

September 3, 2019

Honorable Mayor Thomas and City Council,
City of Panama City Beach, Florida
110 South Arnold Road
Panama City Beach, Florida 32413

**Annual Executive Summary Report
Simplified Fire Service Assessment
City of Panama City Beach, Florida**

Dear Mayor Thomas and City Council Members:

This memorandum summarizes the estimated 2019-20 Fire Service Assessment revenue, and among things, considers a summarized annual budget analysis, describes the simplified apportionment method and provides funding (amount) scenarios for decision-making purposes based upon direction to employ the same rates of assessments as last year. This information then necessarily will assist you with incorporating these revenues in your upcoming budget and shares in summary form the approach to the ongoing annual determination of this non-ad valorem assessment for affected tax parcels, whether developed or undeveloped, in the entire community.

Introduction And Purpose

Special assessments comprise a levy made against certain real property to recover all or part of the cost of a specific service or capital improvement deemed to benefit certain real properties. In 2018 the City of Panama City Beach in Bay County adopted a special assessment to defray a portion of the annual operating and capital costs associated with its fire department.

When the assessment program was adopted by the City, it was understood the reasoning and the use of the simplified funding strategy and apportionment methodology (sometimes called "Simplified Fire"TM) underlying the program would itself remain unaltered or evergreen. Likewise, it was also understood the amount of the actual assessment might change as City policies or practices, the annual budget, and conditions attributed to each tax parcel might also change from year to year. In brief, the methodology for calculating the assessment in Panama City Beach stems from a series of considerations associated with the relative value of all improvements in the City, the number of tax parcels in the City subject to the assessment, and an allocation of the fire department budget reflecting two defined tiers of costs.

As described in our 2017 detailed report, there were two levels or tiers of cost, functioning together, to be assessed.

- Tier 1 costs are those which are largely, but not exclusively, variable and indeterminate.
- The costs allocated to Tier 2 are largely recurring based on an expected staffing level necessary to maintain a certain standard of departmental readiness or preparedness. These latter costs are primarily labor costs and largely, but not altogether, fixed.

The combination of both tiers in the adopted assessment program has logical and identified relationships to the benefits, burdens and costs of the affected tax parcels, creating a strong, rational, and proportionate funding vehicle that can be further linked to, or supplemented by, other legally available resources.

This initial annual update document comments on relevant legislation or case law associated with assessments generally, summarizes findings associated with a review of the fire department budget for FY 2019-20, serves to explore or confirm the absence of material changes therein, if any, and provides parameters for the upcoming assessment. This process of information sharing and analysis contributes to assuring the methodology and procedures outlined in the original Simplified Fire analysis and as previously implemented by the City are reasonably maintained.

Special Assessments In General, Florida Law

Recapping key legal points from our prior analysis, special assessments are a dedicated revenue source available to general purpose local governments in Florida to fund capital improvements or essential services. While this discussion of the law governing special assessments should not be construed as a legal opinion, there are legal guidelines to draw upon in laying out an assessment methodology which conforms to accepted principles and practices necessary to achieve legal validity.

As established by Florida case law, two requirements exist for the imposition of a valid special assessment.

- The property assessed must derive a special benefit from the improvement or service provided; and
- The assessment must be fairly and reasonably apportioned among the properties receiving the special benefit.

Under both Florida's case law and certain statutory components, it is well settled that the benefit required for a valid special assessment may be measured or benchmarked against something other than simply an increase in real property market value. The concept of benefit also includes the relief of a burden or

demand created by property as well as added use and enjoyment of the real property.

It is not necessary that the benefits be direct or immediate, but they must be substantial, certain, and capable of being realized within a reasonable time. The benefits, then, can be conceptual, but they must be capable of being evaluated by some metric and being apportioned in some reasonable manner. The benefits must be distinguishable or different from those of non-assessed properties, but they may coincidentally extend to non-assessed properties.

In sum, Florida's case law, as well as its statutory regime relating to special assessments, supports substantial latitude both in the means by which benefit to or relief of burden created by real property is identified and determined and the subsequent manner by which an assessment itself is calculated or apportioned. Though Florida law requires that special assessments funding improvements or services must be fairly and reasonably apportioned, the State's Supreme Court has held that the method of apportionment is immaterial and may vary provided the amount of the assessment for each property does not exceed the proportional benefits it receives compared to other properties. No single apportionment methodology has emerged as preferable in the governing case law for a given service or improvement. So long as the apportionment is reasonable and not arbitrary, the assessment is generally capable of withstanding legal challenge.

Judicial Approval Of Simplified Fire In The City Of Panama City Beach

In 2018, Mr. Lawson and Ms. Myers took the City through a judicial validation procedure which involved the City's Simplified Fire apportionment approach. The program proceeded to collections once it had obtained a favorable ruling from the Circuit Court, without appeal, that a portion of the assessments could be used to secure financing of capital debt. The Circuit Court in, and for Bay County, validated proposed revenue bonds based on the imposition of fire service assessments using the Simplified Fire method made available for the City's use. This validation entailed a detailed and well-reasoned judicial approval of the assessments and the apportionment methodology associated with them. The validation serves *inter alia* the function of providing finality to the legality of the City's chosen assessment regime.

