

# **TOWN OF LAUDERDALE-BY-THE-SEA**

## **TOWN COMMISSION**

### **SPECIAL MEETING AGENDA**

Town Commission Meeting Room

**4501 Ocean Drive**

**Tuesday, July 31, 2007**

**5:00 P.M.**

#### **1. CALL TO ORDER, MAYOR OLIVER PARKER**

Mayor Parker called the meeting to order at 5:00 p.m. Vice Mayor Yanni, Commissioner McIntee, Commissioner Silverstone, Mayor Pro Tem Clark were present. Also present was Town Attorney Michael Cirullo, Jr., and Town Clerk June White.

#### **2. PLEDGE OF ALLEGIANCE TO THE FLAG**

#### **3. REPORTS**

##### **A. Burton and Associates (Fire Assessment Report)**

Mike Burton distributed his Draft Fire Assessment Report (hereby attached as part of these minutes. He stated that although the final analysis was not available for this report, the conclusion would be available for the final assessment. Mr. Burton reviewed the results from the Broward Sheriff's Office regarding cost allocation to Fire and Emergency Management Services (EMS). Mr. Burton added that in the current assessment methodology all current fire service costs are a portion to property classes based on calls for service to each property class. He explained that the residential assessment is an equal assessment for dwelling units and nonresidential assessment is based upon the square feet of developed space per parcel within prescribed ranges of developed square feet per parcel.

Mr. Burton reviewed the cost analysis of EMS calls, referring to line 2 of the Fire Assessment Report and the Fire Rescue calls, line 3, of \$2,300,000. He explained that the figures were based on calls for service. Mr. Burton added that based on the Burton and Associates analysis of 2 years of calls of service data, about 83 percent were residential and 17 percent were non-residential within a fire call. He said 1.8 million was allocated to residential and \$378,000 to non-residential which covered the entire \$2,232,000.

Using the same methodology that was used in the last analysis Mr. Burton calculated the cost of 6,839 residential dwellings at \$271 a year per dwelling. He added that non-residential was distributed according to square footage. Mr. Burton pointed out an increase to non-residential properties at approximately 6 ½ percent while residential properties would increase about 4.22 percent.

Town Commission Special Meeting Minutes  
July 31, 2007

Town Attorney Cirullo advised that a Preliminary Assessment Resolution was scheduled for Public Hearing on September 14, 1007 at 7:00 PM. Mr. Burton stated he would have the final report ready for Attorney Cirullo's review prior to that hearing.

Town Attorney Cirullo talked about the preliminary results, page 11 of the Fire Assessment Report. He explained that the adoption Resolutions 2007-11, 2007-12, and 2007-13 would set for the Fire Assessment, Stormwater Utility Fee, the date of the public hearing in September, and the date of the first public hearing for the millage rate and budget. He added that Resolutions 2007-11, 2007-12, and 2007-13 would be heard at a public hearing on Friday, September 14, at 7:00 p.m., and the final resolution on the fire as well as the utility. He advised that the Town must comply with the statutory deadline that the assessment roll must be adopted by September 15, 2007 and received by the Property Appraiser on Saturday, September 15, 2007.

Mr. Burton advised that the report contained an appendix that included full documentation of the alternative methodology for informational purposes.

Commissioner Silverstone stressed the importance of not having any EMS in the Fire Assessment and requested Mr. Burton supply a safe number to work with. Mr. Burton believed \$400,000 to \$500,000 would be a safe range.

Discussion followed with definition of EMS calls, advanced life support, and paramedics.

Commissioner McIntee questioned Mr. Burton's statement that as much as \$500,000 charged on the fire side, would go back to EMS. He asked if there was a probability that the taxpayers overpaid \$500,000 a year in Fire Assessment. Mr. Burton said he would have to review the last three years to make that determination. Commissioner McIntee believed that if Mr. Burton established that the taxpayers overpaid, then the taxpayer's would be entitled to a refund.

