

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS

Agenda Item #:

5C-1

AGENDA ITEM SUMMARY

Meeting Date: October 3, 2006 [] Consent [X] Regular
Department: Office of Financial [] Workshop [] Public Hearing
Management & Budget

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve on preliminary reading and advertise for public hearing on October 17, 2006 at 9:30 a.m.: an Ordinance of the Board of County Commissioners providing for an ad valorem tax deferral for certain recreational and commercial working waterfront properties; providing for a title; providing for eligibility criteria; providing for application procedures; providing for deferred payment tax certificates; providing for termination of tax deferral; providing for prepayment of deferred taxes; providing for distribution of payment of deferred taxes; providing for construction; providing for penalties; providing for repeal of laws in conflict; providing for severability; providing for inclusion in the Code of Laws and Ordinances; providing for captions and providing for an effective date.

Summary: In 2005 the Florida Legislature enacted FSS 197.303 authorizing counties and municipalities to allow ad valorem tax deferrals for recreational and commercial working waterfronts if the owners are engaging in the operation, rehabilitation, or renovation of such properties. The tax deferral must be authorized by ordinance and would apply only to taxes levied by the government granting the deferral, i.e., the Board of County Commissioners. The deferred taxes would accrue interest at a rate calculated pursuant to Statute, but may not exceed 9.5% per year. The deferrals would not apply to the County's voted debt. On August 15, 2006 the Board directed staff to return with an ordinance to provide for tax deferrals, but to exclude lodging establishments and those working waterfronts located within the boundaries of a CRA. Countywide (PFK)

Background and Policy Issues: FSS 197.303 allows for the adoption of an ordinance to allow for ad valorem tax deferrals for recreational and commercial working waterfronts. This tax deferral would apply only to the taxes levied by the government granting the deferral and would not include voted debt millage. The taxes, non-ad valorem assessments and interest deferred will constitute a prior lien and will be collected as other liens for taxes.

Any owner of a working waterfront property may elect to defer payment of ad valorem taxes and non-ad valorem assessments designated in the ordinance by filing an annual application with the Tax Collector. In order to retain the deferral, if granted, the use and ownership of the property as a working waterfront must be maintained over the period for which the deferral is granted.

A tax deferral will not be granted if:

- The total amount of deferred taxes, assessments and interest plus the total amount of all other unsatisfied liens on the property exceeds 85% of the assessed value of the property; or
- The primary financing on the property is for an amount that exceeds 70% of the assessed value of the property.

The amount of the deferral will accrue interest at a rate calculated pursuant to the Statute, but may not exceed 9.5% per year.

At the request of the marine industry, the Board considered this matter on May 16, 2006 and discussed it again on August 15, 2006, at which time staff was directed to return with an ordinance providing for the tax deferral for working waterfronts, excluding lodging establishments and those properties that lie with the boundaries of a CRA.

Attachments: Ordinance

Recommended by: Richard Robert 9/15/2006
Department Director Date

Approved By: [Signature] 9/19/06
County Administrator Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2006	2007	2008	2009	2010
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	_____	_____	_____	_____	_____
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included In Current Budget? Yes No

Budget Account No: Fund _____ Agency _____ Org. _____ Object _____ Reporting Category _____

B. Recommended Sources of Funds/Summary of Fiscal Impact:

The amount of revenue to be deferred is indeterminable at this time. We have requested the Property Appraiser to provide us with the number of properties and taxable values that would qualify as working waterfronts. However, even with that information, we do not know how many property owners would request the deferral. If there is a change in use or ownership such that the owner is no longer entitled to claim the property as a working waterfront or if the owner fails to maintain the required fire and extended insurance coverage, the total amount of deferred taxes and interest for all previous years becomes due and payable on November 1. If deferred taxes become delinquent, the Tax Collector shall sell a tax certificate for the delinquent taxes and interest in the same manner as any other unpaid property taxes.

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Dev. and Control Comments:

<i>Elizabeth Blaeser</i> OFMB 9/15/06 <i>pm</i>	N/A Contract Dev. and Control
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B. Legal Sufficiency:

Paul F. J. 9/18/06
 Assistant County Attorney

C. Other Department Review:

 Department Director

1 **SECTION 2. TAX DEFERRAL ELIGIBILITY:**

2 (1) The Board adopts this Ordinance to allow for ad valorem tax deferrals for
3 recreational and commercial working waterfront property if the owners of such properties are
4 engaged in the operation, rehabilitation, or renovation of such properties in accordance with the
5 guidelines established in this section.

