IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT
IN AND FOR SANTA ROSA COUNTY, FLORIDA

HOME BUILDERS ASSOCIATION
OF WEST FLORIDA, INC., a
Florida not-for-profit corporation,
et al.,
Plaintiffs,

Case Number: 2020 CA 201

v.

THE BOARD OF COUNTY COMMISSIONERS,
SANTA ROSA COUNTY, FLORIDA, a
political subdivision of the State of Florida, et al.,
Defendants.

ORDER GRANTING PLAINTIFFS' VERIFIED MOTION
FOR TEMPORARY INJUNCTION

THIS MATTER was before the Court for hearing on June 10 and 11, 2020 upon Plaintiffs' Verified Motion for Temporary Injunction filed on May 1, 2020. Counsel for Plaintiffs and Defendants and all witnesses attended via Zoom. The Court has considered all evidence and arguments presented, and finds as follows:

INTRODUCTION

Plaintiffs consist of a home builders association, as well as other entities that construct residential units within Santa Rosa County, and they have brought suit against the Santa Rosa County Board of County Commissioners (the "County" or "BOCC") and the Santa Rosa County School Board (the "School Board" or "School District"). The Complaint brings two counts:

> Count I - Declaratory relief that the Educational Facilities Impact Fee Ordinance enacted by the County on behalf of the School Board is invalid, unconstitutional and illegal; and,
>
> Count II - Action for temporary and permanent injunction against the County and School Board prohibiting the collection of the Educational Facilities Impact Fees.

On May 1, 2020, Plaintiffs filed a Verified Motion for Temporary Injunction (the "Motion") asserting that the Educational Facilities Impact Fees are invalid and unenforceable as contrary to the requirements of Section 163.31801, Florida Statutes and the Florida Constitution. Plaintiffs seek to enjoin the collection of impact fees while this case is pending. Plaintiffs and Defendants have each submitted Memorandums of Law in support of their respective positions.

WITNESSES AND EXHIBITS

Plaintiffs presented the testimony of the following witnesses: (1) L. Carson Bise, II (expert witness); (2) Blaine Flynn (CEO of Plaintiff Flynn Building Specialists, LLC. (d/b/a FlynnBuilt), and President of the Home Builders Association of West Florida, Inc.); and (3) Commissioner Bob Cole, Santa Rosa County Board of County Commissioners.

Defendants presented the testimony of the following witnesses: (1) Assistant Superintendent for Administrative Services Joseph Harrell, Santa Rosa County School District; (2) Claude E. (Gene) Boles, Jr. (expert witness); and (3) Henry H. Fishkind, Ph.D. (expert witness).

Plaintiffs introduced Exhibits A-V, without objection. Defendants introduced Exhibits 1-25, without objection. The Court received 7 Joint Exhibits, and it marked one Court Exhibit: a document titled Stipulation for Admissibility of Factual Matters and Joint Request for Judicial Notice.

FACTUAL FINDINGS

The Court adopts and incorporates the facts in each numbered paragraph of Court Exhibit 1 (Stipulation for Admissibility of Factual Matters and Joint Request for Judicial Notice).

BRIEF OVERVIEW OF THE FACTS

The Santa Rosa County School Board is the governing body for the Santa Rosa County School District. (Ct. Ex. ¶13). The School Board does not have authority to charge impact fees, so they presented a proposed ordinance to the Board of County Commissioners requesting an ordinance for school impact fees.

Beginning in 2018, the School Board began reviewing alternative revenue sources to support expansion of school facilities because of increased growth within the County. (Tr. V.2 at 6). The School District hired an entity known as Building Livable Communities, Inc., whose principal is Claude E. (Gene) Boles, Jr., to compute the maximum amount of impact fees allowable in Santa Rosa County. (Tr.V.2 at 13, 97). Mr. Boles ultimately produced two reports memorializing his recommendations, each titled "Public Education Facility Funding Analysis." (Joint. Exs. 1 and 2). One report is dated April 25, 2019 (Joint. Ex. 1), and the other is dated December 2, 2019 (Joint. Ex. 2). The Court will refer to these documents as "report" or "study."

There are some important differences between the two reports. The April study divided the County into a "north" and "south" zone, but the geographic boundaries of

those zones were not defined in the report[1]. (Joint. Ex. 1) The April study combined mobile homes with single family. (*Id.)* Those amounts were as follows:

Housing Type (DOR Code)	**Elementary**	**Middle**	**High**	**Total**
NORTH COUNTY				
Single Family (100/200)	$3,354	$2,017	$3,115	$8,487
Multi Family (300)(400)(800)	$2,565	$1,121	$1,416	$5,102
SOUTH END				
Single Family (100/200)	$3,551	$2,242	$3,682	$9,474
Multi Family (300)(400)(800)	$1,184	$672	$1,133	$2,989
DISTRICTWIDE				
Single Family (100/200)	$3,354	$2,017	$3,399	$8,770
Multi Family (300)(400)(800)	$1,775	$897	$1,416	$4,088

The School Board recommended different fees for the undefined north and south ends of the County during its presentation to the Board of County Commissioners in May 2019. This meeting will be discussed in more detail below.

The December report was adopted in the Impact Fee Ordinance. It did not divide the County into north and south zones, and it separated mobile homes from single family. (Joint. Ex. 2). The December study recommended the same impact fee rates countywide as shown on page 4 of Joint Exhibit 2:

Housing Type (DOR Code)	**Elementary**	**Middle**	**High**	**Total**
Single Family (100)	$3,092	$1,826	$3,319	$8,237
Mobile Home (200)	$2,910	$1,420	$2,213	$6,543

[1] The two reports do not define "north" and "south" boundaries, and the explanation given by the School Board's witness did not provide sufficient information to know the amount of impact fees a person would expect to pay for new construction pursuant to these two districts. Without clearly defined boundaries, the County would not know how much to charge when a permit is issued if the April study had been adopted into the Ordinance.

Multi Family (300)(400)(800)	$1,637	$1,420	$1,383	$4,440

The Santa Rosa County Board of County Commissioners (BOCC) voted to enact County Ordinance No. 2020-01, titled Santa Rosa County Educational Facilities Impact Fee Ordinance, on January 9, 2020 ("School Impact Fee Ordinance" or the "Ordinance")(Ct. Ex. 1, ¶16; Defs. Ex. 1), and this Ordinance was later enrolled at Article III, Sections 5-96 through Sections 5-108, Santa Rosa County Code of Ordinances.

The Ordinance relies upon the December 2, 2019 "Public Education Facility Funding Analysis" in support of assessing impact fees, and that report is incorporated into the Ordinance. (Joint Ex. 2). The April 2019 Report nor the December Report contain an analysis of the School Board's existing funding capabilities to support new growth, nor did they discuss *whether* an educational impact fee should be imposed for the first time within the County. (Joint Exs. 1 and 2).

The Ordinance requires people building new residential units in Santa Rosa County to pay Educational Facilities Impact Fees[2], and it applies to all permits issued after May 1, 2020. (Ct Ex. 1, ¶21). Section 5-101 of the enrolled Ordinance and Section 17 of the enacted Ordinance say that the fees are paid at the time the building permit is issued, and applications received prior to May 1, 2020 were exempted from the school impact fee. (Santa Rosa County, Fla. art. III §§5-96 through 5-108 (2020); Ordinance 2020-01). The money collected by Santa Rosa County is for the benefit of the Santa Rosa County Schools, and the method of payment and other details are set forth in an

[2] The Ordinance assesses the following amounts for the benefit of Educational Facilities: $5,000 for single-family detached residences; $4,000 for mobile homes; and $2,750 for multifamily dwelling units. (Ct. Ex. 1, ¶25; Santa Rosa County, Fla. art. III, §5-108; Ordinance 2020-01, Section 13).

Interlocal Agreement Concerning Educational Facilities Impact Fees ("Interlocal Agreement"). (Ct. Ex.1, ¶22-23; and Ex.D to Pls. Complaint).

Plaintiffs filed the Complaint on April 17, 2020. Soon thereafter, both Defendants passed Resolutions to segregate any school impact fees collected and to place those fees in an interest-bearing escrow account until a final judgment is entered in this case. (Ct. Ex.1, ¶27-29, Defs. Ex. 20 and 21).

PUBLIC MEETINGS (MAY 15, 2019; DECEMBER 12, 2019; JANUARY 9, 2020)

The School Board presented its proposal for educational impact fees to the Board of County Commissioners during a joint meeting on May 15, 2019. They next presented their proposal to the BOCC on December 12, 2019, and the BOCC voted to adopt school impact fees during a January 9, 2020 meeting. The Court has watched the videos of those meetings and has reviewed the exhibits presented by Plaintiffs related to these meetings.

MAY 15, 2019 MEETING (Pls. Ex. J).

A joint meeting of the Board of County Commissioners and the School Board was held on May 15, 2019. Superintendent of Schools Tim Wyrosdick and Chair of the Santa Rosa School Board Carol Boston spoke to the Board of County Commissioners during this joint meeting. Assistant Superintendent for Administrative Services Joseph Harrell and Mr. Gene Boles each gave PowerPoint presentations to the BOCC.

During the May 2019 joint meeting, Mr. Boles talked about the north end of the county and the south end of the county having "significant" differences in the number of students generated in multifamily dwellings. (Pls. Ex. F). He said, "for obvious reasons," his study recommends separate impact fees for the north and south districts

of the county. (Pls. Ex. F). He further explained that he didn't need to provide a lot of explanation to the BOCC about his reasoning based upon these "distinctly different areas." (Pls. Ex. F). During the injunction hearing, Mr. Boles explained that the south end enjoys more seasonal multifamily housing based upon resort and retirement living which do not generate as many school-age children as the north end demography. (Tr. V.2 at 54).

In response to a Commissioner's question, Mr. Boles said "clearly" there is a distinction between the north and the south that he thought everyone understood. He recommended a north and south district, but said it is not advisable to make districts that are too small because the small districts would never collect enough money to build anything. (Pls. Ex. F). Mr. Boles' opinion in May 2019 was that the impact fees should be adjusted for the multifamily unit differences between the north and south parts of the county. (Pls. Ex. F).

Mr. Boles said his job was solely to compute the maximum allowable impact fees, and the School Board could choose any amount up to the maximum. At the May 2019 meeting, the School Board recommended $3,000 for multifamily housing in the north of the county and $1,500 for multifamily in the south end of the county. (Pls. Ex. I, Slide "Recommendation").

At the end of the School District's presentation to the BOCC, each Commissioner had the opportunity to ask questions. The Commissioners questioned the amount of growth predicted in the study; whether the impact fees met the rational nexus test; whether Mr. Boles did any analysis on the current and projected funding available to the

School District; why the tax credits in Table 20 were so low; and several other questions.

One Commissioner explained that Seminole County had 17 public meetings and workshops before bringing a proposed impact fee ordinance to their Board of County Commissioners. This joint meeting in May 2019 did not allow the BOCC to take any action, so no motions or votes occurred. A Commissioner again stressed that the School Board needed to provide more information to the BOCC before it would consider voting for an impact fee ordinance. (Pls. Ex. F). Superintendent Wyrosdick ended by saying the School Board had followed due diligence in doing the study in accord with what the law requires.

