



Brevard County Board of County Commissioners

2725 Judge Fran Jamieson Way
Viera, FL 32940

Legislation Text

F-10

File #: 5797, Version: 1

Subject:

Approval RE: Educational Facilities Impact Fee Deferral Contract for the St. Stephen's Way Affordable Housing Development between the Brevard County Board of County Commissioners, Brevard County Public Schools and St. Stephen's Way Inc.

Fiscal Impact:

Fiscal Year 2023 - Educational Impact Fees that would've been collected for the Brevard County School District in the South Area Benefit District in the amount of \$77,620 will be deferred for a period of ~~fifty (50)~~ ten (10) years for the St. Stephen's Way project due to its intended occupancy by very-low or low-income households. A lien on the property will be recorded to ensure payment of the deferred balance.

Dept/Office:

Planning and Development

Requested Action:

It is requested, on behalf of the developer, that the Board of County Commissioners: (1) authorize the Chair to execute the Educational Facilities Impact Fee Deferral Contract for the St. Stephen's Way Affordable Housing Development upon approval and execution by Brevard County School Board and the developer as currently presented and attached; and (2) authorize the County Attorney's Office to record the Notice of Assessment, as currently presented within the contract and which constitutes a lien on the property for the deferred balance of \$77,620.

Summary Explanation and Background:

St. Stephen's Way is a non-profit organization that provides affordable housing along with support services to homeless families referred by the Brevard County school system. St. Stephen's Way is currently finalizing the multifamily residential development of an affordable housing project. The project is located near Lipscomb Street and Brothers Avenue, in the City of Melbourne and includes eight (8) multifamily residential one-story buildings consisting of forty (40) units total, each with three (3) bedrooms, to provide housing for low or very-low income families.

Since the developer anticipates obtaining a certificate of occupancy in mid-June, they have asked that Board consider the contract prior to it being scheduled for Brevard County School Board approval, which may occur at the earliest on May 30th, in order to prevent delays. Staff will only request the Chair to execute the contract on the County's behalf once we have affirmed the School Board granted a deferral for the St. Stephen's Way Affordable Housing Multifamily Development Project. The County collects educational impact fees on behalf of the School Board and disburses them to the School Board quarterly.

This contract obligates the developer to provide the 40 units for affordable housing opportunities for a period

of ~~50~~ 10 years as specified in the attached contract. The contract also recognizes that the Brevard County School Board does not wish to impose educational impact fees on this project given the terms of the contract and authorizes the County to forego collection of the educational impact fees associated with this contract. The contract does not obligate the County to any financial burden associated with deferring the educational impact fees.

Because the impact fees that will be deferred for this project would be collected and disbursed to the Brevard County School Board, the County has asked the School Board of Brevard County to review the request and affirm that it has no objection to this deferral.

Clerk to the Board Instructions:

Please send one copy of the Board Memo to Planning and Development.



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

Telephone: (321) 637-2001

Fax: (321) 264-6972

Kimberly.Powell@brevardclerk.us

May 24, 2023

MEMORANDUM

TO: Tad Calkins, Planning and Development Director

RE: Item F.10., Educational Facilities Impact Fee Deferral Contract for the St. Stephen's Way Affordable Housing Development between the Brevard County Board of County Commissioners, Brevard County Public Schools, and St. Stephen's Way Inc.

The Board of County Commissioners, in regular session on May 23, 2023, authorized the Chair to execute the Educational Facilities Impact Fee Deferral Contract for the St. Stephen's Way Affordable Housing Development upon approval and execution by the Brevard County School Board and the developer as currently presented and attached; and authorized the County Attorney's Office to record the Notice of Assessment, as currently presented within the Contract and which constitutes a lien on the property for the deferred balance of \$77,620. Enclosed is an executed Contract.

Upon execution by all parties, please return a fully-executed Contract to this office for inclusion in the official minutes.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
RACHEL M. SADOFF, CLERK

A handwritten signature in cursive script that reads "Kimberly Powell".

