

RESOLUTION

A RESOLUTION OF THE SCHOOL BOARD OF CLAY COUNTY, FLORIDA, FINDING IT APPROPRIATE THAT THE SCHOOL IMPACT FEE REGULATIONS ADOPTED BY THE BOARD OF COUNTY COMMISSIONERS OF CLAY COUNTY, FLORIDA, BE AMENDED TO PROVIDE, IN THE CASE OF A SCHOOL IMPACT FEE PAID AS A CONDITION FOR ISSUANCE OF A BUILDING PERMIT THAT HAS EXPIRED WITHOUT COMMENCEMENT OF CONSTRUCTION, THAT THE FEEPAAYER IS AUTHORIZED TO APPLY FOR A CREDIT UNDER SPECIFIED CIRCUMSTANCES AND SUBJECT TO SPECIFIED LIMITATIONS; FINDING IT APPROPRIATE THAT SAID SCHOOL IMPACT FEE REGULATIONS BE FURTHER AMENDED TO CLARIFY THE APPLICABILITY OF CREDIT RECEIVED FOR THE DONATION OF LAND OR THE CONSTRUCTION OF AN IMPROVEMENT OR ADDITION TO THE PUBLIC EDUCATION SYSTEM, TO REQUIRE THE PROPERTY TO WHICH THE CREDIT APPLIES TO BE SPECIFICALLY IDENTIFIED IN A CREDIT AGREEMENT, TO PROVIDE THAT THE CREDIT SHALL NOT ASSIGNED OR APPLIED TO ANY OTHER LANDS OR BE CONVERTED TO CASH, AND TO PROVIDE THAT ANY CREDIT REMAINING AFTER BUILD-OUT SHALL BE DEEMED ADJUSTED TO ZERO; RECOMMENDING TO THE CLAY COUNTY BOARD OF COUNTY COMMISSIONERS THAT SUCH REGULATIONS BE SO AMENDED; AND RECOMMENDING A SPECIMEN OF AN ORDINANCE THAT WOULD ACCOMPLISH SUCH AMENDMENT.

Recitals

WHEREAS, on March 25, 2003, the Board of County Commissioners of Clay County, Florida (the BCC), at the request of the School Board of Clay County, Florida (the CCSB), adopted Ordinance No. 2003-30 creating Article IV of Chapter 16 of the Clay County Code (Article IV) and imposing thereunder a public school impact fee on new residential development throughout Clay County, Florida; and,

WHEREAS, the CCSB desires hereby to recommend to the BCC that Article IV be amended, to make findings in support thereof, to recommend a specimen of an ordinance that would accomplish such amendment, and to hold the BCC harmless should it adopt an ordinance in the form of such specimen.

NOW, THEREFORE, BE IT RESOLVED by the School Board of Clay County, Florida:

1. The CCSB finds that Sec. 16-69 of Article IV authorizes a feepayer to apply for a refund of the net portion of the school impact fee paid as a condition for issuance of a building permit if the permit expires without commencement of construction, but provides that if the application is not submitted within thirty days following the expiration of the permit, then the school impact fee shall be retained by the CCSB.

2. The CCSB finds that limiting the refund application period in Sec. 16-69 of Article IV to thirty days and providing for the CCSB's retention of the school impact fee in the absence of a timely and properly supported refund application is appropriate and reasonable, as the net portion of the school impact fee is often expended soon after it is received by the CCSB, and therefore its availability for refunding is limited.

3. The CCSB finds that it is appropriate and reasonable for Article IV to be amended to provide that, if the feepayer shall have failed to submit a timely and properly supported refund application under Sec. 16-69 of Article IV, then the feepayer is authorized to apply for a credit under specified circumstances and subject to specified limitations, in recognition of the fact that the school impact fee paid by the feepayer has been or will be expended by the CCSB in funding the cost of public educational plant facilities required to offset the impact of a dwelling unit that has not been constructed.

