

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

CASE No.: 2025-CA-000621
DIVISION: 49

FLAGLER COUNTY — PALM COAST
HOMEBUILDERS ASSOCIATION, 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.

_____ /

**DEFENDANT CITY OF PALM COAST'S MOTION TO DISMISS
PLAINTIFFS' COMPLAINT**

COMES NOW, Defendant, CITY OF PALM COAST, by and through the undersigned
counsel and pursuant to Rule 1.140, Florida Rules of Civil Procedure, respectfully moves to
dismiss Plaintiffs, FLAGLER COUNTY – PALM COAST HOMEBUILDERS ASSOCIATION,
INC., INTRACOASTAL CONSTRUCTION, LLC, INTEGRITY HOMES USA, LLC,
THOMAS CONSULTING AND CONSTRUCTION, LLC, 1621 BUILDING AND
REMODELING, LLC, FLORIDA GREEN BUILDING CONSTRUCTION, INC., and
WILLIAM R. BARRICK (collectively, the “Plaintiffs”), Complaint for failure to state a cause of

action for which relief may be granted, and in support thereof states as follows:

I. BACKGROUND

On October 1, 2025, Plaintiffs filed a four-count Complaint for Declaratory Judgment and Injunctive relief seeking to invalidate City of Palm Coast (the “City”) Ordinances 2025-10 (Fire Rescue Impact Fees), 2025-11 (Parks Impact Fees) and 2025-12 (Transportation Impact Fees) (collectively, the “Ordinances”) on the basis that they violate Section 28 of the recently enacted Chapter 2025-190, Laws of Florida (a/k/a Senate Bill 180)(hereinafter, “Section 28”), the Florida Impact Fee Act, Section 163.31801, Florida Statutes, and the Florida Constitution. The Complaint should be dismissed as Plaintiffs fail to plead causes of action for which relief may be granted.

II. FACTUAL ALLEGATIONS

Plaintiffs comprise the Flagler County–Palm Coast Homebuilders Association, five local construction companies, and a resident of the City of Palm Coast, Florida, all of whom purport to be subject to the increased impact fees enacted by the City. The three Ordinances challenged were adopted on July 1, 2025, to update the City’s one-time impact fees for new development. These Ordinances collectively raise the City’s impact fee rates for new residential and commercial construction to fund expanded fire, parks, and transportation infrastructure.

The Complaint alleges that the City’s adoption of the Ordinances violates Section 28 of Chapter 2025-190, Laws of Florida, which broadly prohibits certain local governments from adopting land development regulations that are “more restrictive or burdensome” than those in effect as of August 1, 2024, *Complaint* ¶ 2.20. According to Plaintiffs, the City’s enactment of the Ordinances, imposing increased impact fees, constitutes "more restrictive or burdensome" amendments to "land development regulations" and is therefore void under Section 28.

Complaint ¶ 2.21.

In addition, the Complaint alleges that the Ordinances fail to comply with the Florida Impact Fee Act, § 163.31801, Florida Statutes (the “Act”). Plaintiffs assert that the City’s expert impact fee studies did not rely on the most recent locally available data, that the new impact fees do not have the requisite dual rational nexus to the impacts of new development, that the city-wide application of the fees fails the "special benefit" test, and that the Ordinances improperly invoked "extraordinary circumstances" to exceed statutory caps on fee increases. *Complaint* ¶ 3.30. Based on these allegations, Plaintiffs seek declaratory judgment invalidating the Ordinances and injunctive relief preventing their enforcement.

