Filing # 236554346 E-Filed 11/25/2025 02:33:24 PM

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

CASE NO. 2025 CA 000621
DIVISION: 49 (J. Upchurch)

FLAGLER COUNTY – PALM COAST HOMEBUILDERS ASSOCIATION, INC., a Florida not-for-profit corporation; INTRACOASTAL CONSTRUCTION, LLC, a Florida limited liability company; INTEGRITY HOMES USA, LLC, a Florida limited liability company; THOMAS CONSULTING AND CONSTRUCTION, LLC, a Florida limited liability company; 1621 BUILDING AND REMODELING, LLC, a Florida limited liability company; FLORIDA GREEN BUILDING CONSTRUCTION, INC., a Florida corporation; and WILLIAM R. BARRICK, an individual,

Plaintiffs,

v.

CITY OF PALM COAST, a Florida municipal corporation,

Defendant.
_______________________________/

AMENDED COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF FOR UNLAWFUL AND UNCONSTITUTIONAL IMPACT FEES

Plaintiffs, FLAGLER COUNTY – PALM COAST HOMEBUILDERS ASSOCIATION, INC., a Florida not-for-profit corporation ("Association"); INTRACOASTAL CONSTRUCTION, LLC, a Florida limited liability company ("Intracoastal Construction"); INTEGRITY HOMES USA, LLC, a Florida limited liability company ("Integrity Homes"); THOMAS CONSULTING AND CONSTRUCTION, LLC, a Florida limited liability company ("Thomas Construction"); 1621 BUILDING AND REMODELING, LLC, a Florida limited liability company ("1621 Building"); FLORIDA

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GREEN BUILDING CONSTRUCTION, INC., a Florida corporation ("Green Building"); and WILLIAM R. BARRICK, an individual ("Barrick") (collectively the "Plaintiffs"). Plaintiffs seek declaratory judgments regarding: (i) Ordinance 2025-10 - - Amending Fire and Rescue Impact Fees ("Fire Ordinance"); (ii) Ordinance 2025-11 - - Amending Parks System Impact Fees ("Parks Ordinance"); and (iii) Ordinance 2025-12 - - Amending Transportation Impact Fees ("Transportation Ordinance"), all adopted by Defendant, CITY OF PALM COAST, a Florida municipal corporation (the "City")[1], on July 1, 2025 (collectively referred to as "Ordinances"), are invalid, illegal and unconstitutional , as well as related injunctive relief. Plaintiffs file this Amended Complaint against the City as authorized pursuant to Rule 1.190(a), Florida Rules of Civil Procedure.

PART I

GENERAL ALLEGATIONS[2]

THE PARTIES

1.1 The Association is, and at all times material hereto was, a Florida not-for-profit corporation, created in compliance with Chapter 617, Florida Not For Profit Corporation Act, and is empowered to sue under Section 617.0302, Florida Statutes, and doing business within the municipal boundaries of the City. The Association members include homebuilders or related businesses who do business in the City or who own real estate and have entered into construction contracts to build homes in the City. The Association has hundreds of members representing thousands of employees in the City and surrounding areas. The Association membership also includes general contractors,

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[1] The term City shall also mean, as context indicates, within the City limits of the City.

[2] Due to the length and complexity of this Complaint, Plaintiffs' have attached as Appendix 1, a listing of all exhibits, which includes the paragraph number where the exhibit is first referenced; and Appendix 2, which is a Table of Contents for the Complaint.

subcontractors, and associated businesses directly involved in the construction industry in the City.

1.2 Intracoastal Construction is, and at all times material hereto was, a Florida limited liability company authorized to do business in Florida, which is a contractor and/or real estate developer doing business in the City.

1.3 Integrity Homes is, and at all times material hereto was, a Florida limited liability company authorized to do business in Florida, which is a contractor and/or real estate developer doing business in the City.

1.4 Thomas Construction is, and at all times material hereto was, a Florida limited liability company authorized to do business in Florida, which is a contractor and/or real estate developer doing business in the City.

1.5 1621 Building is, and at all times material hereto was, a Florida limited liability company authorized to do business in Florida, which is a contractor and/or real estate developer doing business in the City.

1.6 Green Building is, and at all times material hereto was, a Florida corporation authorized to do business in Florida, which is a contractor and/or real estate developer doing business in the City.

1.7 Barrick is, and at all times material hereto, was a citizen and resident in the City.

1.8 The City is, and at all times material hereto was, a municipality established pursuant to Article VIII, Section 2, Florida Constitution, whose powers are limited pursuant thereto.

JURISDICTION / VENUE

1.9. This court has jurisdiction pursuant to Florida Statutes, Chapter 86 and

general law.

1.10 This court also has subject matter jurisdiction pursuant to Section 26.012, Florida Statutes, because the Plaintiffs seek injunctive relief and equitable protection.

1.11 Venue is proper in Flagler County pursuant to Section 47.011, Florida Statutes, because the alleged causes of action arose in Flagler County, and the City is located within Flagler County, Florida.

1.12 The amount in controversy exceeds $50,000.00, exclusive of interest, fees and costs.

1.13 All conditions precedent to the institution of this lawsuit have occurred, been performed or have been waived.

THREE (3) IMPACT FEE ORDINANCES

1.14 True and correct copies of the following: (i) Fire Ordinance, is attached hereto as **Exhibit A-1**; (ii) Parks Ordinance, is attached hereto as **A-2**; and (iii) Transportation Ordinance, is attached hereto as **Exhibit A-3.**

1.15 The newly increased impact fees created by the Ordinances are to commence effective October 1, 2025.

1.16 The Fire Impact Fee formula set forth in the Fire Study "updated from time to time" was incorporated into, and attached as Exhibit A, pursuant to Section 29-102(b) of the Fire Ordinance, which states in pertinent part:

> **Sec. 29-102. Adoption of impact fee formula.**
>
> (a) The City Council hereby adopts the City Manager's assumptions, conclusions and findings as set forth in subsection (b) with regard to the determination of anticipated costs of the acquisition of capital improvements for the City fire and rescue system required to accommodate growth contemplated in the City's Comprehensive Plan.

> (b) The formula set forth in the City of Palm Coast Fire Rescue Impact Fee Study dated June 9, 2025, and as updated from time to time **is incorporated herein as** adopted by the City Council as set forth in the recitals to this article, and is also attached as an Exhibit A to the ordinance from which this code section derives.

(Emphasis Supplied)

1.17 The Park Impact Fee formula set forth in the Parks and Recreation Impact Fee Study, was incorporated into the Parks Ordinance, pursuant to Section 29-74 of the Parks Ordinance, which states in pertinent part:

> **Sec. 29-74. Adoption of impact fee formula; amount of park impact fee.**
>
> (a) The City Council hereby adopts the assumptions, conclusions and findings as set forth in Subsection (b) with regard to the determination of anticipated costs of the acquisition of capital improvements for the City park system required to accommodate growth contemplated in the City's Comprehensive Plan.
>
> (b) The formula set forth in the report entitled "Parks and Recreation Impact Fee Study," dated June 9, 2025 and as updated from time to time, **is incorporated herein** as set forth in the recitals to this article, and is also attached as Exhibit A to the ordinance from which this code section derives.
>
> (c) The amount of park impact **fee is established consistent with the formula set forth in the report entitled "Parks and Recreation Impact Fee Study," dated June 9, 2025**, and as updated from time to time.

(Emphasis Supplied)

1.18 The Transportation Impact Fee Report Fee Update and Technical Report Update, dated April 25, 2025, and City of Palm Coast Extraordinary Circumstances Study, dated May 25, 2025, were incorporated by reference into the Transportation Ordinance,

pursuant to Section 29-32 of the Transportation Ordinance, which states:[3]

Sec. 29-32. Transportation impact fee report.

> The City Council has reviewed and accepted, and incorporates into this article by reference, the transportation impact fee reports, titled, "City of Palm Coast Transportation Impact Fee Technical Report Update," **dated April 2025** and "City of Palm Coast Extraordinary Circumstances Study" **dated May 2025**, and prepared by LTG Inc., and NUE Urban Concepts, LLC, which establishes the need for impact fees for capital transportation improvements and sets forth a reasonable methodology and analysis for the determination of the impact fees for capital transportation improvements.

(Emphasis Supplied)

$163,217,372 In Impact Fees

1.19 The amount of Impact Fees proposed to be imposed under the Ordinances are: (i) Fire Impact Fees in the amount of $60,318,338 (page 7 of the Fire Study); (ii) Transportation Impact Fees in the amount of $71,519,873 (as the Assignable Cost from Table 10 of the June 2025 Transportation Study); and (iii) Parks Impact Fees in the amount of $31,379,160 (taking the fee of $1,255.92 to be recovered per person on page 6 of the Parks Study, times the increase in population of 24,985 = $31,379,161); for total Impact Fees of $163,217,372.

Parks / Fire Impact Fees Double
Other Cited Local Governments Impact Fees

1.20 Pursuant to the Impact Fee Comparison Chart, on page 8, of the Fire Study, the Fire Impact Fees will be, an average, of approximately double any of the 14 other local governments cited.

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[3] The third recital/whereas clause of the Transportation Ordinance referenced a Transportation Impact Fee Technical Report, dated June 2025, and an Extraordinary Circumstance Study, dated June 2025. Therefore, the City erroneously incorporated previous versions of the reports, which have a different fee formula and include additional state roads, for which the City has no responsibility to maintain or improve.

1.21. Pursuant to the Impact Fee Comparison Chart, on page 7, of the Parks Study, the Parks Impact Fees will be higher than the 17 other cited local governments and, an average, of approximately double the majority of the others.

Over 100% Increase in Impact Fees[4]

1.22. The chart below substantially summarizes the prior existing fees, calculated fees per dwelling for a 2,000 square foot residence, dollar increase in fee and percentage increase in impact fees for all three (3) Ordinances.

New	Existing fee per dwelling unit	Calculated fee per single family detached dwelling unit	Dollar increase in fee	Percentage increase in fee
Parks & Recreation	$1,828.01	$3,164.00	$1,135.99	73.10%
Fire	$434.51	$942.00	$507.49	116.80%
Transportation	$3,502.00	$7,540.00	$4,038.00	115.30%
Unit Total	**$5,764.52**	**$11,646.00**	**$5,681.48**	**101.7% average**

REQUEST FOR JUDICIAL NOTICE

1.23 Pursuant to Section 90.201, Florida Statutes, Matters Which Must Be Judicially Noticed, provides that a court shall take judicial notice of "(1) Decisional, constitutional, and public statutory law and resolutions of the Florida Legislature and the Congress of the United States." Plaintiffs request this court take judicial notice of all statutes, Florida case law cited herein, and SB 180.

[4] The Transportation Impact Fees in the Chart above are based upon the June 2025 Transportation Impact Fee Technical Report, dated June 2025 (6.15 miles of road, excluding U.S. Highway 1). The impact fees under the April 2025 Report would have been significantly higher (10.98 miles of road, including U.S. Highway 1). This becomes important because the Transportation Ordinance adopted the April 2025 Report rather than the June 2025 Report - - therefore, it adopted the wrong impact fee calculation.

PART II

"SENATE BILL NO. 180", SECTION 28, VIOLATION

General Allegations

2.1. This action by Barrick ("Resident Plaintiff"), who is a resident of the City and owner of a business within the City, for declaratory judgment and injunction under Florida's Declaratory Relief Act, Chapter 86, Florida Statutes with respect to Senate Bill No. 180, §28/Ch. 2025-190, Laws of Florida (2025) ("Section 28"), was approved by the Governor of the State of Florida on June 26, 2025.

2.2. Resident Plaintiff is in doubt as to the right, power, or privileges of the City with regard to the effect of Section 28, with respect to the Ordinances. Resident Plaintiff is entitled to have such doubt removed.

2.3 Resident Plaintiff alleges that the Ordinances impose more burdensome land development regulations in violation of Section 28 and, therefore, are invalid under the provisions of Section 28.

2.4. The Resident Plaintiff is a resident of the City or owner of a business within the City; pursuant to Section 28, subsection 3(a), he is authorized to bring a civil action for declaratory and injunctive relief against the City for violation of Section 28.

City Powers Limited by Florida Constitution

2.5. Pursuant to Article VIII, Local Government, Section 2, Municipalities, allows municipalities to exercise any power for municipal purposes, except as otherwise provided by law, and states, in pertinent part, in subsection (b) as follows:

> (b) POWERS. Municipalities shall have governmental, corporate and proprietary powers to enable them to conduct municipal government, perform municipal functions and render municipal services, and may exercise any power for municipal purposes except as otherwise provided by law.

Section 28

2.6. Section 28, imposed, in essence, a moratorium on more burdensome amendments to Land Development Regulations by local governments impacted by hurricanes until October 1, 2027. Section 28, states, in pertinent part, as follows:

> **Section 28.**
>
> (1) Each county listed in the Federal Disaster Declaration for Hurricane Debby (DR-4806), Hurricane Helene (DR-4828), or Hurricane Milton (DR-4834), and each municipality within one of those counties, may not propose or adopt any moratorium on construction, reconstruction, or redevelopment of any property damaged by such hurricanes; propose or **adopt more restrictive or burdensome amendments to its comprehensive plan or land development regulations;** or propose or adopt more restrictive or burdensome procedures concerning review, approval, or issuance of a site plan, development permit, or development order, to the extent that those terms are defined by s. 163.3164, Florida Statutes, before October 1, 2027, and **any such moratorium or restrictive or burdensome comprehensive plan amendment, land development regulation, or procedure shall be <u>null and void ab initio</u>. <u>This subsection applies retroactively to August 1, 2024</u>.**
>
> * * *
>
> **(3)(a) A resident of or the owner of a business in a county or municipality may bring a civil action for declaratory and injunctive** relief against the county or municipality for a violation of this section. Pending adjudication of the action and upon filing of a complaint showing a violation of this section, the resident or business owner is entitled to a preliminary injunction against the county or municipality preventing implementation of the moratorium or the comprehensive plan amendment, land development regulation, or procedure. If such civil action is successful, **<u>the resident or business owner is entitled to reasonable attorney fees and costs</u>.**
>
> * * *
>
> (4) This section expires June 30, 2028.

"Land Development Regulations" and "Development" Definitions

2.7. Section 28 adopts the definition of "land development regulations" from Chapter 163. Section 163.3164, Florida Statutes, defines "land development regulations" as follows:

> (26) "Land development regulations" means ordinances enacted by governing bodies for the regulation of **any aspect of development** and includes any local government zoning, rezoning, subdivision, **building construction**, or sign regulations **or any other regulations controlling the development of land**, except that this definition does not apply in s. 163.3213.

(Emphasis Supplied).

2.8 Additionally, the term "development" is defined in Chapter 163, as having the same meaning as in Section 380.04, and is utilized in the definition of "land development regulations", (Section 163.3164(14), Florida Statutes).