4. The CCSB finds that it is appropriate and reasonable for Sec. 16-66 of Article IV to be amended to clarify the applicability of credit received for the donation of land or the construction of an improvement or addition to the public education system, to require the property to which the credit applies to be specifically identified in a credit agreement, to provide that the credit shall not assigned or applied to any other lands or be converted to cash, and to provide that any credit remaining after build-out shall be deemed adjusted to zero

5. To accomplish the amendment of Article IV outlined in sections 3 and 4 above, the CCSB recommends to the BCC that it adopt an ordinance in the form of the specimen attached hereto as Exhibit A at the earliest date allowed by law.

[The remainder of this page is intentionally blank.]

DULY ADOPTED AND APPROVED this ____ day of April, 2014, by the School Board of Clay County, Florida.

SCHOOL BOARD OF CLAY COUNTY,
FLORIDA

By: _____
CAROL Y. STUDDARD, Chairman

By: _____
JANICE KEREKES

By: _____
LISA GRAHAM

By: _____
TINA BULLOCK

By: _____
JOHNNA MCKINNON

ATTEST:

CHARLIE VAN ZANT, JR., Superintendent

Exhibit A
[Specimen Ordinance]

ORDINANCE NO. 2014-_____

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF CLAY COUNTY, FLORIDA, REVISING ARTICLE IV OF CHAPTER 16 OF THE CLAY COUNTY CODE RELATING TO PUBLIC SCHOOL IMPACT FEES BY AMENDING THE CAPTION OF SEC. 16-66 THEREOF TO READ "CREDIT FOR DONATION OF LAND OR CONSTRUCTION"; BY AMENDING SEC. 16-66 TO CLARIFY THE APPLICABILITY OF CREDIT RECEIVED FOR THE DONATION OF LAND OR THE CONSTRUCTION OF AN IMPROVEMENT OR ADDITION TO THE PUBLIC EDUCATION SYSTEM, TO REQUIRE THE PROPERTY TO WHICH THE CREDIT APPLIES TO BE SPECIFICALLY IDENTIFIED IN A CREDIT AGREEMENT, TO PROVIDE THAT THE CREDIT SHALL NOT ASSIGNED OR APPLIED TO ANY OTHER LANDS OR BE CONVERTED TO CASH, AND TO PROVIDE THAT ANY CREDIT REMAINING AFTER BUILD-OUT SHALL BE DEEMED ADJUSTED TO ZERO; BY CREATING NEW SEC. 16-66.5 THEREOF AND PROVIDING THEREIN FOR AN IMPACT FEE CREDIT IF A BUILDING PERMIT HAS EXPIRED WITHOUT COMMENCEMENT OF CONSTRUCTION AND AN APPLICATION FOR A REFUND HAS NOT BEEN SUBMITTED UNDER SUBSECTION (b) OF SEC. 16-69 WITHIN THE TIME PERIOD PROVIDED THEREIN, INCLUDING THE PROCEDURE AND TIMEFRAME FOR SUBMITTING AN APPLICATION FOR SUCH CREDIT, AND RESTRICTIONS, LIMITATIONS AND REQUIREMENTS THEREFOR, TRANSFERS THEREOF AND THE ENTRY INTO AN AGREEMENT RELATED THERETO; AND BY AMENDING SEC. 16-69 THEREOF, WHICH RELATES TO REFUNDS OF PUBLIC SCHOOL IMPACT FEES, BY PROVIDING THEREIN THAT A FEEPAYER'S FAILURE TO TIMELY APPLY FOR A REFUND UNDER SUBSECTION (b) THEREOF SHALL NOT PREJUDICE THE FEEPAYER'S RIGHT TO APPLY FOR A CREDIT UNDER SEC. 16-66.5; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

Be It Ordained by the Board of County Commissioners of Clay County:

Section 1. Sec. 16-66 of Article IV of Chapter 16 of the Clay County Code is hereby amended to read as follows:

Sec. 16-66. Credit for donation of land or construction.

- (a) Subject to the terms and conditions of this section, and except as provided in subsection (i), a credit shall be granted against the school impact fee imposed under Sec. 16-64 for the donation of land or for the construction of an improvement or addition to the public educational system that is required pursuant to a development permit or made voluntarily in

connection with new residential development. Such donations or construction shall be subject to the approval and acceptance of the planning director and the facilities director. No credit shall be given for the donation of land or construction unless the same is conveyed in fee simple to the school board without consideration.

