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Gina Peebles, Assistant County Manager
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Email delivery only

Re: ISOB Questions

Dear Gina:

At your request, I have researched two issues that have arisen in recent oversight board meetings and offer the following analysis.

Issue #1: May the City of Alachua expend its share of surtax funds on improvements to the Alachua County School Board's Alachua Elementary School?

Short answer: Yes, with the proper documentation and a new agreement between the City and School Board.

Discussion: The 1980 Agreement between the School Board and City of Alachua predates the surtax statute and does not qualify as an interlocal agreement between and among Alachua County, the municipalities and the School Board under Sec. 212.055(2)(c), Florida Statutes. Therefore, although the parties could continue to exercise their partnership under that 43-year-old Agreement, surtax monies may not be used. The Agreement does not clearly spell out the times when public access is ensured and it does not provide guardrails that ensure funds are expended on eligible capital improvements and infrastructure as defined in the statute. It is recommended that the new agreement require the School Board to disgorge funds to the City in the event it closes public access (or otherwise discontinues use of the improvements paid for by the surtax) and do that disgorgement on an amortized schedule (i.e. if before 5 years, 100% disgorgement; if between 5 and 10 years, 50%; and, if after 10 years, 25%). Further, it is recommended that the new agreement make clear that these surtax expenditures are for permitted uses pursuant to Section 212.055, Florida Statutes and Alachua County's implementing Resolution and Ordinance 2022-08.

Issue #2: May "new" surtax funds be expended on Operation and Maintenance of capital improvements or acquisitions funded under the "old" surtax?

Short answer: No.

Discussion: Sec. 212.055(2)(g), Florida Statutes, states:

(g) Notwithstanding paragraph (d), a county having a population greater than 75,000 in which the taxable value of real property is less than 60 percent of the just value of real property for ad valorem tax purposes for the tax year in which an infrastructure surtax referendum is placed before the voters, and the municipalities within such a county, may use the proceeds and interest of the surtax for operation and maintenance of parks and recreation programs and facilities **established with the proceeds of the surtax** throughout the duration of the surtax levy or while interest earnings accruing from the proceeds of the surtax are available for such use, whichever period is longer. **(Emphasis added)**

It is undisputed that so long as Alachua County meets the population and taxable value threshold of this provision, the County's surtax funds may be spent for "operation and maintenance of parks and recreation programs...". The issue is whether the time frame in which those surtax funds may be expended on O & M is continuous. It is not. It is limited to the term of each discrete surtax, based on the express statutory language.

Review of the key statutory language "...established with the proceeds of the surtax..." in the context of the County's implementing Ordinance 2022-08 and a statutory mandate to levy only one surtax at a time demonstrates that each enacted "surtax" in Alachua County is discrete. That means proceeds of a surtax may only be used for O & M on capital facilities built during the term of the same surtax.

Specifically, the half-cent WSPP Surtax Ordinance 16-06 was approved by referendum and took effect on January 1, 2017. The voters on November 8, 2022, approved repeal of the WSPP Surtax and replaced it with the new 1.0 cent Infrastructure Surtax, which is in effect now (Ordinance 2022-08). Florida law authorizes the County Commission to levy and have in effect only one local government infrastructure surtax at a time. (See, Ordinance 2022-08). Therefore, while the current Ordinance Section 4(a)(ii) [Use of Surtax Proceeds] permits use of surtax funds to be expended "(ii) to create, improve, operate and maintain parks and recreational facilities..." the statute requires O&M to also be paid for by current surtax proceeds.

This conclusion is in harmony with the rationale of statutory provisions (and Attorney General Opinions) that prohibit use of new surtax revenue to service bond or other debt incurred prior to the surtax referendum. Surtax revenue can only be used for new bond indebtedness.

Sincerely,

/s/ PATRICE BOYES, ESQ.

Patrice Boyes, Esq.