MEMORANDUM

TO: Edward F. Lavallee, City Manager, City of Venice, Florida
FROM: Chris Roe, Bryant Miller Olive
DATE: August 27, 2017
SUBJECT: Fire Assessment Program

This memorandum includes a brief overview of the law governing special assessments, describes the assessment of condominium units in the availability apportionment methodology currently under consideration by the City of Venice (the "City"), and addresses the pending lawsuit challenging an assessment program adopted by Cooper City, Florida

Assessment Overview:

Special assessments are similar to ad valorem property taxes in several respects including the ability to collect the assessment on the annual property tax bill mailed by the county Tax Collector each November.[1] One important distinction is that the formula for calculating property taxes is determined by the state constitution and statutes, whereas the formula or apportionment method for assessments is determined at the local level and not dictated by state statute. A city may choose from any number of apportionment methods to fund a given service or improvement through assessments, provided the governing body determines that the chosen method is reasonable.[2] The Florida Supreme Court has long recognized that no apportionment system is perfect or free from criticism,[3] and has specified that the apportionment approach selected by a governing body is immaterial and may vary widely as long as the amount of the assessment for each property does not exceed the proportional benefit it receives as compared to other properties.[4] The Court has also held that apportionment of benefits is a legislative function, deference is given to local determinations regarding benefit and apportionment, and that if

[1] See section 197.3632, Florida Statutes.

[2] As established by Florida case law, two requirements exist for the imposition of a valid special assessment. First, the property assessed must derive a special benefit from the improvement or service provided. Second, the assessment must be fairly and reasonably apportioned among the properties receiving the special benefit. Sarasota County v. Sarasota Church of Christ, Inc., 667 So.2d 180 (Fla. 1995).

[3] City of Ft. Myers v. State of Florida and Langford, 95 Fla. 704, 117 So. 97, 104 (Fla. 1928) ("[n]o system of appraising benefits or assessing costs has yet been devised that is not open to some criticism. None have attained the ideal position of exact equality, but, if assessing boards would bear in mind that benefits actually accruing to the property improved in addition to those received by the community at large must control both as to benefits prorated and the limit of assessments for cost of improvement, the system employed would be as near the ideal as it is humanly possible to make it.")

[4] South Trail Fire Control District v. State, 273 So.2d 380, 384 (Fla. 1973).

reasonable people may differ as to whether the land assessed is benefitted or the methodology is reasonable, the findings of the city officials as to benefit and apportionment must be sustained.[5]

Availability Method and Condominiums:

Fire assessments are typically apportioned either by the *calls-for-service* methodology which allocates fire department costs among property categories based on historic demand for service, or the *availability* method premised upon the benefit conveyed to each parcel of real property by the availability of fire service. The availability methodology involves two components or tiers: Tier 1 which allocates a portion of the overall assessment amount equally among all tax parcels[6] on a per parcel basis, and Tier 2 which recognizes that a primary benefit of fire service availability is protection from loss of the structures associated with a given tax parcel (and therefore avoidance of replacement costs), whereby the remaining amount to be recovered through the assessment is apportioned among developed property based on the value of structures. Tier 2 generally excludes reasonably ascertainable land value because the land and its value will remain even in the event the improvements are completely lost in a fire incident.

One of the advantages of the availability method is that it relies upon data prepared by the county Property Appraiser. The Property Appraiser is required to develop and maintain a database of information in the course of fulfilling constitutional duties associated with the Florida system of ad valorem taxation. The database includes, among other things, a list of each tax parcel in the jurisdiction and the distinct tax parcel identification number assigned to each, as well as estimated replacement costs for the structures and buildings on each parcel.[7] That data may be accessed and utilized by a city for purposes of the availability methodology, at no cost to the city. Use of such publicly maintained data avoids duplication of efforts and the ongoing expenses associated with a city first developing and then maintaining over time apportionment metrics such as replacement value on its own, resulting in cost-efficient administration.

One limitation of that data is that the Property Appraiser may not isolate, separately identify or determine a land value for real property associated with a condominium form of ownership, wherein each condominium unit is owned individually but other elements of the overall complex are owned jointly (i.e. parking lots, clubhouses or other amenity features, and the land upon which the units are constructed). Recognizing this limitation, the communities that have adopted the availability method typically use the replacement cost or just value

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[5] Roche v. City of Hollywood, 55 So. 2d 909 (Fla. 1952); City of Boca Raton, 595 So. 2d at 30.

[6] The term "tax parcel" as used herein shares the definition set forth in City Resolution No. 2017-16: "'Tax Parcel' means a parcel of property to which the Property Appraiser has assigned a distinct ad valorem property tax identification number."

[7] Section 193.011, Florida Statutes ("Factors to consider in deriving just valuation.—In arriving at just valuation as required under s. 4, Art. VII of the State Constitution, the property appraiser shall take into consideration the following factors: ... (5) The cost of said property and the present replacement value of any improvements thereon ...").

assigned by the Property Appraiser for purposes of deriving the Tier 2/structure value component, finding that such approach is reasonable because the legal structure of condominium or similar common ownership materially restricts the severability of a specific or individual unit created under a statutory regime from any associated parcel of land, and that the benefit of service availability to common features is conveyed back to the unit itself in the form of improvement value. The availability method and its use of replacement value as a metric for fire assessment apportionment which includes the above-described handling of condominiums has been upheld at both the trial court level and by the Florida Supreme Court.[8]

Venice has an unusually high percentage of residential condominium units compared to the number of tax parcels as a whole. Approximately 7,000 of the 16,000 tax parcels in the City (almost 44%) are condominium units. In light of the high percentage of condominium units in the City and concerns expressed by unit owners, the methodology consulting team is developing potential refinements whereby an adjustment could be made to just value to attribute a percentage of the just value to land and to calculate the Tier 2 component of the assessment based upon the remainder attributed to structure value replacement cost. The attribution of the portion of the condo value to land will be based upon an analysis of the value per square feet of land for all residential parcels, applied to the square feet of land in all common area parcels upon which all of the condo units in the City reside to derive an imputation of the land value for all condos in the City. Dividing this land value by the total just value for all condo units will result in an imputed percentage of just value associated with land value that will be removed from the just value for each condo unit based upon application of this percentage. Preliminary calculations performed by the methodology consulting team indicate that this imputed land value adjustment percentage will be approximately 25%.

This adjustment will not be exact for each condo parcel but is reasonable given 1) the limitation regarding land value data for each condo parcel in the Property Appraiser's data, which is the source of property data used in the assessment calculations, and 2) the averaging concept in rate making that is used when data limitations will not allow a more precise allocation to individual rate payers. This adjustment employs that averaging concept regarding land value of condo parcels because land value data for individual condo parcels is not available. For example, this form of averaging is commonly used in utility ratemaking where a property close to the water treatment plant actually costs less to serve than a property distant from the plant, but data is not available to practically differentiate the rate for such parcels based upon distance from the plant and an average rate is applied to both properties.