Commissioner McIntee asked Mr. Burton if Broward Sheriff's Office advised that they wanted 3 men on their ambulance, Rescue 12. He advised that with three men on an ambulance, and three shifts per ambulance, 4.3 men would have to be hired per shift, or a total of 12.9 firefighters. Commissioner McIntee pointed out the yearly salary for a Firefighter/Paramedic was \$122,000, and a Lieutenant \$139,829 with full benefits. At 12.9 firemen assigned to Rescue 12 then conservatively the costs would have to be over 1.4 million. He said he was concerned because he saw a figure for manpower at Rescue 12 was \$700,000 plus and wondered where are they getting the other \$700,000 to take up the load for Rescue 12.

Brief discussion followed regarding the possible overpayment on the Fire Assessment. Commissioner McIntee inquired as to the latest day the millage could be increased provided that would be necessary. Attorney Cirullo said that the Commission would set the preliminary and tentative rate and millage at this meeting. He added that there would be two public hearings in September to set the millage. Attorney Cirullo also

Town Commission Special Meeting Minutes  
July 31, 2007

pointed out that whatever the Commission sets the proposed millage at tonight could go lower, but not higher. He felt it best to go high on a tentative or preliminary rate because it could always be reduced, but could not go higher if needed.

Vice Mayor Yanni referred to page 21 of the Fire Assessment Report and asked for an explanation of 30,000 – 60,000 with a frequency of 143. Mr. Burton explained that 143 parcels with a building value that fell within that range and said the assessment for that frequency was \$35, as shown on page 24. Vice Mayor Yanni said that in the business/commercial structures there are quite a few commercial properties that are Time Share's and/or privately owned and asked if they were considered as residential or non-residential. Mr. Burton said they would be considered as non-residential under the alternative methodology and subject to the ranges on page 25. He asked if the owners of those properties were being charged by unit. Mr. Burton said they were. Discussion followed differentiating the assessment on square footage and value.

Mayor Parker clarified that the Sheriff does not staff the Town's EMS unit with 4.3 EMS staffers. He said the Town's EMS units were staffed with two EMS personnel. Mayor Parker said that regulations state that some calls need three EMS personnel while others only need two, depending on the call. He added the Sheriff staffs fire trucks with three firefighters. Mayor Parker pointed out the Sheriff's firefighters are also EMS and all of his EMS are also firefighters so if there was a fire call, one of the EMS personnel becomes a firefighter; this avoids hiring additional personnel for each fire truck and each EMS vehicle.

Lengthy discussion followed regarding Advanced Life Support (ALS) and Emergency Management Services (EMS). Mayor Parker recalled a case specifically noted whereby providing first aid and advanced life support to people hurt in a fire while waiting for EMS vehicles to arrive, benefited the property. He added that the court decision was that it was a normal incident of fire protection.

Mayor Parker said the Sheriff's staffing system is done throughout Broward County and believed there was no reason to change it. He said since it cost the same to provide emergency service to a house worth \$30,000 as it does to a house worth \$300,000 it did not seem rational to allocate them differently and added that the Supreme Court decisions he has seen so far, held that charging all residents the same was a fair method of allocating cost of benefit. Mr. Burton said Burton and Associates attempted to give a conservative posture to the Commission.

Mayor Parker asked Mr. Burton if he spoke with any of the Commissioners outside of the hearings and whether he was asked to review information regarding the writings of Mr. John Thompson. Mr. Burton said he had. Mayor Parker said the Commission's intention was to hire an independent, unbiased analysis and believed the Fire Assessment Report was contaminated. Mr. Burton took offense to the Mayor's accusation and said that it may be appropriate for the Mayor not to like his report but inappropriate for the Mayor to impugn his character.

Town Commission Special Meeting Minutes  
July 31, 2007

Attorney Cirullo responded to an earlier discussion regarding Supreme Court findings and referred to the North Lauderdale case where any assessment that included EMS was not valid. He stated that a methodology that included a flat rate for residential and a tiered rate for non-residential was found generally acceptable by the court.