6 (2) The deferral of County imposed ad valorem taxes and non-ad valorem
7 assessments for recreational and commercial working waterfront properties is hereby granted to
8 the extent provided by this Ordinance.

9 (3) The ad valorem tax deferral granted by this Ordinance includes all Board
10 imposed ad valorem taxes, except as provided in subsection (4) of this section, for any
11 property meeting the provisions of Section 342.07(2), Florida Statutes, excluding public
12 lodging establishments.

13 (4) The deferrals apply only to taxes levied by the Board. The deferrals do not
14 apply, however, to taxes or non-ad valorem assessments defined in Section 197.3632(1)(d),
15 Florida Statutes, levied for payment of bonds or to taxes authorized by a vote of the electors
16 pursuant to Section 9(b) or Section 12, Article VII of the Florida Constitution.

17 (5) Any deferral granted remains in effect regardless of any change in the authority
18 of the Board to grant such deferral. In order to retain the deferral, however, the use and
19 ownership of the property as a working waterfront must be maintained over the period for
20 which the deferral is granted.

21 (6) Property located in a community redevelopment agency (CRA) area is not
22 eligible for the tax deferral granted by this Ordinance.

23 (7) Any property owner that owns a recreational and commercial working
24 waterfront facility as defined by Section 342.07, Florida Statutes, except public lodging
25 establishments, may elect to defer payment of those ad valorem taxes and non-ad valorem
26 assessments designated in this Ordinance. The property owner must file an annual application
27 for tax deferral with the Palm Beach County Tax Collector ("Tax Collector") on or before
28 January 31 following the year in which the taxes and non-ad valorem assessment are assessed.
29 The applicant has the burden to affirmatively demonstrate compliance with the requirements of
30 this Ordinance.

1 (8) Approval of an application for tax deferral shall defer that portion of the
2 combined total of ad valorem taxes and any non-ad valorem assessments that are authorized to
3 be deferred by this Ordinance.

4 (9) A tax deferral may not be granted if:

5 (a) The total amount of deferred taxes, non-ad valorem assessments, and
6 interest plus the total amount of all other unsatisfied liens on the property exceeds 85
7 percent of the assessed value of the property, or

8 (b) The primary financing on the property is for an amount that exceeds 70
9 percent of the assessed value of the property.

10 (10) The amount of taxes, non-ad valorem assessments, and interest deferred shall
11 accrue interest at a rate equal to the semiannually compounded rate of .5 percent plus the
12 average yield to maturity of the long-term fixed-income portion of the Florida Retirement
13 System investments as of the end of the quarter preceding the date of the sale of the deferred
14 payment tax certificates; however, the interest rate may not exceed 9.5 percent.

15 (11) The taxes, non-ad valorem assessments, and interest deferred pursuant to this
16 Ordinance constitute a prior lien and shall attach as of the date and in the same manner and be
17 collected as other liens for taxes, as provided for under Chapter 197, Florida Statutes, but such
18 deferred taxes, non-ad valorem assessments, and interest shall only be due, payable, and
19 delinquent as provided in Sections 197.303 – 197.3047, Florida Statutes, and this Ordinance.

20 **SECTION 3. TAX DEFERRAL APPLICATION:**

21 (1) The application for deferral must be made annually upon a form prescribed by
22 the Florida Department of Revenue (“Department”) and furnished by the Tax Collector. The
23 application form must be signed upon oath by the applicant before an officer authorized by the
24 state to administer oaths. The Tax Collector may require the applicant to submit any other
25 evidence and documentation as deemed necessary by the Tax Collector in considering the
26 application. The application form must provide notice to the applicant of the manner in which
27 interest is computed. Each application form must contain an explanation of the conditions to be
28 met for approval and the conditions under which deferred taxes and interest become due,
29 payable, and delinquent. Each application form must clearly state that all deferrals granted
30 pursuant to Sections 197.303 – 197.3047, Florida Statutes, constitute a lien on the applicant’s
31 property.

1 (2)(a) The Tax Collector shall consider and render his or her findings, determinations,
2 and decision on each annual application for a tax deferral for recreational and commercial
3 working waterfronts within 45 days after the date the application is filed. The Tax Collector
4 shall exercise reasonable discretion based upon applicable information available under this
5 section. The determinations and findings of the Tax Collector as provided for in this paragraph
6 are not quasi judicial and are subject exclusively to review by the Palm Beach County Value
7 Adjustment Board (“VAB”) as provided in this section. If the Tax Collector finds the
8 applicant is entitled to the tax deferral, the Tax Collector shall approve the application and file
9 the application in the Tax Collector’s permanent records. If the Tax Collector finds that the
10 applicant is not entitled to the deferral, the Tax Collector shall send a notice of disapproval
11 within 45 days after the date the application is filed, giving reasons for the disapproval to the
12 applicant. The notice must be sent by personal delivery or registered mail to the mailing
13 address given by the applicant in the application and must be filed in the Tax Collector’s
14 permanent records. The original notice of disapproval sent to the applicant shall advise the
15 applicant of the right to appeal the decision of the Tax Collector to the VAB and the procedure
16 for filing such an appeal.

