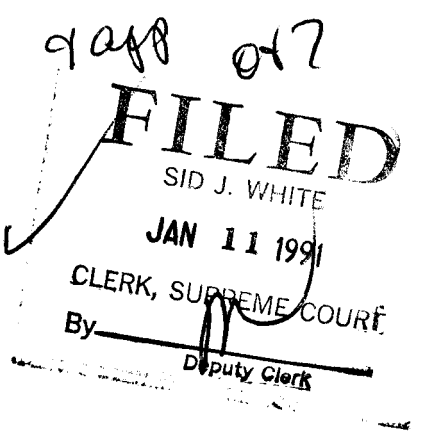
IN THE SUPREME COURT OF FLORIDA

Tallahassee, Florida

CASE NUMBER: 77,098



NORTHERN PALM BEACH COUNTY WATER CONTROL DISTRICT, a drainage district of the State of Florida, Appellant, vs. THE STATE OF FLORIDA, et. al., Appellants.	On Appeal from a Bond Validation in the Circuit Court in and for Palm Beach County, Florida Case No. C1-90-6844-AH

APPELLANT'S INITIAL BRIEF

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CITATION OF AUTHORITIES

CASES

MISCELLANEOUS AUTHORITIES:

STATEMENT OF THE CASE AND OF THE FACTS

This is an appeal to the Florida Supreme Court pursuant to Florida Rules of Appellant Procedure, Rule 9.030(a)(1)(B)(i), from the final order entered in the Circuit Court of the Fifteenth Judicial Circuit in and for Palm Beach County, Florida (the "Circuit Court" or the "trial court"), wherein the trial court failed to validate the issuance of Water Control and Improvement Bonds for Unit of Development No. 31, Program Two, of the Northern Palm Beach County Water Control District in a principal amount of not to exceed $16,312,500.00, (the "Program Two Bonds").

The Appellant, Northern Palm Beach County Water Control District (the "District") is a political subdivision of the State of Florida, organized and existing under and by virtue of Chapter 59-994, Laws of Florida, as amended and supplemented, (Ap. T.14 P.307-399) and applicable provisions of Chapter 298, Florida Statutes and other applicable provisions of law (collectively the "Act").

Unit of Development No. 31 (the "Unit") was established by the Board of Supervisors of the District (the "Board") pursuant to a resolution adopted on December 28, 1988, for the purpose of draining and reclaiming the land located within the Unit.

On August 23, 1989, the Water Management Plan for the

Unit, (the "Plan"), as prepared by the Chief Engineer of the District was adopted by the Board. (Ap. T.4 P.162-208)

On September 14, 1989, the Circuit Court in In Re: Northern Palm Beach County Water Control District, Unit of Development No. 31 Case No. CL 89-9259-AO, appointed three Commissioners to prepare a Report of Commissioners (the "Report") regarding the Plan for the Unit. The Commissioners filed their Report with the Clerk of the Circuit Court on November 29, 1989.(Ap. T.7 P.211-234) The Report assessed the benefits of the Water Management Plan as to the lands within the Unit to be in the amount of $55,000,000.00 and showed the estimated cost of construction of improvements as contained in the Plan to be less than the benefits assessed against the lands in the Unit. On December 21, 1989, the Circuit Court entered its order (the "Order") approving and confirming the Report, and confirming the benefits as to the lands within the Unit as described within the Report.(Ap. T.8 P.235-236)

In assessing benefits as to the lands within the Unit, the Report distinguishes between two separate components of the planned improvements to be constructed within the Unit pursuant to the Plan. The first component consists of the water management system, the water and sewer facilities and the exterior roadway improvements, including landscaping, and also including certain interior roadway improvements that are to be open to the general public together with associated

landscaping (the "Program One Improvements"); and the second component consists of all other improvements (the "Program Two Improvements"). With respect to the Program Two Improvements the Report assessed benefits against the lands in the Unit in the amount of $18,125,000.00.

On March 28, 1990, by the duly adopted Unit of Development No. 31 Program Two Tax Resolution, the District levied a total non ad valorem assessment called a drainage tax on the lands in the Unit in proportion to the benefits to be derived from the construction of the Program Two Improvements as set forth in the Plan, in the aggregate amount of $42,625,000.00 (consisting of an initial tax of $18,125,000.00 plus interest in the amount of $24,500,000.00 which is estimated to accrue on the Bonds).(Ap. T.11 P.300-302) As provided in the Act, the interest to be paid on the Bonds is not considered when determining whether the cost of improvements exceeds the benefits assessed upon the lands in the Unit. Such total drainage tax has been lawfully levied pursuant to the requirements of Section 298.36 Florida Statutes and is legal and valid in all respects.

