

**Date:** July 19, 2023

**To:** Mayor and City Commission Members  
City of Palatka, Florida

**From:** Erin A. Pomeroy, Ennead, LLC

**Re:** 2023-24 Annual Summary Memorandum  
Fire Budget and Assessment Review  
City of Palatka, Florida

This is an Annual Summary Memorandum (the "Memorandum"), which among other things, summarizes a budget analysis, describes a simplified apportionment method and provides a funding (amount) scenario for decision-making purposes. This information then necessarily will allow for the resultant determination of the proposed assessment for any specific tax parcel, whether developed or undeveloped, in the entire community. This Memorandum also incorporates and references the Executive Summary Report, titled "Overview of Simplified Fire Protection Assessment Apportionment Strategy," which was submitted to the City of Palatka in 2015.

## INTRODUCTION

The City of Palatka in Putnam County adopted a special assessment in August of 2015 to defray at least some part of the annual operating and capital costs associated with the Palatka Fire Department (PFD). 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 those real properties.

When the assessment program was adopted, it was understood the reasoning and the use of the simplified funding strategy and apportionment methodology (sometimes called "Simplified Fire"<sup>TM</sup>) underlying the program could remain unaltered or *evergreen*. Then each year the Simplified Fire methodology would be applied to other statutorily standardized and publicly maintained data certified to the Department of Revenue. This creates a sturdy, verifiable and self-correcting process year after year. We have reviewed emerging or preliminary budget data provided by the Finance Director. It is understood, however, that in the future, assessment rates or practices, the annual budget and conditions attributed to each tax parcel might change from year to year.

In brief, the methodology for calculating the assessment in Palatka 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 anticipated fire department budget reflecting two defined tiers of costs. As described in GAI Consultants, Inc. detailed report in 2015, the costs allocated to Tier 1 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 associated with availability of service to 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 Memorandum comments on relevant legislation or case law associated with assessments generally, summarizes findings associated with a review of the anticipated fire department budget for FY 2023-24, and provides parameters

for the upcoming assessment, assuring the methodology and procedures developed in the original Simplified Fire analysis and previously implemented by the City are maintained.

## LEGAL CONTEXT

**Special Assessments in General, Florida Law.** Special assessments are a dedicated revenue source available to general purpose local governments to fund capital improvements or essential services. While discussion of the law governing special assessments included herein 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. The benefits, then, can be conceptual, but they must be capable of being evaluated by some metric and being apportioned in some reasonable manner. 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 must be distinguishable or different from those of non-assessed properties but they may coincidentally extend to non-assessed properties. Specifically, 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*. All of these relevant legal issues were addressed by the City before the local court before the City commenced the collections of its Fire Service Assessments several years ago and by law remain binding for the purpose of securing funding for capital infrastructure.

**Judicial Approval of Simplified Fire in the City of Palatka.** Mr. Lawson and Mr. Holmes (then City Attorney) took the City through a judicial validation procedure in 2015 which involved the City's Simplified Fire apportionment approach, and the City Commission proceeded only to collections once it had obtained a favorable ruling from the Circuit Court without appeal. On September 10, 2015, the Circuit Court in and for Putnam County validated proposed revenue bonds based on the imposition of fire protection assessments using the Simplified Fire method made available for the City's use and detailed in the original GAI report. This validation entailed a detailed and well-reasoned judicial approval of the assessments and the Simplified Fire apportionment methodology associated with them. The validation serves the function of, among other things, providing finality to the legality of the City's chosen assessment regime. This same Simplified Fire approach is the subject of this Memorandum.

The Fire Service Assessments, by law, are imposed by the City Commission, not the Property Appraiser or Tax Collector. Florida case law clearly provides that any collection activity of the Property Appraiser or Tax Collector provided for as a result of the City Commission imposing the Fire Service Assessments under the provisions of the City's Ordinance or Annual Assessment Resolution shall be construed solely as ministerial.

The Final Judgment expressly provides that "[t]he Fire Service Assessments are not imposed by the Putnam County Property Appraiser or the Putnam County Tax Collector. The statutory duties of the property appraiser and the tax

collector are unaffected by the City's use of information produced by such entities. Any duties of the property appraiser or the tax collector in regards to the collection of the Fire Service Assessments under section 197.3632 [Florida Statutes,] are wholly ministerial and the property appraiser and the tax collector are without any discretion with regard to the collection of Fire Service Assessments on the tax notice once the City elects to use this method and complies with the requirements of the statute." This Memorandum features one in many actions of careful compliance with the Assessment Ordinance and all general law provisions.

## **OVERVIEW OF SIMPLIFIED FIRE APPORTIONMENT METHOD, RECENT DEVELOPMENTS**

That local governments are afforded great latitude under Florida law with respect to legislative determinations concerning special benefit and reasonable apportionment is well settled law. 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.

