

ORDINANCE NO. 2005-01

AN ORDINANCE OF THE COUNTY COUNCIL OF VOLUSIA COUNTY, FLORIDA, AMENDING ARTICLE V OF THE CODE OF ORDINANCES OF THE COUNTY OF VOLUSIA, BY REVISING SECTION 70-170, RELATING TO TITLE, AUTHORITY AND APPLICABILITY; BY REVISING SECTION 70-171, RELATING TO DEFINITIONS, INCLUDING PROVISIONS FOR DICTIONARY MEANINGS WHEN WORDS ARE UNDEFINED, DELETING THE PREVIOUSLY DEFINED TERM "BANBERRY-LAFFERTY STANDARD;" REDEFINING "BUILDING PERMIT" AS BEING THAT PERMIT REQUIRED BY THE FLORIDA BUILDING CODE, EXCLUDING THE COST OF RECONSTRUCTING SYSTEM IMPROVEMENTS OF FACILITY EXPANSIONS FROM THE DEFINITION OF "CAPITAL COSTS OF EDUCATIONAL FACILITIES," DELETING COMPUTERS AS AN EXCLUSION FROM THE DEFINITION OF "CAPITAL EQUIPMENT;" ADDING FINAL INSPECTION FOR MOBILE HOMES TO THE DEFINITION OF "CERTIFICATE OF OCCUPANCY," AMENDING THE DEFINITION OF "EDUCATIONAL FACILITIES" TO INCLUDE "AUXILIARY FACILITIES," AMENDING THE DEFINITION OF "EXTERNAL REVENUES" TO PROVIDE THAT SUCH REVENUES ARE PAID BY NEW DEVELOPMENT FOR THE CAPITAL COSTS OF EDUCATIONAL FACILITIES AND OTHERWISE AMENDING THE DEFINITION, PROVIDING A NEW DEFINITION OF "IMPACT FEE CALCULATION REPORT," AMENDING THE DEFINITION OF "LOCAL CAPITAL REVENUES" TO PROVIDE THAT SUCH REVENUES ARE PAID BY NEW DEVELOPMENT FOR CAPITAL COSTS OF EDUCATIONAL FACILITIES AND OTHERWISE AMENDING THE DEFINITION, AMENDING THE DEFINITION OF "MULTI-FAMILY DWELLING UNIT," AMENDING THE DEFINITION OF "NET CAPITAL COST," CLARIFYING THE DEFINITIONS OF "OWNER" AND "PERSON," AND DELETING THE DEFINITIONS OF "DEVELOPMENT," "DEVELOPMENT ORDER," "EDUCATIONAL FACILITIES IMPACT FEE REPORT," "PRESCRIBED IN THE VCLDC" AND "STIPULATED FINAL JUDGMENT;" REVISING SECTION 70-173, RELATING TO LEGISLATIVE FINDINGS, INCLUDING PROVISIONS UPDATING REFERENCES TO THE FLORIDA CONSTITUTION AND TO THE FLORIDA STATUTES, DELETING REFERENCES TO AN INTERLOCAL AGREEMENT, FINDING THAT THE IMPACT FEE CALCULATION REPORT APPROVED BY THE SCHOOL BOARD ENSURES THAT FEEPAYERS DO NOT PAY MORE THAN THEIR EQUITABLE SHARE OF NET CAPITAL COSTS RELATED TO BENEFIT, FINDING THAT THE IMPACT FEE CALCULATION REPORT SETS

(Words in ~~strike-through~~ type are deletions; words in underscore type are additions.)

1 FORTH A REASONABLE FORMULA FOR DETERMINING THE
2 IMPACT OF DEVELOPMENT ON EDUCATIONAL FACILITIES, AND
3 FINDING THAT THE EDUCATIONAL FACILITIES IMPACT FEE
4 (THE "FEE") IS BASED UPON THE AVERAGE STUDENT
5 GENERATION RATE PER DWELLING UNIT; BY REVISING
6 SECTION 70-174, RELATING TO INTENTS AND PURPOSES,
7 INCLUDING A PROVISION DELETING REFERENCES TO THE USE
8 OF THE BANBERRY-LAFFERTY STANDARD; BY REVISING
9 SECTION 70-175, RELATING TO METHODOLOGY FOR
10 CALCULATING THE IMPACT FEE, INCLUDING PROVISIONS
11 WHICH PROVIDE THAT THE FEE SHALL BE DETERMINED BY
12 THE REPORT AND PROVIDING FOR HOW THE REPORT SHALL
13 BE PERFORMED, CLARIFYING THE FORMULA FOR THE FEE,
14 PROVIDING FOR THE EFFECTIVE DATE OF REVISED FEE
15 CALCULATIONS, DELETING CERTAIN LANGUAGE AND
16 PROVIDING FOR ADJUSTMENTS TO THE FEE TO REFLECT
17 INFLATION OR DEFLATION FOR YEARS IN WHICH THERE HAS
18 NOT BEEN A REVISED REPORT; BY REVISING SECTION 70-176,
19 RELATING TO DETERMINATION OF THE AMOUNT OF IMPACT
20 FEE, INCLUDING PROVISIONS INCREASING THE IMPACT FEE
21 TO FIVE THOUSAND FOUR HUNDRED FORTY-TWO AND FIFTY-
22 TWO ONE HUNDREDTHS (\$5,442.52) DOLLARS, INCLUDING THE
23 ADMINISTRATIVE FEE, PER DWELLING, EFFECTIVE
24 APRIL 4, 2005, AND BY DELETING LANGUAGE PERTAINING TO
25 BUILDINGS OR STRUCTURES CONTAINING MIXED USES; BY
26 REVISING SECTION 70-177, RELATING TO IMPOSITION OF
27 EDUCATIONAL FACILITIES IMPACT FEE, BY DELETING
28 EDUCATIONAL FACILITIES FROM THE SECTION HEADING AND
29 CLARIFYING THE IMPOSITION OF FEES ON DWELLINGS
30 CREATED BY NEW CONSTRUCTION OR CHANGE OF BUILDING
31 USE; BY REVISING SECTION 70-178, RELATING TO METHOD OF
32 PAYMENT OF IMPACT FEE, INCLUDING PROVISIONS ALLOWING
33 MUNICIPALITIES HAVING INTERLOCAL AGREEMENTS WITH THE
34 COUNTY TO ISSUE IMPACT FEE STATEMENTS AND TO
35 COLLECT FEES, MAKING FEES DUE UNDER THIS ARTICLE A
36 LIEN ON PROPERTY UPON CHANGE OF USE OR ISSUANCE OF
37 A CERTIFICATE OF OCCUPANCY FOR THE CHANGED USE, AND
38 ALLOWING THE IMPOSITION AND COLLECTION OF AN
39 ADMINISTRATIVE FEE OF THREE PERCENT; BY REVISING
40 SECTION 70-179, RELATING TO IMPACT FEE TRUST ACCOUNT,
41 INCLUDING PROVISIONS TO CLARIFY THE USE OF ENTRUSTED
42 FUNDS AND DELETING REFERENCES TO AN INTERLOCAL
43 AGREEMENT; BY REVISING SECTION 70-180, RELATING TO
44 REFUND OF IMPACT FEE PAID, INCLUDING PROVISIONS
45 REVISING THE INTEREST TO BE PAID UPON REFUND OF FEES;