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[8] Morris v. Cape Coral, 163 So.3d 1174, 1180 (Fla. 2015) ("The use of the property appraiser's structure value is reasonable because the property appraiser is statutorily required to use a replacement cost to determine this value. See § 193.011(5), Fla. Stat. (2014). We find that this is a reasonable approach to apportionment and not arbitrary.")

Such a revision to the treatment of condominium units in Tier 2 reflects a reasoned and logical approach to addressing the specific circumstances and parcel configuration present in Venice based upon available data, and in my estimation is defensible on the basis that it complies with the fair and reasonable apportionment standard applicable to special assessments.

Cooper City:

Some municipal fire departments provide only traditional fire services involving protection of property and suppression of fire in structures and on land, in which case any available emergency medical services[9] ("EMS") are provided by a separate entity which funds and budgets for the service on its own, separate and apart from the municipal fire department budget. Other fire departments are integrated in that they provide both fire suppression activities and emergency medical services. It is my understanding that Cooper City has historically offered integrated fire and emergency medical services and implemented a special assessment program in 1999 to fund a portion of its integrated department budget, including costs associated with EMS, and that the city has imposed its assessment every year since. Other local governments offering integrated services, including the Cities of North Lauderdale[10] and Pembroke Pines,[11] likewise adopted special assessment programs at or before that time to fund the provision of both fire services and EMS. There were no statutes or court decisions in effect in 1999 which prohibited the imposition of special assessments to fund EMS. In fact, section 170.201, Florida Statutes, expressly authorized EMS assessments.[12]

It is my understanding that the Cooper City methodology was designed to include emergency medical services and therefore was intended from its inception to include EMS costs in the amount to be recovered through the assessment, an approach that was lawful when the program was adopted in 1999 because there was no existing statutory or case law prohibition against EMS assessments, and the implementing ordinances and resolutions expressly contemplated the expenditure of assessment proceeds to fund EMS activities. Several years later, in an appellate decision involving challenge to North Lauderdale's integrated assessment program, the Florida Supreme Court determined that emergency medical services did not satisfy

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[9] "Emergency medical services" means the activities or services to prevent or treat a sudden critical illness or injury and to provide emergency medical care and prehospital emergency medical transportation to sick, injured, or otherwise incapacitated persons in this state. Section 401.107(3), Florida Statutes. See also City of North Lauderdale v. SMM Properties, Inc., 760 So.2d 998 (Fla. 4th DCA 2000) (Emergency medical service is a term of art used to define the systematic provision of services for assessment, treatment and transportation of injured person in medical emergencies).

[10] City of North Lauderdale v. SMM Properties, Inc., 760 So.2d 998 (Fla. 4th DCA 2000).

[11] City of Pembroke Pines v. McConaghey, 728 So.2d 347 (Fla. 4th DCA 1999).

[12] 170.201 Special assessments. (1) In addition to other lawful authority to levy and collect special assessments, the governing body of a municipality may levy and collect special assessments to fund capital improvements and municipal services, including, but not limited to, fire protection, emergency medical services, garbage disposal, sewer improvement, street improvement, and parking facilities. (underline added)

the special benefit requirement for assessments because such services benefit people, not property.[13] The Court described the difference between and EMS and first response medical aid,[14] providing generally that on-scene patient stabilization and provision of initial medical care fall within the umbrella of fire protection services and may be funded through special assessments.

Since that ruling, development of assessment programs involving integrated fire and EMS services includes a review of the integrated budget to exclude EMS components from assessable costs to ensure only fire services are funded by the assessment. This analysis is of critical importance for integrated systems since a single budget includes both fire service and EMS expenditures and only the fire-related portions may be funded by assessments. Development of a fire assessment for a non-integrated fire department may also undertake a budgetary analysis and staff interviews to identify and exclude costs or expenses, if any, related to services beyond on-scene patient stabilization and provision of initial medical care. An example of such exclusion could involve pay differential for firefighters who are dual-certified as paramedics, in which case the pay differential could be excluded from assessable costs. However, any such exclusions in a non-integrated budget typically represent a small fraction of the department's total costs, if any at all, since another entity bears primary responsibility for providing, and budgeting for and funding, emergency medical services.

The Cooper City assessment was challenged in 2011 on several grounds, including an assertion that the city did not sufficiently revise the apportionment methodology to address the Supreme Court's ruling in the North Lauderdale case. The trial court issued a ruling in 2016 which agreed in part with the challengers. Cooper City appealed that ruling and the appeal is currently pending in the Fourth District Court of Appeals. Oral arguments were held in June, 2017, and the appellate court has not yet issued a decision in the matter. Regardless of the outcome of that case, I do not expect the appellate court ruling to change current law since neither party is arguing that emergency medical services benefit real property or that the prohibition against EMS assessments should be abolished such that the applicability of the ruling may be limited to the parties involved.

In any event, the Cooper City case is distinguishable from the fire assessment program currently under consideration by the City of Venice in several ways. Venice does not have an integrated fire department or an integrated fire department budget which addresses EMS because emergency medical services are provided by Sarasota County and funded through a county

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[13] City of North Lauderdale v. SMM Properties, Inc., 825 So.2d 343 (Fla. 2002).

[14] "First response medical aid" is considered one of the routine duties of a firefighter, and firefighters are required to take 40 hours of training of first response medical aid in order to become certified fire fighters under state laws and rules. Sections 401.435(1), 633.35(2), Florida Statutes; Fla. Admin. Code 69A-37.055. First response medical aid is routinely provided by policemen, firefighters, lifeguards, etc., as necessary on-scene patient care before emergency medical technicians or paramedics arrive. City of North Lauderdale, 825 at 346.

millage levy.[15] The services provided by the City are limited to traditional fire rescue, protection and suppression services and first response medical aid routinely provided by firefighters as necessary on-scene patient stabilization and provision of initial medical care and the Courts have determined that costs associated with first response medical aid may be included in the assessment.[16] Venice firefighters do not engage in transportation of the injured or perform other procedures indicative of emergency medical services such as endotracheal intubation, administration of drugs or intravenous fluids. Venice does not budget for the provision of EMS because EMS is provided, budgeted for and funded by Sarasota County.