III. ARGUMENT AND AUTHORITY

A motion to dismiss is designed to test the legal sufficiency of the complaint, not to determine factual issues, and the allegations of the complaint must be taken as true and all reasonable inferences therefrom construed in favor of the nonmoving party. *The Florida Bar v. Greene*, 926 So. 2d 1195, 1199 (Fla. 2006). When examining the sufficiency of a complaint, “the court must accept the facts alleged therein as true and all inferences that reasonably can be drawn from those facts must be drawn in favor of the pleader.” *Riggins v. Clifford R. Rhoades, P.A.*, 373 So. 3d 655, 659 (Fla. 6th DCA 2023) (citations omitted). While the court must “accept the facts alleged as true and make all reasonable inferences in favor of the pleader, ‘conclusory allegations are insufficient.’” *Stein v. BBX Capital Corp.*, 241 So. 3d 874 (Fla. 4th DCA 2018); *See also Poirier v. Villages Senior Hous. I OPCO, LLC*, 395 So. 3d 640 (Fla. 5th DCA 2024).

A motion to dismiss for failure to state a cause of action tests the legal sufficiency of the complaint and is not intended to determine issues of ultimate fact. *See, Thomas v. Trench Training Systems, LLC*, 377 So. 3d 198, 203 (Fla. 2d DCA 2023). When passing on a motion to

dismiss, the trial court is limited to considering the four corners of the complaint along with the attachments incorporated into the complaint. *Swerdlin v. Florida Mun. Ins. Tr.*, 162 So. 3d 96, 97 (Fla. 4th DCA 2014); *Landmark Funding, Inc on Behalf of Naples Syndications, LLC v. Chaluts*, 213 So. 3d 1078 (Fla. 2d DCA 2017).

A. Impact Fees are not “Land Development Regulations”

Counts I and II of Plaintiffs’ Complaint should be dismissed for failing to state a cause of action for declaratory or injunctive relief because the Ordinances enacted by the City do not constitute an amendment to its comprehensive plan or land development regulations under Section 28, Chapter 2025-190, Laws of Florida.

Plaintiffs' central claim in Counts I and II is that the impact fee increases adopted by the Ordinances are "more restrictive or burdensome ... land development regulations" under Section 18. *Complaint* ¶ 2.21, 2.27. The statute cited by Plaintiffs, § 163.3164(26), Fla. Stat., defines "land development regulations" as ordinances regulating "any aspect of development" and provides examples such as "zoning, rezoning, subdivision, building construction, or sign regulations or any other regulations controlling the development of land". The definition relied on by Plaintiffs clearly pertains to regulations that control the *physical use, form, and intensity* of development.

Impact fees, by contrast, are financial exactions governed by a separate, highly specific, and comprehensive statute: the Florida Impact Fee Act, § 163.31801. Impact Fees do not control *whether* or *how* land can be developed; they are a condition for the issuance of a building permit to fund the infrastructure necessitated by that development. The Florida Legislature explicitly authorized impact fees under § 163.31801(2), stating, “The Legislature further finds that impact fees are an extension of a local government’s home rule authority to provide certain

services within its jurisdiction,” as distinguished from a local government’s land use regulatory authority.

Florida courts have consistently held that impact fees, such as those set forth in the Ordinances, are not land use regulations. *Baywood Const., Inc. v. City of Cape Coral*, 507 So. 2d 768 (Fla. 2d DCA 1987) (“A valid impact fee ordinance enacted for the purpose of capital expansion is not a zoning ordinance, and the imposition of a fee for this purpose does not substantially restrict the use of one's property”) (emphasis added); *St. Johns Cnty. v. Ne. Florida Builders Ass'n, Inc.*, 583 So. 2d 635, 638 (Fla. 1991) (“The use of impact fees has become an accepted method of paying for public improvements that must be constructed to serve new growth”); *Galaxy Fireworks, Inc. v. City of Orlando*, 842 So. 2d 160 (Fla. 5th DCA 2003) (“[N]otice and hearing requirements are not usually ... required for impact fee ordinances which have the primary purpose of capital expansion rather than land use regulation”).

The Complaint fails to demonstrate that the Ordinances adopted more restrictive or burdensome land development regulations under Section 28, since impact fees are distinct from land development regulations. Because each of the Ordinances concerns impact fees, not land development regulations, they are outside the scope of Section 28. Therefore, Plaintiffs’ Complaint fails to state a cause of action for declaratory relief under Count I.

