

PALM BEACH COUNTY

BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: 03/09/10 [X] Consent [] Regular
[] Workshop [] Public Hearing
Department
Submitted By: Office of Financial Management & Budget

I. Executive Brief

Motion and Title: Staff recommends motion to approve: budget transfer of \$36,000 from the School Impact Fee Zone 2 reserve account to the School Impact Fee Zone 2 appropriation account.

Summary: An applicant filed for bankruptcy, canceled permits for part of a proposed development project and applied for a refund of \$57,874 of school impact fees paid in 2006. The Impact Fee Manager initially denied the application because the refund request did not meet Article 13 requirements. The applicant then filed a lawsuit against Palm Beach County Government. Following a review of applicable bankruptcy laws and other pertinent factors, the School Board passed a resolution authorizing Palm Beach County Government to pay the school impact fee refund out of school impact fee revenues on deposit with the County that would be remitted to the School District. This budget transfer allows for the appropriation of school impact fee impact fee revenues collected in a prior year so that the refund may be paid and the lawsuit resolved.

(District 7, LB)

Background and Policy Issues: Waterbrook Peninsula filed for bankruptcy, canceled part of a proposed development project, and applied for a refund of road, park, public building, and school impact fees paid in conjunction with the canceled part of the project. The Impact Fee Manager initially denied the refund request because the refund application was filed more than three years following the payment of the fees. In addition, the school impact fee refund request was also denied because the school impact fees had already been spent and remitted to the School District.
(continued on Page 3)

Attachments:

- A. Budget Transfer
- B. School Board Resolution

Recommended By: Elizabeth Rose 3/2/2010
Department Director Date
Approved By: Joe Baker 3/3/2010
County Administrator Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	<u>2010</u>	<u>2011</u>	<u>2012</u>	<u>2013</u>	<u>2014</u>
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	\$36,000	_____	_____	_____	_____
Operating Revenues	_____	_____	_____	_____	_____
Net Fiscal Impact	\$36,000				
Is Item Included In Current Budget?	Yes _____	No <input checked="" type="checkbox"/>			
Budget Account No.:	Fund _____	Department _____	Unit _____	Object _____	
	Reporting Category _____	Various			

B. Recommended Sources of Funds/Summary of Fiscal Impact:
 There will be no impact on ad valorem funds. Previously collected school impact fees will be refunded to the applicant.

C. Department Fiscal Review:

Kellie M. Groop
 Impact Fee Manager
 Ret 2/24/10

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Administration Comments:

<u><i>ML: JLL</i></u> 3/2/10	<u>N/A</u>
OFMB	Contract Administration
<i>sw 3/2/10 PM 3-1-10</i>	

B. Legal Sufficiency:

Seaman D.
 Assistant County Attorney

C. Other Department Review:

 Department Director

Revised 02/92
 ADM FORM 01
 (This Summary is not to be used as a basis for payment)

(Continued from Page 1)

Waterbrook Peninsula then filed an appeal of the Impact Fee Manager's decision followed almost immediately by a lawsuit against Palm Beach County Government.

Based on a legal review by the County Attorney's Office, it was determined that bankruptcy laws supersede Article 13 regulations on time limitation of impact fee refunds. Accordingly, the Impact Fee Manager refunded the road, park, and public building impact fees to Waterbrook Peninsula. However, since the school impact fees had already been spent and remitted to the School District, they were not included in the refund.

The School District and Palm Beach County attorney's offices then negotiated a resolution of the legal matter wherein Waterbrook Peninsula would accept a \$34,776 (\$36,000 less 3.4% admin fee) refund of school impact fees to satisfy all claims against Palm Beach County Government and potential claims against The Palm Beach County School District, and The Palm Beach County Tax Collector. The School Board approved a resolution authorizing Palm Beach County Government to pay the school impact fee refund out of school impact fee revenues on deposit with the County that were to be remitted to the School District. A copy of the resolution is attached.

2010

0425

BOARD OF COUNTY COMMISSIONERS
PALM BEACH COUNTY
BUDGET Transfer

FUND 1264 - School Impact Fee Zone 2

ACCOUNT NUMBER	ACCOUNT NAME	ORIGINAL BUDGET	CURRENT BUDGET	INCREASE	DECREASE	ADJUSTED BUDGET	EXPENDED/ ENCUMBERED AS OF 03/09/10	REMAINING BALANCE
<u>School Impact Fees</u>								
1264-743-7500	4958 Refund Prior Yrs Revenues	0	0	36,000	0	36,000	0	36,000
<u>RESERVES</u>								
1264-743-9902	9902 Reserves Restricted Projects	477,622	477,622	0	36,000	441,622		
				36,000	36,000			