2.9 The definition of "development" in Section 380.04, Florida Statutes, means "the carrying out of **any building activity** or ... the making of any **material change in the use or appearance of any structure or land**...". (Emphasis Supplied).

2.10. Clearly, "building construction", "any other aspect of development", "building activity" or "the making of any material change in the use or appearance of any structure or land" are restricted when a building permit is denied until payment of impact fees. Based upon such definitions, the Ordinances fall within the scope of definition of "land development regulations", which utilizes the definition of "development".

2.11. At no point does Section 28 impose any of the procedural notice and hearing requirements or other provisions under Chapter 163. Section 28 simply utilizes the definition of "Land Development Regulations" to establish the scope of the moratorium.

2.12. An impact fee that imposes substantial increase in cost for the issuance of a permit for a new home or business relate to any "aspect of development" and/or a regulation "controlling the development of land."

2.13. Resident Plaintiff's Notice of Violation of, among others, Section 28, was sent to the City Mayor and Council Members of the City on August 27, 2025. The Notice of Violation is attached hereto as **Exhibit B**.

2.14. It has been more than fourteen (14) days since the City has received the Notice of Violation sent by Resident Plaintiffs. The City has not withdrawn the Ordinances.

2.15. Though the Ordinances were adopted on June 17, 2025, Section 28(1), states in pertinent part, "[t]his subsection applies **retroactively** to August 1, 2024." (Emphasis Supplied).

2.16. Section 28 prohibits the City from adopting more restrictive or burdensome amendments to land development regulations, before October 1, 2027, provided they were listed in the Federal Declaration of Disaster for, among others, Hurricane Milton.

2.17. The City is located with Flagler County, Florida.

2.18. Flagler County was named in the Federal Emergency Management Association, Florida Hurricane Milton (DR-4834-FL) of designated areas, designating, among others, on page 3, Flagler County "as adversely affected by this major disaster", a true and correct copy is attached as **Exhibit C.**

2.19. Hurricane Milton impacted Flagler County on or about October 9, 2024 and the Fire Ordinance and Parks Ordinance were adopted on June 17, 2025, and the Transportation Ordinance was adopted on July 1, 2025.

COUNT I

DECLARATORY JUDGMENT – VIOLATION OF SECTION 28

2.20. This is an action by Resident Plaintiff for declaratory judgment for violation of Section 28.

2.17. Resident Plaintiff realleges and incorporates by reference the allegations contained in Part I, paragraphs 1.7 to 1.23, and paragraphs 2.1 through 2.15 above.

2.18. The Ordinances each constitute a "land development regulation" in that they: (i) regulate the issuance of a building permit for the development of land; and/or (ii) constitute "any aspect of development … building construction … or any other regulations controlling the development of land", "building activity" or "the making of material change in the use or appearance of any structure or land".

2.19. As incorporated herein from paragraph 1.20, the percentage increase in impact fees are an average of approximately 101.7% calculated per dwelling for a 2,000 square foot residence.

2.20. The newly increased impact fees imposed by the Ordinances adopt impact fee schedules as set forth in Part I, paragraphs 1.1 through 1.22 above are more burdensome amendments to the City's "land development regulations" in that they prohibit issuance of a building permit for any construction without payment of the substantially increased impact fees.

2.21. All three (3) Ordinances constitute more burdensome amendments to the "land development regulations" of the City and were adopted before October 1, 2027, City in violation of Section 28.

2.22. All three (3) Ordinances are void *ab initio* pursuant to Section 28.

2.23. Pursuant to Section 28(3)(a), the resident or business owners are entitled to recover reasonable attorneys' fees and costs if successful.

2.24. Resident Plaintiff has retained the undersigned counsel and is obligated to pay them a reasonable fee for their services.

WHEREFORE, Resident Plaintiff requests this court adjudicate and declare that the Ordinances are void ab initio and have no force, no effect, pursuant to the terms of Section 28, together with such supplemental or coercive relief as this court deems appropriate and an award of reasonable attorneys' fees and costs against the City.

COUNT II

INJUNCTIVE RELIEF FOR VIOLATION OF SECTION 28

2.25. This is an action for temporary and permanent injunctive relief.

2.26. Resident Plaintiff realleges and incorporates by reference the allegations contained in Part I, paragraphs 1.7 to 1.23, and paragraphs 2.1 through 2.24 above.

2.27. The increase in impact fees adopted, pursuant to the Ordinances, are illegal, unlawful and unenforceable as alleged in Count I above in that:

(a) The impact fees are in violation of Section 28, statutorily impermissible and unlawful.

(b) Resident Plaintiff or his business will be forced to forfeit contracts previously entered into, resulting in financial loss, which cannot be recouped from the City, in whole or in part.

(c) Resident Plaintiff, his members or citizens will be forced to pay impact fees not contemplated for at the time of contracts for the purchase of land or construction and will or may incur losses that cannot be recouped.

(d) Resident Plaintiff or his members that are fee payors will be prevented from obtaining building permits if impact fees are unpaid on any building permit.

2.28. The injuries to the Resident Plaintiff are not adequately remedied by after-the-fact suits for damages; but said injuries are, without injunctive relief, irreparable because their business reputations will suffer a loss of business, which are not subject to measure by any accurate standard, being placed in an uncompetitive market by being required to pay on average double the Fire Impact Fees and Parks Impact Fees than similar local governments, constitute a violation of Plaintiffs' rights and even a refund of escrowed fees does not compensate for loss of interest on the money.

2.29. Resident Plaintiff further alleges that the public interest will be negatively and adversely affected by the assessment and collection of the increased impact fees introduced by the Ordinances. Injunctive relief will prevent such public harm.

2.30. Under the provisions of Section 28(3)(a), Resident Plaintiff is entitled to prohibitory injunctive relief preventing the implementation of the Ordinances and the increased impact fees provided therein.

WHEREFORE, Resident Plaintiff requests this Court adjudicate and declare as follows relief:

(a) Declare that the Ordinances are invalid, unlawful, void *ab initio* and enjoin enforcement, both temporarily and permanently;

(b) Declare that the Plaintiffs will suffer irreparable harm;

(c) If the implementation of the Ordinances are not enjoined, then until final judgment in this action, require that the City retain impact fees paid according to the Ordinances into a separate interest-bearing account and suspend the payment of

expenditure of any such funds until a final judicial determination of the validity of the Ordinances;

(d) Order the City to refund or reimburse any impact fees collected under the Ordinances; and

(e) Award such fees, costs and such other supplemental relief as may be appropriate.

PART III

COUNT III

DECLARATORY JUDGMENT FOR VIOLATION OF FLORIDA IMPACT FEE ACT AND FLORIDA CONSTITUTION

A. GENERAL ALLEGATIONS

3.1. This is an action by all Plaintiffs for declaratory judgment and injunctive relief under Florida's Declaratory Relief Act, Florida Statutes, with respect to the violations of the Florida Impact Fee Act, Section 163.31801, Florida Statutes and the Florida Constitution, with regard to the City's adoption of the Ordinances.

3.2. Plaintiffs are in doubt as to the right, power, or privilege of the City with regards to the effect of the Florida Impact Fee Act, the Florida Constitution, Florida precedent, with regard to the City's adoption of the Ordinances. Plaintiffs are entitled to have such doubts removed.

3.3. Specifically, Plaintiffs allege that the Ordinances are unlawful, invalid and in violation of the Florida Impact Fee Act, Section 163.31801, Florida Statutes, the Florida Constitution and the Florida caselaw precedent.

3.4. All Plaintiffs reallege and incorporate by reference the allegations contained in Part I, paragraphs 1 through 1.23 above.

B. LEGAL AUTHORITY[5]

JUDICIAL STANDARD OF REVIEW

No Deferential Standard - - City Has Burden of Proof

3.5. The court may **not** use a deferential standard in this challenge to the City's imposition of impact fees or the amount of those fees. Also, the City, not Plaintiffs, bear the burden of proving that both the imposition and the amount of impact fees meet the requirements of state legal precedent and the Florida Impact Fee Act, as mandated by Florida Statute § 163.31801(9), which states:

> (9) In any action challenging an impact fee ... the government has the burden of proving by a preponderance of the evidence that the imposition or amount of the fee ... meets the requirements of state legal precedent and this section. ***The court may not use a deferential standard for the benefit of the government.***

(Emphasis Supplied).

SUMMARY OF APPLICABLE LAW

Impact Fee Act[6]

3.6. Below, in summary, are the applicable provisions of the Impact Fee Act:

Section 163.31801(4), Florida Statutes, requires the City, at a minimum, must:

(a) Utilize the most recent and localized data available within 4 years of current impact fee.

* * *

(f) Impact Fees must be proportional and reasonably connected to, or rational nexus with, the need for capital facilities generated by new construction.

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[5] Because the Florida Impact Fee Act contains both statutory requirements and provides in Section 163.31801(9), Florida Statutes, that the adoption of the impact fees must also meet the requirements of State legal precedent, this Complaint outlines the legal authority, including both applicable statutory law and caselaw in this section.

[6] Adopted in 2006.

(g) Impact Fees must be proportional and reasonably connected to, or rational nexus with, expenditures of funds and benefits accruing to new construction.

(h) Specifically earmark funds collected under the impact fee for use in acquiring, constructing, or improving capital facilities to benefit new users.

3.7. **Section 163.31801(6), Florida Statutes, only allows impact fees as follows:**

(a) Only pursuant to a plan for the imposition, collection and use.

(b) An increase may not be more than 25% of the current rate and must be implemented in two (2) equal annual increments.

(c) If the impact fee exceeds 25% but is not more than 50% must be implemented in four (4) equal installments.

(d) Impact fee may not exceed 50% of the current impact fee rate.

(g) May only exceed 50% phased-in limitations with full compliance with subsection (4) and providing meeting the following criteria:

a. A demonstrated need study expressly demonstrating the extraordinary circumstances to exceed the phase-in limitations.

3.8 **Chronological Summary of Florida Legal Precedent Holdings**[7]

A summary of the key Florida decisions is set forth below. Due to the evolution, as referenced above, one must be cautious in relying on older caselaw. The early Florida cases relied on constitutional issues from the U.S. Supreme Court or cases from other states. The Florida cases then evolved into an analysis of Florida Constitutional Law and the difference between a tax and a fee, regardless of whether the fee was a impact fee,

[7] Over the past fifty (50) years, the caselaw relating to impact fees has evolved considerably as arguments became more refined. While certain elements of initial Florida Supreme Court caselaw still holds, much of it has evolved. Therefore, it is necessary to focus on more recent caselaw, particularly the *Collier* and *Aberdeen* decisions from 1999 and 2000. The *Santa Rosa* 2021 decision is also instructive.

special assessment or service fee. The Florida Supreme Court has made it clear that the same standards apply to all such fees, regardless of the nature.[8] The law is now clear, unless the fee or local government attempts to impose on any person meets the criteria promulgated by the Florida Supreme Court as summarized above, then such fee is an unconstitutional tax.

Below is a chronological summary of Florida legal precedent relating to impact fees.

Contractors and Builders Ass'n of Pinellas County v. City of Dunedin,
329 So.2d 314 @ 320 (Fla. 1976)- - Water-Sewer

Limited impact fees to meeting the cost of expansion and held not "just and equitable" to impose entire burden of capital expenditures, including replacement of facilities, on persons connecting after an arbitrarily chosen time. (Emphasis Supplied).

Hollywood v. Broward County,
431 So.2d 606 @ 611 (Fla. 4th DCA 1983) - - Parks

Confirmed impact fees **cannot exceed pro rata share of the reasonably anticipated cost of capital expansion** reasonably required by new development. (Emphasis Supplied)

City of Boca Raton v. State,
595 So.2d 25 @ 29 (Fla. 1992) - - Special Assessment Improvement Bonds

Held that a "legally imposed special assessment is not a tax. Taxes and special assessments are distinguishable in that, while both are mandatory, there is no requirement that taxes provide any specific-benefit to property; instead, they may be levied throughout the particular taxing unit for the general benefit of residents and

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[8] However, school impact fees, must satisfy the Florida Constitution provision "free public schools", Article IX, Section 1.

property. On the other hand, **special assessments must confer a specific-benefit on the land burdened by the assessment."** (Emphasis Supplied).

It also found "there are two requirements for imposition of a valid special assessment. First, the property assessed **must derive a special-benefit** from the service provided". "Second, the assessment must be fairly and reasonably apportioned among the properties **that receive the special-benefit".** (Emphasis Supplied).

State of Florida v. City of Port Orange,
650 So.2d 1 @ 3 (Fla. 1994) - - Transportation Utility Fees

> **"**In *City of Boca Raton v. State*, 595 So.2d 25 (Fla.1992), this court noted that **a tax is an enforced burden** imposed by sovereign right for the support of the government, the administration of law, and the exercise of various functions the sovereign is called on to perform. *Klemm v. Davenport*, 100 Fla. 627, 631, 129 So. 904, 907 (1930). **Funding for the maintenance and improvement of an existing municipal road system, even when limited to capital projects as the circuit court did here, is revenue for exercise of a sovereign function contemplated within this definition of a tax.**
>
> User fees are charges based upon the proprietary right of the governing body permitting the use of the instrumentality involved. Such fees share common traits that distinguish them from taxes: they are charged in exchange for a particular governmental service **which benefits the party paying the fee in a manner not shared by other members of society**."

(Emphasis Supplied)

Lake County v. Water Oak Management Corp.,
695 So.2d 667 @669 (Fla. 1997)

Required to be a "special benefit" to the assessed property.

Collier County v. State of Florida,
733 So.2d 1012 @ 1017-1019 (Fla. 1999) - - Governmental Service Fee

> "The assessment in this case fails because it does not satisfy the first prong of the test. Contrary to the County's contention, **the first prong of the test is not satisfied by establishing that the assessment is rationally related to an increased demand for county services. If that were the**

test, the distinction between taxes and special assessments would be forever obliterated." (Id @ 1017). (Emphasis Supplied).

"In that aspect, user fees are similar to special assessments, in that the fee **must result in a benefit not shared by persons not required to pay the fee.**" (Id. @1018). (Emphasis Supplied).

"Thus, like the invalid fee in *City of Port Orange*, the fee in *St. Johns County* was invalid because it did not provide a **unique benefit** to those paying the fee. *See also* Contractors & Builders Ass'n v. City of Dunedin, 329 So.2d 314, 320 (Fla.1976) ("Users who benefit *especially* ... by the extension of [sewer] system ... should bear the cost of that extension.") (ellipses in original)." (Id. @ 1019). (Emphasis Supplied).

Collier contained an extensive discussion of prior caselaw and affirmed that an impact fee was invalid because it did not provide a **unique benefit** to those paying the fee.