OCTOBER 30, 2019 LETTER FROM SCHOOL TO COUNTY (Pls. Ex. K)

Superintendent Wyrosdick sent a letter dated October 30, 2019 to County Administrator Dan Schleber asking to place the impact fee proposal back before the Board. (Pls. Ex. K). This letter recommends the BOCC to approve impact fees for a north and a south district, again recognizing the significant difference in the students generated by multifamily units in each part of the county. Mr. Boles' April 2019 study was attached as an exhibit to that letter. (Pls. Ex. K). Superintendent Wyrosdick urged the County to "respect the commissioned study and approve the fee without adjustment." (Pls. Ex. K at 1-2). Consistent with Mr. Boles' report and recommendation, that letter asked the County to swiftly adopt "without adjustment" a school impact fee that distinguished between the North County and South End as follows:

North County:	South County:
Single Family $5,000	Single Family $5,000
Multi Family $3,000	Multi Family $1,500

DECEMBER 12, 2019 MEETING (Pls. Exs L-P)

For unknown reasons, the School Board's ordinance proposal did not go back before the BOCC until December 12, 2019. (Pls. Ex. L, beginning at approximately 3:06 into the video). Mr. Boles and representatives of the School District and Board answered questions from the Commissioners during this meeting.

Mr. Boles explained that his methodology was the most commonly used for determining maximum sustainable impact fees by looking at student generation rates for single family, mobile homes and multifamily residences. (*Id.*) Commissioner Parker asked Mr. Boles how often an impact fee study needs to be updated. Mr. Boles explained that any data that is older than 9 months to one year old should be updated, but he qualified that with "that is not a hard and fast rule." (*Id.*) According to Mr. Boles, the proponent of the impact fee "simply needs a strong foundation" of what they are doing. (*Id.*)

Mr. Boles informed the Commissioners that the study he prepared used the most recent data, and he said that the 5-year "District Facilities Plan" is updated by the School District every October. (Pls. Ex. L, beginning at approximately 3:06 into the video). He further explained that the study now includes the School District's new Five Year Plan. (*Id.*) No one from the School Board nor Mr. Boles ever explicitly stated that a *new* report had been prepared by Mr. Boles. (*Id.*) This fleeting reference to a new Five Year Plan is the only reference to any updates to the April report. (*Id.*)

Mr. Boles told the Commissioners that the sole purpose of his report was to determine the maximum allowable impact fees. (Pls. Ex. L, beginning at approximately 3:06 into the video). He explained the specific amount of fees to asses is a matter of

judgment for the School Board and the BOCC, but the fees assessed cannot be more than the maximum allowed amounts he calculated in his study. (*Id.*).

The BOCC Agenda for the December 12, 2019 meeting included attachments pertaining to the school impact fees: a draft ordinance (Pls. Ex. N); a draft interlocal agreement. (Pls. Ex. O); and a final draft ordinance (Pls. Ex. P). Mr. Boles December 2, 2019 report was not presented to the Commissioners in the agenda item packets. (Pls. Ex. M). The BOCC voted to move the Educational Facility Impact Fee Ordinance proposal to January 9, 2020 for public hearing, and the matter was to be properly advertised. (Pls. Ex. L, beginning at approximately 3:06 into the video).

JANUARY 9, 2020 MEETING (Pls. Exs. R and S)

This meeting began with Superintendent Wyrosdick telling the BOCC that the School District had received more public input and had reevaluated their study since the May 2019 meeting. (Pls. Ex. R, beginning at approximately :36 into the video). He expressed his opinion that the School District had demonstrated its need for additional funding and had presented countless pieces of data to support their need. (*Id.*)

County Attorney Andrews summarized the proposed ordinance to the BOCC and explained that the study and analysis for the need of the impact fees were performed by the School Board. (*Id.*) He further expressed to the BOCC his assurances that the County is protected in the event of challenges to the impact fees because the School Board must provide those defenses. (*Id.*)

Several members of the public spoke during the meeting, and several of them referenced a "new study" they received the night before. (Pls. Ex. R, beginning at approximately :36 into the video). A local attorney questioned whether the BOCC had

ever received the December 2, 2019 study prepared by Mr. Boles and suggested the BOCC could possibly avoid legal challenges if they took time to look more closely into the matter. (*Id.*)

When Commissioner Piech asked about differences between the April and December reports, Mr. Boles did not mention two significant differences. (Pls. Ex. R, beginning at approximately 2:05 into the video). No one from the School Board nor Mr. Boles mentioned to the Commissioners that the new study no longer recommended different fees for the north and south parts of the county or that the new study included an additional subdivision of fees for mobile homes. (*Id.*).

Superintendent Wyrosdick said the School Board commissioned an updated study because of the lengthy period of time that had passed since the April report was completed. (Pls. Ex. R, beginning at approximately 2:05 into the video). He said the revised study made adjustments for sales tax credits and accounted for changes in revenues, student growth and population. (*Id.*).

SANTA ROSA COUNTY EDUCATIONAL FACILITIES IMPACT FEE ORDINANCE, Santa Rosa County, Fla. art. III, §§ 5-96 to 5-108 (2020); Ordinance 2020-01

The Ordinance imposes uniform Educational Facilities Impact Fees throughout the County based upon the type of residential units. The fees are collected at the time building permits for new residential units are issued, unless an exception applies. The Ordinance assesses the following amounts for the benefit of Educational Facilities: $5,000 for single-family detached residences; $4,000 for mobile homes; and $2,750 for multifamily dwelling units. (Ct. Ex. 1, ¶25; Santa Rosa County, Fla. art. III, §5-108; Ordinance 2020-01, Section 13).

The Ordinance includes various exemptions from paying the Educational Facilities Impact Fee so that only new residential development that will increase the impact on the Educational System are subject to the fees. One such exemption is for residential units having age restrictions that would limit the ability of school age children to reside there. (See Santa Rosa County, Fla. art. III, §5-104(a)(1)-(4); Ordinance 2020-1, Section 9(a)(1)-(4)). Provisions are made for an appeal process conducted by the School Board as set forth in the Ordinance and the Interlocal Agreement. (See Santa Rosa County, Fla. art. III, §5-105; Ordinance 2020-1, Section 10).

The Ordinance establishes various restrictions relating to the accounting and use of the collected impact fees. The impact fees may only be utilized to provide "growth-necessitated capital improvements" to the Educational and Ancillary Plants of the Educational System, and it includes a list of capital improvements for which the collected fees may be used. (See Santa Rosa County, Fla. art. III, §5-102(b); Ordinance 2020-1, Section 7(b)).

According to the Ordinance, impact fees collected must be maintained in a separate account and administrative costs may not exceed 3% of the funds collected and cannot exceed the actual costs. (See Santa Rosa County, Fla. art. III, §5-102(a); Ordinance 2020-1, Section 7(a)). It expressly prohibits Educational System Impact Fees to be used to eliminate existing debt or for any expense that would constitute a maintenance or repair expense. (See Santa Rosa County, Fla. art. III, §5-102(c); Ordinance 2020-01, Section 7 (c)).

The School Board must provide a report to the County summarizing all expenditures of funds and demonstrating that all expenditures comply with Florida Law.

The Chief Financial Officer of the School Board has to submit an affidavit stating compliance with the Impact Fee Statute to the Florida Auditor General as required by Section 163.31801, Florida Statutes. (See Santa Rosa County, Fla. art. III, §5-102(d) and (e); Ordinance 2020-01, Section 7 (d) and (e)). Some of these restrictions and requirements are found in the Florida Impact Fee Act. See §163.31801, Fla. Stat. An "Interlocal Agreement Concerning Educational Facilities Impact Fees" (the "Agreement") establishes the duties and responsibilities of the School District and the County related to the collection and remittance of the impact fees. On January 18, 2020 a "Notice of New Educational Facilities Impact Fees" was published in the Press Gazette and Navarre Press. The same Notice was published on January 23, 2020 in the Gulf Breeze News. These two notices were in compliance with the Ordinance and the statute. (See Santa Rosa County, Fla. art. III, §5-108; Ordinance 2020-01, Section 13).

The Ordinance expressly adopts and incorporates the December 2, 2019 study titled, "*Public Educational Facility Funding Analysis*" prepared by Building Livable Communities, Inc. (See Santa Rosa County, Fla. art. III, §5-99). It cites to the *St. John's* case as authority for the Ordinance, but the legislative findings lack any specific reference to satisfying the dual rational nexus test. (See Santa Rosa County, Fla. art. III, §5-96; St. John's County v. Northeast Florida Builders Association, Inc., 583 So.2d 635 (Fla 1991). The Ordinance repeatedly mentions the general welfare of the entire Santa Rosa County citizenry, but it fails to indicate that the payers of the impact fees are receiving any special benefit.

WITNESS TESTIMONY

In each subheading below, the Court has summarized the testimony it relies upon in its decision-making. The Court was presented with an uncertified draft of the official transcript of the two-day hearing. Citations to the transcript will be: Day 1 of the injunction hearing held on June 10, 2020 is cited as "Tr. V.1 at __"; and Day 2 of the injunction hearing held on June 11, 2020 is cited as "Tr. V.2 at __."

L. CARSON BISE, II (PLAINTIFFS' EXPERT WITNESS)

Carson Bise testified as Plaintiffs' expert witness. He has significant experience in analyzing impact fees and school impact fees. Mr. Bise worked for Frederick County, VA conducting economic analysis associated with Virginia's version of impact fees. He also worked for two other Virginia counties as a senior planner focusing on economic issues; infrastructure issues; and market issues. (Tr.V1 pat 39-40).

Mr. Bise has been working at Tischler Bise for 23 years and has over 29 years of experience in the field. (Pls. Ex. V and Tr.V1 at 39). He has completed over 350 impact fee studies in thirty-nine states, with 26-27 of those being school impact fee studies in Florida. (Pls. Ex. V and Tr.V1 at 40). Mr. Bise previously testified as an expert on three occasions, but the bulk of his work involves performing studies. (Tr.V1 at 42). Mr. Bise is a "past board member and treasurer of the Growth and Infrastructure Consortium, which is formerly known as the National Impact Fee Round Table." (Tr.V1 at 42).

Plaintiffs hired Mr. Bise to review the two studies performed by Mr. Boles, and to review the Ordinance implementing school impact fees in Santa Rosa County. (Tr.V1 at 42; Joint Exs. 1, 2 and 3). In his own words, Mr. Bise defined the dual rational nexus test, and he correctly cited both prongs of that test. Mr. Bise concludes there are three

big areas or deficiencies with the studies that either individually or cumulatively make the Ordinance unconstitutional.

The first problem cited by Mr. Bise is that the study does not meet the dual rational nexus test because the study does not demonstrate that the payer receives a special benefit. More specifically, he references the fact that the April study recommended different impact fees for the north and south parts of the county, but the December report adopted by the Ordinance deleted that distinction and charges the same impact fees throughout the entire county. (Tr. V1 at 48-49).

Mr. Bise explained that his first step in conducting school impact studies is to determine the demand for new schools, and this is based upon student generation rates. (Tr. V.1 at 50). Mr. Bise testified that the "student generation rate" is a means of quantifying the need for additional school facilities resulting from new growth in the County. (Tr. V.1 at 50-51). According to Mr. Bise, tracking the student generation rates in the County (or, where demographics differ as here, certain areas of the County) allows for a determination of proportionality and benefit to fee payers that satisfies the dual rational nexus test. (*Id.*at 51-54).

