

*BOARD OF COUNTY COMMISSIONERS
OFFICE OF COUNTY ATTORNEY*



Dylan R. Reingold, County Attorney
William K. DeBaal, Deputy County Attorney
Kate Pingolt-Cotner, Assistant County Attorney

MEMORANDUM

TO: Joseph A. Baird, County Administrator

FROM: Dylan Reingold, County Attorney

DATE: February 2, 2016

SUBJECT: Use of Windsor Properties Property Exchange Donation

On July 27, 2005, the Indian River County Board of County Commissioners (the "Board") approved a property exchange with Windsor Properties, involving a portion of Golden Sands Park (the "Exchange"), which included an unrestricted cash donation to Indian River County of \$1,000,000 (the "Donation").

As the original Golden Sands Park was constructed using both Indian River County (the "County") funds and funds from the Florida Recreation Development Assistance Program, the Acquisition and Restoration Council ("ARC") of the Board of Trustees of the Internal Improvement Trust Fund ("Board of Trustees") was required to approve the Exchange.

In a letter to Eva Armstrong, Director of the Division of State Lands, dated June 20, 2006, Chairman of the Board, Arthur R. Neuberger, stated that "Windsor will pay the County \$1,000,000 to enhance the County's management ability and fund needs which are currently unfunded."

As indicated in a memorandum to the Board, dated June 30, 2006, William K. DeBaal, then Assistant County Attorney, noted that staff for the Board of Trustees indicated that they preferred that the Donation be restricted to "improvements to the County's parks and recreation facilities." Mr. DeBaal recommended that the Board "[r]estrict the \$1,000,000 donation to the County from Windsor Properties to improvements to the County's parks and recreation facilities and authorize the Chairman to sign the attached letter." The attached letter to Ms. Armstrong, stated that the donation "will be earmarked to benefit Indian River County parks and recreation."

At the July 11, 2006 Board meeting, Mr. DeBaal reiterated that the Donation was to be earmarked for recreation and park purposes. Commissioner Wheeler specifically asked Mr. DeBaal about the use of the funds. He asked if the Donation had to be used for a new baseball diamond or a new building or whether it could be used for maintenance. He also asked how constricted the County was in the use of the Donation.

Mr. DeBraal responded that the Donation just needed to go into the parks and recreation budget. He noted that the Division of State Lands did not want to reach that far into the County's business.

The minutes from the Board meeting reflect that the Board by a 4-0 vote, with Commissioner Bowden absent, to restrict the Donation "to improvements to the County's parks and recreation facilities and authorized the Chairman of the Board to sign the letter to the Department of Environmental Protection, as recommended in the memorandum of June 30, 2006."

On August 11, 2006, ARC recommended approval of the Exchange. The staff report for the ARC meeting stated that "Windsor will pay the County \$1,000,000 to enhance the County's management ability to fund needs which are currently unfunded. The County has committed to use these funds to support recreation and parks."

On November 21, 2006, you wrote a letter to Scott Woolam, Chief, Bureau of Public Land Administration, in which you stated that the "County has previously earmarked these funds for expenditures on recreation and parks."

On December 5, 2006, the Board of Trustees considered the Exchange. The backup materials for the Board of Trustees meeting state that the Donation will "enhance the County's management ability and fund needs which are currently unfunded. The County has committed to use these funds for recreation and parks." Additionally, the materials noted that the "County has agreed to furnish the Division of State Lands in its annual budget process an accounting of all expenditures of the designated funds." The materials further state that the Exchange will provide significant public benefits by among other things, "providing an additional \$1,000,000 for County Parks and Recreation purposes." The Board of Trustees voted unanimously to approve the matter. It is interesting to note that at the meeting, Secretary Colleen Castille mistakenly stated that the Donation was for "development of recreation facilities" at Golden Sands Park, which was not the case as Windsor Properties had agreed to rebuild Golden Sands Park at no cost to the County.

Finally, the Addendum to the Exchange Agreement, which is attached to and referenced in the Exchange Agreement, dated December 20, 2006, between the County, Windsor Properties and the Board of Trustees, states that the County has earmarked the Donation "to benefit Indian River County Parks and Recreation."

It appears that throughout the process that several different phrases were used as to describe how the Donation would be utilized, such as "to enhance the County's management ability and fund needs which are currently unfunded", "to improvements to the County's parks and recreation facilities", "to benefit Indian River County Parks and Recreation" and "for County Parks and Recreation purposes."

As you are aware, the Board is considering a number of different uses for the funds from the Donation, which include construction of boardwalks on conservation lands for access to the public and improvements to parks and recreation property which is jointly owned with other governmental entities or non-profit organizations. I believe that the Board has broad discretion to utilize the Donation for County parks and recreation, including these types of expenditures.

On January 26, 2016, Bill DeBaal and I spoke with an attorney with the Florida Department of Environmental Protection, Dustin Dailey and with Janice Ellison, Program Consultant with Surplus Land Sales and Dispositions in the Bureau of Real Estate Services within the Division of State Lands. I asked Mr. Dailey several questions concerning the use of the Donation funds, such as whether the funds could be used for 1) basketballs for parks and recreation programs, 2) boardwalks on conservation lands for access to the public, 3) maintenance of parks and recreational facilities, and 4) improvements to parks and recreation property which is jointly owned with other governmental entities or non-profit organizations.

He stated that there were two criteria for the use of the funds from the Donation, 1) use of the Donation for recreation and parks, and 2) an annual accounting of how the money is spent. He noted that the money should serve the recreation needs of Indian River County. He did state that he wanted to discuss the issue further with the Director of the Division of State Lands.

Since the conference call with Mr. Dailey and Ms. Ellison, Mr. DeBaal had a follow-up conference call with Ms. Ellison after she had an opportunity to discuss the issue with the Director of the Division of State Lands. She told Mr. DeBaal that the Division of State Lands had no objection to the use of the Donation for building or replacing athletic courts or fields, construction of trails and boardwalks on recreational lands or making capital improvements to property jointly owned by the County. She went on to say that the Division of State Lands would not like to see the funds spent on basketballs, flags for flag football or other small scale items. Ms. Ellison suggested that she be emailed with the Board approved expenditure of Donation funds and that the County Office of Management and Budget follow-up with the annual accounting at the end of the fiscal year.