Kimberly Powell, Clerk to the Board

/tr

Encl. (1)

cc: Contracts Administration
Finance
Budget

EDUCATIONAL FACILITIES IMPACT FEE DEFERRAL CONTRACT
FOR THE ST. STEPHEN'S WAY AFFORDABLE HOUSING DEVELOPMENT

THIS EDUCATIONAL FACILITIES IMPACT FEE DEFERRAL CONTRACT FOR THE ST. STEPHEN'S WAY AFFORDABLE HOUSING DEVELOPMENT ("the **Contract**") is entered into this _____ day of _____, 2023, by and between the **BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA**, a political subdivision of the State of Florida, whose address is 2725 Judge Fran Jamieson Way, Viera, Florida 32940, (hereinafter referred to as "**County**"), **SCHOOL BOARD OF BREVARD COUNTY, FLORIDA**, the governing body of the School District of Brevard County, Florida pursuant to Article IX, Section 4(b), Constitution of the State of Florida whose address is 2700 Judge Fran Jamieson Way, Viera, Florida 32940 (hereinafter referred to as "**School Board**"), and **SAINT STEPHEN'S WAY, INC.**, a Florida not for profit corporation, whose address is 2310 Lipscomb Street, Melbourne, Florida 32901 (hereinafter referred to as "**Developer**"), is based on the following premises:

RECITALS:

WHEREAS, the School Board and County desire to encourage the development of affordable housing opportunities for students and their families in Brevard County, Florida; and

WHEREAS, educational facilities impact fees are imposed by the Brevard County Educational Facilities Impact Fee Ordinance (hereinafter referred to as "**Educational Facilities Impact Fee Ordinance**"), as adopted in Sections 62-921 through 62-935 of the Brevard County Code of Ordinances; and

WHEREAS, the Educational Facilities Impact Fee Ordinance applies within the jurisdiction of the County and School Board; and

WHEREAS, pursuant to the Amended Interlocal Agreement between the School Board and County recorded in Official Records Book 8418, Page 350 of the Official Records of Brevard County, the County administers and collects

educational impact fees within the benefit district on behalf of the School Board and disburses said collections to the School Board; and

WHEREAS, to mitigate the impact to the development of affordable housing opportunities created by the imposition of educational impact fees, the School Board and County may defer payment of some or all educational impact fees and applicable administration fees for qualified affordable housing units; and

WHEREAS, the Developer wishes to construct an affordable rental housing apartment complex to provide housing for homeless families with children attending Brevard County Schools known as St. Stephen's Way, located near Lipscomb Street and Brothers Avenue within the City of Melbourne and as more specifically described in Exhibit 1 attached hereto (hereinafter referred to as "**Project**"); and

WHEREAS, the Project will contain 40 residential rental units, all of which will be reserved for families with students enrolled in Brevard Public Schools and with a gross annual income that does not exceed 80% of the Area Median Income, which is defined by the Educational Impact Fee Ordinance as "low income person or household"; and

WHEREAS, the Developer has irrevocably waived its option to convert to market rents for a period of ten years; and

WHEREAS, the Developer wishes to defer the educational impact fee amount due on the Project pursuant to the Brevard County Code of Ordinances and the Interlocal Agreement between the School Board and County; and

WHEREAS, based upon the representations of the Developer, the School Board has agreed to defer the payment of educational impact fees due and allow the County to defer the collection and dispersal of these fees; and

WHEREAS, the School Board and County endorse the Developer's application for deferral of educational impact fees.

NOW THEREFORE, in consideration of the mutual covenants contained herein, and for other good and valuable consideration, the receipt and adequacy

of which is hereby acknowledged by all parties, the parties hereto agree as follows:

1. **Recitals.** The above recitals are hereby incorporated and made a part of this Contract.

