

New Fire Assessment Report

A COMPLETELY INDEPENDENT OPINION OF WHAT WE ARE DOING, AND HOW? OR A COLLOSSAL WASTE OF MONEY?

(Opinion by John Thompson © January 2007)

Last April 11 Commissioner McIntee voiced his concern that the current Special Fire Assessment (since confirmed by a 3-2 commission vote for yet another year) is not only grossly inequitable, but also illegal in light of a 2002 Florida Supreme Court ruling. Since our Town Attorney has continuously supported the legality of the special assessment (as his firm has also done in North Lauderdale and Tamarac, where the courts have ordered massive reimbursements to taxpayers) McIntee proposed that the Commission get a second opinion.

This was not the first time McIntee had raised that issue. During the public budget hearings in September 2005, he had pointed out that during the 2003 base year from which special LBTS fire assessment rates were calculated, more than three-quarters of the calls answered by BSO's Advance Life Support (ALS) Engine 36 (totally funded from the LBTS "Fire-Department" budget) had been EMS "rescue" rather than "fire" or "other" calls, but that those had been totally ignored in the assessment calculation by consultants GSG Group. Since both Engine 36 and its cross-trained firefighter-paramedic crew are "EMS assets," and since the special assessment funds more than 99 percent of the "Fire Department" budget, EMS is therefore clearly being funded by the special LBTS "fire" assessment.

McIntee was also concerned that Mr. Cherof's law firm (as well as the Towns GSG consultants) had advised North Lauderdale regarding their special assessment that the 4th District Court of Appeals and Florida Supreme Court both declared to have been illegal, and that Mr. Cherof's partner Sam Goren was still advising Tamarac with regard to a similar special assessment found to be illegal and then under appeal (Ruling against Tamarac was since upheld!) "If Mr. Cherof is advising the town on what to do or how to do it, and his law firm was involved in prior situations where they lost," McIntee (not yet a commissioner) told the Commission, "maybe it's time for Mr. Cherof to recuse himself, or you should hire independent counsel to give you a balanced outside opinion. Cherof did not do so; nor did the Commission.

Mayor Parker still did not like the idea of a second opinion when Commissioner McIntee raised it again on April 11, and twice demanded that McIntee clarify his proposal. As stated in minutes of the meeting, McIntee's motion was "to review the assessment, review the methodology, and to get a complete and independent [His actual words were "completely independent." -Ed.] opinion to the legality of the assessment." You can't get much clearer than that! But while the Commission then approved McIntee's motion by a 4-1 vote, that is certainly not what subsequently developed. The report recently submitted after nine months does not appear to have been independently prepared. Nor does it even address "how" the LBTS special fire assessment is being applied.

Things seemed to go well initially. On May 19 we urged the Commission in these pages to, "Get a Second Opinion by all means, but not simply a clone of the first!" On May 23 the Commission chose Michael S. Davis, Esq., of the firm Bryant Miller & Olive in Tampa from a list the Town Manager obtained from the Florida League of Cities. Davis was selected on the basis of an impressive essay on the subject of special assessments he submitted with his application. Mr. Baldwin said he would negotiate a price and return a proposed contract to the Commission.

That's when things seemed to break down. When Commissioner McIntee phoned Davis 15 weeks later to enquire as to his progress and ask if a preliminary report could be ready before the September 14 decision day on possible extension of the special assessment into F.Y. 2006-07, Davis said he had not yet gotten a contract.

When Assistant Town Attorney Mike Cirullo was asked about the delay in award of contract at the September 14 budget hearings, he said, "We have been discussing with them the scope of the services.... And initially, it was to try to get a grasp of what the exact direction of the Commission was ... that evolved over discussions, over the course of time, between myself, Jim Cherof, and the Town Manager's office ... and insure what we engaged them for was what the Commission wanted them to review." Given the explicit nature of McIntee's motion approved on April 11, and the subsequent delay, we can hardly imagine any equivocation more likely to set off alarm bells in the mind of anyone skilled in bureaucratic maneuvering. We promptly filed a public records request for a copy of the contract, when issued, and following the usual 3- to 6-week delay we encounter in such matters, eventually did get a copy confirming our worst fears.

In four pages of legal verbiage there was not one direct reference to the legality or possible illegality of the Town's special assessment under Florida Law. Far from demanding a "completely independent opinion, the contract required the complete opposite: "The contemplated legal services are to be provided in conjunction with the efforts and input of designated **consultants, attorneys, experts, officials, and staff of the Town.**" How better to insure that nothing in the report could possibly offend or compromise any of those said consultants, attorneys, staff, etc., or run counter to their previous recommendations to the Commission? We are tempted to ask, "What part of '**independent**' did the Town Manager and the Town Attorney not understand?" Moreover, far from any sense of urgency derived from McIntee's September 2005 and April 2006 remarks, Davis and crew were asked to make their recommendations only "for implementation for the fiscal year beginning Oct.1, 2007."

