AGENDA

COMMITTEE OF THE WHOLE WORKSHOP
BOARD OF COUNTY COMMISSIONERS

Board Chambers
Suite 100
Ernie Lee Magaha Government Building - First Floor
221 Palafox Place

April 10, 2014
10:00 a.m.

Notice: This meeting is televised live on ECTV and recorded for rebroadcast on the same channel. Refer to your cable provider's channel lineup to find ECTV.

1. Call to Order

   (PLEASE TURN YOUR CELL PHONE TO THE SILENCE OR OFF SETTING.)

2. Was the meeting properly advertised?

3. Property Assessed Clean Energy (PACE) Program
   (Commissioner Robinson/Alison Rogers - 20 min)
   A. Board Discussion
   B. Board Direction

4. Community/Feral Cats (REFERRED FROM THE MARCH 6, 2014, BCC MEETING)
   (Commissioner Robinson - 20 min)
   A. Board Discussion
   B. Board Direction

5. Office of Public Information and Communications Communications Policy (REFERRED FROM THE MARCH 18, 2014, BCC MEETING)
   (Alison Rogers/Kathleen Dough-Castro - 15 min)
   A. Board Discussion
   B. Board Direction

6. Pensacola Beach Tax Issues
   (Commissioner Robinson/Alison Rogers - 30 min)
   A. Board Discussion
   B. Board Direction

7. Perdido Key Easements
(Keith Wilkins - 30 min)
A. Board Discussion
B. Board Direction

8. Adjourn

Committee of the Whole **3.**

Meeting Date: 04/10/2014

Issue: Property Assessed Clean Energy Program

From: Grover Robinson, District 4 Commissioner

Information

Recommendation:

Property Assessed Clean Energy (PACE) Program
(Commissioner Robinson/Alison Rogers - 20 min)
A. Board Discussion
B. Board Direction

Attachments

PACE Issue Paper - 41014

BOARD OF COUNTY COMMISSIONERS
ESCAMBIA COUNTY, FLORIDA

April 10, 2014 Committee of the Whole

TO: Board of County Commissioners

FROM: Keith Wilkins, Director, Community & Environment Department

DATE: April 10, 2014

RE: Property Assessed Clean Energy (PACE) Program

Issue: Consideration of Adopting a Property Assessed Clean Energy Program

Background:

The PACE Program is a voluntary property energy conservation finance mechanism that allows financing of energy efficiency upgrades to be repaid through an ad valorem assessment. This program is financed by several organizations and collected through local Tax Collectors and levied by local Property Appraisers through agreements with those Constitutional Officers. Enforcement for the collection of the assessments is conducted by the finance organization. Enactment requires authorization of a Resolution and selection of such finance/administrative organization by the local government entity such as a County Commission. Examples of PACE activity in Florida by local governments are included below. We have a letter of interest in a program from Simon Enterprises, owners of Cordova and University Mall properties and Simon has utilized the program to retrofit other properties they own and manage across the country. They are a known supporter of the program.

National

- 31 states and D.C. have enabled commercial PACE programs (New legislative efforts for PACE are underway in Arizona, Indiana, Kentucky, Massachusetts, New Hampshire, Pennsylvania, and West Virginia).
- There are 7 active residential PACE programs
- PACE is available in over 400 municipalities nationwide
- The Western Riverside Council of Governments in California currently has the most successful PACE program in the Country and it include both residential and commercial. The results of the program thus far (3 years in operation):
    - 31,000 applications
    - 10,050 projects completed and funded ($188 million)
    - 99% of people have paid their assessments (1% default rate)
- Commercial PACE projects to date number 200 at a value of $63 Million in improvements (the largest project is $7 Million in improvements for the Los Angeles Hilton)
- Operated under the California Statewide Communities Development Authority (CSCDA), the CaliforniaFIRST residential PACE program will launch this summer in 17 California counties and 167 cities
- More and more local governments are moving to a “Open Market PACE approach” where they allow multiple PACE programs to operate: Here is an article on the trend,

http://www.prnewswire.com/news-releases/cities-and-counties-across-california-adopt-open-pace-marketplace-strategy-210325031.html

State of Florida

- There are still PACE programs in operation in Florida (the Green Corridor District (7 municipalities in Miami Dade County), the Florida Green Energy Works Program (11 municipalities + Martin County= 12 local governments), the Florida PACE Funding Agency (City of Kissimmee, Nassau County and Flagler County).
- Only the Green Corridor and the Florida Green Energy Works programs have actually begun accepting and processing applications for financing
- Leon, Pinellas, Pasco and Miami Dade Counties are all in varying degrees of collecting information to launch PACE in their communities
- Broward County is in negotiations with both the Green Corridor and Florida Green Energy Works programs (they will be the first County in Florida to allow multiple PACE programs "Open Market PACE" to operate within its jurisdiction)

Florida Green Energy Works Program:

- Martin County plus 11 cities across 4 counties: (Town of Lantana, City of Lake Worth, Town of Mangonia Park, City of West Palm Beach, City of Delray Beach, City of Boynton Beach and Village of Tequesta in Palm Beach County; City of Fellsmere and City of Sebastian in Indian River County; City of Stuart in Martin County; City of Gulfport in Pinellas County).
- Focused on commercial properties currently until issues surround residential properties are resolved.
- Multi-jurisdictional program formed through interlocal agreement pursuant to Section 163.01, F.S. Any local government in the State can participate now without further action except passage of Resolution to execute Interlocal. Includes 7 Board members (3 currently filled) with formation of "regional" Boards as more regional programs develop.
- www.floridagreenenergyworks.com
- Agreements in place with Palm Beach County Property Appraiser and Tax Collector and are being provided to other County entities for establishment of levy and collection system.
- Source of capital: open market, any source of capital including national and local banks as well as private equity funds.

Green Corridor Program:

- 7 cities within Miami-Dade County: Miami Shores; Pinecrest; Cutler Bay; Palmetto Bay; South Miami; Miami (Commercial & Multi-Family Only); Coral Gables (Commercial Only).
- 5 participating cities will complete residential and commercial projects. Programs documents include a disclosure to property owners that they may be have issues with their mortgage lender if they complete a residential PACE project.
- Program only includes the 7 municipalities pursuant to interlocal agreement. New participating local governments have to form a new multi-jurisdictional entity to launch a new "corridor".
- https://ygrene.us/fl/green_corridor
- Status unknown in terms of actual levy and collection system.
- Source of capital: interlocal entity or underlying local government issues bonds for purchase by unknown investors.

Florida PACE Funding Agency:

- Nassau County, Flagler County and City of Kissimmee
- Includes residential and commercial projects.
- Governments participate through a "Subscription Agreement" providing control of program over to Board consisting of representatives from City of Kissimmee, Flagler County and Miami-Dade County.
- www.floridapace.gov
- Status unknown in terms of actual levy and collection status.
- Seeking a combination of a bond issuance and private capital provided by Samas.

Other local government activities:

- Lee County in negotiations with a PACE vendor for last 7 months after competitive bid.
- Leon County launching negotiations with a PACE vendor after a competitive bid.
- Broward re-launching competitive bid process after terminating original year-long bid process.
- Pinellas has issued a competitive bid.
- Hillsborough completed Request for Information likely to move forward with competitive bid.
- City of Tarpon Springs completed Request for Information, timeframes to move forward unknown.

Funding:

Funding is not required by Escambia County. All funding, financing, marketing, administrative and collection enforcement is provided by the financing company.

Board Direction:

The Board consider to either opt into an existing program or conduct a solicitation for PACE services.

Committee of the Whole **4.**

Meeting Date: 04/10/2014

Issue: Community/Feral Cats

From: Grover Robinson, District 4 Commissioner

Information

Recommendation:

Community/Feral Cats (REFERRED FROM THE MARCH 6, 2014, BCC MEETING)
(Commissioner Robinson - 20 min)
A. Board Discussion
B. Board Direction

Attachments

Minutes from 3-6-2014, Reg. BCC Agenda

Draft Ordinance

COUNTY ADMINISTRATOR'S REPORT – Continued

II. BUDGET/FINANCE CONSENT AGENDA – Continued

11. Comprehensive Operations Analysis

Motion made by Commissioner Valentino, seconded by Commissioner Barry, and carried unanimously, approving, and authorizing the Chairman to sign, the Agreement for Comprehensive Operations Analysis, PD 13-14.012, between Escambia County, Florida, and Nelson/Nygaard Consulting Associates, Inc., in an amount not to exceed $150,000, for a Comprehensive Operations Analysis of the routes, schedules, and amenities of Escambia County Area Transit (Funding: Fund 320, FTA Capital Projects Fund, Federal Grant, Grant #X804, Cost Center 320417, Object Code 53101).

Speaker(s):

Herold Humphrey
Sherri Myers

III. FOR DISCUSSION

1. Discussion Concerning Community/Feral Cats

The Board discussed feral cats, and was advised by County Attorney Rogers that the Board will need to establish parameters and criteria for identifying *(feral cat)* colonies, and heard Commissioner Robinson's request that the item brought forward by Target Zero be scheduled for discussion at a Committee of the Whole Workshop.