On December 27, 1989, the Board adopted a General Bond Resolution (the "Bond Resolution") authorizing the issuance of the Bonds in order to finance the Program Two Improvements.(Ap. T.10 P.240-299) The principal amount of the Program II Bonds authorized to be issued pursuant to the Bond Resolution does not exceed ninety percent (90%) of the

benefits assessed with respect to the Program Two Improvements confirmed in the Order.

Pursuant to the Bond Resolution, the District, on March 28, 1990, adopted a resolution authorizing the Program Two Bonds to be issued in an aggregate principal amount of not to exceed $16,312,500.00 for the purposes of financing the Program Two improvements consisting of the construction of the on-site roadways and associated landscaping, as defined in the Bond Resolution (the "On-site Roadways"). The On-site Roadway improvements include paving, striping, signage, landscaping, irrigation, bridges, culverts, street lighting, security gate houses and secondary drainage system consisting of storm drain pipes, inlets, manholes and surface drainage.

The On-site Roadways will be public roads owned by the District and designed in accordance with the requirements of the City of Palm Beach Gardens the city wherein the project is located. The On-site Roadways will be controlled access roadways pursuant to Chapter 89-462, Laws of Florida, (Ap. T.14 P.389-399) which amended the Act in part to grant the District power to dedicate or create roads for the exclusive use or benefit of the Unit and its residents. The District, all landowners and residents of the Unit, all employees, guests and invitees of the landowners and residents of the Unit, all governmental vehicles, all public utility vehicles and all emergency vehicles shall have access to the On-site Roadways.(Ap. T.3 P.59) The On-site Roadways will be

financed by non-ad valorem assessments levied against all landowners within the Unit. Ad-valorem taxes will not be utilized to finance the project.

An Order to Show Cause was entered by the Circuit Court on July 12, 1990, giving due and proper notice as required by law to the State of Florida and the several property owners, taxpayers and citizens of the District, including nonresidents 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 or to be affected in any way thereby, was duly published by the Clerk of the Circuit Court in the Palm Beach Post, a newspaper published and of general circulation in Palm Beach County once each week for three consecutive weeks, to wit on September 3, 1990, September 10, 1990 and September 17, 1990, the first publication thereof having been made at least twenty days prior to September 26, 1990, the date set for the hearing, all as required by Chapter 75, Florida Statutes, as appears from the affidavit and proof of publication, containing a true copy of the Order to Show Cause, made by the publisher of the Palm Beach Post.

The Bond Validation hearing was held on September 26, 1990, with each party offering testimony and other documentary evidence in support of their respective position.

On November 16, 1990, the Honorable Judge W. Matthew Stevenson entered a final order that the Bonds not be

validated.(Ap. T.1 P.1-7) The Circuit Court found in part that "the intended use of the proceeds of this Bond issue serves no valid public purpose", and that "the District did not meet the requirements of the Safe Neighborhoods Act, as enumerated in Sections 163.501-163.522, Florida Statutes." It is from this final order that this appeal ensues.

SUMMARY OF ARGUMENT

POINT ONE

Whether the trial court erred in finding that the construction of publicly owned controlled access On-site Roadways within the District's Unit of Development No. 31 does not constitute a public purpose for the issuance of Bonds.

POINT TWO

Whether the District's compliance with the requirements of Chapter 163, Florida Statutes, and the timing of said compliance in the creation of controlled access public roads is a collateral issue outside of the scope of the bond validation hearing.

POINT ONE

WHETHER THE TRIAL COURT ERRED IN FINDING THAT THE CONSTRUCTION OF PUBLICLY OWNED CONTROLLED ACCESS ON-SITE ROADWAYS WITHIN THE DISTRICT'S UNIT OF DEVELOPMENT NO. 31 DOES NOT CONSTITUTE A PUBLIC PURPOSE FOR THE ISSUANCE OF BONDS.

Chapter 59-994 Laws of Florida as amended states in Section 1 that the Northern Palm Beach County Water Control District was created:

> "for the purpose of reclaiming and draining. . . and . . . making the lands within said District available and habitable for settlement and agriculture, and for the public convenience, welfare, utility and benefit, and for the other purposes stated in (the) Act," (Emphasis supplied).(Ap. T.14 P.311)

The Florida Legislature in that same Section 1 of the Chapter 59-994 Laws of Florida, as amended, has also:

> "determined, declared and enacted that . . . the drainage, reclamation and protection of said lands from the effects of water and the control of water and protection of (the lands of the District) from the effects of water . . . and thereby the making of said lands habitable, available for agricultural and urban settlement purposes by drainage, reclamation and improvement, and the creation of said District with the powers vested in it by (the) Act, are in the interest of and conducive to public welfare, health and convenience." (Emphasis supplied) (Ap. T.14 P.311)

Section 2 of the Chapter 59-994 Laws of Florida, as amended, makes the provisions of Chapter 298, Florida Statues, including all the powers and authorities mentioned in or confirmed by Chapter 298, applicable to the District.