- (b) Prior to the issuance of a building permit for a new residential development, a person seeking a credit therefor under subsection (a) shall submit to the planning director an original and a copy of a plan for donations or contributions to the public educational system. The plan shall include:
 - (1) The identification of the new residential development for which the plan is being submitted;
 - (2) A legal description of any land proposed to be donated, a minimum standards topographic and boundary survey thereof based upon such legal description, and a written appraisal prepared in conformity with subsection (e);
 - (3) A list of the contemplated contributions to the public educational system and an estimate of the proposed construction costs certified by a professional architect or engineer; and,
 - (4) A proposed schedule for completion of the plan.
- (c) Within 10 days following receipt of a plan under subsection (b), the planning director shall forward a copy of the plan to the facilities director for review and recommendation. The facilities director shall submit a written recommendation to the planning director within 20 days following the facilities director's receipt of the plan. Based upon the facilities director's recommendation, the planning director shall approve or deny the plan in accordance with subsection (d) and, if approved, establish the amount of credit in accordance with subsection (e). The planning director shall issue a decision within 60 days following the filing of the plan.
- (d) In reviewing the plan, the planning director shall determine in consultation with the facilities director whether:
 - (1) The plan is consistent and in conformity with contemplated improvements and additions to the public educational system;
 - (2) The donation of land and/or construction by the applicant is consistent with the public interest;

- (3) The schedule for the plan is consistent with the capital improvement program for the public educational system; and,
 - (4) The land donations and construction contributions provide improvements or additions to the public educational system that are required to accommodate new residential development.
- (e) The amount of the school impact fee credit granted under subsection (a) for any donation of land and construction provided in a plan approved under subsection (c) shall be determined as follows:
- (1) The value of donated land shall be based upon a written appraisal prepared by an M.A.I. appraiser who was selected from a list of approved appraisers provided by the school board and paid by the person seeking the credit, and who used generally accepted appraisal techniques. The valuation standard utilized by the M.A.I. appraiser shall be the fair market value of the donated land as unimproved property prior to the development approval requiring the donation with its highest and best use being determined without any consideration of any enhanced value of the donated land resulting from approval by the county of the residential development with respect to which the land donation constituted a condition of development approval. Such market value shall be determined as of the submission date of the plan to the planning director.
 - (2) The following legislative findings are made and determined in support of the adoption of the school site valuation standard for the determination of the fair market value of a donated school site for the purpose of a school impact fee credit calculation:
 - a. The requirement of the donation of a school site as a condition of approval of a development phase is intended to provide adequate land for school facilities needed by the contemplated residential development approved and such exaction bears a rational nexus to such need.
 - b. The requirement for the dedication of a school site as a condition of development approval is a reasonable requirement permitting the landowner to engage in the business of subdividing land.
 - c. The imposition of a school impact fee countywide is a rational regulation of growth to ensure that the school facilities needed by growth are provided on a timely basis to accommodate new residential development.

- d. Determination of the amount of a school impact fee credit for a donated school site that was required as a condition of development approval by an appraisal methodology based on the fair market value of the donated site if developed and used not as a school site but in a manner consistent with other parcels as approved within the development ignores the regulatory consequence that the development was permitted only if such donation was made. As a consequence, such donated land would never receive the enhanced value resulting from the development approval precisely because its use was limited to a school site. Such appraisal methodology also undermines the regulation of growth by diminishing the fair share contribution of residentially developed parcels within the development to fund the capital improvements needed to accommodate growth under the methodology used to develop the impact fee studies.
 - e. Under the methodology used to develop the impact fee studies, granting a school impact fee credit for the value of donated land for a school site within a development in excess of the land portion of the school impact fee amount diminishes the fair share contribution needed from residential units within a development to fund the capital improvements needed to accommodate growth caused by the development when compared to other residential units.
- (3) If the appraisal does not conform to the requirements of this subsection and the applicable administrative regulations, the appraisal shall be corrected and resubmitted. In the event the facilities director accepts that the methodology of the appraisal is consistent with the school site valuation standard but disagrees with the appraised value, or if otherwise required by law, the school board may engage another M.A.I. appraiser at its expense and the value shall be an amount equal to the average of the two appraisals. If either the person seeking the credit or the school board does not accept the average of the two appraisals, a third appraisal shall be obtained, with the cost of said third appraisal being shared equally by the person seeking the credit and the school board. The third appraiser shall be an M.A.I. appraiser selected by the first two appraisers and the third appraisal shall be binding on the person seeking the credit and the school board; provided, if the third appraisal is less than the lower of the first two appraisals, then the value shall be the lower of the two first appraisals, and shall be binding on the person seeking the credit