The April study does not delineate or define where the boundary lines are for "north" and "south," yet it repeatedly references these two different districts or zones. The Court interrupted Mr. Bise's testimony to inquire about this, and Defense Counsel advised that question would be addressed through the defense witnesses[3]. Mr. Bise

[3] Nowhere in the April 2019 Report, or in the later December 2019 Report, does the School Board describe precisely which area of Santa Rosa County it delineates as the "North County" versus the "South End." (**Tr. V.1 at 52**). At the hearing, Mr. Harrell testified that "everything north of Interstate 10 and Garcon Point" including "those students above Yellow River" would be North County, whereas "everything else is south end." (**Tr. V. 2 at 66-67**).

never answered that question because the information is not provided in any of the documents he reviewed.

Mr. Bise looked at Table 5 in the April study, and he explained to the Court the contents of this table. (Tr. V.1 at 50-56, Joint Ex. 1, p.9). This table was computed using GIS data from August 2018 showing the number of students in different housing types, and the housing types are assigned by the Santa Rosa County Property Appraiser. (Joint Ex. 1, p. 8-9). In this study, single family homes and mobile homes were assigned one Student Generation Multiplier (SGM); and the multifamily multiplier included townhomes/condos, multifamily (10+) and multifamily (2-9). (Joint Ex. 1, p.9).

Table 5 computes the relationship between housing types in the county shown in Table 3 and the public school students in the county in each housing type shown in Table 4. (Joint Ex. 1, p. 8 and 9). The distribution of the SGM in Table 5 is shown in its monetary form on page 3. (Joint Ex. 1).

Mr. Bise testified, "the overall student generation rate for multifamily units is 46 percent higher in the North County than it is in the South End." (Tr. V.1 at 54). Conversely, relative to single family units, "the single family pupil generation rate is 12 percent higher in the south versus the north." (Tr. V.1 at 54). Mr. Bise finds that these statistical differences in student generation rates are directly related to the dual rational nexus test which requires the Defendants to show that the payer of the impact fee is receiving a special benefit. (Tr. V.1 at 52-53).

Benefits from paying impact fees require that the funds are expended expeditiously to prevent jurisdictions from saving the funds for too long, which would

deprive the payer of any benefit. (Tr. V.1 at 53). Benefits from paying impact fees must also be evaluated by geography. The special benefit to the person paying the fee should be near enough to their geographic location for the payer to actually receive a benefit. (Tr. V.1 at 54). The December Report ignores these differences in demography and geography and adopts a county-wide impact fee. (Tr. V.1 at 56, Joint Ex. 2).

Plaintiffs provided a map of the Santa Rosa School Board Districts, and this map reflects the district boundaries for the elected school board members. (Pls. Ex. U). Plaintiffs also provided a map of Santa Rosa County showing the county boundary lines and some of the community names within the county. (Pls. Ex. T).

The Santa Rosa County School District Facilities Work Plan for 2019-2020 sets forth the District's plan to build a K-8 school in Pace; A high school in the "South End;" and a high school in the Milton/Pace area. (Pls. Ex. Q, p. 14). Defendants did not present a map or document explaining precisely how the School District delineates north and south. This is further discussed in Mr. Harrell's testimony.

Mr. Bise explained how geography is related to the second prong of the dual rational nexus test. He again points out that the School District internally references the North and South parts of the county, but the studies do not define those geographic boundaries. (Pls. Ex. Q, p. 14). The fact that the Work Plan says the District is going to build a high school in the South End begs the question, "What is the special benefit to an impact fee payer in the north end?"

Mr. Bise refers to the large geographic size of Santa Rosa County and the significant differences in the student generation multipliers between the north and south

end of the county when he explained why none of his other Florida school impact fee studies have recommended impact fee districts versus for the entire county. (Tr. V.1 at 64, 86-90). He explained that each county must be evaluated on its own unique characteristics. None of the studies he performed in Florida warranted separate impact fee districts. (Tr. V.1 at 64, 86-90)(Lee County, Pasco County, Manatee County, DeSoto County, and Seminole County).

The second area of concern brought forth by Mr. Bise in his review of the April and December studies involves numerous mathematical errors and inconsistencies which caused him to "seriously question the accuracy and validity of the December report." (Tr. V.1 at 65). Mr. Bise explained how the numbers included in the appendix did not support the amounts in Table 11 of the report. Mr. Bise showed how the tables throughout the December report would be inaccurate if the data in the Appendix tables was used as support for the study.

Mr. Boles testified that the appendix was included "as information for the report" and the information in the appendix "was not used specifically [to] for the actual calculation." (Tr. V.2 at 107). Mr. Boles claims to have gotten his numbers from the Santa Rosa County School District Facilities Work Plan for 2019-2020. (Pls. Ex. Q). This will be further discussed in the section summarizing Mr. Boles' testimony.

The final critique of the December 2019 study is that Mr. Boles did not use the most recent and localized data as required in the Florida Impact Fee Act. §163.31801, Fla. Stat. The lack of details in the study makes it "very difficult to confirm that this report indeed meets that standard, specifically as it relates to the construction costs and land costs." (Tr. V.1 at 71; Joint Ex. 2). Mr. Bise explained that the Florida Department

of Education publishes construction costs using a weighted average from all counties throughout the state. (Tr. V.1 at 72). The cost of building schools varies greatly by geographic area. For example, construction costs in Miami Dade or Hillsborough would expectedly be quite different from construction costs in Santa Rosa County. (Tr. V.1 at 72-73; Pls. Ex. B).

Mr. Bise was unable to determine whether some of the information and calculations were correct because the report does not contain specific references to where the data was obtained. Table 11 cites to the Florida Department of Education Cost Estimates for December 2019 and to the Santa Rosa County School Board Five Year District Facilities Work Program, but it lacks any detail as to where these numbers were found. (Tr. V.1 at 73).

Mr. Bise explained that the Santa Rosa County construction project shown on the 2018 Florida Department of Education Construction Contract costs shows that the cost of construction in Santa Rosa County was less than the state construction average for 2018. (Tr. V.1 at 74; Pls. Ex. B). He questions why the study relied upon State average costs in lieu of localized costs, especially since the cost of construction in Santa Rosa County is less than the state-averaged costs. (Tr. V.1 at 74; Pls. Ex. B).

The 'cost per acre' computation in the December study is another area of concern for Mr. Bise. (Tr. V.1 at 74-75). Simply stated, the study itself is devoid of any data to support the amount of $40,000 per acre. (Tr. V.1 at 75). Defendants presented Exhibit 9 at the injunction hearing, but that data is not a part of the study. Mr. Boles testified that he accepted the amount provided to him by the School District.

The data from the School District for purchases of land and property under contract references property in the "south county" and "north county." (Defs. Ex. 9). Mr. Bise highlights the significant differences between the cost per acre in the north and south. (Tr. V.1 at 75). The cost per acre in the south is approximately three times the amount in the north. (Tr. V.1 at 75). This substantiates Mr. Bise's opinion that the April study with different impact fees for the different geographic benefit areas is warranted based upon the data. (Tr. V.1 at 75).

Mr. Bise explained that his prior studies have taken into consideration the prevalence of school choice which are the students who may be attending a school that is not in their designated geographic school attendance zone. (Tr. V.1 at 87). The Santa Rosa study made no mention of the prevalence of school choice, and the report does not indicate whether it was considered in the study. (Tr. V.1 at 111-112).

Mr. Bice typically conducts an analysis of the specific schools that are at capacity to determine where schools need to be built. (Tr. V.1 at 111-112). The Florida school impact fee studies he has participated in "have been somewhat homogenous and haven't had as much of a divide, I would argue, that exists in Santa Rosa County." (Tr. V.1 at 112). Mr. Bise's impact fee studies typically include all of the supporting data, and the Santa Rosa study does not advise the reader where much of the information was derived. (Tr. V.1 at 117).

Mr. Bise, on cross-examination, summarized the reasons why he thinks separate impact fee districts should be implemented in Santa Rosa County. (Tr. V.1 at 88). The December study did not change or update the student generation rates from the April study, and both showed significant differences in student generation rates as previously

discussed. (Tr. V.1 at 88). The April study recognized these differences and recommended impact fee districts. The disparity in land costs is another reason to implement impact fee districts. (Tr. V.1 at 88). Other factors to consider are: where growth is occurring; where building of schools is occurring or is planned to occur; demography; cost factors; and the ability to reconfigure school attendance zones. (Tr. V.1 at 119).

Mr. Bise doesn't think the mathematical errors would result in an impact fee less than the $5,000 adopted in the Ordinance for single family homes. (Tr. V.1 at 107). If the land costs for a southern district were adjusted, this could result in higher maximum allowable impact fees. (Tr. V.1 at 107). Mr. Bise holds the opinion that the study is unreliable. He concludes that the combination of all of his criticisms makes the Ordinance invalid. He does not have confidence in the conclusions reached by Mr. Boles, and he questions the accuracy of the maximum impact fees in the December study.

BLAINE FLYNN, PLAINTIFF

Mr. Flynn is the CEO and founder of Plaintiff Flynn Building Specialists, doing business as FlynnBuilt. (Tr. V.1 at 122). FlynnBuilt constructs new residential homes in Santa Rosa County for existing customers and builds new homes to leave on the market for sale to potential customers, typically known as "spec houses." (Tr. V.1 at 122-123). Mr. Flynn estimates his company receives between 75-100 building permits annually in Santa Rosa County. (Tr. V.1 at 123).

Mr. Flynn also appeared on behalf of Plaintiff Home Builders Association of West Florida, Inc. (the "Association") for which he is the current President. (Tr. V.1 at 124).

The Association's membership consists of builders, real estate agents, general contractors, title companies, lenders, and anyone connected with the building industry. (Tr. V.1 at 125). He agrees that potential buyers are concerned about having a quality public educational system and that the quality of schools can have a correlation to the value of homes. (Tr. V.1 at 143).

Mr. Flynn explained how the builders with pending contracts in Santa Rosa County made a mad dash to apply for building permits before May 1 when the Ordinance became effective. (Tr. V.1 at 128). Mr. Flynn's business model requires him to pay the impact fees, and he pays interest on those fees until the houses go through a successful closing. That could be a lengthy period of time for his spec houses. (Tr. V.1 at 129).

Mr. Flynn is nervous about how the impact fees may force him to account for payment of the fees upfront and then later collect on the fees from his buyers. (Tr. V.1 at 130). He does not know whether he will lose business because the ordinance has not been applied yet. (Tr. V.1 at 130). So far, he has pushed all of his permits through before the County began assessing the school impact fees. (Tr. V.1 at 130, 133). At the time of the injunction hearing, Mr. Flynn had not paid any school impact fees. (Tr. V.1 at 136).

Mr. Flynn has received telephone calls from prospective customers asking about the impact fees, but any business losses as a result of the Ordinance are unknown. (Tr. V.1 at 131). He admits he has no way to speculate or quantify the amount of business he might lose as a result of the school impact fees. (Tr. V.1 at 140).

According to Mr. Flynn, the construction industry is the largest private driver for revenue in Santa Rosa County. He explained that every 1,000 homes built require approximately 2,900 full-time employed positions to support the construction process from beginning to end. (Tr. V.1 at 134). He is concerned about overall ramifications to the construction industry in Santa Rosa County. (Tr. V.1 at 134). He does not want to see people losing their jobs if there is a significant decrease in construction as a result of the school impact fees.