Furthermore, the methodology under consideration by Venice is premised entirely on the benefits conveyed by the availability of fire protection services. The method does not attempt to include emergency medical services within the assessment formula, such that no aspect of the method is founded upon the intent to fund EMS through the assessment. The apportionment report prepared in support of the assessment program acknowledges the legal prohibition against EMS funding, describes the fact that EMS services are provided by Sarasota County, provides that firefighters cross-trained as emergency medical technicians (a level of certification below that of paramedic) do not receive increased pay, the Venice Fire Department does not incur additional costs to have its firefighters cross-trained as emergency medical technicians, and does not employ personnel cross-trained as paramedics, such that all costs of the fire department budget are appropriate for funding through the fire protection assessment.

Finally, the City is considering an assessment to partially fund its fire department, with the balance of costs paid by other legally available funds. The initial assessment considered included 50% of the fire department budget in the assessment and at its public hearing on July 21, the City Council expressed interest in an alternative that would fund approximately 20% of the fire department budget through the assessment. Even if there were limited EMS expenditures identifiable in the City's non-integrated fire department budget, they would represent a small fraction of total costs which would be attributable to and properly funded by either the 50% or the 80% non-assessment funding sources (in the initial and alternative cost recovery scenarios considered to date, respectively) that will be contributed by the City to pay the total annual service cost. The courts have recognized that a partial funding approach limits the risk the risk of over-inclusiveness with respect to assessable costs.[17]

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[15] The TRIM notice sent by the Sarasota County Property Appraiser for 2017 indicate a millage rate of 0.66 mills for the provision of EMS services by the County.

[16] See City of North Lauderdale, supra. See also Lake County v. Water Oak Management Corp., 695 So.2d 667 (Fla. 1997).

[17] See Desiderio Corp. v. Boynton Beach, 39 So.3d 487 (Fla. 4th DCA 2010) (city elected to fund 64.3% of fully assessable budget, challengers did not demonstrate that "true" fire protection services consumed less than this level of funding and therefore did not show that non-assessable services were funded by assessments).

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Supreme Court of Florida.
CITY OF NORTH LAUDERDALE, Petitioner,
v.
SMM PROPERTIES, INC., et al., Respondents.

No. SC00-1555.
Aug. 22, 2002.

Owners of commercial property in city filed complaint requesting declaratory relief and injunction against city, alleging that assessment was an unconstitutional tax disguised as a special assessment. The Circuit Court, Broward County, John T. Luzzo, J., entered judgment for city. Owners appealed. The District Court of Appeal, 760 So.2d 998, affirmed in part, remanded, and certified questions. The Supreme Court, Quince, J., held that special assessment for emergency medical services was invalid.

Questions answered; approved.

West Headnotes

[1] Municipal Corporations 268 438

268 Municipal Corporations
268IX Public Improvements
268IX(E) Assessments for Benefits, and Special Taxes
268k436 Benefits to Property
268k438 k. General or Special. Most Cited Cases

Emergency medical services provided by city did not confer a special benefit on property, and thus, assessment for those services was an invalid ad valorem tax clothed as a special assessment; services provided personal benefit to individuals, not special benefit to real property, and there was no evidence that availability of emergency medical services decreased insurance premiums or enhanced value of real property. West's F.S.A. Const. Art. 7, §§ 1(a), 9(a); West's F.S.A. § 170.201.

[2] Municipal Corporations 268 503

268 Municipal Corporations
268IX Public Improvements
268IX(E) Assessments for Benefits, and Special Taxes
268k496 Confirmation or Revision of Assessment by Court
268k503 k. Scope of Inquiry and Powers of Court. Most Cited Cases

Appellate courts traditionally defer to the legislative body's determination of special benefits to real property funded by special assessments.

[3] Municipal Corporations 268 503

268 Municipal Corporations
268IX Public Improvements
268IX(E) Assessments for Benefits, and Special Taxes
268k496 Confirmation or Revision of Assessment by Court
268k503 k. Scope of Inquiry and Powers of Court. Most Cited Cases

Legislative determination as to the existence of special benefits to real property, funded by special assessments, and as to the apportionment of costs of those benefits, should be upheld unless the determi-

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nation is arbitrary.

[4] **Municipal Corporations 268 ⚿412**

268 Municipal Corporations
268IX Public Improvements
268IX(E) Assessments for Benefits, and Special Taxes
268k411 Nature of Improvement
268k412 k. In General. Most Cited Cases

Municipal Corporations 268 ⚿438

268 Municipal Corporations
268IX Public Improvements
268IX(E) Assessments for Benefits, and Special Taxes
268k426 Benefits to Property
268k438 k. General or Special. Most Cited Cases

A legislative body cannot by its fiat make a local improvement of that which in its essence is not such an improvement, and it cannot by its fiat make a special benefit to sustain a special assessment where there is no special benefit.

***344** Robert L. Nabors,Gregory T. Stewart, and Virginia Saunders Delegal of Nabors, Giblin & Nickerson, P.A., Tallahassee, FL; and Samuel S. Goren and Michael D. Cirullo, Jr. of Josias, Goren, Cherof, Doody & Ezrol, P.A., Fort Lauderdale, FL, for Petitioner.

Neisen O. Kasdin of Gunster, Yoakley & Stewart, P.A., Miami, FL; and Edna L. Caruso of Caruso, Burlington, Bohn & Compiani, P.A., West Palm Beach, FL, for Respondents.

Jamie A. Cole and Susan L. Trevarthen of Weiss, Serota, Helfman, Pastoriza & Guedes, P.A., Fort Lauderdale, FL, for The Group City Emergency Medical Service Coalition of Broward County, Florida, Inc., Amicus Curiae.

Randall N. Thornton, Lake Panasoffkee, FL, for The Village Center Community Development District, Amicus Curiae.

Frank A. Shepherd, Miami, FL, for Pacific Legal Foundation, Amicus Curiae.

William Phil McConaghey, pro se, Pembroke Pines, FL, Amicus Curiae.

QUINCE, J.

We have for review a decision of the Fourth District Court of Appeal on the following questions, which the court certified to be of great public importance:

> DO EMERGENCY MEDICAL SERVICES (EMS) PROVIDE A SPECIAL BENEFIT TO PROPERTY?
>
> CAN A FIRE RESCUE PROGRAM FUNDED BY A SPECIAL ASSESSMENT USE ITS EQUIPMENT AND PERSONNEL TO PROVIDE EMERGENCY MEDICAL SERVICES FOR ACCIDENTS AND ILLNESSES UNDER *LAKE COUNTY V. WATER OAK MANAGEMENT CORP.*, 695 So.2d 667 (Fla.1997)?

SMM Properties, Inc. v. City of North Lauderdale, 760 So.2d 998, 1004 (Fla. 4th DCA 2000) (en banc). We have jurisdiction. *See* art. V, § 3(b)(4), Fla. Const. For the reasons stated herein, we answer the certified questions in the negative and approve the decision of the district court.

