IN THE SUPREME COURT OF THE
STATE OF FLORIDA

ST. JOHNS COUNTY, FLORIDA et al.,	:	
Appellants,	:	
vs.	:	CASE NO. 75,986
NORTHEAST FLORIDA BUILDERS ASSOCIATION, INC., etc.,et al.,	:	FIFTH DISTRICT COURT OF APPEAL NO. 89-861
Appellees.	:	

BRIEF OF AMICUS CURIAE

FLORIDA ASSOCIATION OF COUNTIES INC. IN SUPPORT OF APPELLANT, ST. JOHNS COUNTY, FLORIDA

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STATEMENT OF THE CASE AND FACTS

Amicus Curiae incorporates herein by reference the STATEMENT OF THE CASE AND FACTS contained in the Brief of Appellant, ST. JOHN'S COUNTY, FLORIDA.

Amicus, FLORIDA ASSOCIATION OF COUNTIES, INC., is a non-profit association which represents all sixty-seven counties in Florida. Its membership is comprised of all elected county commissioners throughout the State of Florida.

SUMMARY OF ARGUMENT

The Florida Constitution in 1968, Article VIII, Section 1, provided broad sweeping homerule powers for both charter and non-charter counties. Under this, a non-charter county may enact law (ordinance) that is not inconsistent with special acts or general law to meet local public needs. This provision is not a grant of taxing authority and any attempt by a county to levy a tax would be inconsistent with general law.

The same is not true of impact fees. No general law or constitutional provision restricts impact fees. Therefore, non-charter counties are free to adopt impact fee ordinances to meet their specific needs within the parameters set forth by case law.

This is exactly what St. Johns County has done. Arguments that it somehow violates the constitutional guarantee of a free public school system; that it must be statutorily authorized; that it is impermissible for a county to levy the fee for school purposes; and that it is an unlawful delegation of power fail to grasp the clear and simple meaning of local government homerule provided in Article VIII.

Accordingly, Amicus Curiae would argue:

1. Neither the Florida Constitution nor statutes restrict imposition of impact fees by ordinance to supplement school district capital improvements.

2. St. Johns County Ordinance 87-60 does not violate Article IX, Section 1, providing for a uniform system of free public schools.

3. St. Johns County Ordinance 87-60 is not inconsistent with general or special law.

4. St. Johns County Ordinance 87-60 imposes a valid regulatory fee and is not an impermissible tax.

I

DOES SECTION 1, ARTICLE IX, CONSTITUTION OF THE STATE OF FLORIDA, PREVENT ADOPTION OF AN ORDINANCE ASSESSING IMPACT FEES FOR SCHOOL PURPOSES?

For St. Johns County Ordinance 87-60 to be unconstitutional, it must specifically contravene or violate the constitutional restrictions or limitations placed upon the ordinance-making power of local governments. The District Court held that it violated Section 1, Article IX, Constitution of the State of Florida which, in pertinent part, provides: "Adequate provision shall be made by law for a uniform system of free public schools. . . ."

Although the District Court of Appeal found the Ordinance violates the constitutional mandate for a uniform system of free public schools and is invalid and unenforceable because it imposes a user fee, such a finding is unsupported by any constitutional interpretation. The constitutional proviso for free public schools does not mean the public will not be required to fund the school system or that those who use the schools should not contribute to the cost of education. The public school system is for the public good and is supported principally by ad valorem taxes, some of which are paid by users, some are paid by non-users, some are paid by individuals, some are paid by corporations, some are paid by non-residents. Many residents, by virtue of constitutional limitations, pay no ad valorem taxes at all.

Clearly the intent of this section is to prohibit the student or his parents from paying a direct fee, charge or other exaction, to attend public schools. This idea was discussed in Scavella v. School Board of Dade County, 363 So.2d 1095 (Fla. 1978). The educational impact fees levied by St. Johns County in no way make the system less free in a constitutional sense.

The collateral issue is whether impact fees are violative of any constitutional provision to use funds generated by a governmental entity other than the School Board. There is no specific limitation or restriction in the statutes or Constitution.

