



# Agenda Report

2725 Judge Fran Jamieson  
Way  
Viera, FL 32940

## New Business - Add-On

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J.1.

9/3/2020

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### Subject:

Interlocal Agreement with the Barefoot Bay Recreation District and the Brevard County Board of County Commissioners regarding a cap on the levy and collection of special assessments within the District and companion Resolution rescinding Resolution 20-001 which called for a Referendum Election on November 3, 2020 on the question as to whether to revoke the Barefoot Bay Recreation District's authority to collect its special assessments in the manner provided for ad valorem taxes.

### Fiscal Impact:

None to Brevard County.

### Dept/Office:

Brevard County Commission District 3.

### Requested Action:

1. Approve Interlocal Agreement between the Barefoot Bay Recreation District and the Brevard County Board of County Commissioners regarding a cap on the levy and collection of special assessments within the District.
2. Approve Resolution 20- 002, rescinding Resolution 20-001 which called for a Referendum Election on November 3, 2020 on the question as to whether to revoke the Barefoot Bay Recreation District's authority to collect its special assessments in the manner provided for ad valorem taxes.

### Summary Explanation and Background:

The Barefoot Bay Recreation District is an independent mobile home park recreation district established under Chapter 418, Florida Statutes which levies special assessments. The Barefoot Bay Recreation District currently collects the special assessments in the manner provided for ad valorem taxes under Chapter 197, Florida Statutes.

In May of 2020, the Brevard County Board of County Commissioners adopted Resolution 20-001 placing on the November 3, 2020 ballot the question of whether to revoke the Barefoot Bay Recreation District's authority to collect the Barefoot Bay Recreation District's special assessment in the manner provided for ad valorem taxes under Chapter 197, Florida Statutes.

The Barefoot Bay Recreation District via the proposed Interlocal Agreement has agreed to cap the increase in special assessments to CPI in exchange for the ability to continue to collect the special assessments in the manner provided for ad valorem taxes under Chapter 197, Florida Statutes. Upon approval of the Interlocal Agreement by the Board, the Board will rescind Resolution 20-001 requesting that the Referendum Election be

placed on the ballot for the November 3, 2020 election. Accordingly, the requested action is twofold:

- 1) Adopt the proposed Interlocal Agreement between Barefoot Bay Recreation District and the Brevard County Board of County Commissioners
- 2) Approve Resolution 20-\_\_\_\_, rescinding Resolution 20-001 that requested a Referendum Election on the November 3, 2020 ballot regarding the Barefoot Bay Recreation District's method of collecting the special assessment.

**Clerk to the Board Instructions:**



September 4, 2020

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

TO: John Tobia, Commissioner, District 3

RE: Item J.1., Interlocal Agreement with the Barefoot Bay Recreation District and the Brevard County Board of County Commissioners Regarding a Cap on the Levy and Collection of Special Assessments within the District and Companion Resolution Rescinding Resolution 20-001, which Called for a Referendum Election on November 3, 2020, on the Question as to whether to Revoke the Barefoot Bay Recreation District's Authority to Collect its Special Assessments in the Manner Provided for Ad Valorem Taxes

The Board of County Commissioners, in regular session on September 3, 2020, approved the Interlocal Agreement between the Barefoot Bay Recreation District and the Brevard County Board of County Commissioners regarding a cap on the levy and collection of special assessments within the District; and adopted Resolution 20-002, rescinding Resolution 20-001, which called for a Referendum Election on November 3, 2020, on the question as to whether to revoke the Barefoot Bay Recreation District's authority to collect its special assessments in the manner provided for Ad Valorem taxes. Enclosed is a certified copy of the Resolution and a certified copy of the Interlocal Agreement.

Your continued cooperation is greatly appreciated.