and the school board; provided further, if the third appraisal is greater than the higher of the first two appraisals, then the value shall be the higher of the two first appraisals, and shall be binding on the person seeking the credit and the school board. All appraisals shall be consistent with the school site valuation standard. An appraisal submitted with a method of valuation not consistent with the school valuation standard adopted shall be rejected by the facilities director.

- (4) The cost of construction shall be based upon either the amount of cost estimates certified by a professional architect or engineer, or the actual cost of construction, whichever is less. In no event, however, shall any credit be granted in excess of the estimated construction costs approved unless the construction project is competitively bid, in which case, the credit shall be limited to the actual cost or 120% of the bid amounts, whichever is less.
- (f) If a plan is approved under subsection (c), the person seeking the credit, the county and the school board shall enter into a credit agreement in accordance with subsection (k) which shall provide for the timing of the action to be taken by such person and the obligations and responsibilities of such person, including, but not limited to:
- (1) The timing of actions to be taken by such person and the obligations and responsibilities of such person, including, but not limited to, the construction standards and requirements to be complied with;
 - (2) The obligations and responsibilities of the county and school board, including but not limited to inspection of the construction project; and,
 - (3) The amount of the credit as determined in accordance with subsection (e).
- (g) A credit for the donation of land for a school site shall be granted at such time as the property which is the subject of the donation has been conveyed to and accepted by the school board, subject to and in accordance with the requirements of subsection (k). The amount of the credit for the donation of land shall only apply against the land portion of the school impact fee amount for each dwelling unit. A credit for the construction of an improvement or addition to the public educational system shall be granted at such time as the construction is completed, approved and accepted by the school board. The administration of such credit shall be the responsibility of the facilities director after such credit has been provided in the credit agreement under subsection (f). The credit

shall be applicable only to property governed under the development permit or to property comprising the new residential development for which the donation of land was made or the construction of an improvement or addition to the public educational system was provided. Such property shall be specifically identified in the credit agreement required under subsection (k). If the credit is limited to only a portion of such property, such portion shall be specifically identified in such credit agreement. No credit may be assigned or applied to any lands or development beyond the limits of the property or portion thereof so identified. No credit, whether unused or otherwise, may be converted to cash payable to the person entitled to the credit. Any credit remaining after the build-out of the property or portion thereof so identified shall be deemed to have been adjusted to zero.

- (h) Any person seeking a credit under subsection (a) who submits a plan pursuant to subsection (b) and desires the immediate issuance of a building permit for the new residential development related to the plan prior to the approval of the plan shall pay the applicable school impact fee imposed under Sec. 16-64 prior to the issuance of the building permit. Should the plan be subsequently approved and a credit agreement therefor entered into under subsection (f), then at the option of such person, any school impact fee so paid shall be refunded to such person, not to exceed the amount of the credit, and the amount refunded shall be applied against such credit. The administration of such refund shall be the responsibility of the facilities director.
- (i) A credit shall be granted against the school impact fee imposed under Sec. 16-64 within an existing development of regional impact as follows:
 - (1) The amount of such credit shall be determined in accordance with the terms of the development order by which the same was authorized, but any appraisal for a land donation must be consistent with the school site valuation standard, and the amount of the credit for such donation shall only apply against the land portion of the school impact fee amount for each dwelling unit.
 - (2) Unless the owner of such existing development of regional impact agrees otherwise, such credit shall not be subject to proration as set forth in subsection (j) amongst either the total number of dwelling units authorized to be developed under the development order therefor or amongst any fraction thereof, but shall be available for application against the full amount of the school impact fee imposed on new residential development therein until exhausted.
 - (3) The use of such credit for application against the school impact fee imposed on any new residential development within such existing

