IN THE SUPREME COURT
OF THE STATE OF FLORIDA

STATE OF FLORIDA,
et al.,

Appellants,

Case No. 83,103

-vs-

CITY OF PORT ORANGE,
FLORIDA

Appellee.
_____/

# AMENDED
# BRIEF OF AMICUS CURIAE
# THE FLORIDA BAR, by and through its Local Government Law Section

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## AMICUS CURIAE'S BRIEF

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**BRIEF OF AMICUS CURIAE**
**THE FLORIDA BAR, by and through its**
**Local Government Law Section**

## PRELIMINARY STATEMENT

In this case, Appellant (defendant below), the State of Florida, will be referred to as the "State." Appellee (plaintiff below), the City of Port Orange, a Florida Municipal Corporation, will be referred to as the "City." Amicus Curiae, The Florida Bar, by and through its Local Government Law Section, will be referred to alternatively as "Amicus Curiae" or "Amicus Curiae Bar." "Transportation Utility Fees" will be referred to as "TUF." References to the TUF ordinance adopted by the City of Port Orange will reference the State's Appendix as "(Appellant's App: ___)" given the fact that an exemplar of the ordinance is included in that appendix. References to the State's brief will be noted as "(Appellant's Br:___)."

## STATEMENT OF THE CASE

Amicus Curiae Bar adopts the Statement of the Case of the State, to the extent modified by the City, and with the following additional statement. In this case, which comes before the Court as a bond validation proceeding, Amicus Curiae Bar believes that there are three central issues. First, the Court is asked to rule on the bond validation proceeding. To do that the Court must determine the second issue, namely whether TUF's are legal. A third issue, is whether the Port Orange TUF is legally constituted.

Amicus Curiae Bar is appearing before the Court only to deal

with the second issue, that of the legality of TUF's, because the issue is one of first impression in Florida and of potential importance to Florida local governments. Amicus Curiae Bar enters no comment with regard to the composition of the Port Orange TUF or the bond validation questions that may be before the Court. Amicus Curiae Bar appears to present legal argument why it believes that TUF's are legal in Florida in an effort to assist the Court in its deliberations.

**FACTS**

Amicus Curiae Bar adopts the factual statement of the State to the extent modified by the City.

**SUMMARY OF THE ARGUMENT**

There is adequate authority for this Court to find the concept of a TUF to be legal based on the municipal home rule provisions of the Florida Constitution and Florida Statutes. There are two out of state opinions on this subject of relevance. The Colorado Supreme Court opinion is relevant because it deals with a transportation utility fee. The Idaho Supreme Court opinion is irrelevant, because it deals with a transportation utility tax. The case at bar involves a fee.

Additionally, there are other Florida statutes relating to municipalities and comprehensive planning which provide legal support for the TUF.

A "TUF" is clearly a fee, as opposed to a tax, and it must comply with the "dual rational nexus test." The "dual rational nexus test" has been applied in a number of impact fee cases, and

impact fees are analogous in many respects to a TUF.

## ARGUMENT

### I
### FLORIDA MUNICIPALITIES HAVE THE POWER THROUGH HOME RULE AND OTHER STATUTES TO ADOPT AND ENFORCE TRANSPORTATION UTILITY FEES

#### A
#### Municipal Home Rule

The trial court ascertained that the TUF was a valid user fee, not a tax. City of Port Orange v. State, Case No. 93-32203-CI-CI-32, slip op. at 27 (Fla. 7th Cir. Ct. Jan. 6, 1994). Amicus Curiae Bar would posit that to be legal, this exaction must be viewed as a fee, since only taxes authorized by general law may be collected.[1] Certainly, there is no authorization for a transportation utility tax.

The first basis of authority for the fee amicus curiae arises from the inherent home rule power of municipalities in this State. Article VIII, Section 2(b) of the 1968 Florida Constitution, states that:

> 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 powers for municipal purposes except as otherwise provided by law.