FACTUAL BACKGROUND

At issue in this case is the validity of a special assessment imposed by the City of North Lauderdale

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(the City) on owners of improved property within the City for the purpose of providing an integrated fire rescue program.[FN1] In June of 1996, the City adopted an ordinance which authorized and established procedures to fund the cost of an integrated fire rescue and emergency medical services program through a special assessment levied on all *345 property owners in the City. The integrated fire rescue program included (1) fire suppression, (2) first-response medical aid, and (3) emergency medical services (EMS). A group of commercial property owners in Broward County (the Opponents) opposed the special assessment and filed a complaint requesting declaratory relief and an injunction against the City. The Opponents conceded that the fire services portion of the assessment, items one and two, conferred a special benefit on their properties, but sought a declaration that the portion of the assessment for emergency medical services (item three) was improper because the properties did not derive a special benefit from this service. The trial court granted partial summary judgment on behalf of the City, finding that the special assessment conferred a special benefit to property as a matter of law. On appeal, the Opponents argued the trial court erred because the assessment for emergency medical services provided a service to all citizens in the city and did not provide a special benefit to the assessed real property. *See SMM Properties, Inc. v. City of North Lauderdale*, 760 So.2d 998 (Fla. 4th DCA 2000) (en banc). The Fourth District agreed, concluding that the emergency medical services did not provide a special benefit to the assessed property because such services benefit people, not property. *See id.* at 1004. The City seeks review of the Fourth District's decision.

FN1. The City is a municipal corporation, organized and operating under the laws of the State of Florida, with home rule powers under article VIII, section 2(b), Florida Constitution and sections 166.021 and 166.041, Florida Statutes (2001).

DISCUSSION

In *Lake County v. Water Oak Management Corp.*, 695 So.2d 667, 669 (Fla.1997), we reiterated the test for determining the validity of a special assessment:

> In reviewing a special assessment, a two-prong test must be addressed: (1) whether the services at issue provide a special benefit to the assessed property; and (2) whether the assessment for the services is properly apportioned. *Sarasota County [v. Sarasota Church of Christ]*, 667 So.2d at 183; *City of Boca Raton v. State*, 595 So.2d 25, 30 (Fla.1992).[FN2]

FN2. The second prong of the special assessment test, "whether the assessment for the services is properly apportioned," is not at issue in this case.

To resolve the issue in this case we must examine the first prong of the test and determine whether emergency medical services provide a special benefit to property.

The City asserts that its special assessment confers a special benefit to real property because a logical relationship exists between the use and enjoyment of property and the emergency medical services provided by the fire rescue program. In making its argument, the City asserts that the facts of this case fit squarely within our decision in *Lake County*, which included a special assessment imposed for fire protection services.[FN3] The "fire protection services" at issue in *Lake County* were described by the district court as follows:

FN3. *Lake County* also involved a special assessment for solid waste disposal services, but this Court agreed with the district court's summary conclusion that the solid waste disposal special assessment was valid.

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> Lake County provides a number of services under the umbrella of "fire protection services" such as fire suppression activities, first-response medical aid, educational programs and inspections. The medical response teams stabilize patients and provide them with initial medical care. The fire department responds to automobile and other accident scenes and is involved in civil defense. Fire ***346** services are provided to all individuals and property involved in such incidents.
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> *Water Oak Management Corp. v. Lake County*, 673 So.2d 135, 137 (Fla. 5th DCA 1996), *quashed in part*, 695 So.2d 667 (Fla.1997). The issue before this Court on a certified question was whether Lake County's fire protection services, funded by a special assessment, provided a special benefit to the assessed properties. We answered the certified question in the affirmative, finding the fire protection services did provide a special benefit to the assessed properties, because at a minimum, fire protection services provide for lower insurance premiums and enhance the value of property. *Lake County*, 695 So.2d at 669.

[1] In this case, the City argues that Lake County's fire rescue program is similar to its own program because both are consolidated programs funding more than fire protection and suppression activities. The Opponents respond that *Lake County* involved first-response medical aid, not emergency medical services, and thus is not directly on point. The Opponents also argue that since first-response medical aid is a function provided by firefighters as part of their normal duties, the property owners in *Lake County* were really only paying for fire protection, and the special assessment in *Lake County* did not assess property owners for services outside the firefighters' jobs, such as emergency medical services.

We agree that the facts of this case do not fit squarely within *Lake County*. Although both programs are "integrated" programs encompassing more than fire suppression activities, the fire rescue program funded by the special assessment in *Lake County* did not include the provision of emergency medical services. The fire rescue program at issue in *Lake County* involved only first-response medical aid. The Fourth District recognized and explained the service thusly:

> Pursuant to Florida law, "first response medical aid" is considered one of the routine duties of a firefighter, and firefighters are required to take 40 hours of training of first response medical aid. *See* §§ 401.435(1), 633.35(2), Fla. Stat. (1997); Fla. Admin. Code R. 4A-37.055(2)). First response medical aid is routinely provided by policemen, firefighters, lifeguards, etc., as necessary "on-scene patient care before emergency medical technicians or paramedics arrive." § 401.435(1), Fla. Stat. The duties of the medical response teams in *Lake County* seem to fit precisely within the parameters of routine "first response medical aid" because the teams there had the duty to "stabilize patients and provide them with initial medical care." 695 So.2d 667-69; *see also Water Oak Management Corp. v. Lake County*, 673 So.2d 135 (Fla. 5th DCA 1996). There was no mention of the provision of comprehensive emergency medical transportation services as part of the integrated fire protection service discussed in *Lake County*.
>
> 760 So.2d at 1003.

Emergency medical services, on the other hand, are defined in Florida as follows:

> (3) "Emergency medical services" means the activities or services to prevent or treat a sudden critical illness or injury and to provide emergency medical care and prehospital emergency medical transportation to sick, injured, or otherwise incapacitated persons in this state.

§ 401.107(3), Fla. Stat. (2000). Further, the legislative intent as to medical transportation services is

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outlined as follows:

> Legislative Intent.-The Legislature recognizes that the systematic provision of emergency medical services saves ***347** lives and reduces disability associated with illness and injury. In addition, that system of care must be equally capable of assessing, treating, and transporting children, adults, and frail elderly persons. *Further, it is the intent of the Legislature to encourage the development and maintenance of emergency medical services because such services are essential to the health and well-being of all citizens of the state. The purpose of this part is to protect and enhance the public health, welfare, and safety* through the establishment of an emergency medical services state plan, advisory counsel, minimum standards for emergency medical services personnel, vehicles, services and medical direction, and the establishment of a statewide inspection program created to monitor the quality of patient care delivered to each licensed service and appropriately certified personnel.

§ 401.21, Fla. Stat. (2000) (emphasis added).