To the general points above, it is well settled that local governments are afforded great latitude under Florida law with respect to legislative determinations concerning special benefit and reasonable apportionment. Specifically, the reasoned Simplified Fire assessment methodology described in this executive summary, has been expressly focused upon and judicially validated in circuit court by Mr. Lawson several times since 2012, including in Hernando County (Brooksville), Pinellas County (St. Petersburg), Polk County (Haines City), Putnam County (City of Palatka) and Bay County (City of Springfield and City of Panama City Beach). The concept was subsequently subjected to a challenge in 2014 and upheld by the Florida Supreme Court. The Florida Supreme Court has now also

expressly confirmed the use of the two-tiered approach and legal construct (relative improvement value and per tax parcel) upon which Simplified Fire is premised. In *Morris v. City of Cape Coral*, 163 So. 2d 1174 (Fla. 2015), the Supreme Court addressed a line of reasoning from prior cases, reiterating that the determination of whether a special assessment confers a special benefit on property is not based on whether the benefit is “unique” to that property, but whether instead there is a logical relationship between the assessment on a property and the benefit conferred upon that property. Decisions that seemed to indicate the contrary, including *St. Lucie County-Ft. Pierce Fire Prevention & Control District v. Higgs*, 141 So. 2d 744 (Fla. 1962), turned solely on invalid apportionment, not on inadequate benefit to property.

The holding in *Morris* is like the argument made by the City of Springfield and the City of Haines City in their validations and in an amicus curiae brief filed in *Morris* by Haines City and Springfield (the “Municipalities”). The Municipalities filed an amicus brief because the Cape Coral methodology in *Morris* had been taken, almost verbatim in some instances, from the methodology in reports and work previously delivered to Haines City and Springfield and had been represented by Cape Coral in the circuit court as work and approach almost identical to that provided to other cities by Mr. Lawson, GAI and Ennead LLC. In fact, Cape Coral’s expert testified at the trial level hearing that the methodology of the four cities where Mr. Lawson, GAI and Ennead LLC had previously developed each of those programs (including Brooksville and St. Petersburg alongside Springfield and Haines City) and validated the Simplified Fire methodology was “almost exactly the same” as the Cape Coral methodology.

The Supreme Court opinion in *Morris* noted significant calculation errors made by Cape Coral (affecting some 8% of parcels) but determined that it could validate Cape Coral’s bonds and the fire assessment methodology despite such errors. In doing so the Supreme Court also adopted the logic and analysis in the amicus brief filed by Mr. Lawson for the Municipalities. The wider impact of *Morris* is that the legal and conceptual use of a two-tiered Simplified Fire methodology presented in this Executive Summary, and the ‘almost the same’ method used in Cape Coral, has been determined legally sufficient, valid and approved by the Supreme Court on appeal as compliant with case law and thus not arbitrary nor invalid.

Morris or Mr. Lawson’s validations at the circuit court level should not be construed to mean that local governments considering the use of special assessments can, or should, adopt a particular apportionment methodology based solely on its use elsewhere. The failure to perform a factual and reasoned analysis specific to a set of circumstances in each community can expose another community to legal and political challenges based upon factual differences and/or well-intentioned, but unnecessary use of raw public data. Florida’s local governments vary in their needs, composition, and policies. The well settled implication is local governments are free to select an apportionment methodology which provides competent and substantial means to share the benefits, burdens, and costs of the fire protection budget and represents the best

fit in terms of cost, ease of implementation, and political acceptance not only with respect to affected landowners, but also in consideration of the staff required and resources involved with maintenance of the assessment program from year to year.

Unlike the modified data approach in *Morris*, the specific parcel identification and evaluation system required by law to be maintained by the local property appraiser and tax collector used by the Simplified Fire approach will always be sustained, certified annually by the local property appraiser for other purposes and updated over the years as properties within Panama City Beach develop and change. The use of such classification and statutorily required end product of each community's mass appraisal system and description of tax parcels is publicly prepared, stable, readily accessible, reasonably consistent and accurate, maintained without cost to the City and capable of being used from year to year without extraordinary consumption of resources better expended to address other fire protection related issues.

Even in extraordinary and unusual circumstances such as Hurricane Michael, this data tends to normalize relatively quickly. Accordingly, the assessment approach contemplated herein reasonably relies upon such system as a stable, reasoned and standardized resource. Attempts by other methods to focus on demand characteristics, call data, or working data used by the Property Appraiser create complexities that Simplified Fire, by its design, typically avoids.