The reasoned Simplified Fire assessment methodology described in this Memorandum has not been expressly focused upon and judicially validated in circuit court by Mr. Lawson, including Hernando County (Brooksville), Pinellas County (St. Petersburg), and Polk County (Haines City), Bay County (Springfield, Panama City Beach and Panama City), Putnam County (City of Palatka) and Lee County (Lehigh Acres Fire and Rescue District). The concept was subsequently subjected to a challenge in 2015 and later upheld by the Florida Supreme Court. The Florida Supreme Court has expressly confirmed the use of the two-tiered approach and legal construct (here, 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 instead whether 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. This holding is similar to the argument made by the foregoing cities in their validations and in an independent *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 prepared by Mr. Lawson, Dr. Beitsch and Ennead LLC and delivered to Haines City and Springfield and had been represented by Cape Coral in the circuit court as almost identical work and approach provided to other cities by Mr. Lawson, Dr. Beitsch, 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 over 100,000 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 Mark G. Lawson, P.A., 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 Memorandum, and the 'almost exactly 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* should not be construed to mean that local governments considering the use of special assessments should adopt a particular apportionment methodology solely on the basis of 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.

The parcel identification and classification system required by law to be maintained by the local property appraiser and tax collector will always be sustained and updated over the years as properties within Palatka 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. Accordingly, the assessment approach again contemplated by the City relies upon such system as a stable, reasoned and standardized resource. Attempts by other methods to focus on demand characteristics, call data, or timing or working data used by the Property Appraiser create complexities that Simplified Fire simply avoids. It is also prudent to note and remind that Mr. Lawson, along with Dr. Beitsch and Ennead LLC, in defining the Simplified Fire™ approach work to address legal validity in advance.<sup>1</sup>

Importantly, the City's use of its Simplified Fire strategy and method should not create friction with the local Property Appraiser because it only uses data for tax parcel identification and valuation purposes in a context that is not foreign to that for which it was prepared. Smart and effective use of technology and processes already available industry-wide have made this process quite effective since its inception in the late 1980's.

## **BUDGET REVIEW**

We have used the emerging 2023-24 PFD preliminary budget for analysis and planning purposes. As detailed in our original Executive Summary, we considered the possible impacts, if any, of advanced life support (ALS) and emergency medical services (EMS) of the City's fire budget because only first response medical aid routinely delivered by firefighters can be funded through special assessments.

As is often the case with municipalities, the lines between first response and more intensive care may be blurred when examining the PFD budget. In Palatka, the role of life support and transport falls exclusively to the Putnam County Emergency Medical Services, meaning the cost of such services does not appear in the PFD budget.

Because the potential exists for EMS costs to bleed into Palatka's fire budget, even though there appears to be no direct manner in which this could happen, we have elected to exclude even the appearance of funding EMS services by further eliminating any costs associated with any training programs undertaken by the PFD. For example, this would conservatively include amounts budgeted for "Schooling, Conferences, etc." and an amount budgeted for "Training and Educational Expenses."

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<sup>1</sup> An example of how not to address a non-ad valorem assessment is the City of Ocala. Murty, Jennifer Hunt. "Ocala's fire fee strategies were flawed from inception to \$80 million judgment: Eight years of closed-door deliberations between Ocala City Council members and their attorneys on this controversial episode are revealed." *Ocala Gazette*, Dec. 10, 2022, <https://www.ocalagazette.com/ocalas-fire-fee-strategies-were-flawed-from-inception-to-80-million-judgment/> Accessed July 19, 2023.

In order to ensure compliance with Florida case law regarding the funding of EMS, those costs would be funded instead by other legally available means and the balance of the budget would comprise legally assessable costs and be absorbed through the combination of Tier 1 and Tier 2 assessment revenues. Because of this cautious budget analysis, it can be reasoned plausibly and realistically that all costs in the adjusted or remaining PFD budget are appropriate for recovery through special assessments in the manner described in this analysis.

The use of the adjusted PFD budget presents a conservative approach with exclusion of costs that might be construed to be in support of ALS excluded from the assessed cost associated with the Fire Service Assessment to avoid debate as to compliance with case law.

## 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. An example of other revenues would be impact fees charged to some new developments that may require the fire department to expend additional resources. To be clear, a local government may not impose an assessment for the same portion of capital items purchased with impact fees. For this reason, it was verified that the City of Palatka does not collect impact fees, and none are applied to expenditures found in the PFD budget.

The tables below summarize the percentage allocation between the two tiers that will generally be sustained by the City concerning the actual sum of the assessment anticipated to be adopted for the coming year.

