IN THE SUPREME COURT OF FLORIDA

CASE NO.: 68,582

RINKER MATERIALS CORPORATION,
a Florida corporation,

Appellant,

v.

TOWN OF LAKE PARK, a Florida
municipal corporation, et al.,

Appellee.

ON DIRECT APPEAL FROM THE CIRCUIT COURT
OF THE FIFTEENTH JUDICIAL CIRCUIT OF FLORIDA,
IN AND FOR PALM BEACH COUNTY, FLORIDA

APPELLEE'S ANSWER BRIEF

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PREFACE

Appellee, Town of Lake Park, uses the same abbreviations and references as those set forth by Appellant, Rinker Materials Corporation, in its Initial Brief.

Rinker included an indexed, three-volume appendix with its Initial Brief. An indexed fourth volume accompanies this brief.

STATEMENT OF THE CASE AND FACTS

While the Town has many areas of disagreement with Rinker's Statement of the Facts, the Town will address only areas of material disagreement.

I. THE PRIMA FACIE CASE FOR VALIDATION.

In the presentation of its case-in-chief, the Town complied with the provisions of Chapters 75 and 170, Fla.Stat. (1985). The Town proved that there was a resolution adopted providing for the issuance of the bonds. A. 18-19. The Town's Exhibit No. 5 contains the minutes of the Town meeting conducted on October 30, 1985, at which the Town's commissioners voted in favor of Resolution No. 36,1985 (the "Financing Resolution"). A. 20-47.

There is no dispute by Rinker that the Financing Resolution and the testimony of the underwriters investment banker, Clark Bennet, was sufficient evidence describing the bonds, their amount, the interest they are to bear, etc. A. 272-82.

The trial court had personal jurisdiction over all property owners and citizens of the municipality. The Town's Exhibit No. 10 is the proof of publication of the Order to Show Cause. A. 642. Barbara McCord, from the Palm Beach Post & Evening Times, testified that the Order to Show Cause was duly published three times in a newspaper of general circulation. A. 266-68.

In Resolution No. 40,1985 (the "Implementing Resolution"), the Town set forth the nature of the proposed improvements, the lands to be assessed, the estimated costs, etc. A. 52-55. Pursuant to the Implementing Resolution, the Town's engineer prepared the assessment roll and plat, and hand carried both to the Town Clerk. A. 388-89. The Town Clerk placed on file the Implementing Resolution, the assessment plat, the plans and specifications and an estimate of the cost of the proposed improvements. A. 271. Then, the Town published the Implementing Resolution. A. 641.

The Town then conducted a hearing on January 8, 1986, at which it considered "any and all complaints as to the special assessments" and adjusted or "equalized" the assessments. By Resolution No. 4,1986, the assessment was confirmed and became a legal, valid and binding first lien on the property. A. 79-92. The Town's Exhibit No. 7 contains the minutes of the meeting held on January 8, 1986. A. 57-63. Rinker attended the meeting accompanied by counsel and its engineer, both of whom made presentations to the commission. Additionally, Rinker cross-examined the Town's engineer. After hearing Rinker's presentation, the Town reduced the assessment to Rinker by $49,617.18. A. 62.

A. Rinker's Participation in the Process.

Rinker had been aware of the Town's plan to develop the Watertower Road area since 1979. A. 59. Indeed, Rinker has

been in favor of the project since that time. Rinker's appraiser, Mr. Bischoff, testified that he reviewed the plans and specifications for the project twice in 1985 and at no time did any objection come to his mind. A. 638. Mr. Bischoff testified that Rinker had no objection to any of the improvements, other than the cost assessment. A. 639-40. Mr. Bischoff also testified that once the proposed improvements are made they will increase the market value of Rinker's property. A. 640.

B. The Testimony of the Engineers.

Much of Rinker's Initial Brief is concerned with what the Town's engineer did and did not do. Jeffrey Renault was the Town's project engineer for the Watertower Road project. A. 294. At the outset of the project, Mr. Renault recommended to the commissioners the original boundaries of the special assessment district. A. 327. From an engineering standpoint, Mr. Renault recommended the boundaries of the district based upon a two-part test: 1) did the property front on the streets to be improved? and 2) did the property receive benefits from the improvements? A. 350, 327. Mr. Renault defined benefits as a function of accessibility and use. A. 313, 308-09. For example, Mr. Renault testified:

> The parcel of 15 acres logically would use more water and discharge more waste water and generate more traffic than a parcel of a quarter acre.

