



# Agenda Report

2725 Judge Fran Jamieson  
Way  
Viera, FL 32940

## Unfinished Business

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I.2.

7/23/2024

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### Subject:

Resolution Calling for Referendum Election Regarding a Non-Ad Valorem Special Assessment for Road Paving in Canaveral Groves (District 1)

### Fiscal Impact:

None.

### Dept/Office:

District 1 Commission Office

### Requested Action:

It is requested that the Board of County Commissioners approve a resolution calling for a local referendum election concurrent with the November 2024 general election to determine if a non-ad valorem special assessment shall be levied to fund the paving of certain County-maintained dirt roads in Canaveral Groves.

### Summary Explanation and Background:

On April 24, 2024, the Board of County Commissioners directed the County Attorney to prepare a resolution calling for a local referendum election to determine if a non-ad valorem special assessment shall be levied to fund the paving of certain County-maintained roads in Canaveral Groves. The Board also directed staff to estimate the costs of the road paving project, evaluate financial options, and approximate the amount of the assessment upon benefitted properties.

Based on currently available preliminary cost estimates and 20-year financing at the rate of 4%, the annual per parcel assessment is projected to be approximately \$1,500 per year, or \$30,000 over 20 years. Actual assessment rates may vary depending on the apportionment methodology to be approved by the Board at a future date, changes in construction cost estimates during the design phase, and other factors. The following ballot language is proposed for the referendum election:

REFERENDUM TO DETERMINE WHETHER TO PAVE CERTAIN UNPAVED ROADS THROUGH THE  
LEVY OF NON-AD VALOREM SPECIAL ASSESSMENTS.

Shall the Board of County Commissioners of Brevard County, Florida, be authorized to levy a non-ad valorem special assessment to pave certain County-maintained unpaved roads within Canaveral Groves at an estimated annual assessment amount of \$1,500 per parcel over twenty (20) years beginning in 2025, such assessment to be levied only upon parcels abutting or otherwise receiving a special benefit from the road paving project?

☐ YES, FOR THE NON-AD VALOREM ASSESSMENT  
☐ NO, AGAINST THE NON-AD VALOREM ASSESSMENT

Section 5.4.1 of the Brevard County Home Rule Charter prohibits the County from levying new non-ad valorem special assessments without the approval of the electors residing within the boundaries of the district where they are proposed to be levied at a general election or special election called for approval of the assessment. This requirement excludes Municipal Service Benefit Units, and thus would not apply if the special assessment is implemented via a Board-created MSBU. However, even if not required, the referendum result could be treated as a non-binding referendum within the area where the MSBU is to be established.

If the Board adopts the proposed resolution and if a majority of electors voting approve the special assessment, staff will initiate the process for utilizing the uniform method for the levy, collection, and enforcement of non-ad valorem assessments set forth in section 197.3632, Florida Statutes. That process will require mailed advertisements, public hearings, and future Board action to implement the assessment.

There are miles of County-maintained unpaved roads in the Canaveral Groves area. Property owners in the area would benefit significantly from the paving of these roads. Generally, it is less expensive for the County to maintain paved roads than unpaved roads. The unpaved roads that are the subject of the proposed resolution and referendum election are:

Cangro Street (west of Tangerine Street)	Tangerine Street
Osprey Street (south of Cangro Street)	Oxbury Avenue
Tapscott Avenue	Kumquat Avenue
Papaya Street	Oxeye Avenue
Tokay Avenue	Lemon Street
Vacaro Avenue	Shadwell Avenue
Paddington Street	Navel Street
Valdine Avenue	Scarlett Avenue
Lambros Street	Jake Avenue
Ocala Street	Simpson Place (Jake Ave. to Ocala St.)
Banana Avenue	Calamondin Avenue
Palm Avenue	Grapehill Street
Newburn Street	Showdow Street
Temple St. (Showdow St. to Citrus Blvd.)	West Little Court
East Little Court	Seville Avenue
Bahia Street (south of Seville Avenue)	Erica Street
	Sheridan Avenue

The County has a Municipal Service Benefit Unit (MSBU) program in place that provides residents in already developed and established communities with a funding mechanism for specific infrastructure improvements such as road paving, water, and sanitary sewer line installation. The MSBU program allows residents to request improvements and finance them at a generally low interest rate through a cooperative relationship with the County. This process requires a citizen-initiated petition and the affirmative vote of at least 66.66% of the affected property owners. In an area such as Canaveral Groves with many unpaved roads, it can be a piecemeal process and result in unsystematic, inefficient partial measures taken over a long period of time.

