IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN AND
FOR OSCEOLA COUNTY, FLORIDA

CASE NO.: CI 04-OC-1024

THE HOME BUILDERS ASSOCIATION
OF METRO ORLANDO, INC., on Behalf
of its Members and All Homebuilders and
Homeowners of Osceola County;
FLORIDA HOME BUILDERS ASSOCIATION;
ROBERTSON HOMES, INC.;
WETHERINGTON BUILDERS, INC.; and
ARNCO CONTRUCTION, INC., d/b/a
ARNCO HOMES,

Plaintiffs,

v.

OSCEOLA COUNTY, FLORIDA,

Defendant.

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**AMENDED FINAL JUDGMENT**

THIS CAUSE was previously heard on the Complaint of the Home Builders Association of Metro Orlando, Inc. ("Metro") and the Florida Home Builders Association ("FHBA"), who initiated this action against Osceola County, challenging the school impact fee imposed by Osceola County Ordinance 03-42, which was adopted on December 8, 2003, and became effective May 1, 2004. That ordinance amended the previously-existing school impact fee ordinance of Osceola County by increasing the amount of the school impact fee on residential development from $2,828 to $9,708.30 for each single-family dwelling unit; from $1,003 to $6,346.06 for each multi-family dwelling unit; and from $1,582 to $4,657.57 for each mobile home dwelling unit. On August 5, 2005, this Court entered a Final Judgment, upholding the validity of the school impact fee imposed by Osceola County Ordinance 03-42.

On August 16, 2005, Metro filed a Motion for Rehearing and Reconsideration asserting that the Final Judgment failed to consider whether a credit is due for payments made by the School District of Osceola County on certificates of participation ("COPs"), which finance the cost of additional expansion capacity to serve past development. On October 3, 2005, this Court entered an Order on Plaintiff's Motion for Rehearing and Reconsideration which determined a credit of $2,100 per residential unit was required from the impact fee as a result of the COPs payments made by the School District of Osceola County. In response, on October 15, 2005, Osceola County filed a Motion for Clarification, raising three issues and seeking to present additional evidence to show that the COPs revenues collected exceeded the amount spent on capacity projects or, that some portion of the COPs revenues collected had been directly applied to non-capacity projects. On November 17, 2005, a full-day hearing was held. Based upon the evidence presented, the argument of counsel, and otherwise being fully advised in the premises, the Court amends the Final Judgment previously entered as follows:

1. The Court again reiterates its previous finding that the school impact fee adopted by Osceola County is a valid impact fee under Florida law, except to the extent that a credit is required to be given for COPs payments made by the School District from its non-impact fee revenues, which were actually utilized to provide additional expansion capacity.

2. With respect to the amount of the credit required as a result of the use of such COPs payments for providing additional expansion capacity, the Court approves the calculation presented by Mr. Young at the hearing as to the extent that such COPs payments were utilized toward the provision of additional

expansion capacity, except to the extent that interest was excluded from that calculation.

3. Based upon the evidence presented, the Court finds that a credit from the school impact fee is required for COPs payments made from non-impact fee revenues, which were utilized to provide additional expansion capacity in the following amounts:

| UNIT TYPE | ADOPTED FEE | CREDIT | ACTUAL FEE |
|---|---|---|---|
| Single Family Dwelling Unit | $ 9,708.30 | $ 1,815.00 | $ 7,893.30 |
| Multi-Family Dwelling Unit | $ 6,346.06 | $ 1,152.00 | $ 5,194.06 |
| Mobile Home Dwelling Unit | $ 4, 657.57 | $ 870.00 | $ 3,787.57 |

4. The Court withdraws its previous determination of credit as contained in the Order of October 3, 2005. The credit determined herein shall be applied retroactively and prospectively.

5. The Court finds that Osceola County Ordinance 03-42 and the Young Study are otherwise valid and lawful. In doing so, the Court reaffirms that the data and methodology were appropriate and that the use of the five-year planning method was reasonable and not arbitrary.