development of regional impact shall be determined by the owner of such existing development of regional impact and shall be evidenced by such means as such owner, the county and the school board may agree upon. Such means may include a voucher issued by such owner specifically identifying such new residential development, the person to whom issued, and the amount of the credit to be applied, that may be presented with any building permit application for such new residential development in lieu of payment of the applicable school impact fee. The administration of such credit shall be the responsibility of the facilities director after such credit has been determined in accordance with this section.

- (j) The amount of the credit for any new residential development pursuant to a development order or development phase, other than an existing development of regional impact, shall be prorated among the maximum number of dwelling units available under the development order or within the development phase for which the school site donation is required, to result in an adjusted school impact fee for each dwelling unit. The amount of the adjusted school impact fee for all dwelling units available under the development order or within the development phase shall be determined upon final approval of the development order or the development phase and shall be established at a fixed amount regardless of the final build out of the contemplated development.
- (k) The amount of the credit and, if applicable, the proration of the school impact fee for each dwelling unit within a development phase and within any existing development of regional impact shall be documented in a credit agreement amongst the person seeking the credit, the county and the school board. No credit shall be applied against the school impact fee required for any particular building permit unless such credit is provided in a credit agreement fully executed and in effect prior to submitting an application for such permit.

Section 2. Article IV of Chapter 16 of the Clay County Code is hereby amended by the creation thereunder of new Sec. 16-66.5, to be inserted immediately following Sec. 16-66 thereof, and to read as follows:

Sec. 16-66.5. Credit following building permit expiration.

- (a) If a building permit expires without commencement of construction, and the feepayer has not submitted a school impact fee refund application within the thirty (30) day period provided under subsection (b) of section 16-69, then the feepayer or a title transferee as described in subsection (c)(2) shall be deemed to have waived any right or entitlement to a school impact fee refund but shall be entitled to a credit in the full amount of the

school impact fee paid as a condition for issuance of the building permit. The feepayer or such transferee must submit an application for the credit to the school board within ten (10) years following the expiration of said thirty (30) day period. The application for the credit must contain the following items and information:

- (1) A notarized sworn statement that the applicant is the current owner of the property with respect to which the school impact fee was paid;
 - (2) A copy of the dated receipt issued for the payment of the school impact fee or such other document as would evidence payment;
 - (3) A certified copy of the latest recorded deed or a copy of the most recent ad valorem tax notice evidencing ownership of the property;
 - (4) If the credit has been assigned as permitted under subsection (c), a copy of the instrument of assignment; and
 - (5) Such other information and documentation as the school board may reasonably require.
- (b) The burden shall be upon the applicant under subsection (a) to prove entitlement to the credit.
- (c) A credit approved for an application submitted under subsection (a) is subject to the following restrictions and limitations:
- (1) The amount of the credit can never be subject to refund.
 - (2) The credit runs with the land for which the building permit was issued, and is not assignable to a third party except in connection with the voluntary transfer of fee simple title to such land by the feepayer to such third party. A transferee of such title to which the credit has been assigned properly in accordance with this subsection may assign such credit under the same conditions as are applicable to the feepayer hereunder.
 - (3) The credit is monetary in nature, and applies against the amount of the school impact fee that must be paid under section 16-65 if, as and when a new building permit is issued for the land to which the credit is attached. If at the time such building permit is issued the amount of the school impact fee due is greater than the credit, then the building permit applicant must pay the difference. If at the time such building permit is issued the amount of the school impact fee due is less than the credit, then the difference shall be

←----- Formatted: Indent: Left: 1"

←----- Formatted: Indent: Left: 1"

adjusted to zero, and no further credit shall be available to the holder thereof.