Count II is entirely derivative of Count I, seeking injunctive relief for the same alleged Section 28 violation rather than declaratory relief. Because Count I fails to state a cause of action for the reasons stated above, Count II must also fail.

B. Plaintiffs Fail to Plead Ultimate Facts Showing the Ordinances Violate the Florida Impact Fee Act

In Counts III and IV, Plaintiffs allege that the Ordinances violate the Florida Impact Fee Act, § 163.31801, Fla. Stat., and the Florida Constitution. These claims consist of conclusory

allegations that are directly contradicted by the detailed legislative findings embedded within the Ordinances themselves and are based on a fundamental misapplication of controlling legal precedent. Counts III and IV are legally insufficient and, accordingly, must be dismissed.

Plaintiffs rely heavily on § 163.31801(9), Fla. Stat., which places the burden of proof on the government in an impact fee challenge. This statutory provision shifts the burden of proof to the government at the evidentiary stages of litigation, such as summary judgment or trial. It does not, however, relieve Plaintiffs of their initial burden at the pleading stage to allege ultimate facts sufficient to state a cause of action upon which relief can be granted. See *Bd. of Cnty.*

Commissioners, Santa Rosa Cnty. v. Home Builders Ass'n of W. Florida, Inc., 325 So. 3d 981 (Fla. 1st DCA 2021) (noting that while “the government has the burden of proof in any challenge of an impact fee,” plaintiffs must still adequately plead their challenge) (emphasis added).

Plaintiffs' allegations in Count III and IV amount to a laundry list of purported statutory violations and critiques of the City's expert studies. *Complaint* ¶ 3.30. These are arguments and mere legal conclusions, not well-pleaded facts.

i. Failure to Allege Facts Regarding “Most Recent and Localized Data”

Plaintiffs allege that the City's impact fee studies violated § 163.31801(3)(a), which requires that “the calculation of the impact fee be based on the most recent and localized data.” *Complaint* ¶ 3.18. However, Plaintiffs fail to identify what data the City allegedly failed to use, what more recent or localized data exists, or how the use of such data would materially alter the impact fee calculations.

Plaintiffs' assert that the Ordinance's city-wide application of the impact fees violates the "special benefit" prong of the dual rational nexus test. *Complaint* ¶¶ 3.31-3.43. Plaintiffs' cite *Volusia Cnty. v. Aberdeen at Ormond Beach, L.P.*, 760 So. 2d 126 (Fla. 2000) and *Bd. of*

Cnty. Commissioners, Santa Rosa Cnty. v. Home Builders Ass'n of W. Florida, Inc., 325 So. 3d 981 (Fla. 1st DCA 2021) to argue that the City was required to create smaller, neighborhood-based benefit districts. This argument fundamentally misinterprets and misapplies Florida law by conflating all public services.

The cases Plaintiffs cite are distinguishable and inapplicable to the services at issue here. Both *Aberdeen* and *Santa Rosa* involved *school* impact fees. In *Aberdeen*, the Supreme Court of Florida held that a county-wide school impact fee was unconstitutional as applied to a mobile home park with restrictive covenants prohibiting children. The Court applied the “dual rational nexus” test adopted by the court in *St. Johns County v. Northeast Florida Builders Ass'n, Inc.*, 583 So. 2d 635 (Fla. 1991). Under the “needs” prong of the test, the court determined that because of the park's age restriction, “Aberdeen does not generate any students.” *Aberdeen* 760 So. 2d at 136. Again, the court stressed the uniqueness of the case: “[E]xempting deed-restricted adult communities cannot be equated to exempting households that do not have children.... [W]here there is no potential to generate students, there is no impact warranting the imposition of fees.” *Id.* at 137. The court also found that the county was unable to satisfy the “benefits” prong of the dual rational nexus test, “[b]ecause no children can live at Aberdeen, impact fees collected at Aberdeen will not be spent for Aberdeen's benefit, but for the benefit of children living in other developments.” *Id.* at 136. The court concluded, “Aberdeen neither contributes to the need for additional schools nor benefits from their construction. Accordingly, the imposition of impact fees as applied to Aberdeen does not satisfy the dual rational nexus test.” *Id.*