Attorney Cirullo addressed reasonableness and said that as long as the actions of the Commission are not found to be arbitrary the courts are supposed to defer to what the Commission decided, whether it is a 4.1, 5.0 or 3.2. He explained further that a 3.2 would demonstrate the most reasonable, so when going through the analysis of methodology the Town of Lauderdale By-The-Sea would be requested to prove a final assessment methodology. He explained further, for the record, that the debate was healthy, but the conclusion would be that of the Commission as a whole and, if reviewed by judiciary, it would be used on that standard of arbitrariness.

Vice Mayor Yanni apologized for Mayor Parker and the Commission. He clarified that everyone knew Burton and Associates received reports from Mr. John Thompson and believed Mr. Burton was not influenced by it. He asked how the assessment would be applied to the Condos, some of which may be worth \$20,000,000. Mr. Burton said they would be considered as residential and would get a higher assessment under the alternative method. Vice Mayor Yanni believed that method of methodology was not fair. Mr. Burton explained loss value.

Commissioner McIntee offered his apology to Mr. Burton. He asked Attorney Cirullo's opinion of Mr. Burton's worthiness as a professional and capability of producing a non-biased opinion. Attorney Cirullo said he enjoyed working with Mr. Burton. He said Mr. Burton possessed an understanding of case law and the existing methodology and has applied the existing methodology as requested. Attorney Cirullo stated that he had no problem with the draft report as presented.

Commissioner McIntee questioned whether Mr. Burton had any problem with the information or material presented to him by the Broward Sheriff's Office or whether he had been influenced in any way. Mr. Burton said he had a high opinion of the Broward Sheriff's office and was in no way influenced by them or anyone else.

Commissioner Clark acknowledged his talks and emails between himself and Mr. Burton. He apologized for the way Mr. Burton was treated and looked forward to future contact with him.

Mayor Parker referred to page 11 of the Fire Assessment Report, bottom, and said that with the fire assessment at \$271 for residences, and whatever the rates are in yellow for commercial, increased the residential rate 4.22% over last year and the commercial rate increased 6.6%. He asked if the residential rate stayed at \$260 would the commercial rate need to be scaled back also, and if so, would it have to be scaled back by 4.2. Mr. Burton said it would have to be proportionate. He believed that whether scaling back

proportionately or leaving it the way it is, would be reasonable as the call for service varies from year to year.

Mayor Parker said he was bothered by the benefit related primarily to the value. Mr. Burton explained that the Town of Lauderdale By-The-Sea provides the ability for homeowners and businesses to have insurance. Without fire protection neither of those properties could have insurance.

Attorney Cirullo specified that the methodology that was considered was not a value based methodology. He said that was an alternative in the study and asked Mr. Burton to confirm. Mr. Burton confirmed.

Town Manager Colon apologized on behalf of the Podium to Mr. Burton. She said she had worked very closely with Mr. Burton and had received numerous emails from Mr. John Thompson and never did she or Mr. Burton discuss Mr. Thompson's emails.

Commissioner McIntee made a motion to allow an additional floor time. Commissioner Silverstone seconded the motion. In a roll call vote, the motion failed 2-3 with Mayor Parker, Vice Mayor Yanni, and Commissioner Clark dissenting.

Mayor Parker thanked Mr. Burton for his presentation.

#### **4. RESOLUTIONS**

- A. RESOLUTION 2007-11:** A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA, RELATING TO THE PROVISION OF FIRE PROTECTION SERVICES, FACILITIES AND PROGRAMS IN THE TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA; DESCRIBING THE METHOD OF ASSESSING FIRE PROTECTION ASSESSED COSTS AGAINST ASSESSED PROPERTY LOCATED WITHIN THE TOWN'S GEOGRAPHICAL BOUNDARIES, KNOWN AS FIRE PROTECTION ASSESSMENT AREA – TOWNWIDE; ESTABLISHING THE ESTIMATED RATES FOR FIRE PROTECTION SERVICES FOR THE FISCAL YEAR BEGINNING OCTOBER 1, 2007; DIRECTING THE PREPARATION OF AN ASSESSMENT ROLL FOR FIRE PROTECTION ASSESSMENT AREA – TOWNWIDE; AUTHORIZING A PUBLIC HEARING AND DIRECTING THE PROVISION OF NOTICE THEREOF; PROVIDING FOR CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE.