Speaker(s):

Ned Wernick
Pattie Krakowski
Janet Lewis
Jan Papra
Sharyn Berg

DRAFT ORDINANCE RELATING TO THE COMMUNITY CAT MANAGEMENT PROGRAM

Sec. 10-3. Definitions.

The following words, terms and phrases when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Caregiver means any person over the age of eighteen or any entity that provides care, shelter, protection, refuge and/or nourishment to any animal, feral or domesticated.

Community Cat means any free-roaming cat that may be cared for by one or more residents of the immediate area who is/are known or unknown; a community cat may or may not be feral. Community cats shall be distinguished from other cats by being sterilized, vaccinated and ear tipped.

Feral Cat means any cat that has no apparent owner or identification and is apparently wild, untamed, unsocialized, unmanageable, and unable to be approached or handled.

Sec. 10-27. Community Cat Management Program.

(1) Short title. This section shall be known as the "Escambia County Community Cat Management Program Ordinance".

(2) Legislative intent. Escambia County hereby recognizes the need for innovation in addressing the issues presented by feral, free-roaming and other community cats. The intent of this section is to address these issues by establishing a comprehensive community cat management program.

(3) Caregiver Requirements. It shall be unlawful for any person to intentionally provide food, water, or other forms of sustenance or care to a feral, free roaming cat or cat colony unless the person has complied with the requirements of this section.

(a) All managed community cat colonies must be **registered** by the Caregiver(s) with Escambia County Animal Control.

(b) All managed community cat colonies must be maintained on **private property** of the caregiver(s), or with permission on the private property of another landowner (including city, state, and federal public property).

(c) Caregivers are not permitted to release community cats on private or public property without the permission of the property owner.

(d) All cats that are part of a managed community cat colony and over twelve (12) weeks of age must be **sterilized and vaccinated** against the threat of rabies.

(e) All cats that are part of a managed community cat colony shall be **ear-tipped** (preferable on the left ear) for easy identification. Female cats may also be tattooed on the stomach or right ear as evidence of sterilization.

(f) The registered Caregiver(s) shall maintain proof of sterilization, vaccination, and any other infectious diseases as required by law. These records shall be provided to Escambia County Animal Control upon request.

(g) The registered Caregiver(s) shall be responsible for providing **food and water** for the community cat colony/colonies on a daily basis throughout the year, including weekends and holidays.

(h) The registered Caregiver(s) shall remove sick or injured cats from the colony for immediate veterinary care or humane euthanasia.

(4) Registered Caregiver(s) who comply with the requirements of this section shall be exempt from the provisions of section 10-8(b), animals to wear tags, section 10-9, unlicensed animals prohibited, and section 10-11(e), animal nuisances.

(5) Escambia County Animal Control shall be authorized to **remove, impound, and/or destroy** any community cat or community cat colony if:

a) The cats are creating a public nuisance as defined in section 10-11;
b) The registered Caregiver fails to abide by these requirements; or
c) There are public health and/or public safety concerns.

(6) Any registered Caregiver who fails to comply with the requirements of this section shall be issued a written warning and permitted a reasonable time to achieve compliance. Failure to comply after receiving the initial warning notice shall result in a violation of this chapter and punished as provided in section 10-23.

Committee of the Whole **5.**

Meeting Date: 04/10/2014

Issue: Office of Public Information and Communications Communications Policy

From: Larry Newsom, Interim County Administrator

Information

Recommendation:

Office of Public Information and Communications Communications Policy (REFERRED FROM THE MARCH 18, 2014, BCC MEETING)

(Alison Rogers/Kathleen Dough-Castro - 15 min)

A. Board Discussion

B. Board Direction

Attachments

Resume Page from 3-18-2014 BCC Meeting

PIO Communications Policy

COUNTY ADMINISTRATOR'S REPORT – Continued

III. FOR DISCUSSION

1. Discussion Concerning the Workforce Development Plan – Larry M. Newsom, Interim County Administrator

   The Board:

   A. Was advised by Interim County Administrator Newsom that he has sent a letter to *(the City of)* Pensacola, and a copy to Scott Luth, asking that the Workforce Development Plan be implemented;

   B. Was advised by Commissioner Barry that objective measures will be much more valuable as the Board assesses performance of plans; and

   C. Was advised by Commissioner May that he will not support any economic development initiative that does not include workforce readiness and workforce development components.

2. Discussion Concerning the Contractor Competency Board – Larry M. Newsom, Interim County Administrator

   The Board discussed the Escambia County Contractor Competency Board and was advised by Donald R. Mayo that a recommendation will be placed on the agenda for the April 3, 2014, Regular Board Meeting for the Board's approval of the Commissioners' appointees, and a Conflict of Interest questionnaire that has been submitted to the County Attorney for review.

3. Discussion Concerning Amending the Escambia County Office of Public Information and Communications Communications Policy – Larry M. Newsom, Interim County Administrator

   The Board heard the request from Interim County Administrator Newsom that this issue be discussed at the April 2014 Committee of the Whole Workshop.

Board of County Commissioners
Escambia County, Florida

Title:	Office of Public Information and Communications Communications Policy, Section I, Part A.14
Date Adopted:	May 19, 2011
Effective Date:	April 29, 2014, as amended
Reference:	
Policy Amended:	May 19, 2011; February 2, 2012; April 29, 2014

Mission Statement

This policy exists to ensure that information released by Escambia County is timely, accurate, comprehensive, authoritative and relevant to all aspects of communications with the media and public. In addition, it is the goal of the Public Information Office (PIO) to promote and enhance Escambia County government through consistent, professional imagery via media relations, publications, television (ECTV), internet and social media:

A. Information on local government services;
B. General information to the public about Escambia County meetings and County sponsored/management events;
C. Emergency and public safety information; and,
D. Live and taped coverage of government meetings, events and activities.

Roles of the Public Information Office

A. External Communications

1. All news releases and other external communications to the media and on the County's websites are to be written and distributed through the Public Information Office (PIO). The PIO is responsible for writing and distributing releases for events, programs and happenings that are sponsored/managed/produced by the Board of County Commissioners and/or County departments. Exceptions can be made in the event of a declared emergency or at the discretion of the County Administrator or Public Information Manager.

2. Every effort should be made to send information and requests for news releases for events, meetings or workshops to the PIO a minimum of 10 working days prior to the event. Each department is responsible for letting the PIO know when there is a newsworthy event happening.

3. The Public Information Office serves as the primary point of contact for the media. Each media request isresearched, evaluated and balanced against the larger scope events throughout the County to determine the best way to provide information that responds to the request in the context of the County's overall goals and objectives. Public Information will convey the

Formatted Table
Formatted: Font: Times New Roman, 11 pt
Formatted: Line spacing: Multiple 1.15 li
Formatted: Font: Times New Roman, 11 pt
Deleted: T
Deleted: and
Deleted: will only
Deleted: e
Deleted: e
Deleted: county administrator's
Deleted: N
Deleted: should be sent
Deleted: two (2) to three (3) weeks
Deleted: If a news release is not given to the PIO at least two (2) weeks prior to the event, the PIO is not obligated to write and distribute the information. This does not include breaking news or emergency information.
Formatted: Font: Times New Roman, 11 pt

County's official position on issues of significance or that are controversial or sensitive in nature.

4. If a member of the news media contacts an employee directly to obtain information or comment regarding recent events or actions they should be referred directly to the Public Information Office. Employees of Escambia County are under no obligation to respond to a reporter nor can they be compelled to answer questions on the spot. It is Escambia County's policy to refer all media inquiries to the Public Information Office. The Public Information Manager and Public Information Officer or back-upare on-call 24 hours a day.

   There are times when Public Information may have a staff person – as the subject matter expert – to respond directly to a media request. This will only be done after vetting the story with the reporter and conferring with County Administration.

   If an employee of Escambia County does respond to questions from the media without first notifying County Administration or the PIO, they should do so as soon as possible after that interaction.

5. The PIO will work with the county administrator, commissioners and county department directors to set up news conferences. In general, while news conferences are useful, most members of the media prefer one-on-one interviews rather than a large news conference.

6. The Public Information Manager or designee serves as the lead public information officer for activations of the Emergency Operations Center. Staffing will be set as needed to manage the situation including 24-hour shifts if necessary. With EOC activation, a Joint Information Center is established and all information is channeled through the County PIO before release to the media.

7. For special events such as ribbon cuttings, building dedications and/or groundbreakings, County departmentsshould coordinate the event with the PIO, County Administration and with commissioner's office. The PIO will assist with event planning, invitations, program, news releases and news coverage once the date has been scheduled. The PIO will assist County departments and divisions with publicity and promotions for Escambia County events and activities including news releases, video, still photography, advertising and social media use. In consultation with County Administrationand, if time and resources allow, thePIO mayprovide these services to other governmental or community entities.

8. Letters, blogs (online columns) and guest columns shall not be submitted to the media as an official County statement, unless it is reviewed by the PIO and approved by the county administrator or designee. County employees may write letters, blogs and columns stating their personal opinion on issues, as long as it does not reflect an official statement from Escambia County.

9. Without exception, all County employees will comply with the Florida's public records statutes. County Administration oversees all requests from the public through a software system, i.e. Web QA. The PIO will handle public records requests from the media. The County Attorney's Office is available to handle any questions regarding public records.