(Words in ~~strike-through~~ type are deletions; words in underscore type are additions.)

1 BY REVISING SECTION 70-181, RELATING TO EXEMPTIONS AND
2 ALLOWABLE CREDITS, INCLUDING PROVISIONS EXEMPTING
3 THE REPLACEMENT OF CERTAIN LEGALLY PERMITTED
4 DWELLING UNITS FROM PAYMENT OF FEES, DELETING A
5 SEPARATE EXEMPTION FOR REPLACEMENT OF MOBILE
6 HOMES, AND IMPOSING FEES ON THOSE DEVELOPMENTS
7 WHICH OBTAIN EXEMPTION FROM FEES AS COMMUNITIES
8 FOR OLDER PERSONS BUT BREACH OR MODIFY THE
9 COVENANTS AND RESTRICTIONS PERTAINING TO AGE
10 PROVIDING FOR NOTICE AND OPPORTUNITY TO CURE; BY
11 REVISING SECTION 70-184, RELATING TO ARTICLE REVIEW
12 REQUIREMENTS, INCLUDING PROVISIONS PROVIDING FOR
13 COUNTY COUNCIL REVIEW OF THE FEE EVERY THREE YEARS
14 AND PROVIDING FOR THE SCHOOL BOARD TO PROVIDE THE
15 COUNTY COUNCIL WITH A REVISED REPORT, WITH
16 PROVISIONS FOR INPUT FROM THE VOLUSIA HOMEBUILDERS
17 ASSOCIATION ; PROVIDING FOR EFFECT OF THIS ORDINANCE;
18 PROVIDING AN EFFECTIVE DATE.
19
20

21 BE IT ORDAINED BY THE COUNTY COUNCIL OF VOLUSIA COUNTY, FLORIDA,
22 AS FOLLOWS:
23

24 **SECTION I:** That Article V, section 70-170 of the Code of Ordinances, County of
25 Volusia, be amended so that section shall read as follows:

26 **Sec. 70-170. Title, authority and applicability.**

- 27 (a) This article of chapter 70 shall be known and may be cited as the "Volusia County
28 Educational Facilities Impact Fee Ordinance."
- 29 (b) The county council of Volusia County has the authority to adopt this article pursuant
30 to article VIII, section 1(g), Florida Constitution (1968 revision); F.S. chs. 125, 163,
31 and ~~235~~1013; chapter 70-966 (Volusia County Home Rule Charter), Laws of Florida
32 (Sp. Acts), as amended; and Volusia Ordinance 90-10, adopted on March 15, 1990
33 (Volusia County Comprehensive Plan), as amended.

(c) This article shall apply uniformly throughout Volusia County, in the unincorporated areas and in all incorporated areas thereof.

SECTION II: That Article V, section 70-171 of the Code of Ordinances, County of Volusia, be amended so that section shall read as follows:

Sec. 70-171. Definitions.

~~As used in the article, the definitions of the following words and phrases shall apply, unless the context clearly requires otherwise:~~ The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning. Webster's New Collegiate Dictionary (G & C Merriam Co., 11th ed. July 2003, or any subsequent edition) shall be used for the definition of any words not defined in this section.

Ancillary facilities means the buildings, sites, and site improvements necessary to provide support services to educational programs (e.g., facilities as vehicle maintenance, warehouses, maintenance or administrative buildings not located at school plants).

~~*Applicant* means the same as the definition of the word "applicant" prescribed in the glossary of the Volusia County Land Development Code, appendix A, Ordinance 88-3, as amended [hereinafter the "VCLDC"]~~ any person applying for or who has been granted a permit to proceed with a project.

Auxiliary facilities means those portions of a school plant which are not designated for student stations.

1 ~~*Banberry-Lafferty standard* means the considerations to be used in determining~~
2 ~~credits in the calculation of proportionate share impact fees derived originally from the case~~
3 ~~of Banberry Development Corp. v. South Jordan City, 631 P.2d 899 (Utah 1981) and~~
4 ~~Lafferty v. Payson City, 642 P.2d 376 (Utah 1982), and adopted and made applicable to~~
5 ~~Volusia County under the Stipulated Final Judgment.~~

6 ~~*Building permit* means the same as the definition of the phrase "building permit"~~
7 ~~prescribed in the VCLDC, and for purposes of this article, includes a tie-down or installation~~
8 ~~permit for a building, such as a mobile home, that does not require a building permit in~~
9 ~~order to be occupied. the permit required by the Florida Building Code in effect at the time~~
10 ~~of the application for the building permit to construct the specific type of dwelling for which~~
11 ~~the application was made.~~

12 ~~*Capital costs of educational facilities* means costs incurred to provide additional~~
13 ~~public facilities capacity needed to serve new growth and development for planning, design~~
14 ~~and construction, land acquisition, land improvement, design and engineering related~~
15 ~~thereto, including the cost of constructing or reconstructing system improvements or facility~~
16 ~~expansions. Projected interest charges and other finance costs may be included if the~~
17 ~~impact fees are to be used for the payment of principal and interest on bonds, notes or~~
18 ~~other financial obligations issued on behalf of the municipality or county district to finance~~
19 ~~the capital improvements element, but such costs do not include routine and periodic~~
20 ~~maintenance expenditures.~~

21 ~~*Capital equipment* means equipment, except for computers, with an expected use~~
22 ~~life of three years or more.~~

(Words in strike-through type are deletions; words in underscore type are additions.)

