

What liability could the Town face?

COMMISSIONERS DESERVE TO HEAR "THE WHOLE TRUTH"

(Opinion by John Thompson ©, reprinted from *By-the-Sea Times*, April 21, 2006)

In American courts of law, witnesses are routinely asked to swear or affirm that they will "tell the truth, the whole truth, and nothing but the truth." They are then questioned by attorneys who often seem committed to make sure the witness does NOT tell the WHOLE truth – only that portion or version of the truth that benefits each attorney's clients. Similarly, at meetings of the LBTS Town Commission, we would often not want to hold our breath waiting to hear "the whole truth" from some commission members or from the town staff.

Vice Mayor Yanni, who has recently evidenced serious interest in citizens' concerns, came up against that phenomenon at last week's commission meeting. He referred to the concern we have expressed over apparently illegal "fire" and "storm-water utility" special assessments that might eventually have to be repaid to taxpayers as the courts recently ordered in Tamarac and Miami. Yanni asked the town staff, "Do you have any idea what – if we have to pay it back – what it's going to come to, a round, ball-park figure?"

"I have no knowledge of us having to pay back anything." Town Manager Baldwin promptly responded. That was a completely accurate statement, since there have thus far been no class-action taxpayers' suits in LBTS as there were in Tamarac and Miami. But it was not an answer to Commissioner Yanni's "what-if" question. Baldwin certainly knew – or should have known – the answer to that question, and we think the Vice Mayor deserves to hear the answer. In fact, he already has answers in copies of professional economic studies and letters we previously gave to the Town and to all commissioners, but we are happy to summarize them for him here.

Briefly, there are two separate special assessments we believe to be in clear violation of Florida Supreme Court and appeals-court rulings – the \$260-a-year special assessment purportedly for fire services and the special "storm-water-utility" assessment, initially \$3.50 a month but raised to \$7.00 (\$84 a year) last year to fund installation of storm drains on Terra Mar Island. In the "ball-park" figures Vice Mayor Yanni requested, the special assessment for "fire" came to about \$2 million a year for the past two years, over half of which, we have calculated, goes to pay for emergency medical services (EMS) the Supreme Court has ruled may not be specially assessed. So, that comes to \$2 million so far, "if we have to pay it back," to quote John Yanni.

The special "storm-water-utility" assessment, on the other hand, raised over \$100,000 during the previous fiscal year, and will raise over \$200,000 this year, about \$90,000 of which, as we previously reported, was needed to fund the annual debt service on the \$1 million loan taken out to fund the then-estimated \$1¼ million cost of installing storm drains on Terra Mar Island. Now, we learned last week that the cost of that project has already come to \$2 million (without yet having solved the problem of flooding after heavy rains).

But not to worry: at the same time, Town Manager Baldwin advised (and Commissioners voted) to borrow \$2 million more, just on general principles (because the interest rates were so low). So that money was also on hand to fund the Terra Mar drain project, annual debt service on which must now therefore be estimated at \$180,000, or 90 percent of the new, increased special storm-water

assessment. If, as clearly appears to be the case, that assessment also violates previous court rulings, the amount that could have to be repaid for the past two years comes to \$300,000, for a grand total potential repayment of \$2.3 million (so far), Vice Mayor.

In further response to the Vice Mayor's query, Town Attorney Cherof characterized warnings about illegal special assessments that might have to be repaid as "purely speculative." But the Vice Mayor continued to press for answers. "What's he saying? What did we do illegal?" Yanni demanded. "The cases that Mr. Thompson is talking about, in my opinion, are distinguishable from the assessment here," Cherof replied. That opinion is entirely accurate. But once again, it does not provide the "whole truth" he could certainly have given in response to the Vice Mayor.

The other cases are "distinguishable" from the situation in LBTS because Tamarac and Miami lumped ALL their EMS services together with fire services and funded them all from one special "fire/rescue" assessment. Here, the Commission is paying PART of the LBTS EMS costs (those for BSO's ambulance, Rescue 12) from ad valorem taxes, while funding another large PART of EMS costs (those for Advance-life-support (ALS) Engine 36) from the special "fire" assessment. Town Attorney Cherof wisely avoided comment on whether the practice in LBTS is any more "legal" than regimes the courts have ruled illegal in Tamarac and Miami. We note, however, the 2002 supreme-court ruling that "a fire rescue program funded by a special assessment [may not] use its equipment and personnel to provide emergency medical services...." That was based on a simultaneous court ruling that EMS do not "provide a special benefit to property."

The attempt in LBTS seems to have been to describe the combined fire-rescue service provided by BSO's ALS Engine 36 as simply a "fire" service; by excluding from that engine's call data for the base year 856 calls (77.8% of total calls!) classified as EMS calls; by arbitrarily transferring 13 positions (representing the entire 24/7 three-man crew of ALS Engine 36) from the "Fire-Rescue" (EMS) budget to "Fire Department" (fire suppression) budget between FY2003-04 and FY2004-05; and then by brazenly asserting, in Resolution 2004-15 which establishes the \$260 special assessment for "fire" services, that "all costs of EMS shall be funded from available Town revenue other than Fire Protection proceeds. No EMS shall be funded through Fire Protection Assessment proceeds." In light of the incontrovertible facts outlined above, that statement appears to be at best a gross misrepresentation of material facts, and at worst a bald-faced lie.

That, Vice Mayor, is what we believe LBTS has been doing illegally. It is conceivable that the courts might rule otherwise since the LBTS regime is, as Mr. Cherof has correctly pointed out, "distinguishable" from those of Tamarac and Miami. But we think it more likely that they could be concerned over what strikes us as a concerted effort in Resolution 2004-15 and elsewhere to conceal the true facts relative to the Town's special fire assessment, and could therefore reflect that concern in a ruling on the LBTS situation. You may also recall, sir, that we are qualified academically and professionally to perform economic analyses such as the "second opinion" the Commission is currently considering on the fire assessment, and that we previously offered to do so at only one-tenth the \$17,500 fee the Commission already agreed to pay GSG, Inc. for a study GSG has formally stated would follow the same methodology on which the current "fire services" special assessment is, we believe, illegally based. Our offer still stands.