A. 310.

Mr. Renault testified that he did not make any assumption about the intent of each of the individual parcel owners to develop their property, because there was no logical way to do that. A. 310-11. Specifically, Mr. Renault had no plans and specifications to determine the manner in which the individual parcel owners would develop their own property. A. 310-12. If such data was available, Mr. Renault would have considered it. A. 311.

Rinker has no specific plans for the use of its property. Mr. Bischoff, Rinker's real estate representative, testified that no plans have been prepared for the property, no architect or engineer had been retained to prepare any plans, that no permitting had been sought and that the property had not even been cleared.

> Q. Has Rinker done anything to begin the development of that property?
>
> A. No, sir.

A. 637-38. While the Town's engineer viewed the benefits as a function of accessibility and use, Rinker's engineer viewed the benefits in terms of adjacency. Mr. Pitchford opined that, because Rinker would have to spend money internally to develop this property, that it was not receiving adequate access to the improvements. A. 404. Mr. Pitchford, however, testified that Rinker could develop the property in a way that it would be able to maximize to the fullest extent the use of each improvement. A. 416-17. In its Initial Brief, Rinker states

that it will not benefit from the planned improvements to certain streets. Its expert, however, testified:

> Q. There is some benefit, is there not, to the roadway improvements to the Rinker property?
>
> A. Yes.

A. 416.

> Q. You are not telling use that Rinker is going to obtain no benefit from these improvements, are you?
>
> A. No, sir.

A. 415.

In its Final Judgment, the trial court concluded that Rinker failed to carry its burden of proving that the manner of assessment adopted by the Town constituted an unconstitutional deprivation of property without due process of law or that the doctrine of equitable estoppel prevented the Town from prevailing. A. 173.

SUMMARY OF ARGUMENT

The scope of review of this Court is narrow and the Final Judgment of the trial court validating the bonds comes to this Court with a presumption of correctness.

The statutory requirements of Chapter 170, Fla.Stat. (1985) have been substantially followed. There has been no denial of any of Rinker's due process rights. Indeed, Rinker participated extensively in the assessment process and received from the Town all that it asked for. Rinker's complaints about hypertechnicalities lack any showing of prejudice or denial of

due process. Furthermore, Rinker has waived its challenges to the procedures used to enact the Implementing Resolution and the Financing Resolution.

The assessments made by the Town are consistent with its Comprehensive Plan. First, Rinker may not raise an inconsistency challenge in a bond validation proceeding; the LGCPA provides that such challenges can be raised only in actions brought pursuant to Section 163.3215. Secondly, Rinker has waived its right to raise the inconsistency issue by failing to plead this issue in either its answer or counterclaim. Thirdly, there is no proof in the record that the assessments are inconsistent with the Town's Comprehensive Use Plan.

The Rinker parcel was not assessed arbitrarily. First, Rinker failed to carry its burden below of overturning the presumption of correctness of the special assessments by strong, direct, clear and positive proof. Secondly, the motives of the Town Commissioners in adopting the Implementing Resolution are not the proper subject of judicial inquiry. As a matter of fact, nonetheless, the Commissioners exercised sound judgment, considering each resolution, as well as Rinker's presentation and complaints, in an open-minded and impartial way.

The Final Judgment entered by the trial court should be affirmed.

ARGUMENT

I. THE TOWN HAS SUBSTANTIALLY COMPLIED WITH THE PROCEDURES REQUIRED BY LAW FOR LEVYING SPECIAL ASSESSMENTS AND FOR ISSUING BONDS.

A. The Scope of Review.

With more than a little razzle-dazzle (the current term in vogue is "misdirection"), Rinker in its Initial Brief with sleight of hand has attempted to meld the scope of review to be applied by the trial court in a bond validation proceeding with the scope of review to be applied by this Court in reviewing the trial court's findings and conclusions.