Furthermore, Section 3 of the Chapter 59-994 Laws of Florida, as amended, gives the District the power:

> "to convey and dispose of (real property within the (District) as may be necessary or convenient to carry out the purposes, or any of the purposes, of (the) Act and Chapter 298, Florida Statutes . . . and in furtherance of the purposes and intent of (the) Act and Chapter 298, Florida Statutes, to construct, improve, pave and maintain roadways and roads necessary and convenient to provide access to and efficient development of areas made suitable and available for cultivation, settlement and other beneficial use and development as a result of the drainage and reclamation operations of the District . . . and to exercise all other powers necessary, convenient or proper in connection with any of the powers or duties of said District stated in (the) Act." (Emphasis supplied)

Chapter 89-462 Laws of Florida amended the Chapter 59-994 Laws of Florida, in part, to grant the District power to dedicate or create roads for the exclusive use and benefit of the District's inhabitants, or any subset of them. In particular Section 6 of Chapter 89-462 states:

> Section 6. Roads for exclusive use and benefit of a unit of development and its residents. -- It is

hereby found and declared that among the many causes of deterioration in residential neighborhoods are the proliferation of crime, excessive automobile flow, and excessive noise levels from automobile traffic. It is to the benefit of the land in the district and its ultimate users and residents to include provisions in a water management plan pursuant to and in furtherance of the Safe Neighborhoods Act, Sections 163.501-163.522, Florida Statutes, for roads for the exclusive use and benefit of a unit of development and its residents. The district, therefore, has the power:

(1) to provide, by resolution in a water management plan for a unit of development, roads for the exclusive use and benefit of a unit of development and its landowners, residents, and invitees to control ingress and egress.

(2) to finance and maintain said roads and their associated elements as a part of a water management plan.

(3) to construct and maintain security structures to control the use of said roads.

(4) to make provision for access by fire, police, and emergency vehicles and personnel for the protection of life and property in the unit of development.

(5) to include, the annual assessment of taxes as authorized, sufficient funds to finance and maintain said roads as a part of a water management plan for a unit of development.

(6) to adopt, by resolution of the board, rules and regulations for the control of traffic, noise levels, crime, and the use of the roads by those authorized. . . . (Emphasis supplied).

(7) Upon receipt of written consent of the owners of 75 percent of the land located with a unit of development, the board of supervisors shall be authorized to provide by resolution in a water management plan for th exclusive use of roads as permitted under this section. (Emphasis supplied) (Ap. T.14 P.396-397)

Section 163.514, Florida statutes states:

Unless prohibited by ordinance, the board of any district shall be empowered to:

> (12) Undertake innovative approaches to securing neighborhoods from crime, such as crime prevention through environmental design, environmental security, and defensible space.
>
> (13) Privatize, close, vacate, plan or replan streets, roads, sidewalks, and alleys, subject to the concurrence of the local governing body and, if required, the state Department of Transportation.

The District has clearly been granted the legislative authority to construct publicly owned controlled access On-site Roadways. But in determining the validity of the Program Two Bonds to be issued to finance the construction of the publicly owned controlled access On-site Roadways, it is also necessary to determine that this authority is consistent with Florida constitutional law and the fundamental doctrine of public purpose.

Article III, Section 11(a) of the Florida Constitution states, in part:

> There shall be no special law or general law of local application pertaining to: . . . (10) disposal of public property, including any interest therein, for private purposes: (11) vacation of roads; . . .

Additionally, in Article VII, Section 10 of the Florida Constitution it is stated that:

> Neither the state nor any county, school district, municipality, special district, or agency of any of them, shall become a joint

> owner with, or stockholder of, or give, lend or use its taxing power or credit to aid any corporation, association, partnership or person; . . . (Emphasis supplied)

Therefore, as a matter of state constitutional law, public monies must not be used to advance private purposes, including the construction or maintenance of private roads in which the District has no property rights or interest. See State v. Hillsborough County, 151 So. 712 (Fla. 1933). However, when both public and private interests are served by the incurrence of public debt or expenditure of public funds, and the public purpose is predominant, the Florida Constitution does not prohibit such incurrence of debt or expenditures of funds. See e.g., State v. Jacksonville Port Authority, 204 So.2d 881 (Fla. 1967); State v. Inter-American Center Authority, 143 So.2d 1 (Fla. 1962).

