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Longboat Key is Going Underground - What this Means for Your Sellers & Buyers

Longboat Key is going underground. Well, its utilities are anyways. On January 4, 2016 the Town of Longboat Key adopted a resolution which initiated the process for funding the "Gulf of Mexico Drive Undergrounding Project," also referred to as the "GMD Project." In short, the GMD Project is designed to move all existing overhead electrical, telephone, and cable lines on Gulf of Mexico Drive in Longboat Key into underground conduits, along with installing a fiber optic backbone. The cost of that project is projected to be a little over \$25,000,000.00. The Town of Longboat Key is paying for the GMD Project by issuing bonds to cover the cost, and passing the costs for the bonds to property owners in Longboat Key via non ad-valorem special assessments. The Town states that all Longboat Key property owners will benefit from the project (even if utilities are already undergrounded in their area), so the cost will be borne by all property owners. However, the assessment amounts will be lower for owners who live in areas that have already undergrounded their utilities. The vast majority of owners will be responsible for an assessment in an amount under \$5,500.00, and about 75% of owners will be assessed between \$2,400.00 and \$2,500.00. The assessment will be payable, at the option of the property owner, in a single pre-payment (which avoids paying interest and finance charges), or will be assessed in annual installments over 30 years.

How does this affect home sales? Let's dig into this a little bit deeper. The two most widely used residential contracts are the FAR-BAR Residential Contract for Sale and Purchase, and the FAR-BAR "As Is" Residential Contract for Sale and Purchase. Each of those contracts, in section 9(f), gives the parties two options to deal with special assessments (like the GMD Project special assessment). If selection "(a)" is checked, the seller will pay any installments that came due prior to closing, and the buyer will pay any installments that come due after the closing. So, unless the seller decided to pre-pay the GMD Project assessment, the buyer will be responsible for paying it by installments on their tax bill for the next 30 years. On the other hand, if selection (b) is checked, the seller will pay the assessment in full prior to, or at, closing. If the parties don't check either box, selection "(a)" is made automatically. We recommend that the parties address this issue head-on, and address the payment of the assessment in the negotiation phase of a deal. If the issue is not addressed, then buyers may be surprised by the assessments, questions may be asked as to why the issue was not disclosed by the seller or addressed by the agent, and problems will no doubt be unearthed.

Does this bury the issue of undergrounding on Longboat Key? Since I asked the question, you know the answer is no! The voters of Longboat Key have also approved a "Neighborhood Undergrounding Project" which would underground utilities in the neighborhoods and side streets of the key, at a cost of approximately \$24,000,000.00. The final details of that project are still being worked out, and are projected to be finalized in July of this year. The end result will be likely similar to the GMD Project - special assessments levied against all property owners, and financed by bonds.

Additional information can be found at the links below:

Summary of project: <http://longboatkey.org/pView.aspx?id=45989&catid=469>

Frequently Asked Questions: <http://longboatkey.org/pView.aspx?id=49039&catid=469>

Assessment Amount Estimator: <https://is.longboatkey.org/undergrounding/>

As always, should you have any questions, please contact your local real estate attorney.

Sincerely,
Berlin Patten Ebling, PLLC

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