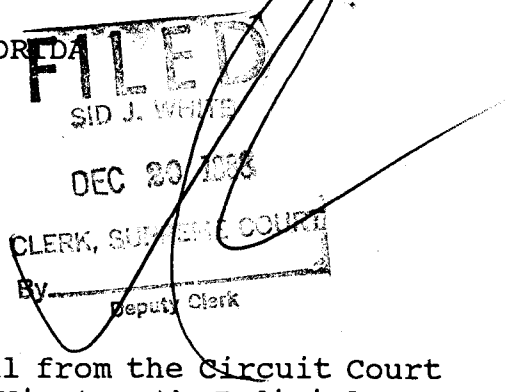
IN THE SUPREME COURT OF FLORIDA

CASE NO. 73,206



BENJAMIN E. PARTRIDGE and BEVERLY MERRITT, Appellants, vs. ST. LUCIE COUNTY, FLORIDA, ETC., Appellee.	On Appeal from the Circuit Court of the Nineteenth Judicial Circuit in and for St. Lucie County, Florida

APPELLEE'S ANSWER BRIEF

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PRELIMINARY STATEMENT

In this Answer Brief, the Appellee, St. Lucie County, Florida, which was the plaintiff below, is sometimes referred to as the "County". The Board of County Commissioners of St. Lucie County, which is the governing body of the County, is sometimes referred to herein as the "Board." The Intervenors, Benjamin E. Partridge and Beverly Merritt, who intervened subsequent to the conclusion of the trial court proceedings for purposes of bringing this appeal, are herein referred to as the "Intervenors."

The area of the County which the Board has designated as a municipal services benefit unit, pursuant to the provisions of Section 125.01(q), Florida Statutes (1987), is herein sometimes referred to as "Lakewood Park." The proposed paving of dirt roads in Lakewood Park and the providing of drainage along such roads is sometimes referred to herein as the "Project." The not exceeding $12,000,000 Special Assessment Bonds of the County, the proceeds of which are proposed to be used to finance the portion of the Project determined to specially benefit the owners of abutting property in Lakewood Park, are sometimes referred to herein as the "Special Assessment Bonds." The special assessments proposed to be levied and collected from the owners of the benefitted property in Lakewood Park are herein sometimes referred to as the "Special Assessments." The not exceeding $3,000,000 Optional Gas Tax Bonds of the County, the proceeds of which are proposed to be used to finance the portion of the Project

determined to be of general benefit to the County and its residents, are sometimes referred to herein as the "Gas Tax Bonds."

Pursuant to Rule 9.220, Florida Rules of Appellate Procedure, the County has previously submitted to the Court with its Motion to Dismiss Appeal as Frivolous a bound appendix containing the documents introduced into evidence in the trial court together with a transcript of the testimony at such proceedings. Parenthetical references to the appendix are presented throughout this Answer Brief in the following form: "(A - __)."

STATEMENT OF THE CASE

The Appellee chooses to make a statement of the case and of the facts inasmuch as the Intervenors, in their "Statement of the True Facts," has merely recited certain procedural facts relating to the appeal. The purpose of the proceedings in the trial court was to validate (i) not exceeding $12,000,000 Special Assessment Bonds (the "Special Assessment Bonds") to be issued to pay the portion of the cost of certain street and drainage improvements (the "Project") within the Lakewood Park Municipal Service Benefit Unit ("Lakewood Park") allocated to the owners of property specially benefitted by such improvements, (ii) the special assessments (the "Special Assessments") to be levied and collected in order to pay such Special Assessment Bonds, (iii) not exceeding $3,000,000 Optional Gas Tax Revenue Bonds (the "Gas Tax Bonds") to be issued to pay the portion of the cost of the Project which the County allocated to itself, and (iv) all proceedings taken by the County in connection with the foregoing.

A Complaint for validation of the Special Assessment Bonds, the Special Assessments, the Gas Tax Bonds, and all proceedings of the County had in connection therewith was filed in the lower court on July 19, 1988. (A - 1). An Amended Order To Show Cause was entered by the trial judge on August 15, 1988, requiring any interested party to appear on the 15th day of September, 1988 at 12:30 p.m. before the Circuit Court for St. Lucie County and show cause why the Special Assessment Bonds, the Special Assessments, the Gas Tax Bonds, and the

proceedings taken in connection therewith should not be validated. (A - 12). A copy of the Amended Order to Show Cause was served on the State Attorney of the Nineteenth Judicial Circuit on August 15, 1988. A Proof of Publication shows that this Amended Order to Show Cause was published in the Fort Pierce News Tribune on August 18, 25 and September 1, 1988. (A - 19).