***Volusia County v. Aberdeen at Ormond Beach,* 760 So.2d 126 @ 134-135 (Fla. 2000) - - School Impact Fees**

Supreme Court did not abandon the subdivision – based standard. (Id. @ 135).

Impact Fees must offset needs sufficiently attributable to the subdivision and the fee revenue must be "sufficiently earmarked for the substantial benefit of the **subdivision residents**." (Id. @ 135). (Emphasis Supplied).

Expressly repudiated a county-wide standard for determining constitutionality of impact fees. (Id. @ 135).

The Court specifically held that the dual rational nexus test was **not limited to the water sewer line context.**

"The language of the test itself belies the assertion that a county-wide standard should be employed. The first prong of the test explicitly requires a nexus between the county's need and the "growth in population generated by that subdivision". 583 So.2d @ 637. Similarly, **the test's second prong insures that "benefits accru[e] to the subdivision"**. Id, thus, the explicit references to the subdivision indicate that **the standard is not tailored to county-wide growth but to a growth of a particular subdivision"**. (Id. @ 134). (Emphasis Supplied).

The court held:

> "our repeated citations in the special-benefit" standard in our interpretation of *St. Johns County* demonstrate that **we did not abandon the subdivision-based standard. Indeed, imposing a county-wide standard would eviscerate the substantial nexus requirement**. The nexus is significant because of the distinction between taxes and fees". (Id. @ 135). (Emphasis Supplied).
>
> **"Fees, by contrast, must confer a special benefit on the fee payors "in a manner not shared by those not paying the fee"**. (Id. @ 135). (Emphasis Supplied).

Board of County Commissioners, Santa Rosa County v. Home Builders Association of West Florida Santa Rosa;
Summary Final Judgment @ 8[9] - - School Impact Fees

In the Board of County Commissioners, Santa Rosa County v. Home Builders Association of West Florida, *325 So.3d 981 (Fla. 1st DCA 2021)*, the First DCA upheld a Final Summary Judgment Granting Plaintiff's Motion for Summary Judgment, finding that the County ordinance imposing school impact fees on a county-wide basis was unconstitutional and invalid, affirming the summary judgment and temporary injunction.

In its Summary Judgment ruling, though the trial court rejected the plaintiff's argument that there was a bright line test that local governments must assess school impact fees on a neighborhood by neighborhood basis; however, found that the lack of geographic impact fee zones or districts resulted in a violation of the dual rational nexus test. (*Santa Rosa* SFJ, Exhibit 1 @ 45).

The trial court found that the school district had not geographically identified new growth and generalized the fact that the county was growing. The court also found that they did **not** analyze the "special benefit" to a fee payor in either section of the county

[9] Also, see Exhibit 1 to the Summary Final Judgment, which is the Order Granting Plaintiff's Verified Motion for Temporary Injunction, page 50.

would receive relative to their payment. The Ordinances did not address what unique or special benefits residents who will pay the impact fee would receive. (*Santa Rosa* SFJ, Exhibit 1 @ 48).

The trial Court also found that they did not rely on the most recent and localized data but instead relied on state-wide data from Florida Department of Education for construction costs. The court held that the County was unable to meet its burden to prove by a preponderance of the evidence that the impact fees met the requirements of state legal precedent and the Florida Impact Fee Act. (*Santa Rosa* SFJ @ 8).

C. FLORIDA IMPACT FEE ACT[10] - - APPLICABLE PROVISIONS STATED IN FULL

3.9. The Florida Impact Fee Act provisions, which are applicable to this action are, in pertinent part, as follows:

Minimum Mandatory Requirements

3.10. Section 163.31801(4), of the Florida Impact Fee Act requires the City, at a minimum, in pertinent part, **must**:

> (a) Ensure that the calculation of the impact fee is based on a study using **the most recent and localized data available within 4 years of the current impact fee update**. The new study must be adopted by the local government **within 12 months** of the initiation of the new impact fee study if the local government increases the impact fee.
>
> * * *
>
> (f) **Ensure that the impact fee is proportional and reasonably connected to, or has a rational nexus with, the need for additional capital facilities and the increased impact generated by the new residential or commercial construction**.

---

[10] The Florida Impact Fee Act was first adopted in 2006 to require the local government complies with the Act, and there have been substantial revisions several times, including as recently as 2025. Each time the legislature has imposed greater or stricter requirements in the adoption of impact fees.

(g) **Ensure that the impact fee is proportional and reasonably connected to, or has a rational nexus with, the expenditures of the funds collected and the <u>benefits</u> accruing to the new residential or nonresidential construction**.

(h) Specifically earmark funds collected under the impact fee for use in acquiring, constructing, or improving capital facilities to benefit new users.

(i) Ensure that revenues generated by the impact fee are not used, in whole or in part, to pay existing debt **or for previously approved projects unless the expenditure is reasonably connected to, or has a rational nexus with, the increased impact generated by the new residential or nonresidential construction**.

<u>**Phase-In Requirements / Extraordinary Circumstances**</u>

3.11. Subsection (6) of the Florida Impact Fee Act also contains limitations and phase-in requirements for increases in impact fees and may only exceed the phase-in limitations by full compliance with the requirements of subsection (4), and meeting the criteria in subsection (6)(g). Subsection 163.31801(6), Florida Statutes, states in pertinent part, as follows:

> (6) A local government, school district, or special district may increase an impact fee <u>**only**</u> **as provided in this subsection**.
>
> (a) An impact fee may be increased **only pursuant to a plan** for the imposition, collection, and use of the increased impact fees which complies with this section.
>
> (b) An increase to a current impact fee rate **of not more than 25 percent of the current rate must be implemented in two equal annual increments** beginning with the date on which the increased fee is adopted.
>
> (c) An increase to a current impact fee rate **which exceeds 25 percent but is not more than 50 percent of the current rate must be implemented in four equal installments** beginning with the date the increased fee is adopted.
>
> (d) **An impact fee increase may not exceed 50 percent of the current impact fee rate**.

(e) An impact fee may not be increased more than once every 4 years.

(f) An impact fee may not be increased retroactively for a previous or current fiscal or calendar year.

(g) A local government, school district, or special district **may increase an impact fee rate beyond the phase-in limitations** established under paragraph (b), paragraph (c), paragraph (d), or paragraph (e) **by establishing the need for such increase in full compliance with the requirements of subsection (4), provided the following criteria are met**:

a. A demonstrated-need study justifying any increase in excess of those authorized in paragraph (b), paragraph (c), paragraph (d), or paragraph (e) has been completed within the 12 months before the adoption of the impact fee increase and **expressly demonstrates the extraordinary circumstances necessitating the need to exceed the phase-in limitations.**

b. The local government jurisdiction has held at least two publicly noticed workshops dedicated to the extraordinary circumstances necessitating the need to exceed the phase-in limitations set forth in paragraph (b), paragraph (c), paragraph (d), or paragraph (e).

c. The impact fee increase ordinance is approved by a unanimous vote of the governing body.

* * *

(h) This subsection operates retroactively to January 1, 2021.

D. IMPACT FEE DOCUMENTS HAVE LIMITED DISCUSSION OF SEVERAL LANDMARK DECISIONS IN FLORIDA

Very Limited Legal Precedent Discussed in Impact Fee Studies

3.12 Despite that the Florida Impact Fee Act specifically requires that the impact fees meet the requirements of state legal precedent, neither the Fire Study, nor Parks Study, contain any discussion whatsoever of legal precedent by name. The Transportation Study had limited discussion, as addressed below. None of the City

studies mention several more recent landmark Florida Supreme Court decisions and their holdings, which are discussed in paragraphs 3.17 through 3.21 below.

3.12.1. All three (3) of the Impact Fee Studies relied upon by the City in adopting the Ordinances purported to set forth the Impact Fee Criteria. The Fire Study and Parks Study both have this set forth on page 2. The Transportation Study has a section entitled "the Impact Fee Act & Case Law Overview" from pages 2-9.

3.12.2. The pertinent language from the "Impact Fee Criteria" sections of the Fire and Parks Study are identical and states, in pertinent part, as follows:

> The statute provides specific impact fee criteria and certain precedents **originally** established by case law that constitute the legal requirements associated with the implementation of valid impact fees. The major criteria for a valid impact fee includes the following:
>
> 1. The impact fee should be reasonably equitable to all parties; that is, the amount of the fee must bear a reasonable relationship or nexus to the demand for services;
>
> 2. The system of fees and charges should be set up so that there is not an intentional windfall to existing users of municipal services;
>
> 3. The impact fee should, to the extent practical, **only cover the capital cost of construction and related costs thereto (engineering, legal, financing, administrative, etc.) for increases in or expansions of capacity or capital requirements** for major facilities or equipment, such as fire vehicles, which are required due to growth. Therefore, **expenses due to normal renewal and replacement of a facility or major equipment should be borne by all users of the facility or municipality. Similarly, increased expenses due to operation and maintenance of that facility should be borne by all users of the facility**; and
>
> 4. The local government must adopt a revenue-producing ordinance that explicitly sets forth restrictions on revenues (uses thereof) that the imposition of the impact fee generates. Therefore, the funds collected from the impact fees should be retained in a separate account, and separate accounting must be made for those funds to ensure that they are used only for the lawful purposes described.

> Based on the criteria provided above, the impact fees herein will: i) include specific costs of improvements associated with the capacities needed to serve new growth; ii) **not reflect costs of improvements associated with the renewal and replacement ("R&R") of existing capital assets or deficiencies in level of service attributed to existing development**; and iii) not include any costs of operation and maintenance of the capital improvements and major equipment.

(Emphasis Supplied).

3.12.3. Note, there is not a single reference to a case name or year and the first sentence above states "...precedents **originally** established by case law". (Emphasis Supplied). Does that mean they used old caselaw and not the more recent? Certainly, they do not address the specific-need, special-benefit, analysis for subdivision or other mandates, etc. from *Collier* on through *Aberdeen*.

3.12.4. However, note that paragraph 3 states "Therefore, expenses due to normal renewal and replacement of a facility or major equipment should be borne by all users of the facility or municipality." The last paragraph even states "...ii) not reflect cost of improvements associated with the renewal and replacement ("R&R") of existing capital assets or deficiencies in level of service attributed to existing development."[11]

Transportation Study Briefly Discussed Dunedin

3.13. The Transportation Study did have a limited discussion of a few older Florida Supreme Court decisions and mentioned the *Dunedin* decision for the proposition that the fees did not constitute a tax. However, failed to mention that the *Dunedin* decision also held that governments can impose fees, which do not exceed a pro rata share of the reasonably anticipated cost of capital expansion reasonably required because of new

[11] Contrary to their own Fire Study and Parks Study, the proposed impact fees include "buy-in" for existing infrastructure, which are not costs of "improvements associated with capacity needed to serve new growth" and include renewal and replacement of existing capital assets, are improperly included in the Fire and Parks Impact Fees.

development. (*Contractors & Builders Association of Pinellas County v. City of Dunedin*, 329 So.2d 314 (Fla. 1976) (@ 320).

3.14. The Supreme Court held:

> [7] [8] Raising expansion capital by setting connection charges, which do not exceed a Pro rata share of reasonably anticipated costs of **expansion**, is permissible where expansion is reasonably required, If use of the money collected is **limited to meeting the costs of expansion**.[10] Users 'who benefit especially, not from the maintenance of the system, but by the extension of the system . . . should bear the cost of that extension.' Hartman v. Aurora Sanitary District, supra, 177 N.E.2d at 218. On the other hand, **it is not 'just and equitable' for a municipally owned utility to impose the entire burden of capital expenditures, included replacement of existing plant, on persons connecting to a water and sewer system after an arbitrarily chosen time certain.**

(Id. @ 320) (Emphasis Supplied).

3.15. The Transportation Study after its brief discussion of the Dunedin case, referenced a Utah Supreme Court, and a few other U.S. Supreme Court decisions, a California decision and then a brief reference to the Santa Rosa decision. The Transportation Study disregarded and failed to reference landmark Florida Supreme Court decisions referenced below.

E. Mandatory Compliance with "State Legal Precedent"

3.16. Paragraph 9 of the Florida Impact Fee Act specifically requires all impact fees to meet the "requirements of state legal precedent and this section". Therefore, it is fundamental to understand and apply the relevant caselaw in Florida. Unfortunately, neither of the studies for the Fire and Rescue or Park System made any mention of any caselaw whatsoever or the requirements thereunder.

3.17. All three (3) of the Ordinances were adopted City-wide and there is no analysis whatsoever in the Impact Fee Studies of, (or anywhere to Plaintiffs' knowledge)

and the Ordinances do not, satisfy the two (2) prong rational nexus test as required under the legal precedent in Florida referenced below. None of the Florida Supreme Court cases referenced below were mentioned or discussed in any of the Impact Fee Studies relied on by the City in adopting the Ordinances.[12]

F. KEY FLORIDA SUPREME COURT CASELAW - - OMITTED IN CITY STUDIES

Water Oak

3.18. In the *Lake County v. Water Oak Management Corp., 695 So.2d 667, @ 669 (Fla. 1997)*, the Florida Supreme Court said there was required to be a **"special benefit"** to the assessed property.

Collier

3.19. In the *Collier County v. State of Florida, 733 So.2d 1012 (Fla. 1999)*, the Florida Supreme Court held that the assessment must satisfy a two (2) prong test to be considered a valid special assessment: (1) property burdened by assessment must derive **"special benefit"** from service provided by assessment; and (2) assessment for services must be properly apportioned (Id. @ 1017). It also confirmed or held that the **specific-need / special-benefit standard applied**. In addressing the validity of an impact fee, the court held "[t]hus, like the invalid fee in *City of Port Orange*, the fee in *St. Johns County* **was invalid because it did not provide a unique benefit to those paying the fee**", also citing to *Dunedin* @ 320.

3.20. The court in *Collier* also held that "the first prong of the test is **not satisfied by establishing that the assessment is rationally related to an increased demand**

[12] Both the Fire Study, on page 2, and the Parks Study, on page 2 (both by the same consultant) discuss Impact Fee Criteria, but fail to address the criteria imposed by the Florida Supreme Court and the caselaw discussed below.

for county services. If that were the test, the distinction between taxes and special assessments would be forever obliterated". (Id. @ 1017) (Emphasis Supplied). The court also held "that the **fee must result in a benefit not shared by persons not required to pay the fee"**. (Id. @ 1018) (Emphasis Supplied). In other words, if the residents not paying the fee are receiving a benefit, such is unconstitutional.

