

**New Smyrna Beach City Commission Meeting  
Feb. 23, 2021**

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**1. The City Commission voted 4-1, with Vice Mayor Jake Sachs dissenting, to reduce building permit fees for six months at up to \$5,000 per parcel to comply with a state mandate. If necessary, the program would be extended for another six months.**

City officials stressed they took the action reluctantly, but were forced to do so because of a 2019 State Statute that reads: "A local government may not carry forward an amount exceeding the average of its operating budget for enforcing the Florida Building Code for the previous four fiscal years." Staff members said the statute requires local governments to use any excess funds that cannot be carried forward, to "rebate and reduce fees."

The development and building industry is aware of the 2019 law and the fact that New Smyrna Beach's Building Fund isn't in compliance, Mayor Russ Owen cautioned his fellow Commission members.

"I literally hung up with a (state) legislator 10 minutes before this meeting and I told him ... I have to explain to my residents. They elected many of us with the singular focus on helping to maintain and control – to the extent we can legally -- what is happening in our city. And yet now we have things like this that are coming down from on high prohibiting us from doing that," he said.

"I just want to be very clear," the mayor added, "I think the right thing for us to do is to take staff's recommendation (to reduce building permit fees). I do not think it is the right thing for us to do as a city. I think it is the right thing for us to do to avoid getting into trouble with the State Legislature. I can tell you we are on the radar. I have talked to state legislators. They have been approached by folks in our development community and basically said they are aware that our building fund balance is out of compliance with this 2019 statute and they're kind of waiting to see what action we would take."

Vice Mayor Sachs appeared to agree, saying, "I asked our assistant manager if we had any other options and I don't think we do."

City staff members reported the Building Fund was violating the statute by carrying forward into future fiscal years an amount in excess of its average operating budget. The Building Fund balance has increased over the past several years, primarily driven by a high volume of new residential development.

Offsetting that carryover amount, staff members said in the past two years significant investments were made to speed up the Department's processing of permits and improve the quality of its customer service, facilities, and equipment. Due to those investments the average monthly expenses of the Building Department now are nearly equal to its average monthly revenues. However, a "significant fund balance" remained and had to be reduced to comply with state law.

To do that, the city will reduce building permit fees for all permits, including new development, for an initial period of six months at up to \$5,000 per parcel. After six months, the Building Fund will be evaluated to determine if the fee reduction is warranted for another six months.

Staff members also will evaluate current building permit fees, as well as the volume of new permits and building-related expenses, to achieve a building permit fee amount that maintains the Department's required "revenue neutral" goal. [L] [SEP]

Commissioner Michael Kolody said he supported the state's requirement "because our Building Department should be cost neutral."

Vice Mayor Sachs expressed concern that reducing building permit fees runs counter to the Commission's Feb. 23 consensus to have staff members bring back to a future meeting the first reading of an ordinance with a breakdown of higher proposed impact fees for police and fire services, as well as parks and recreation.

Impact fees are imposed on new development in an attempt to make those new residences pay the cost of additional services the city must provide, so existing residents don't subsidize them.

"I'm just concerned the Florida statute is negating what we're trying to do by raising impact fees," Sachs said.

Mayor Owen noted it might seem like the building fee reduction and potential increases in some city impact fees "are sending mixed signals." The key difference, he explained, is impact fees go toward very specific purposes, while building permit fees go toward the building fund that the city uses to provide services to those who are developing local homes and businesses.

The Commission's Feb. 23 action to reduce building permit fees for all development follows on the heels of its Jan. 12 vote to waive those fees for existing developed properties, also up to \$5,000 per parcel and for six months. The latter program was authorized as a COVID-19 relief initiative to assist small business people and homeowners who might have held off on property improvements.

**2. The City Commission voted 4-1, with Vice Mayor Sachs voting no, to approve a Special Exception for a crematorium to operate in the Industrial Park (I-3) zone at 1512 Airway Circle. It would be operated by Baldwin Brothers Funeral and Cremation Society in one side of a two-unit industrial building in the city's Airport Industrial Park.**

Assistant City Manager Brian Fields said two other crematoriums already are licensed nearby.

Vice Mayor Sachs expressed concern about the potential for the crematorium to generate particulate matter or "nanoparticles" that might contain toxic material. "Even though it's approved by the DEP (Florida Department of Environmental Protection), it's not a totally clean business ... I have to worry about the health and safety and welfare of the public."

"We all do," Mayor Owen answered. He said some issues had given him pause about the request, but experts who testified about the use indicated the crematory is strictly regulated to prevent such pollution.

Commissioner McGuirk voted in favor of the Special Exception. However, he, as well as Owen and Commissioner Randy Hartman, agreed the city didn't want "an enclave of crematoriums" in its Industrial Park, where the intent was to promote manufacturing and create high-paying jobs.

Environmental engineer Douglas Bauman, president and principal engineer at General, Civil and Environmental Engineering, LLC. of Apopka, emphasized that crematory

emissions are well regulated. Bauman said any emissions of the type Sachs referenced, including mercury if that was present, would register in the range of "10 to the minus five or minus four per ton of human remains that are burned. In my professional opinion, they're insignificant."

Evan Baldwin, vice president of sales and marketing for Baldwin Brothers, said the company was one of the first in the country to pilot a program to test an abatement system on its crematories, and all of them are continuously monitored by the system's manufacturer.

**3. City Commissioners directed staff members to bring them a plan for limited, short-term improvements to a five-acre park at 160 North Causeway, also known as the city's AOB site. They also approved allowing the city manager to apply for grant money to fund potential upgrades.**

At a January workshop, Commission members reviewed a conceptual layout that reorganized the site's parking, picnic and passive recreational areas.

Capital Improvement Projects Manager Michelle Vallance said staff members proposed adding one driving aisle and eliminating another to make it easier for boats and trailers to park. She noted the site has more than 500 feet of shoreline along the Intracoastal Waterway, and the Florida Fish and Wildlife Conservation Commission has encouraged the city to create a "living shoreline" along that edge. There are grant opportunities for such a project, she said.

City Manager Khalid Resheidat said his idea was to apply for a grant for some of the amenities that Commissioners had been thinking about, such as a gazebo and perhaps a kayak launch.

Commissioner Kolody said he liked the plan and added he would like to see a shell access road rather than a more permanent surface.

Vice Mayor Sachs expressed alarm at seeing additional parking on the rendering of the park improvements and asked if it had increased by a lot. "All I want is for the public to see and use that beautiful shoreline," he said.

"If you drive by there any given Saturday during the boating season, I would argue this isn't a net change in parking. We're bringing order to chaos is how I looked at it," Mayor Owen suggested to Sachs.

**4. City Commissioners voted 3-2, with Vice Mayor Sachs and Commissioner Kolody dissenting, to approve a side-yard setback variance that was denied by the city's Planning and Zoning Board.**

The owner of 0.40 acres at 3010 Turnbull Bay Road sought the variance to reduce the property's side setback from 25 feet to 15 feet to make a buildable lot for a single-family home. The lot is in the county, and zoned as Transitional Agriculture, (A-3). Staff members reported the city was acting on the variance request because the lot is within the city-county boundary area in which the city provides services. After the Planning Board denied the variance, the property owners appealed the matter to the Commission.