Based on these factors, the medical services provided for in this case are clearly distinguishable from the ones present in *Lake County*. The special assessment here cannot be upheld, as the City contends, simply because it provides the same services as the assessment upheld in *Lake County*. To the contrary, the special assessment here provides emergency medical services, while the assessment in *Lake County* did not. The City would have this Court extend the rationale of *Lake County* to apply to the instant case, arguing that a special assessment that provides a higher level of medical services is a natural and logical application of *Lake County*.

[2][3] Having concluded that the facts of the instant case differ from *Lake County*, we must determine whether the special assessment at issue here nonetheless meets the first prong of the special assessment test; in other words, whether the special assessment for emergency medical services provides a special benefit to the assessed property. We traditionally defer to the legislative body's determination of special benefits. *See City of Boca Raton v. State*, 595 So.2d 25, 30 (Fla.1992); *South Trail Fire Control Dist. v. State*, 273 So.2d 380, 383 (Fla.1973) (determination of special benefits is one of fact for legislative body and apportionment of the assessments is a legislative function). "[T]he standard is the same for both prongs; that is, the legislative determination as to the existence of special benefits and as to the apportionment of costs of those benefits should be upheld unless the determination is arbitrary." *Sarasota County v. Sarasota Church of Christ*, 667 So.2d 180, 184 (Fla.1995).

In this case, the Fourth District found "that the City's legislative determination that the assessment for emergency medical services conferred a special benefit on property was arbitrary." *SMM Properties*, 760 So.2d at 1004. The City now argues that the Fourth District erred because it did not make express factual findings of why the legislative declarations of special benefit were arbitrary. Additionally, the City argues that it made clear, detailed, and specific legislative declarations as to the special benefit to property from the fire rescue program. The City points to the Fire Rescue Assessment Ordinance (the Ordinance):

> Section 1.04. Legislative Determinations of Special Benefit.
>
> It is hereby ascertained and declared that the fire rescue services, facilities, and programs of the City provide a special benefit to property within the City that is improved by the existence or construction of a Dwelling Unit or Building based upon the following legislative determinations:
>
> ***348** (A) Fire rescue services possess a logical relationship to the use and enjoyment of improved property by: (1) protecting the value of the improvements and structures through the provision of

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available fire rescue services; (2) protecting the life and safety of intended occupants in the use and enjoyment of improvements and structures within improved parcels; (3) lowering the cost of fire insurance by the presence of a professional and comprehensive fire rescue program within the City; and (4) containing the spread of fire incidents occurring on vacant property with the potential to spread and endanger the structures and occupants of improved property.

(B) The combined fire control and emergency medical services of the City under its existing consolidated fire rescue program enhances and strengthens the relationship of such services to the use and enjoyment of Buildings within improved parcels of property within the City.

(C) The combined fire control and emergency medical services of the City under its existing consolidated fire rescue program enhance the value of business and commercial property that is improved by the existence or construction of a Building which enhanced value can be anticipated to be reflected in the rental charge or value of such business or commercial property.

The trial court agreed with these findings, and in its order granting partial summary judgment to the City found that the consolidated fire rescue service as described in the ordinance provided a special benefit to property. However, the Fourth District disagreed, finding the emergency medical services component of the fire rescue service was not a special benefit to property because

there was no evidence in this record that the availability of emergency medical services decreased insurance premiums or enhanced the value of real property. On the whole, emergency medical transportation services benefit people, not property. Thus, we hold that the City's legislative determination that the assessment for emergency medical services conferred a special benefit on property was arbitrary, and we find that the assessment "has the indicia of a tax because it is proposed to support many of the general sovereign functions contemplated within the definition of a tax." *Collier County*, 733 So.2d at 1018.

760 So.2d at 1004.

[4] An examination of the record supports the Fourth District's holding. Although the City did make general findings in the Ordinance that there was a special benefit to the assessed property, there is nothing more in the record to support these findings. We find, therefore, that competent, substantial evidence does not exist to support the City's findings of special benefit. There is no evidence of the type of benefits that inure to property from the provision of emergency medical services, no studies were conducted by the City documenting any specific special benefit, and there is no testimony or expert opinion indicating how the portion of the assessment providing for emergency medical services specially benefits real property. Moreover, a legislative body "cannot by its fiat make a local improvement of that which in its essence is not such an improvement, and it cannot by its fiat make a special benefit to sustain a special assessment where there is no special benefit." *South Trail Fire Control Dist. v. State*, 273 So.2d 380, 383 (Fla.1973) (quoting 48 Am.Jur., *Special or Local Assessments*, § 29, at 589 (1943)).

***349** Since a presumption of correctness does not attach to the City's findings of special benefit, we adhere to a standard of review of the lower court's decision based on ordinary findings of fact. The test for determining whether a special benefit is conferred to property was set out in *Lake County:*

In evaluating whether a special benefit is conferred to property by the services for which the assessment is imposed, the test is not whether the services confer a "unique" benefit or are different in

> type or degree from the benefit provided to the community as a whole; rather the test is whether there is a "logical relationship" between the services provided and the benefit to real property. *Whisnant v. Stringfellow*, 50 So.2d 885 (Fla.1951); *Crowder v. Phillips*, 146 Fla. 440, 1 So.2d 629 (1941) (on rehearing).

Lake County, 695 So.2d at 669 (footnote omitted). Relying on *Fire District No. 1 v. Jenkins*, 221 So.2d 740, 741 (Fla.1969), we concluded there was a logical relationship between the fire protection services and the assessed property in *Lake County*, because "fire protection services do, at a minimum, specially benefit real property by providing for lower insurance premiums and enhancing the value of the property." 695 So.2d at 669.

Before applying the test, however, we address the Opponents' argument that in *Collier County v. State*, 733 So.2d 1012, 1017 (Fla.1999), we appeared to retreat from the "logical relationship" test and return to a requirement that the services funded by a special assessment provide a direct, special, or unique benefit. This argument is without merit. Although *Collier County* did not mention the term "logical relationship," we did not retreat to the "unique benefit" test as the Opponents claim. In *Collier County*, we rejected the county's theory that the "interim governmental services fee" at issue was valid as a special assessment. We applied the two-prong special benefit test to the interim fee, and in our discussion of the special benefit prong stated:

> We explained in *Water Oak Management* that the first prong requires that the services funded by the special assessment provide a *"direct, special benefit" to the real property burdened.* 695 So.2d at 670. A majority of this Court concluded that the fire services funded by the assessment in *Water Oak Management* met this requirement by providing for lower insurance premiums and enhancing the value of property. *Id.* at 669.