This Court has clearly enunciated its scope of review in Wohl v. State, 480 So.2d 639 (Fla. 1985):

> The scope of review by this Court in bond validation cases is limited. The purpose of bond validation proceedings and the scope of judicial inquiry held pursuant to chapter 75, Florida Statutes (1983), is to determine if a public body has the authority to issue such bonds under the Florida constitution and statutes, to decide whether the purpose of the obligation is legal, and to ensure that the authorization of the obligations complies with the requirements of law. McCoy Restaurants, Inc. v. City of Orlando, 392 So.2d 252 (Fla. 1980); State v. City of Miami, 379 So.2d 651 (Fla. 1980); State v. Sarasota County, 372 So.2d 1115 (Fla. 1979); State v. City of Sunrise, 354 So.2d 1206 (Fla. 1978). The final judgment validating the Commission's revenue bonds comes to the Court with a presumption of correctness, and appellants must demonstrate from the record the failure of the evidence to support the Commission's and the trial court's conclusions. International Brotherhood of Electrical Workers v. Jacksonville Port Authority, 424 So.2d 753 (Fla. 1982).

Id. at 640-41.

Stated somewhat differently:

> In a bond validation proceeding, the function of this Court is to determine that the authorizing body had the power to act and that it exercised that power in accordance with the purpose and intent of the law. State v. Sarasota County, 372 So.2d 115 (Fla. 1979); State v. City of Sunrise, 354 So.2d 1206 (Fla. 1978).

State v. Sunrise Lakes Phase II Special Recreation District, 383 So.2d 631, 633-34 (Fla. 1980).

In this appeal Rinker does not challenge the authority of the Town to issue the bonds in question, nor does it challenge the legality of the purpose for which the bonds are to be issued. Rinker only challenges whether the authorization of the bonds complies with the requirements of law or, phrased somewhat differently, whether the Town has exercised its powers in accordance with the purpose and intent of the law.

B. The Statutory Procedures Must Be Substantially Followed.

As Rinker has pointed out in its Initial Brief, municipalities are not required to comply strictly with each and every requirement of Chapter 170, Fla.Stat. (1985), which governs special assessments and bonds associated with them:

> In order that such assessments be valid and enforceable, they must be made pursuant to legislative authority and the method prescribed by the Legislature must be substantially followed.

City of Coral Gables v. Coral Gables, Inc., 119 Fla. 30, 160 So. 476, 478 (1935). Each and every statutory requirement need not be strictly followed. For example, in City of Hollywood v.

Davis, 19 So.2d 111 (Fla. 1944) the court upheld the special assessments levied by the municipality even though (1) the resolution of the municipality providing for the street improvement recited an incorrect statutory authority for the enactment; (2) the enacted resolution did not contain a representation that the contemplated improvements of the streets was to be performed by a contractor let by the city or labor under the direct control and management of the city; (3) the resolution failed to indicate the location of the improvements by terminal points and routes as required by Florida law; (4) the resolution failed to designate a convenient and understandable method of improving the property; (5) the city failed to keep a book or record of the improvements or a record of the liens as asserted, even though these were required by Florida law; and finally, (6) the city failed or omitted to keep an improvement assessment roll, as required by Florida law.

The line between procedures that substantially follow the validation method prescribed by the legislature and those that do not is well-defined:

> Irregularities, as such, in administering specific procedures involving special assessments do not render such procedures void if constitutional guarantees are not denied. Abrams v. City of Hollywood, Fla.App. 1958, 105 So.2d 602. We recognize that a person to be specially assessed is to have an opportunity to be heard at some point during the assessment procedure. City of Hollywood v. Davis, 1944, 154 Fla. 785, 19 So.2d 111.

Moody v. City of Vero Beach, 203 So.2d 345, 346 (Fla. 4th DCA 1967).

In this case, no constitutional guarantees have been denied. If there is anything that Rinker has not attacked in its shotgun challenge to this validation proceeding, it is the simple and uncontroverted fact that Rinker had a full and complete opportunity to be heard during the assessment procedure and even the opportunity to cross-examine the Town's engineer. Although Rinker had filed a lawsuit in an attempt to enjoin the January 8, 1986, meeting of the Equalization Board, when its attempt to enjoin that meeting failed, Rinker's representative appeared at and extensively participated in the meeting of the Equalization Board. Rinker presented documentary evidence, exhibits "A" through "M", and presented the testimony of a retained engineer. A. 57-62. As a result of that presentation, Rinker succeeded in convincing the Town to reduce its assessment by $49,617.18. Rinker argued and the Town concluded that because the Town's Future Land Use Plan (A. 2) contemplated certain roadways to be constructed on Rinker's parcel, the area to be occupied by those future roadways should be deducted from Rinker's parcel, thereby reducing its assessment accordingly.