At the hearing on September 15, 1988, an Answer was filed by the State Attorney on behalf of the State of Florida demanding strict proof of each and every allegation contained in the Complaint. (A - 14). The County introduced various resolutions and proceedings of the County in connection with the matters sought to be validated and elicited the testimony of the Assistant County Administrator for Budget and Finance and the County's financial advisor regarding the proposed Project and the financing plan with respect thereto. (A - 21, pages 3-8). Assistant State Attorney Thomas Walsh was present at the final hearing and at the conclusion of the hearing he announced to the Court that the State had no objection to the entry of a Final Judgment validating the Special Assessment Bonds. (A - 21, page 8). No other interested party filed an answer or any other pleading, and no one other than the State Attorney appeared at the final hearing on behalf of the defendants. The Intervenors Partridge and Merritt, although they had legal notice of the hearing through publication of the Amended Order to Show Cause, did not file an answer or other pleading and did not appear at the final hearing.

At the hearing on September 15, 1988, the Court received in evidence the various resolutions, assessment rolls, proofs of

publication and other evidence indicating the procedures taken by the County in connection with its decisions to undertake the Project, to levy the Special Assessments, and to issue the Special Assessment Bonds and the Gas Tax Bonds. At the conclusion of the hearing on September 15, 1988, the Court signed a Final Judgment validating the Special Assessments, the Special Assessment Bonds, the Gas Tax Bonds, and the proceedings had in connection therewith. (A - 13).

Thereafter, the Intervenors filed their Notice of Appeal, which purports to challenge only the levy and collection of the Special Assessments and the issuance of the Special Assessment Bonds and does not appear to challenge the issuance of the Gas Tax Bonds. The proceeds of the Gas Tax Bonds are proposed to be used to finance the County's share of the cost of the Project. Appellee addresses its argument to the proceedings with respect to the Special Assessments and the Special Assessment Bonds only, and assumes that the Intervenors are not aggrieved by the proposed issuance of the Gas Tax Bonds.

STATEMENT OF THE FACTS

The County by virtue of Section 125.01(q), Florida Statutes (1987), Chapter 1-13.5 of the Ordinance Code of the County, and other applicable provisions of law is authorized to create municipal service taxing and benefit units in unincorporated areas of the County for the purpose of providing street and drainage improvements in such areas to be paid for by taxes, special assessments, or service charges levied and collected within the boundaries of such units.

In this case the Board of County Commissioners, as the governing board of the County, established a municipal service benefit unit in the unincorporated area of the County known as Lakewood Park for the purpose of providing street and drainage improvements therein. A public hearing was called to be held on April 5, 1988, on the questions of (i) the creation of a proposed municipal service taxing unit, (ii) the construction and acquisition of the proposed street and drainage improvements, (iii) the allocation of the costs of the Project between the County and the owners of the benefited property, and (iv) the proposal for payment of the portion of the cost of the Project allocated to the owners of the benefitted property through the levy of special assessments or service charges. Proof that notice of the April 5 public hearing was published in the Fort Pierce News-Tribune on March 12 and 26, 1988, together with a copy of the notice, was introduced at the hearing in the trial court. (A - 2).

After the conclusion of the April 5 public hearing, the Board duly adopted Resolution No. 88-69, which states in pertinent part:

* * *

> 1. By virtue of Notice of Proposed Taxing Unit published in the Fort Pierce News Tribune on March 12, 1988, and March 26, 1988, this Board held a public hearing on April 5, 1988, to consider the proposed Lakewood Park Municipal Service Benefit Unit for paving and drainage improvements; and
>
> 2. All interested parties were given an opportunity to present their views on the proposed unit during the April 5, 1988 public hearing; and
>
> 3. By virtue of the evidence and testimony presented during the public hearing, this Board has determined that the proposed improvements would be of special benefit to the real and personal property within the boundaries of the proposed unit, the cost of providing such improvements and services is not in excess of the benefit gained, and the creation of such unit would be in the public interest;
>
> 4. The preliminary cost estimates and the assessment roll attached as Exhibits "A" and "B" are approved; and
>
> 5. After reviewing the pertinent data, this Board has determined that the amount of the public benefit resulting from the improvements to be borne by the County is one million seven hundred sixty-six thousand three hundred one and 95/100 ($1,766,301.95) dollars.

