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SID J. WHITE

FEB 20 1991

CLERK, SUPREME COURT

By _____ Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

Tallahassee, Florida

CASE NUMBER: 77,098

-----X	
NORTHERN PALM BEACH COUNTY	:
WATER CONTROL DISTRICT, a	:
drainage district of the	:
State of Florida,	:
	:
Appellant,	:
	:
vs.	:
	:
THE STATE OF FLORIDA, et. al.	:
	:
Appellees.	:
-----X	

On Appeal from a Bond
Validation in the
Circuit Court in and
for Palm Beach County,
Florida
Case No. CL-90-6844-AH

APPELLANT'S REPLY BRIEF

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ORIGINAL

ARGUMENT IN RESPONSE AND REBUTTAL

POINT ONE

THE CIRCUIT COURT ERRED IN FINDING THAT THE INTENDED USE OF THE PROCEEDS OF THE BONDS BY THE DISTRICT TO FINANCE THE COST OF CONSTRUCTION OF PUBLICLY OWNED CONTROLLED ACCESS ON-SITE ROADWAYS WITHIN THE DISTRICT'S UNIT OF DEVELOPMENT NO. 31 SERVES NO VALID PUBLIC PURPOSE.

The Appellee would have this court believe that a controlled access publicly owned roadway serves no public purpose. This is completely and totally contrary to the evidence introduced at the Circuit Court.

First, the On-Site Roadways consisting of 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 will be owned, operated and maintained by the Northern Palm Beach County Water Control District, a political subdivision of the State, and therefore will be publicly owned improvements. (Ap. T.3 P.27)

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

"to construct, improve 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". (Ap. T. 14 P. 312)

One means to achieve this primary purpose is to produce lands which are habitable for settlement. To enable water control districts to produce habitable settlements, the Florida Legislature empowered the various water control districts including this District to construct and maintain roads.

Third, 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 land 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 will 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).

The Appellee relies on the case of State v. Sunrise Lakes, Phase II, Special Recreation District 383 So.2d 632 (Fla. 1980) and argues that the issue in Sunrise Lakes was whether a valid public purpose existed for the issuance of the bonds by a recreation district for the purpose of purchasing recreational facilities within a condominium

complex. The facilities were to be available for use by the general public as well as by the condominium owners. The court found that the bond issue served a valid public purpose and, based on the fact that the improvements would be made on private property, stated that the key is the availability of the facilities to the general public.

What the Appellee has failed to recognize is that this case is distinguishable on the basis that recreational facilities were to be installed within a private condominium complex on private property owned by the condominium association and therefore there was no public purpose without the public having the use of the facilities.

In the case at hand, the On-site Roadway facilities are to be installed on publicly owned property and will continue to be owned, maintained and operated by the public and will be available to each and every member of the public who is being assessed and paying for the On-site Roadway facilities. Thus the public purpose is established even though the On-site Roadways will be controlled access facilities. This position is further supported by the fact that the state legislature by Sections 163.501 - 163.522 of the Florida Statutes, and by Chapter 89-462 Laws of Florida, has given the District the power to own, maintain and operate roads for the exclusive use and benefit of a Unit of Development and its landowners, residents and invitees to control ingress and egress and has declared this to be a

public purpose. (Ap. T.14. P.396-397)

The Appellee also argues that Hansen-Florida II, Incorporation, ("Hansen"), will be the only entity to benefit from the On-site Roadways. The Appellee contends that the security gate houses, the roadways, and the landscaping will serve to increase the value of the unit and that Hansen will therefore be able to sell home sites within the unit at higher prices and will thereby realize greater profits. (Appellees Brief P. 7). However, the fact that Hansen will realize profits from the improvements is not a factor when it comes to determining the public purpose of the project. Improvements such as paving, striping, signage, landscaping, irrigation, bridges, culverts, street lighting and secondary drainage system which are owned, operated and maintained by local governments have repeatedly been held to be valid public purposes and bonds have been validated and issued for these types of improvements repeatedly for Northern Palm Beach County Water Control District and other district's throughout the State. The issue then is not the benefit to Hansen as alleged by the Appellee, but rather that of the controlled access of the roadways.

Chapter 163.514 of the Florida Statutes states, unless prohibited by Ordinance, the Board of any Safe Neighborhood 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 re-plan streets, roads, sidewalks or alleys subject to the concurrence of a local governing body and if required the State Department of Transportation.

This legislation allows a Safe Neighborhood District to take a public road built with general revenues which include ad valorem taxes paid by all of the property owners and not simply those within the Safe Neighborhood District and convert a public road into a private road for the benefit of a safe neighborhood district and thus prohibit access to the now private road, by the general public who paid for it. If the transferring of a public road to private ownership, after said road has been built with general ad valorem revenues, constitutes a legislatively determined public purpose then it surely follows that the building of roads to be owned by a governmental entity with special assessments levied only against the property owners who benefit from the road and who have access to the road, with no ad valorem dollars being used, constitutes a public purpose. This is supported by State ex rel. Exrell Nicholas v. Headley 40 So.2d 80 (Fla. 1950) which held that 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.

While some private benefits may derive from controlled access of the On-site Roadways, a more substantial public purpose will be served by such action.

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

THE CIRCUIT COURT ERRED IN FINDING THAT THE ISSUANCE OF THE BONDS WAS NOT AUTHORIZED BY LAW BECAUSE 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.

The Appellee would have this court believe that the District must prove at the validation hearing its compliance in every detail with Chapter 163 of the Florida Statutes.

Contrary to the Appellee's allegation, the issue of the District's compliance with Chapter 163 and its enabling legislation does not go directly to the District's authority to issue bonds but to the timing of the District's compliance with its legislation before commencing to construct and operate the project, which is a collateral issue.

The Florida Statutes require that governmental agencies bid construction work. In order to award a contract for the construction of a road or drainage project or to award the contract for the construction of the On-site Roadways contemplated in this case, the work must first be publicly bid. If we follow the Appellee's argument as it relates to compliance with Chapter 163 Florida Statutes we must also reach the conclusion that the Bonds cannot be validated or issued until after the On-site Roadways are properly bid because the law requires bidding prior to construction of the

project. This of course is not the case because bidding of the project is a collateral issue not subject to the validation proceedings and as everyone knows bonds are validated routinely for projects which have not yet been bid.

In the case at hand, assuming, for the sake of argument, that the District must follow the procedures of Florida Statutes Chapter 163 in creating a safe neighborhood district, the State Statutes do not require compliance in every respect with Chapter 163 prior to the bond validation. The State Statutes only require compliance at some point in the future even after validation but prior to implementation of the controlled access of the On-site Roadways. Thus the bonds could be legally validated prior to full compliance with the statute if, the District: 1) has authority to issue the Bonds, and 2) has followed the procedure required for the Bond validation. The law does not require a third prerequisite, as believed by the Appellee, that the District's comply with Chapter 163 prior to validation.

The Appellee's argument as to whether or not the District must comply with Chapter 163 Florida Statutes does not go to the District's authority to issue bonds or to the District's compliance with the procedural requirements for issuance of bonds. 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 clearly a collateral issue outside the scope of the bond validation hearing. The Circuit 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 Circuit Court should be reversed.



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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 19th day of February, 1991.



CHARLES F. SCHOECH, ESQUIRE