IN THE SUPREME COURT OF THE

STATE OF FLORIDA

ST. JOHNS COUNTY, FLORIDA, a political subdivision of the State of Florida, and DANIEL CASTLE, as County Administrator of St. Johns County, Florida,

Defendants/Petitioners,

v.

NORTHEAST FLORIDA BUILDERS ASSOCIATION, INC., a Florida corporation, and LAWSON HOMES, INC., a Florida corporation,

Plaintiffs/Respondents.

_____/

SUPREME COURT CASE NO: 75,986

DISTRICT COURT CASE NO: 89-861

LOWER COURT CASE NO: 88-728-CA

APPEAL FROM THE FIFTH DISTRICT COURT OF APPEALS AND THE SEVENTH JUDICIAL CIRCUIT FOR ST. JOHNS COUNTY

REPLY BRIEF OF PETITIONERS

Charles L. Siemon
Michelle J. Zimet
SIEMON, LARSEN & PURDY
Dearborn Station
47 West Polk Street
Chicago, Illinois 60605-2030
(312) 939-7117

James G. Sisco
County Attorney for
St. Johns County
4020 Louis Speedway
St. Augustine, Florida 32084
(904) 824-8131

Attorneys for Petitioners

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INTRODUCTION

Petitioners ST. JOHNS COUNTY and DANIEL CASTLE, by and through their attorneys, submit this reply brief in response to Respondents' (Homebuilders') answer brief in regard to the validity of educational facilities impact fees and the authority of counties and school boards to participate in financing educational facilities.

III.
ARGUMENT

The St. Johns County Educational Facilities Impact Fee Ordinance (Ordinance 87-60) is presumed valid and the Homebuilders have failed to establish that the Ordinance violates Florida's constitutional guarantee of free public schools. The educational facilities impact fees imposed by the Ordinance are distinguishable from the fees imposed in every case that the Homebuilders cite in that educational facilities impact fees do not in any way affect the right of a resident student to attend public school. It is well established that indirect charges that do not directly control a resident student's right to attend free public schools, such as ad valorem taxes and mandatory dedication of school sites, do not violate the free schools guarantee. Neither does the educational facilities impact fee which is challenged in this case.

The Homebuilders also fail to establish that educational facilities impact fees in any way compromise the uniform system of public schools established by the Florida Constitution. None of the authority which the Homebuilders cite establishes that local governments are precluded from contributing to the funding of the uniform system. In fact, local government funds are expressly listed among the sources of school district funds in the Education Finance Code (Chap. 236, Fla. Stat.). The Homebuilders' argument on this point is in fact based on constitutional language long since repealed. Moreover, the Florida Growth Management Act (Part II, Chap. 163, Fla. Stat.) requires and encourages local provision for adequate public school facilities, among other types of public facilities.

In their zeal to invalidate the educational facilities impact fee, the

Homebuilders misconstrued the purpose and effect of the impact fee formula and the independent fee calculation method (set out in Section 7 of the Ordinance) and attempt to equate the impact fee with a user fee. The courts below erred in finding the fee to be arbitrary and unreasonable.

Finally, the Homebuilders present inapposite authority to reach the conclusion that the Ordinance unlawfully delegates power to the St. Johns County School Board. The Ordinance, in conjunction with its implementing document, the Guidelines and Procedures Manual, provides ample standards and guidelines to prevent the exercise of unbridled decisionmaking on the part of either the School Board or the County.

A.
THE EDUCATIONAL FACILITIES IMPACT FEE DOES NOT VIOLATE THE CONSTITUTIONAL GUARANTEE OF "FREE PUBLIC SCHOOLS"

The County and the Homebuilders are at fundamental odds over the meaning of "free schools." The parties agree that the policy behind the requirement is to "[a]dvance and maintain proper standards of enlightened citizenship," State v. Henderson, 188 So.2d 351 (Fla. 1939), and that free education benefits society as a whole. However, the Homebuilders interpret this policy to preclude the use of development exactions to ensure that adequate public facilities are available to serve as free public schools. The County emphatically disagrees.

