


## MEMORANDUM

**TO:** Mayor England  
 Vice Mayor Kostka  
 Commissioner George  
 Commissioner Samora  
 Commissioner Rumrell

**FROM:** Max Royle, City Manager 

**DATE:** October 29, 2020

**SUBJECT:** Constructing Unbuilt Section of 2<sup>nd</sup> Street West of 2<sup>nd</sup> Avenue: Request for Approval of Resolution 20-21, to Levy a Non-Ad Valorem Assessment to Pay Costs

### INTRODUCTION

The constructing of a road on the right-of-way of 2<sup>nd</sup> Street west of 2<sup>nd</sup> Avenue has been discussed at various times since 1992. In the past, the building of other streets, such as 3<sup>rd</sup>, 8<sup>th</sup>, and 10<sup>th</sup> between the Boulevard and 2<sup>nd</sup> Avenue, and 3<sup>rd</sup>, 4<sup>th</sup>, and 5<sup>th</sup> Streets west of 2<sup>nd</sup> Avenue, has been paid by either the owners of the adjacent lots or a developer, not the City. To be consistent with that policy, the City Manager proposed the same for 2<sup>nd</sup> Street. However, over the years, the obstacle to the construction has been a lack of agreement by all the owners of the lots along this section of 2<sup>nd</sup> Street to pay the costs. Some of the owners have been willing to pay so that they could develop their lots; other owners have not wanted to develop their lots. This has resulted in a stalemate.

Initially, as a way out of the stalemate, the Manager proposed that the costs be paid by a special assessment of each lot owner, as was done for 3<sup>rd</sup> and 8<sup>th</sup> Streets, whether they wanted to develop their lot or not. However, the Finance Director, Ms. Patty Douylliez, recently suggested a less cumbersome, more efficient method, which is a non-ad valorem assessment, similar to the one you recently approved for the collection and disposal of household waste, yard trash, and recyclables. The non-ad valorem assessment is less cumbersome because it: a) insures that each property owner will pay their fair share of the costs; b) guarantees that the City will receive the money to pay the costs within a specific time; c) makes it unnecessary for the City to bill each lot owner because the amount owed by each lot owner will be on their annual property tax bill; and d) makes it unnecessary for the City to file a lien on the lots of those owners who refuse the pay, thus delaying reimbursement to the City.

It has been suggested that road impact fee money be used to pay the costs to open 2<sup>nd</sup> Street. We provide information below about road impact fees, what they can be used for, and why we recommend they not be used to build 2<sup>nd</sup> street.

### THE PROCESS

The process for implementing the non-ad valorem assessment for the opening of 2<sup>nd</sup> Street is the same as was used for the solid waste non-ad valorem assessment.

1. The passage of a resolution prior to January 1, 2021, stating the City's intent to levy the non-ad valorem assessment.

2. The adoption of a non-ad valorem assessment roll for the project between January 6 and September 7, 2021, and that the City notify each property owner of a public hearing when the assessment roll will be adopted. For the public hearing, the Public Works Director will have a full estimate of the project's cost, the assessment each property owner will be charged and for how many years.

#### ATTACHMENTS

Attached for your review is the following information:

- a. Pages 1-5, the minutes of that part of your September 14, 2020 meeting when you last discussed the special assessment.
- b. Pages 6-9, proposed Resolution 20-21, and the legal description of the lots subject to the assessment.
- c. Pages 10-13, Section 334.03, Florida Statutes, which has definitions for various types of roads and matters related to the use of road impact fees.
- d. Pages 14-17, sections, highlighted in color, of the County's Ordinance 1987-57, which imposes the road impact fee and regulates its uses and which the City has adopted.
- e. Pages 18-32, information from the City Attorney, Mr. Lex Taylor, about various types of impact fees and their allowable uses.

#### ROAD IMPACT FEES

At your September 14<sup>th</sup> meeting, the City Manager suggested that the owners of the lots along 2<sup>nd</sup> Street west of 2<sup>nd</sup> Avenue pay two-thirds of the costs with the City paying the remaining third. The City's third would come from road impact fees. This would be an allowable use of the fees, which can be used for new roads, not to maintain existing roads. Having the owners pay, instead of the City using road impact fees for all the costs, will be in accordance with long standing City policy and will allow the City to use the impact fees for other projects, such new drainage improvements to prevent existing roads from flooding; new sidewalks that are needed because of population growth; and possibly new pavement on the right-of-way of existing roads where additional vehicle parking is needed because of growth.

Mr. Taylor can explain the information on pages 18-32 and provide clarification as to whether road impact fees can be used for drainage, sidewalks, and parking improvements on road rights-of-way.

#### ACTION REQUESTED

It is that you decide whether to use the non-ad valorem assessment as the means for the City to obtain the money needed to open 2<sup>nd</sup> Street west of 2<sup>nd</sup> Avenue.

If you do approve the non-ad valorem assessment, then you will need to pass Resolution 20-21, which simply states the City's intent to levy a non-ad valorem assessment.

If you decide not to use the non-ad valorem assessment, then we recommend you approve the special assessment method. The steps for this method would be:

- Public Works Director develops an estimate of the costs to construct 2<sup>nd</sup> Street between now and February 2021.
- A public hearing is held at a Commission meeting, perhaps in March, to which the lot owners will be invited.
- The Commission approves the amount of the special assessment and the length of time it is to be in effect.
- The lot owners are billed the amount, so that the City will have money to build the street; or the City could use road impact fees to build the street and use the money from the special assessment to pay back the road impact fee fund.
- For those owners who do not pay the assessment, the City will put a lien on the property for the amount owed. The lien must be paid before the City will approve a permit for a house to be built on the lot, or when the property is sold.