Another mechanism to fund the retrofitting of existing developments is for the Board of County Commissioners to implement a non-ad valorem special assessment. This would also involve the creation of a municipal services benefit unit, but not through the petition initiated MSBU program. Instead, the special assessment process would be commenced upon the approval of a simple majority of the electors residing within the boundaries of the district where the assessment is proposed to be levied at a referendum held concurrently with the November general election.

Special assessments are a Home Rule revenue source available to the County to fund all or some portion of the costs of capital improvements or essential services. Road paving and improvement projects may be funded through special assessments. There are two basic requirements under Florida law for a valid special assessment:

1. The assessed property must receive a special benefit; and
2. The assessment must be fairly and reasonably apportioned.

### ***Special Benefit***

Each assessed property must receive a special benefit from the improvement or service funded by the assessment. The special benefit can include an increase in the property's market value, or heightened use and enjoyment of the property.

Properties abutting a street paving project are presumed to receive a special benefit from the project. As the Florida Supreme Court explained, "The whole theory of special assessments for improvements is based upon the doctrine that the property against which the assessment is levied derives some special benefit from the local improvement. In the matter of street paving, it is presumed or assumed that all property abutting on a street to be improved will or may be benefited, and upon that theory such special assessments are permitted without having to establish that the property will be benefited." *Atlantic Coast Line R. Co. v. City of Gainesville*, 91 So. 118, 283-84 (Fla. 1922). Therefore, the proposed special assessment would be assessed only against properties abutting or otherwise directly benefitting from the road paving program.

### ***Fair and Reasonable Apportionment***

The assessment must be fairly and reasonably apportioned among the properties receiving the special benefit. The assessment rate must be based on the special benefit accruing to each property in the benefit unit. The Board has wide discretion in choosing an apportionment method that best meets local needs and is not required to follow a statutory formula. Assessments can be allocated by any method so long as the Board determines the method is fair and reasonable. Assessment methodologies can be based upon, but are not limited to, the following:

- Property frontage (typically in linear feet).
- Platted lot.
- Buildable lot.
- Square footage
- Any combination of these methods deemed to be equitable by the Board.

**Clerk to the Board Instructions:**

Please provide a copy of the executed Resolution and Clerk's Memorandum to the Supervisor of Elections, the District 1 Commission Office, the County Manager's Office, and the County Attorney's Office.



Kimberly Powell, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

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Kimberly.Powell@brevardclerk.us

July 24, 2024

**M E M O R A N D U M**

**TO:** Morris Richardson, County Attorney

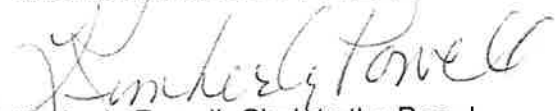
**RE:** Item I.2., Resolution Calling for Referendum Election Regarding a Non-Ad Valorem Special Assessment for Road paving in Canaveral Groves

The Board of County Commissioners, in regular session on July 23, 2024, adopted Resolution No. 24-069, calling for a local referendum election concurrent with the November 2024 general election, to determine if a non-ad valorem special election assessment shall be levied to fund the paving of certain County-maintained dirt roads in Canaveral Groves. Enclosed is fully-executed Resolution.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS  
RACHEL M. SADOFF, CLERK



Kimberly Powell, Clerk to the Board

Encl. (1)

cc: Each Commission District  
Supervisor of Elections  
County Manager

**RESOLUTION 2024- 069**

**A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF  
BREVARD COUNTY, FLORIDA, ORDERING AND PROVIDING FOR AN  
ELECTION ON A NON-AD VALOREM SPECIAL ASSESSMENT TO  
FINANCE THE PAVING OF CERTAIN COUNTY-MAINTAINED  
UNPAVED ROADS IN CANAVERAL GROVES; AND PROVIDING FOR  
AN EFFECTIVE DATE.**