Sincerely yours,

BOARD OF COUNTY COMMISSIONERS  
SCOTT ELLIS, CLERK

Kimberly Powell, Clerk to the Board

/sm

Encls. (2)

cc: Barefoot Bay Recreation District  
County Attorney  
County Manager

**INTERLOCAL AGREEMENT**  
**BETWEEN BAREFOOT BAY RECREATION DISTRICT**  
**AND THE BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS**  
**REGARDING LEVY AND COLLECTION OF BAREFOOT BAY RECREATION**  
**DISTRICT'S NON-AD VALOREM ASSESSMENT RATE**

**THIS INTERLOCAL AGREEMENT** is made and entered into by and between the BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, a political subdivision of the State of Florida, hereinafter referred to as "County" and BAREFOOT BAY RECREATION DISTRICT, an independent mobile home park recreation district established under Chapter 418, Florida Statutes, sections 418.30 through 418.309, and specifically pursuant to Ordinance Number 84-05 of the Brevard County Board of County Commissioners (as subsequently amended), hereinafter referred to as "BBRD."

**RECITALS:**

**WHEREAS**, BBRD, an independent mobile home park recreation district established under Chapter 418, Fla. Stat. Secs. 418.30 through 418.309, as may be amended, and specifically pursuant to Ordinance Number 84-05 of the Brevard County Board of County Commissioners (as subsequently amended by Ordinance 96-53, Ordinance 08-03, Ordinance 12-01, and Ordinance 18-22 adopted by the Board of County Commissioners of Brevard County); and

**WHEREAS**, Fla. Stat. Sec. 418.304 (4)(a) and Article VI, Section 1 of Ordinance 84-05 requires the Board of Trustees of BBRD to prepare and adopt an itemized budget on or before July 1 or each year, which budget shall show the amount of money necessary for the operation of the next ensuing fiscal year; and

**WHEREAS**, Fla. Stat. Sec. 418.304 (4)(b), and Article VI, Section 2 of Ordinance 84-05, requires the Board of Trustees of BBRD to fix and adopt the amount of an assessment for the next ensuing year on or before July 30 or each year after a public hearing to fund the ensuing year's adopted budget; and

**WHEREAS**, pursuant to Fla. Stat. Sec. 418.304 (4)(b) and Article VI, Section 2 of Ordinance 84-05, the special assessments levied by BBRD may be collected in the manner provided for ad valorem taxes under Fla. Stat. Ch. 197, subject to the conditions of Fla. Stat. Sec. 197.363; and

**WHEREAS**, pursuant to Fla. Stat. Sec. 418.304 (4)(e)1 and Article VI, Section 3 of Ordinance 84-05, the assessment levied by BBRD, shall be a valid lien upon each improved residential lot within the District until it has been paid in full; shall be considered a part of the county tax; and is subject to the same penalties, charges, fees, and remedies provided for the enforcement and collection of county taxes; and

**WHEREAS**, Brevard County Board of County Commissioners desires that BBRD voluntarily limit any increase in the amount of annual assessment levied in any given year pursuant to Fla. Stat. Sec. 418.304 (4)(b) such that the rate shall not exceed the percentage change in the Consumer Price Index (as set by Fla. Stat. Sec. 193.155(1)(b) or as such section may be amended)

over the assessment levied by BBRD in the immediately preceding year; and

**WHEREAS**, BBRD voluntarily agrees that any increase in the amount of the annual assessment levied in any given year pursuant to Fla. Stat. Sec. 418.304 (4)(b) shall not exceed the percentage change in the Consumer Price Index (as set by Fla. Stat. Sec. 193.155(1)(b) or as such section may be amended) over the assessment levied by BBRD in the immediately preceding year; and

**WHEREAS**, given BBRD's willingness to voluntarily limit its assessment rate as provided herein, the Brevard County Board of County Commissioners agrees to allow BBRD to continue to collect its assessment in the manner provided for ad valorem taxes under Fla. Stat. Ch. 197, subject to the conditions of Fla. Stat. Sec. 197.363 and the terms and conditions of this Interlocal Agreement as set forth herein below.

**NOW THEREFORE**, the County and BBRD the covenant and agree that they have full power and authority to enter into this Agreement and bind their respective governmental entities as follows:

#### **SECTION 1. RECITALS.**

The above recitals are true and correct and by this reference are hereby incorporated into and made an integral part of this Agreement.

#### **SECTION 2. STATUTORY AUTHORITY.**

This Agreement shall be considered a Interlocal Agreement pursuant to the authority of Florida Statutes, Chapter 163, Part 1, specifically including, but not limited to, Fla. Stat. Sec. 163.01(5).