#### CONSERVATION EASEMENT

There are two property owners who want the North Florida Land Trust to put a conservation easement on the three lots they own, so that the lots cannot be developed in the future. In October, the City Manager met with two representatives of the Trust. They said they would present the conservation easement proposal to their board in early November. Regardless of whether their board approves the easement, we suggest you proceed with the approval of Resolution 20-21. Should the three lots eventually be dedicated to the North Florida Land Trust for conservation, the two owners will not be subject to the non-ad valorem assessment that you will consider adopting later in 2021. Because of the dedication of their lots to conservation, a public purpose, the City can pay from road impact fees the owners' share of the costs to construct 2<sup>nd</sup> Street.

## REGULAR COMMISSION MEETING

SEPTEMBER 14, 2020

5. Opening of 2<sup>nd</sup> Street West of 2<sup>nd</sup> Avenue: Review of Options and Costs, and Request to Approve a Special Assessment (Presenter: Bill Tredik, Public Works Director)

Mayor England introduced Item 5 and asked City Manager Royle for a staff report.

City Manager Royle advised that the first point is how to get the money to open the road. He explained in the past the homeowners would pay their portion of the road costs, which they never agreed to. He explained that some property owners do not want their property developed. He suggested to assess the property owners as it has been done in the past on 3<sup>rd</sup> Street, 8<sup>th</sup> Street and C Street in 1978 and explained that the value of the properties will go up with development even though the property owners may not want to develop it. The second point was that two property owners came to see him, Mr. Craddock and Mr. Toledo who own lots shown on the overhead (Exhibit 5). They would like to deed these lots to a Public Conservatory Group or to the City so they would never be developed. They only want them as greenspace and not a park. They want the trees and vegetation undisturbed and asked if they would deviate the road to the south because there are trees close to the right-of-way that might be affected by the road being too close. He suggested to Mr. Craddock and Mr. Toledo instead of donating this land to the public to allow the City to use impact fees to pay their share of the costs to put the road in, but all the others who wanted to develop the land would be assessed a cost. He explained that that was what was done on 3<sup>rd</sup> Street and it worked out well. He advised that Public Works Director Tredik and he thought that the access point should go from 2<sup>nd</sup> Street east to 2<sup>nd</sup> Avenue, which is the most direct route and most cost effective. To help the residents with safety a sidewalk would be put in, which would be paid by impact fees. He also would like to widen the road because it is so narrow, and the City could use impact fees for that project. He advised that the City would pave the existing road, which would come from City monies. He requested to create a special assessment and then move forward with the project and consider the three lots that the owners would like to donate. He explained that the Commission could also go from 3<sup>rd</sup> Street, but both the Public Works Director and he do not want to go on 1<sup>st</sup> Street due to the busy traffic.

Public Works Director agreed with City Manager Royle and advised that 1<sup>st</sup> Street would have problems.

Mayor England asked James Whitehouse to come to the podium to speak on behalf of the 56% of the homeowners who want the street opened.

Attorney James Whitehouse, St. Johns Law Group, 104 Sea Grove Main Street, St. Augustine Beach, FL, advised that he is here on behalf of the lot owners and has their authorizations for him to speak for them (Exhibit 5). He advised that the City staff has done a great job in presenting this item to the Commission, which also included his proposal. He advised that the lot owners that he represents would agree with that proposal and is here to answer any questions.

Mayor England opened the Public Comments section. The following addressed the Commission:

Mark Craddock, 116 2<sup>nd</sup> Street, St. Augustine Beach, FL, explained that he is the owner of two of the lots on 2<sup>nd</sup> Street. He advised that he does not believe that the assessments should be put on all the lots and that procedurally the owners must agree by 65% consensus. The rules have been a longstanding policy and has been a policy for a long time. He advised that Public Works Director Tredik confirmed this before he purchased his two properties. He said it was a matter of fairness and the City should not move the goal posts on owners for developments. He explained that there are other ways for the owners to development who want to develop. He advised that the ones who want to develop pay there costs now, while waiting for those who do not want to develop their properties now until they sell the properties or apply for a building permit. He advised that would be a fair solution since the 65% has not been met. He has been working on the conservation of properties to protect three of the lots from development indefinitely. If they are forced to pay assessments for the lots, it would force them to develop or sell the lots which would not be in the public's interest. If the City does select the 2<sup>nd</sup> Street route, he does appreciate the widening of the road and install sidewalk on 2<sup>nd</sup> Street, but requests that the City invest in underground utilities when 2<sup>nd</sup> Street is done.

Mayor England closed the Public Comments section and asked what the Commission needs to do to move forward with this.

City Attorney Taylor advised that the Commission needs to give their consensus to staff on how to move forward.

Mayor England advised that the City has a right to open a street at anytime because the lots are platted. She explained that the percentages are not binding and can be changed by the Commission. She commented that the time has come to act and to move forward. The proposal from the City has been well thought out.

Commissioner Rumrell explained that he likes the idea of those who are going to use it pay now, but his question is if the City pays a percentage and the owners who use it would pay their percentage or assessment at the time they develop it or sell it. He said there is a problem because there is a street just north of Dunes Cracker that is another through street. He advised that the City split the fees with the street north of Dunes Cracker and to assess the difference. He advised that the impact fees are for paving and opening roads and so the City should use it.

Commissioner George asked why the Commission should deviate from the 65% approval from the property owners who want to proceed. There is a policy in place and the owners are not at that point yet. She asked why staff is changing policy and pushing the opening of 2<sup>nd</sup> Street. She understood that it is not binding and is a policy of the Commission, but there is no difference in these properties then when it came up earlier. She advised that she does not agree in spending all of the impact fees on two projects because the money could be used for new parking and should not be taking out that money for a private benefit for certain lot owners. That would be a disserve to the other residences and do no agree with changing the policy.