2. **Scope of Contract.** The Project, consisting of 40 affordable rental units located in the City of Melbourne, is subject to an assessment of educational facilities impact fees by County on behalf of the School Board. The scope of this Contract is limited to the provisions of the Educational Facilities Impact Fee Ordinance and the Interlocal Agreement between the School Board and County. Other impact fees may be imposed on the Project by County, the City of Melbourne, or other applicable agencies and such other impact fees will remain due and payable pursuant to the land development regulations of the respective agencies absent any deferrals or waivers.

3. **Educational Facilities Impact Fees.**

A. Educational Facilities Impact Fee Deferral.

The Project, consisting of 40 multifamily rental units, is subject to educational facilities impact fees in the amount of \$1,940.50 per unit as a multifamily one story structure. The educational facilities impact fees may be deferred pursuant to the provisions of this Contract, resulting in the deferral of educational facilities impact fees in the total amount of \$77,620 for the 40 rental units.

B. Long-term Affordability.

The Developer shall set aside 40 units for which educational facilities impact fees are herein deferred for persons or households who have annual gross incomes at or below 80% of the Area Median Income as calculated by the U.S. Department of Housing and Urban Development. The Developer shall limit the monthly rent for these units to no more than 30% of family income. The Developer shall require and ensure that families renting a unit in the Project must

have children currently enrolled in Brevard Public Schools, such that the occupancy of the unit does not generate the need for additional educational capacity in Brevard Public Schools.

C. Sale, Transfer, or Refinancing of the Project.

Developer agrees to notify the School Board and County of any proposed sale and/or transfer of the Property. The deferral of educational facilities impact fees provided in this Contract may continue if the proposed new owner of the Project is a nonprofit organization or agency approved by the County and School Board and agrees to maintain all set asides and other requirements of this Contract for the period originally specified. In the event the above-stated conditions are not met, the deferred educational facilities impact fees hereunder shall be due in full upon the sale, transfer, or refinancing of the Project.

C. Notice of Assessment.

A Notice of Assessment setting forth the balance of the educational facilities impact fees that are deferred and remain unpaid is attached hereto as Exhibit 2. Developer agrees to execute a Notice of Assessment in the form prescribed in Exhibit 2. The County shall record the Notice of Assessment in the official records of Brevard County. Upon execution, the Notice of Assessment shall constitute a lien on the Project for the balance of the educational facilities impact fee that is due under the terms and conditions of this Contract.

D. Default.

If the Developer defaults in the performance of its obligations under this Contract or breaches any covenant, agreement, or warranty of the Developer set forth in this Contract, and if such default remains uncured for a period of thirty (30) days after notice thereof shall have been given by the County to the Developer (or for an extended period approved by the County and School Board if such default stated in such notice can be corrected, but not within such thirty (30) day period, and if the Developer commences such correction within such

thirty (30) day period, and thereafter diligently pursues the same to completion within such extended period), then the balance of the deferred educational facilities impact fee shall be due and payable by the Developer or their successor in title to the Project. The County may take any lawful action, whether for specific performance of any covenant in this Contract or such other remedy as may be deemed most effective by the County to enforce the obligations of the Developer with respect to the Project.

E. Deferral of Collection.

The School Board agrees that the County's obligation to collect and transmit educational impact fees to the School Board shall be deferred pursuant to the terms of this Contract. If Developer fulfills the requirements of this Contract for the duration of the term hereof, upon the expiration of the term of this Contract the remaining balance of the deferred impact fee shall be waived and forgiven.

4. **Non-Transferability.** The educational impact fee deferral applies exclusively to the Project as it is more precisely described in Exhibit 1 and Exhibit 2. The educational impact fee deferral may not be transferred to any other property.

5. **Effective Date and Duration.** Within fourteen days after the execution of this Contract by all parties, the County shall record this Contract with the Brevard County Clerk of Court. The Developer shall be responsible for all costs associated with recordation. This Contract is not effective until it and the required Notice of Assessment are properly recorded in the Brevard County Public Records ("Effective Date"). Unless terminated earlier by either party as provided herein, this Contract shall remain in effect for a period of ten (10) years. The burdens of this Contract shall run with the land and shall be binding upon, and the benefits shall inure to, respectively, the Developer, the County, and the

School Board and their respective successors and assigns during the term of this Contract.