#### **SECTION 3. ASSESSMENT RATE LIMITATION.**

(a) Barefoot Bay Recreation District hereby voluntarily agrees that any increase in the amount of the annual assessment levied in any given year pursuant to Fla. Stat. Sec. 418.304 (4)(b) shall not exceed the percentage change in the Consumer Price Index (as set by Fla. Stat. Sec. 193.155(1)(b) or as such section may be amended) over the annual assessment levied by BBRD in the immediately preceding year.

(b) Notwithstanding the above limitation in subsection (a), the Brevard County Board of County Commissioners may approve BBRD's levy of an annual assessment above the percentage change in the Consumer Price Index over the annual assessment levied by BBRD in the immediately preceding year if a supermajority of the Brevard County Board of County Commissioners finds that such an excess is necessary because of an emergency or critical need. An unfunded mandate by any Federal, State, or Local authority may constitute such an emergency or critical need in the sole determination of the Brevard County Board of County Commissioners. The Brevard County Board of County Commissioners' finding of an emergency or critical need shall set forth the ultimate facts upon which it is based and shall be valid for a single budget year.

BBRD agrees to seek approval from the Brevard County Board of County Commissioners prior to the final levy of an annual assessment pursuant to Fla. Stat. Sec. 418.304 (4)(b) which is above the percentage change in the Consumer Price Index over the annual assessment levied by BBRD in the immediately preceding year; however, the parties agree that such approval is not required where an annual assessment increase does not exceed the percentage change in the Consumer Price Index over the assessment levied by BBRD in the immediately preceding year.

#### **SECTION 4. ALLOWANCE OF COLLECTION METHOD VIA COUNTY TAX ROLL.**

(a) So long as BBRD voluntarily continues to limit any increase in the amount of the annual assessment levied in any given year pursuant to Fla. Stat. Sec. 418.304 (4)(b) such that said increase shall not exceed the percentage change in the Consumer Price Index (as set by Fla. Stat. Sec. 193.155(1)(b) or as such section may be amended) over the annual assessment levied by BBRD in the immediately preceding year, the County shall allow BBRD to continue to collect its annual assessment in the manner provided for ad valorem taxes under Fla. Stat. Ch. 197, subject to the conditions of Fla. Stat. Sec. 197.363.

(b) In addition to subsection (a) above, and as consideration for the entry of this Agreement, the County agrees to take action to rescind Resolution 20-001 calling for a referendum election on November 3, 2020 on the question of whether to revoke BBRD's authority to collect its assessment in the manner provided for ad valorem taxes. If the rescission of Resolution 20-001 cannot be done with enough time to remove the referendum question from the ballot, the Supervisor of Elections shall be instructed not to count the ballot response and BBRD agrees to pay any costs associated with Notice to voters regarding rescission of the referendum question from the ballot.

(c) If BBRD, in any year subsequent to the entry of this Agreement, fixes or adopts an annual assessment rate that exceeds the percentage change in the Consumer Price Index (as set by Fla. Stat. Sec. 193.155(1)(b) or as such section may be amended) over the annual assessment levied by BBRD in the immediately preceding year, unless an excess rate is approved by the Brevard County Board of County Commissioners due to an emergency or critical need, BBRD shall pay all unauthorized collected funds that exceed the percentage change in the Consumer Price Index (as set by Fla. Stat. Sec. 193.155 (1)(b) or as such section may be amended) over the annual assessment levied by BBRD in the immediately preceding year (hereinafter "unauthorized funds") to the County and the County shall refund the unauthorized funds to the taxpayers of the Barefoot Bay Recreation District who paid the assessment.

#### **SECTION 5. TERM AND EFFECTIVE DATE.**

Pursuant to Chapter 163, Florida Statutes, the effective date of this Agreement shall be the date on which it is recorded with the Clerk of the Circuit Court in and for Brevard County. This Agreement shall apply to the assessment rate set for the 2021-2022 fiscal year on or before July 30, 2021 and for every year thereafter. The initial term of this Agreement shall be for five (5) years. Thereafter, this Agreement shall automatically renew for an unlimited number of five (5) year periods unless and until otherwise amended in writing by both parties.