Mayor England asked City Attorney Taylor what the law is on the rights of the property owners and the 65% verses the 56% that we have.

City Attorney Taylor advised that the 65% is a policy that has been established by the City, but it is not codified.

Mayor England commented that she was not sure if the 65% was used in previous properties in 1978 and others.

City Attorney Taylor advised that the 65% is used in several municipalities in the State of Florida, so it is a common percentage. The state has given the municipalities discretion. He explained that he does not want property owners to sue the City and the longer the City does not move forward the better that they may have a lawsuit. It would not be tomorrow and if the Commission wants to wait until there is a better consensus, that would be okay.

Commissioner George advised that the City is deciding by the 65%. She advised if the City forms with precedent, the City would be more protected. She said that she does not see a potential threat in this case.

Vice Mayor Kostka asked if the three lots included in the 65% or not.

City Clerk Raddatz asked to extend the meeting.

**Motion:** to extend the meeting until 10 p.m. **Moved by** Mayor England, **Seconded by** Vice Mayor Kostka. **Motion passes unanimously.**

Commissioner George advised that the three lots would not be given to conservancy unless the road goes through. He purchased the lots with the expectation of the 65% rule and asked that this not move forward until the 65% consensus is received. She explained that the property owners are shy by three lots.

Discussion ensued regarding nine property owners have given authorization, not eight.

Vice Mayor Kostka said that the Commission should stay with 65%.

Commissioner Samora advised that if the policy were codified or in a written policy, he would agree with Vice Mayor Kostka and Commissioner George. He explained that most of the property owners are for the open and should be taken into consideration. He said if the Charter Review Committee said that it needs to be 65%, then that would be different, and they would have codified it somehow. He agreed with the proposal but does not believe that we should use all the impact fees for these projects because there are other things the money can be used for. He agrees with the route that has been proposed by staff and believes that the City should improve 2<sup>nd</sup> Street to come straight in, but does not know if a sidewalk makes more sense; however, widening it does make sense. He does like the component to give flexibility to those who do not want to develop now.

Mayor England asked City Manager Royle if in the past the 65% was used every time.

City Manager Royle advised that 8<sup>th</sup> Street was 65%, but 3<sup>rd</sup> Street and was not 65%.

Mayor England asked when the special assessment is done is not it in their tax bill?

City Manager Royle advised that they would have to pay in advance of the street being opened. They would pay up front or they could give them a three-year payment plan with interest. He commented that he did not agree with Mr. Craddock's suggestion because the owners could take years to pay for their share and in the meantime the City must pay for the opening of the street. He suggested that they pay up front or pay over time.

Mayor England asked what happens if the homeowners do not pay.

City Manager Royle advised that the City could put a lien on the property, which they would have to pay, or the new owner would have to pay. He explained that the City Attorney would have to guide him on the special assessment. He commented that the City may have an obligation to build the road for property owners who want to build.

Mayor England advised that the City has the authority to open 2<sup>nd</sup> Street and there is a good proposal by the staff which is greater than half of the residents. She requested staff put together a plan to open 2<sup>nd</sup> Street and work with the owners of the three lots for the Florida Trust conservatorship and that the City assess the remaining property owners for the costs of opening up the street and the assessment be over five years and that the City use part of the impact fees for the City's cost of opening 2<sup>nd</sup> Street, plus to put in sidewalks and widening the street equal to the western part of 2<sup>nd</sup> Street. She advised that she stated that to see what objections the Commission has.

Discussion ensued regarding Attorney Whitehouse's clients are nine property owners.

Attorney Whitehouse advised that 65% is used with STU's and MTU's for an improvement, such as a sea wall, not for an access road to lots without any access. He explained that he submitted the authorizations of nine properties including Ms. Garrison's lot.

Commissioner George asked is Ms. Garrison for the improvement.

Attorney Whitehouse advised that he represents her as an attorney.

Mayor England asked with nine lots requesting the street to be opened. She explained that the lot owners paying for their share and the City paying one-third, the lots being donated to the Florida Trust would not pay the assessment. She suggested the City moves forward with handling this because of the good proposal.

Commissioner George advised that the lot owners are not denied access. If the lot owners want to open it up themselves and pay for it, they could. She advised that they are asking for more than they are legally entitled to do. She commented that she is not in favor of granting any special treatment or additional funding that has not been provided in the past to other developers.

Commissioner Samora advised that this started because a developer came to us to have the Commission decide which way they wanted to access the properties. He commented that the Commission needs to decide how to pay for it and split the costs. He advised that this needs to move forward. He agreed to move forward and allow staff to work on it and bring it back.

Vice Mayor Kostka agree that the costs share does not need to be done at this time, but she agrees with the direction of the street to be opened.

Mayor England asked Commissioner Rumrell if he agreed with the direction of the street to open the road and then the Commission work through the fees of the assessment.

Commissioner Rumrell agreed that staff can look into the direction of the opening of the street.

Mayor England asked Commissioner George if she agreed with opening 2<sup>nd</sup> Street and to work through the financials on how to pay for it.



Commissioner George advised she is not taking a position on the directionality at this point. She does not agree with the City taking the reins on this by acting as a developer unless the City has 65% of the residents that agree. She advised that if the Commission wants to manage the nine homeowners then she would not take a position on either direction, but advocates the ownership of the three lots with the conservation easement and make the layout of the road to preserve the trees in the right-of-way and to forgive their assessment which becomes a cost to the City because the taxpayers would have to pay for that cost share. Staff would have to find out where the money would come from.