1 *Capital improvements* means educational facilities and capital equipment which
2 increase the capacity of the school system.

3 *Certificate of occupancy* means the official document or permit issued by a
4 municipality in Volusia County or by the county, evidencing the completion of construction
5 of a building in accordance with all applicable codes and its legal entitlement to permanent
6 occupancy and use. The term certificate of occupancy shall also include an approved final
7 inspection for a mobile home.

8 *Comprehensive plan* means the same as the definition of the phrase
9 "comprehensive plan" prescribed in the VCLDC.

10 *County* means the County of Volusia, a body corporate and politic.

11 *County Council* means the ~~G~~county ~~C~~council of Volusia County, Florida.

12 *County manager* means the county manager of the county or his or her designee.

13 ~~*Development* means the same as the definition of the word "development"~~
14 ~~prescribed in the VCLDC.~~

15 ~~*Development order* means the same as the definition of the phrase "development~~
16 ~~order" prescribed in the VCLDC.~~

17 *District* means the ~~Volusia~~ School District of Volusia County.

18 *District school system* means the educational facilities, auxiliary facilities, and
19 ancillary facilities of the district, which are used to provide instruction in the public schools
20 and the administrative or support activities relating to such instruction.

21 ~~*Dwelling unit* means a building, or a portion thereof, which is designed for residential~~
22 ~~occupancy, which consists of one or more rooms, and which is arranged, designed or used~~

1 as living quarters for one family only, and includes multifamily dwelling units and mobile
2 homes.

3 Dwelling means one or more rooms in a building forming a separate and
4 independent housekeeping establishment, arranged, designed or intended to be used or
5 occupied by one family, and having no enclosed space or cooking or sanitary facilities in
6 common with any other dwelling with no ingress or egress through any other dwelling, and
7 containing permanent provisions for sleeping facilities, sanitary facilities and not more than
8 one kitchen facility, and includes multifamily dwellings, manufactured homes and mobile
9 homes and any dwelling in a multifamily dwelling and/or in a building containing multiple
10 uses.

11 *Educational facilities* means the building, furniture and capital equipment that are
12 constructed, installed, or established for student stations, auxiliary facilities, and ancillary
13 facilities.

14 ~~*Educational facilities impact fee report* means the report, entitled "Volusia County,~~
15 ~~Florida, Educational Facilities Impact Fee Report," dated as of May 15, 1997, prepared by~~
16 ~~James C. Nicholas, Ph.D. and Arthur C. Nelson, Ph.D.~~

17 *External revenues* means those revenues of the district which are derived from
18 sources other than local tax sources, which are paid directly or indirectly by new
19 development for the capital costs of educational facilities and which, based on the district's
20 previous five-year historical pattern of funding the construction of additional capacity and
21 the maintenance of existing capacity of capital improvements, are reasonably anticipated to

1 be available to the district to pay for a portion of total capital cost while continuing the
2 district's historical pattern of funding the maintenance of existing facilities.

3 ~~Feepayer means a person commencing a land development activity in Volusia~~
4 ~~County, under the land development jurisdiction of the county or a municipality in Volusia~~
5 ~~County.~~

6 Feepayer means that person who pays an impact fee for educational facilities or
7 such person's successor in interest with the right or entitlement to any refund of previously
8 paid development impact fees which is required by this article and which has been
9 expressly transferred or assigned to the successor in interest.

10 Impact fee means the fee imposed for educational facilities under section 70-177.

11 Impact fee calculation report means the report, entitled "Volusia County, School
12 Impact Fee Update Final Report," dated December, 2004, prepared by Tindale-Oliver &
13 Associates, Inc. and approved by the School Board.

14 ~~Impact fee receipt means the document issued to a feepayer prior to the issuance of~~
15 ~~a certificate of occupancy.~~

16 Land development activity means any change in land use or any construction or
17 installation of a dwelling unit, or any change in the use of any structure that will or could
18 result in additional students in the public schools of the district.

19 Local capital revenues mean are those revenues of the district which are derived
20 from local tax sources, which are paid directly or indirectly by new development for the
21 capital costs of educational facilities and which, based on the district's previous five-year
22 historical pattern of funding the construction of additional capacity and the maintenance of

1 existing capacity of capital improvements, have been or may be are reasonably anticipated
2 to be available to the district to pay for a portion of total capital cost while continuing the
3 district's historical pattern of funding the maintenance of existing facilities.

4 ~~Mobile home means a "manufactured home" as that phrase is defined in the~~
5 ~~VCLDC, or "park model" vehicles, and which are placed on a lot and which are intended to~~
6 ~~be used for continuous residential occupancy.~~

7 ~~Multifamily dwelling unit means a dwelling unit attached to one or more other~~
8 ~~dwelling units in the same structure, including duplexes, townhouses, apartments, and~~
9 ~~attached condominiums.~~

10 ~~New dwelling unit means a dwelling unit constructed after the effective date of this~~
11 ~~article.~~

12 ~~Net capital cost means the difference between total capital cost and the sum of the~~
13 ~~present values of all external revenues and local capital revenues attributable to new~~
14 ~~dwelling units for the capital costs of educational facilities.~~

15 ~~Other development exactions means the dedication of the sites for or actual~~
16 ~~improvements constituting educational facilities, as mandated or required by the county or~~
17 ~~by a municipality located in Volusia County in connection with the issuance of a~~
18 ~~development permit.~~

19 ~~Owner means the same as the definition of the word "owner" prescribed in the~~
20 ~~VCLDC any person, group of persons, firm or firms, joint venture, corporation or~~
21 ~~corporations, or any other legal entity having legal title to the land sought to be developed~~
22 ~~in Volusia County including both incorporated and unincorporated areas.~~

1 *Person* means ~~the same as the definition of the word "person" prescribed in the~~
2 ~~VCLDC~~ an individual, firm, association, organization, whether social, fraternal or business,
3 partnership, joint venture, trust company, corporation, receiver, syndicate, business trust or
4 other entity or group or combination acting as a unit, including any government.