1.
Taxation Is Not An Exclusive Funding Source For Public Schools

In the Homebuilders' view, educational facilities may be financed only through general taxation; therefore, parents and students are not required to pay any money for school facilities, except indirectly through taxation. (Answer Brief at 12-14). The Homebuilders express sympathy for the financial need of public schools in Florida, but disclaim that new growth and development can be held partially accountable for this. They claim that the exclusive answer to this need lies with "the Legislature, mandated by our Constitution to provide for that uniform system; with the voters who must approve most school bond issues; and with the willingness of school boards to set millage rates

at the appropriate levels, as our Constitution provides." (Answer Brief at 10. Citations omitted.)

The authority which the Homebuilders cite in their Answer Brief (at 10) does not establish taxes as the exclusive source of funding for the uniform system of free public schools. Article IX, Section 1, of the 1968 Florida Constitution (incorrectly cited in Homebuilders' Answer Brief, at 10, as section 4), merely requires the Legislature to make adequate provision for a uniform system of free public schools. The authority cited for the voter approval (§12 of Article VIII), is apparently from the Constitution of 1885 and has no relevance today. Finally, the citations to school board powers to determine school district funds (§230.23(10)(a), Fla. Stat.) and the rate for school district taxes (Art. IX, §4(b), Fla. Const. (1968), which is also incorrectly cited, at 10, as §1) do not preclude other sources of revenue. As the County's Initial Brief establishes (at 28-30), the Educational Facilities Act, Chap. 235, Fla. Stat. (1989), and the School Financing Code, Chap. 236, Fla. Stat. (1989), expressly provide for a varied system of public school funding which includes revenue sources other than taxes.[1]

The Homebuilders argue to this Court that two Florida cases stand for the proposition that funding of schools by the people utilizing them is prohibited, except

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[1] See, e.g., § 235.4235(1), Fla. Stat. (1989):

> Capital projects are to be financed in accordance with s. 9(a)(2), Art. XII of the State Constitution as amended [Public Educational Capital Outlay bonds secured by gross receipts taxes] or from other legally available state funds or grants, donations, or matching funds, or by a combination of such funds. (emphasis added).

See also § 236.24(1), Fla. Stat. (1989):

> The district school fund shall consist of funds derived from the district school tax levy; state appropriations; appropriations by county commissioners; local, state and federal food service funds; and any other sources for school purposes; national forest trust funds and other federal sources; and gifts and other sources. (emphasis added).

indirectly as taxpayers. (Answer Brief at 13). These cases do not establish any such policy, but are limited to their facts. Scavella v. School Bd. of Dade County, 363 So.2d 1095 (Fla. 1978), involved tuition payments to private schools for handicapped students, which were upheld. As the County has argued, the educational facilities impact fee in this case are not even the functional equivalent of tuition. (Initial Brief at 13-17). The issue in State v. Henderson, 188 So. 351 (Fla. 1939), was whether or not the ad valorem charges by the school district for school improvements were "special assessments" (excluded from the homestead exemption) or a tax in the same nature as the county school tax (not excluded from the homestead exemption). Henderson establishes that the homestead exemption could not be avoided by calling the tax an assessment; it does not establish that public schools are to be financed solely by the general citizenry through taxation, as the Homebuilders assert in their Answer Brief (at 14).

The cases which the Homebuilders cite (Answer Brief at 14-15) do not support their proposition. The Homebuilders cite State v. Henderson, 188 So. 351 (Fla. 1939), and two cases from other jurisdictions, Midtown Properties, Inc. v. Township of Madison, 172 A.2d 40 (N.J. Super. Ct. 1961); and Salazar v. Honig, 246 Cal. Rptr. 837 (Cal. App. 2d Dist. 1988). Again, the Henderson case stands for nothing more than reaffirmation that the homestead exemption is alive and well. Midtown Properties stands only for the narrow proposition that contract zoning is illegal in New Jersey. Salazar involved transportation (school bus) fees charged to non-indigent parents utilizing the California school district's transportation services. The court held that these charges violated California's constitutional free school guarantee. The fees in Salazar were direct user charges which controlled students' right to attend free schools and are not to be confused with school impact fees, which have been expressly upheld on numerous occasions by the California courts. See, e.g., McLain Western #1 v. County of San Diego, 146 Cal. App. 3d 772, 194 Cal. Rptr. 594 (4th Dist. 1983). In contrast, the educational facilities impact fee in this case does not in any way affect the right of resident students to attend free public schools.