Mayor England advised that since Commissioner George is in the minority, then direction to staff is to move forward with the plan to open 2<sup>nd</sup> Street directly and to accept the three lots and work on a plan for the financials.

Discussion ensued regarding that the meeting will continue to the meeting on September 22, 2020.

The Commission agreed to continue the meeting until September 22<sup>nd</sup>.



RESOLUTION 20-21

CITY OF ST. AUGUSTINE BEACH  
ST. JOHNS COUNTY

RE: EXPRESSING THE INTENT OF THE CITY OF ST. AUGUSTINE BEACH TO USE THE UNIFORM METHOD FOR THE LEVY, COLLECTION, AND ENFORCEMENT OF NON-AD VALOREM ASSESSMENT PROVIDED FOR IN CHAPTER 197, FLORIDA STATUTES, SECTION 197.3632, FOR THE PROVISION OF BUILDING 2<sup>ND</sup> STREET WEST OF 2<sup>ND</sup> AVENUE; PROVIDING THAT THE NON-AD VALOREM ASSESSMENT SHALL BE INCLUDED IN THE COMBINED NOTICE FOR AD VALOREM TAXES AND NON-AD VALOREM ASSESSMENTS PROVIDED IN CHAPTER 197, FLORIDA STATUTES, SECTION 197.3635; PROVIDING THAT THE NON-AD VALOREM ASSESSMENT SHALL BE COLLECTED IN THE SAME MANNER AS AD VALOREM TAXES; PROVIDING THAT THIS NON-AD VALOREM ASSESSMENT IS NEEDED IN ORDER TO BUILD 2<sup>ND</sup> STREET WEST OF 2<sup>ND</sup> AVENUE; PROVIDING FOR THE LEGAL DESCRIPTION OF LOTS WHICH SHALL BE SUBJECT TO THE NON-AD VALOREM LEVY; PROVIDING THAT THE PUBLIC HEARING ON THIS RESOLUTION WAS DULY ADVERTISED; PROVIDING THAT THE CLERK OF THE CITY OF ST. AUGUSTINE BEACH SHALL MAIL CERTIFIED COPIES OF THIS RESOLUTION; AND PROVIDING FOR AN EFFECTIVE DATE.

The City Commission of St. Augustine Beach, St. Johns County, Florida in regular meeting duly assembled on Monday, December 7, 2020, resolves as follows:

WHEREAS, by the authority created in Chapter 166, Florida Statutes, Section 166.021, and within Section 2 (b), Article VIII, of the Constitution of the State of Florida, municipalities have the governmental, corporate, and proprietary power to conduct municipal government, perform municipal functions, and render municipal services and may exercise any power for municipal purposes, except as expressly prohibited by law; and

WHEREAS, such statutory and constitutional authorization includes the ability to levy a special assessment for the provision of building 2<sup>ND</sup> Street west of 2<sup>ND</sup> Avenue in the City of St. Augustine Beach; and

WHEREAS, Chapter 197, Florida Statutes, Section 197.3632, sets forth the required procedure to be followed by a local government in order to elect the use of the uniform method of levying, collecting, and enforcing non-ad valorem assessments; and

WHEREAS, the City Commission held a public hearing on this Resolution on December 7, 2020, after advertising in *The St. Augustine Record* for four (4) consecutive weeks on October 28, 2020, November 4, 2020, November 11, 2020, and November 18, 2020, as required by Chapter 197, Florida Statutes, Section 197.3632(3)(a); and

WHEREAS, the City Commission has determined it serves the health, safety, and general welfare of the residents of the City of St. Augustine Beach to utilize the uniform method of collection for non-ad valorem assessments for the provision of building 2<sup>nd</sup> Street west of 2<sup>nd</sup> Avenue.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF ST. AUGUSTINE BEACH, FLORIDA, AS FOLLOWS:

**Section 1. Intent to Use Uniform Method.** The City Commission of the City of St. Augustine Beach intends to use the uniform method for the levy, collection, and enforcement of non-ad valorem assessments for the provision of to build 2<sup>nd</sup> Street west of 2<sup>nd</sup> Avenue in the City of St. Augustine Beach, pursuant to Chapter 197, Florida Statutes, Section 197.3632 and 197.3635.

**Section 2. Need for Levy.** The levy of non-ad valorem assessment for the provision of building 2<sup>nd</sup> Street west of 2<sup>nd</sup> Avenue is necessary in order to fund a comprehensive, coordinated, and efficient construction of 2<sup>nd</sup> Street within the City of St. Augustine Beach.

**Section 3. Legal Description of Area Subject to Levy.** the lots bordering 2<sup>nd</sup> Street west of 2<sup>nd</sup> Avenue shall be subject to the levy and collection of the non-ad valorem assessment and are legally described in Exhibit "A."

**Section 4. Combined Notice for Ad Valorem Taxes and Non-Ad Valorem Assessments.** The non-ad valorem assessment that shall be levied using the uniform method provided for in Chapter 197, Florida Statutes, Section 197.3632, shall be included in the combined notice for ad valorem taxes and non-ad valorem assessments provided for in Chapter 197, Florida Statutes, Section 197.3635.

**Section 5. Non-Ad Valorem Assessment Subject to Collection Procedures for Ad Valorem Taxes.** The non-ad valorem assessment collected pursuant to Chapter 197, Florida Statutes, Section 197.3632, shall be subject to the collection procedures provided for in Chapter 197, Florida Statutes, for ad valorem taxes and includes discount for early payment, prepayment by installment method, deferred payments, penalty for delinquent payment, and issuance and sale of tax certificates and tax deeds for nonpayment.