In Penn v. Pensacola-Escambia Governmental Ctr. Authority, 311 So.2d 07, 101 (Fla. 1975), the Florida Supreme Court held that even if city or county funds benefited the capital needs of the School Board, there would be no violation of Article IX of the Florida Constitution. The District Court also opined that the impact fee ordinance violated the uniform provision of Article IX since it did not apply to the entire county. Section 1, Article IX, requires a uniform system of free public schools not that each program be identical or that each tax or revenue source be the same. The Supreme Court addressed a similar question with respect to a special taxing district created to issue bonds in a growth area. See, State v. Board of Public Instruction of Pasco County, 176 So.2d 337 (Fla. 1965).

The St. Johns County Ordinance simply does not relate to or affect the system of public schools.

II

FOR ST. JOHNS COUNTY ORDINANCE 87-60 TO BE UNCONSTITUTIONAL, IT MUST BE INCONSISTENT WITH GENERAL OR SPECIAL LAW, ARTICLE VIII, SECTION 1(f)

Article VIII, Section 1(f), provides:

> "The Board of County Commissioners of a county not operating under a charter may enact, in a manner prescribed by general law, county ordinances not inconsistent with general or special law." [Emphasis added.]

The implementing section, 125.01(1), Florida Statutes (1987), provides the governing body of a county with homerule power, unless the legislature has preempted a particular subject by general or special law. Speer v. Olson, 367 So.2d 207, 210-211 (Florida 1979). There is no language in the Florida Constitution, statutes or case law to support the finding that public school regulations preempt local government in the planning and financing functions of public school facilities. The Florida Local Government Comprehensive Planning Act insures that public schools are included in local government planning. Florida Statute 163.3161(3) (1987). The Local Government Comprehensive Planning and Land Development Regulation Act provides express authority for the establishment, support and maintenance of administrative instruments and procedures to carry out the provisions

and purposes of this act. Florida Statute 163.3161(3) (1987). One of the purposes of this act is to ". . . facilitate the adequate and efficient provisions of . . . schools . . . ." In this ordinance, St. Johns County Board of County Commissioners has designated the County School Board as an "administrative instrument" to carry out the purposes of the ordinance and the act.

The concurrency requirement of the Local Government Comprehensive Planning and Land Development Regulation Act requires local governments to deny development if adequate public facilities and services are not available. Florida Statute 163.3202(2)(g) (1987). Rather than deny development approval in a rapidly growing county, which St. Johns County not only could have done but was legislatively required to do in the absence of adequate facilities, the county chose to condition approval on the payment of impact fees that would satisfy the need for facilities created by the new development. The scheme is not only not prohibited by general or special law but it is encouraged by Chapter 163. Subsection 163.3202(3) therein expressly provides:

> "This section shall be construed to encourage the use of innovative land use development regulations which include provisions such as . . . impact fees. . . ." [Emphasis supplied]

III

THE IMPACT FEE PROVIDED BY ST. JOHNS COUNTY ORDINANCE 87-60 IS NOT A FEE DISGUISED AS A TAX

The other constitutional challenge that could be made is that the St. Johns County impact fee is really a tax. Article VII, Section 9, Florida Constitution, provides no tax shall be levied by counties except in pursuance of law. If St. Johns County Ordinance 87-60 was a tax instead of a regulatory fee, it would clearly fail the constitutional test. However, impact fees have been upheld by the courts of this state if three requirements have been met: (1) the impact fee recognizes that new development will require a substantial increase in the capacity of capital facilities; (2) the impact fee formula allows for independent assessment and is not rigid or inflexible; and (3) the expenditure of the funds collected is localized in the problem area. Hollywood, Inc. v. Broward County, 431 So.2d 606 (Fla. 4th DCA 1983); Home Builders and Contractors Ass'n of Palm Beach County v. Board of County Commissioners of Palm Beach County, 446 So.2d 140, 145 (Fla. 4th DCA 1983). St. Johns County Ordinance 87-60 meets these requirements. The court in the Home Builders case cited the differences between regulatory fees and taxes by quoting from Juergensmeyer and Blake, Impact Fees: An Answer to Local Government's Capital Funding Dilemma, 9 Fla. State U. Law Review, 415, 440-441 (1981):