5 ~~*Prescribed in the VCLDC* means that the quoted word or phrase is defined in the~~
6 ~~glossary of the Volusia County Land Development Code, appendix A, Ordinance 88-3, as~~
7 ~~amended.~~

8 *Public schools* means all educational facilities for kindergarten classes; elementary
9 and secondary school classes and special classes; adult, part-time, vocational and evening
10 schools, courses, or classes authorized by law to be operated under the control of the
11 school board.

12 *School board* means the governing board of the district.

13 *School plant* means the land, building, furniture, equipment and site improvements
14 which are necessary to accommodate students, faculty, administrators, staff and the
15 activities of the educational programs and services for each student; the term includes
16 educational facilities, ancillary facilities, and auxiliary facilities.

17 ~~*Stipulated final judgment* means the stipulated final judgment, dated November 21,~~
18 ~~1996, nunc pro tunc September 6, 1996, in Florida Home Builders Association, Inc. et al. v.~~
19 ~~the County of Volusia, et al., filed in the Circuit Court of Volusia County, Florida, as case~~
20 ~~93-10992-CIDL-Division 01 (J. Smith).~~

21 *Student generation rate* means the average number of public school students who
22 are expected to reside in a typical new dwelling unit in the district.

1 *Student station* means the square footage of building area per student, excluding
2 auxiliary facility spaces and ancillary facility spaces, depending on the type of the
3 instructional programs to be housed in the educational facility.

4 *Total capital cost* means the total cost of all capital improvements required to
5 increase the capacity of the Volusia District School System, in order to accommodate the
6 demand on that system which is reasonably attributable to the construction of each new
7 dwelling unit in the district. The term includes the cost of financing of that proportion of
8 such cost paid by debt instruments or their equivalent.

9
10 **SECTION III:** That Article V, section 70-173 of the Code of Ordinances, County of
11 Volusia, be amended so that section shall read as follows:

12 **Sec. 70-173. Legislative findings.**

13 The county council of Volusia County makes the following findings of legislative fact:

- 14 (1) Article IX, Section 1, of the Florida Constitution requires that adequate provision be
15 made by law for a uniform, efficient, safe, secure and high quality system of free
16 public schools that allow students to obtain a high quality education. It also
17 provides that adequate provision be made for specific class size requirements.
- 18 (2) Volusia County is constituted as a separate school district, and the school board is
19 empowered by law to operate, control, and supervise all free public schools in the
20 district.
- 21 (3) The school board is required under F.S. ch. ~~235~~ 1013, to coordinate school site
22 planning and selection with the county's comprehensive plan.

1 ~~(4) The school board and the county have entered into an interlocal agreement~~
2 ~~providing for the imposition of an educational facilities impact fee in Volusia County~~
3 ~~for the benefit of the district.~~

4 ~~(45)~~ F.S. § ~~235.193~~ 1013.33, requires the coordination of planning between school
5 board and the County council to ensure that plans ~~ef~~ for public educational facilities
6 are facilitated and coordinated in time and place with plans for residential
7 development concurrently with ~~and~~ other necessary public services.

8 ~~(56)~~ In order to maintain current levels of service the district school system must expand
9 the capacity of the system if new development in the district is to be
10 accommodated. This expansion of capacity must be done in order to promote and
11 protect the public health, safety and welfare of the residents of Volusia County.

12 ~~(67)~~ Under F.S. §§ 380.012 and 163.3202, counties are encouraged to adopt innovative
13 land development regulations which include, among other provisions, impact fees
14 such as the impact fee imposed under this article.

15 ~~(78)~~ The imposition of an impact fee is one of the preferred methods of ensuring that
16 new development bears a proportionate share of the capital costs of educational
17 facilities which are necessary to accommodate new development. This must be
18 done in order to promote and protect the public health, safety and welfare.

19 ~~(8)~~ The calculation and assessment of the impact fee is done to assure that the fee
20 imposed on new development does not require feepayers to bear more than their
21 equitable share of the net capital cost in relation to the benefits conferred.

22 ~~(9)~~ The impact fee calculation report has been approved by the school board.

1 (10) The impact fee calculation report sets forth a reasonable methodology and analysis
2 for the determination of the impact of new land development on the need for and
3 costs of additional educational facilities in the district.

4 ~~(911)~~ The educational facilities impact fee is derived from, is based upon the average
5 student generation rate per dwelling, and does not exceed the costs of providing for
6 the acquisition of new school sites, the expansion and equipping of existing
7 educational facilities, and the construction and equipping of new educational
8 facilities necessitated by new land development for which the impact fee is imposed.

9 ~~(10) The educational facilities impact fee report sets forth a reasonable methodology and~~
10 ~~analysis for the determination of the impact of new land development on the need~~
11 ~~for and costs of additional educational facilities in the district.~~

12
13 **SECTION IV:** That Article V, section 70-174 of the Code of Ordinances, County of
14 Volusia, be amended so that section shall read as follows:

15 **Sec. 70-174. Intent and purposes.**

16 (a) This article is consistent with, and intended to assist in the implementation of, the
17 Volusia County eComprehensive pPlan.

18 (b) The purpose of this article is to regulate land development so as to assure that new
19 development bears a proportionate share of the cost of accommodating new
20 development with educational facilities.

21 ~~(c) The educational facilities impact fee report has been approved by the school board.~~

(d) ~~The application of the Banberry Lafferty standard in the calculation and assessment of the educational facilities impact fee is done to assure that the fee imposed on new development does not require feepayers to bear more than their equitable share of the net capital cost in relation to the benefits conferred.~~

SECTION V: That Article V, section 70-175 of the Code of Ordinances, County of Volusia, be amended so that section shall read as follows:

Sec. 70-175. Methodology for calculating the impact fee.

a) The amount of the impact fee shall be determined by applying the following formula: the impact fee calculation set out in the impact fee calculation report. The impact fee calculation shall apply the following formula:

Impact Fee (net capital cost) = Total Capital Cost - External Revenues - Local capital Revenues Credit apportioned per dwelling based upon the student generation rate.

In performing the impact fee calculation, the same definitions as provided herein shall be used.

Where:

(1) ~~Based on the educational facilities impact fee report and the annual financial reports of the district, the total capital cost of increasing the capacity of the district school system, in order to accommodate the demand on that system which is reasonably~~

1 attributable to the construction of new dwelling units is \$4,202.80 per dwelling unit,
2 and the cost of financing is \$645.13 per dwelling unit.