Collier held:

> [5] In *Lake County v. Water Oak Management Corp.*, 695 So.2d 667 (Fla.1997), we recited the two-pronged test an assessment must satisfy in order to be considered a valid special assessment, rather than a tax. The two prongs are: (1) the property burdened by the assessment must derive a "special benefit" from the service provided by the assessment; and (2) the assessment for the services must be properly apportioned. *Id.* at 668 (citing *City of Boca Raton*, 595 So.2d at 30).
>
> The assessment in this case fails because it does not satisfy the first prong of the test. Contrary to the County's contention, **the first prong of the test is not satisfied by establishing that the assessment is rationally related to an increased demand for county services. If that were the test, the distinction between taxes and special assessments would be forever obliterated**.
>
> **We explained in *Water Oak Management* that the first prong requires that the services funded by the special assessment provide a "direct, special benefit"** to the real property burdened. 695 So.2d at 670. A majority of this Court concluded that the fire services funded by the assessment in *Water Oak Management* met this requirement by providing for lower insurance premiums and enhancing the value of property. *Id.* at 669. In rejecting the criticism that our decision in *Water Oak Management* would open the flood-gates for municipalities and counties to impose improper taxes labeled as special assessments, we made clear that
>
> > *services such as general law enforcement activities, the provision of courts, and indigent health care are,* like fire protection services, *functions required for an organized society.* However, unlike ***1018** fire protection services, those services provide no direct, special benefit to real property. *Thus, such services cannot be the subject of a special assessment.*
> >
> > Id. at 670 (citation omitted) (emphasis supplied).
>
> The County concedes that the services funded by the assessment in this case are the same general police-power services the County provides to all

county residents for their general benefit, funded from ad valorem taxes, including: sheriff services; libraries; parks; election services; public health services; and public works. Thus, the fee in this case has the **indicia of a tax because it is proposed to support many of the general sovereign functions** contemplated within the definition of a tax. *See* City of Port Orange, 650 So.2d at 3.

* * *

[7] [8] The County's ordinance includes a "savings clause" providing for the collection of the same amount of money as a fee upon the issuance of the certificate of occupancy, if the uniform method of collection is declared invalid. However, a change in the method of collection will not convert a prohibited tax into a valid fee. As we stated in *City of Port Orange,* the power "to tax should not be broadened by semantics which would be the effect of labeling what the City is here [attempting to collect] a fee rather than a tax." 650 So.2d at 3.

[9] In *City of Port Orange,* this Court found an alleged "transportation utility fee" to actually be an impermissible tax. In that case, the City sought to levy a fee on property owners to support the operation, maintenance and improvement of the local road system. *See id.* at 2. We explained that user fees are "charged in exchange for a particular governmental service which *benefits* the party paying the fee *in a manner not shared by other members of society.*" *Id.* at 3 (emphasis supplied). In that aspect, **user fees are similar to special assessments, in that the fee must result in a benefit not shared by persons not required to pay the fee.**

[10] Similarly, the fee cannot be authorized as a valid impact fee. *See* *St. Johns County v. Northeast Florida Builders Ass'n,* 583 So.2d 635 (Fla.1991). In *St. Johns,* the County enacted an ordinance requiring that no new building permits could be issued except upon payment of an impact fee. *See id.* at 636. The collected fees were to be placed in a trust fund to be spent to "acquire, construct, expand and equip" educational sites and facilities "necessitated by new development." *Id.* at 637.

We observed that impact fees had become an accepted method of paying for "*public improvements* " to serve new ***1019** growth. *Id.* at 638 (emphasis supplied). We found the fee to be invalid because it was imposed only on those *outside* a municipality, with limited exceptions. *See id.* at 639. Those residing in a municipality were not required to pay the fee. However, there was nothing in the ordinance restricting the use of the funds to build schools that would *only* benefit those outside municipalities, who were the ones paying the fee. *See* *St. Johns County,* 583 So.2d at 639. **Thus, like the invalid fee in *City of Port Orange,* the fee in *St. Johns County* was invalid because it did not provide a unique benefit to those paying the fee**. *See also* *Contractors & Builders Ass'n v. City of Dunedin,* 329 So.2d 314, 320 (Fla.1976) ("Users who benefit *especially* ... by the extension of [sewer] system ... should bear the cost of that extension.") (ellipses in original).

(Id. @ 1017-1019). (Emphasis Supplied).[13]

Aberdeen

3.21. In the Volusia County v. Aberdeen at Ormond Beach, *760 So.2d 126 (Fla. 2000)*, the court rejected the argument that a county-wide standard should be employed and that the second prong ensures benefits accrue to the subdivision. The explicit references to subdivisions indicate the standard is not tailored to county wide growth, but growth to a particular subdivision. The Supreme Court confirmed that they did not abandon the subdivision-based standard and that **imposing a county wide standard would eviscerate the substantial nexus requirement.** (Id. @ 135).

3.22. The *Aberdeen* court also held:

> [13] The parties also dispute the proper application of the dual rational nexus test. In *St. Johns County,* the Court expressly adopted the dual rational nexus test for determining the constitutionality of impact fees: the local government **must demonstrate reasonable connections between (1) "the need for additional capital facilities and the growth in population generated by the subdivision" and (2) "the expenditures of the funds collected and the benefits accruing to the subdivision."** St. Johns County, 583 So.2d at 637 (quoting Hollywood, Inc. v. Broward County, 431 So.2d 606, 611–12 (Fla. 4th DCA 1983)). Volusia County **argues** that the test requires needs and benefits to be assessed based on countywide growth, **and that the specific-need/special-benefit analysis is limited to the water and sewer line context.[5] This argument, however, is without merit**.
>
> The language of the test itself **belies the assertion that a countywide standard should be employed**. The first prong of the test **explicitly requires a nexus between the County's need and the "growth in population generated by the subdivision."** 583 So.2d at 637. **Similarly, the test's second prong ensures that "benefits accru[e] to the subdivision."** *Id.* Thus, the explicit

[13] *St. Johns* is a 1991 decision that dealt with school impact fees, as an issue of first impression, and they were found not in violation of Article IX, Section 1, of the Florida Constitution, dealing with adequate provision of public schools. It did not deal with the subdivision-based standard addressed in *Aberdeen*.

references to subdivisions indicate that the standard is not tailored to countywide growth, but to growth of a particular subdivision.

Furthermore, this Court in *St. Johns County* adopted the dual rational nexus test exactly as it was enunciated in Hollywood, Inc. v. Broward County, 431 So.2d 606 (Fla. 4th DCA 1983), which applied the test to parks. The test ensures that the *Broward County* requirements—**the fee must "offset needs sufficiently attributable to the subdivision"** and the **fee revenue must be "sufficiently earmarked for the substantial benefit of the subdivision residents"**—are satisfied. *Id.* at 611. Moreover, this Court in *St. Johns County* reaffirmed the *Dunedin* **requirement that the fees must "be spent to benefit those who have paid the fees**." *St. Johns County*, 583 So.2d at 639. Thus, the Court's use of the dual rational nexus test has not been limited to the water and sewer line context.

Additionally, in *Collier County v. State*, 733 So.2d 1012 (Fla.1999), **we reaffirmed the specific-need/special-benefit standard. Construing *St. Johns County,* we said, "[T]he fee in *St. Johns County* was invalid because it did not provide a unique benefit to those paying the fee."** *Id.* at 1019. **We **135* further explained that the fee at issue in *Collier County* was an invalid tax because "the services to be funded by the fee are the same general police-power services provided to all County residents."** ***Id.*** **Thus, we expressly repudiated a countywide standard for determining the constitutionality of impact fees.**

Nevertheless, Volusia County highlights the dicta in *St. Johns County* as credible support for its position: "Thus, if this were a countywide impact fee designed to fund construction of new schools as needed throughout the county, we could easily conclude that the second prong of the test had been met." *St. Johns County*, 583 So.2d at 639. Certainly, this statement bolsters Volusia County's contention that a countywide standard should be employed. At the very least, the dicta created ambiguity in determining the application of the test.

[14] Nonetheless, our repeated citations to the special-benefit standard and our interpretation of *St. Johns County* demonstrate that **we did not abandon the subdivision-based standard. Indeed, imposing a countywide standard would eviscerate the substantial nexus requirement**. This nexus is significant because of the distinction between taxes and fees. As this Court noted in *Collier County,* "[T]here is no requirement that taxes provide any specific benefit to the property; instead, they may be levied throughout the particular taxing unit for the general benefit of residents and property." *Collier County*, 733 So.2d at 1016 (quoting *City of Boca Raton v. State*, 595 So.2d 25, 29

(Fla.1992)). **Fees, by contrast, must confer a special benefit on feepayers "in a manner not shared by those not paying the fee."** *Id.* at 1019. We likewise noted in *State v. City of Port Orange*, 650 So.2d 1, 3 (Fla.1994), that "the power of a municipality to tax should not be broadened by semantics which would be the effect of labeling what the City is here collecting a fee rather than a tax." Thus, a liberal reading of the dual rational nexus test would obliterate the distinction between an unconstitutional tax and a valid fee.

(Id. @ 134) (Emphasis Supplied).

G. SANTA ROSA SUMMARY FINAL JUDGMENT AND APPELLATE DECISION AFFIRMING

3.23. While the June 2025 Transportation Study did reference the *Santa Rosa* case, it conveniently failed to discuss key findings addressed below.

3.24. In the *Board of County Commissioners, Santa Rosa County v. Home Builders Association of West Florida, 325 So.3d 981 (Fla. 1st DCA 2021)*, the First DCA upheld a Final Summary Judgment Granting Plaintiff's Motion for Summary Judgment, finding that the County ordinance imposing school impact fees on a county-wide basis was unconstitutional and invalid, affirming the summary judgment and temporary injunction.

3.25. In its Summary Judgment ruling, though the trial court rejected the plaintiff's argument that there was a bright line test that local governments must assess school impact fees on a neighborhood by neighborhood basis; however, found that the lack of geographic impact fee zones or districts resulted in a violation of the dual rational nexus test. (*Santa Rosa* SFJ, Exhibit 1 @ 45).

3.26. The trial court found that the school district had not geographically identified new growth and generalized the fact that the county was growing. The court also found that they did **not** analyze the "special benefit" to a fee payor in either section of the county would receive relative to their payment. The Ordinances did not address what unique or

special benefits residents who will pay the impact fee would receive. (*Santa Rosa* SFJ, Exhibit 1 @ 48).

3.27. The trial Court also found that they did not rely on the most recent and localized data but instead relied on state-wide data from Florida Department of Education for construction costs. The court held that the County was unable to meet its burden to prove by a preponderance of the evidence that the impact fees met the requirements of state legal precedent and the Florida Impact Fee Act. (*Santa Rosa* SFJ @ 8).

H. STUDIES AND DOCUMENTS RELIED UPON BY CITY

3.28. Pursuant to the Impact Fee Act, the City relied upon the following studies and documentation for the adoption of the respective Ordinances as follows:

(a) **Fire:** The Fire Impact Fees Final Report, dated June 9, 2025 ("Fire Study"), a true and correct copy of which is attached as **Exhibit D-1**; and Power Point Presentation entitled "Fire Impact Fee" ("Fire Power Point"), attached hereto as **Exhibit D-2**; (hereinafter collectively the "Fire Impact Fee Documents"). [14]

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[14] Pursuant to Section 29-101 of the Fire Ordinance it was found that:

(a) Future growth represented by fire and rescue system impact construction should contribute its fair share to the cost of **acquiring additional capital improvements** for the City fire and rescue system that are required to accommodate the use of the fire and rescue system by such growth.

(b) Implementation of an impact fee structure and formula to require future City fire and rescue system impact construction to contribute its fair share of the **cost of the acquisition of capital improvements** for the City fire and rescue system is an integral and vital element of the regulatory plan of growth management incorporated in the City's Comprehensive Plan.

(Emphasis Supplied)

(b) **Parks:** The Parks System Impact Fees Final Report, dated June 9, 2025, ("Parks Study"), a true and correct copy of which is attached as **Exhibit E-1**; the Recreation Impact Fee Fund, dated May 21, 2025 ("Parks Fee Fund"), attached hereto as **Exhibit E-2**; the Recreation Impact Fee Power Point Presentation ("Parks Power Point"), which is attached as **Exhibit E-3**; (hereinafter collectively the "Parks Impact Fee Documents").

(c) **Transportation:** The Transportation Impact Technical Report Update Report, dated June 2025 ("June 2025 Transportation Study"), a true and correct copy of which is attached as **Exhibit F-1**; City of Palm Coast Transportation Impact Fee Update & Extraordinary Circumstances Study, dated June 2025 ("Extraordinary Study June 2025"), a true and correct copy of which is attached as **Exhibit F-2**; City of Palm Coast Transportation Impact Fee Technical Report Update, dated April 2025 ("April 2025 Transportation Study"), a true and correct copy of which is attached as **Exhibit F-3**; City of Palm Coast Extraordinary Circumstances Study, dated May 25, 2025 ("Extraordinary Study May 2025"), attached hereto as **Exhibit F-4**, (hereinafter collectively the "Transportation Impact Fee Documents").

3.29. The Fire Impact Fee Documents, Parks Impact Fee Documents and Transportation Impact Fee Documents, as defined above, shall collectively be referred to as "Impact Fee Documents". [15]

[15] However, section 29-32 of the Transportation Ordinance, only incorporated by reference the April 2025 Transportation Study and the Extraordinary Study, dated May 2025; however, fails to incorporate the Extraordinary Study, dated June 2025. This is notwithstanding that third Whereas clause of the Transportation Ordinance references the June 2025 Reports and defines them as the "Reports", which are purportedly incorporated into the Transportation Ordinance.

I. SUMMARY OF VIOLATIONS

3.30. The Impact Fee Documents, relied upon by the City to adopt the Ordinances, show serious and clear violations of the Florida Impact Fee Act and state legal precedent. The pertinent violations, in part, are summarized as follows:

3.30.1. Failed to rely on the most recent and localized data available within four (4) years, as required pursuant to Section 163.31801(4)(a), Florida Statutes;

3.30.2. The impact fees are not proportional or reasonably connected to or have a rational nexus with the need for additional capital facilities and the increased impact generated by the new residential or commercial construction, as required pursuant to Section 163.31801(4)(f), Florida Statutes;

3.30.3. The impact fees are not proportional and reasonably connected to, or have a rational nexus with, the expenditures of funds collected and the benefits accruing to the new residential or to the new construction, as required pursuant to Section 163.31801(4)(g), Florida Statutes;

3.30.4. The Ordinances do not specifically earmark funds collected under the Impact Fee for use in acquiring, constructing or improving capital facilities to benefit new users, as required pursuant to Section 163.31801(4)(h), Florida Statutes.

3.30.4. The revenues are not reasonably connected to, or have a rational nexus with, the increased impact generated by the new construction, as required pursuant to Section 163.31801(4)(i), Florida Statutes;

3.30.5. There is an unlawful reliance on "extraordinary circumstances" to exceed the phase in limitations in Section 163.31801(6), Florida Statutes, in that

the circumstances set forth in the respective studies do not constitute, as a matter of law, “extraordinary circumstances”.