The Homebuilders' sweeping statement that the only constitutional means

to finance new schools is through general taxation is unsupported by any law from this State or any other state. The County has provided ample law from the Florida School Code which clearly establishes a right to fund schools through a variety of sources.

2.

"Free Schools" Means Unconditional Access

The County submits that "free" means that resident students do not pay tuition or user fees as a condition precedent to the right to attend and fully utilize the County's uniform system of public education. Any conditions, except the residency requirement, are invalid. (Initial Brief at 12). However, the County respectfully re-emphasizes that school educational facilities impact fee do not constitute tuition or user fees, nor in any way abrogate the right of students in St. Johns County to attend public school. (Initial Brief at 17).

The Homebuilders make the hyperbolic claim that there is "absolute agreement among all jurisdictions that the state must provide the school house without charge" (Answer Brief at 16), citing authority from only six states (not including Florida)[2] which shows anything but "absolute agreement." These cases merely establish a point to which the parties already agree -- that students (or their parents) cannot be directly charged for school facilities or any other essential part of the uniform system as a condition to the students' right to attend public school. A student's right to attend "free" public schools is affected no more directly by the payment of educational facilities impact fees by a developer than it is by the payment of taxes for school facilities. If ad valorem property taxes do not violate the Constitution, then neither do educational facilities

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[2] Answer brief at 16, citing State ex rel. Roberts v. Wilson, 297 S.W. 419 (Mo. 1927)(invalidating fees to school board directors for personally arranging financing for new high school); Young v. Trustees of Fountain Inn Grade School, 41 S.E. 824 (S.C. 1902)(enjoining school board from charging fees to students for school expansion); Salazar v. Honig, 246 Cal. Rptr. 837 (Cal. App. 2d Dist. 1988)(invalidating transportation fees charged to non-indigent parents utilizing the school district's transportation); Board of Education v. Sinclair, 222 N.W.2d 143 (Wis. 1974)(invalidating fee charged to parents for physical facilities but upholding fees for book rental); cited in accord, Sneed v. Greensboro City Board of Education, 264 S.E.2d 106 (N.C. 1980)(upholding fees charged to students for supplementary course materials and supplies, and rental fees for music instruments and gym uniforms); and also in accord, Bond v. Public Schools of Ann Arbor School District, 178 N.W.2d 484 (Mich. 1970)(invalidating charge for books and school supplies are essential part of system).

impact fees because the payment of such taxes and fees has no affect on the right of resident students to attend free public schools.

3.
The Educational Facilities Impact Fee Is A Development Exaction, And Not A User Fee

The Homebuilders erroneously argue that the County cannot indirectly charge families in advance for the use of school facilities through educational facilities impact fees when it could not do so directly through user fees at the schoolhouse door. In the Homebuilders' view, the fact that the fees are charged before the student arrives at the schoolhouse door does not make them any less of a user fee or any less invalid. The important difference is that when stations are funded through educational facilities impact fees, there is no direct cost to the student. The station is "free" in the same sense that other stations paid for by general taxation are "free."

The Homebuilders mistakenly quote from Contractors and Builders Assoc. v. City of Dunedin, 329 So.2d 314 (Fla. 1976), to argue that educational facilities impact fee are user fees because they are borne by "new users." (Answer Brief at 11). The "users" that are referred to in Dunedin, however, are "land uses," not persons and particularly not students, and the fees are required only "to the extent [that the] new use requires new facilities." 329 So.2d at 321. Use of the sewer system in Dunedin was not the actual flush of a toilet by a homeowner, but rather the development of the land that created the need for additional sewer capacity. Educational facilities impact fees do not charge new users for actual use of public facilities, but charge new development for the cost of making additional public facilities capacity available.

