



Pat Keogh, a Fernandina Beach developer and owner of Merge Restaurant, says Fernandina Beach's water and sewer impact fees are "highway robbery."

## Water fees hurt biz in Fernandina

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**FERNANDINA BEACH** — The downtown district in Fernandina Beach has a quaint, small-town charm and plenty of available shop space.

Still, Realtor Phil Griffin said he has trouble convincing prospective business owners to move to

the historic town after they find out about what he and others in the community believe are excessive and illegal water and sewer impact fees charged by the city.

Griffin, the owner of Amelia Coastal Realty, is among 400 members in a class-action lawsuit against the city for the impact fees that he said discourage new business and make it more difficult

for existing companies to stay in business.

"Much of the damage is the damage you don't see, which is the lack of businesses wanting to do business here," Griffin said. "They are making it impossible for small businesses to get capitalized and started."

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## FEES: Class-action lawsuit wants city to stop charging, pay back water fees

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The suit was filed in circuit court in Nassau County in 2011. Attorney Michael Tanner filed the suit, which states that since 2003 the city has been collecting water and sewer impact fees under the term "futures" from new and existing customers that change their usage to pay off its debt from buying the utility in 2002 from the Florida Public Utilities Co. It's an action, the suit states, that is illegal because impact fees are supposed to be used to pay for future capital improvements, not past debts.

The plaintiffs want the city to stop charging the fees and to pay back the residents and business owners who have been assessed since 2003. There was no estimate of the amount paid up to 2012, but the suit states that more than \$1.6 million in water and sewer impact fees were assessed from 2003 to 2009.

Numerous representatives from the city of Fernandina Beach, including the mayor, the utility department director and the city attorney, declined to comment. Brian Hayden, from the Tallahassee-based firm Rumberger Kirk & Caldwell, which is representing the city in the lawsuit, did not return a phone call and email requesting comment.

The city's response to the suit filed in October refutes the claims, and the city filed a motion for the case to be dismissed. The judge is expected to rule on that motion later this year.

The city of Fernandina Beach wanted to buy the water utility to make it publicly owned. The utility company was eager to sell in order to make back more quickly its investment to meet service capacity until 2020.

The city paid \$18.95 million for the utility and agreed to pay the company an additional \$7.5 million over a seven-year period for futures. The suit states that the city agreed to the purchase price and futures cost for a total of \$26.45 million, which was above the city's own valuation of the utility at \$19.4 million, without disclosing the total cost or plans to charge futures in the form of impact fees to the community.

Impact fees, although they are sometimes called by different names such as capacity fees and facility fees, are charged to residential and business development to pay for the impact it will have on the community.

Florida communities are among the most prevalent users of impact fees, said James Duncan, president of the Austin, Texas-based consulting firm Duncan Associates. More than two-thirds of the 67 counties in Florida charge at least one type of impact fee, ranging from water and sewer to schools, roads, parks, police and library.

While impact fees have been contested in court cases throughout the state, Duncan said water impact fees tend to be the least controversial because they have been around for the longest time and because they receive far fewer objections than some other types of impact fees.

John Metcalf, a shareholder at the law firm Gunster, Yoakley & Stewart PA who specializes in the environmental, land use and real estate areas of law, said impact fees can only be collected when there is an actual impact caused by development and that they must be used for capital expenditures, not for operating costs.

"The point of the impact fee is to try to mitigate the impact that the person or business is having," said

Metcalf, who has no direct knowledge of the Fernandina Beach case.

A number of counties and cities throughout the state have lowered or suspended impact fees since the recession began to spark more economic development, including several in Northeast Florida. The state average for annual water and sewer impact fees in Florida for retail users per 1,000 square feet of space dropped 1.69 percent to \$932 in 2011 from \$948 in 2010, according to data from Duncan Associates.

Clay, Nassau, Putnam and Flagler counties did not have water and sewer impact fees in 2011, according to the data. In the city of Palm Coast, the water and sewer impact fee for retail users per 1,000 square feet was \$786 in 2011, which was flat from the previous year.

The lawsuit against the city of Fernandina Beach also states that the city has not provided the community with the rationale behind the fee amounts it is charging. Although most of the fee totals have been in the range of \$1,500 to \$2,000, in some cases the totals have been much higher, including \$85,000 in one case, according to the suit.

Pat Keogh, a developer and commercial property owner in Fernandina Beach, said the impact fees in the city are extremely high.

"This is just highway robbery under the guise of the government," said Keogh, who owns Merge restaurant on Eighth Street and is a partner in 29 South restaurant on South Third Street. "When the rest of the universe is trying to make it easier for business, Fernandina Beach is trying to squelch it."