3.30.6. The Ordinances and proposed impact fees are in violation of Florida precedent in that, among others:

(a) Impact Fees adopted are not limited to meeting the cost of expansion as required in *Dunedin*. (*Dunedin* @ 320);

(b) Impose the entire burden of capital expenditures, including replacement of facilities on persons after arbitrarily chosen time in violation of *Dunedin*. (*Dunedin* @320);

(c) Exceed the pro rata share of reasonably anticipated cost of capital expansion reasonably required by new development in violation of *Hollywood* in that impact fees cannot exceed pro rata share. (*Hollywood* @ 611);

(d) Neither the Impact Fee Documents or Ordinances identify any “special-benefit” to the assessed property in violation of *Water Oak*. (*Water Oak* @ 669); (*Collier* @ 117-118);

(e) The City did not geographically identify new areas of growth, instead simply generalizing growth throughout the City, despite that there are significant undeveloped areas on the periphery of the City. The impact fees were then adopted on a city-wide basis contrary to *Aberdeen,* which affirmed that impact fees must be based upon a subdivision standard to satisfy the specific-need / special-benefit analysis to ensure that the benefits accrue to that subdivision. (*Aberdeen* @ 134-135);

(f) The impact fees do not confer a special-benefit on the fees payors in a manner not shared by those not paying the fees. (*Collier* @ 1017-1018); and (*Aberdeen* @ 134-135);

(g) The Impact Fees do not offset needs sufficiently attributable to a subdivision and are not earmarked for a substantial benefit of subdivision residents in violation of adopting a county/city-wide standard for constitutional impact fees; violate the specific needs / special benefit test and fail to ensure that the benefits accrued to the subdivision paying the fees and not others. (See, *Aberdeen* @ 134-135);

(h) Relied on either state-wide or national construction costs, non-specific cost, included non-recent historical costs, all of which do not meet the requirement of most recent or localized data (*Santa Rosa* SFJ @ 8).

J. IMPACT FEE DOCUMENTS AND ORDINANCES LACKING REQUIRED ANALYSIS

3.31. Nowhere do any of the Impact Fee Documents or the Ordinances even mention "specific-need" or "special-benefit". Further, the Ordinances make no findings or even mention of the terms "specific-needs" or "special-benefit".[16] None of the Ordinances impose impact fees based upon any regional analysis or subdivision basis and there is no special-benefit for the fee payors in a manner not shared by those not paying the fees. (*Aberdeen* @ 134-135).

3.32. The City of Palm Coast has a minimum of eleven (11) different geographically distinct areas, neighborhoods or sections, with differing fire, park or

[16] This was confirmed based both on a reading of the documents, and an OCR search of all the Impact Fee Documents and Ordinances, which are attached as exhibits to this Complaint.

transportation infrastructure needs. The City is approximately twenty-two (22) miles in length at its longest point, twelve (12) miles in width at its widest point, (90.8 square miles) boarders along the intracoastal waterway, has a municipal core, suburban neighborhoods, as well as the undeveloped DRI areas and other substantially undeveloped areas on the periphery of the City limits. See Map below generally depicting them.

3.33. The Impact Fee Documents relied upon by the City in adopting the Ordinances totally fail to identify the "specific need" or "special benefit" of any project versus any area being developed nor do the Impact Fee Documents even address any divergent needs or benefits from one part of the City to another, or one element versus another.

3.34. In the City Impact Fee Documents, the Parks Study included funds for neighborhood parks, however, there was virtually no discussion of the neighborhoods and

no discussion whatsoever of any "special benefit" to the differing neighborhoods, zones or areas, much less any correlation to the "specific need" for the improvements proposed - - as required by both the state legal precedent and the Florida Impact Fee Act. However, as discussed below, the Transportation Studies did discuss the need for "assessment areas or benefit districts" and then totally disregarded such adopting the city-wide Ordinances.

Transportation Study - - "The Impact Fee Act & Caselaw Overview"

3.35. Of the three (3) Impact Fee Studies or documents, the only Impact Fee Documents which substantially attempts to address legal requirements, is the June 2025 Transportation Study, on pages 2-9 in a section titled Florida Impact Fee Act & Case Law Overview ("Overview"). There is discussion of the Impact Fee Act and its history, with revisions through 2024. It does reference the dual rational nexus of "need" and "benefits". However, fails to reference "specific-needs" or "special-benefits" at any point. It then references the *Dunedin* case and then rolls into a Utah decision and two (2) U.S. Supreme Court decisions. On page 8, it makes a brief reference to the *Santa Rosa* case as mentioned above and then a U.S. Supreme Court case again on page 9.

3.36. The June 2025 Transportation Study Overview ("Overview") fails to even mention the key Florida Supreme Court decisions discussed above in paragraphs 3.17 through 3.21, viz: *Hollywood, Water Oak*, *Collier* and *Aberdeen*.

3.37. On page 8, the Overview does mention the *Board of County Commissioners, Santa Rosa County v. Home Builders Association of West Florida* case, which is discussed in more detail above.

3.38. The Overview mentioned that the impact fees in *Santa Rosa* failed a dual rational nexus test because they did not account for the differences between the northern

and southern parts of the county; however, failed to mention that the court relied on *Aberdeen* and questioned whether specific neighborhoods were receiving a special benefit. (*Santa Rosa* SFJ, Exhibit 1 @ 45). The Overview also fails to mention that the court in *Santa Rosa* overturned the impact fees as they were adopted on a county-wide basis and were not based on the most recent and localized data - - Santa Rosa County had also relied upon state and national cost and not localized, as the City did in adopting the Ordinances.

3.39. The Transportation Study acknowledges that the dual rational nexus test requires the local government establish defined areas or districts on page 28, Under a section titled “Transportation Impact Fee Benefit District”, and states the following:

> The benefit test of the dual rational nexus test **requires that the local governments establish defined areas or districts within which impact fees collected are earmarked for expenditure**. The current geographic limits of the benefit district are the current City boundary.

(Emphasis Supplied). It also stated that the City of Port Saint Lucie established 6 benefit districts in 2021. (See further allegations below, paragraph 3.56.13, which addresses the City's failure to have benefit districts when it adopted the impact fees city-wide after the City falsely claimed that “multiple assessment areas are established”.).

3.40. Nowhere did the Transportation Study discuss that in the *Santa Rosa* decision, the impact fees were unenforceable because they were based on county-wide and not a district, neighborhood or zoned basis. Also, nowhere did the Transportation study discuss that the *Aberdeen* case required the benefits accrue to a subdivision, defined areas or districts. None of the Ordinances utilize any neighborhood or zone basis for adoption and no subdivision or areas enjoy any special or unique benefit in a manner not shared by those not paying the fee as required by *Aberdeen* @ 134-135.

3.41. Despite the acknowledgment in the Transportation Study that there was a requirement for defined areas or districts for impact fees to be collected, the City failed to create any zones or districts for any of the ordinances, which are clearly required by the Florida Supreme Case Law precedent cited above (which were conveniently omitted in the June 2025 Transportation Study.)

3.42. Despite the fact that the City has at least eleven (11) different divergent neighborhoods, plus the undeveloped DRIs in other areas, none of the studies addressed:

(i) which specific growth is causing the need for which specific new park or park improvement, new road improvement or new fire station or improvement; or

(ii) which new park, park improvement, fire station or improvement, or road improvement provides a special benefit to those paying the impact fees in a manner not shared by those not paying the impact fees.

This is a clear violation of the dual nexus, or 2-prong test, to identify the "specific-need/special-benefits" accruing to the new homes or businesses or how the new home or business caused the "specific-need/special-benefits" for the new park or park improvement, new fire station or fire station improvement, or road improvement.

3.43. The State legal precedent is clear. A city or county cannot rely upon county-wide basis or even a city-wide basis. There must be a specific-need/specific-benefit applied to subdivisions or zone areas. Whether it is on subdivision by subdivision basis as addressed in the *Aberdeen* case or on an impact fee zone approach as in the *Santa Rosa* case, the caselaw does not tolerate an "impact fee" that looks and acts more like a "tax".

K. EXTRAORDINARY CIRCUMSTANCES REQUIREMENTS

3.44. In order to exceed the 50% cap on increases in special assessments in Section 28(6), subsection 6(g) of the Florida Impact Fee Act requires, among others, a "demonstrated need study justifying any increase in excess of those authorized to have "been completed within 12 months before the adoption of the increased fee and expressly demonstrate the "extraordinary circumstances" necessitating the need to exceed the phase-in limitations".

3.45. While all three (3) Ordinances purport to have such demonstrated-needs studies, none of those studies even mentioned a definition of "extraordinary circumstances". None of them evaluated any caselaw dealing with "extraordinary circumstances".

3.46. There are no known cases in Florida interpreting "extraordinary circumstances" with respect to the Florida Impact Fee Act. However, under other caselaw, "extraordinary circumstances" are extremely limited. Typically, these involve those matters which are unusual and unexpected, beyond the control, or have significant impact. Examples could be natural disasters, acts of terrorism or war, unexpected illness or injury, or significant economic deterioration. None of those were present, certainly not city-wide.

3.47. Under Florida law, "extraordinary circumstances" are rarely found; however, two (2) examples are where a trial judge had *ex parte* communications with the opposing party which warranted granting an extension of time for filing a motion to recuse (*Klapper-Barrett v. Nurell*, 74 So.2d 851 (Fla. 5th DCA 1999); and allowing an administrative agency to alter a final judgment because consumers were being forced to pay unreasonably high fuel adjustment charges because of an illegal scheme (known as "daisy-chaining")

conducted by a fuel consultant employed by the agency. (*Richter v. Florida Power Corporation*, 366 So.2d 798 (Fla. 2nd DCA 1979).

3.48. There is always inflation. It is just a question of how much. The studies fail to take into consideration that the COVID related inflation had stabilized and, therefore, did not use the most recent localized data. Population growth in Florida is certainly not unusual or unexpected - - it is the norm. The fact that if the impact fees were not adopted, it would directly impact the existing residents and taxpayers is clearly not extraordinary circumstances - - it is basic math. The availability of other resources to offset impact fees is not an extraordinary circumstance to adopt impact fees, which are based upon new growth.

3.49. The only thing extraordinary in the demonstrated-need studies is the extent of creativity in an attempt to establish the nonexistent. Failure to plan by the City does not constitute extraordinary circumstances. Failure to understand that there is always inflation is not an extraordinary circumstance. To say that other taxpayers may have an increase in their burden without the special assessments is not an extraordinary circumstance - - is it simply reality.

3.50. The violations discussed above are substantially common to all three (3) Ordinances. Additionally, the violations relating to extraordinary circumstances are substantially similar for all three (3) Ordinances.

L. STUDY SPECIFIC VIOLATIONS

3.51. The specifics of each of the Ordinances and supporting documentation are addressed below.

FIRE IMPACT FEES

3.52. The Impact Fee Study for the Fire Department, in addition to the above general issues, violates the Florida Impact Fee Act and Florida Precedent, on the following grounds:

3.52.1. The Fire Study proposed impact fees increased from $435 to $942, a 117% increase.

3.52.2 On page 3 of the Fire Study, the City currently staffs 74 fire rescue personnel and through 2035, on page 6 of the Fire Study, proposed to add 33 additional fire fighters, for a projected total of 107 fire fighters.

3.52.3 On page 5 of the Fire Study, it states that the facility cost includes the cost of existing land and building for the fire stations and other fire related buildings and facilities, at a cost of $151,214 per fire fighter and that the total proposed impact fee for eligible capital cost is $426,133 per fire fighter. There is a chart at the top of page 6 entitled "Existing and Future Capital Cost Per Fire Fighter" showing a net total cost per fire fighter of $563,723.

3.52.4. On page 8 of the Fire Study, the impact fee comparisons show the proposed City Fire Impact Fee of $942.00 to be substantially higher than the average of $505.69, and higher than 14 of the 15 other local governments cited.

3.52.5 Under the Fire Power Point both: (i) Fire Station 22, which is a "replacement for outdated Fire Station 22", with a budget of $10,928,271; and (ii) Fire Station 26, are identified as current major projects; however, they included the cost of both in the future impact fees. Current needs cannot be a need based on future growth[17].

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[17] City broke ground on Fire Station 26 in October 2024, approximately eight (8) months before the Ordinances were adopted. Additionally, including Fire Station 22, as a replacement, is not increasing any capacity due to demand by new construction.

3.52.6. Failed to establish where growth is occurring and how there is a correlation to the "specific need" for an increase in personnel or stations.

3.52.7. The City fire stations also serve areas outside of the City and utilize as personnel Flagler County Fire Department personnel operating out of City Stations, which also serve areas outside of the City. This was not addressed and results in benefits to persons or properties outside the City limits, which are not paying impact fees.

3.52.8. There has been no allocation or explanation as to the current actual needs nor any study showing when or why additional stations or personnel are needed to serve residents in which areas within the City.

3.52.9. Fire Station 22 is a current project nearing completion to be replaced at a cost of $10,928,271; however, the Fire Study has included the full cost with no explanation as to whether that is to serve a different area, larger area, smaller area and allocation.

3.52.10. The proposed North Station, near the edge of the City limits, is budgeted for $15,488,840, with no explanation as to who it serves or why such a station is needed to meet population growth within the City when the Fire Department also serves areas outside the City.

3.52.11. The Fire Study, on page 3, discusses three (3) different impact fee methods: (i) improvements-driven method utilizing specific set of planned capital improvements; (ii) buy-in approach utilizing the cost of existing infrastructure; and (iii) standards-driven method utilizing theoretical costs. The City acknowledges it is using a combination of the improvements-driven method and buy-in method. The City is,

therefore, charging impact fees to recover costs of existing infrastructure and city-wide planned capital improvements, despite that the Florida Supreme Court has limited impact fees to meeting the cost of expansion, which would not include any "buy-in approach" for existing infrastructure.

3.52.11. In confirmation of this unlawful "buy-in method", Table 5 of the Fire Study totals the Recoupment (existing) Costs of $23,771,096, plus total Proposed Capital Additions of $46,445,665, for total Allocated Costs of $61,572,814, which is divided by the 107 total fire fighters, for a Capital Cost per Fire Fighter of $563,723. The City has, therefore, added the cost of existing facilities, plus the proposed capital expansion, which means they are seeking to recoup not only needs caused by growth, but also recapture prior expenditures and put the burden of that on new projects.