The Homebuilders argue that this is semantics -- that educational facilities impact fees are not funding the construction of new school capacity so that schools will sit empty, and that the fee is for the use of the space. (Answer Brief at 18). The County admits that capacity is created so that students will use it. However, neither students nor their parents are directly charged for this use, except indirectly through taxes and (if in fact passed through to homebuyers) educational facilities impact fees. No resident

student's right to attend public school is controlled by whether he or she or his or her parents have paid educational facilities impact fees.

Contrary to the Homebuilders' argument, the individual assessment option in Section 7(B) of the Ordinance does not convert the fee to a "user fee" since actual use of schools by a particular occupant is irrelevant. Rather, the dwelling unit is the measure of capacity needs. Educational facilities impact fees, like taxes, fund the long-term, capital needs created by new development. It is not necessary that all occupants of a new development use the facilities at any particular time. Rather, it is the availability of adequate capacity to serve that is the hallmark of sound growth management. The fact that not all residents of a new subdivision will create a need for schools every day does not negate the need for a certain amount of capacity to serve the development.

The Homebuilders also mistakenly argue that a child in a new dwelling unit is precluded from the classroom because the child's family will have a larger mortgage payment. (Answer Brief at 12). The County respectfully disagrees. A child is not precluded from attending public school merely because his or her parents make mortgage payments. Even assuming that educational facilities impact fees are passed through to the home buyer, which may or may not be true in any particular case, the parents' mortgage payments do not affect the child's right to attend public school. If this were true, an increase in mortgage interest rates for a variable rate mortgage would also violate the Constitution. The higher mortgage payment may prevent the parents from purchasing a new home, but, as the Homebuilders acknowledge (Answer Brief at 18), the right to purchase a new home is not constitutionally guaranteed.

4.
Educational Facilities Impact Fees Are Valid Development Exactions

The educational facilities impact fee in this case is a valid development exaction because the Growth Management Act imposes an obligation on local governments to withhold development approval unless adequate public facilities (including schools) are available to serve the proposed development. (Initial Brief at 22-24). The Homebuilders answer that the State (not the County) is required to order remedial action to cure the inadequacy and, therefore, the exaction of money in lieu of a moratorium is invalid. (Answer Brief at 22-23). The Florida Home Builders Association, amicus curiae in this case, argues that the Act is meaningless because on their reading of Rule 9J-5 of the Florida Administrative Code, "educational facilities" are not included in the definition of "public facilities" in Rule 9J-5, Fla. Admin. Code, as they are in the "concurrency" requirements of the Growth Management Act. Therefore, "concurrency" does not apply to these facilities. (Brief of Amicus Curiae at 21).

In response, the County respectfully refers this Court to Section 163.3177(10)(g) of the Florida Statutes, which expressly denies the regulatory effect of any definitions established by Rule 9J-5 of the Florida Administrative Code.[3] The definition of "public facilities and services" in the Growth Management Act controls. §163.3164(23), Fla. Stat. In addition, Section 163.3177(10)(g) also authorizes local governments to establish alternative definitions in their comprehensive plans, as long as these accomplish the intent of the Growth Management Act and Rule 9J-5. St. Johns County has opted to include educational facilities within the ambit of public facilities that must be adequate in order for development to be approved. The St. Johns County

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[3] §163.3177(10)(g), Fla. Stat. (1989), provides that:

> Definitions contained in chapter 9J-5, F.A.C., are not intended to modify or amend the definitions utilized for purposes of other programs or rules or to establish or limit regulatory authority. Local governments may establish alternative definitions in local comprehensive plans, as long as such definitions accomplish the intent of this chapter and chapter 9J-5, F.A.C.

educational facilities impact fee is therefore a valid regulatory alternative to a development moratorium and is consistent with the constitutional "free schools" mandate.

Regarding the Homebuilders' argument that the State must order remedial action when schools are inadequate, the County replies that State remedial orders come too late. The concurrency requirement of the Growth Management Act, §§163.3177(10)(h) and 163.3202(2)(g), Fla. Stats. (1989), requires the County to stem the tide of reactive capital facilities planning and to deny development approval before the inadequacy occurs or is worsened.

B.