3 ~~(2) — Based on the educational facilities impact fee report and the annual financial reports~~
4 ~~of the district, external revenues have provided 27.23 percent of the total capital~~
5 ~~cost.~~

6 ~~(3) — Based on the educational facilities impact fee report and the annual financial reports~~
7 ~~of the district, the school district deems that local revenues consisting of past~~
8 ~~payments of 6.27 percent of local cost, 100 percent of the capital improvement tax~~
9 ~~and 100 percent of the debt service (bond) tax, and having an aggregate present~~
10 ~~value of \$2,488.00 have been contributed in the past or will be contributed in the~~
11 ~~future by impact fee payers to total capital cost.~~

12 ~~(4) — Based on the educational facilities impact fee report, the annual financial reports of~~
13 ~~the school district, the Banberry-Lafferty standard and the provisions of the~~
14 ~~stipulated final judgment, the educational facilities impact fee is determined to be~~
15 ~~\$984.00 per dwelling unit. On January 1, of 1999 and on May 1 of each subsequent~~
16 ~~year, the growth management department shall adjust the school impact fees~~
17 ~~accruing on or after those dates, to reflect any inflation or deflation in school~~
18 ~~construction costs after May 15, 1997 in accordance with the most recently~~
19 ~~published five-year average inflation rate for total cost per square foot, in the Florida~~
20 ~~Department of Education's Annual Public School Cost of Construction Report.~~

21 b) On February 1, 2006, and February 1 of every subsequent year thereafter the
22 impact fee shall be adjusted to reflect any inflation or deflation in school

1 construction costs after December 1, 2004, based upon a blended rate of ninety
2 (90%) percent of which is based on the percentage changed in school constructions
3 costs and ten (10%) percent of which is based on the percentage change in
4 property values. The percentage change in school construction costs will be the
5 average of the percentage changes in the cost per square foot of schools
6 completed in the previous twelve-month period compared to the prior year's
7 determination of cost per square foot. If no schools have been completed within the
8 previous twelve-month period, then the prior year's percentage change in cost per
9 square foot will be used. The change in property values will be the percentage
10 change in just property values as reported by the Volusia County Property Appraiser
11 based upon the most recent final tax roll for Volusia compared to the final tax roll of
12 the preceding year. The school board shall provide the adjustment rate with the
13 revised impact fee amount to the county by December 1 of the year preceding the
14 effective date for collection of the revised impact fee.

- 15 c) For any revised calculation as provided in this Section 70-175, the effective date of
16 the new impact fee amount shall be the 1st day of February next following the school
17 board having provided the adjustment rate as described in section 70-175(b).

18
19 **SECTION VI:** That Article V, section 70-176 of the Code of Ordinances, County of
20 Volusia, be amended so that section shall read as follows:

21 **Sec. 70-176. ~~Determination of the a~~Amount of impact fee.**

1 (a) ~~Notwithstanding any other provision of this chapter, the amount of the educational~~
2 ~~facilities impact fee shall be \$850.00 per dwelling unit during the period from the~~
3 ~~effective date of this article to and including January 1, 1999. After January 1,~~
4 ~~1999, Commencing on June 6, 2005, the amount of the educational facilities impact~~
5 ~~fee shall be FIVE THOUSAND FOUR HUNDRED FORTY-TWO AND FIFTY-TWO~~
6 ~~ONE HUNDREDTHS (\$5,442.52) DOLLARS (including the three (3%) percent~~
7 ~~administrative fee) per dwelling. Thereafter, the impact fee shall be the amount~~
8 ~~calculated under section 70-175(d).~~

9 ~~(b) If a building permit is requested for construction or improvement of a building or~~
10 ~~structure containing mixed uses, then the impact fee shall be determined by~~
11 ~~apportioning the space committed to new dwelling units.~~

12 (eb) In the case of change of use, redevelopment, or expansion or modification of an
13 existing use which requires the issuance of a building permit, the impact fee shall be
14 based upon the number of new dwellings units.

15
16 **SECTION VII:** That Article V, section 70-177 of the Code of Ordinances, County of
17 Volusia, be amended so that section shall read as follows:

18 **Sec. 70-177. Imposition of educational facilities impact fee.**

19 (a) ~~After the effective date, the feepayer shall pay an educational facilities impact fee in~~
20 ~~the amount and on the terms as set forth in this article. Any person who makes or~~
21 ~~causes the making of a dwelling, or any person who changes the use of any~~
22 ~~building to create a dwelling shall be required to pay an impact fee for educational~~

1 facilities in the manner and amount set forth in this article. The liability for the impact
2 fee shall accrue upon issuance of a building permit for the land development activity
3 or upon occupancy of the dwelling if issuance of a building permit is not required or
4 obtained. The fee shall be payable not later than the issuance of a certificate of
5 occupancy for the land development activity or occupancy of the dwelling,
6 whichever occurs first.

- 7 (b) No certificate of occupancy for any land development activity requiring payment of
8 an ~~educational facilities~~ impact fee shall be issued until the impact fee has been
9 finally determined and paid. No person shall change the use or allow a change in
10 use of any building where the impact fee imposed by this article is applicable
11 without having paid the proper impact fee imposed by this article.

12
13 **SECTION VIII:** That Article V, section 70-178 of the Code of Ordinances, County of
14 Volusia, be amended so that section shall read as follows:

15 **Sec. 70-178. Method of payment of impact fee.**

- 16 (a) The person applying for the issuance of a building permit shall pay the ~~educational~~
17 ~~facilities~~ impact fee prior to the issuance of a certificate of occupancy, or the
18 occupancy of the building. The county and any municipality with an interlocal
19 agreement with the county shall issue an impact fee statement to the applicant for a
20 building permit. Such impact fee statement shall set forth the amount of impact fee
21 due.

1 The obligation for payment of the impact fee shall run with the land. However, this
2 section shall not be construed to relieve an applicant of responsibility or liability for
3 payment of the impact fees imposed by this article.

4 The obligation of a person to pay the impact fee imposed by this article shall not be
5 extinguished by the inadvertent failure of the county to collect the impact fee at the
6 time required.