3.52.12. Table 6 of the Fire Impact Study states, in pertinent part, as follows:

1.	**Calculation of Net Average Capital Cost per New Personnel [1]**	
2.	Recoupment Costs	$222,160
3.	Proposed Capital Additions	426,133
4.	Less Historical and Planned Future Capital Grants/Other Funding Sources Received	(84,570)
5.	Total Calculation of Net Average Capital Cost per New Personnel	$563,723
6.	**Additional Fire Personnel Anticipated to Serve Population [2]**	
7.	Existing Personnel in 2025	74.00
8.	Additional Personnel Associated with New Stations Through 2035	33.00
9.	Total Firelighters Projected by 2035	107.00
10.	**Total Costs Recovered From Impact Fees**	
11.	Total Calculation of Net Average Cost per New Personnel	$563,723
12.	Number of Total Firefighters Needed	107.00
13.	Total Capital Costs to be Recovered From Impact Fees	$60,318,338

3.52.13. Therefore, the City has imposed a $60,318,338 Capital Cost to be Recovered From Impact Fees (line 13 above) by multiplying the Total Fire Fighters Needed of 107 times the average Capital Cost of new personnel of $563,723. Therefore,

the City is imposing the full burden of all 107 fire fighters on new development, not just the 33 additional projected by 2035, in clear violation that the impact fees must be proportional or reasonably connected or have a rational nexus with the need for additional capital facilities and the increased impact generated by the new residential or commercial construction.[18]

3.52.14. Nowhere does the Fire Study establish any special-benefit in a manner not shared by those not paying the fee to any home or business paying the impact fee, nor do they establish how each property or area are generating the specific need for any fire station or improvement thereto, as required under *Collier* @ 1018-1019. To the contrary, the Fire Ordinance imposes a fire impact fee on all new development and provides no different services to the new development than the existing developed properties.

3.52.15. Nowhere does the Fire Study establish how the fire impact fees specially benefits the party paying the fee in a manner not shared by other members of society as required under *Collier* @ 1019.

3.52.16. Nowhere does the Fire Study establish how any fire station expansion or improvement, which can be located up to eleven (11) – thirteen (13) miles from any property results in a benefit not shared by persons not required to pay the fee (aka a unique benefit to those paying the fee), nor do they establish that the needs are attributable to any subdivision or that any revenues are sufficiently earmarked for the

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[18] Further, in conflict with Tables 6 and 7, the Fire Power Point presented to the City Council for the Fire Impact Fee conflicts with the Fire Impact Study in that it shows on slide 23, an Average Capital Cost per fire fighter of only $514,400 and shows $45,232,843 from residential impact fees and $9,813,157 from non-residential impact fees, for a total to be collected in impact fees of $55,560,400. The study showed $563,723 per fire fighter, not the $513,400.

substantial benefit of any subdivision residents, or even regions or areas of the City. Instead, the fire impact fees do not provide any service to the properties paying the fees that differs in any manner from other previously developed properties - - all get the same city-wide emergency response services.

Fire
Extraordinary Circumstances

3.53. The Extraordinary Circumstances relied upon in the Fire Study states as follows (Pages 8 and 9):

> In light of the recent updates to the Florida Impact Fee Act (F.S. 163.31801 Section 6) that provides for limitations on increasing impact fees, outside of extraordinary circumstances, the above tables demonstrate the fee levels that are recommended for adoption by the City. As these proposed fee levels exceed the standard statutory maximums the City has elected to proceed with the proposed fee implementation via the extraordinary circumstance provisions. **The extraordinary circumstances impacting the City include rapid population growth historically averaging 3.8% per year over the past five (5) years and projected material growth rate of 2.1% per year over the next 10 years**. This growth places pressure on the fire rescue department to expand in order maintain levels of service. **Additionally, recent large inflationary impacts to capital project construction costs have impacted the projected costs to build facilities to accommodate new growth**. For example, the Construction Materials Index has increased approximately 40%+ since 2019 which is greater than the total change over the prior 14 years. This index tracks the price changes of construction-related materials nationwide and demonstrates the extraordinary cost inflation being experienced by the City for materials only for projects (not even including the labor cost changes for project construction). **Additionally, the cost of fire trucks and related apparatus have increased in an extraordinary manner in the past five (5) to six (6) years**. Previously an aerial truck would cost the City approximately $1.0 million while the current cost estimates five (5) years later are now at approximately $2.0 million. The City has approved an updated Capital Improvement Plan ("CIP") that identifies major investments in new facilities that will be required to serve growth that will place significantly more demand on the City's services for fire rescue service and facilities. **Additionally, the impact on the community should the City not implement the fees at the fully calculated level should be considered as these**

> **would directly impact the existing residents and taxpayers.** Should no action be taken then the revenue shortfall that would need to be recovered from existing taxpayers to cover the same amount of planned future capital investment would be approximately $6.1 million by 2035 and if the fees are implemented using the standard statutory approach the revenue shortfall would be approximately $3.9 million. This significant growth and substantial capital needs along with the potential material impact to taxpayers justify having the fully calculated fees implemented for fire rescue services.

(Emphasis Supplied).

3.53.1. Below is a summary of the Extraordinary Circumstances above:

(a) A rapid population growth historically averaging 3.8% per year over the past five (5) years and projected material growth rate of 2.1% per year over the next ten (10) years.

(b) Recent large inflationary impacts to capital project construction costs have impacted the projected cost to build facilities to accommodate new growth in reliance upon a Capital Construction Materials Index.

(c) The cost of fire trucks and related apparatus have increased in an extraordinary manner in the past five (5) to six (6) years.

(d) The impact on the community, should the City not implement the fees at fully calculated level should be considered, as it would directly impact the existing residents and taxpayers.

(e) If the fees are implemented using the standard statutory approach, the revenue shortfall would be approximately $3.9 million.

3.54. None of these extraordinary circumstances cited comes close to legally constituting extraordinary circumstances. Further, there is no showing whatsoever as to the urgent needs for exceeding the phased in provisions of the Florida Impact Fee Act. A revenue shortfall of $3.9 million, due to lack of planning or proper budgeting by the City,

does not establish legally "extraordinary circumstances". Certainly, the impact on the community should the City not implement the fees cannot be any kind of extraordinary circumstances, that would be the norm in any case where no impact fee was adopted.

Fire Impact Fees Violate the Florida Impact Fee Act and Legal Precedent

3.55. The Fire Impact Fees violate the Florida Impact Fee Act and Legal Precedent by, without limitation, the following:

(a) They seek to recapture costs of all existing expenses plus future estimates in violation of *Dunedin* @ 320, by having the impact fees bear the burden of the cost of all 107 firefighters, not just the new firefighters, and includes the cost of the existing assets and not limited to cost of expansion.

(b) Places the whole burden of both reimbursement of prior expenses and future growth on new growth in violation of *Hollywood* @ 611, which limits the pro rata cost of reasonably anticipated capital expansion reasonably required by the development and does not allow for reimbursement of prior expenses and are not proportional or reasonably connected to the need for such capital facilities generated by new construction required under Section 163.31801(4)(f), Florida Statutes.

(c) Fails to provide for any special benefit to the payors because the fees also result in the same benefits for persons not required to pay the fee in violation of *Collier* @ 1017-1018.

(d) Adopted on a city-wide basis and not neighborhood or subdivision, including that the benefits accrue to each subdivision, as required by *Aberdeen* @ 134-135.

(e) Exceeded the phase-in limitations under Section 163.31801(6) by reliance on unlawful "extraordinary circumstances".

(f) Because the impact fees impose the full burden of all 107 firefighters capital costs, the fees are not proportional and reasonably connected to, or have a rational nexus with, the need for capital facilities generated by new construction in violation of Section 163.31801(4)(f), Florida Statutes, nor are they proportional and reasonably connected to, or rational nexus with, expenditures of funds and benefits accruing to the new construction as required pursuant to Section 163.31801(4)(g), Florida Statutes, and as required by the *City of Port Orange*, *Collier* and *Aberdeen*.

TRANSPORTATION IMPACT FEES

3.56. The June 2025 Transportation Study, in addition to the grounds set forth above, violates the Florida Impact Fee Act and Florida Precedent on the following grounds:

3.56.1. The transportation impact fees increased from $3,502 to $7,540, a 115% increase.

3.56.2. On page 3, under the section titled "Existing Conditions Evaluation (ECE)", states that Florida Statute prohibits local governments from charging a new development for existing transportation deficiencies and explains that the ECE is achieved by dividing the vehicle miles of travel (VMT) by the vehicle miles of capacity (VMC). A VMT / VMC ratio greater than 1.00 indicates there are system wide deficiencies. Table 3 shows a VMT to VMC ratio of .27 to .50 for roads which may be the City responsibility. Such confirms that current capacity substantially exceeds current need.

3.56.3. Table 3, page 12, of the June 2025 Transportation Study shows 2023 existing road capacity and future capacity based upon the proposed road work. The proposals have increases in capacity on most roads of over 48% up to 220% increase, when there is only a proposed 50% increase in population.

3.56.4. Table 3, page 12, of the June 2023 Transportation Study shows that the 2023 vehicle capacity, in fact, substantially **exceeds** the amount of vehicle travel on most roads by an average of approximately 70%. The Impact Fee Consultant in a presentation before the City Council confirmed this when he admitted on May 27, 2025 at a Public Hearing before the City Council that the roadways are not projected to be over capacity until 2050 and that only one (1) or two (2) roads would be over capacity within the next five (5) years.

3.56.5. Table 5, page 14, of the June 2025 Transportation Study shows 2050 Road Improvement twice from 2 lanes to 4 lanes; three times from 4 lanes to 6 lanes; once from 2 lanes to 4 lanes; and once from 6 lanes to 8 lanes.

3.56.6. Table 6, page 15, of the June 2025 Transportation Study establishes the existing capacity of roads to be improved and the future capacity. In Table 6, as modified below, we have added the Percentage Increases in the right column.

TABLE 6. 2050 ROAD CAPACITY INCREASE			
Road: (From & To Limits)	**Existing Capacity**	**Future Capacity**	**Percentage Increase**
Belle Terre Pkwy: E. Hampton Blvd. to Royal Palms Pkwy	32,940	48,690	48%
Belle Terre Pkwy: Parkview Dr (S) to Pine Lakes Pkwy	32,940	32,940	0%
Belle Terre Pkwy: Pine Lakes Pkwy to Cypress Point Pkwy	32,940	48,690	48%
Matanzas Woods Pkwy: US 1 to Bird of Paradise Dr	15,190	35,250	132%
Matanzas Woods Pkwy: Bird of Paradise Dr to I-95 SB	15,190	48,690	220%
Matanzas Woods Pkwy: I-95 SB to Old King Road Extension	15,190	32,940	117%
Palm Coast Pkwy: Cypress Point Pkwy to I-95 SB Ramps	54,100	64,200	18%
SR 100: Palm Coast City Limit to Bulldog Drive	30,700	47,700	55%
SR 100: Bulldog Drive to I-95	30,700	64,000	108%
SR 100: I-95 to Old Kings Rd	36,600	64,200	75%

Note: Percentage Increase column added.

3.56.7. Table 7, page 16, of the June 2025 Transportation Study, 2050 Vehicle Miles of Capacity Increase, identifies a vehicle mile capacity increase of 129,132 miles. The 2023 VMC is 531,406 from Table 3. Taking the total capacity of 660,538 divided by the existing capacity of 531,406 shows a 24% increase in capacity.

3.56.8. Combining the amount which the Current Capacity exceeds Vehicle Travel of approximately 70% with a 24% increase, would result in a minimum of 94% increased capacity. However, there is no analysis as to the capacity actually required by new growth, especially, in that they currently have substantial excess capacity. Instead of first determining the needed capacity, the Transportation Study simply took what additional lanes were desired, then determined what those additional lanes would increase capacity, and then charging an impact fees per use type in Appendix J, Updated Transportation Impact Fee Schedule. There was no basis for allocation of, or basis for, any specific-benefit to an area creating the demand. There is also no analysis as to which proposed road widenings are being caused by which areas of new development or how they will specially benefit just those areas.

3.56.9. The June 2025 Transportation Study does not substantiate a need for the increasing capacity on older roadways which is caused by growth in other areas of the City; especially no special benefit for any new home or business of the City over others.

3.56.10. Table 8, page 17, of the June 2025 Transportation Study shows road improvement costs total estimated of $101,519,873 and Table 10, page 20, shows the portion attributable to impact fees of $71,519,873. Therefore, the City is substantially over building capacity and placing 70% of the burden on the future

(approximately 1/3) residents. Table 1 of the June 2025 Transportation Study shows 2024 population of 106,193 and 2050 projected population of 157,883, which means the new population will equal 32.7% of the total population.

3.56.11. Nowhere does the June 2025 Transportation Study even use the term **"special-benefit"**. The study does address benefits, however, fails to use the term "special benefit" anywhere. Nowhere does the June 2025 Transportation Study use the term **"specific-need"**. The Study also does not identify which growth neighborhoods are creating the specific need. The Transportation Ordinance does not satisfy the dual rational nexus test as promulgated by State Law precedent. (*Aberdeen* @ 134, 135; and *Collier* @ 1017-1019).

3.56.12. The June 2025 Transportation Study, on page 20, identifies an Assignable Cost of $71,519,873 in Table 10[19], which appears to be the amount of Transportation Impact Fees. However, there does not appear to be any analysis as to how much is anticipated to be collected based on the fees by use, which is attached as Appendix J.

3.56.13. The June 2025 Transportation Study, on page 24, under the heading "Transportation Impact Fee Assessment Area", falsely states that new development in the City only pays the transportation impact fee applicable to the assessment area in which the new development is located and then states "multiple assessment areas are established" for transportation impact fees to reflect the differences, which states:

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[19] However, in the paragraph above Table 10 on page 20 it identifies an Assignable Cost of $101,519,873, which is not consistent with the Assignable Cost of $71,519,873 in Table 10. Also, Table 10 of the April 2025 Transportation Study shows Assignable Costs of $132,685,919, which is consistent with the Assignable Cost stated in the paragraph above in the April 2025 Study.

TRANSPORTATION IMPACT FEE ASSESSMENT AREA

> There are two kinds of geographic areas in transportation impact fee systems: assessment areas and benefit districts. Assessment areas are based on either a physical location, such as a downtown, or a type of development pattern, such as a traditional neighborhood development (TND) or vested platted residential lots.
>
> **New development within the City only pays the transportation impact fee rate applicable to the assessment area in which the new development is located**. A benefit district is a geographic location within which transportation impact fees collected are earmarked for expenditure as required by the "benefits" test of the dual rational nexus test.
>
> The establishment of different assessment areas is done in recognition that certain geographic locations or types of developments will result in shorter trips, more people walking and bicycling, and higher levels of internal capture; thus, minimizing impact to the external roadway network. **Multiple assessment areas are established for transportation impact fees to reflect differences dues to internal capture or external distribution of trips**.

(Emphasis Supplied). However, the language was blatantly false as to multiple assessment areas reflecting being established - - there are none. Then the City totally disregarded the language of the report above, the Transportation Ordinance adopted a single "assessment area" for the entire City instead of for the "assessment area in which the new development is located".