* * *

(A - 3)

Thereafter, the Board adopted Resolutions 88-106, 88-138, and 88-191, which amended the provisions of Resolution No. 88-69 in certain respects. Resolution No. 88-106, adopted on May 10, 1988, (i) equalized certain assessments and increased the County's share of the

cost of the Project by approximately $15,000 and (ii) provided for the use of the ad valorem method of collecting the Assessments pursuant to the provisions of Section 197.363, Florida Statutes (A - 3). Resolution No. 88-138, adopted on May 17, 1988, (i) further equalized the assessments by reducing the portion of the cost of the Project to be assessed against the owners of the benefitted properties, (ii) increased the County's share of the cost of the Project by approximately $330,000, (iii) extended the deadline for prepayment of assessments without interest from June 5, 1988, to August 1, 1988, and (iv) provided that those persons prepaying assessments would not be liable for interest during the construction period. (A - 3). Resolution No. 88-191, adopted August 2, 1988, (i) made further amendments to the assessment roll that had been approved on April 5, 1988, reducing the portion of the cost of the Project to be assessed against the owners of the benefitted properties and (ii) further increased the County's share of the cost of the Project by approximately $800. The cumulative effect of the adjustments to the assessment roll for the Project was to increase the County's share of the cost of the Project by $345,800.

The Board thereafter also, pursuant to the provisions of Chapter 125, Part I, Florida Statutes, Ordinance 87-77 of the County, and other applicable provisions of law, approved Resolution No. 88-174, which authorized the issuance of the Special Assessment Bonds. (A - 6).

SUMMARY OF THE ARGUMENT

The Intervenors have demonstrated no reversible error by the trial court in validating the Assessment Bonds and the Special Assessments. The findings and determinations of the Board of County Commissioners with respect to the Special Assessments, the Special Assessment Bonds, and the proceedings of the Board of County Commissioners taken in connection therewith came to the trial court clothed with the presumption of correctness accorded by the courts to the findings of legislative bodies, the trial court properly validated those findings and proceedings, and the final judgment rendered by the trial court should be affirmed on this appeal.

The Intervenors are opposed (i) to the County's carrying out the paving and drainage project in Lakewood Park and, more significantly, (ii) to the residents of Lakewood Park having to bear the portion of the cost of the Project (Intervenors' Brief, Conclusion, paras. 1, 2, 4, and 5), costs which the Board has found and determined to be (a) assessable against the benefitted property owners and (b) not in excess of the benefits conferred by the Project. (A - 3, page 1).

The Intervenors would substitute for the finding and determination of the Board of County Commissioners that (i) the Project is ". . .necessary and in the best interests of the health, safety, and welfare of the County and its residents . . ." (A - 6, page 8, section 1.03(A)), and (ii) that ". . . the proposed improvements would be of special benefit to the real and personal

property within [Lakewood Park] . . . ." (A - 3, page 1, para. 3), their own judgment that (i) the Project is not necessary and, (ii) if necessary, should be paid for by the County out of public moneys without regard to the benefits specially conferred on the residents of Lakewood Park.

The Intervenors are not the duly elected representatives of the residents of Lakewood Park; the Board of County Commissioners of the County are the duly elected representatives of the residents of Lakewood Park and of the remainder of St. Lucie County, and, as such, have made findings and determinations, based on evidence before them, regarding the necessity for the paving and drainage project in Lakewood Park, the cost thereof, the apportionment of such cost between the County and the benefitted property owners, and the method of financing such cost. The bases for these findings by the Board were not challenged in the trial court, and there is no basis in the record on appeal for the appellate court to overturn the judgment of the trial court validating the proceedings of the Board of County Commissioners in these matters.

At the heart of the Intervenors legal argument is the mistaken belief that a referendum election must be held in Lakewood Park and that a majority of those voting in the election must approve the proposed Project and the Special Assessments before the Board of County Commissioners can proceed to undertake the Project and to levy special assessments to pay a portion of the cost thereof (Intervenors' Brief, Summary of Argument, Points 1 and 12). The Intervenors also mistakenly believe that the provisions of Chapter 170, Florida

Statutes, apply to the levy of special assessments by a County. These beliefs are understandable inasmuch as Intervenors are laypersons, but Intervenors' mistaken beliefs about the law are no basis for a reversal of the trial court's findings and the findings and determinations of the Board of County Commissioners of the County which were validated by the trial court.