Deleted: Department heads, public safety/incident command staff and public information staff can take media questions regarding general information related to their job, department or county program. Anyone else must have approval from the department head and/or county administrator before talking to the media. Questions about issues other than general information should be directed to the PIO. Media calls should be returned as soon as possible. Knowing the reporter's deadline will help with the collection information.

Formatted: Font: Times New Roman, 11 pt

Formatted: Font: Times New Roman, 11 pt

Formatted: Font: Times New Roman, 11 pt

Formatted: Font: Times New Roman, 11 pt

Formatted: Font: Not Italic

Formatted: Font: Times New Roman, 11 pt, Not Italic

Formatted: Font: Times New Roman, 11 pt

Formatted: Font: (Default) Times New Roman, 11 pt, Not Bold, Not Italic, Font color: Auto

Formatted: Font: Times New Roman, 11 pt

Formatted: Font: Times New Roman, 11 pt

Deleted: The county administrator and/or PIO must be notified when staff has spoken with or provided information to the media, either in person, by telephone or e-mail.

Deleted: The Public Information Manager and a back-up are on-call 24/7 to respond to emergencies as they arise. Cell numbers are available to county staff and we can be reached through dispatch (9-1-1 communications center).

Deleted: The PIO serves as the lead public information officer for activations of the Emergency Operations Center. Staffing will be set as needed to manage the situation including 24-hour shifts if necessary. With an EOC activation, a Joint Information Center is established and all information is channeled through the county PIO before release to the media.

Deleted: PIO will coordinate and be responsible for all media requests during an activation.

Deleted: For ribbon cuttings, building dedications and/or groundbreakings, department directors must coordinate the event with the PIO, county administration, and with commissioner's office. The PIO will assist with invitations, program, news releases and news coverage once the date has been scheduled. They will also assist with the set-up and clean-up on the day of the event.

10. Escambia County has an official logo/seal and complements it with a branding image. There is also a set palette of colors to complement the use of these elements in printed and electronic productions:

11. The official logo for Escambia County is maintained by the PIO. County departments, divisions and offices are not authorized to alter or use a different logo for County promotions without prior approval from the County Administrator or designee. Digital copies of the county logo can be obtained from the PIO.

12. All printed materials including, but not limited to, brochures, posters, flyers and signs, must include the Escambia County logo and must be approved by the PIO prior to distribution.

B. Internal Communications

1.Blast e-mails to all County employees can be done by Information Technology, County Administration or the PIO. Only mass e-mails that relate to County government will be sent to County employees.

2.The PIO will handle promotions for internal employee communications and activities.

C. Website and Social Media

1. Escambia County web pages for departments and/or divisions must be located on the County's official website (www.myescambia.com) or on one of the County owned domains (i.e.:www.bereadyescambia.com, www.mywfpl.com) and coordinated through the PIO and IT.

2. Information posted on the County's website must relate to programs and/or events managed or primarily sponsored by the BCC or county departments, divisions and offices. Information regarding other governmental agencies and community centers at the discretion of the PIO and/or County Administration.

3. Each Commissioner may post information or opinions about County or district events and issues on specified pages of the County's official websites. However, these postings may not be used for campaign or personal purposes. Further, no Commissioner may criticize or comment on any other Commissioner's opinion, position or vote on any topic in any posting on any official County website.

4. All County departments, divisions and offices have designated a staff person responsible

Deleted: The PIO will assist county departments and divisions with publicity and promotions for Escambia County events and activities including news releases, video, still photography and design of advertising/marquees. PIO is unable to provide these services to entities other than county departments, divisions or other governmental entities.

Formatted: Font: 11 pt

Deleted: Letters, blogs (online columns) and guest columns shall not be submitted to the media as an official county statement, unless it is reviewed by the PIO and approved by the county administrator. County employees may write letters, blogs and columns stating their personal opinion on issues, as long as it does not reflect an official statement from Escambia County.

Deleted: Without exception, all county employees will comply with the Florida's public records statutes. County administration oversees all requests from the public through a software system, i.e. Web QA. PIO will handle public records requests from the media. The County Attorney's Office is available to handle any questions regarding public records

Deleted: 13.

Deleted: Escambia County has an official logo/seal and complements it with a branding image. There is also a set palette of colors to complement the use of these elements in printed and electronic productions:

Formatted: Font: Bold

Formatted: Font: (Default) Times New Roman, Bold, Not Italic, Font color: Auto

Deleted:

Formatted: Font: 11 pt

Formatted Table

Formatted: Font: (Default) Times New Roman, Bold, Not Italic, Font color: Auto

Deleted: B.

Deleted: **Internal Communications**

Formatted: Right: 0", Don't adjust space between Latin and Asian text

Formatted: Font: Font color: Black

Deleted: 1.

Deleted: Blast e-mails to all county employees can be done by Information Technology, County Administration or the PIO. Only mass e-mails that relate to county government will be sent to county employees.

Formatted ...

for regularly updating the content on their department web pages and ensuring the accuracy of all posted information. Information on the website is considered a public document.

5. Departments, divisions and offices are encouraged to utilize the County website to provide convenient public access to current information, forms and procedures.

6. The request to add an external link to the County website will be coordinated through the PIO and/or IT. Primary consideration will be given to government agencies or committees under the BCC or the Escambia County Constitutional Officer. All link requestors will be notified as to the direction of their request.

7. Escambia County's website provides links to federal, state and local governmental agencies and educational institutions including school districts, colleges and universities.

8. Escambia County has a business need to augment traditional communication methods with the use of social media channels with the knowledge that the use of social media presents opportunity and risk to the County and individual County departments. Therefore, the PIO will be solely responsible for managing social media accounts (i.e.: Twitter, YouTube, Instagram) on behalf of all departments and commission offices. The PIO will develop and maintain these accounts using one-way communication and will make every effort to ensure that these accounts abide by state record retention laws. As new social media methods develop, the PIO will beresearched, evaluated and balanced against the larger scope events throughout the County to determine the best way to provide information that responds the County's overall goals and objectives. This evaluation will encompass a well-thought out work plan that complements countywide policies and considers the department's mission and goals, audience, legal risks, technical capabilities, security issues, emergency response procedures, etc.

9. Websites are considered non-official when;

a. They are created and presented to communicate information on official Escambia County services, events and programs; and,

b. Contain official Escambia County branding or logos and/or events or programs managed by Escambia County.

c. Websites containing any of these official elements will appear under one of the official Escambia County domains. Unique subdomains and URLs are to be used only after approval has been obtained from the PIO and IT.

10. Websites are considered non-official when:

a. Sites do not contain official elements of Escambia County;

b. Contain items of a personal nature and are maintained outside of the Escambia County domain; and

c. Do not contain an Escambia County email address, physical work address or include any Escambia County specific information while employed at the County.

Deleted: 2.
Deleted: The employee newsletter, InFocus, is
Formatted: Right: -0.08"
Formatted
Formatted: Left, Right: -2.2"
Deleted: 3.
Deleted: Each year a special edition is produce
Formatted: Right: -0.08"
Formatted
Formatted: Left, Right: -2.2"
Deleted: ¶
Deleted: 3.
Deleted: Each Commissioner may post
Formatted
Formatted: Left, Indent: Left: -0.07"
Deleted: 4.
Formatted: Font: Times New Roman, 11 pt
Deleted: All county departments, divisions and
Formatted: Left, Indent: Left: -0.07"
Deleted: 5.
Formatted: Indent: Left: -0.07"
Deleted: Departments, divisions and offices are
Formatted: Left, Indent: Left: -0.07"
Deleted: 6.
Formatted: Indent: Left: -0.07"
Deleted: The request to add an external link to
Formatted: Left, Indent: Left: -0.07"
Deleted: 7.
Formatted: Indent: Left: -0.07"
Deleted: Escambia County's website provides
Formatted: Left, Indent: Left: -0.07"
Formatted: Indent: Left: -0.07"
Formatted: Left, Indent: Left: -0.07"
Deleted: 8.
Formatted: Indent: Left: -0.07"
Formatted: Left, Indent: Left: -0.07"
Formatted: Indent: Left: -0.07"
Formatted: Left, Indent: Left: -0.07"
Formatted: Indent: Left: -0.07"
Formatted: Left, Indent: Left: -0.07"
Formatted: Indent: Left: -0.07"
Deleted: Escambia County encourages and per

11 E-mails sent to Escambia County e-mail accounts/addresses are considered public records and are subjected to disclosure as part of an official public records request.

12. County departments, divisions and offices are prohibited from utilizing social networking sites and/or interactive communications (blogs, chat rooms, etc.) such as, but not limited to, Facebook, MySpace and Twitter to promote County programs and services except as provided by the Escambia County Social Media Policy.

D. ECTV – Channel 98 (Escambia County Government Access Channel)

1. ECTV operates under a board-approved policy, which covers the daily operations of the channel by the PIO. This policy also directs the programming efforts and production services to other governmental entities.

2. The regular meeting of the Board of County Commissioners is "closed captioned" for the hearing impaired

3. The PIO shall provide video production services to County departments at no charge.

4. Departments requesting video production services must follow the ECTV policy.

5 Whenever possible, videos will be available for viewingon myescambia.com, as well as on Cox Channel 98, AT&T UVerse Channel 99 and on the county's YouTube channel.

