



BOARD OF COUNTY COMMISSIONERS

**County Attorney's Office**  
2725 Judge Fran Jamieson Way  
Building C, Room 308  
Viera, Florida 32940

**TO:** Frank Abbate, County Manager

**THRU:** Morris Richardson, County Attorney 

**FROM:** Christine Reilly, Senior Law Clerk 

**SUBJ:** Citizen Efficiency and Effectiveness Recommendation #2024045

**DATE:** 04/01/2024

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CEER #2024045 was received by the County from Sandra Sullivan, affiliated with the group WAVESaction LLC.

**Citizen Statement:**

When Hightower and Pelican Beach parks (unfunded liabilities) were given to the then insolvent city of Satellite Beach in 2012 (D4 Commissioner then a resident of Satellite Beach), the interlocal agreement and deed restrictions required no differential in fee. The whole deal, given the alleged embellishment of CRA monies as documented by state agency raises questions on that transaction, since the city did not have the means to maintain the parks. The only good news is that these beach parks had deed restrictions and interlocal agreement. We the taxpayers who funded the acquisition of our County Parks through our taxes – and expect the deed restrictions to be enforced. Unfortunately, Satellite Beach's Parking Management plan creates a differential in fee – a violation of those agreements. 1. Only golf carts from Satellite Beach are exempted for parking (other golf carts cannot park). IHB and SPS golf carts cannot park at Hightower or Pelican without getting booted. 2. Rental cars cannot get a parking pass which means snowbirds (who may even have winter residences) who fly here cannot get a free annual parking pass. 3. Anyone from outside the US who comes to visit – for extended stay – cannot get a free annual parking pass. i.e., my sister comes to visit each winter for a few weeks. The constant booting of tourists is bad for tourism- and are harming IMO our tourism – yet they want TDT monies for lifeguards. There are many instances of questionable booting of people who claim to have a pass. Further while the County owned these parks,

Hightower was funded by a federal agreement for the bathrooms, boardwalk and beach access. This LW541 agreement required the Hightower park (FCT and County park) to remain conservation lands in perpetuity. The conservation easement on Hightower former County Park has been removed which would be another violation of the park interlocal agreement and deed restrictions. Lastly, the county was a joint application partner with Satellite Beach on the FCT state land acquisition. Again there are alleged violation of those agreements which the county was party to those agreements and made the required Comprehensive Plan changes including (capping density, no moving density bonus, etc.)

#### **Citizen Recommendation:**

Enforce the deed restrictions and interlocal agreement for Hightower/Pelican Parks and take back these parks back as Brevard County parks to facilitate all the above issues above. This is owed to the taxpayers of Brevard as the responsible action.

#### **Staff Analysis:**

When Brevard County conveyed Hightower Beach Park and Pelican Beach Park to the City of Satellite Beach in 2012, the deeds<sup>1</sup> included the following deed restriction in pertinent part,

The property described in Exhibit "A" is to be used solely as a public beach park and for purposes providing public recreational use and related activities.... Any user fees required by the City must be applied uniformly with no differential in the amount charged to the public.... In the event this Property is not used or ceases to be used for the stated purpose and under the stated conditions, then all right, title and interest in the Property shall revert to the party of the first part (County) which shall thereafter have the right to reenter and repossess the Property conveyed herein.... (Parenthetical added).

In 2022, the City of Satellite Beach proposed a beach parking fee program that would have imposed a user fee on non-City residents to park at Hightower Beach Park and Pelican Beach Park, while allowing City residents to park for free. On November 9, 2022, at the direction of the Board of County Commissioners, the County Attorney sent correspondence to Satellite Beach objecting to the proposed program and expressing the Board's intent to take action to enforce the deed restrictions. That correspondence is attached.

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<sup>1</sup> The deed for land commonly known as Hightower Beach Park was recorded on May 9, 2012, at OR Book 6597, Page 592, in the Public Records of Brevard County, and the deed for land commonly known as Pelican Beach Park was recorded on May 9, 2012, at OR Book 6597, Page 785, in the Public Records of Brevard County.