Under the provisions of Section 125.01(q), Florida Statutes (1987), the Board of County Commissioners is vested with the authority to ". . . establish . . . municipal service taxing or benefit units for any part . . . of the unincorporated area of the county, within which may be provided . . . streets, . . . [and] drainage . . ., from funds derived from service charges, special assessments, or taxes within such unit only." Pursuant to the provisions of Section 125.01(r), Florida Statutes (1987), and County Ordinance 87-77, the County is authorized to issue obligations payable from sources other than ad valorem taxation to finance County projects. There is no requirement in the County Ordinance Code or in the Constitution and Laws of the State of Florida for a referendum to be held for the exercise of these powers. The Board of County Commissioners has properly exercised its powers under these provisions, and an approving vote of the residents of Lakewood Park is not required for implementation of the Project and the proposed plan of financing through the issuance of the Special Assessment Bonds and the Gas Tax Bonds. The requirements of Chapter 170, Florida Statutes (1987), are not applicable to the levy of special assessments by Counties.

For the foregoing reasons, the arguments of the Intervenors should be rejected by this court and the judgment of the trial court affirmed.

ARGUMENT

POINT I

THE JUDGMENT OF THE TRIAL COURT IN THE PROCEEDINGS BELOW IS PRESUMED TO BE CORRECT IN THE ABSENCE OF A SHOWING OF ERROR, AND THE INTERVENORS HAVE ASSERTED NO ERROR OF THE TRIAL COURT IN THE CONDUCT OF THE VALIDATION PROCEEDINGS.

In this appeal, the Intervenors have focused their attention solely upon the actions of the Board of County Commissioners and have failed to demonstrate any reversible error on the part of the trial court. This is, perhaps, understandable in light of the fact that the Intervenors did not appear at the validation hearing to protest the Special Assessments and the Assessment Bonds, despite publication of the notice thereof in the Fort Pierce News-Tribune in accordance with the provisions of Section 75.06, Florida Statutes (1987). (A - 29). Nevertheless, the Intervenors were notified of the validation hearing, and their failure to appear at the validation hearing cannot excuse them from the legal requirement that they demonstrate reversible error on the part of the trial court in the proceedings below or in the entry of its final judgment of validation. As this Court has stated: "The judgment of validation . . . comes to [the Supreme Court] with a presumption of correctness, and the burden is on the Intervenors to point out from the record the failure of the evidence to support the conclusions of the issuing authority and of the trial court." International Brotherhood of Electrical Workers v. Jacksonville Port Authority, 424 So.2d 753, 755 (Fla. 1982). In the absence of any demonstration of error by the trial court, its judgment is entitled to be affirmed.

POINT II

THE TRIAL COURT PROPERLY HELD THAT ALL REQUIREMENTS OF THE CONSTITUTION AND LAWS OF THE STATE OF FLORIDA RELATED TO THE LEVY AND COLLECTION OF THE SPECIAL ASSESSMENTS IN THE LAKEWOOD PARK MUNICIPAL SERVICES BENEFIT UNIT WERE FOLLOWED AND THAT THE ASSESSMENTS ARE VALID.

A. THE DETERMINATION OF THE NEED FOR THE PAVING AND DRAINAGE IMPROVEMENTS IN LAKEWOOD PARK WAS PROPERLY MADE BY THE BOARD OF COUNTY COMMISSIONERS AND IS ENTITLED TO A PRESUMPTION OF CORRECTNESS IN THE ABSENCE OF A SHOWING OF MANIFEST ABUSE OF LEGISLATIVE AUTHORITY.

The Intervenors legal arguments are predicated in essence on two propositions: first, that the Project is unnecessary (i.e., that the unpaved streets and unimproved drainage ditches are adequate), and, second, that the Project, if necessary, cannot be afforded by the residents of Lakewood Park (Intervenors' Brief, Conclusion). In making these assertions, the Intervenors, claiming to represent some 200 of the 2,000+ residents of Lakewood Park, would substitute their own judgment for that of the duly elected Board of County Commissioners of St. Lucie County with respect to matters of public health, safety and welfare.

The Board of County Commissioners determined in Resolution 88-69, adopted at the time of the public hearing on April 5, 1988, that the "creation of [the municipal service benefit] unit would be in the public interest." (A - 3, page 2, para. 3). The Board reaffirmed this finding in Resolution No. 88-174, adopted on June 7, 1988, where they determined that the paving and drainage project was ". . . necessary and in the best interests of the health, safety, and welfare of the County and its inhabitants . . . ." (A - 6, page 8, Section 1.03(A)).

