



Brevard County Board of County Commissioners

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Legislation Text

File #: 6755, **Version:** 1

Subject:

Referendum Regarding the Establishment of a Non-Ad Valorem Special Assessment / Municipal Service Benefit Unit (MSBU) for Road Paving in Canaveral Groves (District 1)

Fiscal Impact:

None.

Dept/Office:

District 1 Commission Office

Requested Action:

It is requested that the Board of County Commissioners (1) direct the County Attorney to prepare a resolution calling for a local referendum election concurrent with the November 2024 general election to determine if a non-ad valorem special assessment shall be levied to fund the paving of certain County-maintained dirt roads in Canaveral Groves; (2) direct staff to estimate the costs of the road paving project, evaluate financing options, and approximate the amount of the assessment upon properties within the benefit unit; and (3) direct staff to work with the Supervisor of Elections to prepare for the administration of the localized referendum election within the benefit area.

Summary Explanation and Background:

There are miles of County-maintained unpaved roads in the Canaveral Groves area. Property owners in the area would benefit significantly from the paving of these roads. Generally, it is less expensive for the County to maintain paved roads than unpaved roads. The unpaved roads that are the subject of this agenda item are:

- Cangro Street (west of Tangerine Street)
- Tangerine Street
- Osprey Street (south of Cangro Street)
- Oxbury Avenue
- Tapscott Avenue
- Kumquat Avenue
- Papaya Street
- Oxeye Avenue
- Tokay Avenue
- Lemon Street
- Vacaro Avenue
- Shadwell Avenue
- Paddington Street
- Navel Street
- Lambros Street
- Jake Avenue
- Ocala Street
- Simpson Place (Jake Ave. to Ocala St.)
- Banana Avenue
- Calamondin Avenue
- Palm Avenue
- Grapehill Street
- Newburn Street
- Showdow Street
- Temple St. (Showdow St. to Citrus Blvd.)
- West Little Court
- East Little Court
- Seville Avenue

- Valdine Avenue
- Scarlett Avenue
- Bahia Street (south of Seville Avenue)
- Erica Street

The County has a Municipal Service Benefit Unit (MSBU) program in place that provides residents in already developed and established communities with a funding mechanism for specific infrastructure improvements such as road paving, water, and sanitary sewer line installation. The MSBU program allows residents to request improvements and finance them at a generally low interest rate through a cooperative relationship with the County. This process requires a citizen-initiated petition and the affirmative vote of at least 66.66% of the affected property owners. In an area such as Canaveral Groves with many unpaved roads, it can be a piecemeal process and result in unsystematic, inefficient partial measures taken over a long period of time.

Another mechanism to fund the retrofitting of existing developments is for the Board of County Commissioners to implement a non-ad valorem special assessment. This would also involve the creation of a municipal services benefit unit, but not through the petition initiated MSBU program. Instead, the special assessment process would be commenced upon the approval of a simple majority of the electors residing within the boundaries of the district where the assessment is proposed to be levied at a referendum held concurrently with the November general election.

Special assessments are a Home Rule revenue source available to the County to fund all or some portion of the costs of capital improvements or essential services. Road paving and improvement projects may be funded through special assessments. There are two basic requirements under Florida law for a valid special assessment:

1. The assessed property must receive a special benefit; and
2. The assessment must be fairly and reasonably apportioned.

Special Benefit

Each assessed property must receive a special benefit from the improvement or service funded by the assessment. The special benefit can include an increase in the property's market value, or heightened use and enjoyment of the property.

Properties abutting a street paving project are presumed to receive a special benefit from the project. As the Florida Supreme Court explained, "The whole theory of special assessments for improvements is based upon the doctrine that the property against which the assessment is levied derives some special benefit from the local improvement. In the matter of street paving, it is presumed or assumed that all property abutting on a street to be improved will or may be benefited, and upon that theory such special assessments are permitted without having to establish that the property will be benefited." *Atlantic Coast Line R. Co. v. City of Gainesville*, 91 So. 118, 283-84 (Fla. 1922). Therefore, the proposed special assessment would be assessed only against properties abutting or otherwise directly benefitting from the road paving program.

Fair and Reasonable Apportionment

The assessment must be fairly and reasonably apportioned among the properties receiving the special benefit. The assessment rate must be based on the special benefit accruing to each property in the benefit unit. The Board has wide discretion in choosing an apportionment method that best meets local needs and is not required to follow a statutory formula. Assessments can be allocated by any method so long as the Board determines the method is fair and reasonable. Assessment methodologies can be based upon, but are not

limited to, the following:

- Property frontage (typically in linear feet).
- Platted lot.
- Buildable lot.
- Square footage.
- Any combination of these methods deemed to be equitable by the Board.

Special Assessments Are Not Taxes

While an assessment may be similar to a property tax, Florida courts have held that special assessments are not taxes and are distinguishable in several respects:

- By paying an assessment, the property owner is directly paying for a service or improvement that provides a tangible and special benefit to his or her property such as paving of their street, whereas the services or improvements resulting from payment of property taxes may not be so obvious or direct.
- Special assessments do not count against the Charter cap on ad valorem tax revenue growth, or the aggregate millage rate calculation to determine whether the County must advertise a proposed tax increase.
- Special assessments must convey a special benefit to the property. There is no requirement that taxes convey a special benefit to property, only that the taxes are authorized by law and imposed on a uniform basis.
- Assessments must be earmarked and be spent only for their intended purpose, whereas property taxes generally can be spent to advance any public purpose.
- The formula for calculating property taxes is determined by state law, whereas the assessment methodology is determined by local discretion.
- Ad valorem tax exemptions generally do not apply to special assessments.

Section 5.4.1 of the Brevard County Home Rule Charter prohibits the County from levying new non-ad valorem special assessments without the approval of the electors residing within the boundaries of the district where they are proposed to be levied at a general election or special election called for approval of the assessment. This requirement excludes Municipal Service Benefit Units, and thus would not apply if the special assessment is implemented via a Board-created MSBU. However, even if not required, the referendum result could be treated as a non-binding referendum within the area where the MSBU is to be established.

Next Steps / Election

If the Board approves the requested action, staff will proceed to estimate the costs of the road paving project, evaluate financing options, and approximate the amount of the assessment upon properties within the benefit unit at rates based on methodologies designed to provide the maximum achievable equity among properties. That information will be made available to electors residing within the benefit unit prior to the election.

The County Attorney and staff will assist the District 1 Commissioner in preparing a resolution and ballot language for the referendum election, subject to Board approval at an upcoming meeting. The deadline for submittal of a referendum item to the Supervisor of Elections is 78 days prior to the election, so for 2024, it

would be August 21, 2024. Because this election will be specific to only some of the voters in Precinct 102, it will be necessary for the Supervisor of Elections to create a “Precinct 102.1” that will be identical to the Precinct 102 ballots except for the inclusion of this referendum issue. Board support at this point will allow the Supervisor and staff to move forward with the effort necessary to administer this localized referendum election concurrently with the general election.

Clerk to the Board Instructions:

Please return a copy of the Clerk’s Memorandum to the District 1 Commission Office, the County Manager’s Office, and the County Attorney’s Office.