733 So.2d at 1017 (emphasis added). The emphasized language ("direct, special benefit") came directly from the discussion of the special benefit prong in *Lake County*. We also mentioned the "logical relationship" test in the recent case of *City of Winter Springs v. State*, 776 So.2d 255, 259 n. 4 (Fla.2001) ("Further, this Court has stated that, '[i]n evaluating whether a special benefit is conferred to property ... the test is whether there is a logical relationship between the services provided and the benefit to real property.' "). Thus, the "logical relationship" test for determining whether a special assessment confers a special benefit to property remains the standard by which we judge the validity of the special assessment at issue in this case.

The City argues there is a logical relationship between emergency medical services and a special benefit to property because these services protect the life and safety of intended occupants in the use and enjoyment of the assessed property. The Opponents argue that the portion of the assessment providing for emergency medical services must fail because there is no logical relationship between the assessment,***350** treatment, and transport of sick or injured people and a special benefit to real property. Opponents contend this portion of the special assessment is an invalid ad valorem tax clothed as a special assessment.

In *City of Boca Raton v. State*, 595 So.2d 25 (Fla.1992), we explained the distinction between special assessments and taxes:

> [A] legally imposed special assessment is not a tax. Taxes and special assessments are distinguishable in that, while both are mandatory, there is no requirement that taxes provide any specific benefit to the property; instead, they may be levied throughout the particular taxing unit for the general benefit of residents and property. *On the other hand, special assessments must confer a specific benefit upon the*

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land burdened by the assessment. As explained in Klemm v. Davenport, 100 Fla. 627, 631-34, 129 So. 904, 907-08 (1930):

> A tax is an enforced burden of contribution imposed by sovereign right for the support of the government, the administration of the law, and to execute the various functions the sovereign is called on to perform. *A special assessment* is like a tax in that it is an enforced contribution from the property owner, it may possess other points of similarity to a tax but it is inherently different and governed by entirely different principles. *It is imposed upon the theory that that portion of the community which is required to bear it receives some special or peculiar benefit in the enhancement of value of the property against which it is imposed as a result of the improvement made with the proceeds of the special assessment.* It is limited to the property benefitted, is not governed by uniformity and may be determined legislatively or judicially.

Id. at 29 (emphasis supplied) (citation omitted); *see also* Collier County, 733 So.2d at 1016-17. Here, the emergency medical services portion of the special assessment has the indicia of a tax because it fails to provide a special benefit to real property. More specifically and according to the test set out in *Lake County,* there is no logical relationship between emergency medical services (the assessment, treatment, and transport of sick or injured people) and a special benefit to real property. Emergency medical services provide a personal benefit to individuals. There is no indication from the City or in the record how emergency medical services enhance the value of the property against which the assessment is imposed. The better argument made by the City is that the provision of emergency medical services has a logical relationship to property because these services enhance the use and enjoyment of property. *See* Meyer v. City of Oakland Park, 219 So.2d 417 (Fla.1969). As to the "use and enjoyment" argument, however, it does not follow that one has potential added or actual use and enjoyment of property because emergency medical services are provided to owners of that property. Although emergency medical services may provide a sense of security to individuals, neither the service nor the sense of security is provided to the property itself.

CONCLUSION

Accordingly, we answer both certified questions in the negative, find that emergency medical services do not provide any special benefit to property, and approve the decision of the district court.

It is so ordered.

***351** ANSTEAD, C.J., and SHAW, HARDING, WELLS, and LEWIS, JJ., concur. PARIENTE, J., recused.

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END OF DOCUMENT

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City of North Lauderdale v. SMM Properties, Inc., 825 So.2d 343, 27 Fla. L. Weekly S689 (Fla., Aug 22, 2002) (NO. SC00-1555)

History

Direct History

SMM Properties, Inc. v. City of North Lauderdale, 760 So.2d 998, 25 Fla. L. Weekly D1439 (Fla.App. 4 Dist. Jun 14, 2000) (NO. 4D98-3525)

Review Granted by

City of North Lauderdale v. SMM Properties, Inc., 786 So.2d 1184 (Fla. Feb 05, 2001) (Table, NO. SC00-1555)

AND Decision Approved by

City of North Lauderdale v. SMM Properties, Inc., 825 So.2d 343, 27 Fla. L. Weekly S689 (Fla. Aug 22, 2002) (NO. SC00-1555)

Negative Citing References (U.S.A.)

Distinguished by

Quietwater Entertainment, Inc. v. Escambia County, 890 So.2d 525, 30 Fla. L. Weekly D140 (Fla.App. 1 Dist. Jan 05, 2005) (NO. 1D03-4396) * * **HN: 1 (So.2d)**

Court Documents

Appellate Court Documents (U.S.A.)

Fla. Appellate Briefs

CITY OF NORTH LAUDERDALE, Petitioner, v. SMM PROPERTIES, INC., et al., Respondents., 2000 WL 33998198 (Appellate Brief) (Fla. 2000) **Respondents' Amended Brief on the Merits and**

in Response to Amicus Curiae Briefs (NO. SC00-1555)

6 CITY OF NORTH LAUDERDALE, Appellant, v. SMM PROPERTIES, INC., et al., Appellees., 2000 WL 33998199 (Appellate Brief) (Fla. 2000) **Brief of Amicus Curiae, the Group City Emergency Medical Service Coalition of Broward County, Fla., Inc.** (NO. SC00-1555)

7 CITY OF NORTH LAUDERDALE, Petitioner, v. SMM PROPERTIES, INC., et al., Respondents., 2000 WL 33998201 (Appellate Brief) (Fla. 2000) **Respondents' Brief on the Merits** (NO. SC00-1555)

8 CITY OF NORTH LAUDERDALE, Appellant, v. SMM PROPERTIES, INC., et al., Appellees., 2000 WL 33998945 (Appellate Brief) (Fla. 2000) **Amicus Curiae Brief of the Village Center Community Development District** (NO. SC00-1555)

9 CITY OF NORTH LAUDERDALE, Appellant, v. SMM PROPERTIES, INC., et al., Appellees., 2000 WL 33998200 (Appellate Brief) (Fla. Sep. 2000) **Initial Brief of Appellant, City of North Lauderdale** (NO. SC00-1555)

10 CITY OF NORTH LAUDERDALE, Appellant, v. SMM PROPERTIES, INC., et al., Appellees., 2000 WL 33998197 (Appellate Brief) (Fla. Nov. 30, 2000) **Brief Amicus Curiae of Pacific Legal Foundation in Support of Appellees Smm Properties** (NO. SC00-1555)

11 CITY OF NORTH LAUDERDALE, Appellant, v. SMM PROPERTIES, INC., et al., Appellees., 2001 WL 34114559 (Appellate Brief) (Fla. Jan. 2001) **Reply Brief of Appellant, City of North Lauderdale** (NO. SC00-1555)

Dockets (U.S.A.)

Fla.