3.56.14. The Transportation Ordinance relied upon Appendices, which were based upon statewide or national data not localized data, including, without limitation, the following:

(i) Appendix B, entitled Florida's Generalized Service Volume Tables for 2023 utilized State data;

(ii) Appendix F, entitled Road Improvement Cost relies on FDOT Long Range Cost Estimates 2025 utilized State data;

(iii) Appendix G, entitled Trip Generation relies on a ITE Trip Generation Manual Eleventh Edition, which is not localized;

(iv) Appendix H, entitled Vehicle Travel Demand Per Land Use, which provides no source for data; and

(v) Appendix I, entitled National Household Travel Data utilizes 2022 national household travel data survey.

Additionally, the City failed to use: (i) local traffic data, which the City had from its 2023 Traffic Studies, including, without limitation, the City's bi-annual traffic studies of its own road and needs, with the last one being performed in 2023; (ii) the most recent localized data, including adding turn lanes on Whiteview, Citation Blvd. extension, Lake Avenue extension, Matanzas Woods Parkway extension, all of which are planned and approved, including their costs since 2024; (iii) the regional FDOT cost data; (iv) recent cost or road improvements readily available from local contractors; or (v) recent other costs actually incurred by the City. All of which is in violation of Section 163.31801(4)(a), Florida Statutes, which requires the use of most recent and localized data.

3.56.15 Nowhere does the Transportation Study, nor any materials or documentation of the City, establish how any road improvement or expansion, which can be located up to sixteen (16) miles from any property subject to the impact fees results in a benefit not shared by persons not required to pay the impact fees (aka a unique benefit to those paying the fees), nor do they establish that the needs are attributable to any subdivision or that any revenues are sufficiently earmarked for the substantial benefit of any subdivision residents, or even regions or areas of the City. (*Aberdeen* @ 135).

Transportation
Extraordinary Circumstances

3.57. The extraordinary circumstances relied upon in the Extraordinary Circumstances Study (see page 13), identified the extraordinary circumstances and stated as follows:

(1) The City of Palm Coast over the past 30 years has experienced extraordinary population growth that has exceeded the extraordinary population growth of the State of Florida;

(2) The City of Palm Coast is projected to continue experiencing extraordinary population growth by 2050 at a rate that will exceed the projected growth for the State of Florida;

(3) The overall cost per mile of improvements between the 2018 Transportation Impact Fees and the 2025 Transportation Impact Fees increased roughly 124% due to inflation;

(4) The Florida Department of Transportation (FDOT) Long Range Estimates for per mile construction cost of transportation facilities has increased by 123% between 2018 and 2024 due to inflation, which equates to roughly 20.5% per year, or 17.5% a year higher than historic annual inflation rates of roughly 3.0% used by FDOT;

(5) The National Highway Construction Cost Index (NHCCI) has increased by 80.4% between 2018 and 2024 due to inflation, which equates to roughly 13.4% per year, or almost 13% a year higher than national inflation rates between 2008 and 2018;

(6) The 2025 Transportation Impact Fee rate includes $30 million in reasonably anticipated funding to off-set the increase; even though the $30 million is not currently programmed for funding;

(7) The ITE Trip Generation Manual and the National Household Travel Survey have been updated between 2018 and 2025, resulting in increases in trip generation rates, vehicle trip lengths, and vehicle travel demand for a number of land uses and a subsequent increase in Transportation Impact Fees;

(8) The City of Palm Coast Transportation Impact Fee Technical Report dated June 2025 documents the need for road and

intersection improvements to accommodate future travel demand. The calculation for the Transportation Impact Fee update is based on the most recent and localized data as of 2025. Limiting increases in fees will impact the ability of the City to fund improvements to ensure new development mitigates its transportation impacts. The Technical Report and this Study serves as the basis for the findings of extraordinary circumstances in support of adoption of the Transportation Impact Fee at 100% of the calculated rates.

These types of issues do not constitute extraordinary circumstances under Florida Law and utilize national or state-wide data not even using FDOT regional data or local costs. Further, how can there be any extraordinary circumstances when there is currently no deficiency in capacity and that the City would not exceed capacity on all roads until 2050.

Transportation Ordinance Incorporated Wrong Reports

3.58. The third recital/whereas clause of the Transportation Ordinance referenced a Technical Report, dated June 2025, and a Extraordinary Circumstances Study, dated June 2025. However, the City in Section 29-32, on page 5 of the Transportation Ordinance incorporated the Impact Fee Technical Report Update, dated April 2025, and the Extraordinary Circumstances Study, dated May 2025, which have a different fee formula and include additional state roads, for which the City has no responsibility to maintain or improve. For example, the June 2025 Transportation Study shows on page 17 a total Estimated Improvement Cost of $101,519,873 versus the April 2025 Technical Report Update on page 17, which showed a total Road Improvement Cost of $157,685,919, a difference $56,166,046.

3.59. Therefore, the Transportation Ordinance also incorporated a 56 million dollar inflated impact fee formula from the April 2025 Report. For example, Tables 5, 6, 7 and 8 on pages 14-17 showed improvements on the April version for twelve (12) roads and only ten (10) roads on the June version; and Table 10 on page 20 of the April version

showed an increase in vehicle miles of capacity of 213,432 and only 129,132 in the June version.

3.60. Table 10 of the April version and the June version, both attached below as identified, showing substantial differences in road improvement costs, etc.

Transportation Technical Report, dated April 2025

TABLE 10. VEHICLE MILES OF CAPACITY RATE (VMCr)

Road Improvement Cost (RIC)	**$157,685,919**
Reasonably Anticipated Funding (AF)	$25,000,000
Attributable Road Improvement Cost (RICa)	**$132,685,919**
Existing Conditions Evaluation Factor (ECEf)	1.00
New Growth Evaluation Factor (NGEf)	**1.00**
Assignable Cost (AC)	$132,685,919
Increase in Vehicle Miles of Capacity (VMCi)	**213,432**
Vehicle Miles of Capacity Rate (VMCr)	$621.68

Source: 2050 Road Improvement Cost (Table 8). Existing Conditions Evaluation factor (Table 4). New Growth Evaluation factor (Table 5). Assignable Cost (Table 10). Vehicle Miles of Capacity increase (Table 7). The Vehicle Miles of Capacity Rate (VMCr) are calculated per Figure 5.

Transportation Technical Report, dated June 2025

TABLE 10. VEHICLE MILES OF CAPACITY RATE (VMCr)

Road Improvement Cost (RIC)	**$101,519,873**
Reasonably Anticipated Funding (AF)	$30,000,000
Attributable Road Improvement Cost (RICa)	**$71,519,873**
Existing Conditions Evaluation Factor (ECEf)	1.00
New Growth Evaluation Factor (NGEf)	**1.00**
Assignable Cost (AC)	$71,519,873
Increase in Vehicle Miles of Capacity (VMCi)	**129,132**
Vehicle Miles of Capacity Rate (VMCr)	$553.85

Source: 2050 Road Improvement Cost (Table 8). Existing Conditions Evaluation factor (Table 4). New Growth Evaluation factor (Table 9). Assignable Cost (Table 10). Vehicle Miles of Capacity increase (Table 7). The Vehicle Miles of Capacity Rate (VMCr) are calculated per Figure 5.

3.61. Paragraph 21 of the June 2025 Study states: "The 2025 update of the Transportation Impact Fee will transition from a flat rate per dwelling unit for each applicable residential use to a variable rate per 1,000 square feet".

3.62. On page 25 of the June 2025 Transportation Study it states: "the calculation for determining the impact fee is illustrated in figure 8. The Transportation Impact fee will be assessed based upon the square footage or unique unit of measure for each land use on the transportation impact fee schedule."

3.63. Therefore, the City has incorporated by reference an erroneous formula, including costs, for road widening which are not under the City's responsibility and cannot even be performed by the City.

Transportation Impact Fees Violate the Florida Impact Fee and Legal Precedent

3.64. The Transportation Impact Fees violate the Florida Impact Fee Act and Legal Precedent by, without limitation, the following:

(a) Places a 70% burden of future roadway expansion (with no new roads), which is not pro rata and in violation of *Hollywood* @ 611.

(b) The Impact fees are not proportional and reasonably connected to, or rational nexus with, either the need for capital facilities generated by new construction or expenditure of funds and benefits accruing to the new construction in violation of Section 163.31801(4)(f) and (g), Florida Statutes, it is not just and equitable to impose such burden for unneeded roadway on new growth, particularly in that there is no current shortage of road capacity and there is not an expected shortage, other than maybe one (1) or two (2) roads, until 2050.

(c) Fails to provide for any special-benefit to the fee payors in a manner not shared by those not paying the fee because the fee does not provide a unique benefit to those paying the fee in violation of *Collier* @ 1017-1018, and *Aberdeen* @ 134-135.

(d) Fails to identify the specific-need created for any road improvements based on neighborhood analysis or other appropriate constitutional assessment areas the impact fee revenues are not sufficiently earmarked for the substantial benefit of any subdivision residents, instead, provides benefit to all city-wide, in violation of *Aberdeen* @ 134-135.

(e) Adopted on a city-wide basis and not neighborhood or subdivision, including that the benefits accrue to each subdivision, as required by *Aberdeen* @ 134-135.[20]

[20] Despite their own Transportation Study acknowledging the need for multiple assessment areas. (See, paragraph 3.56.13).

(f) Relied on national, state and outdated data, in violation of *Santa Rosa* SFJ @ 8 and Section 163.31801(4)(a), Florida Statutes, which require utilizing the most recent and localized data.

(g) Exceeded the phase-in limitations under Section 163.31801(6) by reliance on unlawful "extraordinary circumstances", particularly since there is no admitted shortage of capacity and there is a documented substantial excess of capacity, at least for the next several years.

(h) Incorporated the wrong and erroneous Impact Fee Studies, thereby imposing an additional $56,166,046 in Transportation Impact Fees than the correct study.

PARKS AND RECREATION IMPACT FEES

3.65. The Parks Study, in addition to the grounds set forth above, violates the Florida Impact Fee Act and legal precedent on the following grounds:

3.65.1. The parks and recreation impact fees increased from $1,828 to $3,164, a 73% increase. (Impact Fee Study, Page 7).

3.65.2. Under the impact fee comparisons on page 7 of the Parks Study, it shows the proposed impact fees of $3,164 to be well over double the average and the highest of the eighteen (18) local governments cited.

3.65.3. Page 3 of the Parks Study states the City's adopted level of service is to maintain eight (8) acres of recreational space per 1,000 residents and three (3) acres of resource based parkland and five (5) acres of activity based parkland per 1,000 residents.

3.65.4. Page 3 of the Parks Study also provides that the City owns approximately 1,068 acres of recreational space; however, the City has a surplus of approximately 208 acres. Through 2035 the City is expected to only need an additional

sixteen (16) acres. However, the City does not propose to simply add 16 acres to meet its established level of service. Instead, the City proposes to provide recreational services at a cost, all the way to buildout, of $185,486,906 (Page 5) and spending $59,590,036 by 2035, with a Future Planned Investment through 2035 of $106,677,445.

3.65.5. The Parks Study, on page 3 (similar to the Fire Study), acknowledges three (3) different impact fee methods: (i) improvements-driven method utilizing specific set of planned capital improvements; (ii) buy-in approach utilizing the cost of exiting infrastructure; and (iii) standards-driven method utilizing theoretical costs. The City, as stated in the Parks Study, then proceeded to use a combination of improvements-driven method and buy-in method imposing impact fees for the cost of existing infrastructure and not limited to the cost of expansion as required under *Dunedin* @ 320.

3.65.5. In confirmation that the City used the "buy-in method" in the impact fees, the Parks Study, in its chart on page 5 (inserted below) entitled "Existing and Planned Future Investment Per Person", adds the estimated cost per person for Existing Investment of $450.12, plus Planned Future Investment of $805.80, for a total of $1,255.92. This total of existing investment and planned future investment of $1,255.92 was multiplied times 2.52 persons per dwelling unit on page 6 in the chart entitled "Calculation of Proposed Recreation Impact Fee", resulting in a total Impact Fee per dwelling unit of $3,164.92.

Existing and Planned Future Investment per Person [1]					
Description	Total Investment	Projected Buildout Population	Estimated Cost per Person	Projected 2035 Population	Estimated 2035 Investment
Existing Investment	$103,567,540	230,094	$450.12	132,387	$59,590,036
Planned Future Investment	185,486,906	230,094	805.80	132,387	106,677,445
Total	$289,054,446	230,094	$1,255.92	132,387	$166,267,481

3.65.6 Additionally, in the Exhibit "E-3", Parks Power Point, slides 30-32, the City has: (i) slide #30, Existing Investment In Recreation Assets stating a Cost per person of $450.12, with the estimated 2035 population of 132,387 = 59.6 million; and (ii) slide #31, Planned Future Investment In Recreation Assets, stating Cost per person of $968.74 with estimated 2035 population of 132,387 = 130.6 million. Both the Existing Investment and Planned Future Investment, per person, are added on the chart on the Parks Power Point on slide #32, which is set forth below, to determine the Total Cost to be Recovered Per Person - - which includes existing and future investments.

Calculation of Proposed Parks and Recreation Impact Fee

Description	Basis / Amount
Total Allocated Net Existing Investment in Recreation Facilities	$59,590,036
Total Allocated Net Planned Future Investment In Recreation Facilities	130,631,547
Total Allocated Net Existing and Planned Future Investment In Recreation Facilities	$190,221,585
Total Allocated Net Existing and Planned Future Investment In Recreation Facilities	$190,221,585
Projected 2035 Population	132,387
Total Cost to be Recovered Per Person	$1,436.86
Total Cost to be Recovered Per Person	$1,436.86
Average Persons per Residential Dwelling Unit	2.52
Fee Per Dwelling Unit	$3,620.89
Fee Per Dwelling Unit (Rounded)	**$3,620.00**

3.65.7. Therefore, the new dwelling units are not only paying for the new parks and recreational facilities that may be caused by growth, they are also paying for the existing parks. Such is not proportional to the need for <u>new capital facilities</u> and increased cost generated by the new residential construction, as required pursuant to Section 163.31801(4)(f), Florida Statutes, and *Dunedin* @ 320, or pro rata as required by

Hollywood @ 611. and because it includes recapturing of existing cost is not limited to meeting the cost of expansion as required in *Dunedin* @ 320, (See, Parks Fee Fund, Page 1).

3.65.8. The Parks Study shows available funds of $10,709,311, with fiscal year 2025 expenditures of only $5,107,673, therefore, there was no immediate need for substantial funds.

3.65.9. Nowhere does the Parks Study discuss which homes are creating the "specific-need" necessitating the addition of parks throughout the City.