E. Audio/Visual Support

1. PIO staff will record and rebroadcastall meetings of the BCC, as well as assist with audio/visual needs and presentation needs during those meetings.

2. Members of the public, outside organizations, County departments, divisions and/or offices making an electronic presentation or presenting a video or PowerPoint presentation at a BCC meeting should endeavor to provide the PIO with a copy of the presentation at least 24 hours prior to the start of the meeting or accept full responsibility for ensuring compatibility with all available technology and for setting up their own presentation.

3. Presentations may not exceed the time limit outlined in the meeting agenda. Exceptions can only be made by the Chairman of the Board of County Commissioners.

F. External Services

The PIO may enter into a Memorandum of Understanding with the approval of the County Administrator to provide public information services to another constitutional office or governmental entity.

Formatted ...
Formatted ...
Formatted ...
Formatted ...
Formatted ...
Formatted ...
Formatted ...
Formatted ...
Formatted ...
Formatted ...
Formatted ...
Formatted ...
Formatted ...
Formatted ...
Formatted ...
Formatted ...
Formatted ...
Formatted ...
Formatted ...
Formatted ...
Formatted ...
Formatted ...
Formatted ...
Formatted ...
Formatted ...
Formatted ...
Formatted ...
Formatted ...
Formatted ...
Formatted ...
Formatted ...
Formatted ...
Deleted: 9.
Formatted ...
Formatted ...
Formatted ...
Formatted ...
Formatted ...
Formatted ...
Formatted ...
Deleted: Websites are considered official when:
Formatted ...
Formatted ...
Deleted: a.
Deleted: They are created and presented to ...
Deleted: ¶ ...

Committee of the Whole **6.**

Meeting Date: 04/10/2014

Issue: Pensacola Beach Tax Issues

From: Alison Rogers, County Attorney

Information

Recommendation:

Pensacola Beach Tax Issues
(Commissioner Robinson/Alison Rogers - 30 min)
A. Board Discussion
B. Board Direction

Attachments

Accardo v. Brown - SC11-1445
Ariola, LLC v. Jones - SC11-2231

Supreme Court of Florida

No. SC11-1445

LEONARD J. ACCARDO, et al.,
Petitioners,

vs.

GREGORY S. BROWN, etc., et al.,
Respondents.

[March 20, 2014]

CANADY, J.

In this case, we consider whether the land and improvements on certain leaseholds in Navarre Beach on Santa Rosa Island that were created under long-term leases granted by Santa Rosa County, are subject to the intangible personal property tax rather than the ad valorem real property tax.[1]

---

1. We also decide a related case concerning the taxation of improvements on certain leaseholds in Pensacola Beach on Santa Rosa Island in Escambia County. See 1108 Ariola, LLC v. Jones, No. SC11-2231 (Fla. Mar. 20, 2014).

In Accardo v. Brown, 63 So. 3d 798 (Fla. 1st DCA 2011), the First District Court rejected the claim of the petitioner taxpayers that they were entitled to the benefit of a statutory provision found in section 196.199(2)(b), Florida Statutes (2006), under which certain leasehold or other possessory interests in real property owned by a political subdivision of the State are exempt from ad valorem taxation and subject only to taxation as intangible personal property. The First District concluded that given the nature of their perpetual leasehold interests, the taxpayers are the equitable owners of the real property and the improvements thereon and that the statutory provision relied on by the taxpayers is therefore inapplicable. Accardo, 63 So. 3d at 801-02. The District Court certified the following question as one of great public importance:

> WHETHER SECTION 196.199(2)(b), FLORIDA STATUTES, IS INAPPLICABLE TO THE REAL PROPERTY AT ISSUE BECAUSE APPELLANTS ARE THE EQUITABLE OWNERS OF THAT PROPERTY?

Id. at 802.

We determined to exercise our discretionary jurisdiction under article V, section (b)(4), Florida Constitution. For the reasons we explain, we answer the certified question in the affirmative and approve the decision reached by the First District.

I. THE LEASEHOLDS IN NAVARRE BEACH

The properties at issue in this case—consisting largely of residential condominiums with some single-family residential units and commercial properties—are located on the portion of Santa Rosa Island known as Navarre Beach, on lands conveyed to Escambia County by the United States in 1947. The deed permitted Escambia County to lease the land for purposes it deemed to be in the public interest but provided that the land was "never to be otherwise disposed of or conveyed" by Escambia County. These Navarre Beach lands were leased in 1956 by Escambia County to Santa Rosa County under a lease providing for an initial term of ninety-nine years, "automatically" renewable for a further term of ninety-nine years "on the like covenants, provisions and conditions," "including the right in lessee for further renewals." Santa Rosa County subsequently entered into various subleases with private parties for the development of the Navarre Beach lands.

The subleases granted by Santa Rosa County—tracking the renewal provisions of the lease by Escambia County to Santa Rosa County—generally provide for an initial ninety-nine-year term and renewal for a further term of ninety-nine years on like terms "including an option for further renewals." The subleases provide for the payment of rentals and include no option to purchase. The subleases provide that title to any buildings or improvements on the land vests in the lessor upon the termination of the lease and prohibit the sublessee from

removing any such improvements. The order of the trial court granting summary judgment to the respondents describes the undisputed features of the interests of the taxpayers arising under the subleases granted by Santa Rosa County:

> All of the [taxpayers'] interests at issue in this action are used for purely private purposes. The [taxpayers] enjoy the capital appreciation and rental income derived from these interests. The [taxpayers] have the right to convey their interests without restraint; they have the right to encumber their properties with mortgages; they bear all of the risks of ownership; they bear the responsibility for insurance, maintenance and repair; and they are typically responsible by the terms of the lease documents for taxes imposed upon their interests.

II. THE STATUTORY FRAMEWORK

As provided in section 196.199(1), Florida Statutes (2013), property owned by governmental units is not generally subject to the ad valorem tax. But government property leased to private parties may be subject to ad valorem taxation. Section 196.199(2) provides generally that where government owned property is "used by nongovernmental lessees," the leasehold interest in the government property shall be exempt from ad valorem taxation only when the lessee serves or performs the governmental, municipal, or public purpose or function as specifically defined by law. This rule regarding the taxation of private leasehold interests in governmental property is qualified by section 196.199(2)(b), which is specifically referenced in the certified question and is central to the petitioners' argument.

Section 196.199(2) provides in pertinent part:

> (2) Property owned by the following governmental units but used by nongovernmental lessees shall only be exempt from taxation under the following conditions:
>
> . . . .
>
> (b) Except as provided in paragraph (c), the exemption provided by this subsection shall not apply to those portions of a leasehold or other interest defined by s. 199.023(1)(d), Florida Statutes 2005, subject to the provisions of subsection (7). Such leasehold or other interest shall be taxed only as intangible personal property pursuant to chapter 199, Florida Statutes 2005, if rental payments are due in consideration of such leasehold or other interest. All applicable collection, administration, and enforcement provisions of chapter 199, Florida Statutes 2005, shall apply to taxation of such leaseholds. If no rental payments are due pursuant to the agreement creating such leasehold or other interest, the leasehold or other interest shall be taxed as real property. Nothing in this paragraph shall be deemed to exempt personal property, buildings, or other real property improvements owned by the lessee from ad valorem taxation.
>
> (c) Any governmental property leased to an organization which uses the property exclusively for literary, scientific, religious, or charitable purposes shall be exempt from taxation.

Section 196.199(7) provides that "[p]roperty which is originally leased for 100 years or more, exclusive of renewal options, or property which is financed, acquired, or maintained utilizing in whole or in part funds acquired through the issuance of [certain governmental bonds], shall be deemed to be owned for purposes of this section."

The central provision of section 196.199(2)(b) is tied to section 199.023(1)(d), Florida Statutes (2005), which defines intangible personal property as including, subject to an exception not relevant here, "all <u>leasehold or other</u>

possessory interests in real property owned by [governmental entities], which are undeveloped or predominantly used for residential or commercial purposes and upon which rental payments are due." (Emphasis added.)

The provisions in section 196.199(2)(b) were first adopted in 1980 and have not been materially altered since then. Compare § 196.199(2)(b), Fla. Stat. (2013), with § 196.199(2)(b), Fla. Stat. (1980).

