Departmental Item

Indian River County, Florida
Department of Utility Services
Board Memorandum

Date: October 14, 2020

To: Jason E. Brown, County Administrator

From: Vincent Burke, PE, Director of Utility Services

Prepared By: Cindy Corrente, Utility Finance Manager

Subject: Utility Accounts Receivable Bad Debt

Background:

During late 2018 and early 2019, staff with the Indian River County Department of Utility Services (IRCDUS) made a series of presentations to the Board of County Commissioners (BCC) regarding past-due balances related to services for utility reserve accounts. The end-result was the adoption of County Ordinances 2018-027 and 2019-002. These code modifications provided the framework to enable staff to work with customers with past-due balances to settle their debt at significantly reduced rates. It also established policy to enable staff to address similar circumstances as they occur and to prevent the excessive accumulation of bad debt from reserve accounts moving forward.

The process resulted in 765 water and 879 sewer equivalent residential units (ERUs) being relinquished or reclaimed by the County. That, in turn, freed up capacity in the system. There is only one remaining property left to resolve through the foreclosure process. The most significant impact to the utility was the write-off of just over $4.8 million in bad debt.

Analysis:

At this time, there are 295 past-due utility accounts that have fees and charges over twenty-four months old. Thirty-eight percent of these accounts have past-due amounts over twenty years old. From time to time, owners of some of these properties have appeared before the BCC to request waivers of some of the fees affiliated with these accounts. One such situation occurred on March 17, 2020, when Mr. Brodley Williams appeared before the BCC regarding a property that he and his father purchased from a tax deed sale. At the time, the lien on the property was for over $39,000. After listening to Mr. Williams, the BCC advised staff that they should develop a policy in order to deal with this type of situation and bring back an analysis of these accounts for BCC review. The purpose of this agenda is to fulfill that directive.

Staff worked to review the aged receivables and formulated proposed options for the BCC to consider as policy. Staff consulted with the County Attorney's office while working on the directive. In so doing, staff learned that there are limitations regarding collections related to certain liens. Pursuant to Florida Statute Section 153.67, utility and special assessment liens more than 30 days old may be foreclosed upon by the County in the manner provided by the laws of Florida for the foreclosure of a mortgage on real property. Florida Statute Section 95.11(2)(a) provides for a five-year statute of limitation for an action to foreclose a mortgage. Case law has made it clear that the statute of limitations is five years and begins on the date the lien is recorded, and that the statute of repose allows for collectability without foreclosure up to 20 years after the recording of the lien. See City of Riviera Beach v. Reed, 987 So. 2d 168 (Fla. 4th DCA 2008). Florida Statute Section 95.281(1)(b) establishes that a lien terminates "[i]f the final maturity of an obligation secured by a mortgage is not ascertainable from the record of it, 20 years after the date of the mortgage. Thus, liens that do not show as ascertainable from the record, such as those for assessments and impact fees, expire after twenty years. This information influences some of the staff recommendations in creating policy to address the various situations involving aged accounts receivable and liened accounts. This limitation does not apply to water and sewer accounts that consist of monthly reoccurring service availability charges.

Unlike the reserve accounts, 131 of the 295 accounts are water and sewer accounts that are, or were, connected to the system. There are also 14 expired impact fee loans. Expired impact fee loans are those that have exceeded their original term, which is typically five years. Eleven of the 14 accounts exceed twenty years old. None of these accounts currently receives service. Together, the water and sewer accounts and expired impact fee loans make up over $2.4 million in receivables. There are also 150 expired assessment loans. Expired assessments are those over ten years old. Seventy-nine of the assessments are over twenty years old. Expired assessments make up another $640,000 in receivables.

A summary of the three types of accounts is depicted in the table below:

Account Type	Number of Accounts	Total Outstanding Debt	Principle or Service Availability	Penalties & Interest
Water & Sewer	131	$2,332,000	$636,000	$1,696,000
Impact Fee Loans	14	$ 95,000	$ 34,000	$ 61,000
Assessments	150	$ 640,000	$270,000	$ 370,000
Totals	**295**	**$3,067,000**	**$940,000**	**$2,127,000**

Leaving these accounts to continue to accrue fees does nothing to benefit IRCDUS or its customers. In many cases, the balance due exceeds the value of the property. Since revenues are recorded when a bill is created, the utility revenues currently reflect monies that most likely will never be collected. In order to prevent exponential growth of the receivables balance and to create a means by which to make these marketable, substantial bad debt expense will need to be written-off.

WATER & SEWER ACCOUNTS

The water and sewer accounts make up $2.3 million in receivables. The table below breaks out the balance between service availability charges and penalties and interest.