**Section 6. Public Hearing on Non-Ad Valorem Assessment Roll.** The City Commission shall adopt a non-ad valorem assessment roll of the property to be assessed within the corporate limits of the City of St. Augustine Beach at a public hearing held between January 6, 2021, and September 7, 2021.

**Section 7. Copy of Resolution.** The Clerk of the City of St. Augustine Beach is hereby directed to mail a certified copy of this Resolution by United States mail to the St. Johns County Property Appraiser, the St. Johns County Tax Collector, and the State of Florida Department of Revenue by January 1, 2021.

RESOLVED AND DONE, this 7<sup>th</sup> day of December 2020, by the City Commission of the City of St. Augustine Beach, St. Johns County, Florida.

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Margaret England, Mayor

ATTEST:

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Max Royle, City Manager



**City of St. Augustine Beach Building and Zoning Department**

**TO: Max Royle**

**FROM: Gil Timmons**

**SUBJECT: Chautauqua Beach Subdivision**

**DATE: 10/09/2020**

<b>LOT</b>	<b>BLOCK</b>	<b>PARCEL #</b>	<b>LEGAL DESCRIPTION</b>
2	32	169670-0000	2-5 CHAUTAUQUA BEACH LOT 2 BLK 32 OR4188/1951
4	32	169690-0000	2-5 CHAUTAUQUA BCH LOT 4 & 6 BLK 32 OR3027/1095
6	32	169690-0000	2-5 CHAUTAUQUA BCH LOT 4 & 6 BLK 32 OR3027/1095
8	32	169710-0080	2-5 CHAUTAUQUA BEACH LOT 8 BLK 32 OR1814/28(P/R) & 30(Q/C)
10	32	169720-0100	2-5 CHAUTAUQUA BEACH LOT 10 BLK 32 OR1814/28(P/R) & 30(QC)
12	32	169720-0120	2-5 CHAUTAUQUA BCH LOT 12 BLK 32 OR1814/28(P/R) & 30(Q/C)
14	32	169730-0140	2-5 CHAUTAUQUA BCH BLK 32 LOT 14 OR3904/164 OR4222/1157
16	32	169730-0160	2-5 CHAUTAUQUA BCH LOT 16 BLK 32 OR3904/164 OR4222/1157
1	31	169615-0010	2-5 CHAUTAUQUA BCH LOTS 1 & 3 BLK 31 OR1398/800-801
3	31	169615-0010	2-5 CHAUTAUQUA BCH LOTS 1 & 3 BLK 31 OR1398/800-801
5	31	169620-0050	2-5 CHAUTAUQUA BCH LOT 5 BLK 31 OR1004/2007&2328/1019 &4603/1964
7	31	169630-0000	2-5 CHAUTAUQUA BCH LOT 7 BLK 31 OR1004/2006 &2359/401
9	31	169640-0000	2-5 CHAUTAUQUA BCH LOT 9 BLK 31 OR499/686
11	31	169640-0110	2-5 CHAUTAUQUA BCH LOT 11 BLK 31 OR4408/966
13	31	169650-0000	2-5 CHAUTAUQUA BEACH LOT 13 BLK 31 OR4408/966
15	31	169640-0150	2-5 CHAUTAUQUA BCH LOT 15 BLK 31 OR4408/966



## The 2019 Florida Statutes

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### Title XXVI

### Chapter 334

### [View Entire Chapter](#)

#### **PUBLIC TRANSPORTATION**

#### **TRANSPORTATION ADMINISTRATION**

**334.03 Definitions.**—When used in the Florida Transportation Code, the term:

(1) “Arterial road” means a route providing service which is relatively continuous and of relatively high traffic volume, long average trip length, high operating speed, and high mobility importance. In addition, every United States numbered highway is an arterial road.

(2) “Bridge” means a structure, including supports, erected over a depression or an obstruction, such as water or a highway or railway, and having a track or passageway for carrying traffic as defined in chapter 316 or other moving loads.

(3) “City street system” means all local roads within a municipality, and all collector roads inside that municipality, which are not in the county road system.

(4) “Collector road” means a route providing service which is of relatively moderate average traffic volume, moderately average trip length, and moderately average operating speed. Such a route also collects and distributes traffic between local roads or arterial roads and serves as a linkage between land access and mobility needs.

(5) “Commissioners” means the governing body of a county.

(6) “Consolidated metropolitan statistical area” means two or more metropolitan statistical areas that are socially and economically interrelated as defined by the United States Bureau of the Census.

(7) “Controlled access facility” means a street or highway to which the right of access is highly regulated by the governmental entity having jurisdiction over the facility in order to maximize the operational efficiency and safety of the high-volume through traffic utilizing the facility. Owners or occupants of abutting lands and other persons have a right of access to or from such facility at such points only and in such manner as may be determined by the governmental entity.

(8) “County road system” means all collector roads in the unincorporated areas of a county and all extensions of such collector roads into and through any incorporated areas, all local roads in the unincorporated areas, and all urban minor arterial roads not in the State Highway System.

(9) “Department” means the Department of Transportation.

(10) “Functional classification” means the assignment of roads into systems according to the character of service they provide in relation to the total road network using procedures developed by the Federal Highway Administration.

(11) “Governmental entity” means a unit of government, or any officially designated public agency or authority of a unit of government, that has the responsibility for planning, construction, operation, or maintenance or jurisdiction over transportation facilities; the term includes the Federal Government, the state government, a county, an incorporated municipality, a metropolitan planning organization, an expressway or transportation authority, a road and bridge district, a special road and bridge district, and a regional governmental unit.