III. THE TAXPAYERS' ARGUMENTS

The petitioners argue that because their leaseholds all are on county property that is either undeveloped or used for residential or commercial purposes, rental payments are due under their leases and their initial lease terms are for less than 100 years, under the plain terms of section 196.199(2)(b), the leasehold interests are taxable only as intangible personal property. They contend that the statute precludes ad valorem taxation "if a leaseholder is declared to have an 'other interest,' such as 'equitable ownership,' if the lessee is not an actual owner of the property under Florida law." Petitioners' Revised Initial Brief on the Merits at 10. The petitioners further argue that in any event, they are not equitable owners. According to the petitioners, there can be no equitable ownership absent the right to acquire legal title. They contend that "[i]f there were ownership, there would be no payment of rent, the leaseholders would have no obligation to construct, insure, or replace the property, and they would be free to move the improvements to

another location." Petitioners' Revised Initial Brief on the Merits at 24. They further argue that subjecting their renewable ninety-nine-year leases to ad valorem taxation is inconsistent with the provision of section 196.199(7) regarding the taxation of "[p]roperty which is originally leased for 100 years or more, exclusive of renewal options." The petitioners make some additional arguments that we have determined do not merit discussion.[2]

IV. EQUITABLE OWNERSHIP AND AD VALOREM TAXATION

"The concept of equitable ownership in ad valorem taxation has long been a part of Florida law." Leon Cnty. Educ. Facilities Auth. v. Hartsfield, 698 So. 2d 526, 528 (Fla. 1997). In Bancroft Investment Corp. v. City of Jacksonville, 27 So. 2d 162, 170-71 (Fla. 1946), we held that the vendee in possession under a contract for deed from the United States—where the United States retained legal title as security—was "the owner of the taxable interest in the property in question, that the United States ha[d] abandoned such use of it as gave it an exemption status" and that the property therefore was subject to ad valorem taxation. We recognized that our prior decisions had "held that the one who holds the equitable interest is the owner for taxing purposes." Id. at 171 (citing Porter v. Carroll, 92 So. 809 (Fla. 1922) (stating that owner of property for ad valorem tax purposes was not the

2. The petitioner taxpayers point out that some of the subleases are not perpetually renewable, but they do not make an argument that is specific to those leases.

person who "held the legal title only" but was instead the contract vendee who held "the equitable interest which is the substantial interest"); Dean v. State, 77 So. 107, 109-110 (Fla. 1917) (holding that persons who were "vendee[s] in possession" of property had "an equitable freehold estate in the land" and thus were properly allowed to vote as freeholders—that is, ad valorem taxpayers—in election regarding issuance of bonds)). Following our decision in Bancroft, the district courts have repeatedly applied the equitable ownership doctrine in the ad valorem taxation context.

In Mikos v. King's Gate Club, Inc., 426 So. 2d 74, 75-76 (Fla. 2d DCA 1983), the Second District Court held that mobile home tenants who did not have legal title to the lots on which their mobile homes were located should nevertheless be deemed equitable owners of the lots for ad valorem tax purposes. Fee simple ownership of the mobile home park real property was vested in a nonprofit corporation, which was prohibited from selling or leasing any lot or site in the park. Id. at 74-75. The mobile home park had 331 lots. Id. at 75. The corporation had a corresponding number of authorized memberships. Id. The certificates issued to each of the members entitled the member to locate a mobile home at a site designated by the corporate directors, provided for the payment of a monthly maintenance fee, were transferable by sale with the corporation having the right of first refusal, and stated that the certificate holder did not own any interest in the

land. Id. The district court thus recognized that "no member owns legal title to the site upon which his mobile home is situated." Id. The court nonetheless concluded that the mobile home owners held equitable title to their respective lots by virtue of the interest conferred on them as members of the nonprofit corporation. Id. at 76. In reaching this result, the court relied on the provisions regarding homestead exemption in article VII, section 6(a), Florida Constitution, which provides that the homestead exemption is applicable to real estate that is held by "equitable title." Id. The Second District reasoned that if the mobile home owners "are qualified to obtain homestead exemption on these sites, it follows that their interest in the respective sites is one of ownership." Id. The court further observed that "[t]o permit the members of the [mobile home park corporation] to avoid the payment of real estate taxes because they maintain their interest in the mobile home sites through the vehicle of a nonprofit corporation would unfairly place a disproportionate burden on other taxpayers of the county." Id. Because "[e]ach member has practical dominion over his designated site which is essentially equivalent to ownership," the Second District held that each member's interest was subject to ad valorem taxation. Id.

In Hialeah, Inc. v. Dade County, 490 So. 2d 998, 999-1000 (Fla. 3d DCA 1986), the Third District Court specifically considered application of the version of section 196.199(2) then in force, along with the corresponding definition of

intangible personal property contained in section 199.023. The circumstances considered by the court involved a sale-leaseback transaction in which the City of Hialeah purchased the land portion of the Hialeah Park Race Track from Hialeah, Inc., and then leased it back to Hialeah, Inc., for a thirty-year term, with lease payments due from Hialeah, Inc., in an aggregate amount equivalent to the principal and interest due on municipal revenue notes secured by a purchase money mortgage for the funds the city borrowed to finance the purchase. Id. at 998-99. Upon the payment of the full outstanding indebtedness with an additional $100 payment, Hialeah, Inc., had the option to purchase the city's fee simple interest in the property. Id. at 998. The Third District rejected the argument of Hialeah, Inc., that its interest in the land was subject only to the intangible personal property tax. Id. at 999-1000.

Rejecting the claim that only leasehold interests falling within the scope of section 196.199(7)—relating to properties originally leased for 100 years or more, exclusive of renewal options, or properties financed by certain governmental bonds—would qualify for ad valorem tax treatment, the court reasoned that the provisions of section 196.199 and section 199.023 concerning taxation as intangible personal property only came into play after a determination that the property was owned by the government. Id. at 1000. In determining whether the property at issue was government owned, the Third District turned to our holding

in Bancroft regarding equitable ownership: "Bancroft establishes that property is not government owned under applicable taxing statutes where the government merely holds legal title as security and a taxpayer is the beneficial owner in equity." Id. at 1000. The court therefore concluded that the Hialeah Park Race Track property was "not government owned because the city holds legal title to the property merely as security" and that Hialeah, Inc., was "the true and equitable owner." Id. at 1001. The property thus was subject to ad valorem taxation. Id.

In First Union National Bank of Florida v. Ford, 636 So. 2d 523, 527 (Fla. 5th DCA 1993), the Fifth District Court resolved a case it described as "the reverse or mirror image of Hialeah, Inc." The case concerned taxation of property that Brevard County used "as its primary governmental and administrative offices." Id. at 523. The county utilized a financing arrangement "whereby individual investors purchased certificates of participation to raise sufficient funds to build" the county governmental center on donated land. Id. at 524. Title to the land was held by the First Union Bank as trustee for the holders of the certificates of participation. Id. The property was leased by the bank to the county for a projected twenty-five-year term, running from year to year and automatically renewable. Id. Rental payments made by the county were used solely to retire the principal and interest on the debt owed to the owners of the certificates of participation. Id. Under the terms of the

lease, once the indebtedness was paid in full, the "Bank must convey legal title to the property in fee to the County." Id.

The Fifth District concluded "that the County has retained sufficient rights and duties regarding the realty and its improvements, to make it the equitable owner." Id. The court focused on the fact that "neither the Bank nor the certificate holders have a right nor prospect of ever occupying or using the land and buildings" and reasoned that "the County holds substantially all the burdens and benefits of ownership relating to the property sought to be taxed." Id. at 524, 527. Accordingly, the Fifth District held that the bank was not liable for ad valorem tax on the property. Id. at 527.

In Leon County Educational Facilities Authority, we considered circumstances similar to those at issue in Ford and reached a result in accord with the result reached by the Fifth District in Ford. The Authority, a governmental entity authorized "to own, lease, and finance higher educational facilities," decided to undertake a dormitory and food service project. Leon Cnty. Educ. Facilities Auth., 698 So. 2d at 527. To accomplish this, a nonprofit corporation was created, and the Authority entered into a lease with an option to purchase agreement with the corporation under which the corporation "as the lessor would acquire, construct, and equip the project and lease it to the Authority in exchange for periodic rental payments." Id. Certificates of participation were issued to obtain

financing for the project under the lease. Id. Once the indebtedness owed to the certificate of participation holders was satisfied, the Authority had the right to purchase the project for one dollar. Id.

After discussing Ford, Bancroft, and Hialeah, Inc., and referring to Mikos, we observed that "[f]airness dictates that the doctrine of equitable ownership should be applied evenhandedly regardless of whether a tax is being imposed or an exemption is being claimed." Id. at 529. We rejected the argument that Ford was distinguishable and stated that "[t]he fact that legal title to the project does not automatically pass to the Authority upon the termination of the lease as in Ford is not significant in this instance where the Authority can acquire title by paying the nominal consideration of one dollar." Id. at 529. Based on the facts presented, we held that "the project is not subject to ad valorem taxation because the Authority holds virtually all the benefits and burdens of ownership." Id. at 530.

V. WARD v. BROWN

Prior to the case now before us, the taxation of leaseholds at Navarre Beach was dealt with most recently in Ward v. Brown, 919 So. 2d 462, 463 (Fla. 1st DCA 2005), where the First District Court considered whether the taxpayers bringing the challenge were "equitable owners of the property improvements placed on their leaseholds," which derived from the lease granted by Escambia County to Santa Rosa County. In evaluating this question, the First District stated:

> It is undisputed that appellants have the right to renew their own assigned interests in this land lease for the same term of Santa Rosa County's lease term from Escambia County, thereby providing appellants with the same right to perpetual renewals. Appellants have the right to use or rent the improvements, encumber their interests, transfer their property rights, and realize any appreciation in value from sale or rental income. They must ensure and maintain the improvements and are responsible for the payment of any taxes.

Id. (footnote omitted).