This court has consistently held that legislative matters, such as the need for a particular capital project and the manner of its financing, are not to be adjudicated in a validation proceeding. Such matters lie within the province of the legislative body of the governmental unit. See DeSha v. City of Waldo, 444 So.2d 16, 18 (Fla. 1984) (question of need for project is matter to be determined by governing body); Town of Medley v. State, 152 So.2d 257, 259 (Fla. 1964) ("questions of business policy and judgment incident to issuance of [bonds] are beyond the scope of judicial interference and are the responsibility and prerogative of the governing body of the governmental unit in the absence of fraud or violation of legal duty"); State v. City of Daytona Beach, 431 So.2d 981, 983 (Fla. 1983) (validation proceeding is improper forum for inquiry into economic feasibility of project); Penn v. Pensacola-Escambia Governmental Center Auth., 311 So.2d 97, 102 (Fla. 1975) (in bond validation proceeding, court is not concerned with "political and policy considerations within the legislative spheres of authority," or with the "political or economic wisdom of the project proposed to be financed with the proceeds of the bonds").

The Intervenors have made arguments going to the necessity for the Project and the method of its financing, matters which are the prerogative of the Board of County Commissioners, and the Intervenors have not demonstrated that there is any legal basis for the Court to interfere with that judgment.

B. THE FINDINGS OF THE BOARD OF COUNTY COMMISSIONERS REGARDING THE APPORTIONMENT OF THE COST BETWEEN THE PUBLIC AND THE PRIVATE LANDOWNERS AND THE BENEFIT TO BE DERIVED BY THE LANDS WITHIN LAKEWOOD PARK FROM THE CARRYING OUT OF THE PROJECT ARE ENTITLED TO A PRESUMPTION OF VALIDITY AND ARE NOT SUBJECT TO REVIEW BY THE COURTS UNLESS THERE IS A SHOWING OF FRAUD, MISTAKE, OR PATENT ARBITRARINESS ON THE PART OF THE BOARD IN MAKING SUCH DETERMINATIONS.

At the public hearing held on April 5, 1988, on the Project, the Board of County Commissioners, after receiving comments from the public:

> " . . . determined that the proposed improvements would be of special benefit to the real and personal property within the boundaries of the proposed [municipal services benefit] unit, the cost of providing such improvements and services is not in excess of the benefit gained, and the creation of the unit would be in the public interest." (A - 3, page 1, para. 3).

It is well settled in Florida that (1) where a local legislative body has the authority to undertake paving and drainage projects and (2) the legislative body has passed a resolution finding that benefits are conferred, these findings are "conclusive and final." Rosche v. City of Hollywood, 55 So.2d 909, 913 (Fla. 1952). There is a presumption that such findings are correct, and that presumption can be overcome only by "strong, direct, clear, positive proof." Ibid; Bodner v. City of Coral Gables, 245 So.2d 250, 253 (Fla. 1971)(assessments overturned only where there is a showing of arbitrary and unwarranted exercise of power or denial of equal protection); Klein v. City of New Smyrna Beach, 152 So.2d 466, 470 (Fla. 1963)(lack of evidence to show assessments improperly levied;

burden on appellant to establish invalidity); Atlantic Coast Line R.R. v. City of Gainesville, 91 So. 118, 121 (Fla. 1922) court can ignore legislative determination only in a clear case, where court clearly sees no benefit and lack of benefit is so clear as to admit of no dispute, presenting case of manifest abuse of legislative authority).

This standard of review is based on the recognition that the apportionment of assessments is a legislative and not a judicial function. Where reasonable men may differ about the levy of assessments, the findings of the legislative body must be upheld. Meyer v. City of Oakland Park, 219 So.2d 417, 420 (Fla. 1969).

There is a further presumption in a case where the Legislature has indicated in the authorizing legislation that benefits flow from a particular type of project. In these situations, there is no need for a finding by the legislative body of express benefits in particular cases; rather, there is a presumption that such special benefits accrue. City of Treasure Island v. Strong, 215 So.2d 473, 477-78 (Fla. 1968), citing Atlantic Coast Line R.R., supra.

The presumption of benefits doctrine was early applied with respect to street paving projects. In Atlantic Coast Line R.R., supra, at 121 , this Court stated that there is a presumption of benefit to the owners of abutting property where street paving is undertaken.

Since the provisions of Section 125.01(q), Florida Statutes (1987), specifically include streets and drainage among the list of improvements which Counties may undertake and for which special assessments may be levied, there attaches the presumption that special

benefits accrue to abutting properties when such improvements are undertaken. City of Treasure Island, supra, at 477-78.