6. The Court incorporates and adopts its previous findings and determinations from the August 5, 2005 Final Judgment into this Amended Final Judgment as

set forth in its entirety. A copy of the original Final Judgment is attached hereto.

**DONE AND ORDERED** in Chambers in Kissimmee, Osceola County, Florida, this ____ day of December, 2005.

Original signed by:
R. JAMES STROKER
Circuit Judge, this

DEC 12 2005

and conformed copies were
furnished by Judicial Assistant

**R. JAMES STROKER**
**Circuit Judge**

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Order has been furnished via U.S. Mail, this _____ day of December, 2005 to:

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_____
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IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN AND
FOR OSCEOLA COUNTY, FLORIDA

THE HOME BUILDERS ASSOCIATION OF METRO ORLANDO, INC., on Behalf of its Members and All Homebuilders and Homeowners of Osceola County; FLORIDA HOME BUILDERS ASSOCIATION; ROBERTSON HOMES, INC.; WETHERINGTON BUILDERS, INC.; and ARNCO CONTRUCTION, INC., d/b/a ARNCO HOMES,

Plaintiffs,

v.

OSCEOLA COUNTY, FLORIDA,

Defendant.



CASE NO.: CI 04-OC-1024



**FINAL JUDGMENT**

On April 30, 2004, the Home Builders Association of Metro Orlando, Inc. ("Metro") and the Florida Home Builders Association ("FHBA") initiated this action against Osceola County, challenging the school impact fee imposed by Osceola County Ordinance 03-42, which was adopted on December 8, 2003, and became effective May 1, 2004. That ordinance amended the previously existing school impact fee ordinance of Osceola County by increasing the amount of the school impact fee on residential development from $2,828 to $9,708.30 for each single-family dwelling unit; from $1,003 to $6,346.06 for each multi-family dwelling unit; and from $1,582 to $4,657.57 for each mobile home dwelling unit.

On May 12, 2004, Metro and FHBA filed an Amended Complaint, joining as additional plaintiffs: Robertson Homes, Inc.; Wetherington Builders, Inc.; Palm Homes, Inc.; George Byrne, individually; and Arnco Construction, Inc., d/b/a Arnco Homes (collectively,

"Plaintiffs"). On September 9, 2004, Palm Homes, Inc. and George Byrne were voluntarily dismissed as plaintiffs. On November 10, 2004, the School Board of Osceola County was permitted to intervene in the action on a limited basis.

Testimony and exhibits were presented by the parties from July 18, 2005 through July 20, 2005. During the trial, the Court requested that the parties present evidence or, in the alternative, to consider entering a stipulation as to the amount of credit by which the school impact fee would be reduced if the court determined that the methodology used by Osceola County violated the dual rational nexus test. However, no agreement was made. At the close of the Plaintiffs' case, Defendant moved for a directed verdict, which was denied.

## FINDINGS OF FACT

1. Metro is the principal trade association serving the homebuilding industry of the metropolitan Orlando area. Because all of Metro's members, who have constructed or will construct residential dwelling units in Osceola County, are directly, adversely, substantially and uniquely affected by the ordinance by being required to pay the school impact fee mandated by the ordinance, Metro has standing to sue for the benefit of its members. *See Florida Homebuilders Ass'n, Inc. v. Department of Labor & Employment Security*, 412 So. 2d 351, 352 (Fla. 1982).
2. FHBA is the principal trade association for the homebuilding industry in Florida. Because a substantial number of its members are builders of residential dwelling units in Osceola County who are directly, adversely, substantially, and uniquely affected by Osceola County Ordinance 03-42 by being required to pay the school impact fee

mandated by that ordinance, FHBA has standing to sue for the benefit of its members. *Id.*