Table 1: Approximate Fire Department Budget Funding Sources<sup>2</sup>

	Assessment	General Fund	Total
<b>Distribution</b>	<b>51%</b>	<b>49%</b>	<b>100%</b>
<b>Dollar</b>	<b>\$1,840,168</b>	<b>\$1,763,970</b>	<b>\$3,604,138<sup>3</sup></b>

Table 2: Approximate Tier Allocation

	Tier 1	Tier 2	Total
<b>Distribution</b>	<b>74%</b>	<b>26%</b>	<b>100%</b>
<b>Dollar</b>	<b>\$1,365,918</b>	<b>\$474,250.00</b>	<b>\$1,840,168</b>

It is recognized that in the ongoing budget process the indicated sums may be modified. Insubstantial modifications to the budget used will not materially affect this analysis. Due to statutory notice requirements involved with the imposition of assessments, a substantial increase in the budget used will also not have a material effect on this analysis as all increases must be funded with other legally available funds. However, a large and substantial decrease

<sup>2</sup> Any costs that might be associated with advanced life support-related emergency medical services (ALS) will be paid for from the general fund.

<sup>3</sup> Subject to final City budget adoption.

in the budget provided by the City for our use may impact our analysis.

## **EXCLUSION OF CERTAIN PARCELS**

Research reveals there are approximately 4,404 tax parcels within the boundaries of the City that are found in the Property Appraiser's records that are affected by the analysis and approach outlined herein. Among the 4,404 parcels, approximately 360 tax parcels may not benefit from fire protection services or are otherwise inappropriate or infeasible to assess based on physical configuration, such as submerged or undevelopable lands, or tax parcels with a Just Value of under \$5,000. These parcels have been removed from the roll. Of those remaining there are 200 tax 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. An additional 126 "institutionally-owned" tax parcels (e.g. churches, non-profits, etc.) have been partially exempted (50%) at the City's discretion as noted below. It is noted that one (1) tax parcel is designated as "agricultural" by the Putnam County Property Appraiser. These few parcels, classified as agricultural will be addressed in your annual resolution, and are set to be excluded from the 2023-24 assessment roll. They may or may not be subject to legislation affecting their assessment status after questionable changes in law became effective in 2017. Currently, any exemption or buy-down of these parcels is at the discretion of the City. Included in the 3,814 "assessable" tax parcels described above, are "confidential" tax parcels that have owner and address information that has been redacted at the request of the parcel owner. They are included in the analysis that is provided for the balance of the tax parcels.

In the past, the City mildly appealed to owners of governmentally-owned tax parcels to voluntarily pay their share of fire service costs with no success. It is unknown whether the City will appeal to these parcel's owners again. The City also approved, as a public policy, a 50% reduction in assessment charges to all institutionally-owned tax parcels, based on the assumption that an estimated 50% of their use serves a public purpose. Based on the City's prior public policy determination and direction, Fire Service Assessments for institutionally-owned tax parcels are calculated by summing Tier 1 and Tier 2 amounts for these parcels, and dividing that total by 50%

Extraordinary effort has been made in each assessment period to identify institutionally-owned tax parcels whose Department of Revenue ("DOR") code designation did not indicate that they were institutionally-owned. This process is a time-consuming process that must be continued on an annual basis by the City, as this public data can be expected to vary from year to year. To further complicate this process, a parcel owner "naming convention" does not exist, so tax parcels cannot be sorted by traditional naming logic. For the purpose of developing the 2023-24 assessments, institutionally-owned parcels have been identified by Ennead LLC with the assistance of the City and its Assessment Coordinator.

Amounts associated with exemption of tax parcels from the assessment typically should be funded through other legally available funds of the City.

## **SUMMARY CONCLUSION**

Determinations of relief of burdens caused by various tax parcels within the City, the benefit to property, the amount to be imposed for costs associated with the Fire Service Assessments, and the fair and reasonable apportionment of the Fire Service Assessments for the upcoming fiscal year are fairly documented and supported by, among other things, prior evidence, this updating Memorandum and the Final Judgment.

## **FUNDING EXAMPLES – PRELIMINARY ASSESSMENT ROLL**

Using available certified data, ENNEAD LLC has developed the preliminary roll, which is available on-line by use of an interactive search feature, please see the City's website. This information is provided to accomplish transparency for all property owners and to assist the City Commission in its decision-making role and applies the same rate regime as approved last year.

## **CONNECTION WITH PRIOR WORK**

This Memorandum incorporates by reference GAI's prior Executive Summary from 2015 and work placed in the record before the City Commission at its public hearings on this matter over time. Consistent with that record, the content of this Memorandum provides a reasoned updated review and analysis of information, facts and circumstances associated only with the City of Palatka and is exclusively for the use by the City Commission of Palatka.<sup>4</sup>

cc: Jonathan Griffith, Interim City Manager  
Marcia Carty, Finance Director  
Chris Taylor, Fire Chief  
Sunni Krantz, CMC  
Dr. Owen M. Beitsch, GAI  
Mark G. Lawson, P.A., Special Counsel

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