It was already clear to us then that the study could not serve the purpose for which it had been agreed. But the actual document, dated January 16, 2007, is both a further disappointment and a welcome surprise. Disappointment springs from the fact that while McIntee's motion asked for review both of the assessment and the methodology, the study analyses only "whether the program as structured under its implementing documentation meets with requirements of law," but not "whether application of the program is likewise compliant." They are therefore able to conclude that "the existing fire rescue special program does not appear to be funding emergency medical services." (Note skillful use of the word "appear." If we were to write that the consultants are intentionally trying to pull the wool over readers' eyes, that might well be actionable, but if we simply say they "appear" to be trying to pull the wool over your eyes, that hopefully would not be.)

Recognizing that the study - as commissioned under the contract - could not possibly be "independent" we have been able to enjoy some amusement at the reasoning advanced to "prove" that funding ALS Engine 36 and its fire-fighter-paramedic crew does not amount to funding EMS. One argument is: since the definition of "EMS" includes medical transportation, any vehicle or crew member lacking ability to provide medical transportation cannot be said to provide EMS. (Why, then, bother to equip ALS Engine 36 or cross-train its crew?) The claim is also advanced that "[a] fire responder's 'readiness to serve' is the predominant force in determining fire rescue costs and renders the distinction of incident type ("fire," "rescue," etc.) inconsequential."

Since ALS Engine 36's crew must at all times be prepared to respond to "fires" it does not therefore matter, the study concludes, that 60 or more percent of their calls may actually be EMS "rescue" calls. Clever. But it overlooks two facts: One crew member of ALS Engine 36 must at all times demonstrate readiness-to-serve by augmenting the contractual 2-man crew of BSO's Rescue-12 ambulance, or else that vehicle could itself not legally perform transport to hospital. Moreover, unless we are mistaken, saving life always takes precedence over saving property, so were two calls to be received at one time, Engine 36 would always have to respond to the EMS call to do what they could until the arrival of transport.

We were nevertheless pleasantly surprised by the study because, despite all its inherent shortcomings, it **does** hint at the answer it takes pains to avoid: that the LBTS special fire assessment **as actually applied** (irrespective of all the deceptive wording in the resolution and elsewhere) probably does amount to illegal funding of EMS by a special assessment contrary to the 2002 FL Supreme Court ruling. We read, "We have said from the outset that we will not undertake an analysis of the second, or "as applied" component, because to do so would incur expenses beyond our scope...." We, for one, do not recall having heard them say so, and wonder whether any members of the Commission have. Why, in any event, did they not say so in their bid proposal? Why did they not come back and say they needed more money to do the job they were asked to do, e.g., "review the assessment; review the methodology?"

No, we are convinced the true message to the town is in the second part of that last sentence, i.e., "because to do so ... might embolden policy opponents and underwrite to the detriment of the Town treasury, development of the very basis upon which to institute resource consuming challenges." While our dictionary of "lawyer-speak" is not completely up to date, we take that to mean that a serious analysis of the special assessment "as applied" (rather than as mischaracterized in the special-assessment resolution) would reveal what we believe should be clear to any reasonably astute financial analyst, that the special "fire" assessment is indeed funding EMS equipment and personnel to a considerable extent, in contravention of the supreme court ruling.

That message is repeated even more clearly in the final sentence of the study's conclusion, where the Town is urged to "investigate ... a restructuring of the existing assessment program [which] should also address and defend against threatened or impending challenges to the legal sufficiency of the Town's assessment program based upon the [Supreme Court] ruling." We can only interpret that warning to mean that the consultants have concluded that the current assessment program is vulnerable to challenge under that 2002 ruling.

We have heard the consultants are not planning to attend the February 13 meeting at which their report will be presented, and that "staff" are reluctant to ask them to do so, as it would cost thousands of dollars more. It is not clear why there need be additional cost, since their contract requires consultants to "attend workshops, public meetings and hearings as necessary." But even if it will cost a few thousand more, we think that having already committed \$45,000 to a contract that does not fulfill the terms of the April 11 commission decision, it would now be worth a few thousand more to hear the consultants try to explain – in response to searching questions from commissioners – the strategic obfuscation we have noted in their report.