The Intervenors argue that the percentage of the cost of the Project borne by the County is to be the percentage of the benefits accruing to the public generally. (Intervenors' Brief, Point 8). The Board of County Commissioners expressly found in Resolution 88-69 that "the amount of the public benefit resulting from the improvements to be borne by the County is . . . $1,766,301.95." (A - 3, page 1). The Board subsequently, in Resolutions 88-106, 138, and 191, increased the portion of the cost of the Project to be borne by the County to $2,113,195.85. (A - 3 and A - 15). There is nothing in the record to suggest that the amount of benefit determined by the Board of County Commissioners to be public in nature was either arbitrary or constituted a case of manifest abuse. On the basis of the authorities above-cited, the determination of the Board of County Commissioners on this issue is presumed to be correct in the absence of any such showing.

C. THE CHARACTERIZATION OF LAKEWOOD PARK AS A "BENEFIT UNIT" OR AS A "TAXING UNIT" IS NOT STATUTORILY MANDATED AND IS NOT MATERIAL WHERE THE BASIS FOR PAYING FOR THE PROPOSED PROJECT WAS ADVERTISED TO BE THE LEVY OF SPECIAL ASSESSMENTS.

The Intervenors argue that the process for levy of the Special Assessments was defective because the notice of the public hearing to be held before the Board of County Commissioners on April 5, 1988, regarding the Project and the Special Assessments, made reference to a municipal service taxing unit and the Board thereafter established a municipal service benefit unit (Intervenors' Brief, Point 1). The Intervenors do not claim that they were in any way misled by the initial use of the term taxing unit, but they assert that a municipal service taxing unit is under some particular jurisdiction of the Florida Legislature.

The provisions of Section 125.01(q), Florida Statutes (1987), provide for the creation of both municipal taxing and benefit units within unincorporated areas of a county; there is no statutorily mandated nomenclature to be used in the creation of such a unit, and, indeed, there is no reason for which, under the terms of the statute, special assessments could not be levied within the boundaries of a municipal service taxing unit or taxes collected within the boundaries of a municipal service benefit unit.

The notice of the April 5 hearing clearly stated that the funding for the proposed Project would be through the collection of service charges or special assessments. (A - 2). Even assuming for the sake of argument a requirement that an area in the unincorporated

part of the County in which assessments are to be levied be called a benefit unit, the Intervenors cannot assert that the overall process of approving the Project, the Special Assessments, and the Special Assessment Bonds was so substantially defective as to rise to the level of a denial of due process or equal protection. As this Court said recently in Rinker Materials Corporation v. Town of Lake Park, 494 So.2d 1123, 1125 (Fla. 1986), the issue is not one of strict compliance with a statutory scheme, but whether the deviation from the scheme was so substantial as to amount to a denial of due process. Here, the changing of the name of the Lakewood Park municipal service unit from a taxing unit to a benefit unit does not constitute a denial of due process, especially where the notice of the public hearing on the proposed unit clearly specified that the method of financing the proposed Project would be through the levy and collection of service fees or special assessments.

D. THE RESIDENTS OF LAKEWOOD PARK WERE PROPERLY NOTIFIED OF THE PUBLIC HEARING ON THE PROPOSED PROJECT AND ON THE COUNTY'S PLAN TO FINANCE A PORTION OF THE COST OF THE PROJECT ALLOCABLE TO THE BENEFITTED PROPERTIES THROUGH THE LEVY AND COLLECTION OF SPECIAL ASSESSMENTS. THE RESIDENTS HAD AN OPPORTUNITY TO APPEAR AND BE HEARD BY THE BOARD PRIOR TO THE DETERMINATION TO PROCEED WITH THE PROJECT AND TO LEVY THE ASSESSMENTS.

In its notice of the April 5, 1988, public hearing on the Lakewood Park paving and drainage project and the proposal to levy and collect special assessments to pay a portion of the cost thereof, the County clearly stated that there would be a public hearing and that residents of Lakewood Park would have the opportunity to appear and be heard concerning the proposed Project, the levying of the Special Assessments, and the amounts thereof. (A - 2). The notice included a map of the affected area and stated that the Project would consist of paving and drainage improvements, estimated to cost $11,185,471.97. The notice was published twice in the Fort Pierce News-Tribune, once on March 14 and once on March 26.