This provision was implemented by adoption of the Municipal Home Rule Powers Act. See Ch. 73-129, §1, Laws of Fla. That act implements the constitutional provision and states in pertinent part:

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[1] Art. VII, §§1 and 9, Fla. Const. of 1968; City of Tampa v. Birdsong Motors, 261 So.2d 1 (Fla. 1972).

**166.021 Powers.---**

(1) As provided in s. 2(b), Art. VIII of the State Constitution, municipalities shall have the 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 when expressly prohibited by law.

(2) "Municipal purpose" means any activity or power which may be exercised by the state or its political subdivisions.

(3) The Legislature recognizes that pursuant to the grant of power set for in s. 2(b), Art. VIII of the State Constitution, the legislative body of each municipality has the power to enact legislation concerning any subject matter upon which the state Legislature may act, except:

(a) The subjects of annexation, merger, and exercise of extraterritorial power, which require general or special law pursuant to s. 2(c), Art. VIII of the State Constitution;

(b) Any subject expressly prohibited by the constitution;

(c) Any subject expressly preempted to state or county government by the constitution or by general law; and

(d) Any subject preempted to a county pursuant to a county charter adopted under the authority of ss. 1(g), 3, and 6(3), Art. VIII of the State Constitution.

(4) The provisions of this section shall be so construed as to secure for municipalities the broad exercise of home rule powers granted by the constitution. It is the further intent of the Legislature to extend to municipalities the exercise of powers for municipal governmental, corporate, or proprietary purposes not expressly prohibited by the constitution, general or special law, or county charter and to remove any limitations, judicially imposed or otherwise, on the exercise of home rule powers other than those so expressly prohibited. However, nothing in this act shall be construed to permit any changes in a special law or municipal charter which affect the exercise of extraterritorial powers or which affect an

> area which includes lands within and without a municipality or any changes in a special law or municipal charter which affect the creation or existence of a municipality, the terms of elected officers and the manner of their election, the distribution of powers among elected officials, matters prescribed by the charter relating to appointive boards, any change in the form of government, or any rights of municipal employees, without approval by referendum of the electors as provided in s. 1660.31. Any other limitation o power upon any municipality contained in any municipal charter enacted or adopted prior to July 1, 1973, is hereby nullified and repealed. ...

(emphasis supplied).

The Municipal Home Rule Powers Act provides that municipalities shall have all powers for municipal purposes "not expressly prohibited by the constitution, general or special law, or county charter." §166.021(4), Fla. Stat. (1993). To analyze the TUF against this provision two issues must be resolved. First, it must be determined whether the TUF is an action undertaken for a valid municipal purpose. Second, one must analyze whether the action is expressly prohibited by the constitution, general or special law, or a county charter.

With regard to the first issue, Section 166.041(2) clearly states that "any activity or power which may be exercised by the state or its political subdivisions" constitutes a "municipal purpose." The broadness of the language may be observed based on interpretations of analogous county home rule powers judicial interpretations. The Court was asked in State v. Broward County, 126 So. 353, 355 (Fla. 1930), to ascertain what a valid "county purpose" was. The Court noted that the issue may be expressly or impliedly determined by the County's governing body

in a county ordinance. In essence, a court will not go behind a local government's legislative determination, unless the proposal has no practical relationship to a valid county purpose. Cable-Vision, Inc. v. Freeman, 324 So.2d 149, 154 (Fla. 3rd DCA 1975), appeal dismissed, 429 U.S. 1032 (1976).

However, even if the "municipal purpose" language is viewed as being restrictive, a TUF, as a component of a transportation utility, is clearly an activity constituting a valid municipal purpose. This is because keeping local streets in a safe condition has been found to be a valid purpose and duty of local government. Trumpe v. City of Coral Springs, 326 So.2d 193 (Fla. 4th DCA 1976). With regard to the second question, regarding whether a TUF is expressly prohibited by the Constitution, general or special law, or a county charter, Amicus Curiae Bar is unable to find anything that would expressly preclude or prohibit the fee.