3. Robertson Homes, Inc., Wetherington Builders, Inc., and Arnco Construction, Inc., d/b/a Arnco Homes, are all for-profit corporations whose principal business in Osceola County is in the construction of residential dwelling units. These corporations have standing to challenge the school impact fee ordinance because their homebuilding businesses are directly, adversely, substantially, and uniquely affected by the ordinance.
4. Counties, as political subdivisions of the state, derive their sovereign powers exclusively from the state. Florida charter counties, such as Osceola County, derive their sovereign powers from the state through Article VIII, Section 1(g) of the Florida Constitution. Through this provision, the people of Florida have vested broad home rule powers in charter counties such as Osceola County. The implementing statute, section 125.01(1), Florida Statutes (2004), provides the governing body of a county with home-rule power, unless the legislature has preempted a particular subject by general or special law. The provisions of section 125.01 are to be liberally construed "in order to ... secure for the broad exercise of home-rule powers authorized by the State Constitution." Section 125.01(3)(b), Fla. Stat. (2004).
5. This Court has jurisdiction pursuant to Chapter 86, Florida Statutes (2004).
6. Impact fees are charges levied by a local government and imposed upon newly-constructed development to provide the needed capital facilities to serve that new development.

7. Educational system impact fees, like the fees involved in this case, are imposed only upon newly-constructed residential development to provide the needed capital educational facilities.

8. In November of 1992, Osceola County initially imposed its educational system impact fee through the adoption of Ordinance 92-27. At that time, the amount of the fee imposed was $1,022 for each newly-constructed single-family dwelling unit; $475 for each multi-family dwelling unit; and $673 for each mobile home dwelling unit. The ordinance also incorporated numerous safeguards including the requirements that: the impact fees be maintained in a separate trust account from all other revenues; that the funds could only be used for growth necessitated improvements; and that the funds could not be used for maintenance and repair. *See* section 17-83. The ordinance also required that the funds be used within five years of collection or refunded to the current property owner who paid the fee. *See* Ordinance 05-14. The ordinance further made provisions whereby an applicant, who disagreed with the amount of the fee, could submit an alternative calculation and the ordinance also addressed low-income housing. *See* sections 17-84 and 17-101(5), Ordinance 99-13. Finally, pursuant to the requirements of the ordinance, the fees were required to be periodically reviewed to make certain that the data used was accurate and to incorporate the changes that occurred since the last update into the study and ultimately into the actual amount of the fees.

9. In 1999, an updated study determined that the appropriate impact fee was $4,144 for each single-family dwelling unit, $1,470 for each multi-family dwelling unit, and $2,318 for each mobile home dwelling unit. However, as a result of pending legislation limiting impact fees, the County agreed to reduce the amount of the fee actually implemented.

Therefore, as a result of this agreement, effective August 1, 1999, the County increased the amount of the fee to $2,100 for each single-family dwelling unit, $753 for each multi-family dwelling unit, and $1,187 for each mobile home dwelling unit. Further, beginning January 1, 2000, Osceola County agreed to increase the impact fee amounts to $2,828 for each single-family dwelling unit, $1,003 for each multi-family dwelling unit, and $1,528 for each mobile home dwelling unit. These increases were in an amount less than the actual cost of the student stations needed to serve new growth at that time.

10. In early 2003, the Osceola County School Board again began the process of reviewing and updating its impact fee assessments. To that end, the School Board retained Randall Young, a consultant with Henderson, Young & Company, a nationally recognized expert in the preparation of impact fees, to review the impact fee and update the various components. Prior to the beginning of this update, the School Board had established a priority system for utilization of its revenues. Under this prioritization, the School Board determined to first apply its available non-impact fee revenues to maintaining and securing its existing facilities. Then, and only to the extent revenues existed beyond those needs, would any remainder be applied toward building new facilities. Impact fees were to be the primary revenue source for building new classrooms. This policy was incorporated into the updated study and memorialized by Resolution 04-26 adopted by the School Board.

11. On November 11, 2003, the Young Study was issued, analyzing the needs of the Osceola County School District and updating the data to provide essential facilities to serve newly-constructed development. The Young Study calculated a proposed impact fee under two separate scenarios. At the time of the preparation of the updated Young

Study, a referendum was pending, seeking the approval by the voters of a half-cent sales tax to be used to build new school facilities. The first scenario assumed that the proposed half-cent sales tax referendum was approved by the voters. The second scenario assumed that the referendum failed. The voters ultimately rejected the proposed half-cent sales tax and Osceola County approved the impact fees under the second scenario.