Town Attorney Cirullo read Resolution 2007-11 by title only into record.

Mayor Parker asked for the proposed rate. Attorney Cirullo advised the proposed rates are set forth in Appendix "B" with a proposed increase in the residential rate at \$271 per unit. He pointed out that the rate set at this meeting could be lowered, but not

Town Commission Special Meeting Minutes  
July 31, 2007

increased. Attorney Cirullo said Resolution 2007-11 also set the date and time for the Public Hearing for the final assessment, for Friday, September 14, 2007 at 7:00 p.m., and also provides for the proposed notice to be published in a newspaper or general circulation.

Vice Mayor Yanni made a motion to adopt Resolution 2007-11. Commissioner Clark seconded the motion.

Attorney Cirullo requested an amendment to Resolution 2007-11, to remove the first "Whereas" clause on the top of page 3. He explained the Commission would give their approval on September 14<sup>th</sup> when they accept the final 2007 Report.

Commissioner Clark made a motion to amend Resolution 2007-11 to remove the first "Whereas" clause on the top of page 3. Vice Mayor Yanni seconded the motion. In a roll call vote, the motion carried 5-0.

Commissioner Silverstone referred to a Supreme Court of Florida ruling of the City of North Lauderdale vs. S & M Properties. He asked Attorney Cirullo to clarify that he was one of the attorney's on that case. Attorney Cirullo acknowledged he was the attorney of record for City of North Lauderdale.

Commissioner Silverstone read from the ruling that specifically stated, "we find that emergency medical services do not provide any special benefit to property". If there were any services that were performed and did not benefit property that could logically be considered EMS service.

Attorney Cirullo explained that the City of North Lauderdale assessed 100% of their fire rescue budget, which included all EMS costs. He continued to explain that is what the courts said the cities could not do, even in an integrated fire department, the cities and local government could not assess for the EMS portion. He added that as a result of that case all cities and local governments that assessed for fire rescue under took studies to review their budget and extract costs that are allocated to EMS in order to comply with the Florida Supreme Court decision. Attorney Cirullo said the assessment should not include EMS costs.

Commissioner McIntee inquired as to the amount of costs involved and whether there was a refund. Attorney Cirullo said the City of North Lauderdale did not include a refund request and therefore, was not ordered by the Court to refund any funds. He said the City of Tamarac was ordered by the court to refund \$4,000,000.

Commissioner McIntee also mentioned Miami had an issue of \$15,000,000. He feared there was exposure in the current methodology being used.

Town Commission Special Meeting Minutes  
July 31, 2007

Mayor Parker asked Attorney Cirullo to clarify whether the Supreme Court said that fire personnel could not do any first responder or advanced life saving service. Attorney Cirullo said they did not.

Mayor Parker did not feel that the Town of Lauderdale By-The-Sea was open to any liability, but he believed it would be a mistake to set the rate at \$271.

Mayor Parker made a motion to amend the rate from \$271 and leave it at the current rate of \$260. Motion failed for lack of a second.

Vice Mayor Yanni asked if the rate were left at \$260 everything would remain the same. Town Manager Colon said the methodology would stay the same and reminded the Commission that if the rate was set higher, there was still time to make it lower. She also said that Mr. Burton indicated that the rate might even come in lower than the current year.

Attorney Cirullo reiterated that this was a preliminary rate and come September 14, 2007 the Commission can lower the rate, even not pass it, but the Commission could not increase it. He said the rate decided upon at this meeting would be noticed in the Broward County TRIM notices and the publication.

Vice Mayor Yanni seconded the motion to amend the rate from \$271 and leave it at the current rate of \$260.

Commissioner Clark advised that there was time to gather information and Mr. Burton was still out with his data. He had no problem with the rate being at \$271 or \$260.

Commissioner McIntee elaborated that if the rate is set at \$271 now, it can be dropped down to \$260, or \$240 or \$230 in September. He said Mr. Burton advised \$271 to protect the Town. If there is something that comes back indicating the rate needs to go higher it could not be raised.