Clearly, Article VIII, Section 2(b) of the 1968 Florida Constitution, when read in pari materia with Section 166.021 indicates that municipalities do not need additional authorization from the Legislature to act on a particular subject. So long as the action has not been prohibited by the Legislature, or the subject matter preempted by the Legislature, a municipality is free to act. See Boca Raton v. State, 595 So.2d 25 (Fla. 1992); State v. City of Sunrise, 354 So.2d 1206 (Fla. 1978).

Impact fees relating to the improvement of local roads,

which are analogous to TUF's, have been validated by Florida courts when those fees have been adopted based purely on the home rule powers delegated to local governments under the Florida Constitution and state statutes.[2] For example, a road impact fee was validated under home rule powers concepts in Home Builders v. Board of County Commissioners of Palm Beach County, 446 So.2d 140 (Fla. 4th DCA 1983), and City of Ormond Beach v. County of Volusia, 535 So.2d 302 (Fla. 5th DCA 1988).

Amicus Curiae Bar's research has revealed only two appellate decisions on TUF's, and both cases are cited in the State's brief and in the trial court's opinion. Those cases are Bloom v. City of Fort Collins, 784 P.2d 304 (Colo. 1990), wherein the Colorado Supreme Court approved TUF's, and Brewster v. City of Pocatello, 768 P.2d 765 (1988), wherein the Idaho Supreme Court disapproved TUF's.

The Colorado Supreme Court in Bloom noted that the lower Colorado court had determined the Fort Collins exaction to be a tax, and that it was unconstitutional, because it did not conform to the requirements of Article X, Section 3 of the Colorado Constitution. Bloom, at 305. Article X, Section 3 sets up standards for the manner in which property shall be taxed. The Colorado Supreme Court reversed and found that the exaction was a fee. Id.

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[2] The home rule powers of counties, including non-charter counties, is highly analogous to the home rule powers of municipalities under the Constitution and the Municipal Home Rule Powers Act. See Art. VIII, §1(f), Fla. Const.; §125.01(1)(w), Fla. Stat.; and Speer v. Olson, 367 So.2d 207 (Fla. 1979).

Respectfully, Amicus Curiae Bar must disagree with the interpretation that the State has cast with regard to the Bloom case and the home rule powers of the Colorado Constitution. The State asserts that the Colorado Supreme Court's opinion did not discuss that state's constitutional provisions permitting or restricting Fort Collins' right to impose taxes on citizens of that city.

> Had there been such a discussion, the trial court below would have seen immediately a weakness in the [Colorado Supreme Court] majority's position. Colorado does have home rule powers in its Constitution, though it is limited to cities with populations over 200,000. Article XX, Section 6, Colorado Constitution. However, the taxing power of the cities are not in Article XX but are in Article X, Colorado Constitution. Specifically, Section 7 of Article X, Colorado Constitution, limits the taxing power of municipal governments in Colorado to those taxes vested in the municipalities by the general assembly.

(Appellant's Br: 38).

The reason that the Colorado Supreme Court did not discuss that state's constitutional provisions permitting or restricting Fort Collins' right to impose taxes is because the Supreme Court specifically disagreed with that state's lower court as to whether the transportation utility exaction was a fee or tax. The Colorado Supreme Court found it to be a fee. Bloom, at 305. As a result, it should be obvious why the Supreme Court did not in its opinion discuss Colorado Constitutional provisions regarding taxes.

The State has argued that home rule provisions in Colorado are only applicable to cities of over 200,000 (Appelant's Br: 38). However, Amicus Curiae Bar's research reveals that this

figure is a typographical error. Article XX, Section 6, Colorado Constitution, states that cities or towns with over 2,000 inhabitants may adopt a charter and that upon doing so, they shall become a home rule municipality. In fact, the Bloom court even pointed out that Fort Collins was a home rule city under Article XX. See Bloom, at 305.

This is highly significant, because it is exactly the situation that this Court has at bar, namely a fee adopted by a municipality based upon its home rule powers. As a result, the Bloom opinion should be viewed as highly persuasive.