Account Type	Number of Accounts	Total Outstanding Debt	Principle or Service Availability	Penalties & Interest
Water & Sewer	131	$2,332,000	$636,000	$1,696,000

Of the 131 water and sewer accounts, only 84 still have structures on them. Over the years, many of the structures have been demolished. There are four commercial accounts in this category. Forty-seven (47) of the residential properties are now vacant. In many situations, the debt affiliated with the property exceeds the value of the property. From time to time, these properties go up for tax deed sale. There are situations where people have purchased these properties without doing their due diligence and ultimately end up with a property with excessive liens that they cannot afford to pay off. It makes little sense to leave these properties rendered “useless”. The table below summarizes some of the key data regarding the 131 water and sewer accounts.

Account Category	**Number of Accounts**	**Water ERUs**	**Sewer ERUs**	**Existing Structures**
Residential	127	170	133	80
Commercial	4	175	135	4
Totals	**131**	**345**	**268**	**84**

In similar fashion to the debt reduction offers that were made for reserve accounts, staff proposes two payment options for BCC consideration. Under the first option, the County would waive all of the accrued penalties and interest in exchange for the owner paying all of the remaining utility charges within a defined ninety-day window. The second option would be to extend the payments out for twelve months. Under this option, the County would also collect ten percent of the accrued penalties and interest. Below is an example of the payoff options for the single-family property with the highest receivable balance.

Total Amount Owed	**Service Availability**	**Penalties & Interest**	**Service Type**	**Payment-Option 1**	**Payment-Option 2**
$67,505	$8,562	$58,943	Water & Sewer	$8,562	$14,456

Many of the 131 account holders currently have no interest in activating their utility service at this time. Thus, for any account holder who utilizes one of the payment options, staff suggests allowing the property owner to choose to keep the ERU or to permanently disconnect from the system. Any property owner who chooses to permanently disconnect will be required to sign a document that attests that they understand impact fees and connection charges in place at the time of reconnection will have to be paid before reconnecting to the system. If disconnecting from the system, all physical tie-ins to the utility system will be terminated.

Keep in mind that the long-term goal is to settle or write-off the excessive accounts receivable balances and create a means by which to enable the owners of these properties to become viable customers again. If the debt affiliated with these properties remains intact and continues to grow exponentially, this cannot occur. Therefore, if neither payment option is exercised, staff will work with the County Attorney’s office to pursue foreclosure. Foreclosure case law suggests that each reoccurring charge is a new lien or starting date, therefore the lien period would start on the date the new charge is incurred for that charge and lasts the five years for foreclosure and the 20 years for the statute of repose. See Bartrum v. U.S. Bank, N.A., 211 So. 3d 1009 (Fla. 2016). Thus, the foreclosure step is necessary in order to allow owners of these properties that have the potential to become viable customers eventually. When the County forecloses on the property, it will be necessary to write off the entire receivable balance so that the County can sell the property without the encumbrance of the utility lien. Depending on the hypothetical sale of the property, the proceeds will be used to pay back IRCDUS some, or all, the accrued service availability charges.

IMPACT FEE LOANS

The impact fee loans make up $95,000 in receivables, which is broken out between principle, and penalties and interest in the table below.

Account Type	Number of Accounts	Total Outstanding Debt	Principle or Service Availability	Penalties & Interest
Impact Fee Loans	14	$95,000	$34,000	$61,000

The 14 outstanding impact fee loans consist of 12 residential and two commercial properties. Ten of the properties have structures on them. Ten of the liens are over twenty years old. Similar payment options will be available for the holder of impact fee loan accounts as those for water and sewer accounts. If paid in ninety days, the account holder will pay any remaining principle balance of the original loan. If they choose the twelve-month option, they will pay the remaining principle amount plus ten percent of the additional penalties and interest that have accrued.

For the accounts over twenty years old, if one of the payoff options is not chosen, the County will release the twenty-year-old lien since it is not enforceable. A notice will be filed in the clerk's records that describes the connection fees that will be due before the property can be reconnected to the County's utility system. If the property is vacant or not utilizing the utility system, but currently connected to the utility system, it will be permanently disconnected from the system. The County Attorney's office has already addressed a situation like this one for a property that recently sold. The buyer of such a property contested the lien that was over twenty years old and thus not enforceable. Therefore, a notice regarding connection fees was filed in the Clerk's records. A copy of the template for the notice is included with this agenda item in Attachment 1.

ASSESSMENTS

Assessments make up $640,000 in receivables, which is broken out between principle and penalties and interest in the table below.

