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IN THE SUPREME COURT, IN AND FOR
THE STATE OF FLORIDA

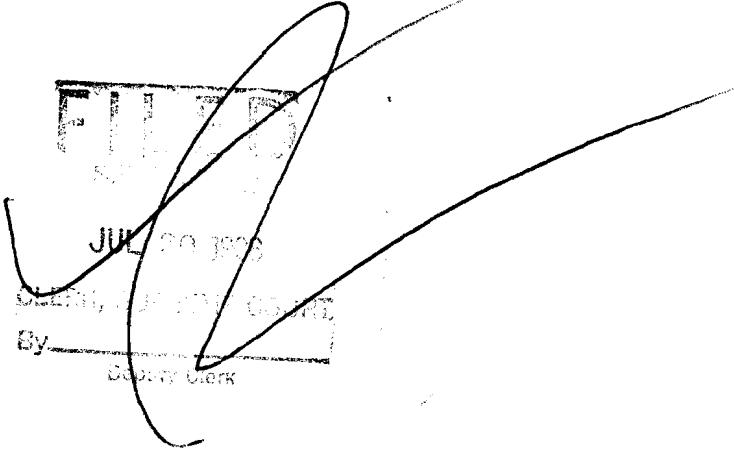
DIVISION OF BOND FINANCE OF THE
STATE OF FLORIDA, DEPARTMENT OF
GENERAL SERVICES, A Public Body
Corporate,

Appellants,

V.

SUPREME COURT NO. 69-046

STATE OF FLORIDA, and the Several
Taxpayers, Property Owners and
Citizens Thereof, including Non-
residents owning property or
subject to taxation therein, and
all others having or claiming any
right, title or interest in
property to be affected by the
issuance of the bonds described
in the complaint, and all others
to be affected in any way thereby,



Appellees.

IN RE: \$800,000 STATE OF FLORIDA,
ORLANDO-ORANGE COUNTY EXPRESSWAY
AUTHORITY REVENUE BONDS, SERIES
OF 1986

\$800,000,000 STATE OF FLORIDA,
ORLANDO-ORANGE COUNTY EXPRESSWAY
AUTHORITY JUNIOR LIEN BONDS,
SERIES OF 1986

INITIAL BRIEF OF APPELLANTS

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PRELIMINARY STATEMENT

The Appellant in this cause, the HOYT-PEPIN TRUST, was a defendant below in a bond validation proceeding. The appellee is the DIVISION OF BOND FINANCE, STATE OF FLORIDA, DEPARTMENT OF GENERAL SERVICES, and will be referred to as the "Division."

The Appendix accompanying this brief will be referred to by the symbol "A".

It should be noted that while the proceeding below was held for the purpose of validating bonds to be utilized by the Orlando-Orange County Expressway Authority, the Expressway Authority was not made a formal party to the proceedings.

STATEMENT OF CASE AND FACTS

This cause arose from a final judgment validating bonds for the expansion of the Orlando-Orange County Expressway. The complaint filed by the Division sought the validation of \$800,000,000, in revenue bonds. (A:56-67). It was alleged in the complaint that the construction of the project would serve "important and essential" public purposes. (A:58).

The appellant answered the complaint, as both an individual taxpayer and as trustee of property in Orange County. (A:68-71). The appellant challenged the public purpose and necessity for the project, especially that portion of the project which would provide an eastern extension of the expressway running approximately 5 miles in length and which would result in the closure of Lake Underhill Drive. (A:14-15;68-71).

At the bond validation Hearing the Division presented the testimony of a witness who described what the project included in terms of road expansion. (A:10-12)(See: Plaintiff's Exhibit 15; A:88). No testimony was offered, however, on the issue of necessity for the project itself. No data, statistics, studies, engineering testimony or other evidence was offered to establish that a need to build the project existed.