Further, the home rule powers that the Colorado Constitution delegated to Fort Collins are very similar to the powers delegated by Article VIII, Section 2(b) of the 1968 Florida Constitution, and Section 166.021(4), Florida Statutes. The Colorado Constitution states in pertinent part:

> ... such city or town, and the citizens thereof, shall have the powers set out in sections 1, 4 and 5 of this article, and all other powers necessary, requisite or proper for the government and administration of its local and municipal matters,....
>
> * * *
>
> It is the intention of this article to grant and confirm to the people of all municipalities coming within its provisions the full right of self-government in both local and municipal matters and the enumeration herein of certain powers shall not be construed to deny such cities and towns, and to the people thereof, any right or power essential or proper to the full exercise of such right.
>
> * * *
>
> This article shall be in all respects

self-executing.

Art. XX, §6, Colo. Const.

Amicus Curiae Bar respectfully suggests to this Court that given the similarity of Florida and Colorado home rule concepts, the Bloom decision is an excellent road map to a correct decision as to the legality of TUF's. The State points to the Idaho Supreme Court's position in Brewster as being the correct rule of law (Appellant's Br: 40-41).

The problem with arguing Brewster in the context of comparing Idaho and Florida constitutional and statutory powers to collect a transportation utility exaction is that Brewster is, unlike Bloom, a case involving a tax not a fee. The Idaho Supreme Court found the City of Pocatello's exaction to be a tax. In Bloom, the exaction was found to be a fee. Thus, the Idaho court's discussion about authority to collect the exaction is irrelevant, because neither Amicus Curiae Bar or the City have ever contended that a TUF is other than a fee.

**B**
**There is Authority in Addition to the Municipal Home Rule Powers Act**

The trial court in its final judgment ascertained that additional authority for the fee was premised on Section 166.201, Florida Statutes, which states:

> A municipality may raise, by taxation and licenses authorized by the constitution or general law, or by user charges or fees authorized by ordinance, amounts of money which are necessary for the conduct of municipal government and may enforce their receipt and collection in the manner prescribed by ordinance not inconsistent with law.

(emphasis supplied). Amicus Curiae Bar would support the position taken by the trial court. Taxes must be authorized by general law adopted by the Legislature, but fees necessary for the conduct of municipal government need only be authorized by ordinance.

In the case at bar, Amicus Curiae Bar notes that Port Orange has adopted just such an ordinance. Ord. No. 1992-11, City of Port Orange (Appellant's App: Tab 1). Although Amicus Curiae Bar does not intend to argue the legality of the Port Orange ordinance, that ordinance provides an example of how a transportation utility program, including a TUF, might legally be implemented in Florida, and there are certain provisions that deserve examination. For example, the purpose of the Port Orange TUF ordinance is as follows:

> **Sec. 20-124. Creation of a transportation utility.**
>
> Pursuant to the home rule power of Article VIII, Section 2(b), Florida Constitution, and Chapter 166, Florida Statutes, and the powers granted in the Charter of the City of Port Orange, the Council of said City does hereby establish a transportation utility and declare its intention to charge a transportation utility fee to defray local road costs. The fees collected shall be dedicated to the operation, maintenance, and improvement of City roads, including, without limitation, construction, reconstruction, resurfacing, patching, chip sealing, crack sealing, landscaping, and lighting of City roads and related facilities.

Ord. No. 1992-11, §2, City of Port Orange (Appellant's App: Tab 1) (emphasis supplied).

Amicus Curiae Bar would note that the purpose of a typical transportation utility program would include the retrofit of

existing roadways, the improvement of which is not reasonably related to new private development projects.[3] In some cases the retrofit of existing roadways could involve new construction, such as roadway widening to increase the capacity of the roadway.

When a transportation utility program is viewed as providing for the retrofit of existing roadways, and the program is considered in light of the Local Government Comprehensive Planning and Land Development Regulation Act,[4] which requires local governments to have an adequate road system, one realizes that the transportation utility program is merely a logical ancillary of growth management intended to implement comprehensive planning and growth management in Florida. In fact, the Port Orange TUF ordinance is predicated in part on this notion.