Having had the opportunity to participate and to present all that it chose to present at the meeting, Rinker cannot complain that it was deprived of any constitutional

protection. Rather, Rinker is left with the argument that both the Implementing Resolution and the Financing Resolution contain procedural flaws that "independently preclude validation". If the statutory procedures were substantially followed, that is, if there were no constitutional guarantees denied, then there can be no procedural flaws which could preclude validation. That is so because of the ancient legal maxim "no harm, no foul".

1. The Implementing Resolution.

Rinker argues that the Implementing Resolution "is so procedurally flawed as independently to preclude validation".

First, Rinker argues that when the Town in the Implementing Resolution, satisfied the requirements of Section 170.03 and at the same time fixed the time and place for the meeting of the Equalization Board, as required by Section 170.07, it somehow committed a statutory mortal sin resulting in the invalidation of the Implementing Resolution. Rinker's argument appears to be that because the statute calls for a two-step process, only a two-step process will protect the public. Specifically, Rinker argues that the two-step process "promotes the integrity of the municipality's legislative process and protects the citizenry's due process rights, much as do multiple readings of ordinances". Rinker's Initial Brief, p. 23. The purpose of promoting "the integrity of the municipality's legislative process" sounds more like lawyer gobbledygook than a genuine

reason for invalidating the Implementing Resolution. On the other hand, protecting "the citizenry's due-process rights" is a genuine justification for invalidating the Resolution, if in fact the Town denied Rinker its due-process rights.

What due process rights of Rinker's were denied? On October 6, 1985, the Town adopted Resolution No. 31,1985 which initiated the project and the special assessment program. A. 3. Rinker received notice of the intended enactment of this Resolution and had the opportunity to appear and challenge it. On October 16, 1985, the Town adopted Resolution No. 35,1985, which recited the acceptance of the assessment roll on file. Rinker received notice of the intended enactment of this Resolution and had the opportunity to appear and to challenge it. This Resolution set November 5, 1985, as the date for the Equalization Board to meet to consider the assessments proposed. Although Rinker had notice of the November 5, 1985, meeting, it chose not to attend, although it did complain to the Town about the procedure used by the Town.

Therefore, at Rinker's request the Town adopted the Implementing Resolution which repealed Resolutions 31,1985 and 35,1985 reinitiating the whole project and setting a meeting of the Equalization Board for January 8, 1986. Rinker attended that meeting, presented all the oral and documentary testimony it desired, and cross-examined the Town's engineer. Rinker had a full and complete opportunity to present its case and to be

heard. (In addition to the administrative forum, Rinker has also been heard in the judicial forum by bringing one action in an unsuccessful attempt to prevent the January 8, 1986, meeting of the Equalization Board and by intervening in another, the one leading to this appeal.)

Secondly, and in an even more picayune manner, Rinker argues that the Implementing Resolution is procedurally flawed in a mortal manner because the only assessment roll officially on file with the Town Clerk when the Implementing Resolution was adopted was the assessment roll prepared on a "combined front foot and square foot method, pursuant to resolution 31".

This is wrong, as a matter of fact. When the Town decided at the December 4, 1985 hearing to adopt the area method of assessment, it directed the Town Clerk to maintain the assessment roll and assessment plat on file, open to inspection to the public. A. 53. Carolyn Neff, the Town Clerk, testified that she maintained on file at the Town Clerk's office the assessment roll, plans and specifications for the project, and the assessment plat. A. 271. Additionally, Jeff Renault, the Town's engineer, testified that he prepared the assessment roll and assessment plat and "hand carried" them to the Town Clerk. A. 388-89.

Indeed, when Rinker made its presentation at the public hearing conducted on January 8, 1986, both the attorney for Rinker and the engineer who testified on behalf of Rinker had

before them the assessment roll calculated on the basis of the area method. For example, the minutes of the meeting show:

> Mr. Payne [Rinker's attorney] introduced Mr. Stephen Oenbrink [Rinker's expert engineer], Vice President, Hutcheon Engineers, who discussed the reasons the Town's proposed assessment roll was not equitable to Rinker and to recommend how the assessment roll can be brought more closely into line with an assessment roll acceptable to Rinker Materials Corporation. A. 59. [Emphasis added.]