12. On December 8, 2003, based on the Young Study, Osceola County adopted Ordinance 03-42, which amended its Educational Facility Impact Fee Ordinance and adopted the educational system impact fee amounts set forth in the study. The amendment in Ordinance 03-42 became effective on May 1, 2004. Under the amendment, the amount of impact fees to be due on newly-constructed development at the time a certificate of occupancy was issued was $9,708.30 for each single-family dwelling unit, $6,346.06 for each multi-family dwelling unit, and $4,657.57 for each mobile home dwelling unit.

13. These are the highest impact fees imposed by any county in the State of Florida. Although Osceola County is the fastest growing county in the state, its growth thus far has not raised it from near the bottom of all Florida counties in property tax revenues.

14. The Young Study, specifically Table 13, identifies the amount of revenue available to the School District for the next five years and is based on information provided to Henderson, Young & Company by the School District. It includes all sources of revenue for capital outlay, repair, renovation, vehicles, debt service and new capital facilities; but excludes revenue from impact fees. The revenue forecast for sales tax was based on the assumption that the current sales tax rate would continue and an additional half-cent sales tax would be enacted pursuant to voter referendum during the 2004-2005 fiscal year. Had this sales tax increase been approved, it would have resulted in a five-year net total

of $229,761,227 (excluding impact fees) to fund all the required capacity and non-capacity needs of Osceola County public schools. The lower half of Table 13 estimated the cost of the first five years of the ten-year capital plan for non-capacity projects, debt service obligations, and replacement or renovation projects that would not increase capacity. These projects and other costs were estimated at $176,367,307 for the first five years of the capital plan. Subtracting the bottom line of Table 13 (costs) from the net five-year forecast of revenues, Osceola County public schools would have had $53,393,920 available from non-impact fee sources of revenue to pay for at least part of the cost of increased capacity to serve new development for next five years. Thus, by the Young Study's calculations (and assuming that the half-cent sales tax had been approved), non-impact fee revenues would have been available to pay 35.55 percent of the cost of the additional educational facility capacity needed to serve new school development. As a result, the Young Study recommended impact fee rate was reduced by the 35.55 percent; resulting in an impact fee of $6,257.28 for each single-family dwelling unit, $4,090.22 for each multi-family dwelling unit, and $3,001.94 for each mobile home dwelling unit. However, when the sales tax referendum failed, the bottom line surplus, noted above, became a $2.45 million shortfall. The Young Study concluded that no credit whatsoever was due if this outcome occurred.

15. In framing its analysis over a five-year period, the Young Study uses only the first five years of the school district's ten-year capital plan. However, that ten-year capital plan itself indicates that the $2.45 million shortfall after five years becomes a $28.15 million surplus after ten years, primarily due to increases in capital improvement taxes.

## ANALYSIS

There is no dispute regarding the fact that Osceola County may impose an impact fee for educational facilities. *St. Johns County v. N. E. Florida Builders Ass'n*, 583 So. 2d 635 (Fla. 1991). Plaintiffs even concede this point. However, Plaintiffs contest the specific methodology used and various data included in the Young Study.

Impact fees pay for those capital facilities necessitated by newly-constructed development, and their use "has become an accepted method of paying for public improvements that must be constructed to serve new growth." *Id.* at 638. As impact fees in Florida have developed, Florida case law, rather than statutory law, has established the characteristics of, and limitations on, impact fees. In *St. Johns County*, the Florida Supreme Court held that an impact fee is a valid fee if it satisfies the judicially-created "dual rational nexus test." *Id.; see also Volusia County v. Aberdeen at Ormond Beach*, 760 So. 2d 126 (Fla. 2000) (determining that a school impact fee may be a valid fee if it satisfies the judicially-created "dual rational nexus test").