During the hearing the appellant raised objections to the validation of the bonds on the basis of lack of necessity to build that portion of the project which would provide an extension between the expressway and State Road 50. (A:37-48). The appellant also voiced objections to the necessity and public

purpose of the project on the basis of past case precedent holding that an owner's failure to raise such objections, at a properly noticed bond validation proceeding, would estop the owner from challenging the taking of his property at a subsequent eminent domain proceeding. (A:39-40; 43-44).

It was established that there currently exists a four lane roadway, known as Lake Underhill Drive, and that traffic handled by this roadway will be diverted to the new extension of the expressway. (A:16-18). Lake Underhill Road will become a cul-de-sac, and through traffic will no longer be permitted. (A:16;17). No evidence was offered on the current or projected traffic demand upon Lake Underhill Road which would indicate either a present or future need to replace the existing roadway with a new facility, such as the proposed expressway extension.

The trial court overruled the objections of the appellant, found a public purpose had been established, and validated the bonds. (A:47-48).

Subsequently a final judgment was entered (A:72-87) and a timely appeal seeking review of the judgment was filed.

POINT AT ISSUE

THE TRIAL COURT ERRED WHEN IT ENTERED A FINAL JUDGMENT, VALIDATING REVENUE BONDS, WITHOUT FIRST REQUIRING A SHOWING OF SOME EVIDENCE OF NECESSITY FOR THE CONSTRUCTION OF THE PROJECT.

SUMMARY OF ARGUMENT

Prior to granting a request made by a public entity to validate bonds, the circuit court should require a showing of "public purpose" for proposed project. The public purpose showing required for a bond validation proceeding is the same as that which is required in an eminent domain proceeding.

It is insufficient merely to allege a public purpose without the presentation of evidence. The public entity is required to come forth with evidence of the necessity for the project itself. While the evidence required need not pinpoint the use intended for a particular piece of property, and specific plans or drawings need not be on hand at the time request is made by the public entity seeking the bond validation, some evidence of necessity for the project itself must be presented.

The public purpose requirement cannot be satisfied without proof of the necessity for the proposed project.

ARGUMENT

In State of Florida v. Miami Beach Redevelopment Agency, 392 So.2d 875 (Fla. 1980), this court, when discussing the concept of public purpose in a bond validation proceeding, held that:

The standard for determining the question of 'public purpose' is the same under article VII, Section 10, and Article X, Section 6. Id. at 885.

The error committed by the trial court in this cause was to apply a lesser standard of proof to the bond validation proceeding, than would have been required at an eminent domain proceeding.

The dispute in this bond validation proceeding does not arise in the usual fashion where the parties opposing the project allege that a predominant private purpose will be served by the project. Rather, the appellant maintains simply that the Division must present, as in a condemnation proceeding, "some evidence" of necessity for the project before the bonds can be validated as serving a public purpose. Cf. City of Jacksonville v. Griffin, 346 So.2d 988, 990 (Fla. 1977).

In addition to the specific finding, pronounced in Miami Beach Redevelopment Agency, supra, that the standards for establishing "public purpose" are the same in bond validation proceedings and eminent domain proceedings, this court in Baycol, Inc. v. Downtown Development Authority of the City of Ft. Lauderdale, 315 So.2d 451 (Fla. 1975) has recognized the

similarity of the burdens carried by the public entity in the two proceedings.

In Baycol, Inc., the condemnor, in an eminent domain proceeding, alleged that a landowner was estopped from attacking the public purpose of the land acquisition, because the judgment validating the bonds had already determined this issue. Id. at 454. After noting that, "[t]he key to this determination vests (sic) in the adequacy of the notice afforded by the bond resolution and related proceedings." Id. at 454, the court went on to find that the notice given by the previous bond validation proceeding was insufficient and would not preclude the owner's right to challenge the propriety of the acquisition at the eminent domain proceeding. Id. at 455.