At the request of Vice Mayor Yanni, Town Manager Colon recommended Mr. Burton's number at \$271 as it could be lowered.

Vice Mayor Yanni withdrew his second.

Mayor Parker believed the Fire Assessment was high enough and should not be raised and said he would not vote for anything higher than \$260.

In a roll call vote the motion to set the rate at \$271 failed 3-2 with Commissioner Silverstone, Commissioner McIntee and Mayor Parker voted dissenting.

Town Commission Special Meeting Minutes  
July 31, 2007

For the record Commissioner McIntee said he was not going to support this at a later date. He felt there were major problems, but in fairness to the community he would change his vote.

Attorney Cirullo said if a Resolution setting the fire assessment were not passed, there would be no fire assessment.

Commissioner Silverstone made a motion to adopt Resolution 2007-11. Mayor Parker seconded the motion. Commissioner McIntee felt the level of distribution was unequal. In a roll call vote, the motion passed 4-1 with Commissioner McIntee dissenting.

Commissioner Clark made a motion to set the preliminary rate at \$272. After brief discussion, Commissioner Clark withdrew his motion. Additional discussion continued regarding preliminary rates and procedures.

Commissioner Silverstone made a motion to amend the preliminary fire assessment to \$200. Commissioner McIntee seconded the motion.

Mayor Parker moved to amend the motion to set preliminary fire assessment \$260  
Commissioner Clark seconded the motion.

The Commission discussed Commissioner Silverstone's motion to amend the preliminary fire assessment to \$200 and agreed unanimously that the number was too low.

Vice Mayor Yanni made a motion to amend the motion and set the proposed preliminary rate at \$271. Commissioner Clark seconded the motion.

Mayor Parker advised the Commission would first vote on the new amendment for \$271. If that one failed the Commission would vote on the original amendment of \$260, and if that one failed then the Commission would vote on Commissioner Silverstone's amendment of \$200.

In a roll call vote, the motion failed 3-2. Commissioner McIntee, Commissioner Silverstone and Mayor Parker voted against the amendment for \$271.

In a roll call vote, the motion carried 3-2. Commissioner McIntee and Commissioner Silverstone voted against the amendment for \$260.

In a roll call vote, the motion carried 3-2. Commissioner McIntee and Commissioner Silverstone voted against Resolution 2007-11.

**B. RESOLUTION 2007-12:** A RESOLUTION OF THE TOWN  
COMMISSION OF THE TOWN OF LAUDERDALE-BY-THE-SEA,  
FLORIDA, RELATING TO THE LEVY AND COLLECTION OF THE

TOWN'S STORMWATER MANAGEMENT UTILITY FEES USING THE PROCEDURES SET FORTH IN SECTION 197.3632, FLORIDA STATUTES; PROVIDING FOR THE AREA IN WHICH THE FEE WILL BE LEVIED, A DESCRIPTION OF THE STORMWATER MANAGEMENT UTILITY SERVICES FUNDED BY THE FEES AND THE METHODOLOGY FOR DETERMINING THE FEES, AND SETTING FORTH THE PRELIMINARY STORMWATER MANAGEMENT UTILITY FEES SCHEDULE FOR THE FISCAL YEAR BEGINNING OCTOBER 1, 2007; DIRECTING THE PREPARATION OF AN ASSESSMENT ROLL AS DEFINED IN ORDINANCE 2006-07; AUTHORIZING A PUBLIC HEARING AND DIRECTING THE PROVISION OF NOTICE THEREOF; PROVIDING FOR CONFLICT, SEVERABILITY, AND AN EFFECTIVE DATE.

Town Attorney Cirullo read Resolution 2007-12 by title only into record. He explained that Resolution 2007-12 set the preliminary stormwater fee, and set the public hearing on Friday, September 14, 2007 at 7:00 p.m. and also provided for notice.

Commissioner Silverstone made a motion to adopt Resolution 2007-12. Mayor Parker seconded the motion. Commissioner McIntee felt the fees were not distributed equally. In a roll call vote, the motion carried 4-1 with Commissioner McIntee dissenting.

