

RESOLUTION NO. 2001- 197

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, AUTHORIZING THE COUNTY ADMINISTRATOR TO TEMPORARILY DELAY THE COLLECTION OF IMPACT FEES FROM THE ST. JOHNS COUNTY-ST. AUGUSTINE AIRPORT AUTHORITY, AND TO ISSUE SUCH BUILDING -RELATED PERMITS TO THE ST. JOHNS COUNTY-ST. AUGUSTINE AIRPORT AUTHORITY AS ARE OTHERWISE APPROPRIATE WITHOUT THE PAYMENT OF SUCH IMPACT FEES, AND FURTHER AUTHORIZING THE COUNTY ATTORNEY TO PARTICIPATE WITH THE ST. JOHNS COUNTY-ST. AUGUSTINE AIRPORT AUTHORITY'S ATTORNEYS IN THE PREPARATION OF AN INTERLOCAL AGREEMENT WITH THE ST. JOHNS COUNTY-ST. AUGUSTINE AIRPORT AUTHORITY

WHEREAS, the St. Johns County-St. Augustine Airport Authority is the owner of certain lands located within the unincorporated area of St. Johns County known as the "airport property," upon which various improvements are located, or are planned to be located; and

WHEREAS, St. Johns County has adopted numerous ordinances providing for the payment of impact fees for certain improvements to ensure the provision of various public services and facilities; and

WHEREAS, the funds collected as impact fees are commingled by St. Johns County with other impact fee payments of a like nature and are not, at the time of collection, earmarked for any specific improvement; and

WHEREAS, as more fully explained in the attached October 8, 2001 correspondence from George M. McClure to the County Attorney, the Federal Aviation Administration (FAA) guidelines and standards prohibit the payment of airport revenue for improvements which are not specifically identifiable, in advance of the payment, as being beneficial to the airport authority; and

WHEREAS, the County Attorney questions whether the ad valorem tax revenues that the property owners of St. Johns County are required to pay to St. Johns County-St. Augustine Airport Authority constitute "airport revenue," as defined by the FAA; and

WHEREAS, the St. Johns County-St. Augustine Airport Authority and St. Johns County desire to obtain a judicial ruling regarding whether payment of impact fees constitutes an unlawful diversion of airport revenue; and

WHEREAS, the St. Johns County-St. Augustine Airport Authority and St. Johns County desire to toll the time that has been set by St. Johns County for the payment of impact fees by the St. Johns County-St. Augustine Airport Authority pending the outcome of such legal action; and

WHEREAS, the St. Johns County-St. Augustine Airport Authority and St. Johns County do not desire to prohibit further improvements to be conducted on the airport property pending the outcome of such legal action.

NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners of St. Johns County, Florida that:

Section 1. The County Administrator is hereby authorized to temporarily delay the collection of impact fees by the St. Johns County-St. Augustine Airport Authority and to issue such building related permits for the St. Johns County-St. Augustine Airport Authority as are otherwise appropriate without the prior payment of impact fees pending a judicial determination of whether or not such impact fees constitute an unlawful diversion of airport revenue.

Section 2. The County Attorney is hereby authorized to participate with the St. Augustine-St. Johns County Airport Authority's attorneys in the preparation of an Interlocal Agreement to address the impact fee issue, the final version of which is to be approved by the Board of County Commissioners and the St. Johns County-St. Augustine Airport Authority Board, setting forth substantially those terms as expressed in the October 8, 2001 correspondence attached hereto.

PASSED AND ADOPTED by the Board of County Commissioners of St. Johns County, Florida this 9th day of October, 2001.

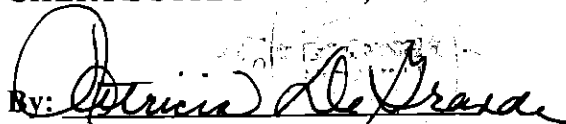
BOARD OF COUNTY COMMISSIONERS
OF ST. JOHNS COUNTY, FLORIDA



Its Chairman

Rendition Date: October 17, 2001

ATTEST:
CHERYL STRICKLAND, CLERK

By: 
Deputy Clerk

ROGERS TOWERS

BAILEY JONES & GAY, P.A.

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October 8, 2001

VIA FACSIMILE 823-2575
and HAND-DELIVERY

James G. Sisco, Esq.
County Attorney
St. Johns County Judicial Center
4010 Lewis Speedway
St. Augustine, FL 32095

Re: St. Augustine - St. Johns County Airport Authority Revenue Diversion

Dear Jim:

This will serve to confirm our communication of the last few days with respect to the St. Augustine - St. Johns County Airport Authority (the "Airport Authority"). As you know, we are General Counsel to the Airport Authority and have recently encountered a question of law regarding federal statutes regulating the use of airport revenue by federally sponsored airports and the FAA's policy adopted in conjunction with the administration of those statutes.