Based on these circumstances, the First District concluded that the "appellants are equitable owners" of the improvements and subject to ad valorem taxation. Id. The court relied on case law establishing that the lessee under a perpetual lease is in effect the owner of the property. Id. at 463-64 (citing Thompson v. First Nat'l Bank of Hollywood, 321 So. 2d 466, 468 (Fla. 4th DCA 1975) (relying on definitions of "[p]erpetual lease" as "renewable forever at the lessee's option" and "[a] lease of lands which may last without limitation as to time"); J.W. Perry Co. v. City of Norfolk, 220 U.S. 472, 478-79 (1911) (concluding that leases "for ninety-nine years, renewable forever" were perpetual leases in which the tenants were effectively the owners of the property); Wells v. City of Savannah, 181 U.S. 531, 544 (1901) (concluding that lessees under a perpetual lease had rights in the property resembling ownership rather than those of an ordinary tenant); Wright Runstad Props. Ltd. P'ship v. United States, 40 Fed. Cl. 820, 825 (1998) (stating that "where the lease term is perpetual or will outlast the useful life of the capital improvement for which the special assessment is

levied, the lessee may be responsible for the assessment since he or she is the sole beneficiary of the improvement"); Penick v. Atkinson, 77 S.E. 1055, 1057 (Ga. 1913) (concluding that a perpetual lease is the substantial equivalent of a fee reserving rent)).

The First District specifically rejected the argument that section 196.199(7) "provides a safe harbor from being taxed as equitable owners." Ward, 919 So. 2d at 464. The court stated that "[t]his provision only provides a bright-line test for leases having an initial term of 100 years or more, by deeming them as owned without the need to further address whether there are sufficient rights and duties to consider the lessees as equitable owners." Id. In reaching this conclusion, the court relied on the analysis in Hialeah, Inc. concerning the scope of section 196.199(7). See Ward, 919 So. 2d at 464.

The First District also rejected the appellant taxpayers' argument that because they were "required to maintain and rebuild the improvements, and the improvements [were] required to be conveyed to Santa Rosa County at the termination of the lease[s]" they could not be deemed the equitable owners of the improvements. Id. at 463 n.1. The court found this argument unpersuasive "because there is no end to the lease." Id.

VI. THE EQUITABLE OWNERSHIP OF THE NAVARRE BEACH PROPERTIES

We conclude that Ward correctly applied the doctrine of equitable ownership in holding that the improvements on the leasehold properties were subject to ad valorem taxation. And we conclude that there is no basis for declining to extend the application of the doctrine of equitable ownership to the underlying land that is subject to the perpetually renewable leases. Under the perpetual leases, the interest of the petitioner taxpayers in the underlying land is not materially different from their interest in the improvements. The taxpayers hold "virtually all the benefits and burdens of ownership" of both the improvements and the land. Leon Cnty. Educ. Facilities Auth., 698 So. 2d at 530.

We reject petitioner taxpayers' argument that an equitable ownership interest is an "other" interest referred to in section 196.199(2)(b) and section 199.023(1)(d) that is subject to taxation only as intangible personal property. This argument ignores the full context of the statutory provisions. First, the argument does not take into account the threshold question of whether the property in question is "real property owned by" a governmental entity. § 199.023(1)(d), Fla. Stat. (2005). Our case law regarding the application of the equitable ownership doctrine makes clear that the person or entity holding equitable title to real property will be deemed the owner of the property for ad valorem tax purposes. See Leon Cnty. Educ. Facilities Auth., 698 So. 2d at 530; Bancroft, 27 So. 2d at 171. The statutory provisions do nothing to alter that preexisting legal rule. Second, the core phrase

in the definitional provision is "all leasehold or other possessory interests." § 199.023(1)(d), Fla. Stat. (2005) (emphasis added). Equitable ownership is not a mere possessory interest. See, e.g., Ward, 919 So. 2d at 464; Hialeah, Inc., 490 So. 2d at 1000-01. Accordingly, the reference to "other" interests in the definitional provision can have no reference to an equitable ownership interest.

As the First District did in Ward, we also reject the petitioner taxpayers' argument that equitable ownership can exist under a leasehold only where there is a right ultimately to acquire legal title. The interest of a lessee under a perpetually renewable lease is not materially different from the interest of a lessee under a lease for a term of years providing the right for the lessee to obtain title for nominal consideration upon the termination of the lease. In both circumstances, the lessee effectively has the right to exercise perpetual dominion over the property.

Similarly, we reject the argument that the payment of rent and the other obligations imposed on the petitioner taxpayers by their leases are sufficient to establish that the taxpayers are not the owners of the properties for ad valorem tax purposes. The payment of rent and the bearing of other obligations are typically incident to leaseholds under which the tenant has equitable ownership, just as the payment of purchase money and the bearing of other obligations is a part of a contract for deed under which the vendee will be deemed the equitable owner.

Furthermore, many of the obligations of the petitioner taxpayers here are like the obligations typically imposed on owners under a declaration of condominium or the restrictive covenants in a subdivision. None of the obligations imposed on the petitioner taxpayers are sufficient to defeat the conclusion that they hold "virtually all the benefits and burdens of ownership" of the improvements and the land. Leon Cnty. Educ. Facilities Auth., 698 So. 2d at 530.

Finally, we reject the petitioner taxpayers' argument that subjecting their leasehold interests to ad valorem taxation is inconsistent with the provision of section 196.199(7) regarding the taxation of "property which is originally leased for 100 years or more, exclusive of renewal options." We agree with Ward and Hialeah, Inc. that it must first be determined that the governmental entity is the "owner" of the property—not the mere holder of bare legal title—before there is any reason to consider whether the bright line one-hundred-year rule of section 196.199(7) is applicable. Here, for ad valorem tax purposes, the "owner" of the property is not a governmental entity.

VII. CONCLUSION

We therefore conclude that the taxpayers are the equitable owners of the real property at issue and that section 196.199(2)(b), Florida Statutes, is inapplicable here. The certified question of great public importance is answered in the affirmative, and the decision of the First District Court is approved.

It is so ordered.

POLSTON, C.J., and PARIENTE, LEWIS, QUINCE, LABARGA, and PERRY, JJ., concur.
NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION, AND IF FILED, DETERMINED.

Application for Review of the Decision of the District Court of Appeal - Certified Great Public Importance

First District - Case No. 1D10-4072

(Santa Rosa)

Danny L. Kepner of Shell, Fleming, Davis & Menge, Pensacola, Florida; Talbot D'Alemberte and Patsy Palmer of D'Alemberte & Palmer, PLLC, Tallahassee, Florida,

for Petitioners

J. Elliott Messer and Thomas Marshall Findley of Messer, Caparello & Self, P.A., Tallahassee, Florida; Roy Van Andrews of Lindsay, Andrews & Leonard, Milton, Florida,

for Respondents

Edward Paul Fleming and Randall Todd Harris of McDonald Fleming Moorhead of Pensacola, Florida,

for Amicus Curiae Beach Club Towers Homeowners Association, Inc.

Benjamin K. Phipps, II and Adam Schuyler Brink of Phipps & Howell, Tallahassee, Florida,

for Amicus Curiae Florida Association of Property Tax Professionals

Supreme Court of Florida

No. SC11-2231

1108 ARIOLA, LLC, et al.,
Petitioners,

vs.

CHRIS JONES, etc., et al.,
Respondents.

[March 20, 2014]

CANADY, J.

In this case, we consider whether the improvements on certain leaseholds in Pensacola Beach on Santa Rosa Island that were created under leases granted by Escambia County are subject to the intangible personal property tax rather than the ad valorem real property tax.

In 1108 Ariola, LLC v. Jones, 71 So. 3d 892, 897-98 (Fla. 1st DCA 2011), the First District Court rejected the claim of the petitioner taxpayers that the improvements were not subject to ad valorem taxation. The First District

concluded that the taxpayers are the equitable owners of the improvements and that the improvements are therefore subject to ad valorem taxation. Id. at 893. In so holding, the court specifically relied on its earlier decision in Ward v. Brown, 919 So. 2d 462 (Fla. 1st DCA 2005), which concerned the ad valorem taxation of the improvements on certain perpetual leaseholds on the portion of Santa Rosa Island located at Navarre Beach in Santa Rosa County. 1108 Ariola, LLC, 71 So. 3d at 897-98. By subsequent order, the First District Court certified the following question as one of great public importance:

> WHETHER THE APPELLANT-LEASEHOLDERS ARE EQUITABLE OWNERS OF THE LEASEHOLD IMPROVEMENTS ON THE SUBJECT REAL PROPERTY WHEN THEY HAVE NEITHER A PERPETUAL LEASE OF THE UNDERLYING REAL PROPERTY NOR AN OPTION TO PURCHASE SUCH PROPERTY FOR NOMINAL VALUE.

We determined to exercise our discretionary jurisdiction under article V, section (b)(4), Florida Constitution. For clarity, we now rephrase the certified question as follows:

> WHETHER A LESSEE CAN HAVE EQUITABLE OWNERSHIP—FOR PURPOSES OF AD VALOREM TAXATION—OF IMPROVEMENTS ON REAL PROPERTY ONLY IF THE LESSEE HAS A PERPETUAL LEASE OF THE UNDERLYING REAL PROPERTY OR THE RIGHT ULTIMATELY TO PURCHASE THE PROPERTY FOR NOMINAL VALUE.

For the reasons we explain, we answer the rephrased certified question in the negative and approve the decision reached by the First District. We address a

related question concerning equitable ownership in Accardo v. Brown, No. SC11-1445 (Fla. Mar. 20, 2014).