**C. RESOLUTION 2007-13:** A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF LAUDERDALE BY THE SEA, FLORIDA, ADOPTING A PROPOSED MILLAGE RATE FOR THE FISCAL YEAR BEGINNING OCTOBER 1, 2007, AND ENDING SEPTEMBER 30, 2008; STATING THE PERCENTAGE AMOUNT THE PROPOSED RATE EXCEEDS THE ROLLED BACK RATE; ANNOUNCING THE DATE, TIME AND PLACE OF THE FIRST PUBLIC HEARING TO CONSIDER THE PROPOSED MILLAGE RATE AND THE TENTATIVE BUDGET; PROVIDING FOR SEVERABILITY, CONFLICTS, AND AN EFFECTIVE DATE.

Commissioner Clark made a motion to adopt Resolution 2007-13. Commissioner McIntee seconded the motion.

Vice Mayor Yanni asked if he could amend 4.35 to 4.7. Attorney Cirullo said under the new tax legislation the rate could not exceed the previous year's rate without referendum. Vice Mayor Yanni withdrew his request.

Mayor Parker made a motion to amend the preliminary rate to the roll back rate of 4.1012. The motion failed for lack of a second.

There was a brief discussion relating to the fees. Commissioner McIntee believed in lower millage rates and felt that there are too many hidden costs. Vice Mayor asked the amount of the stormwater fees and Manager Colon advised it was \$84 a year.

In a roll call vote, the motion carried 4-1 with Mayor Parker dissenting.

Mayor Parker granted a 5-minute break before the presentation of the proposed budget. There were no objections. Mayor Parker reconvened the meeting at 7:05 p.m.

## **5. DISCUSSION ITEM**

### **A. Proposed Budget for Fiscal Year 2007-08**

Mayor Parker requested the Commission review Donations section of the proposed budget before moving into the presentation. There were no objections. Commissioner McIntee made a motion to donate the same amount as in the previous year to each of the organizations requesting donations, with no increases. Mayor Parker seconded the motion. Vice Mayor Yanni pointed out that the Area for the Aging asked for less than they did last year.

Mayor Parker amended the motion to donate the same amount as last year, or whatever they requested this year, whichever is less. Commissioner McIntee accepted the amendment. Commissioner Silverstone felt the Area for the Aging should get an increase. In a roll call vote, the motion carried 4-1 with Commissioner Silverstone dissenting.

Town Manager Colon gave an overview of the proposed budget, submitted as required by the Town Charter. She said the proposed 2007-2008 budget totals all funds \$28,272,215. She added it reflected an increase from prior year of 10.2 percent with the greatest increase in the Capital Improvement Project and referred to the sanitary sewers with the Bel-Aire project being \$2,000,000 higher. Manager Colon explained that once the \$3,000,000 was backed out and transferred to the Capital Improvement Funds to complete the projects as approved by the Commission, the real increase in total funds was \$1,100,000 million, which reflected an increase of 4.4%, well below the 5%, bringing the millage rate to 4.35.

Manager Colon said the total increase in General Funds was \$1,000,099 at the 4.35 millage rate. She said that if the roll back rate as stated in Resolution 2007-13 was considered, the difference from the \$1,000,000 would go down to \$500,000, as the difference from 4.1 to 4.35 represented \$531,000.

Manager Colon pointed out that the overall budget only increased 4.4%. She said she made cuts, reduced operating, reduced positions by placing a freeze on all open positions, and reduced outsourcing of some services.

The Mayor and Commission praised Town Manager Colon for working over the weekend and thanked her for her dedication and incredible work ethic, and for doing an unusually good job.

Town Commission Special Meeting Minutes  
July 31, 2007

**6. ADJOURNMENT**

Vice Mayor Yanni motioned to adjourn the meeting. As there was no further business to discuss the meeting was adjourned at 7:30 p.m.

\_\_\_\_\_  
Oliver Parker, Mayor

ATTEST:

\_\_\_\_\_  
June White, Town Clerk

Date Accepted:\_\_\_\_\_