Likewise, Plaintiffs’ reliance on *Santa Rosa*, 325 So. 3d 981 (Fla. 1st DCA 2021), is misplaced because *Santa Rosa County* concerned school impact fees and the data used to

calculate those fees. The trial court in *Santa Rosa County* gave great weight to the testimony on an expert in the calculation of school impact fees, who “opined that the impact fees failed the dual rational nexus test because they did not account for the differences between the northern and southern parts of the county.” *Id.* at 985. The expert also “testified that fee payers would not receive a special benefit that would not be received by those who were not paying the fee,” and “questioned whether the report reflected the most recent and localized data and whether the calculations were accurate.” The First DCA reviewed the record and could not conclude that the trial court abused its discretion in granting injunctive relief. *Id.* In the instant case, by contrast, Plaintiffs make only the conclusory assertion that the City failed to use “the most recent and localized data” without alleging any ultimate facts showing what data was omitted, why it was required, or how its inclusion would have changed the outcome.

ii. Failure to Allege Facts Showing Lack of “Dual Rational Nexus”

Plaintiffs allege that the Ordinances fail the “dual rational nexus test,” which requires: (1) a reasonable connection between the need for additional capital facilities and the growth in population generated by new development; and (2) a reasonable connection between the expenditures of the funds collected and the benefits accruing to new development. *St. Johns Cnty. v. Ne. Fla. Builders Ass’n*, 583 So. 2d 635, 637 (Fla. 1991). See *Complaint* ¶¶ 3.19-3.21. However, Plaintiffs do not allege any ultimate facts demonstrating the absence of either rational nexus. They do not identify specific infrastructure needs that are unrelated to new development, specific expenditures that would not benefit new development, or any mismatch between projected growth and proposed capital improvements. Instead, Plaintiffs offer only the legal conclusion that the nexus is lacking.

The dual rational nexus test is met when the local government demonstrates “a reasonable connection,” not a perfect correlation, between new development and infrastructure needs, and between fee collections and benefits to new development. *Hollywood, Inc. v. Broward Cnty.*, 431 So. 2d 606, 609 (Fla. 4th DCA 1983). Plaintiffs have not alleged any facts showing that the City’s impact fees fail this reasonableness standard.

iii. Failure to Allege Facts Showing Lack of “Special Benefit”

Plaintiffs allege that the Ordinances fail to confer a “special benefit” on new development because the impact fees are imposed on a city-wide basis. Complaint ¶¶ 3.22-3.24. This allegation misunderstands the “special benefit” requirement and fails to plead ultimate facts supporting a claim.

Florida courts have held that impact fees “must confer a special benefit on feepayers in a manner not shared by those not paying the fee.” *Contractors & Builders Ass’n of Pinellas Cnty. v. City of Dunedin*, 329 So. 2d 314, 318 (Fla. 1976); *Santa Rosa County*, 325 So. 3d 981, 984 (Fla. 1st DCA 2021). The “special benefit” requirement means that impact fee revenues must be earmarked to provide infrastructure that benefits new development, not that each development must receive individualized, project-specific infrastructure improvements.

City-wide impact fees are permissible when they fund capital improvements throughout the city that benefit new development proportionally. See *Florida Attorney General Opinion 2013-25* (impact fees may be imposed county-wide or city-wide, provided funds are earmarked for infrastructure benefiting new development). Plaintiffs fail to allege any ultimate facts showing that the City’s impact fee revenues will not be used to provide fire, park, or transportation infrastructure benefiting new development. Further, Plaintiffs do not allege that

existing deficiencies will be funded by impact fees, or that new development will fail to receive proportional benefits from capital improvements funded by the fees.