Account Type	Number of Accounts	Total Outstanding Debt	Principle or Service Availability	Penalties & Interest
Assessments	150	$640,000	$270,000	$370,000

There are 150 expired assessment loan accounts with a total owed of $640,000. Only one of the accounts is for a commercial property. Seventy-nine of the liens are over twenty years old and not enforceable. The remaining 71 liens are over ten, but less than twenty years old, which means the loans are expired but still collectable. Two payment options will be offered to this group. However, the calculation will be done differently in order to ensure that no one in this group pays less than the property owners who paid off their assessments utilizing the original ten-year amortization schedule. The first option would be valid for a defined ninety-day period. Under this option, the customer would pay the same amount as they would have paid under the original ten-year assessment period. The second option would start with the same calculated amount but add 25% to that total, which will be used to offset the overhead costs for the manual billing, collections, and accounting efforts to collect these accounts. Under both options, credit will be given for any principle payments that were previously made. After the option periods expire, the debt on any unenforceable loans (over twenty-years old) will be written off. A notice will be filed on the property describing future connection fees. This would ensure that anyone connecting to previously assessed utility lines would pay their fair share of the cost of the line.

An example of the payment options is depicted in the table below. This example is a 1992 water assessment project that was originally $1,923.45 at a 9.75% interest rate for ten years.

Original Assessment Amount	Original Interest Rate	Original 10 year payment amount	Amount Owed today	Payments Made	90 Day Option	12 Month Option
$1,923.45	9.75%	$3,096.80	$11,225.75	$0	$3,096.80	$3,871.00

Once policy is adopted for all of the different types of accounts, staff will send certified letters to all affected account holders. Information in the letter will outline the payment options that are available as well as the consequences of not choosing one of the options.

Below is a summary of action items that need to be addressed in order to develop policies for handling the various aged receivable scenarios. The resulting polices will need to be adopted into county ordinance.

WATER & SEWER ACCOUNTS

1. Establish a ninety-day time period during which the County will waive all penalties and interest on any water and sewer accounts that have accumulated over twenty-four consecutive months of charges.

2. Establish a twelve-month period during which the County would waive ninety percent of all accumulated penalty and interest charges on any water and sewer accounts that have accumulated over twenty-four consecutive months.

3. Direct staff to work with the County Attorney's office to pursue foreclosure on any properties that have owners who do not take advantage of any of the payment options. Once this process is complete, write off the accounts receivable balance and release the lien on the property.

4. Direct staff to establish a policy going forward to avoid delinquent accounts that are approaching the 24-month deadline.

IMPACT FEE LOANS

1. Establish a ninety-day time period during which the County will waive all penalties and interest on any expired impact fee loan accounts. Credit will be given for any principle payments made to date.

2. Establish a twelve-month period during which the County will waive ninety percent of all penalties and interest on any expired impact fee loan accounts. The principle balance will stay intact. Credit will be given for any principle payments made to date.

3. Direct staff to establish a policy going forward to avoid the 20-year situation, to make a settlement offer when liens reach 19 years of age. Then if not exercised, the County will move forward to perfect the lien.

Assessments

1. Establish a ninety-day time period to waive some penalties and interest that have accrued on any expired assessment accounts. Only penalties and interest that have accrued beyond the original term of the assessment will be waived. This is to ensure that no one who has an expired assessment account pays less than those customers who made their assessment payments during the original ten-year loan period. Credit will be given for any principle payments made to date.

2. Establish a twelve-month period to waive some penalties and interest that have accrued on any expired assessment accounts. The total of the original loan payments would be the base of this calculation. Another twenty-five percent in fees will be added to this amount. Credit will be given for any principle payments made to date.

3. Direct staff to establish a policy going forward to avoid the 20-year situation, to make a settlement offer when liens reach 19 years of age. Then if not exercised, the County will move forward to perfect the lien.

Funding:

Utility operating funds will be utilized when writing off most of the bad debt. However, any principle balance written off on impact fee loans would be assessed against the impact fee fund. An adjusting journal entry will record the bad debt expense for the amounts written off. More than likely, a budget amendment will be needed to cover this expense.

After the expiration of the twelve-month period for the various settlement agreements, staff will present an informational item to the BCC that depicts actual amounts written off. At that time, the list of pending foreclosures will be presented as well.

The worst case scenario impact to the utility funds is $3,067,000. This number will vary based upon which account holders decide to participate in the various payment options.

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 that will establish county code to adopt the various settlement options. It shall also define the 90-day and 12-month time periods described in the payment options.

Water & Sewer Accounts

1. Establish a ninety-day time period during which the County will waive all penalties and interest on any water and sewer accounts that have accumulated over twenty-four consecutive months of charges.

2. Establish a twelve-month period during which the County would waive ninety percent of all accumulated penalty and interest charges on any water and sewer accounts that have accumulated over twenty-four consecutive months.

3. Direct staff to work with the County Attorney's office to pursue foreclosure on any properties that have owners who do not take advantage of any of the payment options and once this process is complete, write off the accounts receivable balance, and release the lien on the property.

4. Direct staff to establish a policy going forward to avoid delinquent accounts that are approaching the 24-month deadline.

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3. Direct staff to establish a policy going forward to avoid the 20-year situation, to make a settlement offer when liens reach 19 years of age. Then if not exercised, the County will move forward to perfect the lien.

Attachment:

Draft Notice of Future Charges