12 CITY OF NORTH LAUDERDALE v. SMM PROPERTIES, INC., ET AL., NO. SC00-1555 (Docket) (Fla. Jul. 24, 2000)

825 So.2d 343, 27 Fla. L. Weekly S689
(Cite as: 825 So.2d 343)

Supreme Court of Florida.
CITY OF NORTH LAUDERDALE, Petitioner,
v.
SMM PROPERTIES, INC., et al., Respondents.

No. SC00-1555.
Aug. 22, 2002.

Owners of commercial property in city filed complaint requesting declaratory relief and injunction against city, alleging that assessment was an unconstitutional tax disguised as a special assessment. The Circuit Court, Broward County, John J. Luzzo, J., entered judgment for city. Owners appealed. The District Court of Appeal, 760 So.2d 998, affirmed in part, remanded, and certified questions. The Supreme Court, Quince, J., held that special assessment for emergency medical services was invalid.

Questions answered; approved.

West Headnotes

[1] Municipal Corporations 268 438

268 Municipal Corporations
268IX Public Improvements
268IX(E) Assessments for Benefits, and Special Taxes
268k436 Benefits to Property
268k438 k. General or Special. Most Cited Cases

Emergency medical services provided by city did not confer a special benefit on property, and thus, assessment for those services was an invalid ad valorem tax clothed as a special assessment; services provided personal benefit to individuals, not special benefit to real property, and there was no evidence that availability of emergency medical services decreased insurance premiums or enhanced value of real property. West's F.S.A. Const. Art. 7, §§ 1(a), 9(a); West's F.S.A. § 170.201.

[2] Municipal Corporations 268 503

268 Municipal Corporations
268IX Public Improvements
268IX(E) Assessments for Benefits, and Special Taxes
268k496 Confirmation or Revision of Assessment by Court
268k503 k. Scope of Inquiry and Powers of Court. Most Cited Cases

Appellate courts traditionally defer to the legislative body's determination of special benefits to real property funded by special assessments.

[3] Municipal Corporations 268 503

268 Municipal Corporations
268IX Public Improvements
268IX(E) Assessments for Benefits, and Special Taxes
268k496 Confirmation or Revision of Assessment by Court
268k503 k. Scope of Inquiry and Powers of Court. Most Cited Cases

Legislative determination as to the existence of special benefits to real property, funded by special assessments, and as to the apportionment of costs of those benefits, should be upheld unless the determi-

in Response to Amicus Curiae Briefs (NO. SC00-1555)

6 CITY OF NORTH LAUDERDALE, Appellant, v. SMM PROPERTIES, INC., et al., Appellees., 2000 WL 33998199 (Appellate Brief) (Fla. 2000) **Brief of Amicus Curiae, the Group City Emergency Medical Service Coalition of Broward County, Fla., Inc.** (NO. SC00-1555)

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10 CITY OF NORTH LAUDERDALE, Appellant, v. SMM PROPERTIES, INC., et al., Appellees., 2000 WL 33998197 (Appellate Brief) (Fla. Nov. 30, 2000) **Brief Amicus Curiae of Pacific Legal Foundation in Support of Appellees Smm Properties** (NO. SC00-1555)

11 CITY OF NORTH LAUDERDALE, Appellant, v. SMM PROPERTIES, INC., et al., Appellees., 2001 WL 34114559 (Appellate Brief) (Fla. Jan. 2001) **Reply Brief of Appellant, City of North Lauderdale** (NO. SC00-1555)

Dockets (U.S.A.)

Fla.

12 CITY OF NORTH LAUDERDALE v. SMM PROPERTIES, INC., ET AL., NO. SC00-1555 (Docket) (Fla. Jul. 24, 2000)

Lori Stelzer

From: Chris Roe <croe@bmolaw.com>
Sent: Sunday, August 27, 2017 11:28 AM
To: 'Dave Persson - Persson & Cohen'; Edward Lavallee
Cc: Lori Stelzer; Kelly Fernandez - Persson & Cohen; Donna Barton - Persson & Cohen; Judy Gamel; Burton, Michael
Subject: RE: Fire fee case analysis/Venice
Attachments: Memorandum re Fire Assessment 08 27 17 (01250639-2).docx; City of North Lauderdale v SMM Properties (00800760).rtf

Ed and Dave – I have not received any messages from citizenry with case law or questions regarding Cooper City. I went ahead and prepared the attached memorandum addressing the pending challenge to that city's assessment program. The memo also addresses the assessment of condominiums in the availability methodology.

I'm also attaching the case by which the Florida Supreme Court determined that emergency medical services cannot be funded with special assessments. It is my understanding that the Cooper City lawsuit is based on that ruling.
Thank you, I look forward to seeing you tomorrow morning.
Chris

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From: Dave Persson - Persson & Cohen [mailto:dpersson@swflgovlaw.com]
Sent: Thursday, August 24, 2017 7:43 AM
To: Chris Roe
Cc: Edward Lavallee (ELavallee@Venicegov.com); Lori Stelzer (LStelzer@Venicegov.com); Kelly Fernandez - Persson & Cohen; Donna Barton - Persson & Cohen; Judy Gamel (JGamel@Venicegov.com)
Subject: Fire fee case analysis/Venice

Chris,
Good Morning. As we discussed last evening, the city would like your analysis of the Cooper City case (and related case law) as well as the property appraiser's method of determining condominium unit value as it impacts (or if it impacts) the fire fee methodology as currently being considered by the city of Venice. Ed has the case law and questions being circulated by the

citizenry and I ask him to please forward the relevant messages to you and me to ensure inclusion in your analysis.
I understand from Ed that you will be in attendance at the Monday Special Meeting called by the Mayor and it might be helpful to have your analysis prior to that meeting.
Thanks for your ongoing efforts. I'll be pleased to discuss any questions that you might have.
Dave

Mayor Holic Smit
8-28-17

Fire Fee Assessment Comments

& Fire Dept

First, I would like to thank our staff, especially the Finance Department - Linda Senne and Joe Welch – for their hours of number crunching in preparation for this morning's special meeting. And it was not just the preparation for this meeting but the hundreds of calls they took this past month going over facts and figures for residents due to the July 20, 2017 letter of the Notice of Public Hearing to consider the Fire Protection Special Assessments. I don't think any council member could have envisioned the confusion caused by this letter; not from the information we had from our last meeting before summer break at least.

I also don't think any council member could have been more excited, delighted and proud than I was of the actions taken by this body over the last 14 months. After the fact finding for consolidation of the city with the county fire departments fell apart, fact finding that had taken over two years of time, 14 months to develop a fire fee seemed like a reasonable amount of time. Finally, we would have a predictable funding source to cover the complete expenses of the fire department; or at least we thought so.

We all knew that a new program would require minor adjustments over the next few years, but what came back was something that could not be fairly fixed with minor adjustments, it was something that had major glitches.