Pursuant to Rinker's request at that hearing, the proposed assessment roll was discussed at length and ultimately modified in Rinker's favor in the approximate amount of $50,000. A. 62. The area method of assessments was even part of the minutes of the January 8, 1986, meeting. A. 62.

Therefore, this contention is simply based upon an inaccuracy of fact. Rinker cannot bear its burden of overturning the finding of fact made by the trial court in this instance. (Even if the assessment roll was not on file, and the evidence is that it was, by appearing with the roll in hand, arguing from it and not objecting to the fact it was not filed, Rinker has clearly waived this hypertechnical complaint. City of Ft. Lauderdale v. Gulf & Eastern Dev. Corp., 332 So.2d 88 (Fla. 4th DCA 1976)).

2. The Financing Resolution

Next Rinker argues that the Financing Resolution is invalid for two reasons. First, Rinker asserts that the Resolution is invalid because it was adopted before the equalization, approval and confirmation of the levying of the special

assessments by Resolution 4,1986. Secondly, Rinker argues that the Resolution is invalid because it predates the Implementing Resolution.

Both of Rinker's contentions here are simply nothing more than the bald assertion that because the Town did not follow strictly the chronology of Chapter 170, the Financing Resolution should be stricken for that reason and that reason alone. Rinker has not suggested a single reason why the Financing Resolution should be invalidated for failing to follow strictly the chronology of Chapter 170, other than to argue that the Resolution has "lost its conceptual framework", whatever that means.

Rinker has cited not case law in support of this argument. Apparently, the closest case on point is Abrams v. City of Hollywood, 105 So.2d 602 (Fla. 2d DCA 1958). In that case plaintiffs challenged an assessment of special taxes for sewer connection improvements, arguing that the procedure followed by Hollywood did not comply with the sequence of events mandated by the city charter. Simply put, the charter required that there be a resolution ordering that the improvements be made; that after passage of the resolution, plans and specifications should be made and approved and filed by the commission and with the city clerk; that as soon as the plans and specifications were filed, the clerk would publish a notice of a meeting to hear objections; that the objections would be

heard and then the resolution would be confirmed or denied. What actually happened was that the work on the improvements began even before the resolution ordering the improvements was adopted and the work was completed even before the meeting to hear objections and even before the resolution approving the assessment roll was adopted.

Even so, the appellate court ruled that:

> the irregularities in carrying out specific acts does not render such acts invalid or void so long as constitutional guarantees are not denied. In this case all the requirements of the statute were carried out, though not in the order designated. The appellants had ample opportunity for timely objection with reference to the assessment involved but failed to make such objection and, having so failed, are estopped by their own deliquency.

Id. at 604. In the case at hand, the Town has substantially complied with all the requirements of chapter 170. Rinker has been given each and every one of its due process rights.

3. Rinker Has Waived Its Challenges to the Procedures Used to Enact the Implementing Resolution and the Financing Resolution.

The Implementing Resolution and the Financing Resolution were enacted well before the Equalization Board meeting of January 8, 1986, at which Rinker appeared and fully presented its case. At no time during the course of that meeting did Rinker object in any way to those procedural errors which it now argues on appeal. Not having raised those objections and not giving the Town the opportunity to cure those alleged

infirmities, Rinker no longer can maintain those objections. (Rinker did object to the procedure setting the Equalization Board meeting of November 5, 1985, and the Town, in the interest of fairness, heeded Rinker's objections and gave it another opportunity to present its case at the Equalization Board meeting held on January 8, 1986.)

In Abrams v. City of Hollywood, supra, the court when considering certain procedural challenges to the enactment of a special tax, held that:

> [t]he appellants had ample opportunity for timely objection with reference to the assessment involved but failed to make such objection and, having so failed, are estopped by their own deliquency.

Id. at 604.

II. THE ASSESSMENTS ARE CONSISTENT WITH THE TOWN'S COMPREHENSIVE PLAN.

A. The Town's Land Use Plan May Apply to the Project; the Plan, however, Has Nothing To Do with this Bond Validation Proceeding.

1. Rinker May not Raise an Inconsistency Challenge in a Bond Validation Proceeding; the LGCPA Provides that Such Challenges can be Raised Only in Actions Brought Pursuant to Section 163.3215.