The "dual rational nexus test" is a two-pronged test. Under the first prong of the test, there must be a reasonable connection, or rational nexus, between the anticipated *need* for additional capital facilities and the *growth* generated by new development. *See St. Johns County*, 583 So. 2d at 637 (quoting *Hollywood, Inc. v. Broward County*, 431 So. 2d 606, 611 (Fla. 4th DCA 1983)). This nexus is significant because of the distinction between taxes and fees. *Volusia County*, 760 So. 2d at 135. As the Florida Supreme Court noted in *Collier County v. State*, "[T]here is no requirement that taxes provide any specific benefit to the property; instead, they may be levied throughout the particular taxing unit for the general benefit of residents and property." *Collier County v. State*, 733 So. 2d at 1016 (quoting *City of Boca Raton v. State*, 595

So. 2d 25, 29 (Fla. 1992)). Fees, by contrast, must confer a special benefit on fee-payers "in a manner not shared by those not paying the fee." *Id.* at 1019.

Under the second prong of the dual rational nexus test, for an impact fee to be valid, it must exhibit a reasonable connection, or rational nexus, between the *expenditure* of the impact fee proceeds and the *benefits* accruing to the new development that pays the fees. *See Hollywood, Inc.*, 431 So. 2d at 611; *St. Johns County*, 583 So. 2d at 637. This prong of the test is partially met when the implementing ordinance or resolution specifically earmarks the fees collected to benefit the new residents by the construction of capital facilities needed to serve new development. *See Volusia County*, 760 So. 2d at 134. Impact fees are sufficiently "earmarked" when the ordinance or resolution relating to their imposition, collection, and administration expressly limits the use of the fee revenue to meeting the costs of the improvements needed to serve new development and not for operations or maintenance of existing facilities. *See Contractors & Builders Ass'n of Pinellas County v. City of Dunedin*, 329 So. 2d 314, 320 (Fla. 1976). Here, it is clear that the ordinances of Osceola County incorporate restrictions that clearly satisfy these requirements.

As previously noted, Plaintiffs do not contest the authority of Osceola County to impose a school impact fee; rather, they contest the specific methodology utilized, and the data incorporated within that methodology. In the selection of the methodology and the determination of the data to be considered, courts generally defer to the legislative body unless such a determination is clearly arbitrary.

**First Prong of the Dual Rational Nexus Test**

*a. Need*

Generally, all impact fee methodologies have three separate components that are considered in arriving at a reasonable impact fee. The first is the "need" component, which consists of the determination of the impacts of newly-constructed development on or its need for the particular infrastructure. In school impact fees, that need component is satisfied by determining the number of public school students that can reasonably be anticipated to be generated from that newly-constructed residential development. *See St. Johns County,* 583 So. 2d at 638. The need that must be demonstrated is whether that particular new development will generate students into the school system of a particular county.

The Young Study determined that newly-constructed residential development within Osceola County, indeed, creates a need for additional school facilities. As each new unit is constructed, it is probable that public school students will reside in that unit. Throughout the lifetime of that newly-constructed residential unit, the Young Study recognized that there may be periods when no students are present and other times when numerous public school students are present. However, a school district is required to have the capacity and the available facilities to serve all of the children that may be present at that particular unit.

The Young Study also determined that there would be an increase in public school student enrollment due to growth from new construction over the five year planning period of approximately 11,579 students; whereas, the existing capacity could only accommodate 3,544 additional students. Consequently, there was a clear need for additional student capacity facilities due, in large part, to newly-constructed development.

To calculate the amount of students that would reasonably be generated from each newly-constructed residential unit, the Young Study utilized the same methodology approved by the Florida Supreme Court in *St. Johns County. Id.* The Young Study utilized the 2000 Census Public Use Microdata Sample, which is a detailed analysis based upon a survey of five percent of the population in each County. This data allows a determination as to the number of public school children that can reasonably be determined to reside in each single-family dwelling unit, each multi-family dwelling unit, and each mobile home unit in Osceola County. Using this methodology, the Young Study determined that the average number of public school students reasonably anticipated to be generated is 0.523 students from each newly-constructed single-family unit, 0.341 students from each newly-constructed multi-family unit, and 0.256 students from each newly-constructed mobile home unit.