In response to that correspondence, Satellite Beach substantially revised its parking fee program to comply with the deed restrictions. As adopted, the Satellite Beach Annual Beach Parking Permit Program<sup>2</sup> allows residents of the City and non-residents alike to apply for annual parking permits to park at Hightower Beach Park and Pelican Beach Park at no cost. To obtain the annual parking permit, a person must apply online and show proof of a valid registration and ownership of the vehicle. These requirements apply to both residents and non-residents, alike. Therefore, whether an applicant is a resident or non-resident, if he or she does not own the vehicle which he or she would like to park, he or she cannot apply for the annual permit. For those persons without an annual parking permit, the cost is \$2.50 per hour or \$10 per day, irrespective of whether the person is a resident or non-resident. The deed restriction requiring the user fees to be applied uniformly with no differential in the amount charged to the public, therefore, is not violated.

The information from Satellite Beach's Beach Parking program indicates owners of golf carts (LSVs) registered with the State of Florida, and not registered with the city of Satellite Beach, will need to obtain annual permits for parking (which are at no cost). Owners of golf carts which are registered with the City are not required to obtain an annual permit, and similar to non-resident LSVs, they also park at no cost. Golf carts which are not registered with the State or with the City are not allowed to park at Hightower Beach Park and Pelican Beach Park, regardless of whether they are owned by a resident or non-resident.<sup>3</sup>

Brevard County is not aware of any current violation of the restrictions in the Hightower Beach Park or Pelican Beach Park deeds relative to the LW541 agreement referenced in the CEER, nor is the County a party to that agreement.

**Staff Recommended Action:**

It is recommended that the Board of County Commissioners reject CEER #2024045, as the Board of County Commissioners already enforces the deed restrictions when an actual violation is threatened or occurs.

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<sup>2</sup> The Satellite Beach Annual Beach Parking Permit Program, is available for review at [https://satellitebeach.gov/news\\_detail\\_T1\\_R84.php](https://satellitebeach.gov/news_detail_T1_R84.php).

<sup>3</sup> See also <https://www.parksatellitebeach.org/> page entitled "Parking News" which states,

Are golf carts allowed at the Satellite Beach parks and accesses?

Only if

°Golf cart has State registered LSV with FL license plate

°Golf cart has a City of Satellite Beach Police sticker

\*\*All other golf carts can be considered a violation of roadway laws



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November 9, 2022

The Honorable Steve Osmer and City Council  
City of Satellite Beach  
565 Cassia Boulevard  
Satellite Beach, Florida 32937

**Re: Ordinance No. 1228 – Beach Parking Fee Program; Pelican Beach  
Park and Hightower Park**

Dear Honorable Mayor Osmer and City Council Members:

I write to you at the direction of the Board of County Commissioners of Brevard County. On November 2, 2022, the Satellite Beach City Council approved on first reading proposed Ordinance No. 1228. If adopted, the ordinance will create a beach parking fee program applicable to the City's public beach accesses and beach parking areas. This includes two beach parks – Pelican Beach Park and Hightower Beach Park – which were formerly owned by Brevard County. The deeds transferring Pelican Beach Park and Hightower Beach Park from Brevard County to the City of Satellite Beach each contain the following deed restriction: **"Any user fees required by the City must be applied uniformly with no differential in amount charged to the public."**

The ordinance professes that "the City has designed a Beach Parking Fee Program to meet the deed restrictions..." However, as explained herein, the annual parking permit program set forth in Ordinance No. 1228 clearly creates a differential user fee and thus violates the deed restrictions.

Ordinance No. 1228 will impose a user fee on non-City residents in the form of a \$25 per year, per vehicle charge to obtain a parking permit. City residents, however, will not be required to pay any user fee in order to obtain a parking permit. Rather, the City will "pay for" resident parking permits by transferring ad valorem tax revenues from its general fund to a new beach park maintenance restricted fund. The agenda report for the first reading of Ordinance No. 1228 described the scheme as follows:

The Committee felt that since the City residents already pay for the maintenance of the parks and accesses through their taxes, that the Annual Permits for the City residents would be paid by the residents' taxes in the amount of the permit per vehicle, and that non-City residents should pay for Annual Permits for their vehicle. ...Our position is that the Committee's strategy meets the terms of the Deed Restrictions since the Annual Permit charge is the same. The only caveat is that the City is paying for the cost of our residents' permits with their own taxes. (emphasis supplied).