Rinker argues that the project is inconsistent with the Town's Comprehensive Land Use Plan and for that reason the trial court erred in issuing its judgment validating the bond issue. That the project is or is not inconsistent with the Town's Comprehensive Land Use Plan is one issue (the Town emphatically denies that the project is inconsistent); however,

that issue is irrelevant to this appeal because Rinker's sole remedy to challenge an alleged inconsistency between the project and the Town's Comprehensive Land Use Plan is provided through section 163.3215, Fla.Stat. (1985). Section 163.3215(3)(b) provides that:

> Suit under this section shall be the sole action available to challenge the consistency of a development order with a comprehensive plan adopted under this part.

163.3215(3)(b), Fla.Stat. (1985). It is developement orders that are required by law to be consistent with the Comprehensive Land Use Plan. Section 163.3194(1)(a). "Projects" in the abstract are not required to be consistent. The term "project" has no meaning in the context of the LGCPA.

Rinker's real challenge here, properly phrased, is whether either the Implementing Resolution or the Financing Resolution is a "development order" and, if so, is either inconsistent with the Town's Land Use Plan. That is the question and the sole statutory remedy authorized to resolve that question is through a suit maintained pursuant to Section 163.3215. The legislature has made this the sole remedy because in Section 163.3215 there are certain protections granted to the municipality, i.e., sections 163.3215(4), (5) and (6).

Because the legislature has provided that the sole action available to challenge the consistency of a development order with a comprehensive plan is set forth specifically in the statute, Rinker must comply with that section and bring its

suit pursuant to that section in order to challenge any alleged inconsistency.

2. Rinker Has Waived Its Right to Raise the Inconsistency Issue by Failing to Plead This Issue in Either its Answer or Counterclaim.

Rinker never raised in either its answer or its counterclaim the issue that any of the challenged resolutions were inconsistent with the Town's Comprehensive Land Use Plan. Not having properly raised the issue, Rinker waived it. Wood v. Wilson, 84 So.2d 32 (Fla. 1956). Rinker did introduce some evidence pertaining to the Town's Comprehensive Land Use Plan at trial. This evidence, however, on its face was introduced to support its contention that there would be other roads constructed which would more directly benefit Rinker's property (for which Rinker would be assessed) and its contention (upon which it prevailed) that the area of those potential roads should be subtracted from its property.

One thing that Rinker never attempted to prove at trial was that it would be aggrieved or adversely affected by the proposed project. This proof is necessary to satisfy the standing requirements of Section 163.3215(1). If Rinker had pleaded this issue, as it should have, then the question is how it, as an owner of vacant land and a profitable corporation with an obvious desire to develop and utilize its property to the utmost, could be adversely affected by the bringing of sewer, water, drainage and improved roads to the edge of its

property. Although on the face it appears that Rinker could never prove that it was an aggrieved or adversely affected party, the point is that by failing to plead the inconsistency issue, Rinker precluded inquiry into that subject and now asks this Court on appeal to presume that is has standing to raise the inconsistency issue. Not having raised that issue and precluding inquiry into its standing to raise that issue, Rinker has waived its right to raise the inconsistency issue.

3. There Is No Proof in the Record That the Assessments are Inconsistent With the Town's Comprehensive Land Use Plan.

Rinker argues that the "Town's assessing Rinker for the project improvements is anathema to the land use plan". Rinker's Initial Brief, p. 27. More specifically, Rinker argues that the project is inconsistent with the Land Use Plan "because the north-south roadway [contemplated in the plan] along the east line of the Rinker parcel will provide extensive frontage". Id.

The entire proof of this alleged inconsistency is found in the record at A. 1 and A. 2. A.1 is the assessment plat and A. 2 is one page of the Town's comprehensive plan, which page is the Future Land Use Plan. Laying the preliminary assessment plat along side the Future Land Use Plan, it is impossible to conclude that one is inconsistent with the other. The preliminary assessment plat shows the road system as it actually exists in the area; the Future Land Use Plan shows the

roads as they actually exist and as they are planned to exist. There is no inconsistency between the two.

