IN THE SUPREME COURT OF FLORIDA

CITY OF BOCA RATON, FLORIDA, Appellant, vs. STATE OF FLORIDA, and the TAXPAYERS, PROPERTY OWNERS and CITIZENS OF THE CITY OF BOCA RATON, FLORIDA, 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 BY PLAINTIFF OF THE BONDS DESCRIBED HEREIN OR TO BE AFFECTED IN ANY WAY THEREBY, Appellees.	CASE NO. 77,468

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

REPLY BRIEF OF APPELLANT

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PREFACE

For purposes of this Reply Brief, the Appellant and Cross Apellee City of Boca Raton, Florida, will be referred to as the "City"; the Apppellee and Cross Appellant State of Florida will be referred to as the "State"; the Appellee and Cross Apellant Astral Investments, Inc., will be referred to as "Astral"; and the Circuit Count of the Fifteenth Judicial Circuit will be referred to as the "Trial Court".

The Appedix to the City's Initial Brief is cited "App."; the Appendix to the State's Answer Brief is cited "App-S. V.__, T.__, p.__."

SUPPLEMENTAL STATEMENT OF FACTS

The City supplements the statements of the facts of the case set forth in its Initial Brief and set forth in the Cross Appellants Answer Briefs insofar as relevant to the arguments and facts presented by the cross appellants and to clarify certain matters.

THE TASK FORCE

Prior to the adoption of Resolution NO. 128-90 (the "Resoluton") by the City Council of the City authorizing the special assessments which are the security for the bonds herein sought to be validated, the City conducted an extensive process to determine the appropriate method of imposing the special assessements to be used to defray the cost of the project. The City formed a task force composed of downtown property owers, City staff and other interested parties (the "Downtown Task Force") whose function was to assist the City in reviewing the design and cost of the infrastructure, and to recommentd the method of assessment to be utilized. App-S. V.I, T.3, p.110. Atral, through its representative, took part in this task force. App-S. V.I, T.3, p.118. Through its consulting engineer for the project, the City retained Robert J. Harmon and Associates, Inc. (the "Economic Consultant"), an experienced urban economic consulting firm, as economic impact and financial consultant. App-S. V.I, T.3, pp.105 and 110. The Ecomnomic Consultant evaluated different methodologies for apportioning the special assessments and these

methodologies were considered at public workshop meetings of the Downtown Task Force. App-S. V.I, T.3, p.112. Ultimately, the Downtown Task Force recommended the utilization of the ad valorem method of apporionment of the special assessements. App-S. V.I, T.3, p.118.

THE BENEFIT EVALUATION REPORT

After the Downtown Task Force recommended this methodology, the Economic Consultant conducted a benefit evaluation for the project, App-S. V.I, T.3, p.122, and issued its report entitled "Benefit Evaluation of the Boca Raton Vissions 90 Special Assessment Program" (the "Benefit Evaluation Report"). The report was introduced into evidence and is included at App-S. V.II, T.2. The Economic Consultant identified and forecast the types of special benefits which would be derived from the project, what types of properties wuold recive those benefits and estimated the value of those benefits. App-S. V.II, T.2, pp. V-1 to V-30. The Benefit Evaluation Report also analysized the range and timing of the costs of the special assessments. App-S. V.II, T.2, pp. IV-1 to IV-10. Finally, the Benefit Evaluation contains a comparison of the benefits and the costs as applied to typical properties located in the downtown area. App-S. V.II, T.2, p. V-31 et seq.

The Benefit Evaluation Report found that for each of the prototypical properties analyzed in detail, the cumulative benefit recieved would be at least seven dollars of benefit for each one dollar of assessemts. App-S. V.I, T.3, p.130; App-S. V.II, T.2, p.V31 et seq. The testimony of Robert J. Harmon reiterated that,

in the opinion of the Economic Consultant, the benefits recieved by the properties to be assessecd will exceed the amount of the assessments, and that "over time there will be very close to as possible proportional payment for proportional benefit." App-S. V.I, T.3, p.131. The proportion of benefits to assessments range from ten-to-one to approximately twelve-to-one. App-S. V.I, T.3, p.150; App-S. V.II, T.2, p. V-31 et seq.

The assessment methodology adopted by the City excludes certian property from the special assessements. These porperties are residential property and houses of worship. App. p. 24. The Economic Consultant determined that these types of properties would not directly accrue the special benefits of the type provided by the project; accordingly, these properties were excluded. App-S. V.II, T.2, p.II-6.