- (4) The credit expires ten (10) years following the expiration of the thirty (30) day refund application period under subsection (b) of section 16-69.
- (d) A credit approved for an application submitted under subsection (a) may be applied against the school impact fee payable for any type of new residential development to be constructed on the land to which the credit relates regardless of the type of new residential development for which the school impact fee giving rise to the credit was paid.
- (e) The amount of the credit approved for an application submitted under subsection (a) shall be documented in a credit agreement amongst the applicant, the county and the school board. No credit approved for an application submitted under subsection (a) shall be applied against the school impact fee required for any particular building permit unless such credit is provided in a credit agreement fully executed and in effect prior to the issuance of such permit.
- (f) This section applies to all school impact fees regardless of when paid.

Section 3. Sec. 16-69 of Article IV of Chapter 16 of the Clay County Code is hereby amended to read as follows:

Sec. 16-69. Refund of school impact fees.

- (a) The net portion of a school impact fee collected under this article shall be available for refund to the then current owner of the property with respect to which the school impact fee was paid if the school impact fee has not been expended or encumbered prior to the end of the fiscal year immediately following the sixth anniversary of the date upon which the school impact fee was paid. A refund shall be made only in accordance with the following procedure:
 - (1) Such owner must submit to the facilities director an application for the refund within six (6) months following the end of the calendar quarter immediately following six (6) years from the date on which the fee was received.
 - (2) The application for refund must contain the following items:
 - a. A notarized sworn statement that the applicant is the current owner of the property with respect to which the school impact fee was paid;

- b. A copy of the dated receipt issued for the payment of the school impact fee or such other document as would evidence payment; and
 - c. A certified copy of the latest recorded deed or a copy of the most recent ad valorem tax notice evidencing ownership of the property.
- (3) Within three (3) months following the date of receipt of an application for refund, the facilities director shall advise the applicant and the school board of the status of the school impact fee requested for refund. If the school impact fee has not been expended or encumbered within the applicable time period, the net portion of the school impact fee shall be refunded to the applicant by the school board without interest.
- (b) If a building permit expires without commencement of construction, then the feepayer shall be entitled to a refund, without interest, of the net portion of the school impact fee paid as a condition for issuance of the building permit. The feepayer must submit an application for such a refund to the school board within thirty (30) days following the expiration of the permit. The application shall include such supporting documentation as the school board may reasonably require.
 - (c) Any school impact fee with respect to which an application for a refund is not submitted within the required time, or with respect to which a refund is denied for proper cause, shall be retained by the school board.
 - (d) Credits applied in lieu of payment of school impact fees under section 16-66 shall not be eligible for refund under this section.
 - (e) Upon payment of any refund under this section, the school board shall adjust its records maintained under subsection (c) of section 16-67 accordingly.
 - (f) For purposes of this article, school impact fees collected shall be deemed to be expended or encumbered on the basis of the first school impact fee in being the first school impact fee out.
 - (g) The school board shall retain two (2) per cent of any school impact fee with respect to which a refund is made under this section as a charge to offset its administrative costs.
 - (h) For purposes of this section, the net portion of a school impact fee shall be the amount of such school impact fee paid under this article less the

charge retained by the school board under subsection (g) and the charge retained by the county or a municipality under subsection (d) of section 16-64.

- (i) A feepayer's failure to apply for a refund under subsection (b) within the thirty (30) day period provided therein shall be deemed to be a waiver of the feepayer's right to a refund but shall not prejudice the feepayer's right to apply for a credit under section 16-66.5.

Section 4. The provisions of this ordinance are declared to be severable, and if any section, sentence, clause or phrase of this ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this ordinance but they shall remain in effect, it being the legislative intent that this ordinance shall stand notwithstanding the invalidity of any part.

Section 5. This ordinance shall become effective upon adoption.

[The remainder of this page is intentionally blank.]

DULY ADOPTED by the Board of County Commissioners of Clay County, Florida, this
____ day of _____, 2014.

BOARD OF COUNTY COMMISSIONERS
CLAY COUNTY, FLORIDA

By: _____
Wendell D. Davis
Its Chairman

ATTEST:

S. C. Kopelousos
County Manager and Clerk of the
Board of County Commissioners