for exterior lots and \$1,217.39 for interior lots for the new construction costs based on a \$75,000 contribution from the Village. The rates developed by Village staff provide a ratio of exterior lots paying over 2.0 times the assessment amount of the interior lots.

Lynton - The Lynton Area is proposing a thoroughfare wall along Big Blue Trace between the Farmington Area and the Amesbury Area consisting of approximately 973 lineal feet. The wall will be constructed at the only entrance to the Lynton neighborhood. The original project cost was \$88,020; however, the bid cost is \$104,688.47. Lynton is comprised of 9 exterior (abutting) lots and 63 interior lots. Proposed assessment amounts for construction costs provided by the property owners are \$1,320 for exterior lots and \$510 for interior lots based on a 50% contribution from the Village of \$44,010. This produces a ratio of exterior lots paying over 2.5 times the assessment amount of the interior lots. The rates proposed by the Village staff differ from the neighborhood's proposed rates due to the increase in the construction costs. Preliminary analysis by Village staff provides an estimate of assessment amounts of \$1,575.17 for exterior lots and \$605.84 for interior lots for the new construction costs based on a 50% contribution from the Village of \$52,344.26. The rates developed by Village staff provide a ratio of exterior lots paying over 2.5 times the assessment amount of the interior lots.

Amesbury - The Amesbury Area is proposing a thoroughfare wall along Big Blue Trace between the Lynton Area and South Shore Boulevard consisting of approximately 1,510 lineal feet. The wall will be constructed at the only entrance to the Amesbury neighborhood. The original project cost was \$125,000; however, the bid cost is \$162,466.18. Amesbury is comprised of 17 exterior (abutting) lots and 70 interior lots. Proposed assessment amounts for the original construction costs provided by the property owners are \$954.08 for exterior lots and \$658.16 for interior lots based on a \$75,000 contribution from the Village. This produces a ratio of exterior lots paying over 1.4 times the assessment amount of the interior lots. The rates proposed by the Village staff differ from the neighborhood's proposed rates due to the increase in the

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construction costs. Preliminary analysis by Village staff provides assessment amounts of \$1,349.21 for exterior lots and \$930.49 for interior lots for the new construction costs based on a \$75,000 contribution from the Village. The rates developed by Village staff provide a ratio of exterior lots paying over 1.4 times the assessment amount of the interior lots.

ANALYSIS AND RECOMMENDATIONS

To perform the analysis, GSG and NG&N reviewed the grant applications provided by the neighborhoods and the preliminary assessment analysis provided by the Village Finance Department. GSG and NG&N did not review the grant applications to ensure that they complied with the Village's requirements and procedures and GSG and NG&N did not review the projects to determine if the Village has sufficient easements or other property rights for the construction and future maintenance of the to-be-constructed walls. Also, based upon the information, we have assumed that these wall projects will not be financed.

Special assessments must meet two legal requirements as developed by Florida case law: (1) the service or facility must provide a special benefit to the property being assessed and (2) the costs must be fairly and reasonably apportioned among the benefited properties.

The addition of a perimeter wall segregating off the neighborhood and marking the neighborhood entrance provides numerous benefits to the properties within the neighborhood. The special benefits provided through the construction of a wall can be enumerated as: (1) beautification and neighborhood identification; (2) noise and glare attenuation; (3) increased safety; and, (4) preserving and enhancing the value, use and enjoyment of the assessed properties.

Just as there are numerous benefits, there are also numerous ways to apportion the costs of a wall improvement project among the benefited property owners. In determining a fair and reasonable apportionment methodology it is not absolutely necessary that each program utilize an identical apportionment formula. Rather, the goal is to develop a logically and factually driven method to spread the costs across the properties benefited within each neighborhood. Although reasonable persons may disagree about a chosen apportionment methodology, "the choice of apportioning assessments by one or another methodology is ... a City responsibility in the first instance which must be upheld if not arbitrary." See City of Winter Springs v. State, 776 So. 2d 255, 260-61 (Fla. 2001).

In the present cases, to meet the fair and reasonable apportionment requirement, a methodology must be developed that accommodates the unique composition of each neighborhood and recognizes the varying benefits provided to each property. While some of the benefits, such as neighborhood identification and beautification, may spread equally throughout the neighborhood, for other special benefits each parcel will benefit in varying degrees from the wall construction based on each parcel's geographic

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location in relation to the wall and based on the following three components:

- Safety
- Noise attenuation
- Glare abatement

For example, each parcel of property within the subdivision might benefit equally based on the beautification and neighborhood identification components since the wall improvements will be constructed at the neighborhood entrance, enhancing the appeal of the entire area. However, parcels within the geographic area abutting the wall will also receive the enhanced benefits of noise attenuation, increased safety from foot and motor traffic, and glare abatement due to their close proximity to the improvements. Accordingly, these abutting parcels might also be assessed based on the noise attenuation, safety, and glare abatement components. The additional special benefits resulting from noise attenuation, safety, and glare abatement are not precisely quantifiable; however, these varying degrees of benefits could justify an apportionment methodology where the perimeter properties pay more than the interior lots.

Based upon the information provided, for the all three areas (Farmington, Lynton and Amesbury), GSG and NG&N believe that the methodology provided in the grant applications submitted by the property owners appears to be a reasonable method of apportioning the costs of the wall construction since the proposed assessment amounts reflect an apportionment methodology where the perimeter properties pay more than the interior lots. As stated above, the perimeter properties are receiving the enhanced benefits of increased safety, noise attenuation, and glare abatement due to their proximity to the wall improvement.

The analysis provided by the Village Finance staff for these areas also appears to be a reasonable method of apportioning the costs of the wall construction since the proposed assessment amounts reflect an apportionment methodology where the perimeter properties pay more than the interior lots. However, the Village should memorialize the special benefits provided to these neighborhoods and the fair and reasonable apportionment methodology used in each area in an official Village document prior to proceeding with these programs. Such a document could be a resolution adopted by the Village Council expressing the Village's findings of special benefit and fair and reasonable apportionment. Also, please note that while the methodologies utilized by these three neighborhoods all appear to be fair and reasonable from an assessment perspective, the differing methodologies may cause confusion and raise objections among some property owners.

<p>PROGRAM STRUCTURE OPTIONS</p>

There are two options for structuring the imposition and collection of the assessment for these Neighborhood Wall Projects. First, the Village could structure the neighborhood contributions as assessments up front -- including the addition

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of the necessary administrative costs, collection costs and the statutory discount amount – so that each property owner knows the maximum amount they could be charged if the assessment is placed on the tax bill. This program should be set-up in compliance with the procedures for utilizing the tax bill collection method in section 197.3632, Florida Statutes. The Village could then allow an extended prepayment period so homeowners could pay their assessment up front without incurring the additional costs of collection on the tax bill. In addition to easing the transition to the tax bill for the collection of delinquencies, this set-up provides the very important benefit of having a lien imposed against the assessed properties that would not be affected by a change of ownership.

Or, alternatively, the Village could require each homeowner to sign a Consent and Acknowledgment Agreement wherein they consent to the assessment, agree that it is a legal and binding obligation, and provide for the payment options. This agreement would specifically run with the land and be recorded so that any new owner would be put on notice of the assessment obligation.

We hope that this analysis and recommendations regarding the proposed neighborhood wall projects assists the Village in developing these important projects and we look forward to working with the Village of Wellington in implementing these recommendations. If you or any other Village officials have any questions, please contact us.

Sincerely,



Heather J. Encinosa
NG&N



Camille P. Tharpe
GSG