7 In the event the impact fee is not paid prior to the issuance of a certificate of
8 occupancy or the occupancy of the building for the affected impact construction, the
9 county may collect the impact fee, together with interest from the date payment was
10 due at the rate fixed by law for judgments, a penalty of five (5%) percent per month
11 (not to exceed twenty-five (25%) percent), the costs of such collection and a
12 reasonable attorney's fee. Interest and penalties shall be remitted for addition to the
13 trust fund, and the recovered costs and fees for collection shall be retained by or
14 remitted to the government incurring the expense of collection. The county attorney,
15 or ~~his~~ a duly authorized representative of the county attorney may execute, serve
16 upon the owner by certified mail and record a notice of nonpayment in the official
17 records of the county, which shall contain the legal description of the property and
18 the amount of the impact fee liability. Said notice shall thereupon operate as a lien
19 against such property for the amount of the impact fee, together with interest,
20 penalties, and the costs and fees for collection, coequal with the lien of all state,
21 county, district and municipal taxes.

1 In the event the impact fee rate for a particular land use is changed subsequent to
2 the issuance of a building permit and before the issuance of a certificate of
3 occupancy, the impact fee shall be the amount in effect on the date payment is
4 received. ~~If no building permit is required upon a change of use of a structure, the~~
5 ~~fee imposed by this article shall be payable at such time as the person making such~~
6 ~~change shall be required to apply for a county or municipal occupational license or~~
7 ~~use permit.~~

8 All impact fees due under this article shall become a lien at the time of the issuance
9 of the building permit or, in the case of a change of use ~~on the issuance of an~~
10 ~~occupational license,~~ upon the occurrence of the change of use or issuance of a
11 certificate of occupancy for the changed use, whichever comes first, as the case
12 may be. ~~Such~~ Such impact fees shall be due, and shall remain a lien, coequal with the
13 lien of all state, district, county and municipal taxes, superior in dignity to all other
14 liens, titles and claims, until paid. Such liens shall be upon the land on which an
15 improvement is made requiring the payment of impact fees and shall be for the
16 amount of the impact fee required, as well as for all penalties and interest due under
17 the provisions of this article.

18 (b) ~~Payment of educational facilities impact fees shall be made to the County of Volusia~~
19 and any municipality with an interlocal agreement to collect impact fees for the
20 county.

21 (c) The payment of the impact fee shall be in addition to any other fees, charges, or
22 assessments due for the issuance of a building permit. As a collection allowance for

1 reimbursement for the cost of administering and handling of such impact fees, the
2 collecting county shall be permitted to impose on and retain from each feepayer an
3 administrative fee of three (3%) percent ~~(up to a maximum of 50 dwelling units per~~
4 ~~receipt)~~ over and above the amount to be remitted to the school board under this
5 section.

6 (d) A municipality may, through interlocal agreement with the county, arrange for
7 required impact fees to be paid directly to the municipality in accordance with the
8 interlocal agreement. The failure of a municipality having entered into such an
9 interlocal agreement to collect the required impact fee shall in no event relieve any
10 person from the obligation to pay the impact fee imposed by this article.

11 ~~(ed) Educational facilities~~ Impact fees collected by a municipality under this article
12 ~~(together with interest actually earned therefrom)~~ shall be segregated and held
13 separately from all other revenues and shall be transferred to the school board on a
14 monthly basis by the 15th day of each month for those impact fees collected in the
15 previous calendar month handled in accordance with the interlocal agreement
16 between such municipality and the county in effect at the time of such impact fee
17 collection.

18 ~~(fe) Educational facilities~~ Impact fees collected by the county under this article (together
19 with interest earned and credited thereon) and impact fees received by the county
20 from any municipality shall be segregated and held separately from all other
21 revenues in a separate account. The fees collected shall be transferred to the

1 school board on a monthly basis, by the 15th day of each month, for those impact
2 fees collected in the previous calendar month.

3 (gf) All impact fees collected or received by the county under this article shall be
4 properly identified and promptly deposited in the Volusia Educational Facilities
5 Impact Fee Trust Account. Funds shall be held in a separate account, as prescribed
6 in section 70-179, and shall be used solely for the purposes specified in section 70-
7 179.

8 ~~(g) A municipality may, through interlocal agreement with the county, arrange for~~
9 ~~required fees to be paid directly to the municipality in accordance with the interlocal~~
10 ~~agreement. The failure of a municipality having entered into such an interlocal~~
11 ~~agreement to collect the required impact fee shall in no event relieve any person~~
12 ~~from the obligation to pay the fee imposed by this article.~~

13
14 **SECTION IX:** That Article V, section 70-179 of the Code of Ordinances, County of
15 Volusia, be amended so that section shall read as follows:

16 **Sec. 70-179. Impact fee trust account; use of entrusted funds.**

17 (a) There is hereby established a separate account to be known as the Volusia
18 Educational Facilities Impact Fee Trust Account.

19 (b) All funds withdrawn from this account must be used and expended in strict
20 accordance with this section.

21 (c) The funds transferred to the school board under section 70-178(f) shall be
22 deposited in a separate trust or account established by the school board, i.e., the

district impact fee account. The funds deposited in the district impact fee account shall be held and maintained separate from all other accounts of the district. The funds in the account must be used solely for the purpose of paying the capital costs of educational facilities (including but not limited to construction of new and the expansion of existing educational facilities, auxiliary facilities and ancillary facilities) needed to increase the capacity of the district school system in order to accommodate the increased demand on that system which is reasonably attributable to the construction of each new dwelling unit in the district.

(d) Funds deposited in the district impact fee account may be used for repayment of moneys borrowed from any budgetary fund of the county or the school board which is used to fund ~~educational facilities~~ improvements and additions to the district school system otherwise eligible for funding directly under subsection 70-179(c) above.

(e) Funds deposited in the district impact fee account may be used for payment of principal and interest, necessary reserves and costs of issuance under any bonds, certificates of participation in lease-purchase programs, or other indebtedness issued by or on account of the county or school board, heretofore or hereafter, to fund improvements and additions to the district school system otherwise eligible for funding directly under subsection 70-179(c) above.

(f) Without limiting the restrictions pertaining to the use and expenditure of funds, and as an example, funds on deposit in the district impact fee account shall not be used by the district for operational expenses, routine maintenance or repairs.