THE LEGISLATIVE DETERMINATIONS OF THE CITY COUNCIL

In the Resolution the City Council made certain factual findings, including:

1. That is is necesary to the public safety and welfare that the City make the improvements and that a portion of the cost be assessed against the lands specially benefited by the improvements. App. p. 22.
2. That the total cost of the project would bew $44,070,504, of which $28,087,404 would be paid from sources other than the special assessments. App. p. 23.

3. That the improvements will benefit the properties to be specially assessed by increasing the development capacity, reducing the cost of development, including reduced development approval costs, reduced parking costs, and reduced infrastructure costs, and increasing the value of the properties, including increased land values, rental values and retail sales profits. App. p. 23.

4. That it is fair, equitable, just and right to apportion the cost of the project to be paid by special assessements among all the benefited properties according to the value of the property as shown on the real property tas assessment roll of the county property appraiser. App. p. 24.

5. That the project would not benefit houses of worship or residential property in a degree or type different from the benefits derived by the community as a whole. App. p. 24.

6. That the improvements would constitute a special benefit to all the lots and tracts assessed and the the benefit in each case wouuld exceed the amount of the assessments and that such special bemefits would be in proportion to the assessment inposed on such lot or tract. App. p. 24.

SUMMARY OF ARGUMENT

The special assessments will be imposed upon property which receives special benefits from the project, and will be imposed in proportion to, and not in excess of, such special benefits. The value of the properties is a logical base upon which to apportion the assessments because there is a proportional relationship between the special benefits received and the value. The legislative determination of the City Council than each property (other than the excluded parcels) will receive special benefits in proportion to its value was not arbitrary or unreasonable and the Trial Court was correct to refuse to overturn such determination without clear and positive proof to the contrary.

The exclusion from the special assessment of certain properties which will not receive special benefits does no violate equal protection guarantees.

The nature of the special benefits does not require that the City Council specifically itemize the dollar amount of benefits to be receive by each parcel.

ARGUMENT

I. THE SPECIAL ASSESSMENTS LEVIED BY THE CITY MEET THE REQUIREMENTS UNDER FLORIDA LAW FOR A VALID SPECIAL ASSESSMENT.

The fundamental requirements for a valid special assessment are (i) that the property assessed be benefited, (ii) that the benefit is special or local, (iii) that the assessment not be in excess of the benefits conferred by the improvement, (iv) that the total assessment not exceed the cost of the improvement (including incidental expenses), and (v) that the total amount of the charges be apportioned so that the burden on every parcel will bear a just proportion to that imposed on every other parcel. *Lake Howell Water and Reclamation District v. State*, 268 So. 2d 897 (Fla. 1972).

A. The Property Assessed Will Receive Special Benefits From the Improvements.

A special assessment is based upon the benefit conferred by the public improvement upon the property assessed, which benefit is special to the property rather than to the general community. *Meyer v. Oakland Park*, 219 So.2d 417 (Fla. 1969). The proposed improvements to be financed by the City of Boca Raton have been determined by the legislative body of the City to confer such special benefit on the property owners in the downtown area. The City Council found in the Resolution as follows:

> It is hereby found, determined and declared that the proposed Improvements will constitute a special benefit to all lots and tracts to be assessed . . ..
> App. at 24.

Such a legislative determine of a special benefit, while not conclusive, is entitled to significant weight and should only be disturbed by a court if found to be unreasonable or wholly lacking in factual support. *Treasure Island v. Strong,* 215 So.2d 473 (Fla. 1968). The Benefit Evaluation Report prepared by the City's experienced urban economic consultant details the type and nature of the special benefits to be conferred. App-S. V-II, T-2, p. IV-1 to IV-10. While the Cross-Appellants may disagree with the determination and might have reached a different conclusion, it cannot be successfully argued that the City Council's determination was wholly lacking in factual support or arbitrary and unreasonable.

Further, the principal representative of the Economic Consultant, Mr. Harmon, testified in the trial court. App-S. V-II, T-2, p.102-274. Mr. Harmon was offered and qualified as an expert in the field of impact analysis of downtown development. App-S. V-II, T-2, p. 107. Thus, the Trial Court had the opportunity to appraise the experience and credibility of the preparer of the Benefit Evaluation Report. In the Final Judgement, the Trial Court determined that the assessments to be imposed are special assessments, rather than taxes, clearly indicating that the Trial Court judged that there existed a sufficient factual base to support the conclusion that the properties to be assessed receive special benefits. This factual determination by the Trial Court is entitled to great weight and should be upheld.