In paragraph 21 of the Final Order, (Ap. T.1 P.6) the Circuit Court found that Hansen Florida, II, Inc., the corporation, will benefit by the issuance of the Bonds. The Circuit Court then, in paragraph 23 of the Final Order, (Ap. T.1 P.7) concluded that no public purpose existed. The Circuit Court erred in reaching this conclusion based solely on the fact that the corporation would benefit from the issuance of the bonds since the law in Florida is clear that a public benefit can exist even when a private party also benefits.

In State of Florida v. Housing Finance Authority of

Polk County, 376 So.2d 1158 (Fla. 1979) The court held that under the Constitution, it is immaterial to the propriety of an expenditure that the primary beneficiary of a project is a private party, if the public interest, even though indirect, is present and sufficiently strong.

The mere fact that someone engaged in private business for private gain will be benefited by every public improvement undertaken by government or governmental agency does not deprive such improvements of their public character nor detract from the fact that they primarily serve a public purpose. State v. Board of Control, 66 So.2d 209. (Fla. 1953).

The test for public purpose of highways or roads is not how much use is made of the road, but whether the road is available to the public. The District does not believe, however, that every roadway built by a governmental entity must be open to every member of the public, if it is built for other public purposes, e.g., the access to other public works. Furthermore, the right of a citizen to use the public streets is not absolute and unconditional but may be controlled and regulated in the interest of the public good. State Ex Rel. Nicholas v. Headley, 40 So.2d 80 (Fla. 1950). Padgett v. Bay County, 187 So.2d 410, 411 (Fla. 1st DCA 1966).

In State v. Housing Finance Authority of Polk County, Supra. the court further held that what constitutes a public purpose for issuance of bonds is, in the first instance, a

question for the legislature to determine and its opinion should be given great weight. The court further stated that a legislative declaration of public purpose for the issuance of bonds is presumed valid and should be deemed correct unless it is so clearly erroneous as to be beyond the power of the legislature. See also State v. Sunrise Lakes, Phase II, Special Rec. 383 So.2d 631 (Fla. 1980).

The trial court also erred in its decision, in paragraph 23 of the Final Order, (Ap. T.1 P.7) in finding that the intended use of the proceeds of the Program Two Bond issue serves no valid public purpose. The State Legislature, by its enactment of Chapter 59-994, Laws of Florida as amended and supplemented, (Ap. T.14 P.307-399) and particularly by Chapter 89-462, (Ap. T.14 P.389-399) clearly found a public purpose in designating roads for the exclusive use and benefit of a unit of development and its residents. In addition, the Board of the District, the legislative governing body of the District, found in a resolution adopted by the Board on September 26, 1990, that the project is a public purpose of the District. (Ap. T.3 P.45, 46) The District Engineer testified that the On-site Roadway improvements included paving of the roadway, the striping, the signage, the landscaping within the roadways, irrigation to maintain the landscaping and sodding, bridges and overpasses, culverts, street lighting, security gate houses and secondary drainage systems consisting of storm drainage,

pipes, inlets, manholes and surface drainage. The District Engineer further testified that these improvements would be owned by the Northern Palm Beach County Water Control District. (Ap. T.3 P.27) Thus, the evidence clearly shows that the on site roadways are to be publicly owned improvements and were declared by the District's legislative body and the State Legislature to be public purpose improvements. The evidence was undisputed.

The courts employ certain well-settled tests to determine the validity of legislation enacted for the protection of the public health, safety, welfare or morals. All legislation passed by the Florida Legislature is presumed by the courts of Florida to be constitutional if there is any reasonable theory supporting the ends of the legislation. Jones v. Gray & Sons, 430 So.2d 8 (Fla. 3rd DCA 1983). Legislation is valid if it may reasonably be construed as expedient for the protection of the public health, safety, welfare or morals. Courts may not substitute their judgment as to the wisdom and policy of the law for that of the Florida Legislature. It has also been said that legislative declarations of public purpose are presumed valid and are to be considered correct unless patently erroneous. State v. Division of Bond Finance, 495 So.2d 183 (Fla. 1986) (upholding validation of home ownership mortgage revenue bond issue); Zedeck v. Indian Trace Community Development District, 428 So.2d 647 (Fla. 1983) (upholding validation of

water and sewer system expansion bonds).

However, the question of what is or is not a public purpose is a question of law, and though unquestionably the Florida Legislature has large discretion in selecting the object for which public monies are expended, the Legislature's decision on what constitutes public purpose is not final. City of Daytona Beach v. King, 181 So. 1, 5 (Fla. 1938).