1 (g) Funds on deposit in the district impact fee account which are not immediately
2 necessary for expenditure shall be invested by the school board. All income derived
3 from the investment of such funds shall be deposited in the district impact fee
4 account and held and expended subject to the restrictions imposed in subsection
5 70-179(c) above.

6 (h) Concurrent with the receipt of its annual audit, the school board shall provide to the
7 county and to all the municipalities in Volusia County, a report containing a
8 summary of the impact fees collected during the previous year and a detailed
9 description of the uses and expenditures for which the net impact fee revenue was
10 expended during the preceding year.

11 ~~(i) The County council and the school board will enter into an appropriate interlocal~~
12 ~~agreement to ensure proper use and expenditure of the impact fees collected under~~
13 ~~this article.~~

14 (ij) Funds may be used to provide refunds as described in section 70-180.
15

16 **SECTION X:** That Article V, section 70-180 of the Code of Ordinances, County of
17 Volusia, be amended so that section shall read as follows:

18 **Sec. 70-180. Refund of impact fee paid.**

19 (a) If a building permit expires without commencement of construction, then the
20 feepayer or his or her successor or assign may apply to the school district for a
21 refund, without interest, of any ~~educational facilities~~ impact fee paid in connection
22 with its issuance. If the feepayer demonstrates that all rights to commence the

1 construction have irrevocably expired, the county shall refund the fee (or
2 unencumbered portion thereof), after first deducting an administrative fee of three
3 (3%) percent of the first FIVE THOUSAND (\$5,000.00) DOLLARS refunded, and
4 one (1%) percent of any remainder.

5 (b) Any funds held in the district impact fee account which are not expended or
6 encumbered by the end of the fiscal quarter immediately following the sixth year
7 following the date the ~~educational facilities~~ impact fee was collected shall, upon
8 application of the feepayer ~~then current owner of the unit~~ for which an educational
9 facilities impact fee was paid, be returned to the feepayer ~~such owner~~ with interest
10 at the rate of ~~six percent per annum~~ average net interest rate earned by the funds
11 deposited in the Volusia Educational Facilities Impact Fee Trust Account from the
12 date on which the impact fee was actually collected until the date of the referral, if
13 the ~~owner~~ fee payer submits a timely written application for a refund to the county
14 within one hundred eighty (180) days after the expiration of the six-year period. In
15 determining whether the fee paid by the feepayer has been expended or
16 encumbered, funds in the district impact fee account shall be considered to be
17 expended or encumbered on a first in, first out basis.

18 (c) In the absence of an express transfer or assignment or entitlement to any refund or
19 previously paid development impact fees, the right or entitlement shall be deemed
20 "not to run with the land."

1 **SECTION XI:** That Article V, section 70-181 of the Code of Ordinances, County of
2 Volusia, be amended so that section shall read as follows:

3 **Sec. 70-181. Exemptions and allowable credits.**

4 (a) The following development activities are exempt from payment of the educational
5 facilities impact fee:

6 (1) Alterations or expansion of an existing building where no additional dwelling
7 ~~residential units~~ are created, where the use of such building is not changed,
8 and where no additional public school enrollment will be generated over and
9 above the number produced by the existing use.

10 (2) The construction of accessory buildings or structures which will not produce
11 additional public school enrollment over and above that generated by the
12 principal building or use of the land.

13 (3) The replacement of a legally permitted dwelling in use on or after
14 May 1, 1986, ~~destroyed or partially destroyed building or structure with a new~~
15 ~~building or structure of the same size and use,~~ provided that no additional
16 public school enrollment will be generated over and above that produced by
17 the original use of the land.

18 ~~(4) The installation of a replacement mobile home on a lot or other such site~~
19 ~~when the impact fee pertaining to the site has previously been paid pursuant~~
20 ~~to this article or where a residential mobile home legally existed on such site~~
21 ~~on or before the effective date of this article.~~

(Words in ~~strike-through~~ type are deletions; words in underscore type are additions.)

1 (45) Beginning on or after May 18, 2000, ~~any dwelling units in subdivisions,~~
2 ~~mobile home or manufactured housing parks and multi-family dwellings that~~
3 ~~are~~ that is located in any development designated and operated as a
4 Community for Older Persons, in compliance with the terms and provisions
5 of the Federal Fair Housing Act, Title VIII of the Civil Rights Act of 1968, as
6 amended by the Fair Housing Amendments Act of 1988 and the Housing for
7 Older Persons Act of 1995, 42 U.S.C. §§ 3601-3619, and that prohibit any
8 person under the age of eighteen (18) years from residing within any dwelling
9 unit on the property as a permanent resident, as evidenced by a recorded
10 declaration of covenants and restrictions not subject to revocation or
11 amendment for a period of at least thirty (30) years from the date of
12 recording. Said covenants and restrictions shall run with the land. In the
13 event the covenants and restrictions are breached, or are amended or
14 otherwise modified, so that any person under the age of eighteen (18) is
15 allowed to reside as a permanent resident in any dwelling receiving a
16 Housing for Older Persons exemption, the district may give notice of the
17 breach, amendment or modification, to the owners of the dwellings located in
18 that Community for Older Persons, and give them the opportunity to cure the
19 breach or restore the age restriction requirement to the covenants and
20 restrictions, as applicable, within sixty (60) days of the notice being mailed
21 (the "cure"). If the cure is not implemented within the said sixty (60) day
22 period, then the impact fee shall be due for all dwellings within that

1 Community for Older Persons. In that event, the owners of all dwellings
2 within the Community for Older Persons shall be provided notice of the
3 amount of impact fee due, and shall be given six (6) months to pay the
4 impact fee in the amount as is in effect at the time of the notice being given
5 of the amount due and a notice of the amount due shall be filed in the public
6 records of the County. If the "cure" is not implemented the district may
7 request that the County send such notice. If the district requests the County
8 to send the notice, such request shall be in writing with documentation of the
9 breach and failure to cure together with the name and address of any person
10 to whom the notice shall be sent. Notices under this article shall be sent by
11 certified mail, return receipt requested, to the last known address of the
12 owner of each affected dwelling, by reference to the latest ad valorem tax
13 records. Failure to pay impact fee when due shall result in the same
14 penalties and follow the same procedures as set forth in section 70-178.