**WHEREAS**, there are miles of County-maintained unpaved roads in the Canaveral Groves area of Brevard County; and

**WHEREAS**, the Board of County Commissioners of Brevard County, Florida, hereinafter the Board, has determined that the property owners residing within the boundaries of the area where the special assessment is proposed would benefit significantly from the paving of these roads; and

**WHEREAS**, generally, it is less expensive for the County to maintain paved roads than unpaved roads; and

**WHEREAS**, the Board finds that the property owners residing within the boundaries of the area where the special assessment is proposed to be levied should be given the opportunity to determine whether a non-ad valorem special assessment should be imposed to pave certain County-maintained dirt roads in the Canaveral Groves area.

**NOW, THEREFORE**, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, as follows:

**Section 1. RECITALS.** The above recitals are true and correct and incorporated herein by this reference.

**Section 2. FINDINGS.** It is hereby found and determined by the Board as follows:

- A. On April 23, 2024, the Board approved a local referendum election be held to allow the electors in the affected area to vote on whether a non-ad valorem special assessment could be levied to fund the paving of certain County-maintained dirt roads in Canaveral Groves.
- B. Pursuant to Section 125.01(1), Florida Statutes, Section 5.4 of the Brevard County Charter, and other applicable State and County laws, rules, and regulations, the Board is authorized to impose non-ad valorem special assessments upon approval by a majority of the electors residing within the boundaries of the affected area.

- C. November 5, 2024, is an appropriate and desirable date to conduct the non-ad valorem special assessment election.
- D. The unpaved roads upon which the non-ad valorem special assessment may be spent include those depicted in **Exhibit A** and listed in **Exhibit B**, both of which are attached hereto and incorporated herein by this reference.
- E. The non-ad valorem assessment will provide special benefits to those properties within the referendum area where the assessment would be levied. The area where the non-ad valorem assessment would be levied consists of those properties abutting an unpaved road to be paved using funds from the assessment, or which will otherwise receive a special benefit from the road paving project.
- F. The Board directs the Supervisor of Elections to create a referendum area in-line with **Exhibit A** and **Exhibit B** consisting of electors residing in properties that abut an unpaved road to be paved using funds from the non-ad valorem assessment or which will otherwise receive a special benefit from the road paving project.

**Section 3. PLACES OF VOTING, INSPECTORS, CLERKS.** As provided by law, the polls will be open at the voting places on the date of such non-ad valorem assessment referendum. All qualified electors residing within the area where the non-ad valorem assessment is proposed to be levied shall be entitled and permitted to vote at such non-ad valorem assessment referendum on the proposition provided below. The places of voting and the inspectors and clerk for the non-ad valorem assessment referendum shall be those designated by the Supervisor of Elections of Brevard County.

**Section 4. OFFICIAL BALLOT.** The form of ballot to be used in the non-ad valorem assessment referendum shall contain a statement of the description of the proposed assessment, and shall be in substantially the following form:

OFFICIAL BALLOT  
BREVARD COUNTY, FLORIDA  
NOVEMBER 5, 2024

REFERENDUM TO DETERMINE WHETHER TO PAVE  
CERTAIN UNPAVED ROADS THROUGH THE LEVY OF  
NON-AD VALOREM SPECIAL ASSESSMENTS.

SHALL THE BOARD OF COUNTY COMMISSIONERS OF  
BREVARD COUNTY, FLORIDA, BE AUTHORIZED TO LEVY  
A NON-AD VALOREM SPECIAL ASSESSMENT TO PAVE

CERTAIN COUNTY-MAINTAINED UNPAVED ROADS WITHIN CANAVERAL GROVES AT AN ESTIMATED ANNUAL ASSESSMENT AMOUNT OF \$1,500 PER PARCEL OVER TWENTY (20) YEARS BEGINNING IN 2025, SUCH ASSESSMENT TO BE LEVIED ONLY UPON PARCELS ABUTTING OR OTHERWISE RECEIVING A SPECIAL BENEFIT FROM THE ROAD PAVING PROJECT?