Mr. Flynn does not think that escrowing any impact fees collected is an appropriate temporary remedy. He explained that it would be difficult to compute the precise cost to his customers, and he is concerned with the process of issuing refunds after closing. (Tr. V.1 at 137). He supports issuing the injunction so that his company or his customers are not forced to pay fees that, in his opinion, are illegal and will probably be refunded at the end of the case. (Tr. V.1 at 139).

CLAUDE E. (GENE) BOLES, JR. (DEFENDANTS' EXPERT WITNESS)

Mr. Boles has extensive work experience in urban planning, growth management, comprehensive plans and land development, etc, but he does not have as much experience as Mr. Bise specifically with school impact fee studies. (Defs. Ex. 23; Pls. Ex. V). Mr. Boles works for his own company, Building Livable Communities, Inc., and he provides urban planning consultation with local governments and school districts. (Tr.V.2 at 91-92). He has prepared school impact fee studies three times prior to getting involved in the Santa Rosa County school impact fee study. (Tr.V.2 at 95-96). The Court finds his credentials are impressive but recognizes Mr. Bise's more extensive

and specialized knowledge and experience with school impact fees. (Defs. Ex. 23; Pls. Ex. V).

The introductory portions of the two studies were not drafted by Mr. Boles, and he credits Dr. Jim Nicholas with drafting the *Executive Summary* and the *Impact Fees in Florida* sections. (Tr.V.2 at 126). Mr. Boles agrees with the information in these sections, but he does not take credit for the drafting. (Tr.V.2 at 126). He understands the dual rational nexus test to require that "the impact fees paid must confer specific benefit to fee payers in a manner not shared by others." (Tr.V.2 at 128). Mr. Boles agrees that he did not determine whether the Santa Rosa School Impact Fees satisfy the dual rational nexus test. (Tr.V.2 at 126). His sole focus was to compute the maximum allowable fees, and he was not hired to determine the amount of fees chosen or how the fee would be applied. (Tr.V.2 at 129).

Mr. Boles explained the contents of Table 2 at page 8 of his December study. (Tr.V.2 at 99-100; Joint Ex. 2; Defs. Ex. 5). This Table 2 in the December study is the exact same as the Table 2 in the April study. (Joint Ex. 1 and 2). The Bureau of Economic Business and Research at the University of Florida projected the population of Santa Rosa County, and those projections are found in Table 2. (Tr.V.2 at 99). The table further breaks down the population into the number of children between the ages of 5-17. (Tr.V.2 at 99). These numbers are projections, and they are not actual enrollment of school children. (Tr.V.2 at 99). Mr. Boles computed a median growth rate of 1.9% for the next 10 years using the data provided by this Bureau. (Tr.V.2 at 99). He explained that the actual data he reviewed from the School District tracked that projected growth rate of 1.9%. (Tr.V.2 at 100).

Mr. Boles said that the study adopted by the BOCC includes only permanent student stations, and it excludes portable classroom space, also referred to as "relocatables." (Tr.V.2 at 105). Mr. Boles relied upon 2019 data from the Florida Department of Education (FDOE) in computing the cost per student station in Table 11, Construction Cost per Student Station. (Tr.V.2 at 105-106; Defs. Ex. 8; Joint Ex. 2).

Mr. Boles does not do a lot of analysis into the cost per student station, so he "depends upon, in this particular analysis, the school district to validate the numbers." (Tr.V.2 at 106-107). He said he used that state number as a "starting point," but he also relied upon assurances from Mr. Harrell that these state-provided 'cost per student station' amounts are appropriate for Santa Rosa County. (Tr.V.2 at 106). According to Mr. Boles, Mr. Harrell certified or identified that the FDOE projections for cost per student station were reasonable and could be anticipated for the Santa Rosa School District. (Tr.V.2 at 106).

In response to Mr. Bise's testimony regarding the accuracy of Table 11, Mr. Boles explained that the information provided in the Appendix was never intended to provide support for the analysis in this table. (Tr.V.2 at 107). Instead, the Appendix Tables A1, A2 and A3 were only intended as "information for the report."[4] (Tr.V.2 at 107). The data used for Table 11 was obtained from the School District's 2019-2020 Five Year District Facilities Plan (Pls. Ex. 29), but Mr. Boles never identified exactly where these numbers were derived. (Tr.V.2 at 107). The Court finds it is illogical to

[4] Assistant Superintendent Harrell clarifies the discrepancies between the Appendix and the body of the report, and his explanations are inconsistent with Mr. Boles' testimony.

believe that an Appendix in a study of this nature was randomly added as "information" to a report.

According to Mr. Boles, "The most important number is actually the addition of the permanent student stations, and that is actually 31,485. And that is the number that is used throughout the analysis and calculation." (Tr.V.2 at 108). It appears that this "most important number" is incorrect on the face of Table 11. (*Id.*) In the middle school column, the report says there are 8,329 total student stations. (*Id.*) If you subtract the portables (134), the remaining permanent student stations for middle school are 8,195 and not the 8,175 as stated in the table[5]. (*Id.*) Making this adjustment for the mathematical error will result in a change in the number of permanent student stations from 31,845 to 31,505. By Mr. Bole's own testimony, the most important number that was used throughout the analysis and calculations is incorrect. The Court included an amended Table 11 in the section below to illustrate the changes resulting from proper computations of the numbers given by Mr. Boles in Table 11.

The School District and Mr. Boles discovered further errors in these numbers after reviewing Table 11 in recent months. (Tr.V.2 at 109). He testified that they determined there were 90 relocatables that were not properly reported in Table 11; however, his recalculations after adjusting for them still used 31,485 less the 90 portables to reduce the number of permanent student stations to 31,395. Mr. Boles calculated that the error of omitting 90 relocatables changed the maximum allowable impact fees by "about 3/10th of one percent." (Tr.V.2 at 109). He didn't provide the percentage of error using 31,505 less the 90 newly-discovered relocatables.

[5] Mr. Harrell thinks there is a discrepancy involving 50 non-permanent student stations.

Land costs are referenced in Table 12, and Mr. Boles did not do his own analysis of the cost of land in Santa Rosa County. (Tr.V.2 at 110-111). He relied upon information provided to him by Assistant Superintendent Harrell. (Tr.V.2 at 111). Mr. Boles stated that the $40,000 per acre was "validated and developed by the school district." (Tr.V.2 at 111). Obviously, the 'land cost per student station' is going to be incorrect throughout the report because it is based upon an inaccurate number of permanent student stations as noted above.

The School District determined it would exclude the cost of administrative support facilities and buses from impact fee calculations. (Tr.V.2 at 112). Including these two things into the study would have increased the maximum allowable impact fees. (Tr.V.2 at 112). Even though these two things were excluded in the maximum allowable impact fees, both studies computed the costs of Administrative/Support Facilities and Buses. (Tables 13 and 14, Joint Exs. 1 and 2).

Mr. Boles was asked to explain why the study adopted by the BOCC deleted the recommendation for separate impact fees for the north and south parts of the county. He said that the separate districts were not his recommendation and were instead the recommendation of the School District. (Tr.V.2 at 134). However, his testimony to the BOCC on May 15,2019 contradicts this.

Mr. Boles said at the injunction hearing that his study may have influenced the School Board's recommendation, but the study did not "produce" the recommendation. (Tr.V.2 at 134). Mr. Boles concluded at the injunction hearing that the data supports both the April recommendation of north and south impact fees and the December study for a countywide fee. (Tr.V.2 at 135).

HENRY H. FISHKIND, PH.D. (DEFENDANTS' EXPERT WITNESS)

Dr. Fishkind's areas of expertise include economic analysis, project finance and feasibility, fiscal impact analysis, and other areas. (Defs. Ex. 24). Dr. Fishkind's resume says he is the President of Fishkind & Associates, Inc, a "full service economic and financial consulting firm." (Defs. Ex. 24). However, he testified that he sold his consulting business and converted to a new business called Fishkind Litigation Services, which is not on his resume. (Tr.V.2 at 151; Defs. Ex. 24). The Defendants hired Dr. Fishkind through Fishkind Litigation Services. (Tr.V.2 at 151). Dr. Fishkind has participated in more than a dozen impact fee studies, and approximately 5-6 school impact fee studies. (Tr.V.2 at 152). He has testified as an expert over 100 times with approximately ten of those involving impact fees. (Tr.V.2 at 152-153). The Court recognizes Mr. Bise has more experience pertaining to school impact fees.

Dr. Fishkind discussed three problems with having more than one district for school impact fees. (Tr.V.2 at 159-161). First, he thinks separate trust accounting for the funds for each district is unnecessarily burdensome. (Tr.V.2 at 159-160). The next criticism of school impact fee districts involves school choice and school attendance zones. (Tr.V.2 at 160). Dr. Fishkind thinks that delineating school impact fee zones will prohibit the School District from adjusting its school attendance zones, and it does not account for school choice. (Tr.V.2 at 160).

Dr. Fishkind's final criticism depends upon the size of the districts. Impact fees must be spent within the designated impact fee district. (Tr.V.2 at 160). This could lengthen the time it would take to collect enough money to build a new school. (Tr.V.2 at

160). Depending on how long it takes, the benefit to the fee payer may not accrue in a reasonable period of time as required in the Florida Impact Fee Act. (Tr.V.2 at 160).

Dr. Fishkind thinks that the Santa Rosa Ordinance satisfies the first prong of the dual rational nexus test. (Tr.V.2 at 163). He also thinks the Ordinance meets the second prong "by providing the additional capacity needed for new growth." (Tr.V.2 at 163).

ASSISTANT SUPERINTENDENT JOSEPH HARRELL

The School Board began discussing school impact fees in the summer of 2018 and started their review process in the fall of 2018. (Tr.V.2 at 6). Mr. Harrell testified that the District experienced a 1.9% to 2.0% growth rate during the five year period between 2015 and 2020, but the data to support this growth is not included in the impact fee studies. (Tr.V.2 at 6; Joint Exs. 1 and 2).

Mr. Harrell said the District has maximized the amount of space on most of the existing school sites, so it has reached the point that they must now look to build new schools. (Tr.V.2 at 9). The District has already funded a new K-8 school in Navarre with the ad valorem taxes received, also called the Capital Improvement Tax (CIT). (Tr.V.2 at 6). This school is referenced as "Elkhart" in the exhibits presented during the injunction hearing, but it has now been named "East Bay K-8." (Tr.V.2 at 10). This school is said to be in the south end of the county, and it is due to open to students for the start of the 2021-2022 school year. (Tr.V.2 at 10). Mr. Harrell agreed at the injunction hearing that East Bay/Elkhart will not be funded by the newly-assessed school impact fees. (Tr.V.2 at 9). This contradicts his statements to the BOCC during the meetings discussed above.

Mr. Harrell explained that the District planned to spend the impact fee funds in the same manner that it spends ad valorem taxes and Local Option Sales Tax funds. (Tr. V 2 at 82)("[T]he impact fee may be generated in Chumuckla, and it may be needed in Navarre."). He did agree that the impact fees should be limited in use for new capacity only. (Tr. V. 2 at 84).

