

MEMORANDUM

To: Litchfield-by-the-Sea Board of Directors

From: Mark Nappier, Esq.

Date: February 29, 2024

Re: What is the “maximum” annual assessment the LBTS Association can levy for members?

BACKGROUND

Litchfield-by-the-Sea Community Association, Inc. (the “Association”) is a not-for-profit corporation established for the preservation of property values, the maintenance of common facilities and services, and the administration and enforcement of covenants and restrictions for the Litchfield-by-the-Sea properties in Pawleys Island, South Carolina. The affairs of the Association are managed by its elected Board of Directors (the “Board”). The Association was established, and is governed, by multiple duly filed legal documents such as a Declaration of Covenants and Restrictions (recorded June 15, 1978) and all subsequent amendments and supplements (the “Declaration”); a set of Bylaws; and various Rules and Regulations as filed and promulgated by the Board of Directors (collectively the “Governing Documents”).

The Association owns, and is authorized to own, Common Properties, Restricted Common Properties, and Purchased Common Properties (Declaration, Article VI, Sections 1 and 2).

Among multiple obligations and authorizations detailed in the Governing Documents, Article V (“Covenants for Assessments”) provides for the levying and collecting of Annual and Special Assessments, to be used for the improvement, maintenance, repair, enhancement, and operation of Common Properties and Restricted Common Properties, and to provide services the Association is authorized to provide. This Article V more specifically details the various property types subject to assessments and how the maximum for each of those properties shall be calculated. The amount of each year’s Annual Assessment is set by the Board of Directors and paid by the Members to the Association (Article V). On April 30, 1993, the Third Supplemental Declaration of Covenants and Restrictions of Litchfield-by-the-Sea Community Association, Inc. (“the Willbrook Supplement”) was filed and submitted the “Willbrook Plantation” properties to the Declaration, and clarified the calculation of assessments for Willbrook Plantation properties.

ANNUAL ASSESSMENT AND MAXIMUM REGULAR ANNUAL ASSESSMENT

Throughout the Declaration and this memo, “Regular” should be viewed as a means of differentiating from “Special” assessment types.

The Article I, “Definitions” section of the Declaration shows an intentional differentiation between the defined terms “Annual Assessment” and “Maximum Regular Annual Assessment.” (b) **“Annual Assessment” shall mean and refer to annual charges levied by the Board of Directors of the Association for the purposes set forth in Section 2 of Article V. “Maximum Regular Annual Assessment” shall mean and refer to the Annual Assessment calculated as set forth in Section 3 of Article V.** In the referenced section, it provides a schedule for determining the “Maximum” assessment, however if the Board determines that the essential functions of the Association can be funded by an Annual Assessment that is less than the “Maximum”, it may levy that lower assessment. Therefore, the Annual Assessment does not necessarily equate to the “Maximum” assessment and in fact rarely will.

In other words, an “Annual Assessment” is what the Association charges in any given year. The “Maximum Regular Annual Assessment” is the maximum cap on what the Association could charge in any given year for Regular (non-Special) Assessments. The Maximum Regular Annual Assessment is “calculated as set forth in Section 3 of Article V” of the Declaration, referring to the table in Section 3(a) that details all Maximum Regular Annual Assessments for each property type for the year 1978, as well as the required annual increase of the Maximum Regular Annual Assessment as detailed in Section 3(g) of the Declaration. This figure will continue to increase yearly by the calculations in Section 3, **regardless of the amount of the “Annual Assessment” charged each year.**

The language is clear that the Maximum Regular Annual Assessment (the cap on what the Association may charge) shall be increased 6% each year (or more if the ECI-South index is higher), according to Article V, Section 3(g) of the Declaration: *From and after January 1, 1980, the Maximum Regular Annual Assessment **shall be increased each year** by the Board of Directors of the Association **by the greater of (i) six (6%) percent per year over the previous year, or (ii) the percentage increase, if any, during the twelve (12) month period ending September 30 of each year in the Employment Cost Index-South issued by the U.S. Bureau of Labor Statistics in a quarterly report and measuring the wage and salary increases of private, non-farm employees in the South.***

In other words, the Maximum Regular Annual Assessment (the cap on what can be charged), is increased each year by either 6%, or the ECI index, whichever is greater. This is nonoptional; the Association does not have discretion on whether to raise the cap. The discretion is how much to charge in any year in its Annual Assessment, up to the Maximum – but the Maximum is clearly dictated by this language. If the ECI index is less than 6%, the Maximum

Regular Annual Assessment (cap) increases by 6%; if the ECI index is greater than 6%, then the Maximum Regular Annual Assessment increases by that higher percentage. But because it's increased "by the greater of" the two, that means the minimum required increase year over year to the Maximum Regular Annual Assessment (cap) is 6%, no matter what had actually been charged as the Annual Assessment every year.

