



INDIAN RIVER COUNTY, FLORIDA DEPARTMENT OF UTILITY SERVICES

Date: December 18, 2018
To: Jason E. Brown, County Administrator
From: Vincent Burke, P.E., Director of Utility Services
Prepared By: Cindy Corrente, Utility Finance Manager
Subject: Equivalent Residential Unit Issues

BACKGROUND

On December 4, 2018, the Indian River County Board of County Commissioners (BCC) voted to approve language for an amendment to section 201.09 of the Indian River County Ordinance Code (Code) to allow any customer who purchased equivalent residential units (ERUs), who has a current account for such ERUs, and has not connected to the system, to apply to the Indian River County Department of Utility Services (IRCDUS) for a refund, provided application is made within twenty-four (24) months of the payment of impact fees. The reimbursement will be based on the impact fee schedule in effect at the time of original payment. The BCC will be conducting a public hearing on this ordinance on December 18, 2018.

On December 4, 2018, the BCC also voted to approve language for another modification to section 201.09 of the Code to allow a customer who has a reserve account that is affiliated with an assessment paid in lieu of impact fees affiliated with certain voluntary assessments that were adopted by resolution between 1984 and 1989, and the reserve account is current, to apply to IRCDUS for a refund of the amount of the assessment paid, so long as the property is either undeveloped or located 200 or more feet from an existing water and/or sewer line, whichever is applicable. This modification will be heard as part of the same ordinance public hearing as referenced above.

On December 4, 2018, the BCC also approved the language of the draft 90-day ERU amnesty ordinance and directed staff to bring back the proposed ordinance to a public hearing on December 18, 2018.

The BCC also approved language for an amendment to section 201.09 of the Code that would allow Indian River County to reclaim any ERUs if a cumulative of 24 months of related service availability fees become delinquent. Under that ordinance, any impact fees paid will be applied to the account balance, and any excess fees will be refunded. That ordinance, a draft of which is attached, will be presented to the BCC as part of a public hearing on January 8, 2019.

Staff was also directed to return to the BCC with a recommendation on language concerning the relinquishment of ERUs. Pursuant to the BCC's request, staff has drafted language to be inserted into section 201.09 of the Code which states that "[a]ny customer may relinquish any excessive ERUs, or ERUs that cannot be used, if such ERUs are for capacity reserved for future use and the account for such ERUs

is current. The customer will not receive any refund.” This sets up a mechanism in the Code, which will allow someone who has excessive ERUs, to relinquish such ERUs, so long as the account is current. Staff seeks guidance from the BCC on the proposed language and seeks authority to include this as part of the ordinance public hearing scheduled for January 8, 2019.

Finally, on December 4, 2018, the BCC directed staff to work with the County Attorney’s Office to approve a process that allows the County to enter into a final settlement agreement with property owners with large Planned Unit Development (PUD) ERU Reserve Accounts, whereby the County will reclaim ERUs, with the caveat that if the final executed settlement agreement is not performed within the time certain of six months from December 18, 2018, the County will proceed with foreclosure.

The County Attorney’s Office has drafted language to be incorporated into section 201.08 of the Code, which states that “[t]he utilities director may release service availability charges for ERUs reserved for future use and associated delinquency charges if the customer pays 10% of the amount owed, including all charges, penalties and interest, and executes the Agreement for Release of ERUs in substantially the same form as approved by the Board.” Staff seeks guidance from the BCC on the proposed language and seeks authority to include this as part of the ordinance public hearing scheduled for January 8, 2019.

The County Attorney’s Office has prepared the attached draft final settlement agreement with two options. The first option would require the property owner to pay the County the difference between the value of the reserved ERUs that are being relinquished and the amount of the outstanding charges, penalties and interest owed to County.

The second option would be to have the property owner pay the County ten percent of the outstanding charges, including penalties and interest, as compensation for a portion of the utility costs experienced during the period of ownership of the ERUs through and including the release of the ERUs.

In addition to making the payment as determined by the BCC, the property owner would release all reserved ERUs associated with the Property. The impact fee value of the ERUs being released will be applied by the County first against any remaining utility costs owed to County and then to any remaining penalties and interest owed to the County associated with the property. Once the property owner has made the payment and released the ERUs, then the County would then release the lien associated with the delinquent account for the property. Any development of the Property will require the payment of utility impact fees. Additionally, the property owner would not be entitled to any refund.

FUNDING

Funding for the various options presented may affect both the capital fund and operating fund. Capital funds are generated from impact fees, and operating funds are generated from water and sewer sales.

Refunds of any impact fees paid will utilize capital funds. Offsetting account balances for accounts where settlement agreements are made may use impact fees as well. In many cases, the impact fees paid will not cover the balance due on the account. In those situations, operating funds will also be utilized when writing off the bad debt. Any operating fund adjustments will reduce water and sewer sales and penalties for the time period during which the write off occurs.

Any write off of penalties and interest for account holders taking advantage of amnesty will also be funded from the operating fund. These adjustments will reduce the revenues for penalties for the time period during which the write off occurs.

At the expiration of the amnesty period and the six-month window for settlement agreements, staff will present an informational item to the board that depicts actual amounts written off.

The estimated impact to capital funds is \$5,319,846 and to the operating fund is \$1,079,791. This assumes that all voluntary reserve account holders would opt for refunds and the nine highest accounts receivable PUD reserve account holders would take advantage of amnesty. It should be noted, that there are other account holders that may qualify for amnesty or refund of ERUs as well. Therefore, these numbers can vary - plus or minus - based upon which account holders decide to participate in the various reserve-related programs.

RECOMMENDATION

Staff recommends that the Indian River County Board of County Commissioners (BCC) authorize staff to come back with an ordinance at a public hearing on January 8, 2019, which will 1) allow for the reclamation of equivalent residential units (ERUs), 2) allow for the relinquishment of ERUs, and 3) provide a method for settlements of delinquent reserve accounts. Finally, staff recommends that the BCC approve the form contract for the settlement of delinquent reserve accounts and decide the payment amount to be made by the property owner.

ATTACHMENTS

- Proposed Agreement for Release of ERUs
- Proposed Ordinance