6. Notices. All notices, demands and correspondence required or provided for under this Contract shall be in writing and delivered in person or dispatched by certified mail, postage prepaid, return receipt requested. Notice required to be given shall be addressed as follows:

If to Developer: Saint Stephen's Way, Inc.
Attn: John Farrell
2310 Lipscomb Way
Melbourne, FL 32901

If to School Board: School Board of Brevard County
Attn: Superintendent
2700 Judge Fran Jamieson Way
Viera, FL 32940

If to County: Brevard County
Attn: County Manager
2725 Judge Fran Jamieson Way
Viera, FL 32940
Telephone: 321-633-2000

With a copy to: Brevard County Attorney's Office
Attn: County Attorney
2725 Judge Fran Jamieson Way
Viera, FL 32940
Telephone: 321-633-2090

Dept. Brevard County Planning and
Development
Attn: Department Director
2725 Judge Fran Jamieson Way
Viera, FL 32940
Telephone: 321-633-2070

With a copy to : School Board of Brevard County
Attn: Facilities Services
2700 Judge Fran Jamieson Way
Viera, FL 32940

7. **Miscellaneous.** The execution of this Contract has been duly authorized by the appropriate body of each of the parties hereto. Each party has complied with all the applicable requirements of law and has full power and authority, to comply with the terms and conditions of this Contract. The venue of any litigation arising out of this Contract shall be Brevard County, Florida. The exhibits attached hereto and incorporated by reference herein are by such attachment and incorporation made a part of this Contract for all purposes. The fact that one of the parties to this Contract may be deemed to have drafted or structured the provisions of this Contract, whether in whole or in part, shall not be considered in construing or interpreting any particular provision hereof, whether in favor of or against such party. The terms and conditions of this Contract shall bind and inure to the benefit of the parties hereto and their respective successors and assigns. This Contract is solely for the benefit the parties hereto and their respective successors and assigns, and no right or cause of action shall accrue upon or result by reason hereof or for the benefit of any third party not a formal party hereto. Nothing in this Contract whether expressed or implied, is intended or shall be construed to confer upon any person other than the parties hereto any right, remedy, or claim under or by reason of this Contract or any of the provisions hereof. This Contract may not be changed, amended, or modified in any respect whatsoever except through in writing signed by all of the parties, nor may any covenant, condition, agreement, requirement, provision, or obligation contained herein be waived except in a signed writing.

8. **Attorneys' Fees; Hold Harmless; Indemnification.** Should any litigation arise between the parties, each party shall bear its own attorneys' fees and costs. In the event of litigation or claims against the County and/or School Board from third parties arising from this Contract or the construction described herein, Developer shall indemnify and hold harmless the County and/or School Board, as the case may be, from any such litigation or claims; provided, however, nothing contained herein shall be deemed to be a waiver by the County or the

School Board of their respective sovereign immunity. Nothing in this Contract shall inure to the benefit of any third party for the purpose of allowing any claim which would otherwise be barred by sovereign immunity or operation of law. Developer acknowledges that specific consideration has been paid and other good and sufficient consideration has been received for this indemnification provision.

9. **Captions.** Headings of a particular paragraph of this Contract are inserted only for convenience and are in no way to be construed as part of the Contract or as a limitation of the scope of the paragraphs to which they refer.

10. **Severability.** If any part of this Contract is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any way. If any party's joinder in or execution of this Contract is deemed invalid for any particular purpose, the sections for which the joinder or execution is valid shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have caused this Contract to be duly executed and their corporate seals affixed as of the day and year first above written.