Florida courts have noted that the power of the Florida Legislature to exercise total control over Florida's public highways, whether state, county roads or municipal streets, is established beyond question. Roney Investment company v. City of Miami Beach, 174 So.2d 26 (Fla. 1937). For example, the exercise of discretionary power by a municipality to vacate streets is not ordinarily subject to judicial review unless there has been an abuse of discretion, fraud, glaring informality or illegality in the proceedings, or an absence of jurisdiction Id; See also Sun Oil Company v. Gerstein, 206 So.2d 439 (Fla. 3rd DCA 1968); Wedner v. Escambia Chemical Corp., 102 So.2d 631, 632 (Fla. 1st DCA 1958) (referring to county's discretion). The public trust doctrine does not prevent a governmental body from abandoning, vacating or discontinuing streets when such action is taken in the interest of the general welfare. Sun Oil Company v. Gerstein, 206 So.2d at 439, 441.

In the case before this court, the District is not

abandoning, vacating or privatilizing existing roads which were built with ad-valorem tax revenues and previously open to the general public. Rather, the District is causing to be built new publicly owned controlled access On-site Roadways with special assessment revenues levied against the land owners who will have access to the On-site Roadways. (Ap. T.3 P.42, 53)

One of the primary purpose of Chapter 298, Florida Statutes, and Chapter 59-994, Laws of Florida, is to provide a mechanism for surface water management so that the tax base of the State and its subdivisions can be expanded by increased populations, improved productivity from state lands and enhanced property values. One means to achieve that primary purpose is to produce lands which are "inhabitable for settlement". To enable water control districts to produce habitable settlements, the Florida Legislature empowered the various water control districts, including the District, to construct and maintain roads for access to various drainage, reclamation and other public facilities. Obviously a concurrent yet subsidiary purpose for such roads is to provide access to the surrounding reclaimed lands so that lands can be developed, improved and made "habitable for settlement."

As previously stated, the District is required to utilize the On-site Roadways for access to the District's on site water management facilities so that proper water control

is maintained and habitability of the District's lands continues unaffected. (Ap. T.3 P.108) The On-site Roadways will thus facilitate the public function of providing access to the District's water management facilities. Regardless of whether open to the general public, the On-site Roadways continue to provide access to lands of the District which have already been made suitable for settlement and development as a result of the District's water management and reclamation operations and this alone has been legislatively declared to be a public purpose. (Ap. T.13 P.305-306)

At first glance, it may appear that "controlled access" of the On-site Roadways shifts the balance of purposes served by the On-site Roadways toward the private benefits side. However, societal, economic and political forces have changed since the District was created and the State Legislature by enacting Chapter 163 Florida Statutes has acknowledged this change. Now, a "new" public purpose has been legislatively recognized, thereby adjusting the balance of public purposes which can and must be served by the On-site Roadways. Chapter 163, Florida Statutes, and Chapter 89-462, Laws of Florida, (Ap. T.14 P.389-399) have set forth a public purpose, the achievement of which may be served by controlled access of the On-site Roadways. Furthermore, the original purpose of increasing the state's tax base is also achieved by controlled access of the On-site Roadways since this

decreases crime and violence in the Unit of development, improves habitability therein, and thereby increases property values, as was testified to by Paul Urschalitz (Ap. T.3 P.71-122). All this is achieved without detracting from the On-site Roadway's ability to provide access to the District's drainage and other facilities.

In City of St. Petersburg v. Atlantic Coast Line Railroad Company, 312 F. 2d 675 (5th Cir. 1943) the court upheld the municipality's grant to the railroad of land previously utilized as a public thoroughfare. The ordinance vacating the street stated that the purpose of such vacation was that a railroad depot would be erected upon the land to benefit the city as well as the railroad. In upholding the conveyance against the contention that it was a transfer of public lands for the benefit of a private corporation, the court found that the city had statutory power to alter or discontinue any street, avenue, alley, highway, or other way which the city has previously constructed.

Finding the statutory language to be plain and unambiguous on its face, the St. Petersburg court fund that the city was within its statutory powers when it granted the public road to the railroad. Furthermore, the court determined that the primary purpose for the grant was to promote the general welfare of the citizenry. Thus, the case did not fall within the general rule prohibiting cities from vacating public properties for the private use of individuals

and corporations.

If a municipality has the authority to vacate, abandon or privatize a public road as in the St. Petersburg case, then it would certainly follow that a municipality or the District has the legal authority to retain public ownership of a road but control access to the road. This is the same principal that is applied to other public facilities such as a jail or courthouse. Although a jail and courthouse are public buildings, access to the buildings is controlled by the governmental agency which owns the buildings. Even though public access to the buildings is controlled, the buildings still serve a public purpose.