B. The Special Assessment Will Not Exceed the Cost of the Project.

Section 5 of the Resolution provides that the amount of the special assessments levied shall be equal to a portion of the cost of the improvements financed. App. at 25. The cost of the Project is estimated to be $44,070,504; of this amount $15,983,100, plus financing costs and the funding of a reserve account, is to be raised through the Special Assessments. This clearly meets the requirement that the total special assessments not exceed the cost of the improvements (including incidental expenses).

C. The Special Assessments Have Been Properly Apportioned to the Benefited Properties.

To be valid, the special benefit derived from a public improvement must be properly apportioned to the benefited property owners. *South Trail Fire Control District v. State*, 273 So.2d 380 (Fla. 1973). While cities in Florida have traditionally used the front foot or square foot methodologies for apportioning the costs of special improvement projects, other methods are permissible. As stated in *South Trail*,

> The manner of assessment is immaterial and may vary within the district, as long as the amount of the assessment for each tract is not in excess of the proportional benefits as compared to other assessments on other tracts. *Id.*, at 273 So.2d at 384.

The courts have long recognized that the apportionment of special assessments is not a perfect science. The court in the *Oakland Park* case both recognized the fact that any apportionment scheme may be subject to criticism, and suggested

the factors to be taken into consideration and the standard of review by a court. The court said:

> Many elements enter into the question of determining and prorating benefits in a case of this kind. They are physical condition, nearness to or remoteness from residential and business districts, desirability for residential or commercial purposes, and many other peculiar to the locality where the lands improved are located. As stated by the Court in *City of Ft. Myers v. State of Florida and Langford*, 95 Fla. 704, 117 So. 97, 104:
>
> > "No system of appraising benefits or assessing costs has yet been devised that is not open to some criticism. None have attained the ideal position of exact equality, but, if assessing boards would bear in mind that benefits actually accruing to the property improved in addition to those received by the community at large must control both as to benefits prorated and the limit of assessments for cost of improvement, the system employed would be as near the ideal as it is humanly possible to make it."
>
> The term 'benefit,' as regards validity of improvement assessments, does not mean simply an advance or increase in market value, but embraces actual increase in money value and also potential or actual or added use and enjoyment of the property. Vacant lots and lands, may, and usually do, receive a present special appreciable benefit from the construction of a sewer in proximity with and accessible by them for sewerage purposes sufficient to sustain an assessment made on the basis of benefits. A reasonable approach to the question of best possible use is a determination of what can be done with the property by improvements which are reasonably attainable and which can enhance the value under all present circumstances or those foreseeable in the very near future.
>
> * * * The apportionment of the assessments is a legislative function and if reasonable men may differ as to whether land assessed was benefited by the local improvement, the

> determination of the City officials as to such benefits must be sustained.
>
> 219 So.2d 417 at 420.

Thus, the power of determining the benefit in proportion to costs, when exercised by the legislative body, is a legislative rather than judicial function. The determination of this question by the City Council is conclusive both on the property owners and the courts, unless it is palpably arbitrary, or grossly unequal and confiscatory, or is so devoid of any reasonable basis as to be essentially arbitrary and an abuse of power. As summarized in *City of Gainesville v. Seaboard Coastline Railroad Company*, 411 So.2d 1339 (Fla. 1st DCA 1982):

> The courts in this state are not powerless to review objections to special assessments. However, in this case, the trial court misconstrued both its role in evaluating the evidence and the Railroad's burden of proof. In the area of special assessments for local improvements, there is a presumption that the findings of the local government as to benefits are correct and this presumption can be overcome only by strong, direct, clear and positive proof. *Rosche v. City of Hollywood*, 55 So.2d 909, 913 (Fla. 1952). The apportionment of assessments is a legislative function, so if the evidence as to benefits is conflicting, as is generally the case, and is predicated on the judgment of expert witnesses, the findings of the city officials will not be disturbed. *Id.; see also Meyer v. City of Oakland Park*, 219 So.2d 417 (Fla. 1969); *and City of Hallandale v. Meekins*, 237 So.2d 318 (Fla. 4th DCA 1970).
> 411 So.2d at 1340.