15 Any claim of exemption must be made prior to or simultaneously with an application for a
16 building permit or permit for a dwelling ~~the installation of a mobile home.~~

17 (b) Credits against the impact fee.

18 (1) The value of all land dedications for educational purposes and all
19 educational facilities improvements made, when required by or under color of
20 law (including those required pursuant to F.S. § 380.06(16), with respect to a
21 development of regional impact) shall be credited against the educational

1 facilities impact fee due for the development. The credits shall be determined
2 in the manner prescribed in subsection (b)(3) below.

3 (2) Any person may seek to obtain a credit against the ~~educational facilities~~
4 impact fee by dedicating needed school sites or constructing educational
5 facilities or other capital improvements, which are needed by the district and
6 approved by the school board. The offer to make such a dedication must
7 specifically request ~~educational facilities~~ impact fee credits. Construction of
8 all improvements must be in accordance with design standards and
9 specifications prescribed by the applicable state law, administrative rule, or
10 by policy of the school board. If the school board accepts the offer to
11 dedicate, the value of the credits shall be determined as set forth in
12 subsection (b)(3) below.

13 (3) The following rules shall apply to the determination of the value of credits
14 which are available to the ~~feepayer~~ owner under subsections (b)(1) and
15 (b)(2) above:

16 a. Credit for the dedication of land or interest therein shall be valued at:

- 17 1. One hundred fifteen (115%) percent of the current assessed
18 value for real property taxes of the land, as assessed by the
19 county property appraiser; or
- 20 2. By such other appropriate method as the school board may
21 have accepted for particular land dedications or facility
22 improvements made prior to the effective date of this article; or

1 3. At the option of the feepayer owner, by fair market value
2 established by at least two certified state appraisers
3 acceptable to the school board.

4 b. Credit for the dedication of land shall be provided when the land or
5 interest therein has been conveyed to, and accepted by, the school
6 board under the then current policy for the acceptance of dedicated or
7 conveyed lands for this purpose.

8 c. Credit for construction of educational facilities shall be provided only
9 after the ~~feepayer~~owner has submitted acceptable engineering
10 drawings and specifications and construction cost estimates to the
11 school board. The school board shall determine the amount of any
12 credit for educational facility improvements, based upon either these
13 cost estimates or upon alternative engineering criteria and
14 construction cost estimates if the school board determines that such
15 estimates submitted by the feepayer owner are either unreliable or
16 inaccurate. The school board shall provide the feepayer owner and
17 the county manager with a letter certifying the amount of the credit to
18 be granted, the reason for the credit, and the legal description or other
19 adequate description of the development to which the credit may be
20 applied. The ~~feepayer~~owner must sign and date a duplicate copy of
21 such letter indicating his or her agreement to the terms of the letter.
22 No credit shall be awarded unless the letter signed by the feepayer

1 owner is returned to the school board and the county manager. The
2 failure of the ~~feepayer~~owner to sign, date, and return the letter within
3 60 days may be grounds for the nullification of the credit.

4 d. Except as provided in subparagraph b., credit against impact fees
5 otherwise due will not be provided until:

- 6 1. The construction is completed and accepted by the school
7 board or by the appropriate state agency, whichever is
8 applicable;
- 9 2. A suitable maintenance and warranty bond is received and
10 approved by the school board, when applicable; and
- 11 3. All design, construction, inspection, testing, bonding and
12 acceptance procedures are in strict compliance with the then
13 current requirements of the school board or the Florida
14 Department of Education, when applicable, before completion
15 of a specified educational facility if adequate assurances are
16 given by the ~~feepayer~~ owner that the standards set out in
17 subparagraph c. will be met and if the ~~feepayer~~ owner posts
18 adequate security as provided below, for the costs for such
19 construction. Security in the form of a payment and
20 performance bond, an irrevocable letter of credit, an escrow
21 agreement, or any other functionally equivalent security shall
22 be posted with and approved by the school board. The amount

1 of the adequate security shall be determined by the school
2 board. If the building or improvement will not be constructed
3 within one year of the acceptance of the offer by the school
4 board, the amount of the adequate security may be increased
5 in an amount as determined by the school board consistent
6 with school board policy.

- 7 (4) Credits may be transferable from one land development activity to another
8 with the prior approval of the county.
9

10 **SECTION XII:** That Article V, section 70-184 of the Code of Ordinances, County of
11 Volusia, be amended so that section shall read as follows:

12 **Sec. 70-184. Article review requirements.**


13 The impact fee imposed under this article shall be reviewed by the county council at
14 least once every ~~five~~ three years, at which time the school board shall provide the county
15 council with an impact fee calculation report with a recommendation for the amount of
16 impact fee to be assessed. The ~~council~~ county and the school board shall receive and
17 consider the comments and recommendations of the ~~school board,~~ Volusia Homebuilders
18 Association ~~the East Coast Building Industry Association, Inc.~~ or its successor, and other
19 interested persons, ~~and shall apply the Banberry Lafferty standard.~~ The failure of the
20 school board or the county council to initiate a review in a timely manner shall not affect the
21 validity of this article.
22

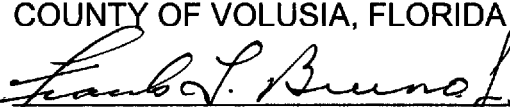
1 **SECTION XIII:** Except as amended herein, the provisions of the Code of
2 Ordinances, County of Volusia, remain in full force and effect.

3
4 **SECTION XIV: EFFECTIVE DATE** - A certified copy of this Ordinance shall be filed
5 with the Department of State by the County Manager within ten (10) days after enactment
6 by the County Council and this Ordinance shall take effect upon April 4, 2005.

7
8
9 ADOPTED BY THE COUNTY COUNCIL OF VOLUSIA COUNTY, FLORIDA, IN
10 OPEN MEETING DULY ASSEMBLED IN THE COUNTY COUNCIL CHAMBERS AT THE
11 THOMAS C. KELLY ADMINISTRATION CENTER, 123 WEST INDIANA AVENUE,
12 DELAND, FLORIDA, THIS 24th DAY OF FEBRUARY, A.D., 2005.

13
14
15
16 ATTEST

17 
18
19 Cynthia A. Coto, County Manager
20
21

COUNTY COUNCIL
COUNTY OF VOLUSIA, FLORIDA

Frank T. Bruno, Jr., County Chair