In Opinion Number 76-87, the Attorney General of the State of Florida addressed a two-part inquiry, the pertinent portion of which was phrased as:

> 2. If . . . Ch. 298, Florida Statutes, water management districts are political subdivisions of the state and/or their functions fall within a public purpose, may such districts consequently prohibit public access to "public" lands?

The Florida Attorney General responded by opining that Chapter 298 water management districts "may prohibit trespass on property owned by them ...". In reaching his opinion, the Attorney General reiterated that water control districts have only those powers and authorities duly granted and delegated to them by statute. The opinion then stated the general proposition that "a governmental body is considered to have, with respect to its own lands, the rights of an ordinary

proprietor." From that statement, the opinion reasoned that the legislatively delegated power to control land owned by the District would allow the District to prohibit trespass on District lands "under their general corporate powers and proprietary ownership rights in property."

Under the instant facts, the District has clearly been granted the statutory authority to institute the construction of publicly owned controlled access on site roadways. Furthermore, the Florida Legislature had legitimate and rational reasons for granting the District the powers set forth in Chapter 89-462, Laws of Florida and Chapter 163, Florida Statutes. While some private benefits would undoubtedly derive from controlled access of the On-site Roadways, substantial public purposes would simultaneously be served by such action. Thus, there is apparently no abuse of discretion, fraud, or illegality in the District's institution of the proposed action.

Both the St. Petersburg case and Attorney General Opinion No. 76-87 show that a governmental entity is not slavishly bound forever to maintain publicly-owned roads as thoroughfares for use by the general public. Instead, the governmental entity may utilize its property as would any other owner, as long as legal requirements, prohibitions and the public trust are not violated. The construction of publicly owned controlled access on-site roadways does not violate this principle.

The Attorney General of the State of Florida, in a recent opinion, AGO Opinion 90-62, responded to the question by the City of Atlantis of whether a local government safe neighborhood improvement district created pursuant to section 163.506 Florida Statutes could take over and privatize streets within the boundaries of the city where the streets have been dedicated to the public.

This opinion is distinguishable from the facts in the case before this court on several grounds, in that:

First, the City of Atlantis proposed to turn over all of its streets and roadways to a safe neighborhood improvement district which would privatize the streets. Thus, the roads would no longer be public roads. In the case before this court, the District would continue to own and maintain the On-site Roadways as publicly owned streets.

Second, the City of Atlantis proposed to privatize <u>all</u> of the streets in the municipality. In the case before this court, only the streets within the Unit are affected by controlled access and none of these controlled access streets are on the city's thoroughfare plan. (Ap. T.6 P.210) The majority of the streets within the City of Palm Beach Gardens within which this Unit is located will remain uncontrolled.

Third, the streets within the City of Atlantis were built and maintained with city ad valorem taxes. In the case before this court the roads will be built and maintained by special assessments levied only against the landowners within

the Unit. No property outside the Unit will be taxed for the cost of construction or maintenance of the roads. (Ap. T.3 P.42)

The State Attorney's office called no witness and presented no testimony to dispute the public purpose finding by either the Legislature of the State of Florida or by the Legislative governing body of the District. The record clearly shows the finding of public purpose which has not been disputed by any testimony. (Ap. T.3 P.45, 52)

The financing by the District of the construction of publicly owned controlled access On-site Roadways within its Unit of Development No. 31 clearly constitutes a public purpose for the issuance of bonds pursuant to its legislation and does not violate the Florida Constitution. The trial court was in error in finding that the construction of publicly owned controlled access On-site Roadways within the District's Unit of Development No. 31 does not constitute a public purpose for the issuance of Bonds. Therefore, the Final Judgment of the trial court should be reversed.

POINT TWO

WHETHER THE REQUIREMENTS OF CHAPTER 163 FLORIDA STATUTES AND THE TIMING OF THE PERFORMANCE BY THE DISTRICT, IF SO REQUIRED, IN THE CREATION OF CONTROLLED ACCESS PUBLIC ROADS IS A COLLATERAL ISSUE OUTSIDE OF THE SCOPE OF THE BOND VALIDATION HEARING.

Bond validation proceedings are governed by Florida Statutes Section 75.01-75.17. The complaint for validation determines, in the first instance, the scope of the Court's inquiry in the validation proceeding.

Florida Statutes 75.04 dictates the content of the complaint:

> The complaint shall set out the plaintiff's authority for incurring the bonded debt or issuing certificates of debt the holding of an election and the result when an election is required, the ordinance, resolution or other proceeding authorizing the issue and its adoption, all other essential proceedings had or taken in connection therewith, the amount of the bonds or certificates to be issued and the interest they are to bear; and, in case of drainage, conservation or reclamation district, the authority for the creation of such district, for the issuance of bonds, and for the levy and assessment of taxes and all other pertinent matters.