## **SECTION 6. NOTICES.**

Any Notices required under this Agreement, and as not otherwise directed herein, shall be in writing and delivered to the parties by United States mail, hand delivery, express mail or electronic mail (email) as follows:

(a) BBRD Representative:

Community Manager, John Coffey  
625 Barefoot Blvd.  
Barefoot Bay, FL 32976  
jcoffey@bbird.org  
(772)664-3141

(b) County Representative:

County Manager, Frank Abbate  
Brevard County Board of County Commissioners  
2725 Judge Fran Jamieson Way Bldg C  
Viera, FL 32940  
Frank.Abbate@brevardfl.gov  
(321) 633-2000

## **SECTION 7. DEFAULT.**

Either Party to this Agreement, in the event of any act of default by the other, shall have all remedies available to it under the laws of the State of Florida. The County shall also be authorized to proceed in accordance with Section 4 (c) in the event of default by BBRD.

## **SECTION 8. SEVERABILITY.**

If any part of this Agreement is found to be invalid or unenforceable by any court, such invalidity or unenforceability shall not affect the other parts of this Agreement if the rights and obligations of the parties contained herein are not materially prejudiced and if the intentions of the parties can still be accomplished.

## **SECTION 9. RECORDING.**

Upon execution of this Agreement, the County shall record a fully executed original of this Agreement in the Public Records of Brevard County, Florida, and shall return a recorded original of the Agreement to the BBRD representative listed in Section 6. BBRD shall pay the costs of said recording.

## **SECTION 10. ATTORNEYS FEES.**

In the event of any legal action to enforce the terms of this Agreement, each party shall

bear its own attorney's fees and costs.

#### SECTION 11. VENUE AND NON-JURY TRIAL.

Any legal action to enforce, interpret, or construe the terms of this Agreement, shall be in a court of competent jurisdiction in and for Brevard County, Florida and any trial shall be a non-jury trial.

#### SECTION 12. COMPLIANCE WITH STATUTES.

It shall be each party's responsibility to be aware of and comply with all federal, state, and local laws. BBRD specifically waives any right to challenge the validity of this Agreement.

#### SECTION 13. ENTIRETY.


This Agreement represents the understanding and agreement of the parties in its entirety. There shall be no amendments to this Agreement unless such amendments are in writing and signed by both parties.

#### BAREFOOT BAY RECREATION DISTRICT

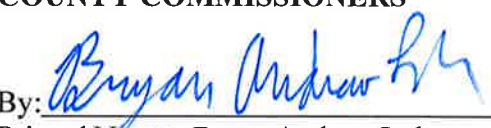
By:   
Printed Name: Joseph Klosky  
As its: Chair

Approved by the BBRD Board of Trustees:  
August 25, 2020

Approved as to legal form and content:

  
Clifford R. Repperger, Jr.  
General Counsel

#### BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS

By:   
Printed Name: Bryan Andrew Lober  
As its: Chair

As approved by the Board on:

September 3, 2020.

ATTEST:

  
Scott Ellis, Clerk to the Board

Approved as to legal form and content:

\_\_\_\_\_  
Attorney for the County



**RESOLUTION 2020- 002**

**A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA RESCINDING RESOLUTION 2020-001, WHICH CALLED FOR A REFERENDUM ELECTION ON NOVEMBER 3, 2020 ON THE QUESTION OF WHETHER THE CHARTER OF THE BAREFOOT BAY RECREATION DISTRICT SHOULD BE AMENDED TO REVOKE THE AUTHORITY OF THE BAREFOOT BAY RECREATION DISTRICT TO COLLECT ITS ASSESSMENTS IN THE MANNER PROVIDED FOR AD VALOREM TAXES UNDER CHAPTER 197, FLORIDA STATUTES; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.**

**BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA:**

**SECTION 1. AUTHORITY FOR RESOLUTION.** This resolution is adopted pursuant to the authority of the Board of County Commissioners of Brevard County, Florida pursuant to Section 418.30, Florida Statutes regarding amendment of the charter of a Mobile Home Recreation District, and any other applicable provisions of law.