(12) "Limited access facility" means a street or highway especially designed for through traffic, and over, from, or to which owners or occupants of abutting land or other persons have no right or easement of access, light, air, or view by reason of the fact that their property abuts upon such limited access facility or for any other reason. Such highways or streets may be facilities from which trucks, buses, and other commercial vehicles are excluded; or they may be facilities open to use by all customary forms of street and highway traffic.

(13) "Local governmental entity" means a unit of government with less than statewide jurisdiction, or any officially designated public agency or authority of such a unit of government, that has the responsibility for planning, construction, operation, or maintenance of, or jurisdiction over, a transportation facility; the term includes, but is not limited to, a county, an incorporated municipality, a metropolitan planning organization, an expressway or transportation authority, a road and bridge district, a special road and bridge district, and a regional governmental unit.

(14) "Local road" means a route providing service which is of relatively low average traffic volume, short average trip length or minimal through-traffic movements, and high land access for abutting property.

(15) "Metropolitan area" means a geographic region comprising as a minimum the existing urbanized area and the contiguous area projected to become urbanized within a 20-year forecast period. The boundaries of a metropolitan area may be designated so as to encompass a metropolitan statistical area or a consolidated metropolitan statistical area. If a metropolitan area, or any part thereof, is located within a nonattainment area, the boundaries of the metropolitan area must be designated so as to include the boundaries of the entire nonattainment area, unless otherwise provided by agreement between the applicable metropolitan planning organization and the Governor.

(16) "Metropolitan statistical area" means an area that includes a municipality of 50,000 persons or more, or an urbanized area of at least 50,000 persons as defined by the United States Bureau of the Census, provided that the component county or counties have a total population of at least 100,000.

(17) "Nonattainment area" means an area designated by the United States Environmental Protection Agency, pursuant to federal law, as exceeding national primary or secondary ambient air quality standards for the pollutants carbon monoxide or ozone.

(18) "Periodic maintenance" means activities that are large in scope and require a major work effort to restore deteriorated components of the transportation system to a safe and serviceable condition, including, but not limited to, the repair of large bridge structures, major repairs to bridges and bridge systems, and the mineral sealing of lengthy sections of roadway.

(19) "Person" means any person described in s. 1.01 or any unit of government in or outside the state.

(20) "Right of access" means the right of ingress to a highway from abutting land and egress from a highway to abutting land.

(21) "Right-of-way" means land in which the state, the department, a county, or a municipality owns the fee or has an easement devoted to or required for use as a transportation facility.

(22) "Road" means a way open to travel by the public, including, but not limited to, a street, highway, or alley. The term includes associated sidewalks, the roadbed, the right-of-way, and all culverts, drains, sluices, ditches, water storage areas, waterways, embankments, slopes, retaining walls, bridges, tunnels, and viaducts necessary for the maintenance of travel and all ferries used in connection therewith.

(23) "Routine maintenance" means minor repairs and associated tasks necessary to maintain a safe and efficient transportation system. The term includes: pavement patching; shoulder repair; cleaning



and repair of drainage ditches, traffic signs, and structures; mowing; bridge inspection and maintenance; pavement striping; litter cleanup; and other similar activities.

(24) "State Highway System" means the interstate system and all other roads within the state which were under the jurisdiction of the state on June 10, 1995, and roads constructed by an agency of the state for the State Highway System, plus roads transferred to the state's jurisdiction after that date by mutual consent with another governmental entity, but not including roads so transferred from the state's jurisdiction. These facilities shall be facilities to which access is regulated.

(25) "State Park Road System" means roads embraced within the boundaries of state parks and state roads leading to state parks, other than roads of the State Highway System, the county road systems, or the city street systems.

(26) "State road" means a street, road, highway, or other way open to travel by the public generally and dedicated to the public use according to law or by prescription and designated by the department, as provided by law, as part of the State Highway System.

(27) "Structure" means a bridge, viaduct, tunnel, causeway, approach, ferry slip, culvert, toll plaza, gate, or other similar facility used in connection with a transportation facility.

(28) "Sufficiency rating" means the objective rating of a road or section of a road for the purpose of determining its capability to serve properly the actual or anticipated volume of traffic using the road.

(29) "Transportation corridor" means any land area designated by the state, a county, or a municipality which is between two geographic points and which area is used or suitable for the movement of people and goods by one or more modes of transportation, including areas necessary for management of access and securing applicable approvals and permits. Transportation corridors shall contain, but are not limited to, the following:

(a) Existing publicly owned rights-of-way;

(b) All property or property interests necessary for future transportation facilities, including rights of access, air, view, and light, whether public or private, for the purpose of securing and utilizing future transportation rights-of-way, including, but not limited to, any lands reasonably necessary now or in the future for securing applicable approvals and permits, borrow pits, drainage ditches, water retention areas, rest areas, replacement access for landowners whose access could be impaired due to the construction of a future facility, and replacement rights-of-way for relocation of rail and utility facilities.

(30) "Transportation facility" means any means for the transportation of people or property from place to place which is constructed, operated, or maintained in whole or in part from public funds. The term includes the property or property rights, both real and personal, which have been or may be established by public bodies for the transportation of people or property from place to place.

(31) "Urban area" means a geographic region comprising as a minimum the area inside the United States Bureau of the Census boundary of an urban place with a population of 5,000 or more persons, expanded to include adjacent developed areas as provided for by Federal Highway Administration regulations.

(32) "Urban minor arterial road" means a route that generally interconnects with and augments an urban principal arterial road and provides service to trips of shorter length and a lower level of travel mobility. The term includes all arterials not classified as "principal" and contain facilities that place more emphasis on land access than the higher system.