EDUCATIONAL FACILITIES IMPACT FEES DO NOT COMPROMISE THE "UNIFORM SYSTEM" OF FREE PUBLIC SCHOOLS

Much has changed since 1911, the date of Brown v. City of Lakeland, 54 So. 716 (Fla. 1911), the tax case from which the Homebuilders quote at length. (Answer Brief at 24-25). Most importantly, Florida has since enacted a new constitution, which deleted the provisions on which Lakeland and the Homebuilders' argument are based. Article IX, Section 4(b), of the 1968 Florida Constitution gives the school boards power to control and supervise all free public schools within their districts. As the commentary following Article IX, Section 6, of the Constitution notes, the new Constitution does not specify the sources of the State school fund, as did the 1885 Constitution.

The Homebuilders lead this Court on an arbitrary tour of selected sections of Chapters 235 and 236 of the Florida Code (Answer Brief at 25-31) only to return to the premise from which they started (Answer Brief at 32). After all of it, the premise still does not hold water. There is no formalized State policy of "leveling off" to which the Homebuilders can cite. (Answer Brief at 26, 31, citing no authority). Nor is Section 236.24, Florida Statutes, "purely definitional" as the Homebuilders contend. This section is entitled "sources of district school fund." The Homebuilders argue that the inclusion of "appropriations by county commissioners" in the list of sources is an anachronism from 1939 that no longer has any meaning. The County respectfully points out to this Honorable Court that Section 236.24 has been amended nine times since 1939. If the

Legislature clearly intended to exclude all local funding sources from the fund, it surely would have done so. The County respectfully contends that this Honorable Court is obligated to give effect to the plain language of the statute, no matter how much the Homebuilders would like to pretend that the language does not exist.

C.

THE COUNTY IS NOT PREEMPTED
FROM THE FIELD OF SCHOOL FINANCING

Nothing in the St. Johns County Ordinance in any way usurps the School Board's constitutional powers to operate, control, and supervise all free public schools. (See Art. IX., Sec. 4(b), Fla. Const.). The limited function of the St. Johns County Educational Facilities Impact Fee Ordinance is to implement the County's Comprehensive Plan and to fulfill the County's obligation under the Growth Management Act to ensure that adequate public school facilities are available to serve new development. See §163.3177(10)(h), Fla. Stat. (1989). The Homebuilders have failed to establish that school facilities funding is an area exclusively reserved to the State. Moreover, they attempt to mislead this Court with the sweeping generalization that "the appropriation or transfer of funds between governmental units is constitutionally prohibited."[4] To the contrary, Section 236.24(1), Fla. Stat., expressly provides for local contributions to school district funds. Therefore, contrary to the Homebuilders' assertion, there is no "danger of conflict" with the State's statutory scheme (Answer Brief at 32).

D.

THE ORDINANCE SATISFIES THE RATIONAL NEXUS TEST

The Homebuilders erroneously assert that educational facilities impact fees fail to meet the need prong of the rational nexus test because most new residences will have no impact on the County's public schools. (Answer Brief at 42). This is not what Dr. Nicholas' Impact Fee Methodology Report establishes. What the Report does establish

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[4] Answer Brief at 33, citing Okaloosa County Water and Sewer District v. Hilburn, 160 So.2d 43 (Fla. 1964); and Amos v. Mathews 126 So.2d 308 (Fla. 1930). These cases stand only for the proposition that funds may only be expended for the purposes for which they were raised. Transfer of funds was upheld in Okaloosa.

is that each residence requires a certain number of educational seats and that the number is less than one-half. (Initial Brief at 35). Each unit requires a pro rata share of capacity even though use will shift and change among the new houses as households move, children are born and children graduate from the public school system. It is irrelevant which dwellings have children in the school system at any particular time. It is enough that each dwelling unit needs a certain amount of capacity to maintain the adequate level of service. The individual assessment procedure exempts only those dwellings that are legally constrained so that children who will attend free public schools will never reside there. This proposition is why commercial uses are not assessed educational facilities impact fees. This proposition underlies the court's decision to refuse an exemption from school impact fees in McLain Western #1 v. County of San Diego, 146 Cal. App.3d 772, 194 Cal. Rptr. 594 (4th Dist. 1983), even though the luxury condominium units at issue would primarily house weekend tourists and retirees. Because the sales agreement did not prohibit the leasing of units or residence by families with children, the McLain court reasoned that the lower pupil yield factor for Pala Mesa's Phase II:

> does not make the County's assessment unreasonable in relation to the students Pala Mesa's Phase II may have generated * * * had residence been taken by families with children.