The items to be set out in the complaint specifically relate to the validity of the bonds.

As stated in Florida Statutes Section 75.02 the purpose of validation is:

> (to) determine (the) authority to incur bonded debt or issue certificates of debt and the legality of all proceedings in connection therewith, including assessment of taxes levied or to be levied, the lien thereof and

proceedings or other remedies for their collection.

An examination of the following cases serves to illustrate that in validation a court will consider only the proceedings that the issuing entity is required to pursue in the exercise of its power to incur indebtedness or issue bonds. Procedural matters that are the proper subject of validation proceedings include the preliminary resolution to be adopted by the authority to declare and notify the public of the issue of the bonds and to declare the purpose for which they are to be issued. Haines City v. Certain Lands Upon Which Taxes and Special Assessments are Delinquent, 178 So. 143, 146 (Fla. 1938). The Court before which the validation complaint is heard must also consider whether authority to issue the bonds exists under the relevant statute or ordinance, and whether the source of payment utilized by the issuing body to service the bonds is a lawful one. State v. City of Tampa, 95 So.2d 409 (Fla. 1957). As the above examples demonstrate, the issues which are properly considered in validation are those which concern: 1. the authority for the issuance of the bonds and 2. the proceedings in connection with the issuance of the bonds and which affect the validity of the bonds.

The Courts have consistently held that a validation proceeding is not the proper forum for adjudicating collateral issues. Atlantic Coast Line R. Co. v. City of Lakeland, 177 So. 206 (Fla. 1937); Penn v. Pensacola-Escambia Governmental Center Authority, 311 So.2d 97 (Fla. 1975); City

of Gainesville v. State, 366 So.2d 1164 (Fla. 1979). In State v. City of Miami, 103 So.2d 185, 188 (Fla. 1958), the Court reviewed the purpose of the validation statute and observed:

> It was never intended that the proceedings instituted under the authority of this chapter to validate governmental securities would be used for the purpose of deciding collateral issues or those issues not going directly to the power to issue the securities and the validity of the proceedings with relation thereto. (Emphasis added)

Id. at 188. The Court further noted that adjudicating collateral questions "would seriously handicap the speedy and efficient disposition of bond validation proceedings in this state, and as a result, would defeat the purpose of the statute and the rules of this Court and seriously impair the general welfare." Id. at 188.

The extent to which Florida courts will go to prevent attempts to have collateral issues adjudicated in a validation proceeding is also well illustrated by Merrell v. City of St. Petersburg, 76 So. 699 (Fla. 1917), and cited with approval in West v. Town of Lake Placid, 120 So. 361, 365 (Fla. 1929). In Merrell, the Florida Supreme Court found that the question of whether or not there was an irregularity in the organization of the issuing municipality was not a proper subject of validation. Citing Town of Enterprise v. State, 10 So. 740 (Fla. 1892) this Court found that compliance with the statute under which the City was organized "cannot be determined in a collateral attack of

this character." Merrell v. City of St. Petersburg, 76 So. 699, 700 (Fla. 1917).

The most similar analogy to the trial courts finding that the District has failed to comply with Florida Statutes Chapter 163 prior to the sale of bonds, is in the area of contracts and their affect on the validation proceedings. When such arguments have been raised the courts have consistently held that contracts to be performed after issuance of the bonds (in this case compliance with Florida Statutes Chapter 163) are collateral issues. See e.g. Renicks v. City of Lake Worth, 18 So.2d 769 (Fla. 1944) (Authority of the City to contract with a bond agent could not be collaterally raised in validation proceeding); Penn v. Pensacola - Escambia Governmental Center Authority, 311 So.2d 97 (Fla. 1975) (Validity of contract whereby Authority's fiscal advisor would purchase the bonds at private sale was not a proper subject in bond validation proceedings).

In State v. Sarasota County, 159 So. 797 (Fla. 1935),the Court refused to pass on the validity of a contract between the County and a "Refunding Agency". Performance under the contract was to take place after the issuance of the bonds and the Court declined to pass on its validity, saying of the contract:

> It is not subject to being challenged collaterally in a statutory proceeding for the validation of refunding bonds as to which the questioned contract with such "Refunding Agency" is to become no part of the proposed obligation of the refunding bonds nor

incorporated into any purported evidence of the same.

