

HOT SPRINGS VILLAGE

Arkansas

Assessment Committee

INVESTING IN OUR FUTURE WHITE PAPER: TWO TIERS

This white paper explains the rationale for proposing a two-tier assessment structure for Hot Springs Village effective 1 January 2015.

Objective for the Assessment Increase

Regardless of the assessment method used (flat rate, two-tier, ad valorem, etc.), the objective of the assessment increase is to replace the \$3 million lost per year to declining assessment revenues, and do so starting in 2015. Any method selected must be expected to meet that objective to be considered in the proposal.

This means two things: 1) the vote must pass, and 2) upon passage, the increased assessment must deliver the replacement revenue.

Is it fair to charge more for improved lots than unimproved lots?

The basis of the fairness question arises from these facts: After 44 years, less than 1/3 of paying lots in HSV are improved. The HSV Declarations, which cannot be changed until 2020 (and then, only with a 2/3 vote), state that every property owner has an equal vote (one vote per lot in good standing).

The Declarations state that assessments "shall be used exclusively for the purpose of promoting the recreation, health, safety, and welfare of the Owners in The Properties and in particular for the construction, improvement and maintenance of properties, service and facilities devoted to this purpose and related to the use and enjoyment of the Common Properties and the improvements situated upon."

The proposal was considered fair for these reasons:

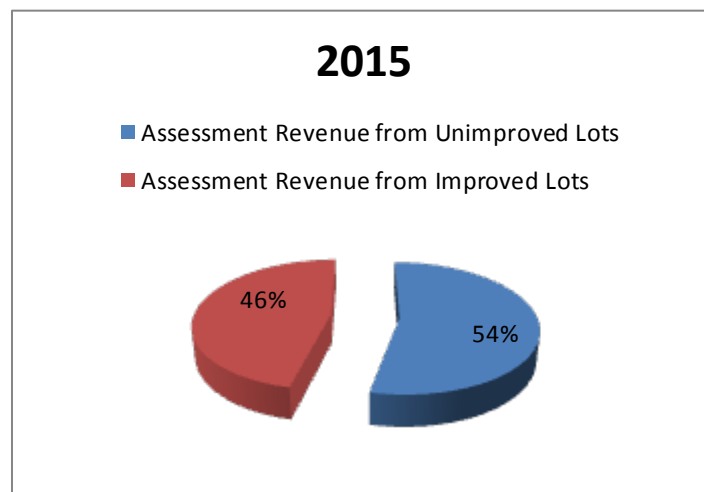
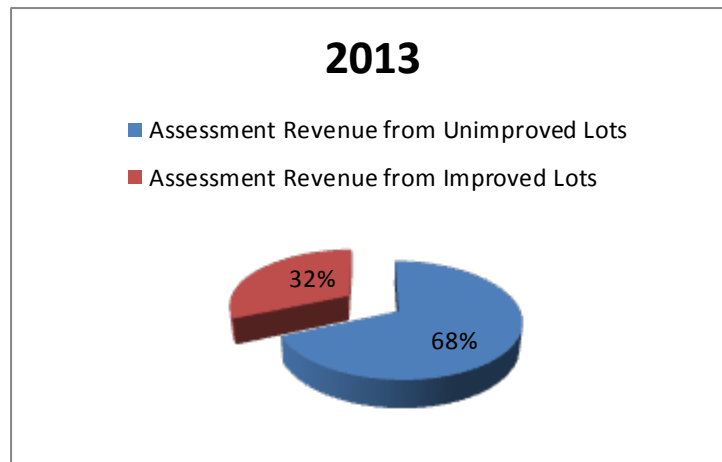
- Owners (or occupants) of improved lots receive significantly more benefits and consume considerably more HSV resources than owners of unimproved lots.
- Even when fees are collected for the use of some of the resources and amenities (e.g., water, golf), assessment revenue partially subsidizes these costs.

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- Owners of unimproved lots currently fund 68% of all assessment revenue. If the proposal passes, owners of unimproved lots would still fund 54% (more than half) of all assessment revenue in 2015.



- Increases in property value following passage of the assessment increase will be of much greater potential benefit to improved properties - especially those in the older sections of the village where infrastructure needs are greatest.
- Many of those who own lots for purpose of amenity usage may not ultimately relocate to HSV. HSV, however, receives not only the benefit of their usage fees, but they still make a substantial contribution to the overall costs of operation by their assessment payments.
- Some contend that owners of unimproved lots may choose to exert their majority by compelling unwelcome costs and other changes on owners of improved lots. This is considered no more likely to happen in the future than it has been in the past 44 years.