SIGNATURE

DATE

By Board of County Commissioners
At Meeting of 03/09/10

Impact Fee Office

Kellie M. Joseph

2.19.2010 *RAB*

Administration / Budget Approval

OFMB Department – Posted

Deputy Clerk to the
Board of County Commissioners

RESOLUTION OF THE SCHOOL BOARD OF PALM BEACH COUNTY, FLORIDA

Agenda Item FM-2

January 27, 2010

The undersigned, being the Chairman and Superintendent of The School Board of Palm Beach County, Florida, a corporate body politic (the "School Board"), do hereby certify that the following is a true and correct copy of a resolution adopted by the School Board at a duly authorized and held meeting at which a quorum of the School Board was present and voting throughout:

WHEREAS, Palm Beach County ("County") assesses impact fees for roads, parks, public buildings and schools each time that a building permit for a new residential unit is issued; and,

WHEREAS, the school impact fees collected by the County are periodically remitted to the School Board, on a reimbursement basis, upon request of the School Board's Treasurer; and,

WHEREAS, on March 7, 2006, Waterbrook Peninsula, LLC ("Waterbrook") paid to the County a total of \$57,874.00 for school impact fees associated with the construction of 20 residential units; and

WHEREAS, on June 23, 2006, after deducting its 2% administrative collection fee, the County remitted to the School Board \$56,716.52 in school impact fees associated with the Waterbrook's 20 residential units, as part of a periodic reimbursement payment in the total amount of \$26,063,000.00; and

WHEREAS, the 20 residential units were never constructed by Waterbrook and on June 25, 2008, Waterbrook filed for bankruptcy under Chapter 11 of the Bankruptcy Code; and

WHEREAS, as part of the bankruptcy proceeding, Waterbrook demanded from the County and the Palm Beach County Tax Collector's Office (PBCTCO) a refund of the impact fees it paid for the 20 unbuilt units; and

WHEREAS, the County refunded to Waterbrook approximately \$77,000 with regard to impact fees collected for roads, parks and public buildings; and

WHEREAS, the County did not refund any portion of the \$56,716.52 associated with the school impact fees because these funds had already been remitted to the School Board; and

WHEREAS, the \$56,716.52 was allocated to a school construction project and expended following receipt in 2006; and

WHEREAS, the County is currently holding approximately \$2,326,000.00 in school impact fees, including approximately \$487,661 in Zone 2, the zone where the Waterbrook project was located; and

WHEREAS, County staff has agreed to refund the school impact fees paid by Waterbrook out of the funds held for Zone 2 by the County; and

WHEREAS, the PBCTCO has no objection to County's refund of school impact

fees paid by Waterbrook out of the funds held for Zone 2 by the County; and

WHEREAS, Waterbrook has agreed to accept a refund in the amount of \$34,776.00, exclusive of the County's 3.4% administrative refund fee in full and complete satisfaction of its claim against the County and the PBCTCO; and

NOW, THEREFORE, BE IT RESOLVED, that the School Board does hereby authorize the County to deduct \$36,000.00 from the Zone 2 school impact fees currently held by the County and, after deduction of the County's 3.4% administrative refund fee, remit the balance of \$34,776.00 to Waterbrook; and

BE IT FURTHER RESOLVED, that the Superintendent and Chairman, individually and independent of any others, be and are hereby authorized, empowered and directed, for and on behalf of the School Board, to make, execute and deliver any and all documents required, or otherwise deemed reasonably necessary by the County, for the School Board to authorize the County to refund the school impact fees to Waterbrook; and

BE IT FURTHER RESOLVED, that the Superintendent and Chairman, individually and independent of any others, be and are hereby authorized, empowered and directed, for and on behalf of the School Board, to take all such other action required, or otherwise deemed reasonably necessary by the County, for the School Board to authorize the County to refund the school impact fees to Waterbrook, and to otherwise carry out the purpose and intent of this Resolution; and

BE IT FURTHER RESOLVED, that any and all actions previously taken by the current or any previous Chairman, Superintendent and/or any of their respective designees, in connection with authorizing the County to refund the impact fees to Waterbrook, or carrying out the purpose and intent of this Resolution is hereby ratified, approved and confirmed in all respects.

THE SCHOOL BOARD OF PALM BEACH COUNTY, FLORIDA, a corporate body politic

By: Monroe Benaim M.D.
Monroe Benaim, M.D., Chairman

ATTEST:

By: Arthur C. Johnson
Arthur C. Johnson, Ph.D., Superintendent

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

Blair Lewis
School Board Attorney