First was the assessment of the condominiums including the value of the land in their structure value. This valuation caused condominium owners assessment to have a tier 1 charge plus have the land value taxed again in tier 2 as additional EBU's. This caused an overcharge to the condominiums.

Second, we were told by our consultant that Sarasota County was different than all the rest of the counties in Florida. We were told that we were the only county to include land value in the assessed value of the condominium property. This was reversed 5 days later when the property appraiser came to our meeting and said our assessment system was identical to that of 44 other counties in Florida, we were not different. This caused a loss of confidence and credibility in our consultant.

Third, to make up for the inclusion of land in the condominium structure value, our consultant suggested using a 25% reduction of appraised value. This gave us a cure as unfair as the original problem. Picture 2 one acre parcels right next to each other; one with 18 units per acre and one with 9 units per acre. Assuming the land value would be the same, the condominiums on the 18 units per acre would have a much greater total deduction. At $200,000 per condominium, the 9 units per acre site values the 1 acre at $450,000 or 90 EBU reduction. The acre next door with 18 condos at $200,000 each values the acre of land at $900,000 or a 180 EBU reduction. Clearly an unfair solution. The same could be said about equal condos on equal size parcels on the Gulf and on East Venice Ave. at Auburn. The Gulf Land is much more valuable in relation to the structure, yet gets a standard 25%. Again, clearly unfair.

Finally, the tier 1 charges for manufactured homes are unequal. Land owned by a REIT is taxed on size where land owned by the manufactured home owner is taxed ordinary tier 1 fees. The tier 1 fee is much higher than the fee per unit that the REIT pays. Same size and age homes in two different parks could have a large difference in the amount of the fee.

As excited as I was when this procedure started, that excitement has changed to disappointment and mistrust in the program to a point that I can no longer support it. I was always taught that 2 wrongs don't make a right; the revised plan is just as wrong as the initial plan. I intend to vote against the fire fee on September 7 and for retention of the 3.6 mill rate. I also intend in my motion to instruct staff to prepare a resolution establishing a citizen task force to study alternatives for the fire department; we should be able to turn all the material on consolidation, fire fee, EMS and others to that task force to analyze.

Third, to make up for the inclusion of land in the condominium structure value, our consultant suggested using a 25% reduction of appraised value. This gave us a cure as unfair as the original problem. Picture 2 one acre parcels right next to each other; one with 18 units per acre and one with 9 units per acre. Assuming the land value would be the same, the condominiums on the 18 units per acre would have a much greater total deduction. At $200,000 per condominium, the 9 units per acre site values the 1 acre at $450,000 or 90 EBU reduction. The acre next door with 18 condos at $200,000 each values the acre of land at $900,000 or a 180 EBU reduction. Clearly an unfair solution. The same could be said about equal condos on equal size parcels on the Gulf and on East Venice Ave. at Auburn. The Gulf Land is much more valuable in relation to the structure, yet gets a standard 25%. Again, clearly unfair.

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- **In preparing the response to Mr. Lobeck at the end of the many hours of review and putting together the details for response, I came away with a few main points:**
    - **You will have to wake me up when I am done.**
    - **Since that will likely be the case let me try and make some key points before I start loosing everyone.**
    - **He has suggested to us with the litany of broad statements that the entire proposed plan is flawed.**
        - **The fear factors:**
            - **We are loosing most if not all of the protections from current plan.**
            - **Will result in a developer wildwest /free for all.**
            - **The proposed plan adds significant development potential from the current plan.**
            - **Roads will be much worse…gridlock.**
            - **There will be no or little protections for compatibility.**
            - **We are in a hurry to rush this through.**

    - **If you can focus just on the big picture, I found that what Mr. Lobeck is asking is for us to do is to focus our attention on the current plan and look at all of the Strong Restrictions and Protections it has…suggesting what good planning is!**
    - **I spoke to a local land use attorney who I believe is no longer active in practice at a civic group presentation I was**

making, he made a comment to me that still resonates with me today. He referred to the current adopted plan as the "attorney's relief fund".

- So what did he mean…let me show you an example …#A Building Façade…one of Mr. Lobeck's "Protective measures that we are loosing".
- I had another local attorney Jeff Boone who often represents the development community tell me he has no problem keeping the entire current plan environmental regulations.

- So the main fundamental question being asked here is why are we replacing such a great document?
  - I would suggest that through all of the comments and testimony you receive to keep in the back of your mind and perhaps ask the question as a test to help you decide if something be included in the Plan:
    - Can you provide an example of any decision by City Council or the Planning Commission sine adoption where the current adopted plan provided a REAL impact/change to any development proposal and if you have an example does the proposed plan address that topic/language?
- I am not suggesting that there are no good ideas or thoughts that need to be carried forward from the current Plan. I would also tell you that the Planning Commission took that specific objective/approach to their review of the current plan…there are some things (compatibility, building

height, architectural standards to name a few) that need to continue to be addressed.

- **So there are "regulatory" aspects of the current plan being carried forward….I would suggest that some of those are aspects that cause concern from the development community. I would add that this plan also provides other control mechanisms that cause the development community to have concerns. You will hear or have heard about some of those today.**
- **Stepping back to the big picture…fundamental question of what do you want your comprehensive plan to be: A vision document providing guidance for decisions affecting the community, or a Vision document that also serves as the land development regulations? I would suggest that those in my profession would tell you that the latter can be very problematic to implement and is not what state law intended. Can you do it…you can. Should you do it…I would not recommend it.**

- **School Capacity Consideration Downgraded**

While current School Concurrency & Facilities Chapter policy 5.3 now requires that the City "will" consider the availability of adequate school capacity in all proposed amendments to the Comprehensive Plan, such as its land use designations, as well as all rezoning and subdivision and site plan proposals, the proposed new Public Schools Chapter Policy 1.1 provides merely that the City "may" use inadequate school capacity to deny "plan amendments" only. Nothing is provided to protect the public from overcrowded schools as a result of proposed rezoning, subdivision plans or site plans. Significantly, concurrency is something that can be addressed only in the Comprehensive Plan.

I spent a lot of hours looking at this and I had our consultant spending time looking at this as well. Let's look at the current plan and proposed plan:

#3 Current Plan Policy 5.3

#4 Proposed Plan Strategy PS 5.1.3

#5 Current Plan Policy 1.1

#6 Proposed Plan Strategy PS 1.1.1

- **Transportation Concerns are Neglected**

The City's Land Development Code has a chapter on concurrency that requires traffic analysis. That code is not being changed and will be in effect until we update the document.

Cliff Tate is the consultant expert that can address these concerns of what is the ability of the City in compliance with State Law as it relates to development impact on the transportation system.