[SIGNATURES ON THE FOLLOWING PAGES]

Signed, sealed and delivered in the presence of:	DEVELOPER: SAINT STEPHEN'S WAY, INC.
<u>Betty Taylor</u> Witness 1 <u>Betty Taylor</u>	By: <u>[Signature]</u>
Print Name of Witness 1 <u>John E. Farrell</u>	Edward Struttmann, President
Witness 2 <u>John E. Farrell</u>	
Print Name of Witness 2	

STATE OF FLORIDA
 COUNTY OF BREVARD

The foregoing instrument was acknowledged before me by means of physical presence or online notarization this 20 day of MAY, 2023, by **Edward Struttmann as President for Saint Stephen's Way, Inc.**, who is personally known to me or produced DRIVER LICENSE as identification.

[Signature]
 Notary Signature
 Glenn S. Taylor

Name of Notary Typed, Printed, or Stamped

(SEAL)



ATTEST:

SCHOOL BOARD OF BREVARD COUNTY,
FLORIDA

Matt Susin, Chair

As approved by the Board on: _____

Reviewed for legal form and content:



ATTEST:



Rachel Sadoff, Clerk to the Board

BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA



Rita Pritchett, Chair

As approved by the Board on: May 23, 2023.

Reviewed for legal form and content:

Justin Caron, Assistant County Attorney

**EXHIBIT 1
LEGAL DESCRIPTION FOR "PROPERTY"**

A portion of Lands described in Official Records Book 1744, Page 531 and all of Lands described in Official Records Book 3526, Page 3853, inclusive of the Public Records of Brevard County, Florida; said Lands lying in Section 3, Township 28 South, Range 37 East, said Brevard County, Florida and being more particularly described as follows:

Commence at the Southeast corner of said Section 3, also being the centerline intersection of Line Street and Lipscomb Street; thence North 89°42'57" West, along the South line of the Southeast ¼ of said Section 3 and the said centerline of Line Street, a distance of 871.00 Feet to the Southerly extension of the West Right-of-Way of Canal Street; thence North 00°10'51" West, a distance of 547.40 Feet to the **POINT-OF-BEGINNING**; thence continue North 00°10'51" West along said extension line, a distance of 274 Feet more or less to the Southerly shoreline of Crane Creek; thence Northeasterly along said Shoreline, a distance of 854 Feet more or less to the East line of Lot 3, Metcalf's unrecorded Plat of Wright Bros. Tract being 787.97' East by perpendicular measurement of the previous call; thence South 00°10'51" East along the East line of said Lot 3, a distance of 237 Feet more or less to the Southeast corner of said Lot 3; thence South 89°42'57" East, a distance of 63.00 Feet to the Westerly Right-of-Way line of said Lipscomb Street; thence South 00°10'51" East along said Right-of-Way line, a distance of 120.00 Feet; thence leaving said line run North 89°42'57" West along the South line of Lot 8 of said Metcalf's unrecorded Plat of Wright Bros. Tract, a distance of 145.00 Feet; thence South 00°10'51" East, a distance of 79.67 Feet; thence North 89°42'57" West, a distance of 157.32 Feet; thence South 00°10'51" East, a distance of 263.01 Feet to the Northwest corner of Lot 3, J.S. Stones Subdivision, as recorded in Plat Book 3, Page 41, as recorded in the said Brevard County Public Records; thence North 89°42'57" West along the North line of said J.S. Stones Subdivision, a distance of 520.18 Feet to a point on the East Right-of-Way line of said Canal Street; thence North 00°10'51" West along said East line, a distance of 90.29 Feet; thence South 89°49'09" West, a distance of 28.50 Feet to the POINT-OF-BEGINNING.

Containing 323,845 Square Feet or 7.43 Acres of land more or less.

Together with:

(Per Official Records Book 8183, Page 1950)

Lots 11,12 and the East 17 feet of Lot 13, J.S. STONES SUBDIVISION, according to the Plat thereof as recorded in Plat Book 3, page 41, of the Public Records of Brevard County, Florida.