Assistant Superintendent Harrell explained that the District is seeking approval to build a similar K-8 school in Pace, and he describes Pace as the central part of the county. (Tr.V.2 at 11). The current Five Year Work Plan (2019-2020) includes building a high school in the south end of Santa Rosa County and another high school in the "central to north end of the county." (Tr.V.2 at 12). Mr. Harrell testified that the sales tax revenue and the CIT revenue will not be enough to pay for these three new schools. (Tr.V.2 at 12).

When Mr. Harrell was questioned by the Defendants' attorney about the two different reports, he claims the District

> "had always looked at this from the standpoint of creating one, keeping this as one district. Some while there was data that may have always been available, it was always a composite number that we were going to be looking at to keep that, the impact fee consistent across the district…"

(Tr.V.2 at 14). During the temporary injunction hearing, Mr. Harrell said, "[I]t was never the intention of the school district" to "break [the impact fee] down into different amounts for different districted areas." (Tr. V.2 at 58).

This testimony contradicts the April 2019 Report; the PowerPoint presentations given by Mr. Harrell and by Mr. Boles at the May 15, 2019 joint meeting; and the October 30, 2019 letter sent by Superintendent Wyrosdick urging the County to adopt

"without adjustment" a school impact fee that distinguished between the North and South areas of the County for multifamily dwellings. (Pls. Exs. D-K). It is also contradicted by Mr. Boles' testimony that the School Board itself made the recommendation for two separate benefit districts based on its own judgment as to what was reasonable and equitable. (Tr. V.2 at 134-135).

As referenced above, the Court was not presented competent evidence regarding a dividing line between a "north" and "south" part of the Santa Rosa County School District. The District uses this term regularly, and the evidence shows the delineation of these dividing boundaries is significant in evaluating the facts before the Court. The descriptions given by Mr. Harrell were not clear at all, as he described "the north end would be from the north of Escambia Bay" and the "Pace, Garcon Point area travelling north" would be considered the "north" part of the School District. (Tr. V.2 at 14-15). He described the southern portion of the School District as "down on the coast itself." (Tr. V.2 at 15). Later in his testimony, Mr. Harrell again said that the bay is the dividing line between north and south. (Tr. V.2 at 66). He added that property north of Interstate 10, Garcon Point, and students above Yellow River are also considered the "north" part of the School District, and everything else is considered "south." (Tr. V.2 at 67).

Regarding the data used to support the study, Assistant Superintendent Harrell explained that they chose to use the State costs per student station in lieu of the actual costs per student station because the State costs are significantly lower than the actual costs. (Tr. V.2 at 22-28). The State sets a maximum allowable cost per student station by statute, and that amount is annually updated by the Florida Department of Economic

and Demographic Research. (Tr. V.2 at 17-18; §1013.64, Fla. Stat). This maximum amount set by the state excludes many parts of a school, and it only computes the classroom portions in its calculations of the maximum allowable cost per student station[6]. (Tr. V.2 at 18-19). Numerous parts of a school campus are excluded in the cost per student station allowed by the State, even though these additional parts are necessary to meet the students' educational needs. Some examples of exclusions from the State maximum allowable cost per student station include: cafeterias; kitchens; media centers; mechanical rooms; electrical spaces; hallways; restrooms; etc. (Tr. V.2 at 19-20). The actual cost per student station in constructing educational facilities is significantly higher than the maximum cost per student station in the statute. (Pls. Ex. B; (Tr. V.2 at 26-28).

As for the price per acre used in the studies, Mr. Harrell explained how it was computed; and the Defendants provided a document reflecting land purchases made by the School District. (Defs. Ex. 9). Mr. Harrell computed the local cost per acre at the request of Mr. Boles. (Tr. V.2 at 29). Mr. Harrell obtained data from the Property Appraiser for north and south properties, and he averaged those numbers for a $35,000 cost per acre in the April study. (Tr. V.2 at 29). He did not look at actual purchases by the School Board when he computed the $35,000 per acre in the April study. (*Id.*).

[6] Cost per student station includes contract costs, fees of architects and engineers, and the cost of furniture and equipment. Cost per student station does not include the cost of purchasing or leasing the site for the construction, legal and administrative costs, or the cost of related site or offsite improvements. Cost per student station also does not include the cost for securing entries, checkpoint construction, lighting specifically designed for entry point security, security cameras, automatic locks and locking devices, electronic security systems, fencing designed to prevent intruder entry into a building, bullet-proof glass, or other capital construction items approved by the school safety specialist to ensure building security for new educational, auxiliary, or ancillary facilities. §1013.64(6)(d)2., Fla. Stat.

The data used to arrive at $40,000 per acre used in the December study also divides purchase prices into north and south districts. (Defs. Ex. 9). The cost per acre in the south end of the county (approximately $63,000) is over three times the cost per acre in the north (approximately $20,000). (Defs. Ex. 9). The study adopted by the Ordinance used a countywide average of $40,000 per acre even though the countywide average cost per acre is slightly higher at $41,216. (Defs. Ex. 9).

Mr. Harrell explained why the tables in the Appendix of the December report do not match the data in the body of the study. (Tr. V.2. at 37-39). The new Elkhart school will house both elementary and middle school students, and Table A2 excluded 600 middle school students. (Tr. V.2. at 37-39). He thinks it is possible that 50 portable student stations were erroneously included in the number of permanent student stations.

Other than Mr. Boles, the School District hired a company called DRMP to geo-code student addresses to determine a precise number of students residing in different housing types based upon housing codes assigned by the Property Appraiser. (Tr.V.2 at 56). This geo-coding was done in August 2018, and it was not updated for the December 2019 report. No other entities or persons outside of the School District and Mr. Boles prepared data or worked on the data contained in the studies. (Tr.V.2 at 57).

The study made no reference to whether it considered students crossing attendance zones, and Mr. Bise indicated he typically considered the rate of out-of-attendance-district students when he conducts school impact fee studies. Assistant Superintendent Harrell discussed the reasons why students may attend schools outside of their geographic districts. (Tr. V.2. at 43-46). He did not provide statistics or data

regarding the rate of students traveling outside of their assigned attendance districts. (Tr.V.2 at 80).

Assistant Superintendent Harrell said that the School District never intended to adopt the maximum allowable impact fees. He later explained that there were members on the School Board who wanted to recommend close to the maximum amounts computed in the study, but Mr. Boles strongly suggested a lower fee to account for errors in the study. (Tr. V.2. at 58).

Mr. Harrell did not recall talking about the changes between the April and December reports during the January 9, 2020 meeting when he responded to questions by Commissioners. (Tr. V. 2 at 59-60). As Commissioner Cole testified, he did not even receive the December 2019 Report upon which the Ordinance is based prior to the County's vote to adopt the Ordinance. (Tr. V.1 at 147).

Assistant Superintendent Harrell was asked why the School District deleted the separate impact fees for north and south in their final recommendation to the BOCC. According to Mr. Harrell, the School Board made the decision based on its collective "judgment" to "treat the district as a whole" with respect to collection and use of the School Impact Fees—just like it does with the "half-cent sales tax" collected in Santa Rosa County. (Tr. V.2. at 58)("…if we happen to make, gain more half-cent sales tax in the Pace Area but there is need for growth and we need a classroom at Jay Elementary School … then we are going to use those half-cent sales tax there. And so it's not proportionate from that standpoint. We treat the district as a whole, and we chose to do that in this process as well.")

Mr. Harrell testified the mathematical errors were limited to the figures in Tables A1, A2 and A3 of the appendix to the December 2019 Report. The appendix omitted student stations at the K-8 facility now under construction in Navarre in the South End of the County. (Tr. V. 2 at 36-38). He claims the report reflects the correct number of permanent student stations in tables 12 through 25. (Id. at 38). Mr. Harrell conceded, though, that on its face, the report appears to be in error mathematically. (Id. at 71). The Court disagrees with Mr. Harrell and notes that there are numerous errors carried throughout the December report.

According to Assistant Superintendent Harrell, the School Board decided to recommend impact fees that were less than the maximum allowable fees presented in Mr. Boles' reports, "We were looking for a fair and equitable number that met the standard ... to be equitable, to be fair, and to meet the needs of the school district as much as possible." (Tr. V.2 at 63-65).

THE FIRST REPORT: "Public Educational Facility Funding Analysis" April 2019 Report (Joint Ex. 1)

This report was presented to the BOCC on May 15, 2019 and again submitted to the BOCC in October 2019. Even though it was not used in support of the Ordinance, it is important to note that the School Board asked the BOCC both in May and in October for an ordinance imposing school impact fees with this April study as the support for school impact fees. The Court doesn't need to spend too much time analyzing this study since it ultimately was not made a part of the Ordinance.

The Court reviewed Table 12 on page 12 of the April report. (Joint Ex. 1). The report does not provide citations to the sources of this information. The Court noted a mathematical error in this table: the square feet of land per station in high school is

shown as 911, and the actual calculation is 914.76. This error was corrected in the December study. (Joint Ex. 2). According to Table 12 in the December report, Mr. Boles obtained all information regarding land costs from the Santa Rosa School Board. (Joint Ex 2, p. 13)

Assistant Superintendent Harrell claims that Mr. Boles was initially consulted to "start projecting growth and to give [the District] some analysis on future needs within the school district." (Tr.V.2 at 13). However, Mr. Boles' testimony does not support this assertion by Mr. Harrell.

Defendants' counsel referenced Mr. Boles' April report as a "draft," but the evidence does not support it as such. This study does not include any geographic descriptions or boundaries for the areas referred to as 'north' and 'south.' The lack of a clear boundary between north and south makes it very difficult to evaluate whether the people paying the impact fees will receive a special benefit or whether their fees are proportional to their impact on the school capacity.

THE SECOND REPORT: "Public Educational Facility Funding Analysis" Dec 2019 Report (Joint Ex. 2)

The Court looked at Table 11 on page 12 and determined there were mathematical errors. (Joint Ex. 2). The study is inconsistent throughout regarding whether the author rounds up at all, and it is also inconsistent as to the number of decimals the author carries as to each computation. For example, Tables A1 and A3 round up to one-tenth of a percentage, but Table A2 rounds up to one-hundredth of a percentage. While these inconsistencies may not result in significant differences, the overall results would be more accurate if the author provided consistency and details as to his methods of calculations.

These are the mathematical errors the Court found in Table 11, page 12:

Table 11: Construction Cost per Student Station (mathematical errors bolded)

	Elementary	Middle	High
Cost per Student Station	$23,329	$25,193	$32,724
Total Student Stations	15,080	8,329 (8,223)	9,292 (9,242)
Permanent Stations	14,490	**8,195** (8,089)	8,820 (8,770)
Relocatables	590	134	472
% Permanent Stations	**96.08**	**98.39** (98.37)	94.92 (94.89)

The above changes to Table 11 are based solely on mathematical errors. Assistant Superintendent Harrell testified that Table 11 was the correct number of permanent student stations because it was adjusted by the 600 middle school stations accidentally omitted in Table A2. However, adjusting Table A2 by 600 middle school student stations results in 8,223 student stations and not 8,329 as stated in Table 11. The calculations resulting from adding these 600 stations are in parenthesis in the middle school column above.

Table A3 miscalculated the number of high school student stations, and the incorrect number was also carried into Table 11. The numbers in parenthesis in the high school column in the above Table 11 reflect the calculations when the correct number of total student stations is used.