The Court finds that the approach used to calculate the need for new student stations is a recognized approach, and thus, is clearly not arbitrary.

***b. Cost***

The second component of most impact fee methodologies is the "cost" component, which consists of determining the approximate cost of capital facilities to serve that newly-constructed residential unit. *See St. Johns County,* 583 So. 2d 635. In most school impact fees, the cost component calculates the cost of a student station, which includes, in addition to the cost of the actual classroom space required by the student, the pro rata cost of the land for that station, the required off-site improvements, and the necessary administrative and ancillary facilities to serve that student station.

In calculating the cost for projected student stations, the Young Study used the standard approach to determine these amounts. Under the Florida Administrative Code, the Department

of Education has propounded various numbers for the cost of a student station. In the past, these numbers have been used to provide awards for school districts that were able to bring student station construction in under these amounts. They are adjusted monthly based upon a recognized construction cost index and are frequently used by school districts in approximating the costs of new construction. These numbers give specific student station costs for elementary, middle, and high school construction. The actual experience of the school district is that some of their new construction has met these guidelines, while some has exceeded the guidelines. Therefore, the figures represent a reasonable approximation of the cost a school district could anticipate for constructing school stations.

The Court finds that the approach utilized by the Young Study, to calculate the cost of providing off-site improvements and land costs necessarily required by new school construction, was reasonable and not arbitrary. Both of these amounts were determined by utilizing the historic experience of the School District.

The Young Study also considered the cost of providing ancillary facilities. Again, the cost numbers utilized within the Young Study were based upon an analysis of the actual costs incurred by the School Board. This approach was also reasonable and not arbitrary.

***c. Credits***

The third component of the first prong of the dual rational nexus test, and the one which is primarily at issue in this case, is the "credit" component. The genesis of the credit component derives from the fundamental nature of fees in the State of Florida. Impact fees cannot exceed the cost of the impacts created by the newly-constructed residential unit. *See Atkins v. Phillips*, 26 Fla. 281, 8 So. 429 (Fla. 1890); *Tamiami Trail Tours, Inc. v. City of Orlando*, 120 So. 2d 170, 172 (Fla. 1960); *Broward County v. Janis Dev. Corp.*, 311 So. 2d 371 (Fla. 4th DCA 1975);

*Contractors & Builders Ass'n of Pinellas County v. City of Dunedin*, 329 So. 2d 314, 320 (Fla. 1976); and *Home Builders & Contractors Ass'n of Palm Beach County, Inc. v. Board of County Comm'rs of Palm Beach County*, 446 So. 2d 140 (Fla. 4th DCA 1983). To make certain that the amount of the fee does not exceed this cost, a credit is given for other revenues that are available and applied toward the construction of that same student station. The clear purpose of the credit is to make certain a newly-constructed residential unit pays no more than its fair share of the unfunded cost of the student station needed to serve that particular dwelling unit.

Plaintiffs, in their Amended Complaint, contend that the methodology used in the Young Study deviates from legally defensible methods for calculating such fees because it eliminated all credits for taxes paid, or expected to be paid, on the newly-constructed residential unit. This contention is primarily based upon two distinct assertions. The first is that the study should not have been allowed to calculate credits pursuant to Resolution 04-26, which sets forth the School Board's determination as to the allocation and use of its revenues available for capital expenditures. The second is that the Young Study's use of a five-year capital planning period to calculate the impact fee and the credit was inappropriate.

Plaintiffs correctly assert that new development will continue to contribute capital improvement taxes for many years beyond the five-year capital planning period. Plaintiffs also maintain that the failure to recognize and provide credit for this future revenue stream unfairly requires new development to subsidize existing development. This argument would be compelling were it not for the unique and particular circumstances existing in Osceola County. Years of inadequate school funding, coupled with explosive growth, have resulted in the School Board's policy decision to dedicate all existing revenue sources to current facilities. This does not appear to be an arbitrary or capricious decision.