17 (b) An appeal of the decision of the Tax Collector to the VAB must be in writing on
18 a form prescribed by the Department and furnished by the Tax Collector. The appeal must be
19 filed with the VAB within 20 days after the applicant’s receipt of the notice of disapproval.
20 The VAB must approve or disapprove the appeal within 30 days after receipt of the appeal.
21 The VAB shall review the application and the evidence presented to the Tax Collector upon
22 which the applicant based his or her claim for tax deferral and shall hear the applicant in
23 person, or by agent on the applicant’s behalf, on his or her right to the tax deferral. The VAB
24 shall reverse the decision of the Tax Collector and grant a tax deferral to the applicant if, in its
25 judgment, the applicant is entitled to the tax deferral or shall affirm the decision of the Tax
26 Collector. Action by the VAB is final unless the applicant, the Tax Collector or other
27 lienholder, within 15 days after the date of disapproval of the application by the VAB, files in
28 the Palm Beach County Circuit Court, a de novo proceeding for a declaratory judgment or other
29 appropriate proceeding.

30 (3) Each application must contain a list of, and the current value of, all outstanding
31 liens on the applicant’s property.

1 (4) For approved applications, the date of receipt by the Tax Collector of the
2 application for tax deferral shall be used in calculating taxes due and payable net of discounts
3 for early payment.

4 (5) If such proof has not been furnished with a prior application, each applicant
5 shall furnish proof of fire and extended coverage insurance in an amount that is in excess of the
6 sum of all outstanding liens and deferred taxes and interest with a loss payable clause to the
7 Tax Collector.

8 (6) The Tax Collector shall notify the Palm Beach County Property Appraiser
9 (“Property Appraiser”) in writing of those parcels for which taxes have been deferred under this
10 Ordinance.

11 (7) The Property Appraiser shall promptly notify the Tax Collector of changes in
12 ownership or use of properties that have been granted a tax deferral.

13 **SECTION 4. DEFERRED PAYMENT TAX CERTIFICATES:**

14 (1) The Tax Collector shall notify the Board of the amount of taxes and non-ad
15 valorem assessments deferred which would otherwise have been collected for the Board. The
16 County shall then, at the time of the tax certificate sale held pursuant to Section 197.432,
17 Florida Statutes, strike each certificate off to the County. Certificates issued pursuant to this
18 section are exempt from the public sale of tax certificates held pursuant to Section 197.432,
19 Florida Statutes.

20 (2) The certificates so held by the County shall bear interest at a rate equal to the
21 semiannually compounded rate of 0.5 percent plus the average yield to maturity of the long-
22 term fixed-income portion of the Florida Retirement System investments as of the end of the
23 quarter proceeding the date of the sale of the deferred payment tax certificates; however, the
24 interest rate may not exceed 9.5 percent.

25 **SECTION 5. TERMINATION OF TAX DEFERRAL:**

26 (1) If there is a change in use or ownership of the tax-deferred property such that the
27 owner is no longer entitled to claim the property as a recreational or commercial working
28 waterfront facility, or there is a change in the legal or beneficial ownership of the property, or
29 the owner fails to maintain the required fire and extended insurance coverage, the total amount
30 of deferred taxes and interest for all previous years becomes due and payable November 1 of
31 the year in which the change in use or ownership occurs or on the date failure to maintain

1 insurance occurs, and is delinquent on April 1 of the year following the year in which the
2 change in use or ownership or failure to maintain insurance occurs.

3 (2) Whenever the Property Appraiser discovers there has been a change in the use
4 or ownership of the property that has been granted a tax deferral, the Property Appraiser shall
5 notify the Tax Collector in writing of the date such change occurs, and the Tax Collector shall
6 collect any taxes and interest due or delinquent.

7 (3) During any year in which the total amount of deferred taxes, interest, and all
8 other unsatisfied liens on the property exceed 85 percent of the assessed value of the property,
9 the Tax Collector shall immediately notify the owner of the property on which taxes and
10 interest have been deferred the portion of taxes and interest which exceed 85 percent of the
11 assessed value of the property is due and payable within 30 days after receipt of the notice.
12 Failure to pay the amount due shall cause the total amount of deferred taxes and interest to
13 become delinquent.