(33) "Urban place" means a geographic region composed of one or more contiguous census tracts that have been found by the United States Bureau of the Census to contain a population density of at least 1,000 persons per square mile.



(34) “Urban principal arterial road” means a route that generally serves the major centers of activity of an urban area, the highest traffic volume corridors, and the longest trip purpose and carries a high proportion of the total urban area travel on a minimum of mileage. Such roads are integrated, both internally and between major rural connections.

(35) “Urbanized area” means a geographic region comprising as a minimum the area inside an urban place of 50,000 or more persons, as designated by the United States Bureau of the Census, expanded to include adjacent developed areas as provided for by Federal Highway Administration regulations. Urban areas with a population of fewer than 50,000 persons which are located within the expanded boundary of an urbanized area are not separately recognized.

(36) “511” or “511 services” means three-digit telecommunications dialing to access interactive voice response telephone traveler information services provided in the state as defined by the Federal Communications Commission in FCC Order No. 00-256, July 31, 2000.

(37) “Interactive voice response” means a software application that accepts a combination of voice telephone input and touch-tone keypad selection and provides appropriate responses in the form of voice, fax, callback, e-mail, and other media.

History.—s. 2, ch. 29965, 1955; ss. 1, 2, ch. 57-318; ss. 1, 2, ch. 63-27; s. 1, ch. 67-43; ss. 23, 35, ch. 69-106; s. 105, ch. 71-377; ss. 5, 17, ch. 77-165; s. 1, ch. 79-357; s. 136, ch. 79-400; s. 1, ch. 83-52; s. 9, ch. 84-309; s. 6, ch. 85-180; s. 9, ch. 88-168; s. 1, ch. 88-224; s. 3, ch. 90-136; s. 2, ch. 93-164; s. 52, ch. 94-237; s. 119, ch. 99-13; s. 6, ch. 99-256; s. 76, ch. 99-385; s. 38, ch. 2003-286; s. 22, ch. 2012-174.

- (a) "And" indicates that all the connected terms, conditions; provisions or events shall apply.
  - (b) "Or" indicates that the connected items, conditions, provisions or events may apply singly or in any combination.
  - (c) "Either...or" indicates that the connected items, conditions, provisions or events shall apply singly but not in combination.
- (7) The word "includes" shall not limit a term to the specific example but is intended to extend its meaning to all other instances or circumstances of like kind or character.
- (8) "County Administrator" means the County Administrator or the county or municipal officials he/she may designate to carry out the administration of this ordinance. Any municipal official so designated shall be approved by the appropriate municipality before exercising duties hereunder.
- (9) A road right-of-way used to define road impact fee district boundaries may be considered within any district it bounds.

Section Five: Definitions

A. A "feepayer" is a person commencing a land development activity which generates traffic and which requires the issuance of a building permit or permit for mobile home installation.

B. A "capital improvement" includes transportation planning, preliminary engineering, engineering design studies, land surveys, right-of-way acquisition, engineering, permitting and construction of all the necessary features for any road construction project including, but not limited to: (a) construction of new through lanes, (b) construction of new turn lanes, (c) construction of new bridges, (d) construction of new drainage facilities in conjunction with new roadway construction, (e) purchase and installation of traffic signalization (including new and upgraded signalization), (f) construction of curbs,

medians, and shoulders, and (g) relocating utilities to accommodate new roadway construction.

C. "Expansion" of the capacity of a road applies to all road and intersection capacity enhancements and includes but is not limited to extensions, widening, intersection improvements, upgrading signalization, improving pavement conditions and expansion of bridges.

D. "Land Development Activity Generating Traffic" means any change in land use or any construction of buildings or structures or any change in the use of any structure that attracts or produces vehicular trips.

E. "Road" shall have the same meaning as set forth in §334.03(17) Florida Statutes (1985).

F. "Arterial Road" shall have the same meaning as set forth in §334.03(1) Florida Statutes (1985).

G. "Collector Road" shall have the same meaning as set forth in §334.03(4) Florida Statutes (1985).

H. "Site-related Improvements" are capital improvements and right-of-way dedications for direct access improvements to and/or within the development in question. Direct access improvements include but are not limited to the following: (1) access roads leading to the development; (2) driveways and roads within the development; (3) acceleration and deceleration lanes, and right and left turn lanes leading to those roads and driveways; and (4) traffic control measures for those roads and driveways.

I. "Independent Fee Calculation Study" means the traffic engineering and/or economic documentation prepared by a feepayer to allow the determination of the impact fee other than by the use of the table in Section Seven (A) of this ordinance.

J. "Level of Service" shall have the same meaning as set forth in the Highway Research Board's Highway Capacity Manual (1965).

K. "Development Order" means a regulatory approval by St. Johns County or a municipality therein.



herein by reference. No district shall include any area within a municipality that issues building permits and that has not entered into an interlocal agreement with the county to collect road impact fees or that that has by ordinance repealed the effect of this ordinance within its boundaries.

Section Ten: Road Impact Fee Trust Funds Established

A. There are hereby established four (4) separate Road Impact Fee Trust Funds, one for each road impact fee district established by Section Nine of this Ordinance.

B. Funds withdrawn from these accounts must be used in accordance with the provisions of Section Eleven of this ordinance.

Section Eleven: Use of Funds

A. Funds collected from road impact fees shall be used for the purpose of capital improvements to and expansion of transportation facilities associated with the Arterial and Collector road network as designated by St. Johns County and under the jurisdiction of St. Johns County, any municipality within St. Johns County which has not opted out from the effect of the ordinance, or the State of Florida.

B. No funds shall be used for periodic or routine maintenance as defined in §334.03(13) and (18) Florida Statutes (1985).