Fundamental to the understanding of credits, is their purpose in the calculation of an impact fee. Credits are required to make sure that other revenues available, and applied to provide the same student stations, are credited in the impact fee calculation. In *St. Johns County,* the Florida Supreme Court provided guidance as to the credit calculation and characterized the fee as "the average net cost of $448 for building new schools that *would not be covered by existing revenue mechanisms.*" 583 So. 2d at 638 (emphasis added). The Supreme Court further recognized that the impact fee is calculated to fund the need for school facilities required to accommodate growth that remains unfunded -- the amount of new school construction that "would not be covered by existing revenue mechanisms." *Id.* In those circumstances, where no other revenues are used or available to provide the same student stations, the credit would still be considered and calculated. However, the amount of the credit would be $0 -- precisely the circumstance in Osceola County.

Plaintiffs contend that the methodology employed fails to recognize the capital improvement taxes that will be paid in the future by new development, and that a credit should be given now for such future payments. While it is possible, in fact likely, that future capital improvement tax revenues will exceed capital expenditure requirements, and to some extent be available for future capital expansion, that will be the proper subject of a future review of the impact fee ordinance.

The Young Study utilized a "Global Approach" to calculate the credit. This is an accepted method to calculate credit. Under this approach, the total of all revenues available for capital improvements is considered, regardless of whether they are to be used for repairs, renovation or maintenance, or derived from non-residential property. Then a determination is made as to the extent to which such available revenues are anticipated to be available and applied

to provide new capital expansion. The primary non-impact fee revenue sources available to the School District to fund the public school improvements are Public Education Capital Outlay and Capital Outlay and Debt Service, both of which are obtained from the State of Florida. The other revenue source is the School District's Capital Improvement Tax, which is a 2-mill ad valorem tax. The Young Study used the School District's five-year planning period and incorporated the budgeted revenue projections of the School Board into the analysis.

After the revenues available for capital improvements were determined, the study determined the extent to which these revenues would be used for repairs and renovation and how much would be available for capital expansion. The School Board recognized that with each passing year, its revenues to both maintain the existing facilities and to provide new capacity facilities were inadequate. Prior to the adoption of Ordinance 03-42, the School Board had prioritized the use of its revenues to primarily utilize them for maintaining existing facilities. This policy was memorialized on April 20, 2004, through Resolution 04-26, which stated:

> first use and direct [that] . . . its non-impact fee capital revenues be utilized to provide the district's non-growth related needs such as renovation, remodeling, and replacement of its existing school facilities.

This resolution does not break with the School Board's past practices, but merely recognizes the realities occurring during the past years. The Young Study incorporated this policy into the assumptions of the actual report and determined that there were insufficient revenues from the above-referenced sources to provide all of the repairs, renovations, and maintenance needed during the five-year period, and that none of these revenues would be available and none applied for new capacity expansion. Therefore, a credit analysis was performed, as required, but no credit was found to be due.

Plaintiffs challenge the decision of the School Board to prioritize the use of its funds. However, the School Board's decision is a legislative budgetary decision outside the scope of this Court's review. *See Office of the State Attorney for the Eleventh Judicial Circuit v. Polites*, 2005 WL 1229676 (Fla. 3d DCA May 25, 2005); *Brown v. Feaver*, 726 So. 2d 322 (Fla. 3d DCA 1999). The decision to first use and direct non-impact fee capital revenues to provide the School District's non-growth related needs, such as renovation, remodeling, and replacement of its existing school facilities, as set forth in Resolution 04-26, constitutes a lawful determination by the School Board. *See City of Riviera Beach v. Martinique 2 Owners Association, Inc.*, 596 So. 2d 1164 (Fla. 4th DCA 1992) (determination as to manner of calculation of the fee charged is a legislative decision); *see also Mohme v. City of Cocoa*, 328 So. 2d 422 (Fla. 1976); *Town of Medley v. State*, 162 So. 2d 257 (Fla. 1964); *Partridge v. St. Lucie County*, 539 So. 2d 472 (Fla. 1989) (per curiam); *State v. Dade County*, 142 So. 2d 79 (Fla. 1962).