> The Local Government Comprehensive Planning and [sic] Development Regulation Act, Section 163.3177, Florida Statutes, imposes on local governments a duty to maintain adequate roads. Pursuant to this Act, the City in its comprehensive plan has established a goal of providing a safe, convenient, cost-effective and efficient transportation system. Objectives of the plan include maintaining all roads with in the City at level-of-service D or better and paving all unpaved roads.

Ord. No. 1992-11, §1, City of Port Orange (Appellant's App: Tab 1).

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[3] This could include widening of a roadway developed years ago and long since overburdened by traffic. In such a case where the funding is not reasonably related to new developments causing the increase in traffic, impact fees would be legally inappropriate to use. Home Builders v. Board of County Commissioners of Palm Beach County, 446 So.2d 140 (Fla. 4th DCA 1983).

[4] Part II, Chap. 163, Fla. Stat.

Provisions in Part II, Chapter 163, Florida Statutes, support a determination that a transportation utility and a TUF are legal. One of the expressed purposes of the Local Government Comprehensive Planning and Land Development Regulation Act is to "facilitate the adequate and efficient provision of transportation, ...." §163.3161(3), Fla. Stat.

Further, Section 163.3177(6)(b), Florida Statutes (1993), requires that a local government's comprehensive plan must include a traffic circulation element which sets forth "the types, locations, and extent of existing and proposed future major thoroughfares and transportation routes, including bicycle and pedestrian ways."

Rule 9J-5.007, Florida Administrative Code,[5] which implements Section 163.3177(6)(b), further states that the traffic circulation element of a local government comprehensive plan must show the location of roadways, present and future,[6] and must even show how many traffic lanes the roadways are to have.[7]

Thus, by law Port Orange and every other Florida local government must plan roadway construction ad maintenance, whether of new roads or reconstruction, including widening, of old roads.

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[5] Chapter 9J-5, Florida Administrative Code, contains the provisions detailing the minimum criteria and contents of a local government's comprehensive plan. Rule 9J-5.001, FAC. The Legislature has reviewed and approved Chapter 9J-5, Florida Administrative Code. §163.3177(10), Fla. Stat.

[6] Rule 9J-5.007(4)(a), FAC.

[7] Rule 9J-5.007(4)(c), FAC.

As is the case with a provision of a local government's comprehensive plan, the actions called for, such as roadway construction, must be financially feasible. §163.3177(2), Fla. Stat. (1993).

Section 163.3177(3)(a), Florida Statutes (1993), assists in the implementation of this provision by requiring that as part of a comprehensive plan, a capital improvements element must be prepared. The capital improvements element is a financially feasible plan that includes future capital projects, including road projects, together with cost and funding sources.

To accomplish new methods of planning and growth management and to assist in the funding of capital projects, including road projects, the Local Government Comprehensive Planning and Land Development Regulation Act provides sweeping language authorizing a dazzling array of approaches. Section 163.3202(3), Florida Statutes, states:

> (3) This section shall be construed to encourage the use of innovative land development regulations which include provisions such as transfer of development rights, incentive and inclusionary zoning, planned-unit development, impact fees, and performance zoning. These and all other such regulations shall be combined and compiled into a single land development code for the jurisdiction. A general zoning code shall not be required if a local government's adopted land development regulations meet the requirements of this section.

(emphasis supplied). The language is clearly intended to be non-exclusive and includes such options as impact fees. Although a TUF is technically not an impact fee, it is certainly a hybrid form of an impact fee. Both fees are assessed to alleviate

infrastructure problems. One fee, the impact fee, offsets the impacts of new development and assists in providing for construction of new facilities, or in some cases widening existing roadway facilities to accommodate new growth. The other fee, the TUF, deals with retrofitting existing facilities, or in some cases widening existing roadway facilities to accommodate pre-existing growth. The assessment of both fees is generally based on automobile trips generated by a particular use, or some similar measure. Amicus Curiae Bar finds that the language of Section 163.3202(3), as amplified by the intent language in Section 163.3161(3), is sufficiently broad so as to accommodate a TUF utilized to satisfy the programs called for in a local government's comprehensive plan.