I.

Like the properties located in Santa Rosa County that are the subject of the First District's decision in Ward and of our decision in Accardo, the Escambia County properties at issue here are located on lands conveyed to Escambia County by the United States in 1947. The First District summarized the relevant facts as follows:

> All of the leases at issue are for 99-year initial terms. Although many of these leases include renewal options, some contain no renewal option, and none of the leases are automatically renewable. . . . [A]ll of appellants' leases here provide that legal title to any building or improvement of a permanent character erected on the premises shall vest in Escambia County, subject to the terms of the leases. The leases require the lessee to make improvements on the property and to repair and maintain those improvements. The leases provide that a leaseholder must rebuild any damaged or destroyed improvement so as to place it in its former condition and that no leaseholder may remove any improvement of a permanent character from the leasehold.
>
> Despite these restrictions, the leaseholders have significant benefits: they may mortgage or otherwise encumber their leaseholds without prior approval of the lessors; they have the ability to convey their leasehold interests by a sublease or assignment; they have the right to rent their leasehold interests for the production of income; and they receive the full benefit of any capital gains or appreciation in the values of their properties. Although there are some variations in the leases, in this proceeding, the parties treated these leases as identical for purposes of determination of the issues in this case.

1108 Ariola, LLC, 71 So. 3d at 895.

II.

The petitioner taxpayers argue that they have no equitable ownership interest in the properties at issue because the rights and obligations associated with the leaseholds are similar to those associated with ordinary leases. Their primary argument is that because they have neither the opportunity to acquire legal title to the improvements nor the right to perpetual renewal of their leases, they cannot be deemed the equitable owners of the improvements. The petitioners offer some additional arguments that we have determined do not merit discussion.

III.

In Accardo, we explain at length the significance of the doctrine of equitable ownership in Florida's law regarding ad valorem taxation and discuss the interaction of the equitable ownership doctrine with the statutory provisions—§ 196.199(2), (7), Fla. Stat. (2006); §199.023(1)(d), Fla. Stat. (2005)—providing for the taxation as intangible personal property of certain leasehold and other possessory interests in property owned by a government entity. No. SC11-1445 at 4-6. In Accardo, we conclude that the taxpayers there are equitable owners who hold "virtually all the benefits and burdens of ownership of both the improvements and the land." Id. at 16. We reject the "argument that equitable ownership can exist under a leasehold only where there is a right ultimately to acquire legal title." Id. at 17. Although we have recognized that equitable ownership may exist where

a lessee under a lease for a limited term has the right to acquire legal title for nominal consideration, that right is not always a feature of equitable ownership.

Our holding in Accardo that the taxpayers in that case are the equitable owners of both the improvements and the underlying land, turns on the fact that the leases are perpetually renewable. In contrast, this case presents leaseholds that are not perpetually renewable.[1] We conclude, however, that this distinction—along with the absence of the right to obtain legal title for a nominal consideration—is not sufficient to remove the improvements on the properties at issue here from the scope of the equitable ownership doctrine.

Florida law recognizes that regardless of how legal title is held, the improvements on lands owned by a governmental entity may—for ad valorem tax purposes—be "owned" by the lessee of the lands. The final sentence of section 196.199(2)(b) provides that "[n]othing in this paragraph shall be deemed to exempt personal property, buildings, or other real property improvements owned by the lessee from ad valorem taxation." Of course, the reference to "owned by the lessee" must be viewed in the context of Florida's law concerning equitable ownership and thus cannot be restricted to the holders of legal title to improvements. And nothing in the text of the statute or in the broader legal

1. The record does show, however, that some of the leases at issue are perpetually renewable.

context suggests that this provision for the ad valorem taxation of "improvements owned by the lessee" is limited to circumstances where the lease of the land is perpetually renewable or the lessee has the right to acquire legal title for a nominal consideration.

Long ago, we held in Gay v. Jemison, 52 So. 2d 137, 138-39 (Fla. 1951), that improvements constructed by a lessee on government owned lands under a seventy-five-year lease were to be treated as property owned by the lessee. Our reasoning in Gay focused on the fact that the "probable useful life of the buildings" would not exceed the limited term of the leasehold. Id. at 138. Although the issue in Gay was the application of the state sales tax, the reasoning of Gay concerning the ownership of leasehold improvements on lands subject to a lease for a limited term is properly applied in the ad valorem taxation context. See also Offutt Housing Co. v. Cnty. of Sarpy, 351 U.S. 253, 261 (1956) (holding that the lessee of federal lands under seventy-five-year lease was properly considered the owner of the improvements for purposes of state taxation where the lessee would "enjoy[] the entire worth of the buildings and improvements"). Here, the petitioner taxpayers have presented this Court no specific argument concerning the useful life of the improvements.

We thus reject the petitioner taxpayers' primary argument that the district court's conclusion that they are the equitable owners of the improvements is

defeated by the fact that they have neither the right ultimately to acquire title nor the right to perpetually renew their leases. We also reject the petitioners' general argument concerning their rights and obligations under the leases for the same reasons we reject a similar argument in Accardo.

IV.

The petitioner taxpayers have failed to present any argument establishing that they do not hold "virtually all the benefits and burdens of ownership" of the improvements at issue. Leon Cnty. Educ. Facilities Auth. v. Hartsfield, 698 So. 2d 526, 530 (Fla. 1997). The rephrased certified question is answered in the negative and the decision reached by the First District is approved.

It is so ordered.

POLSTON, C.J., and PARIENTE, LEWIS, QUINCE, LABARGA, and PERRY, concur.

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION, AND IF FILED, DETERMINED.

Application for Review of the Decision of the District Court of Appeal - Certified Great Public Importance

First District - Case No. 1D10-2050

(Escambia)

Danny L. Kepner of Shell, Fleming, Davis & Menge, Pensacola, Florida; Talbot D'Alemberte and Patsy Palmer of D'Alemberte & Palmer, PLLC, Tallahassee, Florida; Robert Bruce George and Katie L. Dearing of Liles, Gavin, Costantino, George & Dearing, P.A., Jacksonville, Florida,

for Petitioners

J. Elliott Messer, Thomas Marshall Findley, and Robert J. Telfer, III of Messer, Caparello & Self, P.A., Tallahassee, Florida,

for Respondents

Edward P. Fleming and Randall Todd Harris of McDonald Fleming Moorhead, Pensacola, Florida,

for Amicus Curiae Portofino Tower One Homeowners Association at Pensacola Beach, Inc.

Committee of the Whole **7.**

Meeting Date: 04/10/2014

Issue: Perdido Key Easements

From: Keith Wilkins, Department Director

Information

Recommendation:

Perdido Key Easements
(Keith Wilkins - 30 min)
A. Board Discussion
B. Board Direction