Two things are apparent in the finding by the court in Baycol, Inc.: (1) had there been sufficient notice, the owner would have been required to "attack the propriety of the acquisition at the bond validation hearing." Id. at 455; and (2) the evidence of public purpose offered at the bond validation proceeding must be of the same nature as that presented in an eminent domain proceeding. Otherwise, there would be no basis upon which an owner could be estopped from challenging the public purpose of a project at the eminent domain proceeding.

In City of Jacksonville v. Griffin, supra., this court recognized that the public entity must come forward with some evidence of necessity. Id. at 990. It is not necessary that evidence be presented which pinpoints the need for a particular piece of property. Nor is it required that the public entity

have, on hand, plans and specifications. Id. at 991. It is, however, not sufficient to merely offer various resolutions adopted by the public entity with regard to a particular project. Katz v. Dade County, 367 So.2d 277 (Fla. 3rd DCA 1979).

The question now becomes: What competent evidence of necessity was offered for the eastern extension of the expressway? The answer is none! Not a single witness testified to any data, studies or projections which would support the need for the project. Other than describing the proposed project location, no evidence was offered from which it could be concluded that the eastern extension of the expressway is needed now, or within the reasonably near future.

The appellant acknowledges that public officials may plan for the "foreseeable future", but they must do so within "reasonable limitations." Carlor Co. v. City of Miami, 62 So.2d 897, 902-903 (Fla. 1953). At the very least some evidence of proposed future need must be presented.

The court, in Knappen v. Division of Administration, State of Florida, Department of Transportation, 352 So.2d 885 (Fla. 2nd DCA 1977), cert. denied, 364 So.2d 883 (Fla. 1978), recognized that:

"The reason that Florida courts have consistently held that a judicial inquiry is permissible into the necessity of taking stems from their awareness of the 'tunnel vision' that so often plagues a bureaucracy which deems itself immune from judicial review." Chipola [Nurseries, Inc. v. Division of Administration,

Department of Transportation, 294 So.2d 357] at 360
[(Fla. 1st DCA 1974)] (concurring opinion) Id. at 891.

See also: Florida Power Corp. v. Gulf Ridge Council, 385 So.2d
1155, 1157 (Fla. 2nd DCA 1980).

The reasoning provided in Knappen is equally applicable to a
bond validation proceeding. Realistically, the public
acquisition process begins when funds for the project are sought.
When bonds are validated, a momentum is established which is
almost impossible to stop at the formal condemnation stage of the
proceedings. Prior to that time, most of the parcels will have
been purchased without formal proceedings and substantial amounts
of time, effort and money will have been invested by the public
entity. It creates a situation whereby judicial intervention is
unlikely, even if it was justified.

Logically, therefore, the showing of public purpose,
including the necessity for the project, should be made at the
very beginning of the acquisition process, that is when the
validation of the bonds is sought by the public entity. If no
purpose for the project can be established, then the bonds should
not be validated.

Since no evidence of necessity for the eastern extension of
the expressway was offered below, the finding of public purpose
by the trial court is without record support and should be
reversed.

CONCLUSION

Due to the lack of record support for the finding of public purpose, the Final Judgment in this cause should be reversed and the cause remanded for the taking of further testimony, or evidence, which would support the necessity for the project itself. Until such evidence is offered, public purpose has not been established and the request for validation of the revenue bonds should be denied.



ALAN E. DESERIO, ESQ.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the Initial Brief of Appellants has been furnished by U.S. mail to the HONORABLE WILLIAM N. MEGGS, State Attorney for the Second Judicial Circuit of Florida, 500 First Florida Bank Building, Tallahassee, FL 32301; the HONORABLE JOHN ROBERT EAGAN III, the Ninth Judicial Circuit of Florida, P.O. Box 1673, Orlando, FL 33802; THOMAS A BEENCK, Division of Bond Finance, 453 Larson Building, Tallahassee, FL 32301; and JAMES F. COOPER, JR., Sparks, Cooper, Leklem, P.O. Drawer 1271, Orlando, FL 32802, this 30th day of July, 1986.


ALAN E. DESERIO, ESQ.