In addition, the use of a five-year capital planning period does not violate the dual rational nexus test. As discussed previously, nothing in Florida case law provides restrictions as to the appropriate capital planning time period to be utilized in calculating an educational facilities impact fee. Various methodologies have attempted to utilize a variety of planning periods. The purpose of this period is to analyze the fee within the context of the facility that is being provided. Therefore, the five-year planning period under the methodology used in this particular instance is consistent with the requirements of the School District and Florida law to actually provide those facilities.

Under subsection 1013.35(2)(b), Florida Statutes, school districts are required to provide "financially feasible" five-year district facilities work programs for the provision of capital improvements. Moreover, the prevailing local government practice of developing and improving

capital improvement plans within a five-year capital planning period requires that a five-year period be utilized. Additional support for the use of a five-year period is derived from the fact that all statutory requirements mandate that the capital improvement plan be financially feasible, and the requirement in section 1011.012, Florida Statutes, that the financially feasible five-year "tentative district facilities work program" be adopted before a school board adopts its capital outlay budget. Therefore, the methodology used in Osceola County sought to base the determination of impact fees within the context of the actual requirements of state law. That is, the fee study analyzed what would be required to serve new residential development within five years and calculated the fee so as to meet those needs. The approach also utilizes the most accurate data, rather than attempting to speculate as to what factors may occur over an extended planning period. Finally, the ordinance further mandates that the fees actually be expended or encumbered during this five-year period.

Ultimately, the choice of the methodology to be applied, including the calculation of credits, is within the sound discretion of the school board and the county, unless it is arbitrary. Here, the five-year planning period has been adopted to facilitate the provision of a financially feasible approach to meeting the needs of new development, just as is required by state law. It is a reasonable, rational approach that will not be disturbed by this Court.

**Second Prong of the Dual Rational Nexus Test**

Under the second prong of the dual rational nexus test, there must be a reasonable connection, or rational nexus, between the *expenditure* of the impact fee proceeds and the *benefits* accruing to the new development paying the fees. It requires the Court to examine the methodology (the formula) and all the numerical elements thereof (the findings and supporting

data plugged into the formula) in determining whether this prong of the dual rational nexus test has been met.

The second prong is primarily met by the availability of sufficient restrictions within the governing ordinance to make certain that the fee collected will benefit those that are required to pay the fee. In the context of this litigation, the ordinances require that revenues from the impact fee are to be paid only for new capital facilities required as a result of growth and are expressly prohibited to be used for maintenance, renovation, or repair. *See* section 17-83. Further, the ordinance requires that the fee itself be maintained in a separate trust, separate and apart from any other revenue, and that all interest earned on such fees be used only for those purposes. *See id.* More importantly, the ordinance recognizes the ability of a new residential development to submit an alternative calculation based upon its particular circumstances. *See* section 17-84. As such, since the fees imposed were a county-wide impact fee designed to fund construction of new schools as needed throughout the county, and based upon the sufficient restrictions existing within the ordinance, the second prong has been met.

An issue raised by Plaintiffs with respect to this prong is that benefit zones should be used. The concept proposed by the Plaintiffs is that impact fees should only be spent within specific defined areas within which the fee is collected. Though there is no prohibition on using such zones, it is not a requirement for the validity of an impact fee.[1]

## CONCLUSION

The educational facilities impact fee imposed by Osceola County satisfies the dual rational nexus test, in that it establishes that there is a need to provide additional capital facilities within the school system as a result of new residential development within Osceola County.

[1] *See St Johns County*, 583 So. 2d 635 (provides a general discussion on impact fee "zones.")

Further, the ordinance provides sufficient protections and guidelines to assure that the expenditure of those revenues will benefit those properties that pay the impact fee. Finally, the methodology used and the various data incorporated within that methodology were reasonable and not arbitrary.

Judgment is therefore entered for the Defendant and it may go hence without day.

**DONE AND ORDERED** in chambers in Kissimmee, Osceola County, Florida, this 5th day of August, 2005.

**R. JAMES STROKER**
**Circuit Judge**

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing Order has been furnished via U.S. Mail, this 5th day of August, 2005 to:

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