EXHIBIT 2

NOTICE OF ASSESSMENT

NOTICE OF ASSESSMENT FOR EDUCATIONAL FACILITIES IMPACT FEES

This **Notice of Assessment for Educational Facilities Impact Fees** (hereinafter "Assessment"), is made and entered into by and between: **Brevard County**, a political subdivision of the State of Florida, hereinafter referred to as "County", the **School Board of Brevard County, Florida**, hereinafter referred to as "School Board" and **Saint Stephen's Way, Inc.**, its successors and assigns, hereinafter referred to as "Developer."

WHEREAS, Developer is in the process of developing an affordable housing rental complex within Brevard County and the City of Melbourne known as "St. Stephen's Way", for the property located near Lipscomb Street and Brothers Avenue within the City of Melbourne (Property Appraiser Parcel ID # 28-37-03-77-* -6) and whose legal description is incorporated herein as Exhibit 1 (hereinafter the "Project");

WHEREAS, the Project will provide affordable rental housing for very-low or low-income persons, including homeless children attending Brevard Public Schools and their families; and

WHEREAS, Developer has applied for the deferral of the educational facilities impact fees assessed under the Brevard County Code of Ordinances based on the Project providing affordable rental housing for homeless children attending Brevard Public Schools and their families; and

WHEREAS, the School Board of Brevard County, Florida (the "School Board") has determined that it is in the best interest of the School Board to defer the Educational Facilities Impact Fees due on the Project in the total amount of \$77,620.00; and

WHEREAS, pursuant to the Educational Facilities Impact Fee Deferral Contract for the St. Stephen's Way Affordable Housing Development entered into by the School Board of Brevard County, Florida, County, and Developer, hereinafter "Deferral Agreement," the Developer is required to execute this Notice of Assessment for Educational Facilities Impact Fees; and

WHEREAS, the Notice of Assessment for Educational Impact Fees shall be recorded in the Official Records of Brevard County and shall constitute a lien on the property for the balance of the Educational Facilities Impact Fees due under the terms of the Deferral Agreement.

NOW THEREFORE, in consideration of the mutual terms, conditions, promises, covenants and payments hereinafter set forth, Developer agrees as follows:

Section 1. Educational Facilities Impact Fees Deferral Amount.

A. The Developer has requested a deferral of the payment of Educational Facilities Impact Fees for the Project, and School Board has agreed to defer payment of the Educational Impact Fees in the amount of \$77,620.00. School Board has further agreed that the County shall not be responsible for the collection, reimbursement, or disbursement of the Project's educational facilities impact fees pursuant to the terms of the Deferral Agreement.

B. Developer agrees that the unpaid balance of educational facilities impact fees shall be due and payable upon the subsequent sale of the property or when the Property is no longer being used in accordance with the terms of the Deferral Agreement; and Developer authorizes the County to record this Notice of Assessment of Impact Fees in the official records of Brevard County. If Developer fulfills the requirements of the Deferral Agreement, at the end of ten (10) years from the Effective Date of the Deferral Agreement, this Notice of Assessment shall be extinguished in full.

Section 2. Lien on Property.

Upon recordation in the official records of Brevard County, this Notice of Assessment for Transportation Impact Fees shall be a Lien for the balance of the Educational Impact Fees against the Property. This Notice of Assessment runs with the land and creates an obligation on behalf of the Developer and is binding on the successors and assigns of the Developer.

IN WITNESS THEREOF, Developer has executed this Notice of Assessment as of the date and year of execution below.

[SIGNATURE ON THE FOLLOWING PAGE]

Signed, sealed and delivered in the presence of:	DEVELOPER: SAINT STEPHEN'S WAY, INC.
_____ Witness 1	By: _____
_____ Print Name of Witness 1	
_____ Witness 2	
_____ Print Name of Witness 2	

STATE OF FLORIDA
COUNTY OF BREVARD

The foregoing instrument was acknowledged before me by means of [] physical presence or [] online notarization this ___ day of _____, 2023, by _____ as _____ for **Saint Stephen's Way, Inc.**, who is [] personally known to me or [] produced _____ as identification.

Notary Signature

Name of Notary Typed, Printed, or Stamped

(SEAL)