At the public hearing, the Board adopted Resolution 88-69, which established the benefit unit, approved the preliminary cost estimates and the apportionment of the cost between the County and the benefitted properties, and approved the preliminary assessment roll for the benefitted properties. (A - 3). As this Court stated in Cape Development Company v. City of Cocoa Beach, 192 So.2d 766, 771-72 (Fla. 1966), the essential factor of due process in assessment proceedings is notice and the opportunity to be heard.

There can be no complaint that these essentials were lacking in the instant case. There was notice both of the public hearing on April 5, 1988, and of the bond validation hearing on September 15, 1988, and there is nothing in the record to indicate that these notices were not effective and sufficient under the governing statutes. The Intervenors argue that they were deprived of due process because of the inability to secure the assistance of legal counsel (Intervenors' Brief, Point 2), but there is no recognized right to counsel in proceedings before the Board of County Commissioners to determine matters relating to special assessments, and, even assuming the existence of such a right, there has been no showing that the Intervenors are indigent and unable to afford the services of competent counsel. This argument is simply without merit.

E. THE BOARD OF COUNTY COMMISSIONERS MADE A FINDING THAT THE AMOUNT OF THE ASSESSMENTS AGAINST THE BENEFITTED PROPERTIES WAS NOT IN EXCESS OF THE BENEFITS CONFERRED UPON SUCH PROPERTIES.

The Intervenors argue that the cost of the Project is in excess of the benefits to the assessed property owners. (Intervenors' Brief, Point 11). The Board of County Commissioners made an explicit finding in Resolution No. 88-69, adopted at the public hearing of April 5, 1988, that

> "By virtue of the evidence and testimony presented during the public hearing, this Board has determined that . . . the cost of providing such improvements and services is not in excess of the benefit gained . . . ." (A - 3, page 1, para. 3).

Again, the presumption is in favor of the correctness of the legislative finding, which was stated to be on the basis of the evidence and testimony before the Board of County Commissioners at the time of holding the public hearing. Meyer, supra, at 420; Klein, supra, at 470. This presumption of benefits in excess of cost is made clear in this case, since the Board has assessed in excess of $2,113,000 of the total cost of the Project as a public benefit, and has three times equalized assessments, each time increasing the portion of the total Project cost to be borne by the County.

F. THE PROVISIONS OF CHAPTER 170, FLORIDA STATUTES, APPLY ONLY TO SPECIAL ASSESSMENTS LEVIED BY MUNICIPALITIES.

The Intervenors rely upon the provisions of Chapter 170, Florida Statutes (1987). (Intervenors' Brief, Points 5 and 6). This is misplaced inasmuch as the provisions of Chapter 170 are applicable only to the levy of special assessments by municipalities.

G. THE BOARD OF COUNTY COMMISSIONERS COMPLIED WITH THE REQUIREMENTS OF LAW IN LEVYING THE SPECIAL ASSESSMENTS, AND THE INTERVENORS HAVE DEMONSTRATED NO REVERSIBLE ERROR IN THE CONDUCT OF SUCH PROCEEDINGS.

The Intervenors argue variously (1) that parcels of property have been deleted from the assessment rolls but that the total project cost has not been reduced and, therefore, that the total cost to the County will be greater, but that the County held no public hearing to allow its residents in general to protest the payment of this increased cost (Intervenors' Brief, Point 5); (2) that the assessments include a charge for construction interest, which the County will have to refund if no construction takes place (Intervenors' Brief, Point 9); (3) that the County has improperly issued the Special Assessment Bonds (Intervenors' Brief, Point 7); (4) that people were scared into prepaying assessments (Intervenors' Brief, Point 10); and (5) that the County has not acquired rights of way in Lakewood Park.

The Intervenors cannot point to, and the County cannot locate, any requirement that there be public hearings on increases in the County's proposed share of the cost of the Project. The public hearing requirements apply only for the benefit of the owners of property to be specially assessed, and those requirements were strictly followed here. To the extent that the assessments include as a component construction interest, this is properly within the jurisdiction of the Board to determine to be a cost of the Project. See, Cape Development Company v. City of Cocoa Beach, 192 So.2d 766, 771-72 (Fla. 1966).

As to the issuance of the Bonds, the using of in terrorem methods with the property owners, and the failure to acquire rights of way, there is simply no evidence in the record before this Court to suggest that any of these allegations is true. In fact, the Special Assessment Bonds have not been issued; the notification that failure to pay the Special Assessments could result in a loss of property is required by the provisions of Section 197.363(1)(c), Florida Statutes (1987), to be included on the notice of assessments sent to the property owners in Lakewood Park; and the rights of way on which the improvements are being constructed were dedicated to and accepted by the County.