These are the mathematical errors the Court found in the appendix, page 21:

Table A2: Santa Rosa County Middle Schools (omitting first 2 columns) (mathematical errors bolded)

NORTH COUNTY				
Facility	Acreage	19-20 Enrollment	Student Stations	Utilization
Avalon Middle	32.2	778	949	81.98
Central School	10.8	167	198	84.34
Chumuckla		61	76	80.26
Hobbs Middle	14.5	734	960	76.46
Jay Elem		75	132	**56.82**
Jay High	14.0	153	301	50.83
King Middle	22.6	662	785	84.33
Sims Middle	27.5	1062	1004	105.78
TOTAL NORTH END	121.6	3692	**4405**	**83.81**
SOUTH COUNTY				
Gulf Breeze	21.9	990	1047	94.56
Holley Navarre	13.8	995	995	100.00
Woodlawn Beach	29.6	1068	1176	90.82
Elkhart	20.1		**600***	
TOTAL SOUTH END	**85.4**	2818	**3818**	73.81
TOTAL MIDDLE	**207**	6510	**8223**	**79.17**

*Mr. Harrell said this number was omitted from the Appendix, but it was included in the body of the study. However, making this correction still reveals mathematical errors in the study.

Table A1 miscalculated the amount of total acreage for elementary schools in the district. The total of districtwide acreage is 270.3 instead of the stated 276.8. (Joint Ex. 2, p. 21). Table A3 miscalculated the total number of high school student stations districtwide. The correct total of student stations is 9,242 instead of the 9,292 as stated[7]. Changing this number then changes the districtwide utilization rate from 94% to 94.5%. Table A3 also miscalculates the utilization rates for Navarre and for the south end. Navarre should be 102% instead of 100.2%; and the south end is 103% instead of the stated 101.4%.

[7] Mr. Harrell said these were 50 relocatables, and he knows "exactly where those were added at." If they were relocatables, they should have been in the separate column in that table designated for relocatables.

In the Court's review of Table 12 on page 13, it appears the Acres per Student Station were averaged. (Joint Ex. 2). The mathematical average is .02166666, and that number was not rounded to .22. (*Id.*) The Square Feet of Land per Station in the table shows a total of 915. (*Id.*) This is the amount of square feet of land per station for high school. (*Id.*) If the number in the "total" column should have averaged the amount of square feet of land per student station for elementary, middle and high schools, then that amount would be 944 instead of 915. (*Id.*) The same occurred on the section of the table called Land Cost per Student Station- the number in the total column is the amount for high schools only; but the average for elementary, middle and high schools is $866.67. (*Id.*) There was no testimony specifically pertaining to this table, but the Court is concerned that the $840 "land cost that is carried through the full analysis" may be incorrect. (Tr. V.2 at 111).

Tables 3-5 are the same in each study because the GIS data was not updated. The December study computed the Student Generation Multipliers using August 2018 student enrollment data, and the School Board did not update that 16-month-old information. Tables 3-5 in the December study have removed the north and south differences, so each table is much smaller. Table 5 has a mistake in the December study. The total K-12 for multifamily should be .17 like it was in the April study since the same data was used to compute the multiplier. (Add the total students in the three types of multifamily units (244+458+443) and divide by the total number of multifamily housing units in the count (2156+1967+2654); (1145/6777=.1689538~.17))

Tables 8, 9, and 10 refer to the 2019-2020 Five Year District Facilities Plan and the Santa Rosa County School District as the sources for the data. The explanation for

these tables is that they are the "planned school capacity utilization for elementary, middle and high schools." (Joint Ex. 2, p. 11). The 2019-2020 school year data should match throughout this study, but it does not. The permanent elementary student stations in Table 8 (14,486) should match the permanent elementary school student stations in Table 11 (14,490). (Joint Ex. 2, p. 11). The middle school enrollment (7,056) and permanent student stations (7,729) in Table 9 are different from the permanent student stations in Table 11 (8195 or 8175) and the enrollment for 2019-2020 in Table A2 (6,510). Table 9 inflates enrollment by 546 students which lowers the utilization rate.

Table 6 of the December study is titled *10 Year Projected COFTE Enrollment,* and it describes two sources for its data. (Joint Ex. 2, p. 10). This table references 2018-2019 COFTE Projections. Assistant Superintendent Harrell testified that COFTE will always be less than actual enrollment, but this study shows otherwise.

Table 7 proports to be *Projected 10 Year Enrollment* using a 1.9% growth rate. Table 7 was copied exactly from the April study, and it was not updated. At the time the December report was written, the School District already knew the actual number of students enrolled, so the 2018-2019 and 2019-2020 school years in Table 7 are no longer projections. The actual number of students enrolled in 2018-2019 and 2019-2020 were available at the time the December report was authored. Some of these projections show lower enrollment than the COFTE enrollment projections from Table 6, contradicting Mr. Harrell's testimony that COFTE will always be less than actual enrollment.

Dr. Fishkind's opinions do not sway the Court. He did not mention the methodology, the mathematical errors, or the contents of the studies. In addition, he did not accurately state the second prong of the dual rational nexus test.

Contrary to the testimony of Mr. Boles and Mr. Harrell, errors in calculations and wrong numbers were carried throughout the entire study. The Court finds the calculations throughout the report are unreliable. There are too many errors for the Court to have any confidence in the conclusions reached.

The geocoding of student addresses used to compute the student generation multipliers in both studies was performed in August 2018. (Joint. Exs. 1 and 2). At the time of the April 2019 report, the data was eight months old. When Mr. Boles updated the study in December 2019, he used the same August 2018 information which was now 16 months old. Mr. Boles knew at the time he finalized the December report that it contained outdated information since he testified that he would expect data older than nine to twelve months old to be updated.

It is abundantly clear that the School Board hired Mr. Boles for one purpose- to compute the maximum allowable school impact fees. Mr. Boles did not undertake any analysis of the current funding types or amounts available to the School Board other than to the extent needed to compute credits. He did not attempt to determine the fiscal *needs* of the School District. The Executive Summary in each report says, "The study is specifically intended to provide the analytical foundation for the introduction of school impact fees to augment other available revenue sources." (Joint Ex. 1, p.2 and Joint Ex.2, p. 3). The testimony from the Defense witnesses indicates there was not a study

done on the *need* for an impact fee, but there was a study done to compute the maximum amount of an impact fee.

LEGAL ANALYSIS

Impact fees are charges imposed against new development to provide for the cost of capital facilities made necessary by that new development. The purpose of the charge is to impose upon the newcomers, rather than the general public, the cost of new facilities necessitated by their arrival. City of Dunedin v. Contractors & Builders Ass'n of Pinellas County, 312 So. 2d 763, 766 (Fla. 2d DCA 1975). Plaintiffs do not dispute that Defendants have the authority to impose educational facilities impact fees, but they do not think Defendants have met all constitutional and legal requirements to make the impact fees valid.

STANDING

Defendants initially questioned Plaintiffs' standing to bring forth this action, but Defendants did not argue standing at the end of the hearing. The Court is addressing the matter even though it appears Defendants abandoned that argument. An aggrieved plaintiff need not have paid an impact fee or requested a refund to have standing to challenge the impact fee as an unlawful tax. "The fact that these plaintiffs face penalties for failure to pay an allegedly unconstitutional tax is sufficient to create standing under Florida law." Dep't of Revenue v. Kuhnlein, 646 So. 2d 717, 720 (Fla. 1994), *as clarified* (Nov. 30, 1994); Home Builders Assn. of Metro Orlando, Inc. et al. v. Osceola County, Florida, NO. CI 04-OC-1024 (Fla. 9th Cir. Ct. Dec. 12, 2005).

ELEMENTS FOR INJUNCTIVE RELIEF

Injunctions issued by a Court must provide "[c]lear, definite and unequivocally sufficient factual findings [to] support each of the four conclusions necessary to justify entry of a preliminary injunction." Olson v. Olson, 260 So.2d 367, 369 (Fla. 4th DCA 2018)(citations omitted). Issuing a preliminary injunction is "an extraordinary remedy which should be granted sparingly, which must be based upon a showing of the following criteria: (1) The likelihood of irreparable harm; (2) the unavailability of an adequate remedy at law; (3) substantial likelihood of success on the merits; and (4) considerations of the public interest." City of Jacksonville v. Naegele Outdoor Advert. Co., 634 So. 2d 750, 752–53 (Fla. 1st DCA 1994) *citing* Thompson v. Planning Commission, 464 So.2d 1231 (Fla. 1st DCA 1985)(citations omitted).

(1) Substantial likelihood of success on the merits

FLORIDA'S CONSTITUTION: FEE vs. TAX; DUAL RATIONAL NEXUS TEST

Counties cannot impose taxes unless authorized by the Florida Constitution or general law. Art. VII, §§ 1 and 9, Fla. Const.; Contractors & Builders Ass'n of Pinellas County v. City of Dunedin, 329 So. 2d 314, 317 (Fla. 1976). Impact fees are allowed by law, but only if they are not disguised as taxes. See Collier County v. State, 733 So.2d 1012 (Fla. 1999). Therefore, if the Educational Facilities Impact Fees constitute a tax, the fees are unconstitutional. (*Id*).

Because impact fees are a product of a local government's home rule powers, the characteristics and limitations of such fees are traditionally derived from Florida case law. As developed under state legal precedent, a valid impact fee must meet the "dual rational nexus test," the constitutional polestar Florida courts developed to

distinguish a lawful impact fee from an unconstitutional tax. See Volusia County v. Aberdeen at Ormond Beach, 760 So. 2d 126 (Fla. 2000).

An impact fee is permissible only if (1) it offsets "needs that are sufficiently attributable to" the new development; and (2) "the fees collected are adequately earmarked for the substantial benefit of" the residents of the new development. Hollywood, Inc. v. Broward County, 431 So. 2d 606, 611 (Fla. 4th DCA 1983)(citations omitted). "If a fee is charged that has no nexus or logical bearing on an impact then it would amount to a tax without regard to the name that was assigned to it." City of Tarpon Springs v. Tarpon Springs Arcade, Ltd., 585 So.2d 324, 326 (Fla. 2nd DCA 1991).

The dual rational nexus test and its two prongs have been defined in slightly different terms in different cases, but the consensus is that there should be a specific need for assessing the fee and that the payer must receive a special benefit. First, the fees must be proportional and reasonably connected to, or have a rational nexus with, the need for additional capital facilities and the increased impact generated by the new construction. Second, the impact fee must be proportional and reasonably connected to or have a rational nexus with, the expenditure of the funds collected. *See* Section 163.31801(3)(f) and (g), Florida Statutes. *See also* Hollywood, Inc. v. Broward County, 431 So. 2d 606, 611-12 (Fla. 4th DCA 1983). *See also* St. Johns County v. N.E. Fla. Builders Ass'n, 583 So. 2d 635, 637 (Fla. 1991). A valid impact fee must also satisfy all additional requirements of the Impact Fee Statute. Section 163.31801, Florida Statutes.

There are limited appellate decisions addressing school impact fees. The two big cases argued by both sides are Florida Supreme Court decisions: St. Johns County

v. N.E. Fla. Builders Ass'n, 583 So. 2d 635 (Fla. 1991) (*St. Johns*); and Volusia County v. Aberdeen at Ormond Beach, 760 So. 2d 126 (Fla. 2000)(*Aberdeen*). Both cases are informative, but neither case was decided on the same facts before this Court.

