

IN THE CIRCUIT COURT, SEVENTH
JUDICIAL CIRCUIT, IN AND FOR
FLAGLER COUNTY, FLORIDA

CASE NO.: 2025 CA 000621
DIVISION: 49

FLAGLER COUNTY PALM COAST
HOMEBUILDERS ASSOCIATION, INTRACOASTAL
CONSTRUCTION, LLC, INTEGRITY HOMES USA, LLC,
THOMAS CONSULTING AND CONSTRUCTION, LLC,
1621 BUILDING AND REMODELING, LLC,
FLORIDA GREEN BUILDING CONSTRUCTION, INC.,
AND WILLIAM R. BARRICK, Plaintiff(s)

v.

CITY OF PALM COAST
Defendant(s)

**ORDER GRANTING IN PART/DENYING IN PART DEFENDANT'S
MOTION TO DISMISS PLAINTIFFS' AMENDED COMPLAINT**

THIS CAUSE has come before the Court on February 2, 2026, upon Defendant's Motion To Dismiss Plaintiff's Amended Complaint (Docket #49), Plaintiff's Response thereto (Docket #72) and Defendant's Amended Motion to Dismiss (Docket #80)¹. The Court being fully advised in the premises, finds as follows:

- 1) Plaintiffs' Amended Complaint seeks declaratory judgment and injunctive relief. Count I, appears to be filed on behalf of the Resident Plaintiff(s) and seeks to have the subject Fire Ordinance, Parks Ordinance and Transportation Ordinance declared void ab initio under

¹ At the onset of the February 2, 2026 hearing Counsel for Plaintiff addressed the Court regarding the late/untimely filing of Defendant's Amended Motion to Dismiss which was docketed by the Clerk of Court on Friday, January 30, 2026 at 12:05pm and Defendant's new assertions regarding Plaintiffs' standing presented therein. After much discussion with the Court, the Court acknowledged the filing was untimely and offered the Plaintiff three options. Option 1 was to proceed with the hearing only on the issues presented in the initial Motion to Dismiss. Option 2 was to proceed with the hearing encapsulating the arguments presenting in the recently filed Amended Motion to Dismiss since Plaintiffs asserted they were somewhat prepared to address the new issue of standing. Option 3 was to continue the hearing to allow Plaintiffs additional time to delve deeper into the Amended Motion to Dismiss and at a later date hold a comprehensive hearing on all issues presented in the Amended Motion to Dismiss. Because a docket sounding date was looming on February 3, 2026, and because Plaintiffs did not desire further delay in the litigation Plaintiffs agreed to proceed with the hearing and agreed to address all issues presented in the Amended Motion to Dismiss.

Florida Senate Bill 180, Section 28/Ch. 2025-190, Laws of Florida (2025) (hereafter “Section 28”). Count II, which also seems to be filed on behalf of the Resident Plaintiff(s), seeks injunctive relief preventing the implementation of the subject ordinances and the fees provided therein. Count III and IV are filed on behalf of all Plaintiffs and seek declaratory relief and injunctive relief alleging the subject ordinances violate the Florida Impact Fee Act, the Florida Constitution and precedent under existing Florida law.

- 2) The individual and corporate Plaintiffs each have standing to proceed as parties in the above-styled cause of action. Regardless of whether they have paid the subject impact fees, or not, “the fact that these plaintiffs face penalties for failure to pay an allegedly unconstitutional tax is sufficient to create standing.” Dep’t of Revenue v. Juhnlein, 646 So.2d 717, 720 (Fla. 1994).
- 3) The Complaint has not provided sufficient allegations to warrant associational standing for Plaintiff, Flagler County Palm Coast Homebuilders Association. There is one paragraph (Paragraph 1.1 of the Amended Complaint) that outlines who its members are and estimates how many members it has but missing from the Amended Complaint is any allegation of the Association’s purpose, how the interests it seeks to protect are germane to that purpose and any allegation of the Association’s injury.
- 4) The Plaintiffs are challenging the constitutionality of the impact fees and the methodology for their adoption rather than the specific amount they are required to pay or the timing of the payment or some other procedural or administrative component of the fees. There is no administrative process by which constitutionality can be addressed at the County level therefore there are no administrative remedies Plaintiffs must have exhausted prior to filing the subject cause of action.
- 5) Plaintiffs Amended Complaint is comprehensive. The Complaint itself is 75 pages with in excess of 530 pages of Exhibits attached thereto including the Impact Fee Studies relied upon by Defendant in determining an impact fee increase was appropriate. This is not to suggest

that the Court prefers quantity over quality however a careful review of the Amended Complaint demonstrates that it is legally sufficient and provides ultimate facts to state a cause of action upon which relief can be granted.

6) With respect to Defendant's specific assertions of deficiencies in Plaintiffs' Amended Complaint the Court provides simply as follows:

- a. Defendant asserts that the increased impact fees are not "land use regulations" governed by Section 28 however Plaintiffs' Amended Complaint specifically contests and challenges this assertion issue at Pages 10-11.
- b. Defendant asserts that Plaintiffs' allegations of Florida's Impact Fee Act violations are bare legal conclusions and are therefore insufficient however the alleged violations are cited with some specificity in the Amended Complaint at Pages 36-38. Additionally, Defendant's assertions fail to take into consideration an Opinion of the Florida Attorney General dated January 14, 2026, which provides in summary that an increase in population in and of itself does not warrant the "extraordinary circumstances" necessary for an assessment of impact fees in excess of the statutory cap under Florida's Impact Fee Act.

It is ORDERED AND ADJUDGED that Defendant's Amended Motion to Dismiss is GRANTED with respect to Plaintiff Flagler County Palm Coast Homebuilders Association. Flagler County Palm Coast Homebuilders Association's claims for declaratory and injunctive relief are dismissed with leave to amend within 10 days of the date of this Order. Should this Plaintiff fail to amend within 10 days of this Order, its claims will remain dismissed without prejudice.

It is further ORDERED AND ADJUDGED that Defendant's Amended Motion to Dismiss is DENIED in all other respects.

DONE AND ORDERED in chambers, in Flagler County, Florida, on 11 day of February, 2026.

2/11/2026 3:32 PM 2025 CA
000621 

e-Signed 2/11/2026 3:32 PM 2025 CA 000621

SANDRA UPCHURCH
CIRCUIT JUDGE

Copies to: All parties of record

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DANIEL J WEBSTER
444 SEABREEZE BLVD
SUITE 360
DAYTONA BEACH SHORES, FL 32118

JEREMIAH RAY BLOCKER
101 MARKETSIDE AVENUE
SUITE 404-195
PONTE VEDRA, FL 32081

ZACHARY MILLER
3203 OLD BARN COURT
PONTE VEDRA BEACH, FL 32082

CITY OF PALM COAST
160 LAKE AVENUE
PALM COAST, FL 32164

FLAGLER COUNTY PALM COAST HOMEBUILDERS
ASSOCIATION
4863 PALM COAST PARKWAY NW STE 1
PALM COAST, FL 32137

FLAGLER COUNTY PALM COAST HOMEBUILDERS
ASSOCIATION
4863 PALM COAST PARKWAY NW STE 1
PALM COAST, FL 32137