Again, the issue is whether there is direct, clear, and positive proof that the County acted so arbitrarily as to constitute the levying of the assessments a confiscation of property, Atlantic Coast Line R.R., supra, at 121, or whether the County so substantially deviated from required procedures as to deny the residents of Lakewood Park due process in the levying of the assessments, Rinker Materials, supra at 1125. The Intervenors made no demonstration that the Board in any way acted arbitrarily or deviated from required procedures in determining to proceed with the Project and to levy the Special Assessments. Indeed, the record demonstrates that the Board of County Commissioners provided notice, conducted public hearings, equalized assessments on three occasions subsequent to the public hearing, and properly validated all of its proceedings in the trial court.

The Intervenors arguments, being in essence advanced in an effort (i) to thwart the determination of the Board that "the Project

is necessary and in the best interests of the public health, safety and welfare of the County and its residents" (A - 6, page 8, Section 1.03(a)) and (ii) to avoid the necessity to pay the portion of the cost of the Project determined by the Board to be "of special benefit to the real and personal property within the boundaries of the proposed [municipal services benefit] unit" (A - 3, page 1), are simply devoid of any basis that would justify a finding that the Board of County Commissioners acted in an arbitrary manner or that the trial court erred in validating the proceedings of the Board in this matter.

POINT III

NO REFERENDUM IS REQUIRED FOR THE LEVY OF SPECIAL ASSESSMENTS TO PAY THE COST OF A PROJECT BENEFITTING ABUTTING PROPERTY OWNERS.

The Intervenors argue that the assessment is a tax because it appears on the tax bills, and that the County has failed to hold a referendum election prior to the levy of the "tax". (Intervenors' Brief, Point 12). It is well settled that special assessments in Florida are not taxes and are not subject to the constitutional requirements applicable to taxes. Lake Howell Water and Reclamation District v. State, 268 So.2d 897, 899 (Fla. 1972). Therefore, no referendum election was required to be held in Lakewood Park as a condition precedent to the levy and collection of the Special Assessments.

POINT IV

THE STATE ATTORNEY PROPERLY REPRESENTED THE INTERESTS OF THE PROPERTY OWNERS OF LAKEWOOD PARK BY INSISTING ON STRICT PROOF OF THE ALLEGATIONS CONTAINED IN THE COUNTY'S COMPLAINT. THE INTERVENORS DID NOT CHOOSE TO APPEAR AT THE FINAL HEARING ON THE VALIDATION OF THE ASSESSMENTS AND THE BONDS.

The Intervenors assert that the Assistant State Attorney did not provide adequate representation of the their interests and that he should have argued against validation of the Special Assessments and the Special Assessment Bonds. (Intervenors' Brief, Point 3). The record demonstrates that the Assistant State Attorney filed an Answer to the County's Complaint, denied personal knowledge of the facts and allegations contained therein, and demanded strict proof thereof. (A - 14). He was present throughout the conduct of the validation hearing, representing the interests of the citizens and taxpayers, as mandated by Chapter 75, Florida Statutes. He stated that he had reviewed the proposed final judgment signed by the trial court and that he had no objection thereto. (A - 21, page 8).

Again, there is no evidence in the record of reversible error on the part of the trial court, and it is without merit to argue that the Assistant State Attorney did not properly discharge his function when no such error can be demonstrated in the proceedings below.

CONCLUSION

In this appeal, the Intervenors have failed to point to any reversible error on the part of the trial court or any defect in the proceedings of the Board of County Commissioners of St. Lucie County. As this Court has stated,

> The judgment of validation . . . comes to [the Supreme Court] with a presumption of correctness, and the burden is on the appellant to point out from the record the failure of the evidence to support the conclusions of the issuing authority and of the trial court.

International Brotherhood, supra, at 755. The Intervenors made no objections at the time of the proceedings in the trial court, despite proper notice thereof, and have failed to demonstrate any error in this appeal. The judgment of the trial court should, therefore, be affirmed.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing ANSWER BRIEF OF APPELLEE, ST. LUCIE COUNTY, FLORIDA, has been furnished to BENJAMIN E. PARTRIDGE, 7301 Georges Road, Fort Pierce, Florida 34951, and BEVERLY MERRITT, 6601 Ocala Avenue, Fort Pierce, Florida 34951, by Federal Express this 19th day of December, 1988.

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