Rinker's real argument here is that it should not be required to pay for the improvements contemplated by the project because when and if the road system is developed as it is contemplated on the Future Land Use Plan, there will be other roadways fronting on Rinker's property. This argument has nothing to do with an inconsistency between the Future Land Use Plan and the assessment plan. If the improvements are not made as contemplated on the Future Land Use Plan, Rinker has realized the benefits of the project. If the improvements are made at some future date as contemplated by the Future Land Use Plan, then Rinker still has benefited from the improvements made by the project. However long Rinker receives the benefits of the project, that issue has nothing to do with whether or not the Future Land Use Plan is consistent with the project.

III. THE RINKER PARCEL WAS NOT ASSESSED ARBITRARILY.

Rinker contends that its parcel was assessed arbitrarily.

First, Rinker contends that the benefits to be derived by the property from the improvements are exceeded by the costs assessed against it.

In the Implementing Resolution, the Town found, as a matter of legislative fact, that "[t]he assessments as set forth in said assessment roll are upon the properties to be especially

benefited by the proposed local improvements described in the plans and specifications in proportion to the benefits derived therefrom." A. 53. Additionally, the Implementing Resolution provided:

> Such special assessments shall be levied on an area basis against all lots and lands adjoining and contiguous or bounding and abutting upon such improvements or specially benefited thereby and further designated by the assessment plat. The assessment shall be levied against such property in direct proportion to the benefits received from the construction of the project.

Id.

As a general rule, special assessments are clothed with a presumption of validity. Gay v. City of Winter Park, 82 So.2d 139, 143 (Fla. 1955). The standard of review of this type of assessment is narrow: it is presumed to be correct, City of Hallandale v. Meekins, 237 So.2d 318, 320 (Fla. 4th DCA 1970) and the burden was on Rinker at the hearing to establish its invalidity by "strong, direct, clear, and positive proof". Meyer v. City of Oakland Park, 219 So.2d 417, 420 (Fla. 1969).

> The apportionment of the assessments is a legislative function and if reasonable men may differ as to whether land assessed was benefited by the local improvement, the determination of the City officials as to such benefit must be sustained.

City of Hallandale v. Meekins, supra, 237 So.2d 320-21. The method of assessment need only reach a "rough approximation to apportionment" for it to be sustained. Id. at 419.

The proper measure of benefits extends to the future use of the improvements upon the property being devoted to any

reasonable use. City of Hallandale v. Meekins, supra, 237 So.2d 321-22. Moreover, it is presumed that property abutting or in proximity to certain improvements may or will receive special or peculiar benefits. Id. See also, Atlantic Coastline Railroad Company v. City of Gainesville, 91 So. 118 (1922), cited in City of Treasure Island v. Strong, 215 So.2d 473, 478 (Fla. 1968) (presumption of special benefit to property bordering upon an improved street).

In this case, Mr. Pitchford, Rinker's expert, testified that Rinker could benefit to a maximum extent by each of the improvements contemplated. A. 238-40. Mr. Bischoff, Rinker's appraiser, testified that the improvements will enhance the market value of Rinker's property. A. 640. Mr. Renault, the Town's engineer, testified that from an engineering standpoint, the benefits to the property was a function of accessibility and use. A. 130-33.

> Q: For example, a full use of a bigger parcel would have more demand in terms of more traffic is going to come to that parcel, they're going to use more water, discharge more sewer?
>
> A: The parcel of 15 acres logically would use more water and discharge more waste water and generate more traffic than a parcel of a quarter acre.

Id. at A. 133.

Rinker thus failed to overcome the presumption of correctness of the Town's legislative finding as to the proportionality of the assessments to the benefits to be

derived therefrom with strong, clear, direct, and positive proof. The trial court's conclusion is clothed with the presumption of correctness, and Rinker has failed to overcome that presumption on this appeal.

Next, Rinker contends that the elected town officials failed to exercise judgment or discretion on the merits of the "pertinent issues". Rinker is wrong, as a matter of law and fact.

As to the law, "[t]he motives of a legislative body in adopting an ordinance, legislative in character, are not the proper subject of judicial inquiry." Mailman Development Corporation v. City of Hollywood, 286 So.2d 614, 615 (Fla. 4th DCA 1973). As this Court has stated,

> It is a fundamental tenet of municipal law that when a municipal ordinance of legislative character is challenged in court, the motives of the commission and the reasons before it which induced passage of the ordinance are irrelevant. City of Opalocka v. State ex rel Tepper, 257 So.2d 100, 104 (Fla. 3rd DCA 1972).

