



**Date:** December 15, 2010

**To:** Thomas J. Bonfield, City Manager

**Through:** Theodore L. Voorhees, Deputy City Manager

**From:** Donald F. Greeley, Director, Water Management  
Vicki Westbrook, Assistant Director, Water Management

**Subject:** **BENTWOOD PARK HOMEOWNERS ASSOCIATION**  
**Serious Delinquency Issue**

**Executive Summary:**

The Bentwood Park Townhomes is a townhome community constructed in 1986-87. The community consists of three structures, each containing approximately sixty individual units. Each of the three structures is served by a 1 inch meter; thus there are three accounts for the property. As is typical for construction of this timeframe, the individual units are not separately metered. The three accounts serving the community are set up in the name of the homeowners association. The City bills all three accounts to the homeowners association (HOA) and the HOA processes and pays the City. It is our understanding that HOA dues assessed for the units are designed to cover the water and sewer charges and other assessed charges such as stormwater and property maintenance. The community consists of both owner-occupied units and renter-occupied units. Two of the three accounts are seriously delinquent; Customer Billing staff have been working with the accountant for the association and two different HOA boards to collect significant past due amounts for at least two years. As of the December billing, the HOA is \$46,821.06 in arrears for two accounts; the third account is current. In recent discussions with the immediate-past HOA board and a newly elected member of the new HOA board, the City has expressed its intent to discontinue water service in January 2011 if the HOA does not enter into an appropriate payment arrangement to pay off the past due amounts in a reasonable timeframe.

**Recommendation:**

The Department of Water Management recommends that City Administration support the intent to disconnect water services due to the serious nature of the delinquency should the HOA not develop and implement a reasonable payment plan prior to the January cut-off date. The Customer Billing Manager and staff have tried to work with the HOA accountant and Board to avoid termination of services; however, to date no appropriate payment plan has been proffered. Rather, the Board and its representatives continue to request more time to work with residents to collect past due/delinquent HOA fees.

**Background:**

The Bentwood Park Townhomes HOA has been seriously delinquent for the past two years. The Billing Manager, under the discretion authority assigned by the City Code, has allowed the property to continue to have water and sewer services while attempting to work out a reasonable solution to the collect the past due amounts owed to the City. This has involved working with two separate HOA boards in an attempt to develop appropriate payment plans designed to collect the delinquent amounts on these accounts. The year-long extension granted to the previous board expired in September, without any payment made on the outstanding balances.

The HOA boards have indicated that a significant number of properties are vacant and that for the last two years about 60% of the HOA members have failed to pay any dues. To further complicate the matter, 80 of the units are included in the Bobby Roberts estate issue and although there is an active lawsuit against the Roberts estate to collect delinquent HOA dues, no monies have been awarded to the HOA to date. Another major issue is that the delinquent HOA dues are scattered among the three buildings and it is impossible to isolate only the delinquent units since they are not individually metered. Therefore, when service is terminated at a particular meter/account, all units serviced by that meter will lose service whether or not the HOA dues have been paid. This situation is unfortunate, but is not under the control of the City.

On October 18<sup>th</sup>, Department of Water Management staff and a representative from the City Attorney's Office met with Bentwood HOA Board members (now past board) and their accountant. During this meeting, the City provided notice of the intent to disconnect services the two delinquent accounts in the Bentwood community unless appropriate payment arrangements were made. According to correspondence received from board members on October 30<sup>th</sup>, the HOA held an emergency meeting with residents/members and noted the City's intent to disconnect water services if payments were not made. They also implemented a special assessment of \$200 per unit to be added to the on-going \$135 per unit monthly HOA fees. The result of this effort was collection of approximately \$4,300, which after several email exchanges resulted in the delivery of a check on December 3<sup>rd</sup> to the Cashiering staff; portions of the amount were applied to the outstanding balances of two accounts. Based on this good faith offer of payment and a subsequent meeting on December 8<sup>th</sup> with Water Management administration, City Attorney Office staff, Mr. Greg Jones and Mr. Robert Stauffenberg (Bentwood representatives), the City agreed not to terminate water service on December 15<sup>th</sup> as planned in order to allow the new board to craft a payment plan to present to the City on or before the mid-January bill due date.

The past and soon-to-be installed current HOA Boards have presented detailed plans on how they can address water use inefficiencies on the property, including the installation of separate meters for each unit. If installed, these meters would be owned, maintained and operated by the HOA; the City would continue to provide service only through the three large meters. Mr. Jones of the newly formed board has also been aggressive in turning off water service in vacant units to prevent further water waste; this effort should result in a savings on upcoming water bills.

It is also important to note that the City has incorrectly billed two of the three accounts for the last two years. When tiered rates were implemented in August of 2008, only one of the accounts was correctly coded for multi-family. Staff has corrected this error which results in to credit of approximately \$35,000 applied to the accounts. The credit has been applied to the accounts so that only one account remains delinquent; that account has been billed correctly since the implementation of the tiered rate structure.

After a thorough assessment of the issue, Department of Water Management administration believes that all the appropriate steps have been taken to work with the past and current HOA boards to develop appropriate payment plans. Unless the soon to be installed HOA board enters into an agreement with the City by mid- January to pay the past due balance of approximately \$43,322.53 in a reasonable timeframe, staff shall proceed with disconnection of service of the one account that remains delinquent.

**Issues/Analysis:**

One of the key findings of the 2009 City financial audit conducted by the independent auditors was that the City did not terminate service for non-payment for non-residential accounts/customers. Staff drafted a plan to shore up the disconnection process and presented it to the auditors; the plan requires coordination between the Customer Billing staff and the Meter Maintenance staff to disconnect meters larger than one inch. Staff has already implemented an aggressive notification program which has produced more timely payment, but the key motivator with non-responsive customers will be disconnection. In the 2010 Audit, the reviewers noted that the large meter cut-off plan had not been fully implemented. To address this shortcoming, City management has approved this final phase of the plan for full implementation. Should the City fail to fully implement the plan, there will be an unfavorable report from the independent auditors on the 2011 audit. Of further concern is that other rate payers are subsidizing these delinquent customers. Other methods to recover delinquent funds due the City include using an outside collection agency. A collaborative effort between Finance and Water Management is under way to procure these services.