Parcel Data Review

The assignment of assessment values is based on data certified by the Bay County Property Appraiser to the Florida Department of Revenue each year. This year's analysis is provided by Ennead, LLC.¹

Budget Review

The fire department budget for 2019-20, after consultation with City officials, is based on the budget information substantially consistent with last year. As done in our initial analysis, we considered the possible impacts, if any, of advanced life

¹ Research reveals there are approximately 20,227 tax parcels (this includes 19 parcels deemed "confidential" by the Property Appraiser) within the boundaries of the City with a total relative improvement value of \$3,662,986,372. Among the 20,227 parcels, 402 are excluded by resolution due to either their "just value" being less than \$5,000 or such parcels are excluded due to their classification as right-of-way or other use that is not appropriate for development. After removing those parcels from the roll, the "assessable" tax parcel count is 19,825. Of these, 113 are parcels owned by governmental entities which must be excluded since "governmentally-owned" parcels which are used by the government for public purposes cannot be assessed. It is noted that 16 tax parcels are designated as "agricultural" by the Bay County Property Appraiser. Based upon the home-rule imposition authority employed by the City and presented to the circuit court in 2018, these parcels have been assessed. With the adjustments for parcels removed from the roll, the total number of tax parcels used for analysis is 19,696.

support (ALS) emergency medical services (EMS) on the City's fire budget because only first response medical aid routinely delivered by firefighters can be funded through special assessments.

Although the lines between first response and more intensive care may appear blurred, in the City of Panama City Beach the role of advanced life support and transport continues to fall almost exclusively to EMS units managed by parties other than the City and its fire department. Because of the differences between first response medical aid and ALS as these are implemented locally and because ALS is primarily a cost or activity addressed outside the fire department budget, it can be concluded plausibly that all costs in the City's fire department budget are appropriate for recovery through assessments in the manner described in this report. For its part, the City has continued to avoid any overlapping ALS activities from the fire department budget. This avoids any technical argument as to whether assessment revenue is being used impermissibly to fund ALS functions.

Additionally, the estimated revenue from the 2019-20 Fire Service Assessment, will however, only recover approximately 38% of the total the City's fire department budget. See Table 1, Approximate Fire Department Budget Funding Sources *infra*.

Guidelines For Current Assessments

It is well-settled in Florida case law that local governments, should they impose an assessment, are not required to *fully* fund that service or improvement through the special assessment itself. The local government may determine, entirely in its own discretion, to fund some portion of the overall cost with general fund or other legally available revenues.

Clearly, the City Council may annually determine as a tax equity tool to impose special assessments at a rate less than necessary to fund all or any specific portion of the costs which might otherwise be funded by special assessments associated with fire protection services and facilities. Costs incurred in providing fire protection services, facilities and programs not otherwise funded through Fire Service Assessments may be paid with general fund or other legally available revenues. Such legally available revenues as a matter of policy may be applied exclusively to any tier or class of budget allocation or expense otherwise funded by a special assessment, in part to one tier or class of any fire department budget allocation or expense, or in any combination thereof, and maintain the validity of the Simplified Fire apportionment approach used for the remaining portion of the budget attributed to the fire service assessed cost. This flexibility is implemented through a policy and legislative determination employed through careful adherence to case law, statutory law, and the State Constitution, as well as the exercise of annual budget responsibility, discretion and equity vested in the City Council. See Table 2 Approximate Tier Allocation.

To be clear, please keep in mind that a local government should not impose an assessment to a parcel for the same portion of capital items purchased with impact fees charged to new development thereon. For this reason, it was verified that the Panama City Beach does not collect associated impact fees from new development for capital expenditures found in the City’s fire department budget.

Table 1: Approximate Fire Department Budget Funding Sources

	Assessment	General Fund	Total
Distribution	38%	62%	100%
Dollar	\$3,794,673	\$6,194,401	\$9,989,074²

Table 2: Approximate Tier Allocation

	Tier 1	Tier 2	Total
Distribution	59%	41%	100%
Dollar	\$2,258,385	\$1,536,288	\$3,794,673

Assessment Roll

Upon consultation with City management no change in annual assessment rates is proposed nor shown. Using available certified data, Ennead, LLC has accordingly prepared the proposed annual assessment roll which can be accessed world-wide at either <http://quicksearch.ennead-data.com/pcbfire/> or www.pcbgov.com. Those links allow for convenient interactive search and transparent public inquiry concerning parcels to be assessed by: owner name, location address, or parcel identification number. The values and information shown provide subtotals, generally explain adjustments for expenses of administration and collection using the same bill as for taxes and show the total amount of non-ad valorem assessment proposed to be certified for collection in November for each parcel. This provides extraordinary public transparency and assists the City Council in decision-making based upon the same rates as last year using the assumed budget at this point in the annual budget cycle, and a convenient means to review of the array of tax parcels affected. *See also, Parcel Data Review, supra.*

² Subject to final City budget adoption.

Connection With Prior Work

This annual executive summary and referenced information incorporate by reference GAI's prior Executive Summary work placed in the record before the City Council at its previous public hearings on this matter. Consistent with that record, the content of this summary provides a reasoned review and analysis of information, facts and circumstances associated only with the City of Panama City Beach and is exclusively for the use by the City Council of Panama City Beach.³

Sincerely,

GAI Consultants, Inc.



Owen M Beitsch, PhD, FAICP, CRE
Senior Director

CC: Mario Gisbert, City Manager; Amy Myers, City Attorney; Mark G. Lawson and James C. Dinkins, Special Counsel, Ennead, LLC, Special Consultant

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