## II
## BASED ON FLORIDA LAW THE TRANSPORTATION UTILITY EXACTION IS A LEGAL FEE

The trial court determined that TUF was not a tax. City of Port Orange v. State, Case No. 93-32203-CI-CI-32, slip op. at 27 (Fla. 7th Cir. Ct. Jan. 6, 1994). Amicus Curiae Bar believes that determination to have been a proper one. Unfortunately, it is difficult to point to specific caselaw supporting this finding, because the distinction between a fee and a tax has become rather murky. "As one reads the various cases involving the dichotomy between a fee and a tax the distinction almost seems to become more amorphous rather than less." Home Builders v. Board of County Commissioners of Palm Beach County, 446 So.2d 140, 144 (Fla. 4th DCA 1983).

However, because a TUF is a hybrid form of an impact fee, one may look to the law concerning impact fees as a guide. It has been said that a collection of funds whose specific purpose is to raise revenues is a tax. A collection of funds which raises revenues which are restricted to provide a direct benefit to the payors of the funds in relation to the fund amount collected may be viewed as a fee. See for example, Haugen v. Gleason, 359 P.2d 108 (Ore. 1961); Aunt Hack Ridge Estates, Inc. v. Planning Commission of Danbury, 230 A.2d 45 (Conn. 1967).

In Broward County v. Janis Development Corp., 311 So.2d 371 (Fla. 4th DCA 1975), the court noted that where the collection of funds is "exacted solely to raise revenue, and payment of such fee gives the right to carry on the business without the performance of any conditions, it is a tax." Id., at 375, citing Bateman v. City of Winter Park, 37 So.2d 362 (Fla. 1948). If the collection of funds is intended to raise revenues "and more," then the collection is a fee. The "and more" requirement is that the fee must pass the dual rational nexus test.

The test was explained by this Court in St. Johns County v. N.E. Fla. Builders, 583 So.2d 635, at 637 (Fla. 1991).[8] To pass that test two things must be demonstrated by a local government. First, there must be a rational nexus, or as the Court explained, a "reasonable connection" between the need for additional capital facilities and the growth in the population generated by a

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[8] The case cites Hollywood, Inc. v. Broward County, 431 So.2d 606, 611-612 (Fla. 4th DCA), rev. denied, 440 So.2d 352 (Fla. 1983).

particular new subdivision. Second, there must be a rational nexus, or "reasonable connection," between the expenditure of funds collected and the benefits accruing to the payors.[9]

The St. Johns County case is particularly instructive in how the test is to be applied. St. Johns County involved an impact fee assessed to provide expanded school facilities. With regard to the first prong of the dual rational nexus test, it was argued in that case that many of the new homes subject to fee assessment would be inhabited by new residents without children, and that they will bear, in part, the burden of the fee without enjoying any direct benefit. This Court rejected that argument "as too simplistic." St. Johns County, at 638. This Court noted that

> The same argument could be made with respect to many other facilities that governmental entities are expected to provide. Not all of the new residents will use the parks or call for fire protection, yet the county will have to provide for additional facilities so as to be in a position to serve each dwelling unit.

Id.

Thus, with regard to the requirement of a rational nexus

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[9] The first prong of the test is worded in such a manner that it would appear to mean that the test is only applicable in cases of new construction. However, in Contractors & Builders Association v. City of Dunedin, 329 So.2d 314, 321 (Fla. 1976), a water and sewer impact fee case, this Court stated,

> For purposes of allocating the cost of replacing original facilities, it is arbitrary and irrational to distinguish between old and new users, all of whom will bear the expense of the old plant and all of whom will use the new plant.

The language is supportive of the imposition of a fee, such as a TUF, on all users, new as well as existing.

between the need for additional capital facilities and the growth in the population generated by a new development, the "reasonable connection" required is not one of absoluteness. In applying the first prong, the trial court applied the rational nexus test and found that "there is a reasonable connection between the need to maintain and improve the local road system and the use of the local road system by the owners of developed property within the City (i.e., that the need is sufficiently attributable to the use)...." City of Port Orange v. State, Case No. 93-32203-CI-CI-32, slip op. at 20 (Fla. 7th Cir. Ct. Jan. 6, 1994).