The central problem with the City's strategy is that, by definition, a user fee is not a tax, and a tax is not a user fee. The most significant traits that distinguish user fees from taxes are (1) user fees are charged in exchange for a particular government service, (2) the service provided benefits the party paying the fee in a manner not shared by other members of society, and (3) user fees are paid by choice, in that the party paying the fee has the option of not utilizing the governmental service and thereby avoiding the charge. See *I-4 Commerce Center, Phase II, Unit I v. Orange County*, 46 So. 3d 134, 136 (Fla. 5th DCA 2010); *Gargano v. Lee County*, 921 So.2d 661, 667-68 (Fla. 2d DCA 2006) (citing *State v. City of Port Orange*, 650 So. 2d 1, 3 (Fla. 1994)).

Ordinance No. 1228 will not impose a user fee on City residents. City residents will not pay for a parking permit, but rather, the City will pay for resident permits with City tax revenues. The party paying for the permit will not receive benefits in a manner not shared by other members of society, because the City, not the resident, is the party making payment, while the resident enjoys the benefit. Finally, City residents have no ability to avoid paying for the resident parking permit program, as the program is funded by ad valorem taxes. Whether a City resident elects to obtain one parking permit, ten permits, or no permit will have no impact on that resident's City ad valorem taxes.

The fact that the ordinance will create a user fee only as to non-City residents was further illustrated by a slide titled "Estimated Annual Revenue" presented at the November 2 City Council meeting. That slide indicated that non-resident permit user fees would generate an estimated \$30,000 in new revenue annually. However, City resident permits were not estimated to generate any new revenue, because residents would not actually be charged for the permits. The slide noted that the charge for resident permits would be "deducted from general fund," and that "permittees see no charge."

Ordinance No. 1228 creates a program in which non-City residents will be charged a \$25 annual user fee per vehicle, while City residents will not be charged a user fee at all. That plainly violates the Pelican Beach Park and Hightower Beach Park deed restrictions requiring that any user fee be applied uniformly with no differential in amount. The Board of County Commissioners intends to take action to assure that the City honors its legal commitments and complies with the deed restrictions.

Through this letter, the County has now communicated clearly in writing exactly how the City's proposed parking fee program violates the deed restrictions. I trust that this information will inform your further consideration of Ordinance No. 1228. Should you have any questions, I will be happy to discuss this matter with Attorney Beadle and your professional staff.

Very truly yours,



Morris Richardson  
County Attorney

cc: Courtney Barker, City Manager  
Jim Beadle, City Attorney

Recommendation Details

Contact Information

**Full Name:** Sandra I Sullivan

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South Patrick Shores fl 32937

**Alt Email Address:** sandra@sandrasullivan.com

**Phone Number** 954-224-8624

**Group/Organization** WAVESaction

Recommendation Information

**Recommendation Title:** Hightower/ Pelican Interlocal Agreement

**Areas Affected:** Tourism Beach

**Department:** PARKS AND RECREATION DEPARTMENT



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**Problem  
Description:**

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Lastly, the county was a joint application partner with Satellite Beach on the FCT state land acquisition. Again there are alleged violation of those agreements which the county was party to those agreements and made the required Comprehensive Plan changes including (capping density, no moving density bonus, etc).

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**Recommendation  
Description**

**Attachments**

There are no attachments for this recommendation.

**Administrative Action**

**Evaluation**

**Recommendation Timeline**

User	Status	Date	Remarks
CEER WebUser	Citizen Submitted	Dec 30, 2023	
Karen Conde	Department Assigned	Jan 3, 2024	COUNTY ATTORNEY Assigned

Awaiting action from department director