\_\_\_\_ YES, FOR THE NON-AD VALOREM ASSESSMENT

\_\_\_\_ NO, AGAINST THE NON-AD VALOREM ASSESSMENT

**Section 5. ABSENTEE VOTING.** The form of ballots to be used in such bond referendum for absentee voters shall be the same as used at the polling places for said referendum.

**Section 6. PRINTING OF BALLOTS.** The Supervisor of Elections for Brevard County is hereby authorized and requested to: (a) have sample ballots printed and to deliver such sample ballots to the inspectors and clerks on or before the date and time for opening of the polls for such special assessment referendum, and (b) have official ballots for use in such special assessment referendum election printed and delivered in accordance with law.

**Section 7. NOTICE OF REFERENDUM.** Notice of the referendum shall be published in a newspaper of general circulation in the County or on the County's website as provided in Section 50.0311, Florida Statutes, at least twice, once in the fifth week and once in the third week prior to the week in which the referendum is held, the date of first publication in said newspaper to be at least thirty (30) days before said referendum, in the manner provided in Section 100.342, Florida Statutes.

**Section 8. PAYMENT OF REFERENDUM EXPENSES.** The County Manager is hereby authorized and directed to approve the payment of lawful expenses associated with conducting the special assessment election and the clerk of the Board of County Commissioners is hereby authorized and directed to disburse funds necessary to pay such expenses.

**Section 9. VOTER REGISTRATION BOOKS.** The Supervisor of Elections for Brevard County is hereby authorized and requested to furnish to the inspectors and clerks at each place where the votes are to be cast in such special assessment referendum, applicable portions of the registration books or certified copies thereof showing the names of the qualified electors residing in the County.



**Section 10. ELECTION PROCEDURE.** The special assessment referendum shall be held and conducted in the manner prescribed by law and shall, as soon as practicable, be returned to and canvassed by the Board of County Commissioners of Brevard County, Florida. The result shall show the number of qualified electors who voted at such referendum and the number of votes cast respectively for and against approval of the special assessment. Upon certification by the Board of County Commissioners, the results shall be recorded in the minutes of the Board.

**Section 11. ELECTION RESULTS.** If the majority of the votes cast at such referendum shall be "YES, FOR THE NON-AD VALOREM ASSESSMENT," the Board of County Commissioners may consider levying a non-ad valorem assessment utilizing the uniform method for the levy, collection, and enforcement of non-ad valorem assessments provided in Section 197.3632, Florida Statutes.

**Section 12. SEVERABILITY.** In the event that any word, phrase, clause, sentence, or paragraph hereof shall be held invalid by any court of competent jurisdiction, such holding shall not affect any other word, clause, sentence, or paragraph hereof.

**Section 13. REPEALING CLAUSE.** All resolutions or other actions of the County which are in conflict herewith are hereby repealed to the extent of such conflict or inconsistency.

**Section 14. EFFECTIVE DATE.** This Resolution shall take effect immediately upon its adoption.

**DONE AND ADOPTED** in Regular Session of the Board of County Commissioners of Brevard County, Florida, this 23rd day of July, 2024.

ATTEST:

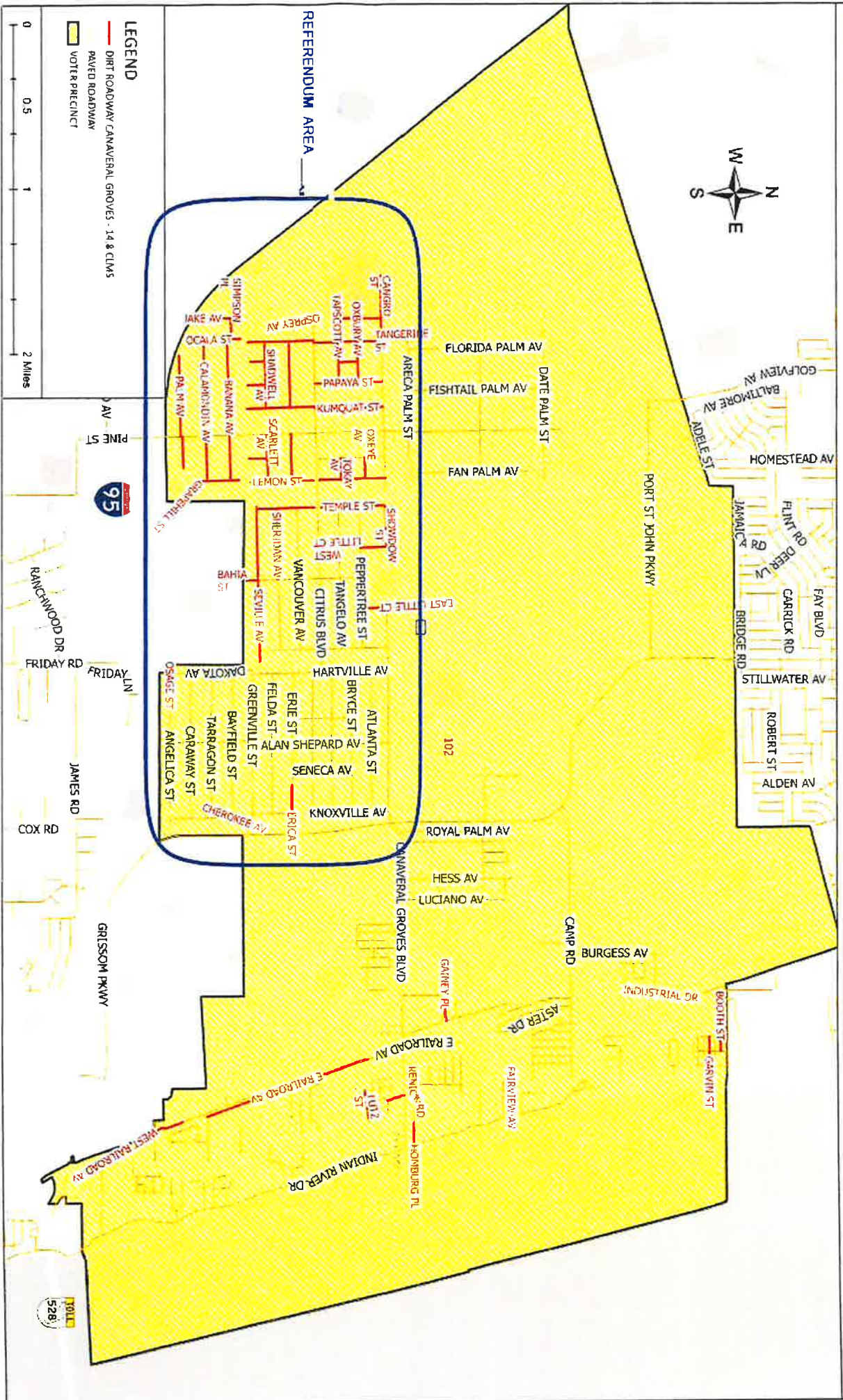
  
Rachel Sadoff, Clerk

**BOARD OF COUNTY COMMISSIONERS OF  
BREVARD COUNTY FLORIDA**

By: 

Jason Steele, Chair

As approved by the Board 07-23-2024.



**ROADS TO BE PAVED USING FUNDS FROM NON-AD VALOREM SPECIAL ASSESSMENT**

Bahia Street (south of Seville Avenue)  
Banana Avenue  
Calamondin Avenue  
Cangro Street (west of Tangerine Street)  
East Little Court  
Erica Street  
Grapehill Street  
Jake Avenue  
Kumquat Avenue  
Lambros Street  
Lemon Street  
Navel Street  
Newburn Street  
Ocala Street  
Osprey Avenue (south of Cangro Street)  
Oxbury Avenue  
Oxeye Avenue  
Paddington Street  
Palm Avenue  
Papaya Street  
Scarlett Avenue  
Seville Avenue  
Shadwell Avenue  
Sheridan Avenue  
Showdow Street  
Simpson Place (Jake Ave. to Ocala St.)  
Tangerine Street  
Tapscott Avenue  
Temple St. (Showdow St. to Citrus Blvd.)  
Tokay Avenue  
Vacaro Avenue  
Valdine Avenue  
West Little Court

**EXHIBIT B**