It's important to note that the Maximum increases by the greater of those two amounts, but no more than that – UNLESS there is a referendum vote by the membership to increase the Maximum. Article V, Section 3 of the Declaration provides: *If the Board of Directors of the Association, by majority vote, determines that the important and essential functions of the Association will not be properly funded in any year by the Maximum Regular Annual Assessments, it may call a Referendum requesting approval of a specified increase in such assessments. If fifty-one (51%) percent of the votes shall be cast in favor of such Referendum, the Maximum Regular Annual Assessments shall be permanently increased to the level of such proposed increased assessments. There is no option for the membership to vote to DECREASE the Maximum Regular Annual Assessment.*

Article V, Section 3 of the Declaration further provides: *The levy of Annual Assessments less than the Maximum Regular Annual Assessments in one year shall not affect the Board's right to levy the Maximum Regular Annual Assessments in subsequent years.* In other words, the Association may charge as little as \$0 or as much as the Maximum Regular Annual Assessment in any year, without being impacted by what was charged in the previous year, and without impacting what may be charged the next year. The Maximum Regular Annual Assessment (cap) increases each year by 6% (or more) no matter how much the Association actually charges for the Annual Assessment.

CALCULATION OF 2024 MAXIMUM REGULAR ANNUAL ASSESSMENT

The 1978 Declaration's Article V, Section 3(a) contains a table that details the following then-current Maximum Regular Annual Assessments for the year 1978:

Property Type	Maximum Regular Annual Assessment, 1978
Dwelling Units	\$360
Residential Lots	\$270
Public/Commercial Units	\$.10 per sq ft
Parcels	\$100 per acre
Unsubdivided property	\$50 per acre

The interpretation of the language in the Declaration set forth above is confirmed by the Willbrook Supplement. In that document was contained identical "Maximum Regular Annual

Assessment” language with an updated table to show the then-current Maximum Regular Annual Assessments for 1993, which align with greater-than-6% increases from 1980-1982, followed by 6% increases from 1983-1993.

Property Type	Maximum Regular Annual Assessment, 1993, LBTS and River Club
Dwelling Units	\$852
Residential Lots	\$600
Public/Commercial Units	\$.23 per sq ft
Parcels	\$234 per acre
Unsubdivided property	\$117 per acre

The ECI Index has not exceeded 6% since the 1993 Supplemental Declaration that updated the then-current Maximum Regular Annual Assessment. As such, the Maximum Regular Annual Assessment shall have increased by 6% each year thereafter, as follows:

Maximum Regular Annual Assessments, Dwelling Units Only

Year	LBTS and River Club	Willbrook Plantation
1993	\$852	\$304
1994	\$903	\$322
1995	\$957	\$341
1996	\$1,014	\$361
1997	\$1,075	\$383
1998	\$1,140	\$406
1999	\$1,208	\$430
2000	\$1,280	\$456
2001	\$1,357	\$483
2002	\$1,438	\$512
2003	\$1,524	\$543
2004	\$1,615	\$576
2005	\$1,712	\$611
2006	\$1,815	\$648
2007	\$1,924	\$687
2008	\$2,039	\$728

2009	\$2,161	\$772
2010	\$2,291	\$818
2011	\$2,428	\$867
2012	\$2,574	\$919
2013	\$2,728	\$974
2014	\$2,892	\$1,032
2015	\$3,066	\$1,094
2016	\$3,250	\$1,160
2017	\$3,445	\$1,230
2018	\$3,652	\$1,304
2019	\$3,871	\$1,382
2020	\$4,103	\$1,465
2021	\$4,349	\$1,553
2022	\$4,610	\$1,646
2023	\$4,887	\$1,745
2024	\$5,180	\$1,850

Each year is calculated by a 6% increase over the previous year's Maximum Regular Annual Assessment amount, and rounded to the nearest dollar.

The Maximum Regular Annual Assessment for 2024 Dwelling Units for LBTS/River Club is \$5180, and for Willbrook Plantation properties is \$1850. (There are different dollar totals for other property types, such as unimproved or commercial.) This memo should be updated and refreshed in each subsequent year, to be included in the Annual Budget documentation.