1. Property value may form a logical base by which to apportion special assessments.

The Ordinance permits, and the Resolution provides for, the special assessments to be apportioned among the benefited

properties in relation to the property value of the various tracts, as determined by the latest available real property assessment roll prepared by the county tax appraiser. Use of the property value to apportion the special assessments does not transform the special assessments into an ad valorem property tax. Special assessments may be imposed according to the value of the benefited property or upon an ad valorem basis. *Richardson v. Hardee*, 96 So. 290 (Fla. 1923); *Houck v. Little River District*, 239 U.S. 254, 36 Sup.Ct. 58, 60 L.Ed. 266 (1915). In the *Richardson* case, which involved a challenge to one mill assessment for maintenance imposed by the Everglades Drainage District, the court affirmed the power of the district to impose such assessment on the basis of ad valorem value. The court stated:

> The principle being established that the assessment being laid on the property within the district upon an ad valorem basis, the question of ascertaining the measure of special benefit resulting from the improvement and the property to which it extends and the apportionment of the [special assessment] is one for legislative determination . . ..
> 96 So. at 292.

Similarly, in the case of *City of Naples v. Moon*, 269 So.2d 355 (Fla. 1972) the Florida Supreme Court approved a special assessment apportionment methodology based upon the assessed value of the property. In that case, the assessed value was multiplied by a benefit factor (computed upon the relative floor space, parking lots and property) to determine the amount of the assessment on each parcel. The Court said:

> It is true that ad valorem assessments are factors in the calculus; however, these

> assessments merely form a logical valuation base against which the special assessment benefits may be multiplied.
> 269 So.2d at 358.

Although the *City of Naples* case differs from the current methodology in the manner of determination of the benefit factor to be applied to the property value, the case clearly supports the use of the property value as the logical and permissible base upon which to base the apportionment of the special assessments.

2. Property value base properly apportions the special benefits and the special assessments.

Of course, just as the more traditional square foot and front foot methodologies for apportioning special assessment benefits and special assessments must, to be valid, in fact properly and fairly apportion such special assessments, so also must a methodology based upon the property value fairly apportion the special assessments. In the case of *Fisher vs. Board of County Commissioners of Dade County*, 84 So.2d 572 (Fla. 1956) (en banc), the court struck down an assessment methodology based upon the value of the property in the assessment area where there was no credible evidence in the record that amount of the benefit was related to the property valuation. The Court noted that it had only "the bald opinion of the County Engineer without factual data to support" the fairness of the apportionment and that the County Engineer's report itself suggested that the property values did not reflect the proportionate benefits. *Id.*, at 576, 577. Lacking a detailed statement of the benefit or the actual

assessment, the Court refused to uphold the assessment. The Court held that the unsupported conclusion of the county engineer that in his opinion the benefit to the property involved would be in proportion to the assessed value of the property was not sufficient to determine that the subject property was specially benefited. The Court further ruled that the district had not shown that the benefit was in proportion to the value of the property.

The *Fisher* case holding is based upon the failure of the district to make the factual demonstration that the special benefit would accrue to the properties in the district in proportion to the assessed value of the property. The City of Boca Raton introduced competent evidence, consisting of the Benefit Evaluation Report and the expert testimony of Mr. Harmon, to establish in this case the factual basis for the proportionate relationship between the special benefit received by the properties within the special assessment area and the value of those properties; thus, the *Fisher* case is not an impediment to validation of these Bonds.

In fact, the *Fisher* case supports the validity of the apportional methodology established in the current special assessment. The Court in that case stated the rule of law:

> In all cases assessments against benefited property must be fairly apportioned and lawfully made. See *Parrish v. Hillsborough County*, 98 Fla. 430, 123 So. 830. An assessment for special benefits must be "according to" or must have a "relation to" or some "reference to" the special benefit resulting to the particular property assessed in order to [be a valid special assessment]. *Id.* at 577.

The central holding of the case, as stated by the same Court six years later in *St. Lucie County - Fort Pierce Fire Prevention and Control District vs. Higgs*, 141 So.2d 744 (Fla. 1962) was

> To be legal, special assessments must be directly proportionate to the benefits to the property upon which they are levied and this may not be inferred from a situation where all property in a district is assessed for the benefit of the whole on the theory that individual parcels are peculiarly benefited in the ratio that the assessed value of each bears to the total value of all property in the district. This point was definitely settled by this court in *Fisher v. Board of County Commissioners of Dade County* . . .. *Id.* at 746 (emphasis supplied).