**SECTION 2. FINDINGS.** It is hereby found and determined as follows:

A. On May 19, 2020, the Board of County Commissioners of Brevard County, Florida passed Resolution 2020-001 calling for a referendum election on November 3, 2020 on the question of whether the Charter of the Barefoot Bay Recreation District should be amended to revoke the authority of the Barefoot Bay Recreation District to collect its assessments in the manner provided for ad valorem taxes under Chapter 197, Florida Statutes;

B. The Board of County Commissioners of Brevard County and the Board of Trustees of Barefoot Bay Recreation District have entered into an interlocal agreement which limits the increase of any annual assessment levied by Barefoot Bay Recreation District to no greater than the applicable CPI percentage;

C. The interlocal agreement between the Board of County Commissioners of Brevard County and the Board of Trustees of Barefoot Bay Recreation District further provides that as consideration for the entry of the interlocal agreement the Board of County Commissioners of Brevard County agrees to remove from the November 3, 2020 ballot the question of whether the Charter of the Barefoot Bay Recreation District should be amended;

D. The Board of County Commissioners of Brevard County desires that the referendum election scheduled for November 3, 2020 be cancelled and that the referendum question proposed by Resolution 2020-001 be removed from the ballot by the Supervisor of Elections. If the Supervisor of Elections cannot remove the referendum election from the ballot then Board of County Commissioners of Brevard County instructs the Supervisor of Elections to not tabulate the referendum question election results and provide notice in advance of the election to the registered electors that the referendum question will not be tabulated.

**SECTION 3. RESCISSION OF RESOLUTION CALLING FOR REFERENDUM ELECTION.** Resolution 2020-001 calling and ordering a referendum election to be held concurrently with the general election to be held on November 3, 2020 regarding an amendment to the Charter for Barefoot Bay Recreation District is hereby rescinded.

**SECTION 4. CANCELLATION OF REFERENDUM ELECTION.** The referendum election called and ordered to be held on November 3, 2020 by way of Resolution 2020-001 is hereby cancelled.

**SECTION 5. REMOVAL OF LANGUAGE FROM OFFICIAL BALLOT.** The following language approved in Section 6 of Resolution 2020-001 is hereby ordered removed from the official ballot for November 3, 2020 by the Supervisor of Elections, if possible:

**BALLOT**

**~~Barefoot Bay Recreation District, Brevard County, Florida~~**

**~~NO. 1~~**

**~~BAREFOOT BAY RECREATION DISTRICT CHARTER AMENDMENT~~**

**~~ARTICLE VI~~**

**~~REVOCATION OF TAXING AUTHORITY~~**

~~Shall the Charter be amended to revoke the authority of the Barefoot Bay Recreation District to collect its assessments in the manner provided for ad valorem taxes?~~

~~YES (for approval)~~

~~NO (for rejection)~~

**SECTION 6. NO TABULATION OF REFERENDUM ELECTION VOTE IF INCLUDED ON BALLOT AND NOTICE TO REGISTERED ELECTORS.** If the Supervisor of Elections cannot remove the referendum language provided for in Section 6 of Resolution 2020-001 from the official election ballot for November 3, 2020, the Supervisor of Elections is instructed not to tabulate the referendum question election results and to provide notice in advance of the election to registered electors that the referendum question will not be tabulated. The Supervisor of Elections is authorized to take all actions deemed necessary by the Supervisor of Elections to ensure that the referendum election is cancelled and/or the results are not tabulated.

**SECTION 7. PAYMENT COSTS ASSOCIATED WITH CANCELLATION OF REFERENDUM ELECTION.** The Barefoot Bay Recreation District shall pay all costs associated with cancellation of the referendum election, including payment of all costs of any notices sent to the registered electors as deemed necessary by the Supervisor of Elections to effectuate the cancellation of the referendum election.

**SECTION 8. 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 9. REPEALING CLAUSE.** All resolutions or other actions of Brevard County which are in conflict herewith, including Resolution 2020-001, are hereby repealed to the extent of such conflict or inconsistency.

**SECTION 10. EFFECTIVE DATE.** This resolution shall take effect immediately upon adoption.

**DONE, AND ADOPTED** in Regular Session of the Board of County Commissioners of Brevard County, Florida this 3rd day of September, 2020.

ATTEST:

CLERK

BOARD OF COUNTY COMMISSIONERS  
OF BREVARD COUNTY, FLORIDA

By:

  
BRYAN ANDREW LOBER, CHAIR

As approved by Board September 3, 2020.