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Is it legal?

Two Arkansas court cases support the legality of a two-tier assessment:

- *Hutchens vs Bella Vista, 2003*: The Arkansas Appellate Court ruled that Bella Vista's declarations did not preclude the establishment of two tiers, nor did they require equal assessment for all members. Further, the establishment of the two tiers was considered reasonable, and it did not create two classes of members. While HSV's and BV's declarations are not identical (Article X, Section 5), we believe that the Hutchens doctrine applies to HSV.
- *Hayes vs HSVPOA, 2012*: The Garland County Circuit Court ruled that requiring commercial properties to pay a higher user fee than non-commercial properties constituted a two-tier assessment (that is, not a fee). The court cited the 2003 Hutchens case with approval as allowing a two-tier assessment for Arkansas POAs, which requires an affirmative vote of the membership in good standing.

Alternatives Considered But Not Proposed

Flat increase for all lots, or small increase for unimproved lots. In late 2009, a \$4/month flat increase was successfully voted in by 60% of HSV members, representing a 12.5% increase in assessment rate. However, 2010 assessment revenues exceeded 2009 revenues by only 5.0%, the difference being an increase in abandoned lots following the increase. In 2013, total assessment revenue was less than it was in 2009 (before the \$4 increase), which reflects the ongoing problem of abandoned lots. In this post-recession era, there is reason to believe that the replacement assessment revenue objective of \$3 million/year would not be achieved with any increase on unimproved lots.

Property value-based assessment (aka "ad valorem"). This method has several complicating factors that cannot be successfully addressed:

- Arkansas courts have upheld two-tiered assessments for communities such as ours. There has been no legal test of an ad valorem assessment in Arkansas for communities of our structure. Therefore, we would risk a long legal process to defend against any challenge to this approach.
- Because Garland and Saline Counties do not assess real property exactly the same, owners of essentially identical properties could have significantly different assessment rates, creating another perception of unfairness.
- Implementing an ad valorem assessment would be a highly complicated and burdensome task for the POA staff, with a high potential for errors resulting from home valuation changes over time.

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Didn't Bella Vista have problems following the institution of a two-tier system?

The two-tier system, effective in 2001, was not a problem for Bella Vista. The problem was they were surrounded by tax-base-sustained cities and financing the city of Bella Vista by assessment did not make sense. Once incorporated in 2006, the only remaining POA responsibility was amenity cost and management.

- The City of Bella Vista is a bedroom city to Bentonville and several other northwest Arkansas communities where high growth has been driven by successful businesses (Wal-Mart, Tyson Foods, Jones Trucking, etc.). Its population grew by 59.6% between 2000 and 2010. Bella Vista has broad generational diversity (18% under age 18, 31.5% over age 65 in 2010). It is not gated, its boundaries are irregular and not clearly recognizable. All of this is in stark contrast to the Cooper vision when Bella Vista was founded as an amenities-oriented retirement community in 1965.
- The Bella Vista POA today basically manages the amenities for property owners in the City of Bella Vista. Virtually all of the "city services" originally provided by the POA are now provided by the City and can be delivered based on their taxing authority.
- Amenity availability and quality aren't among the highest priorities with a significant percentage of today's Bella Vista property owners. In recent years, amenity offerings in the area have become highly competitive. Driven by the high growth of successful businesses, active developers and large corporate employers have introduced amenities and employee benefits such as upscale housing developments, new golf courses and tennis clubs, health facilities and clubs, etc. that compete directly with offerings of the Bella Vista POA.
- Hot Springs Village is a gated and amenities-oriented community. We are not adjacent to any nearby communities. Ours is a slightly older population and we have a lower percentage of working residents. We have a strong sense of community and active volunteer programs with little area competition, if any, for our outstanding amenities. The POA is our primary governmental entity, and our property owners actively participate in government.
- Bella Vista incorporated in response to their inability to get their membership to approve an assessment increase when it could no longer afford to provide the full range of city services.
- The failed POA elections in Bella Vista have been negative from both residents and non-residents. These represent differences of opinion relative to the value of private amenities to the needs and lifestyle of a community of city dwellers immersed without recognizable boundaries into a larger homogenous population. The Bella Vista POA is challenged to find the right balance of amenity offerings desired by its diverse population in a highly competitive environment.

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Please visit <http://hsvpoa.org/governance/investing-in-our-future/> for this and other information regarding the assessment increase proposal.

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