C. Funds shall be used exclusively for capital improvements or expansion within the road impact fee district, including district boundary roads, as identified in Appendix I, hereof, from which the funds were collected or for projects in other road impact districts which are of benefit to the road impact district from which the funds were collected. Funds shall be expended in the order in which they are collected.

D. In the event that bonds or similar debt instruments are issued for advanced provision of capital facilities for which road impact fees may be expended, impact fees may be used to pay debt service on such bonds or similar debt instruments to the extent that the facilities provided are of the type described in

paragraph A of this section and are located within the appropriate impact fee districts created by Section Nine of this ordinance or as provided in paragraph C of this section.

E. At least once each fiscal period the County Administrator shall present to the Board of County Commissioners a proposed capital improvement program for roads, assigning funds, including any accrued interest, from the several Road Impact Fee Trust Funds to specific road improvement projects and related expenses. Monies, including any accrued interest, not assigned in any fiscal period shall be retained in the same Road Impact Fee Trust Funds until the next fiscal period except as provided by the refund provisions of this ordinance.

F. Funds may be used to make refunds required under any Development Order heretofore or hereafter issued or entered into by St. Johns County or participating municipalities as such refunds pertain to the subject matter of this ordinance.

G. Funds may be used to provide refunds as described in Section Twelve.

H. Funds may be used for such other transportation purposes as may be authorized by amendments to this ordinance.

I. The collecting governmental entity shall be entitled to retain not more than three per cent (3%) of the funds collected as compensation for the expense of collecting the fee and administering this ordinance.

#### Section Twelve: Refund of Fees Paid

A. If a building permit or permit for mobile home installation expires without commencement of construction, then the feepayer shall be entitled to a refund, without interest, of the impact fee paid as a condition for its issuance except that the County shall retain six percent (6%) of the fee to offset a portion of the costs of collection and refund. The feepayer must submit an application for such a refund to the Clerk of Courts of St. Johns County within 30 days of the expiration of the permit.

B. Any funds not expended or encumbered by the end of the calendar quarter immediately following six (6) years from the date the road impact fee was paid shall, upon application of the

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# IMPACT FEES

THE CURRENT STATE OF THE LAW

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# IMPACT FEES

## Dual Rational Nexus Test

- 19 -  
A reasonable connection between the need for additional capital facilities and the growth.

AND

A reasonable connection between the expenditure of fee proceeds and the benefits accruing to the growth.



## LEGAL RESTRICTIONS ON IMPACT FEES

- Fees must fund capital facilities, not operations or maintenance;
- 20- • Must have a rational connection between the need for the facilities and the growth;
- • Must have a rational connection between the expenditure of the impact fee proceeds and the benefits received.

## LEGAL RESTRICTIONS ON IMPACT FEES

- Fee cannot exceed the cost of the facilities;
- Fee proceeds must be separately accounted for;
- Fee proceeds must be expended or refunded within a reasonable time;
- Cannot be used to pay a deficiency in service.

- 21 -

## MOST FREQUENTLY IMPOSED IMPACT FEES

- Roads
- Parks Construction or Expansion
- Fire and EMS Facilities
- Water & Sewer Facility Expansion
- School Facilities

## OTHER EXAMPLES

- Libraries
- Correction Facilities
- Law Enforcement
- General Governmental Buildings

## SECTION 163.31801, FLORIDA STATUTES (2006)

- Adopted by Legislature During 2006 Session
- First State Codification of Legislative Requirements for Impact Fee
- Sets Forth Minimum Requirements

## REQUIREMENTS UNDER SECTION 163.31801, FLORIDA STATUTES

- Fee Must Be Based Upon the Most Recent Localized Data
- Provides Accounting of Collection and Expenditure of Impact Fees
- Administrative Charge For Collection Limited to Actual Cost
- Requires Notice No Less Than 90 Days Before Effective Date



# LEGISLATION RELATED TO IMPACT FEES 2019 LEGISLATIVE SESSION

- 26 -

- CS/HB 207
- CS/CS/HB 7103



## CS/HB 207

- May Not Require Payment of Impact Fee Prior to the Issuance of a Building Permit
- Impact Fees Must be Specifically Earmarked to Acquire, Construct or Improve Capital Facilities
- Exempts Water and Sewer Connection Fees

## CS HB 207 (CONTINUED)

- May Not Use Impact Fees to Pay Existing Debt or for Previously Approved Projects Unless the Expenditure Is Reasonably Connect to or Has a Rational Nexus With the Increased Impact

## CS HB 207 (CONTINUED)

### **Codifies the Dual Rational Nexus Test as Follows:**

- The Impact Fee Must be Reasonably Connect to, or Have a Rational Nexus With, the Need for Additional Capital Facilities and Increased Impact from the New Residential Or Commercial Construction
- The Impact Fee Must be Reasonably Connect to, or Have a Rational Nexus With, the Expenditures of the Revenue Generated and the Benefits to the New Residential Or Commercial Construction

## CS/CS/HB 7103

In Additional to Those Changes Incorporated Into CS/HB 207, the Following Amendments Were Adopted:

Must Credit Against the Collection of Impact Fees Any Contribution Related to Public Education Facilities, Site Planning and Design or Construction on a Dollar-for Dollar Basis at Fair Market Value.

## CS/CS/HB 7103 (CONTINUED)

- § If an Impact Fee is increased, then holder of impact fee credits is entitled to full credit balance as of the date it was first established. (prospective only).
- 31 § Governmental entity has the burden of proof in any action challenging whether dollar-for-dollar credit has been granted.
- § Where exemption from impact fees is granted for affordable housing, then the governmental entity is not required to use any other revenues to offset the impact.



**QUESTIONS?**