The Court rejects Plaintiffs argument that the Florida Supreme Court imposed a bright line rule that local governments must assess school impact fees on a neighborhood-by-neighborhood or subdivision basis. Volusia County v. Aberdeen at Ormond Beach, 760 So. 2d 126, 132 (Fla. 2000). Interpreting *Aberdeen* in the manner proposed by Plaintiffs will result in a preposterous outcome. Plaintiffs own expert agrees impact fees should not be broken down into different assessments for each new subdivision. ("That would be ludicrous.") (Tr.V.1 at 86).

The narrow issue in *Aberdeen* was whether assessing impact fees on a development that is closed to children violated the dual rational nexus test; and more succinctly, whether that specific neighborhood was receiving a special benefit. 760 So. 2d 126, 132 (Fla. 2000). If not, both prongs of the dual rational nexus test are not met-making the ordinance unconstitutional as applied to the *Aberdeen* neighborhood.

A large portion of the *Aberdeen* opinion was spent determining whether the Covenants and Restrictions could easily be changed or whether they sufficiently stated that the neighborhood would remain childless for purposes of assessing the school impact fees. The Court ultimately decided that there was no potential for the *Aberdeen* subdivision to generate students, so there was "no impact warranting the imposition of [school impact] fees." Volusia County v. Aberdeen at Ormond Beach, 760 So. 2d 126, 137 (Fla. 2000).

The Florida Impact Fee Act was amended in 2019 to include the dual rational nexus test previously recognized by Florida Courts. "The bill codifies the dual rational nexus test by requiring an impact fee to be proportional and have a rational nexus both to the need for additional capital facilities and to the expenditure of funds collected and the benefits accruing to the new construction." Florida Staff Analysis, H.B. 7103, 7/1/2019. The legislative intent, as stated in the Act, is "to ensure that, when a county or municipality adopts an impact fee by ordinance or a special district adopts an impact fee by resolution, the governing authority complies with this section." § 163.31801(2), Fla. Stat.

§ 163.31801 (3)(f): The impact fee must be proportional and reasonably connected to the need for additional schools and the increased impact generated by the new residential construction.
§ 163.31801 (3)(g): The impact fee must be proportional and reasonably connected to the expenditures of the funds collected and the benefits accruing to the new residential construction.

Plaintiffs' initial challenge centers on the assertion that the December 2019 Study fails to charge fees that are proportional and reasonably connected to the need for additional schools in the south end of the county, specifically for multifamily homes. The evidence shows that the northern part of the county has a student generation rate that is approximately 46 % higher than the southern part for multifamily housing. (Tr. V.1 at 54). This is a significant difference, and it was ignored in the December study. In terms of the dual rational nexus test, the northern part of the county is going to generate the need for more students, but the southern part of the county is paying the same amount in impact fees even though it is generating almost 50% less students in that housing type. Whether to implement geographic impact fee zones is typically a policy-based decision of the local government. This case is different because the Defendants'

data and expert reports indicate the lack of geographic impact fee zones or districts has resulted in a violation of the dual rational nexus test.

The dual rational nexus test is not satisfied by simply showing a relationship between overall growth in the County and the need for new school facilities, or by showing that residents "as a whole" benefit from a "quality district-wide education system." (Tr. V.2 at 131). The Florida Supreme Court has unanimously rejected such a broad reading of the dual rational nexus test. *See* Volusia County, 760 So.2d at 135 ("a liberal reading of the dual rational nexus test would obliterate the distinction between an unconstitutional tax and a valid fee."); *see also* Collier County, 733 So. 2d at 1017 ("If that were the test, the distinction between taxes and special assessments would be forever obliterated.").

The Defendants must show a reasonable connection between new development itself and the need for new schools along with special benefits accruing to the new developments that pay the impact fees. That standard is not present before the Court. The Santa Rosa School District has not geographically identified new growth, and it seems to have generalized the fact that Santa Rosa County is growing. The County has experienced a steady growth rate of approximately 1.9% over the past five years. The School Board did not do "heat-mapping" to justify the need for a school impact fee in the parts of the county experiencing the exponential growth that was described to the BOCC. (Tr.V.1 at 119)("GIS analysis that showed heat maps that showed exactly where development was happening and where you had capacity needs…").

The unique characteristics of Santa Rosa County were not addressed in the December study used to support the ordinance, yet they were included in the April

study. The distinct differences from the northern rural areas and the southern coastal areas as far as geography and demography were ignored. The studies and data supporting the School Impact Fee Ordinance do not meet the requirements for the dual rational nexus test. Plaintiffs have a substantial likelihood of success on the merits of their claim that the Ordinance is a countywide tax and not a tailored school impact fee.

The December 2019 report does not analyze the "second prong" of the dual rational nexus test—that is, the proportionality and nexus between the impact fees collected and the benefits accruing to new residential construction. It doesn't discuss or analyze the special benefit a fee payer in either the north or south county areas would receive relative to a countywide payment (i.e., how school facilities constructed for capacity needs in the southern part of the county would benefit fee payers in the northern part of the county and vice versa). (Tr. V. 1 at 62).

Mr. Boles agreed his December 2019 report upon which the Ordinance was adopted does not address what unique or special benefit residents who will pay the School Impact Fee will receive. (Tr. V. 2 at 129-130) ("That was not the purpose of the report... That is a question of decisions by the governmental bodies that are imposing the fee"). Mr. Boles described the benefit to those paying the School Impact Fee as a "quality district-wide education system [] shared by both fee payers and non-fee payers alike." (Id. at 131). According to Mr. Boles, there is "no question" that "the benefit is shared by everyone in the county whether they pay the fee or not" and that the School Impact Fee "has the same effect in terms of the general welfare in the community of the taxes that support the school system." (Tr. V. 2 at 132).

§ 163.31801 (3)(a): The calculation of the impact fee must be based on the most recent and localized data.

Since 2006, the Florida Legislature has repeatedly amended the Impact Fee Act to heighten citizen protections against local governments imposing unlawful taxes. These amendments include: (1) adding minimum conditions impact fees must satisfy; (2) codifying the government's burden to prove the validity of the fee; and, most recently, (3) codifying the dual rational nexus test. Laws 2009, c. 2009-49, § 1, eff. June 1, 2009; Laws 2011, c. 2011-14, § 5, eff. April 27, 2011; § 163.31801(3)(f-h),(7), Fla. Stat. (2019). Courts are to carefully scrutinize impact fees to ensure a local government satisfies its burden to prove an impact fee is in fact a valid fee, and not an unlawful means to raise additional revenue[8]. *See* Florida Staff Analysis, S.B. 410, 1/26/2011 ("Increasing constitutional protections is a function well within the jurisdiction of the Legislature.") and §163.31801(7), Fla. Stat. (2019)("The court may not use a deferential standard for the benefit of the government.").

Plaintiffs argue the Ordinance fails to meet all of the statutory requirements in the Impact Fee Act, and they specifically reference Sections (3)(a), in addition to the dual rational nexus test discussed above. §163.31801, Fla. Stat. The GIS data used in the December study was created in August 2018. Another school year began in August 2019, and the students' addresses from the 2019-2020 school year would have been the most recent data for the December study. The School District chose to use the

[8] The Florida Supreme Court in *City of Port Orange* rejected the premise that a local government's alleged *need* for alternative revenue source changes the constitutional analysis: "we recognize the revenue pressures upon the municipalities and all levels of government in Florida. We understand that this is a creative effort in response to the need for revenue. However, in Florida's Constitution, the voters have placed a limit on [local government's taxing authority] ... These constitutional provisions cannot be circumvented by such creativity." 650 So.2d 1, 3 (Fla. 1994).

August 2018 GIS data previously supplied to it by a company it hired in 2018, DRMP. The student generation multiplier computed with this data is one of the core factors in computing the maximum allowable impact fees, and the School District did not use the most recent data for this computation. (Joint Ex. 1, p.8, Table 4; Joint Ex. 2, p.9, Table 4) ("Source: Santa Rosa County School District, August 2018/Geocoding of student addresses by DRMP"); (Tr. V.2 at 55).

The Defendants must prove by a preponderance of the evidence that "the calculation of the impact fee [is] based on the most recent and localized data." § 163.31801(3)(a). The County failed to meet its burden of proof in establishing the calculation of the School Impact Fee was based on the most recent and localized data for both the costs of school facility construction and the cost of land.

The December 2019 Report does not cite to data local to Santa Rosa County for the costs of construction. (Tr. V.1 at 71; Joint Ex. 3 at 12, Table 11). Instead, the report refers to statewide data from the Florida Department of Education. (Joint Ex. 3 at 12, Table 11; Tr. V.1 at 72). While this data is not inappropriate to consider, Mr. Bise's unrebutted testimony was that "best practices" dictate the use of "either recent or planned engineering construction from the particular jurisdiction to meet the standard" and to confirm whether reliance on state standards is appropriate. (Tr. V. 1 at 72). This is so because the Department of Educations' data consists of a weighted average of school facility construction costs from every one of the school districts across the state. (Id.)

Because the cost to build schools varies from county to county, the December 2019 Report's use of state data alone, without support as to whether such data is

commensurate to the cost to build schools in Santa Rosa County, lacks the "level of detail" mandated by the Act. (Id. at 73); Seda Construction Co. v. Nassau County, No. 45-2020-CA-000294 at 4 (Fla. 4th Cir. Ct. Apr. 14, 2014)(noting the study conducted to support the impact fees in that case "looked at historic construction and land cost of the School Board, along with adopted state standards for the cost of student stations for the various types of schools"). The Department of Education's data shows the cost of construction in the Santa Rosa school district is less than the state construction average for 2018. (Pls. Ex. B; Tr. V. 1 at 74). The Court thus agrees with Mr. Bise that "it's very difficult to confirm" the December 2019 Report's calculation is based on the most recent and localized data available to Defendants at the time the Ordinance was adopted. (Tr. V.1 at 71; Joint Ex. 3 at 12, Table 11).

This is also true of the cost of land used to calculate the cost per student station, another important component of the School Impact Fee calculation. The December 2019 Report simply refers to a $40,000 per acre cost for land without explanation or source citation. (Joint Ex. 2 at 12, Table 12; Tr. V. 1 at 75). The report provides no further backup for this figure. (Id.). Mr. Boles admitted he just accepted the $40,000 per acre figure the School Board provided him. (Tr. V.2 at 111) ("My assignment was not to develop the cost per acre, but rather in the analysis to … use a cost per acre that was validated and developed by the school district."). This might ordinarily suffice if the data had been included in the report, except that Defendants' own exhibit shows the cost per acre of land "is approximately three times the amount in the South County versus North County." (Defs. Ex. D; Bise, Tr. V.1 at 75). If the land cost per acre is three times higher in one part of the county compared to another, the cost to provide a new school would

be very different, depending on its location. The large disparity supports the need for geographic school impact fee districts for properly assessing and spending school impact fees and to meet the dual rational nexus test.

The numerous mathematical errors talked about by Mr. Bise and later analyzed by the Court cause the Court to question the validity of the study as a whole. The Court recognizes, and hopefully Plaintiffs recognize, fixing these infirmities could result in a higher allowable impact fee. The insufficient data or analysis in the study makes it difficult to determine whether the current maximum allowable fees are too high or too low.