> Collateral attacks not germane to the main inquiry, when attempted to be interjected in a statutory bond validation proceeding, are properly dismissed from consideration. Collateral attacks not germane to the main inquiry, when attempted to be interjected in a statutory bond validation proceeding, are properly dismissed from consideration, leaving the determination of same to a property forum in an appropriate direct proceeding wherein all interested and affected parties may be heard. (Emphasis added). See Volusia County v. State, 97 Fla. 1166, 125 So. 375, 813; West v. Town of Lake Placid, 97 Fla. 127, 120 So. 361; City of Fort Myers v. State, 95 Fla. 704, 117 So. 97; State v. Sarasota County, 159 So. 797 at 803.

In paragraphs 15, 16 and 22 of the Final Order the trial court held that the District had not met the requirements of the Safe Neighborhoods Act as enumerated in Sections 163.501 to 163.522 of the Florida Statutes and that the District had failed to comply with its Chapter 89-462, Laws of Florida by not meeting the requirements of the Safe Neighborhoods Act.

The trial court erred in its decision to not validate the bonds for the reasons set forth in paragraphs 15, 16 and 22 of the Final Order because each of these findings by the trial court are solely collateral issues. (Ap. T.1 P.5 & 6)

A review of the trial transcript clearly shows that the District's resolutions do comply with Chapter 89-462 in all respects that are relevant and germane to the bond validation proceedings. (Ap. T.3 P.53)

Further, a review of the trial transcript clearly shows that the District has complied with the Act in all respects

that are relevant and germane to the bond validation proceedings.

The issue raised regarding the timing of compliance by the district with the requirements of Chapter 163, Florida Statutes if so required, in the creation of controlled access public roads is irrelevant to the bond validation hearing since it does not relate to the District's authority to issue Bonds. Therefore, since it does not relate to the proceedings in connection with the issuance of the bonds it is clearly a collateral issue and does not fall within the scope of the bond validation hearing.

The performance by the District under this statute, if required, could take place after the issuance of the bonds and therefore this issue does not go directly to the District's authority to issue the bonds or the validity of the proceedings with relation to the issuance of the bonds.

Regardless of whether the District proceeds under the authority of Chapter 163, Florida Statutes or under the authority of Chapter 89-462, Laws of Florida or under a combination thereof, in the creation of controlled access public roads the function and purpose of the validation hearing remains the same. The Circuit Court, in either instance, must find that the project to be financed by the bonds constitutes a public purpose in order to validate the bonds. The purpose of the bond validation hearing proceeding is to determine whether the District has the legal authority and whether the District has met its procedural obligations

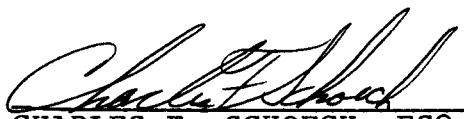
regarding the issuance of bonds to finance the construction of roads, and not if the District has met every legal obligation necessary to create controlled access roads as of the date of the validation hearing.

The requirements of Chapter 163, Florida Statutes and the timing of the performance by the District, if so required, in the creation of controlled access public road is clearly a collateral issue outside the scope of the bond validation hearing. The trial Court was in error in not validating the Bonds based on the issue of the District's compliance with the requirements of Chapter 163 Florida Statutes because this is a collateral issue outside the scope of the bond validation hearing. Therefore the Final Judgment of the trial court should be reversed.

CONCLUSION

For the reasons stated above, Appellant, Northern Palm Beach County Water Control District, respectfully submits that the trial court was in error in finding that the construction of publicly owned controlled access On-Site Roadways within the District's Unit of Development No. 31 does not constitute a public purpose for the issuance of bonds. The Appellant further respectfully submits that the trial court was in error in not validating the Program Two Bonds based on the issue of the District's compliance with the requirements of Chapter 163 Florida Statutes because this is a collateral issue outside of the scope of the bond validation hearing.

Therefore this court should reverse the decision of the trial court and find that the District's Bond Resolution does comply with Chapter 89-462 Laws of Florida; that the District is not required to meet the requirements of the Safe Neighborhoods Act as a condition precedent to the validation of the Program Two Bonds; that the District has complied with its enabling legislation Chapter 59-994, Laws of Florida as amended and supplemented particularly by Chapter 89-462, Laws of Florida; and that the intended use of the proceeds of the Program Two Bonds serve a valid public purpose.



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CERTIFICATE OF SERVICE

I DO HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by hand delivery to the State Attorney, DAVID H. BLUDWORTH, ESQUIRE, and Assistant State Attorney, LESLIE M. RITCH, ESQUIRE, 224 Datura Street, Harvey Building, 7th Floor, West Palm Beach, Florida 33401 this 10th day of January, 1991.

CHARLES F. SCHOECH, ESQ.