City of Pompano Beach v. Big Daddy's Inc., 375 So.2d 281, 282 (Fla. 1979)

Therefore, going beyond the finding of the Implementing Resolution that the benefits to be derived are in proportion to the costs assessed is not a proper subject of judicial inquiry.

The case of Snell Isle Homes, Inc v. City of St. Petersburg, 199 So.2d 525 (Fla. 2nd DCA 1967), cited in

Rinker's Initial Brief, is distinguishable. In Snell, the court was searching for a finding by the city council that a determination was made as to the benefits to be derived. In that search, the court examined the testimony of some of the commissioners. Id. at 527-28. One of the conclusions reached by the court was that "The City Council failed to determine that the assessments were not in excess of the benefits; . . .". Id. at 529.

In this case, the town commissioners made that express finding in the Implementing Resolution. A. 52, 53. Thus, beyond that finding, no further inquiry is necessary.

As to the facts, Rinker's assertions concerning the exercise of judgment or discretion made by the commissioners are inaccurate or incomplete.

Commissioner Bache testified that she voted in favor of the assessment based upon the area method after the presentation made by Rinker and a consideration of alternative methods of calculating the assessments. A. 437-39, 441. It is not accurate to state that Commissioner Bache did not consider the relative costs to individual parcel owners. A. 441-42. Moreover, Commissioner Bache testified that she relied upon the engineers for advice concerning the project, reviewed the charts, heard the presentation made by Rinker and the explanations made by both Rinker's and the Town's engineer. She testified that she had an open mind in choosing

among the methods presented and sought the fairest method of assessment before she voted on it. A. 449.

Commissioner Cottrell testified that he voted in favor of the area method because in his best judgment, it was the fairest method among the several choices presented, that decision being made after discussion and hearing from the people involved. A. 481-82. Additionally, Commissioner Cottrell testified that he was open-minded concerning the presentation made by Rinker and that he was persuaded to give to Rinker an adjustment to its assessment. A. 476.

The statement attributable to Commissioner Cottrell in Rinker's Initial Brief is an unfair one. The full quote is as follows:

> Q: As we sit here today, how are these assessments going to be prorated, what basis?
>
> A: On the area method is what we decided on.
>
> Q: All right, and what is the area method?
>
> A: Well, it is a combined method of several things. I won't try and explain it. You have a chart of it. I can't explain it.
>
> Q: Well, what do you understand as to how the area method applies or how it is used to compute the assessments?
>
> A: Well, without this sheet, I wouldn't attempt to explain it.

A. 471.

Mayor Gaurd testified that she listened to the presentation of the engineers, evaluated it in her own mind, and understood,

in general, how the variety of assessment methods differed. A. 501-03.

Commissioner Inlow did not attend the meeting at which Rinker made its presentation. A. 533. Thus, it is unfair to criticize him for failing to do any analysis.

Commissioner Neyland testified that the area method was the fairest method because it allocates to each property owner its cost in accordance with the benefit. A. 555-57. The benefit, Commissioner Neyland testified, was a function of bringing the improvements to the property owners for their use. A. 556. Commissioner Neyland also testified that he had an open mind at all meetings. A. 561.

Rinker's complaint that the town did not consider its Land Use Plan in assessing the Rinker parcel is likewise unfounded. Consideration of its Land Use Plan was the basis of the adjustment that the Town made to Rinker's assessment. A. 59-62. Indeed, one of Rinker's exhibits at the public hearing was the Town's Future Land Use Plan. A. 59. Rinker made no contention at the public hearing that any of its land should not be included in the district or that it had any complaint about the district boundaries. In short, everything Rinker wanted to be considered by the Town was considered by the Town.

CONCLUSION

The Town of Lake Park respectfully requests that this Court affirm the Final Judgment entered by the trial court.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Answer Brief has been furnished to D. Culver Smith, III, Esq., and Theresa W. Parrish, Esq., Steel, Hector, Davis, Burns & Middleton, Northbridge Center, Suite 1200, 515 North Flagler Drive, West Palm Beach, FL 33401; and to Frank Stockton, Esq., 224 Datura Street, West Palm Beach, FL 33401, by hand delivery this 29th day of May, 1986.

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