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Gina Peebles, Assistant County Manager  
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Email delivery only

Re: ISOB Question

Dear Gina:

At the Board's request, I have researched an issue that arose in the recent oversight board meeting and offer the following analysis.

**Issue:** "Definition of infrastructure for a public space vs. construction of a public facility and provide background for the Board to discuss" in response to the City of Alachua's and Town of Micanopy's upcoming projects proposed to be funded via their Infrastructure surtax."

Short answer: This is a distinction without much difference, if any.

Discussion: The half-cent WSPP Surtax Ordinance 16-06 was approved by referendum and took effect on January 1, 2017. The voters on November 8, 2022, approved repeal of the Wild Spaces/Public Places ("WSPP") Surtax and replaced it with the new 1.0 cent Infrastructure Surtax, which is in effect now (Ordinance 2022-08). Florida law authorizes the County Commission to levy and have in effect only one local government infrastructure surtax at a time.

The starting point of any analysis is the enabling statute, Sec. 212.055(2), Florida Statutes, to determine the permissible uses for local infrastructure surtax proceeds<sup>1</sup>. The County Commission by ordinance, subject to the previous referendum, narrowed the statute's permissible uses to those set forth in the WSPP referendum, including conservation land acquisition and parks/recreational facilities.

The County Commission's newer Ordinance 2022-08, however, broadened the permissible uses beyond the previous WSPP surtax, although it still did not include all of the permissible uses

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<sup>1</sup> Notably, the referendum was approved pursuant to §212.055(2) Local government infrastructure surtax, not §212.055(1) Charter county and regional transportation system surtax.

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of proceeds authorized under the statute. The new Alachua County Infrastructure Surtax Ordinance 2022-08 in Section 4(a) requires that 50% of the surtax proceeds shall be used for conservation land acquisition and parks/recreation, dubbed “WSPP Uses.” Section 4(b) requires that 50% of the surtax proceeds shall be used for “Other Infrastructure Uses,” including to repair roads and improve road safety, **construct or renovate** fire stations and **other Public Facilities**, acquire lands for affordable housing, and fund economic development projects. (emphasis added, caveats omitted). Not more than 15% of the surtax proceeds may be allocated to funding economic development projects. Section 4(b).

Distribution to Alachua County and the nine municipalities of the surtax proceeds levied pursuant to Ordinance 2022-08 is governed by a statutory formula contained in §218.62, Florida Statutes.

The recreational projects to be constructed or renovated by the City of Alachua and the Town of Micanopy are proposed for surtax funding as “Other Infrastructure Uses.” The question before the ISOB is whether the parks/recreational projects may qualify as Other Infrastructure Uses. They do potentially qualify under the Ordinance because they fall within the definition of “other Public Facilities” that may be funded by a municipality’s share of its Infrastructure Surtax. Ordinance 2022-08, at Section 4(b)(ii).

Ordinance 2022-08 does not define “Public Facilities”; however, a definition of the term “public facilities” is set forth in Section 212.055(2)(d)(1)(a), Florida Statutes:

For purposes of this sub-paragraph, the term “public facilities” means facilities as defined in s. 163.3164(39), s. 163.3221(13), or s. 189.012(5), and includes facilities that are necessary to carry out governmental purposes, including, but not limited to, fire stations, general governmental office buildings, and animal shelters, regardless of whether the facilities are owned by the local taxing authority or another governmental entity.”

In turn, §163.3164(39), Florida Statutes, states:

(39) “Public facilities” means major capital improvements, including transportation, sanitary sewer, solid waste, drainage, potable water, educational, **parks and recreational facilities**. (emphasis added)

Sec. 163.3221(13), Florida Statutes, states:

(13) “Public facilities” means major capital improvements, including transportation, sanitary sewer, solid waste, drainage, potable water, educational, **parks and recreational facilities**. (emphasis added)

Sec. 189.012(5), Florida Statutes, states:

(5) “Public facilities” means major capital improvements, including, but not limited to, transportation facilities, sanitary sewer

facilities, solid waste facilities, water management and control facilities, potable water facilities, alternative water systems, educational facilities, **parks and recreational facilities**, health systems and facilities, and, except for spoil disposal by those ports listed in s. 311.09(1), spoil disposal sites for maintenance dredging in waters of the state. (emphasis added).

Conclusion: While the County Commission has set a floor of 50% of the Infrastructure Surtax proceeds that shall be spent on what the public understands the former and current “WSPP Uses” to include (i.e. conservation land acquisition, parks/recreational facilities), the County Commission did not set a ceiling for specific uses (other than qualifying economic development projects) for the other 50% of surtax proceeds, i.e. “Other Infrastructure Uses.” Consequently, a municipality could, in theory, spend all of its “Other Infrastructure Uses” surtax proceeds on parks and recreational facilities.

Sincerely,

/s/ PATRICE BOYES, ESQ.

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Patrice Boyes, Esq.  
Special Counsel to ISOB