Attachments

Easement Discussion Backup

Perdido Key Beach Nourishment
Project History
&
Private Easement Discussion

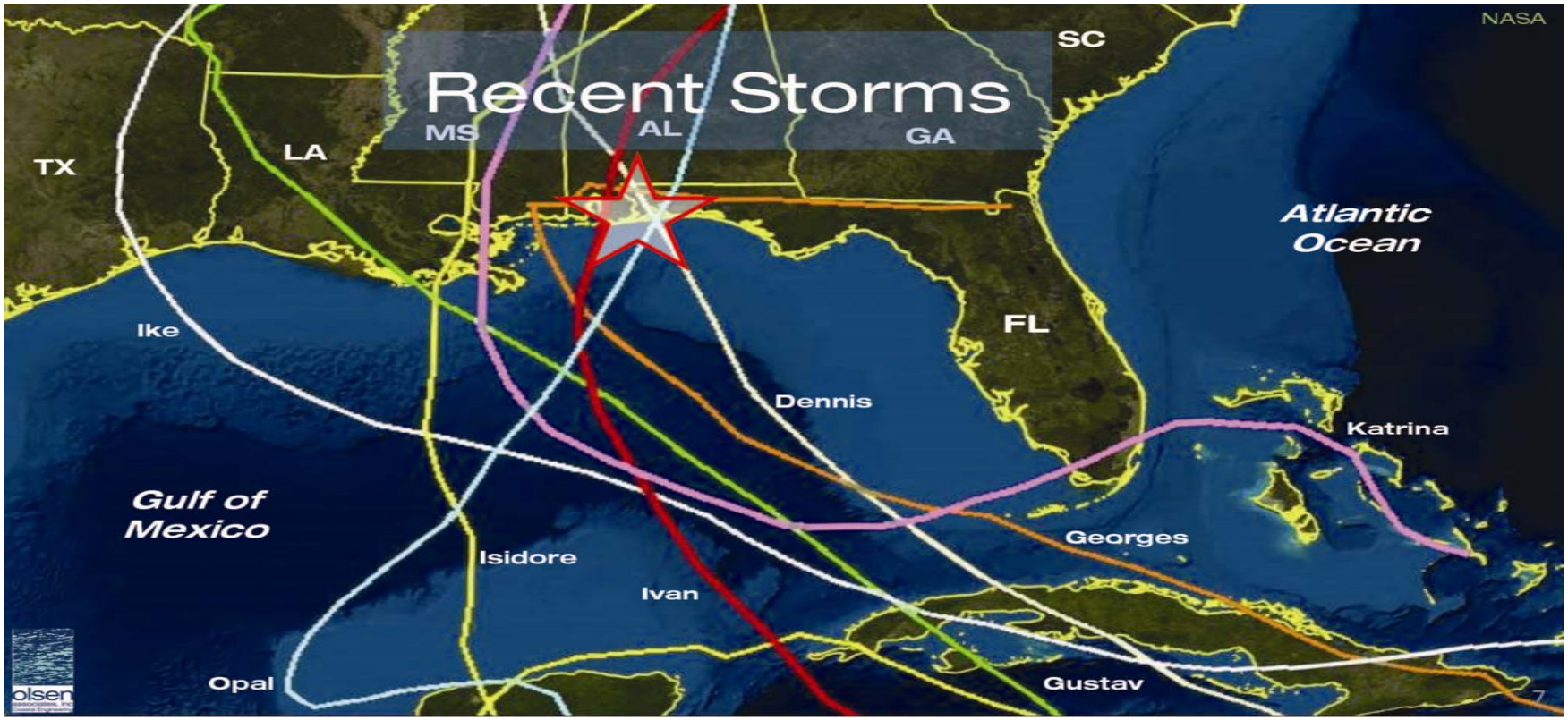
Community & Environment Department

Water Quality & Land Management Division

Project History

- 2004 – Hurricane Ivan
- 2005 – Hurricanes Dennis/Katrina
- 2006 – Beach Nourishment Feasibility Study Completed
- 2006 – Off-shore Sand Search Completed
- 2007 – Erosion Control Line (ECL) Hearings Held by FDEP
- 2008 – Hurricane Gustav
- 2009 – ACOE and FDEP Environmental Permits Obtained
- 2010 – Deepwater Horizon Oil Spill
- 2011 – ECL Recorded by BCC Action
- 2011 – Construction Easements Sent Out to Private Landowners

Major Storms (1995-present)



Storm Vulnerability

Vista Del Mar
Prior to Demolition

Perdido Key Drive

Need

- Beach is designated as “critically eroded” by the FDEP
- Private development (tax base) and public infrastructure at higher level of risk without the benefit of nourishment
- Funding for beach restoration projects at risk without easements
  - $600,000 NRDA dune restoration
  - FEMA post-storm response
  - RESTORE
  - Other State or Federal funding

Methods to Evaluate Easement Approval

- Unit Evaluation – Reflects approval rating
  - based on number of gulf front units
  - 1 house = 1 unit
  - 12 unit condominium = 12 units
- Linear Foot Evaluation
  - Credit is given based on the gulf frontage of a parcel
- Parcel Evaluation
  - 1 parcel = 1 easement

Easement Status
Perdido Key East

Unit Evaluation (1497 units)

- 75% Support (1137)
  - 68% units signed (1001)
  - 8% units represented by letter of support (136)
- 3% Opposed
  - 3% units rejected (46)
- 32% Unresponsive
  - 32 units unresponsive (360)

Easement Status
Perdido Key East

- Linear Foot Evaluation
  - 58% Support (6,065 ft)
    - 53% shoreline approved easement (5,565 ft)
    - 5% shoreline represented by letters of support (500 ft)
  - 4% Opposed
    - 4% shoreline rejected (415 ft)
  - 38% Unresponsive
    - 38% shoreline unresponsive (3,961 ft)

Easement Status
Perdido Key East

- Parcel Evaluation (83 parcels)
  - 53% Support (44)
    - 51% of gulf front parcels owners signed (42)
    - 2% represented by letter of support (2)
  - 2% Opposed
    - 2% parcel owners rejected the easement (2)
  - 47% Unresponsive
    - 47% parcel owners unresponsive (37)

Beach Restoration, Nourishment, and Erosion Control Easement

- Access for the County to restore critically eroded shoreline
- Access for the County to maintain and monitor the restoration post-construction
- Increase storm protection for infrastructure
- Protect and enhance coastal habitat
- Temporary – Expires December 31, 2026

Direction?

- Project Manager: Timothy Day
  (850) 595-1144
  3363 West Park Place
  Pensacola, FL 32505
- Website: www.myescambia.com/Bureaus/CommunityServices/index.html

- Department Director: Keith Wilkins, REP
  (850) 595-4988
  3363 West Park Place
  Pensacola, FL 32505

Perdido Key Easements

Eminent Domain

Issues

1) Duration and Scope of easement

2) Method of Eminent Domain

3) Entire Key or phases?

4) Potential Costs

Board Direction

1) Duration and Scope of easement?

   a) Permanent?

   b) Re-notice all property owners who have agreed to a 15-year easement?

   c) Scope: Grantor retains right to exclude general public; but gives County right to enter property for beach restoration and nourishment, erosion control and environmental monitoring.

Board Direction

2) Eminent domain

    a) Slow take: County only entitled to easement after compensation decided, or

Board Direction

2) Eminent domain

b) Quick take: County takes easement upon deposit with Court of good faith estimate of compensation; up to parcel owners to object to good faith estimate.

Board Direction

3) Extent of Easement Takings

a) Entire Key, or

b) Phases with East first, then West sides of the Key (as shown in the next slide).


PERDIDO KEY, EAST
JOHNSON BEACH TO PERDIDO KEY STATE PARK
East Easements
1.Total Units = 1497
Units Approve = 1037 (75%)
Rejected = 46 (3%)
2.Total Linear Feet = ~10,441
Approve = 6,065 ft (58%)
Reject = 415 ft (4%)
3.Total Parcels = 83
Signed = 44 (53%)
Rejected = 2 (2%)
Perdido Key State Park
Easement Request Area
~2.0 Miles
Johnson's beach


PERDIDO KEY
GULF-FRONT BEACH NOURISHMENT
AND DUNE RESTORATION EASEMENT
LOCATION MAP (NOT TO SCALE)
800 400 0 800 Feet
LEGEND
EASEMENT REQUEST AREA
"This map was prepared by the Escambia County Water Quality and Land Management Division and is provided for information purposes only. It is not to be used for development of construction plans or any type of engineering services based on the information depicted herein and is maintained for the function of this office only. It is not intended for conveyance, nor is it a survey. The data is not guaranteed accurate or suitable for any use other than that for which it was gathered. Photography taken in 2009."


PERDIDO KEY, WEST
PERDIDO KEY STATE PARTK TO ALABAMA STATE LINE
Alabama State Line
Easement Request Area
~2.4 miles
Perdido Key State Park
~1.8 miles
West Easements
Total Parcels = 96
Signed = 23 (24%)
Rejected = 0 (0%)

Board Direction

4) Potential Costs

a) Appraiser's Fees for County.

b) Compensation to be Paid to Parcel Owners.

c) Retain Eminent Domain Counsel for County.

d) Statutory Costs: parcel owner's appraiser and engineering expert fees; attorney's fees if benefits obtained are greater than that offered by County.

MEMORANDUM

To: Alison Rogers, County Attorney

From: Kris Hill, Paralegal

Date: February 10, 2014

Re: PK Easements – Synopsis of letters received from outside counsel

I. Appraisals

Buzz Wagand and Associates, Jacksonville, FL

- Valuation analysis of each parcel, before and after taking.
- Length of time: completion, 90-100 days; first reports, 4-6 weeks.
- Expenses: travel and lodging paid by appraiser; client to provide engineering drawings and other necessary documentation.
- Cost/fee for appraisals:
    - Parcels with no building/site improvement, $550 each
    - Parcels owned by property owner associations, $2500 each
    - Single-family residences, $800 each
- Expert WitnessTestimony: $225/hour; lodging, if necessary, $125/day; travel time: $50/hour
- $10,000 retainer due upon engagement

Brantley & Associates

- Preparation of Project Data Book: $5000
- Form Appraisals (per parcel): $500
- Time Frame: 30 days after receiving notice to proceed
- Other costs:
    - Expert witness: $250/hr.
    - Appraisal update, if necessary: $250
    - Narrative appraisal: $2500
- Severance damages: Does not envision damages to the remainder properties as benefits to property owners far outweigh damages to remainder
- Valuation of property rights acquired: Would be set forth in the easement document; highly possible that the value of these rights may be negligible.

II. Attainment of Easements by Outside Counsel

Shell, Fleming, Davis & Menge

- Project Planning and Scheduling (assist County with development of legal and ROW schedules and budgets): $3500
- Project Document preparation and ROW Workshop: $250/hr., not to exceed $7500; drafting of all notices, right of use agreements, offer letters, easements, access agreements, etc., followed by workshop with staff to help them understand easements and property owners rights
- ROW Support: $250/hr. (budget $2500-5000); this includes obtaining, reviewing & approving the title work for each parcel
- Eminent Domain: $1500 per parcel through Order of Taking; following Order of Taking, $250/hr.
- Environmental Permit support: $250/hr.; assist county environmental and engineering consultants with obstacles in permitting process; assistance with any administrative challenge to permits.
- Other expenses: No charge for travel time and discount travel expenses charged at cost (if need team members from Tampa and Tallahassee).

Jacobs Scholz & Associates

- Easement taking project: $90-140,000

  (At $250/hr., Charlie calculates $90,000 would pay for 360 hours of work; at $300/hr., this would be 300 hours of work.)