Instead, Plaintiffs cite *Santa Rosa County* for the proposition that city-wide fees are per se invalid. This misreads the case. In *Santa Rosa County*, the court invalidated the school impact fees not because they were county-wide, but because the school district failed to justify a uniform fee rate across geographically distinct areas with materially different infrastructure needs and costs. *Santa Rosa County*, 325 So. 3d at 984. The court found that the school district “did not geographically identify new growth” and instead “generalized the fact that the county was growing” without analyzing whether fee payors in different areas would receive commensurate benefits. *Id.*

Here, Plaintiffs do not allege that Palm Coast has geographically distinct areas with materially different fire, park, or transportation infrastructure needs. They do not allege that new development in one area of the city will be charged fees to fund infrastructure exclusively benefiting development in another area. They simply assert, without factual support, that city-wide fees cannot satisfy the special benefit test—a legal conclusion insufficient to survive a motion to dismiss.

iv. Failure to Allege Facts Regarding “Extraordinary Circumstances”

Plaintiffs allege that the City improperly invoked “extraordinary circumstances” under § 163.31801(6)(g), Fla. Stat., to exceed statutory phase-in limitations for impact fee increases. *Complaint* ¶¶ 3.25-3.28. Section 163.31801(6)(g), Fla. Stat., permits a local government to exceed the 50% cap on impact fee increases if it completes a demonstrated-need study within 12 months before adoption, holds at least two public workshops, and obtains a two-thirds vote of the governing body.

Plaintiffs do not allege that the City failed to complete the required study, hold the required workshops, or obtain the required super-majority vote. Instead, they challenge the substantive conclusions of the City's extraordinary circumstances studies, arguing that the studies fail to "expressly demonstrate" extraordinary circumstances. *Complaint* ¶ 3.26. Without such factual allegations, Plaintiffs' challenge to the extraordinary circumstances finding is purely conclusory.

Counts III should be dismissed for failure to state a cause of action for declaratory or injunctive relief. Plaintiffs have failed to allege sufficient ultimate facts demonstrating that the Ordinances violate the Florida Impact Fee Act or Florida Constitution. While § 163.31801(9), Fla. Stat., places the burden of proof on the government in impact fee litigation, that burden applies only after Plaintiffs have successfully pleaded a cause of action. Plaintiffs cannot bypass the pleading requirements of Rule 1.110 by invoking a statutory burden-shifting provision that applies at trial. Accordingly, counts III and IV should be dismissed.

Count IV is entirely derivative of Count III, seeking injunctive relief for the same alleged violations of the Florida Impact Fee Act rather than declaratory relief. Because Plaintiffs failed to plead sufficient ultimate facts demonstrating any Impact Fee Act violation, Count IV necessarily fails.

IV. CONCLUSION

Plaintiffs' Complaint fails to state a claim upon which relief can be granted. Counts I and II rest on a fundamental mischaracterization of impact fees as "land development regulations" under Section 28, when in fact they are financial exactions governed exclusively by the Florida Impact Fee Act. Counts III and IV fail because Plaintiffs have not alleged sufficient ultimate facts demonstrating that the Ordinances violate the Florida Impact Fee Act or lack the requisite

dual rational nexus; instead, they offer only conclusory allegations and legal conclusions unsupported by factual pleading. Accordingly, dismissal is warranted.

WHEREFORE, Defendant, City of Palm Coast, respectfully requests this Court enter an order dismissing the Complaint and grant such other and further relief as the Court deems just and proper.

CERTIFICATE OF CONFERRAL

I certify that conferral is not required prior to filing this Motion under to Florida Rules of Civil Procedure Rule 1.202.

CERTIFICATE OF SERVICE

I certify that, in compliance with Fla. R. Gen. Prac. & Jud. Admin. 2.516, the foregoing document has been filed with the Florida Courts E-Filing Portal System on this 28th day of October, 2025. Accordingly, a copy of the foregoing is being served on this day to the attorneys or interested parties identified in the e-Portal Electronic Service List, including those listed below, via transmission of Notices of Electronic Filing generated by the e-Portal System.

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