3.65.10. Nowhere does the Parks Study identify specifically where the new parks are going to be located or how any of the new parks or improvements to existing parks are going to provide any special benefit to the new homes paying the fees in a manner not shared by those not paying the fee. (*Aberdeen* @ 135).

3.65.11. Nowhere does the Parks Study establish any "special-benefit" to any home or business paying the impact fee, nor do they establish how each property is generating the "specific-need" for the parks or improvements. Nowhere does the Parks Study establish that the persons paying the impact fees will obtain a unique benefit. (*Collier* @ 1019; citing *City of Port Orange*.)

3.65.12. Nowhere does the Parks Study establish any specific-need for any park being caused by any subdivision or area within the City.[21]

3.65.13. The City may have used documented cost data for existing projects and projects which were constructed in the past; however, such cost data was simply used to be added up to be part of cost imposed of existing projects, which are not

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[21] Other than the need for sixteen (16) additional acres, however, fail to identify where such acreage would be located or how such acreage would benefit any specific neighborhood or zone.

permissible, to be imposed upon new development. Nowhere does the Parks Study provide any cost data, much less localized or recent, for the future acquisition of 16 acres or even where the 16 acres would be located.

3.65.14. The Parks Study identified several areas where they will place neighborhood parks:, Indian Trails (future), Central Park, Matanzas Woods Neighborhood Park, Quail Hollow Neighborhood Park, Seminole Woods Neighborhood Park expansion (future per Table 5), and Pine Lakes Neighborhood Park (future per Table 5). Such neighborhood parks would potentially serve a specific neighborhood and may provide a unique benefit to that neighborhood; however, all costs are lumped into the Parks Impact Fee Study, and provide no correlation as to specific-benefit to any subdivision for the impact fees, which include existing investment plus projected future investment.

3.65.15. Nowhere does the Parks Study, nor any other City analysis or documentation establish how any park or improvement, which can be located up to eleven (11) miles from any property subject to the impact fees results in a benefit not shared by persons not required to pay the impact fees (aka a unique benefit to those paying the fees), nor do they establish that the needs are attributable to any subdivision or that any revenues are sufficiently earmarked for the substantial benefit of any subdivision residents, or even regions or areas of the City. (*Aberdeen* @ 134, 135).

Parks Impact Fee Power Point

3.66. Below are descriptions of the Parks and Recreational Facilities being funded by the Parks Impact Fee taken from the Power Point (Exhibit E-3 to Amended Complaint) used to present the Parks Impact Fee to the City Council.

Long Creek Nature Preserve Phase 3: $9,677,750

Waterfront Park Phase 2: $2,285,250 (expanding parking, pavilion)

Neighborhood Parks: $8,339,000 (3 parks)

Graham Swamp Trail Phase 2: $19,919,599

Conversion of Fire Station: $4,753,500 (history museum, arts venue, etc.)

Skate Park: $3,270,000

Southern Recreation Facility Phase 3: $6,652,181 (additional parking, remote restroom facilities and maintenance building)

Sports Complex: $19,115,000

Matanzas Woods Canoe/Kayak Launch: $1,147,000

Cultural Arts Facility: $6,145,000 (add covering over existing stage)

ITSC Expanded Parking and Additional Field Lighting: $2,853,000

Palm Coast YMCA: $3,180,000 (City contribution)
$90,669,923 (10 year plan)

3.67. With reference to the above parks, the Neighborhood Parks and Skate Park have no location, so there is no justifiable correlation to benefit any specific new home or area. There is also no justifiable correlation to any specific-need created by new development in certain areas of the City.

3.68. The Waterfront Park Phase 2 is simply an expansion of parking and pavilion, with no indication of increase in capacity and no allocation of proportional amount in the difference in demand as required pursuant to section 163.31801(14), Florida Statutes.

3.69. With respect to the three (3) neighborhood parks, if they are in fact Neighborhood Parks, they cannot possibly provide special benefit to any person burdened by the impact fees in another neighborhood. These are clearly "neighborhood" specific parks that do not specifically benefit other neighborhoods. There is no justification for how developments in other parts of the City could cause the specific need to justify impact fees for other areas.

3.70. With reference to the Southern Recreation Facility Phase 3, they are simply adding parking, remote restroom facilities and a maintenance building. No increased capacity and no explanation how it benefits those in the central or northern part of the City in a manner not shared by those not paying the fees.

3.71. With respect to the remainder, they are all general facilities for the benefit of the entire City with no nexus or no correlating special-benefit to any impacted property owner that pays the new fees in a manner not shared by those not paying the fees.

Parks
Extraordinary Circumstances

3.72. The extraordinary circumstances relied upon in the Parks Impact Fee Study (see pages 7 and 8) states as follows:

> In light of the recent updates to the Florida Impact Fee Act (F.S. 163.31801 Section 6) that provides for limitations on increasing impact fees, outside of extraordinary circumstances, the above tables demonstrate the fee levels that are recommended for adoption by the City. As these proposed fee levels exceed the standard statutory maximums the City has elected to proceed with the proposed fee implementation via the extraordinary circumstance provisions. **The extraordinary circumstances impacting the City include rapid population growth historically averaging 3.8% per year over the past five (5) years and projected material growth rate of 2.1% per year over the next 10 years**. This growth places pressure on the recreation department to expand in order maintain levels of service. Additionally, recent large inflationary impacts to capital project construction costs have impacted the projected costs to build facilities to accommodate new growth. For example, the Construction Materials Index has increased approximately 40% since 2019 which is greater than the total change over the prior 14 years. This index tracks the price changes of construction-related materials nationwide and demonstrates the extraordinary cost inflation being experienced by the City for materials only for projects (not even including the labor cost changes for project construction). The City has approved an updated Capital Improvement Plan ("CIP") that identifies major investments in new facilities that will be required to serve growth that will place significantly more demand on the City's services for recreation service and facilities. **Additionally, the impact on the community should the City not implement the fees at the fully calculated level should be considered as these**

> **would directly impact the existing residents and taxpayers**. Should no action be taken then the revenue shortfall that would need to be recovered from existing taxpayers to cover the same amount of planned future capital investment would be approximately $13.1 million by 2035 and if the fees are implemented using the standard statutory approach the revenue shortfall would be approximately $5.6 million. This significant growth and substantial capital needs along with the **potential material impact to taxpayers justify** having the fully calculated fees implemented for recreational services.

(Emphasis Supplied).

3.73. Below is a summary of the Extraordinary Circumstances above:

(a) Rapid population growth historically averaging 3.8% per year over the past five (5) years and projected material growth rate of 2.1% per year over the next ten (10) years.

(b) Recent large inflationary impacts to capital growth project construction cost have impacted the projected cost to build facilities to accommodate new growth, citing the construction materials index.

(c) The City's approved and updated capital improvement plan that identifies major investments in new facilities that will be required to serve growth that will place significantly more demand on the City's services for recreational services and facilities.

(d) The impact on the community should the City not implement the fees at the fully calculated level, shall be considered as these would directly impact the existing residents and taxpayers.

3.74. As noted above, these types of issues do not constitute extraordinary circumstances under Florida Law.

Parks Impact Fees Violate the Florida Impact Fee and Legal Precedent

3.75. The Parks Impact Fees violate the Florida Impact Fee Act and Legal Precedent by, without limitation, the following:

(a) The City has stated a claimed need of only 16 acres going forward to meet the adopted level of service and have a current surplus of 208 acres. Yet, have a planned future investment of $185,486,906 for a "need of 16 acres". There is no discussion or evidence of which Parks are reasonably required by new development, much less any pro rata allocation, in violation of *Dunedin* @ 320 and *Hollywood* @ 611, because there is no finding, discussion or evidence of any specific-need caused by development to incur a cost of $11,592,931.00 per acre for new Parks.

(b) The City has added the existing investment plus planned future investment to come up with a cost per person of both as the basis for the impact fee, which places the burden of both reimbursement of prior expenses and future growth on new growth in violation that impact fees cannot exceed the pro rata share of the reasonably anticipated costs of "capital expansion" reasonably required by the development of *Dunedin* @ 320 and *Hollywood* @ 611. Including the cost of existing investment in Parks and Recreation is not part of the cost of expansion and the report cannot be a lawful basis or impose impact fees. (Id.).

(c) Fails to provide for any special-benefit because the fees also result in benefits for persons not required to pay the fee in violation of *Collier* @ 1017-1018, because the fee is invalid if it does not provide a unique benefit to those paying the fee. There is no unique benefit finding, or even any mentioned, in the Parks Impact Fee Documents.

(d) The Impact Fees were adopted on a city-wide basis and not neighborhood or subdivision, including that the benefits must accrue to each subdivision, and the Parks Ordinance provides no mechanism for fee revenue being sufficiently earmarked for the substantial benefits of subdivision residents, all as required by *Aberdeen* @ 134-135, because there is no unique or special benefit finding made or even discussed, and there is no sufficient earmarking of fee revenues for the substantial benefit of subdivision residents.

(e) Fails to identify any specific-need for each subdivision or area that is causing the specific-need for each park as required by *Aberdeen* @ 134-135.

(f) The Parks Ordinance fails to sufficiently earmark for the substantial benefit of subdivision residents to offset needs attributable to that subdivision in violation of *Aberdeen* @ 134-135.

(g) Exceeded the phase-in limitations under Section 163.31801(6) by reliance on unlawful "extraordinary circumstances", particularly as the City has a current surplus of 208 acres above its adopted level of service and no timeline for exhaustion or utilization of such 208 surplus acres.

(h) The City simply took its wish list of desired parks and recreation areas, and the full cost thereof, and no evidence of how or which new development was causing such specific-need for parks and recreation areas and use the total cost as the basis for impact fees in violation of *Aberdeen* @ 134-135.

WHEREFORE, Plaintiffs request this court adjudicate and declare that the Ordinances are invalid, unconstitutional and illegal and have no force or effect under the Florida Impact Fee Act and state legal precedent, together with such supplemental or coercive relief as this court deems appropriate.

COUNT IV

INJUNCTIVE RELIEF FOR VIOLATION OF FLORIDA IMPACT FEE ACT AND FLORIDA CONSTITUTION

3.76. This is an action for temporary and permanent injunctive relief.

3.77. All Plaintiffs reallege and incorporate by reference the allegations contained in Part I, paragraphs 1 to 1.23, and paragraphs 3.1 through 3.75 above.

3.78. The increase in impact fees adopted, pursuant to the Ordinances, are illegal, unlawful and unenforceable as alleged in Count III above in that:

(a) All three (3) Ordinances are unlawful in violation of the Florida Impact Fee Act and the legal precedent related thereto, unconstitutional and unlawful.

(b) Plaintiffs, their respective members or businesses, will be forced to forfeit contracts previously entered into, resulting in financial loss, which cannot be recouped from the City, in whole or in part.

(c) Plaintiffs, their members or citizens will be forced to pay impact fees not contemplated for at the time of contracts for the purchase of land or construction and will or may incur losses that cannot be recouped.

(d) Plaintiffs or their members that are fee payors will be prevented from obtaining building permits if impact fees are unpaid on any building permit.

3.79. The injuries to the Plaintiffs are not adequately remedied by after-the-fact suits for damages; but said injuries are, without injunctive relief, irreparable because their business reputations will suffer a loss of business, which are not subject to measure by any accurate standard, being placed in an uncompetitive environment by being required to pay on average double the Fire Impact Fees and Parks Impact Fees than similar local governments, constitute a violation of Plaintiffs rights and even a refund of escrowed fees does not compensate for loss of interest on the money.

3.80. Plaintiffs further allege that the public interest will be negatively and adversely affected by the assessment and collection of the increased impact fees introduced by the Ordinances. Injunctive relief will prevent such public harm.

3.81. Under the provisions of Section 28(3)(a), Plaintiffs are entitled to prohibitory injunctive relief preventing the implementation of the Ordinances and the increased impact fees provided therein.

WHEREFORE, Plaintiffs request this Court adjudicate and declare as follows relief:

(a) Declare that the Ordinances are invalid, unconstitutional and illegal and have no force or effect under the Florida Impact Fee Act and state legal precedent, together with such supplemental or coercive relief as this court deems, and enjoin enforcement, both temporarily and permanently;

(b) Declare that the Plaintiffs will suffer irreparable harm;

(c) If the implementation of the Ordinances are not enjoined, then until final judgment in this action, require that the City retain impact fees paid according to the Ordinances into a separate interest-bearing account and suspend the payment of expenditure of any such funds until a final judicial determination of the validity of the Ordinances;

(d) Order the City to refund or reimburse any impact fees collected under the Ordinances; and

(e) Award such fees, costs and such other supplemental relief as may be appropriate.

DESIGNATION OF EMAIL ADDRESS PURSUANT TO RULE 2.516

DANIEL J. WEBSTER, P.A., in its capacity as attorney for the Associations, pursuant to Fla. R. Jud. Admin. 2.516 (effective September 1, 2012), hereby designates

the following email address for the purpose of service of all documents required to be served pursuant to said rule in this action:

PRIMARY: Service@websterpa.com

DATED this 25th day of November, 2025.

/s/ Daniel J. Webster

Daniel J. Webster, P.A.
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Daytona Beach, FL 32118
Fla. Bar No. 0382132
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Counsel for Plaintiffs

ATTACHMENTS:

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APPENDIX 1

LIST OF EXHIBITS

Exhibit No.	Document	Complaint Paragraph No.
Exhibit A-1	Fire Impact Fee Ordinance	1.14
Exhibit A-2	Parks Impact Fee Ordinance	1.14
Exhibit A-3	Transportation Impact Fee Ordinance	1.14
Exhibit B	Notice of Violation, dated August 27, 2025	2.13
Exhibit C	Federal Emergency Management Association, Florida Hurricane Milton (DR-4834-FL)	2.18
	FIRE	
Exhibit D-1	Fire Rescue Impact Fee Final Report, dated June 9, 2025	3.28(a)
Exhibit D-2	Power Point Presentation entitled "Fire Impact Fee"	3.28(a)
	PARKS	
Exhibit E-1	Parks & Recreation Impact Fee Final Report, dated June 9, 2025	3.28(b)
Exhibit E-2	Recreation Impact Fee Fund, dated May 21, 2025	3.28(b)
Exhibit E-3	Power Point Presentation entitled "Recreation Impact Fee"	3.28(b)
	TRANSPORTATION	
Exhibit F-1	City of Palm Coast Transportation Impact Fee Technical Report Update, dated June 2025	3.28(c)
Exhibit F-2	City of Palm Coast Extraordinary Circumstances Study, dated June 2025	3.28(c)
Exhibit F-3	City of Palm Coast Transportation Impact Fee Technical Report Update, dated April 2025	3.28(c)
Exhibit F-4	City of Palm Coast Extraordinary Circumstances Study, dated May 25, 2025	3.28(c)

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