With regard to the second prong of the dual rational nexus test, there must be a "reasonable connection" between the expenditure of funds collected and the benefits accruing to the payors. Again, this Court refused to apply a rule of absoluteness to the test.

> As indicated, we see no requirement that every new unit of development benefit from the impact fee in the sense that there must be a child residing in that unit who will attend public school. It is enough that new public schools are available to serve that unit of development.

St. Johns County, at 639.

In applying the second prong of the rational nexus test, the trial court found that "there is a reasonable relationship between the expenditure of the funds and the benefit to the owners of developed property within the City (i.e., the funds are sufficiently earmarked for the benefit of the payors)." City of Port Orange v. State, Case No. 93-32203-CI-CI-32, slip op. at 20

(Fla. 7th Cir. Ct. Jan. 6, 1994). It is therefore submitted that the transportation utility exaction is in fact a fee, is a hybrid form of or substantially similar to an impact fee, and fully satisfies the dual rational nexus test.

## CONCLUSION

Amicus Curiae Bar would suggest that application of constitutional and statutory concepts of home rule and comprehensive planning and the application of the dual rational nexus test support the legality of the concept of a transportation utility fee.

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing amended brief has been furnished by U.S. Mail to ROBERT A. BUTTERWORTH, Attorney General, JOSEPH C. MELLICHAMP, III, Senior Asst. Attorney General, and ERIC J. TAYLOR, Asst. Attorney General, Attorneys for Appellant, Office of the Attorney General, The Capitol - Tax Section, Tallahassee, Florida 32399-1050, and to MAUREEN S. SIKORA, City Attorney, City of Port Orange, P.O. Drawer 291038, Port Orange, Florida 32129-1038, and PETER L. DAME, ESQ., Squire, Sanders & Dempsey, 2100 Enterprise Center, 225 Water Street, Jacksonville, Florida 32202, Attorneys for the Appellee, on this 6th day of May, 1994.

Respectfully submitted,

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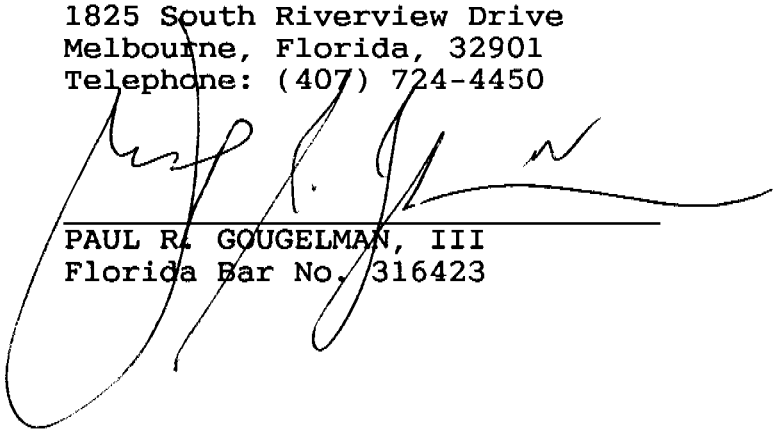

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If there are questions or problems, please let me hear from you.

Very truly yours,

Paul R. Gougelman, III

PRG/mmc
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**VIA FEDERAL EXPRESS**

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**Re: Your File: State v. City of Port Orange**
**Supreme Court Case No. 83,103**
**Our File: Transportation Utility Fee**
**Filing of Amicus Brief**

Dear Mr. White:

Yesterday, the undersigned filed briefs on behalf of The Florida Bar, by and through its Local Government Law Section, in the above styled case. Last evening, the undersigned discovered that as a result of a word processing error (my fault), the page cites on the Table of Cases and Authorities were either scrambled or missing.

This morning I spoke with your office, and they suggested merely filing an amended brief with the proper Table of Cases. Please find enclosed an amended original and seven copies of the brief of Amicus Curiae The Florida Bar, by and through its Local Government Law Section, in the above cited case.

Sincerely