Briefly, §511(a)(12) the Airport and Airway Improvement Act of 1982 (AAIA) established a general requirement for the use of airport revenue. The revenue-use requirement directed public airport owners and operators to "use all revenues generated by the airport...for the capital or operating costs of the airport, the local airport system, or other local facilities which are owned or operated by the owner or operator of the airport and directly related to the actual transportation of passengers or property." This language has been clarified and slightly modified by the Airport and Airway Safety and Capacity Expansion Act of 1987, the FAA Authorization Act of 1994, and the FAA Re-authorization Act of 1996. The 1994 Authorization Act directed the Secretary of the FAA to withhold approval of grant applications for airports found in violation of the restrictions on use of airport revenue and to impose civil penalties up to a maximum of \$50,000.00 on airport sponsors for violations of the revenue retention requirement. Even when the payment is authorized under a grandfathering provision, even the lawful diversion of airport revenues by airport sponsors is a factor militating against the distribution of discretionary grants to the airport.

The FAA adopted a final policy with respect to the interpretation of these Acts in Volume 64, No. 30 of the Federal Register. That policy specifically included an analysis of impact fees and contingency fees that included an analysis of a Florida airport sponsor. Generally, the policy

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provides that payments of impact fees must meet the general requirement that airport revenue be expended only for "actual documented costs of items eligible for use of airport revenue under this Policy Statement." The policy generally requires that there be a specific improvement identified before the payment of the impact fee which is for the use and benefit of the airport and for which the payment is actually being made. Obviously, the existing status of the County's impact fees do not conform to this requirement.

Significant benefits have accrued to the Airport Authority and to the community as a result of federal grants. Just in the last two years, the FAA has awarded grants to the Authority providing for improvements to Taxiway A (approximately \$1,300,000.00), the installation of high intensity runway lighting system (approximately \$250,000.00), improvements to Taxiway D (approximately \$500,000.00), and an environmental assessment of proposed improvements to the main runway (approximately \$150,000.00). The FAA has further indicated that it will be granting funds to the Airport Authority for the improvement of Taxiway B (approximately \$1,500,000.00) and for the updating of the Airport Authority's master plan beginning in January (approximately \$200,000.00) of 2002.

We know that the Office of the County Attorney has taken the position that because the Authority has the statutory right to levy a millage (within certain limitations) throughout the County, then portions of the Airport's revenue are not "airport revenue" as defined by the FAA. We have corresponded with the FAA and argued this position, but the FAA has adamantly responded that all revenue received by the Airport is in fact, "airport revenue." The payment, therefore, of impact fees to the County, unless some change is achieved, would jeopardize extraordinarily valuable contributions to the community.

The Authority is presently engaged in an expansion of a passenger terminal. We have recently requested the provision of temporary power to the contractor to allow the testing of the HVAC systems and the dehumidifying of installed drywall. We have been advised by the County Building Department that temporary power will not be provided except upon payment of the impact fee associated with the terminal. That number is something less than \$30,000.00.

Confirming our conversation of last week, we would propose to the County and to the Airport Authority Board the adoption of an interlocal agreement. The essence of that interlocal agreement is to require the Airport Authority to file an action in the appropriate Court seeking a declaratory judgment as to whether the payment of the impact fees represents an unlawful diversion of airport revenue. The interlocal agreement will further provide that the County will suspend the collection of the impact fees pending the results of the declaratory judgment action and that if that action determines that the Airport Authority may lawfully pay the impact fees, we will do so within sixty (60) days of the entry of the Final Judgment.

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I would offer that one possible result of that action is that a court would find both that the County is entitled to recover the impact fee and that it constitutes a violation of the FAA regulation. If that were the case, then the payment of the impact fee (although lawfully required) could result in the loss of federal revenue. We would reserve the right to lobby the County at that time as to alternative arrangements to avoid the loss of revenue to the County.

We would request at the County Commission's meeting tomorrow morning, that, pending approval of the interlocal agreement, they authorize the Building Department to provide temporary power to the terminal expansion with the understanding that no certificate of occupancy can be issued until the interlocal agreement is approved or, if not approved, some other agreement or order from a court of competent jurisdiction is entered addressing the payment of the fee. We have enclosed a draft Resolution for your review.

We very much appreciate your prompt cooperation in this and look forward to seeing you tomorrow morning.

Very truly yours,



George M. McClure

GMM:nhd

Enclosure