As Mr. Bise testified, there are a number of math errors in the report, the most fundamental of which affects the calculation of permanent student stations. (Tr. V.2 at 65-68). The inaccurate permanent student station number is then used to determine the cost per demand unit, or cost per student seat, as well as the credits for future revenue throughout the entire analysis. (Id. at 69). The Court agrees with Mr. Bise that such fundamental and "numerous mathematical errors and inconsistencies" seriously call into "question the accuracy and the validity of" the report's calculation of the impact fee. (Id. at 65, 71).

Defendants have tried to dismiss these errors and discrepancies by pointing to the fact that the County adopted impact fees well below the amount of the maximum allowable fees computed in the December 2019 Report. (Tr. V.2 at 40). However, errors and defects in the calculation of the maximum allowable fees are not cured by simply charging something less than the maximum. The Legislature prohibits the Court from

using a deferential standard, and the Court cannot overlook these defects or deficiencies in favor of the government.

With errors of this magnitude, the County cannot meet its burden to prove by a preponderance of the evidence that "the calculation of the impact fee" meets the requirements of state legal precedent and the Act. § 163.31801(3)(a) and (7). For these reasons, the Court finds the County has failed to meet its burden to prove the School Impact Fee "at a minimum" satisfies "all" conditions set forth in the Florida Impact Fee Act. § 163.31801(3), (7). Plaintiffs are thus substantially likely to succeed on the merits of their claim that the Ordinance is invalid.

(2) The likelihood of irreparable harm:

Plaintiffs argue two types of irreparable harm. They first posit that the School Impact Fees are unconstitutional, so there is a presumption of irreparable harm. They next assert that the builders will suffer irreparable harm to their business reputations and will also suffer a loss of business. "[A]n injury is irreparable where the damage is estimable only by conjecture, and not by any accurate standard." JonJuan Salon, Inc. v. Acosta, 922 So. 2d 1081, 1084 (Fla. 4th DCA 2006) citing Sun Elastic Corp. v. O.B. Indus., 603 So.2d 516, 517 n. 3 (Fla. 3d DCA 1992).

Presumption of irreparable harm:

Irreparable harm is "a material injury that continues for the remainder of the case and cannot be corrected on appeal." Fla. Gas Transmission Co. LLC. v. City of Tallahassee, 230 So. 3d 912, 914 (Fla. 1st DCA 2017). The harm Plaintiffs assert here is not the mere payment of fees, but rather the enforcement of an impact fee that violates the Florida Constitution's prohibition against an unauthorized tax. If the School

Impact Fee is in fact a tax imposed in excess of the County's home rule authority (as this Court has found Plaintiffs are substantially likely to prove), the mere imposition and enforcement of such a fee would violate Plaintiffs' rights. See Towbin v. Antonacci, 885 F. Supp. 2d 1274, 1295 (S.D. Fla. 2012); Fla. Dep't of Health v. Florigrown, LLC, No. 1D18-4471, 2019 WL 2943329, at *4 (Fla. Dist. Ct. App. July 9, 2019), review granted, No. SC19-1464, 2019 WL 5208142 (Fla. Oct. 16, 2019)

Each day Plaintiffs face the ongoing harm of having to pay an unconstitutional tax or suffer penalties for failure to do so. *See* Kuhnlein, 646 So. 2d at 720. The harm—which stems from violations of their constitutional rights—cannot be fully cured by financial compensation, including a refund of the School Impact Fees paid or an escrow of those funds. Defendants claim irreparable harm cannot be established when Defendants can recovery money damages. A refund of escrowed fees at the end of this litigation does not compensate Plaintiffs for the "interest on that money" Plaintiffs will pay "until the build is complete" or until the spec houses are sold. (Tr. V. 1 at 128-29). Defendants assume the interest earned on the escrowed fees will be enough to pay for the interest the Plaintiffs pay.

Defendants argue that irreparable harm is only presumed when the constitutional violation is one involving fundamental rights. The United States Supreme Court has not limited fundamental rights to just those found in the Bill or Rights to the U.S. Constitution. Doe v. Moore, 410 F.3d 1337, 1343 (11th Cir. 2005). There are other liberty and privacy interests that are "deeply rooted in this Nation's history and tradition, and implicit in the concept of ordered liberty, such that neither liberty nor justice would exist if they were sacrificed." Doe v. Moore, 410 F.3d 1337, 1343 (11th Cir. 2005).

Almost 250 years ago, a lot of tea was thrown into the harbor as a revolt against government's taxing authority. The Court finds Plaintiffs interest to be free from unlawful taxation is deeply rooted in history and tradition to the extent it should be recognized as a right worthy of protection in a temporary injunction. Plaintiffs have met their burden of showing the likelihood of irreparable harm based upon the presumption of irreparable harm arising from the purported violation of the Florida Constitution.

Business reputations and loss of business:

Blaine Flynn, CEO of Plaintiff Flynn Building Specialists, LLC and President of Home Builders Association of West Florida, Inc. testified that the building community, including the Plaintiffs, pushed through as many permits as they could before the Ordinance became effective on May 1, 2020. According to Mr. Flynn, he has not paid any School Impact Fees, and he is not yet aware whether he has lost any business as a result of the impact fees. Mr. Flynn anticipates problems for builders who had contracts in-the-works or not yet finalized prior to the added fees imposed by the Ordinance. He thinks the possibly of having to renegotiate some of those outstanding contracts could harm Plaintiffs' reputations with their potential customers.

Mr. Flynn speculates that his company will suffer a loss of business because his potential home buyers will not be able to afford the School Impact Fees. He explained how a $5,000 added cost to his typical home buyer would take them out of the range of financing available to them. These missed opportunities of unknown value and inestimable harm to Plaintiffs' businesses can be considered irreparable harm. *See* Bautista Reo U.S., LLC v. ARR Inv., Inc., 229 So. 3d 362, 365 (Fla. 4th DCA 2017).

(3) The unavailability of an adequate remedy at law:

Florida's courts have long recognized that constitutional violations, by their very nature, tend to not have adequate remedies at law. Gainesville Woman Care, LLC v. State, 210 So. 3d 1243, 1263 (Fla. 2017)(Holding that where a law is likely unconstitutional, "there is no adequate legal remedy at law for the improper enforcement" of the law); Florigrown, LLC, 44 Fla. L. Weekly D1744. Since the Court finds the Defendants failed to meet their burden to prove the impact fee is valid, placing collected funds in escrow is not appropriate. The fee is likely an unconstitutional tax because it does not satisfy the Impact Fee Act's requirements. Therefore, the County may not collect the fee at all. Placing unlawfully collected funds in escrow does not remedy those constitutional violations.

In addition, Plaintiffs will not have full compensatory damages available to them due to sovereign immunity of both Defendants. *See* Tampa-Hillsborough County Expressway Authority v. K.E. Morris Alignment Service, Inc., 444 So. 2d 926, 928–29 (Fla. 1983); Manatee Cty. v. Town of Longboat Key, 365 So. 2d 143 (Fla. 1978). "The Court agrees with Plaintiffs that potential claims for damages would be barred by sovereign immunity; therefore, there is no adequate remedy at law." Diaz v. City of Ft. Pierce, Fla., 2019 WL 1141117, at *2 (Fla.Cir.Ct. Feb. 22, 2019).

(4) Considerations of the public interest:

Mr. Flynn talked about how these fees could harm more than just the Plaintiffs. He is concerned that the School Impact Fees can hurt the entire industry, such as: banking, title companies, construction workers, surveyors, etc. Mr. Flynn reflected that

it is important to keep people employed in the local economy, but he also agreed that having a good school system could increase the value of homes in Santa Rosa County.

The Court recognizes the policy and motives of the Defendants, but the current study does not appear to comport with Florida law. See Scott v. Williams, 107 So. 3d 379, 385 (Fla. 2013). "The public interest does not support the [County's] expenditure of time, money, and effort in attempting to enforce an ordinance that may well be held unconstitutional." Fla. Businessmen for Free Enter. v. City of Hollywood, 648 F.2d 956, 959 (5th Cir. Unit B June 1981).

CONCLUSION

It appears as if the tail wagged the dog in the study. The expert relied upon the school district to perform critical portions of the study, and he did not independently verify or produce much of the data. The explanations provided by Assistant Superintendent Harrell for the mathematical errors in the December report seem to indicate that he prepared the report instead of Mr. Boles. This is the beginning of the process, and both parties will conduct further discovery to prepare for the final hearing. Based upon the evidence presented to the Court during the 2-day temporary injunction hearing, the Court finds Defendants have not met their burden by a preponderance of the evidence in showing that there is a likelihood they will be successful on the merits. Plaintiffs have met their burden of showing the likelihood of irreparable harm; the unavailability of an adequate remedy at law; and the public interest is best served by enjoining collection of the school impact fees until the final judgment.

BOND

The Court must establish a bond sufficient to pay costs and damages sustained by the Defendants if they were wrongfully enjoined. Rule 1.610(b), Florida Rules of Civil Procedure. "The amount of bond constitutes the court's determination of the foreseeable damages." Burke v. Sunco Title & Escrow Co., 219 So.3d 967, 969 (Fla 4th DCA 2017).

(a) Length of time needed to bring this case to final hearing

All parties have vested interests in moving this case forward as expeditiously as possible. This was not discussed at the injunction hearing, and the Court does not know how many days the parties need for a final hearing on the merits. In addition, the ability to schedule a final hearing is uncertain at the time of entering this Order due to the COVID-19 pandemic. The Court must prioritize jury trials for people who have been incarcerated, so that could delay the final hearing on this matter. The Court is estimating, at the longest, five months may pass before a final judgment.

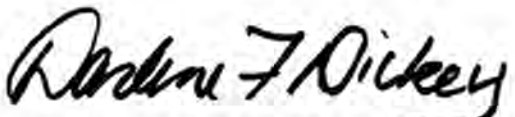
(b) Damages

Defendants damages would arise from the number of impact fee assessments it would expect to receive while this case is pending. Defendants Exhibit 22 provides the number of permits obtained by Plaintiffs for the one-year period prior to the Ordinance's effective date of May 1, 2020. Two Plaintiffs did not obtain any single-family dwelling permits during this period. The Court finds it appropriate to assess bond in the amount of $250.000. (10 single family building permits each month for 5 months)

WHEREFORE, it is ORDERED:

1. Plaintiffs' Verified Motion for Temporary Injunction is GRANTED.
2. Plaintiffs shall post bond in the amount of $250,000 with the Clerk of Court in Santa Rosa County.
3. Upon Plaintiffs paying the required bond, Defendants are hereby enjoined from collecting school impact fees pursuant to the Santa Rosa County Educational Facilities Impact Fee Ordinance.
4. This Temporary Injunction remains in place until further order of the Court.
5. This Order does not serve as a final adjudication of this cause.
6. The parties are instructed to set a Case Management Conference within 30 days of this Order.

DONE and ORDERED in Milton, Santa Rosa County, Florida on this 1st day of July, 2020.



eSigned by CIRCUIT COURT JUDGE DARLENE DICKEY
on 07/01/2020 20:24:55 sO0SCq0z

CIRCUIT JUDGE DARLENE F. DICKEY

e-served to the attorneys of record