194 Cal. Rptr. at 597 (emphasis added). In other words, current occupancy is irrelevant to the validity of educational facility impact fees.

The Homebuilders posit that educational facilities impact fees are only appropriate for funding sanitary sewer expansions. (Answer Brief at 43). The Growth Management Act, however, does not direct local governments to provide only for facilities that are used on a predictable, daily basis. Given the unpredictability of birth rates and household mobility, Dr. Nicholas' Methodology Report provides a reasonable approximation of the school facility needs of new development and therefore satisfies the "need" prong of the rational nexus test.

The Homebuilders also mistakenly argue that the "benefit" prong of the rational nexus test is violated because of the windfall which the Ordinance allegedly

confers on new development in municipalities who have not opted into the fee program. The County respectfully reminds this Honorable Court of other cases in which the exclusion of municipalities from an impact fee was not a fatal defect. See, e.g., Home Builders and Contractors Ass'n of Palm Beach County v. Board of County Commissioners of Palm Beach County, 446 So.2d 140 (Fla. 4th DCA 1983). The public school children living in new dwelling units in the County still receive a substantial benefit from the payment of the fee, despite the incidental benefit to students residing in non-participating municipalities.

Finally, the Homebuilders argue that severance of the municipal exclusion cannot save the Ordinance (Answer Brief at 44-46), and that the key factor in determining whether a provision may be severed is legislative intent (Answer Brief at 44-45). It is evident from Section 6(A) of the Ordinance that the County intended to make municipal participation voluntary. The important question, however, is the intent of the Ordinance as a whole. The Homebuilders borrow language from State v. Lee, 356 So.2d 276 (Fla. 1978), regarding the "touchstone" of the severability test, but leave off a very important phrase (Answer Brief at 44-45). The complete quote states:

> The touchstone for severability under each of these formulations [the severability tests], however, is the "intent of the Legislature with respect to the enactment as a whole."

356 So.2d at 284 (dissent)(emphasis added). Extending the geographic applicability of the Ordinance to all parts of the County by severing the municipal exclusion in Section 6(A) would enhance, not defeat, the purpose of the Ordinance as a whole (as expressed in §3) which is to ensure that new development bears a proportionate share of the cost of capital expenditures necessary to provide public educational sites and facilities in St. Johns County.

The Homebuilders argue that the individualized assessment procedure provides an essential safeguard that cannot be severed without fatal effect to the remainder of the Ordinance. (Answer Brief at 46). The County agrees that the individual assessment procedure is intended as a safeguard to ensure that individual developments

are not charged more than their proportionate share of the cost of additional educational facilities. Other safeguards intended to serve the same purpose are found in Section 13,[5] Section 7(A)(5),[6] Section 7(A)(6),[7] Section 11,[8] Section 12 of the Ordinance,[9] and in the Guidelines and Procedures Manual. Given these safeguards, the County respectfully asserts that the severance of Section 7(B) alone is not fatal.

E.
THE ORDINANCE DOES NOT UNLAWFULLY DELEGATE LEGISLATIVE AUTHORITY TO THE SCHOOL BOARD

The Homebuilders' final attack against the County's Educational Facilities Impact Fee Ordinance is that it unlawfully delegates legislative functions of the Board of County Commissioners to the School Board. The specific delegated functions to which they object are: (1) the power to spend County funds, and, (2) the power to determine the amount of the impact fee in situations not covered by the Ordinance. (Answer Brief at 46-47). However, these are not legislative functions.

Legislative functions encompass the power to make law rather than authority as to its execution. Jones v. Dept. of Revenue, 523 So.2d 1211, 1214 (Fla 1st DCA 1988). Ordinance 87-60 does not allow the School Board to make law. The School Board is authorized to do nothing more than implement the County's directions to use

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[5] Section 13 of the Ordinance requires the County Commissioners and the School Board to review the fee schedules at least once every two years.