> "The appropriate frame work for determining whether an impact fee is a regulation or tax is one of public policy in which a number of factors should be weighed. The homerule powers granted local governments in Florida, the legislative mandate that local governments must plan comprehensively for future growth, and the additional broad powers given them to make those plans work effectively, indicate that property limited impact fees for educational or recreational purposes should be construed as regulations. Characterization as a regulation is particularly appropriate wherein an impact fee is used to complement other land use measures such as in lieu fees or dedications. If an impact fee is characterized as a regulation, its validity should then be determined by reference to the dual rational nexus police power standard.

The dual rational nexus standard of (1) the fee does not exceed the cost of the improvements and (2) the improvements benefit the development was not discussed by the District Court.

CONCLUSION

1. St. Johns County Impact Fee Ordinance 87-60 has no "impact" upon the constitutionally mandated uniform system of free public schools. The Ordinance only provides a supplemental method of financing needed capital improvements. It in no way constitutes a charge upon an individual student attending St. Johns County public schools.

2. The St. Johns County Ordinance is not inconsistent with any general or special law. Non-charter counties under the provisions of Article VIII may adopt any needed non-

inconsistent ordinance. In every respect, St. Johns County Ordinance 87-60 is properly adopted.

3. St. Johns County Ordinance 87-60 meets the court established tests for a valid enactment. Its dissimilarity is in the use of proceeds for school purposes, the opt-out provision and the geographic area covered. There is no expressed or implied prohibition against any of these provisions in the Florida Constitution.

4. The people of Florida in adopting the 1968 Constitution provided Florida's local government's expansive homerule powers. As growth in Florida has burgeoned, the Florida Legislature has imposed non-funded mandates upon local government. The foremost of these is concurrency. Simply stated, a local government must identify and commit to provide the capital improvements to meet a designated level of service or building permits may not issue. This has led counties, as a supplement, to fashion impact fees ordinances which have been universally upheld if basic, common sense, court imposed standards are met.

The scope of these ordinances has not been limited by legislative act.

St. Johns County recognized that growth clearly was not paying its own way. Infrastructure needs for the county and the school board had fallen behind available funding sources.

The school system needed an innovative, supplemental revenue source to meet capital needs which had become

critical not only because of constitutionally limited millage caps but because of strict growth management concurrency requirements mandated by Chapter 163, Florida Statutes.

Here, the Board of County Commissioners of St. Johns County in a carefully drawn, rational ordinance imposed a realistic fee on the impacts of new home construction.

Nowhere in the Constitution or laws of Florida or in the Ordinance itself does there appear any reason why the Ordinance is not valid.

The opponents help create the problem by responding to the demands for new housing. Yet, they choose to oppose rational means to solve the problem. Here, they clearly have mistaken this fair and innovative revenue measure for an unauthorized tax. The law does not support such a conclusion.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing BRIEF has been furnished to SIEMON, LARSEN and PURDY, Dearborn Station, 47 West Polk Street, Chicago, IL 60605-2030, Attorneys for ST. JOHNS COUNTY, FLORIDA; to MICHAEL P. McMAHON, ESQUIRE, of AKERMAN, SENTERFITT AND EIDSON, 255 South Orange Avenue, Orlando, Florida 32801, Attorneys for Appellees; to JOSEPH L. SHIELDS, ESQUIRE, FLORIDA SCHOOL BOARDS ASSOCIATION, INC., 203 South Monroe Street, Tallahassee, Florida 32301; and to SIDNEY H. McKENZIE, ESQUIRE, General Counsel, STATE OF FLORIDA DEPARTMENT OF EDUCATION, Capitol Building, Tallahassee, Florida 32301, by U.S. Mail, this 11 day of June, 1990.

William J. Roberts
ATTORNEY