14 (4) If deferred taxes become delinquent under this section, on or before June 1
15 following the date the taxes become delinquent, the Tax Collector shall sell a tax certificate for
16 the delinquent taxes and interest in the manner provided by Section 197.432, Florida Statutes.

17 **SECTION 6. PREPAYMENT OF DEFERRED TAXES:**

18 (1) All or part of the deferred taxes and accrued interest may at any time be paid to
19 the Tax Collector by:

20 (a) The owner of the property, or

21 (b) The next of kin of the owner, heir of the owner, child of the owner, or
22 any person having or claiming a legal or equitable interest in the property, if no
23 objection is made by the owner within 30 days after the Tax Collector notifies the
24 owner of the fact that such payment has been tendered.

25 (2) Any partial payment made pursuant to this section shall be applied first to
26 accrued interest.

27 **SECTION 7. DISTRIBUTION OF PAYMENT OF DEFERRED TAXES:**

28 When any deferred taxes or interest is collected, the Tax Collector shall maintain a
29 record of the payment, setting forth a description of the property and the amount of taxes or
30 interest collected for the property. The Tax Collector shall distribute payments received in

1 accordance with the procedures for distributing ad valorem taxes or redemption moneys as
2 prescribed in Chapter 197, Florida Statutes.

3 **SECTION 8. CONSTRUCTION:**

4 The provisions of this Ordinance shall not prevent the collection of personal property
5 taxes that become a lien against tax-deferred property, defer payment of special assessments to
6 benefited property other than those specifically allowed to be deferred, or affect any provision
7 of any mortgage or other instrument relating to property requiring a person to pay ad valorem
8 taxes or non-ad valorem assessments. If any mortgagee shall elect to pay the taxes when an
9 applicant qualifies for tax deferral under this Ordinance, then such election shall not give the
10 mortgagee the right to foreclose.

11 **SECTION 9. PENALTIES:**

12 (1) The following penalties shall be imposed on any person who willfully files
13 information required under this Ordinance which is incorrect:

14 (a) The person shall pay the total amount of taxes and interest deferred,
15 which amount shall immediately become due;

16 (b) The person shall be disqualified from filing a tax deferral application for
17 the next 3 years; and

18 (c) The person shall pay a penalty of 25 percent of the total amount of taxes
19 and interest deferred.
20

21 (2) Any person against whom the penalties prescribed in this section have been
22 imposed may appeal the penalties imposed to the VAB within 30 days after the penalties are
23 imposed.

24 **SECTION 10. REPEAL OF LAWS IN CONFLICT:**

25 All local laws and ordinances in conflict with any provisions of this Ordinance are
26 hereby repealed to the extent of such conflict.

27 **SECTION 11. SEVERABILITY:**

28 If any section, paragraph, sentence, clause, phrase, or word of this Ordinance is for any
29 reason held by a Court of competent jurisdiction to be unconstitutional, inoperative, or void,
30 such holding shall not affect the remainder of this Ordinance.

1 **SECTION 12. INCLUSION IN THE CODE OF LAWS AND ORDINANCES:**

2 The provisions of this Ordinance shall become and be made a part of the Palm Beach
3 County Code. The sections of this Ordinance may be renumbered or relettered to accomplish
4 such, and the word "ordinance" may be changed to "section," "article," or other appropriate
5 word.

6 **SECTION 13. CAPTIONS:**

7 The captions, section headings, and section designations used in this Ordinance are for
8 convenience only and shall have no effect on the interpretation of the provisions of this
9 Ordinance.

10 **SECTION 14. EFFECTIVE DATE:**

11 The provisions of this Ordinance shall become effective upon filing with the
12 Department of State.
13

14 APPROVED and ADOPTED by the Board of County Commissioners of Palm Beach
15 County, Florida, on this the ____ day of _____, 20 ____.

16 SHARON R. BOCK,
17 CLERK & COMPTROLLER

PALM BEACH COUNTY, FLORIDA, BY ITS
BOARD OF COUNTY COMMISSIONERS

18
19
20

21 By: _____
22 Deputy Clerk

By: _____
Tony Masilotti, Chairman

23
24 APPROVED AS TO FORM AND
25 LEGAL SUFFICIENCY

26
27

28 By: _____
29 County Attorney

30

31 EFFECTIVE DATE: Filed with the Department of State on the ____ day of
32 _____, 20 ____.

33

34