[6] Section 7(A)(5) provides for determination of the fee amount by the School Board if the type of development activity that is proposed is not specified on the fee schedule.

[7] Section 7(A)(6) provides for a special determination of the fee by the County Administrator for more minor types of development (change, modification, redevelopment of existing uses) based upon student generation statistics from the School Board.

[8] Section 11 of the Ordinance provides for refund of impact fees in the event that construction does not commence before the building permit expires or the fees are not encumbered within 6 years of payment.

[9] Section 12 of the Ordinance exempts certain types of development from payment of the impact fee (e.g., non-residential development, development that does not create new residential units). It also requires the County to give credits against impact fees for other exactions of educational facilities.

collected funds for the purposes specified in the Ordinance,[10] and determine the amount of the fee in situations not covered by the Ordinance pursuant to explicit standards and guidelines set forth in the Ordinance, the Guidelines and Procedures Manual and the Intergovernmental Agreement.

Unlike the licensing ordinance in Amara v. Town of Daytona Beach Shores, 181 So.2d 722 (Fla. 1st DCA 1966), which the Homebuilders cite in their Answer Brief (at 47), the Ordinance in this case does not leave the determination of individual applications to the "undirected or uncontrolled discretion" of the licensing authority. The invalid ordinance in Amara left the decision of whether or not a beach concessionaire should receive a license to private property owners who were required to give their written consent before the license could issue. Unlike the Amara ordinance and each of the other cases which the Homebuilders cite, the St. Johns Educational Facilities Impact Fee Ordinance and implementing Guidelines and Procedures Manual are not devoid of standards and guidelines.[11] The School Board is not free to spend collected funds on any project it wishes, but rather, is restricted to expenditure of funds only for educational facilities that are necessitated by new development. Funds may not be used to cure existing deficiencies, or for operating and maintenance expenses. The discretion of the School Board is not so limited, however, that it intrudes upon the constitutional powers of the School Board to operate, control and supervise public schools.[12] The County respectfully submits that the Ordinance in this case strikes a delicate balance in providing

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[10] Section 10(B) of the Ordinance expressly restricts the use of funds to "acquire, construct, expand and equip the educational sites and educational capital facilities necessitated by new development."

[11] Compare the case at hand to Apalachee Regional Planning Council v. Brown, 546 So.2d 451 (Fla. 1st DCA 1989), in which the court upheld the constitutionality of a Florida Administrative Code Rule that gave the Council the power to set and collect fees for development of regional impact (DRI) applications and review costs. The court explained that specificity of the standards and guidelines will depend on the subject matter of the regulation. The procedures in the case at hand closely resemble the review process at issue in Apalachee.

[12] It is ironic that the Homebuilders argue here that the County does not exert sufficient control over the School Board to constitute a valid delegation, and at that same time, that the County meddles too much in the School Board's affairs. (See the Homebuilders' preemption argument at 33 of their Answer Brief.)

standards to guide School Board actions without usurping the School Board's constitutionally-delegated powers to operate, control and supervise public schools.

IV.
CONCLUSION

The Homebuilders' arguments in answer to the County's Initial Brief have no support in the law. For the reasons set forth above, and for the reasons set forth in the County's Initial Brief, the County prays that this Honorable Court reverse the judgment of the appellate court and uphold the validity of the Ordinance.

Respectfully submitted,

Charles L. Siemon, Esq.

James G. Sisco
Florida Bar Number: 144133
County Attorney for
St. Johns County
4020 Louis Speedway
St. Augustine, Florida 32084
(904) 824-8131

Charles L. Siemon
Florida Bar Number: 194765
Michelle J. Zimet
Florida Bar Number: 782610
SIEMON, LARSEN & PURDY
47 West Polk Street
Chicago, Illinois 60605-2030
(312) 939-7117

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Reply Brief of Petitioners has been furnished by United States mail, postage pre-paid, to Michael P. McMahon, Akerman, Senterfitt & Eidson, Suite 1700, Firstate Tower, 255 S. Orange Avenue, P.O. Box 231, Orlando, Florida 32802-6610, this 30th day of July, 1990.

Michelle J. Zimet