In the present case there was no need for the Trial Court to infer the amount or proportionality of the benefits to be received by the property in the assessment district. The evidence referred to above established this relationship. The Trial Court specifically found that "B. The assessments are directly proportional to the special benefits to be provided each parcel ...." App. at 100. Thus, the rule of law as set forth in the *Fisher* case requires the validity of the apportionment methodology be upheld.

As noted earlier, the City's determination of the assessments and the benefits from the project is essentially a legislative function and the burden is on those contesting the assessments to establish the invalidity of the assessments. *City of Hallandale v. Meekins*, 237 So.2d 318 (Fla. 2DCA, 1970), citing *Klien v. City of New Smyrna Beach*, 152 So.2d 460 (Fla. 1963) and *Roche v. City of Hollywood*, 55 So.2d 904 (Fla. 1952). While the CIty has introduced both written and oral evidence that the

proposed assessments are fair and equitable, the Cross-Appellants produced no compelling evidence to carry their factual burden of showing the assessments to be arbitrary or unreasonable. The forecasts and opinions of the City's urban economic analysis consultant and expert were substantially unchallenged by any witness, experts or evidence introduced by the Cross-Appellants and other intervenors. Even if the Cross-Appellants had demonstrated that reasonable men could differ as to the amount and type of the special benefits or the fairness of the apportionment methodology, the Trail Court was not presented with the clear and positive proof necessary to rebut the presumption of validity which attaches to the legislative determination and findings of fact. Thus, the Trial Court correctly held that the assessments are directly proportional to the special benefits to be provided each parcel and that the benefits are in excess of the assessments.

II. EXCLUDING HOUSES OF WORSHIP AND RESIDENTIAL PROPERTY DOES NOT VIOLATE EQUAL PROTECTION GUARANTEES BECAUSE THERE IS NO SPECIAL BENEFIT TO SUCH PROPERTIES.

Property which receives only general benefits not differing materially from the benefits received by the community in general cannot be subjected to special assessments for the cost of the improvements. The State, in its Answer Brief, refers to testimony in the trial court as to benefits to be received by houses of worship and residential property, but fails to distinguish between the general benefit to be received by every property in the downtown area and the special benefits which accrue to the properties to be specially assessed. The case studies prepared by Mr. Harmon and included in the Benefit Evaluation Report generally also excluded these types of properties form assessment (App-S. V-II, T-2, p. III-1 to III-18). The Benefit Evaluation Report states:

> Single family homes and houses of worship are two notable special case exemptions. These types of property do not directly benefit from the impacts above unless redeveloped. Therefore, there is a sound economic and legal basis for the Task Force's recommendation to exclude these parcels from the planned downtown Boca Raton special assessment program.
> App-S. V-II, T-2, p. II-6.

The exclusion of governmental facilities from the payment of the special assessments is also based upon the determination that such properties would not receive the special benefits of the type provided by the project. App-S. V-I, T-3, p.142. The objection that this exclusion of government owned facilities improperly excludes property leased to private

developers, such as the Mizner Park development, is misconceived, because in fact the value of the leasehold interest of the private developer will appear on the property tax roll and will be subject to the assessment. The Cross-Appellant's objection seems to be that the leasehold is not fairly valued because the value of the surrounding land owned by the City is not included (see App-S. V-I, T-5, p.302); however, this should be argued to the county property appraiser rather than in this proceeding.

The Cross-Appellant's argument that the exclusion of houses of worship, residential property and government owned property (collectively, the "Excluded Parcels") improperly burdens other properties in the downtown area would be more persuasive if the entire cost of the improvements was being assessed. In fact, only approximately one-third of the total cost of the project is being assessed. App. at 23. Thus, *Utley v. City of St. Petersburg*, 106 Fla. 692, 144 So. 58 (Fla. 1932), which concludes that properties cannot be made to bear the entire cost of a project which benefits non-assessed properties, is not on point with the instant case. The City's determination that the special benefits exceeded the portion of the project cost to be assessed and the substantial portion of the project cost being paid from other funds available to the City makes it clear that the assessed properties are not being required to pay for the general benefits received by the Excluded Parcels.

The Excluded Parcels, not being specially benefited, cannot be specially assessed. Thus, there is no violation of the state or federal constitutional equal protection guarantees.

The decision of the City to allow certain small property owners to defer payment of the special assessments does not violate any equal protection guarantees. Governments typically establish reasonable payment methods and may specify different payment provisions for different classes of payors without denying equal protection to any party. The deferment bears interest and does not affect the portion of the cost of the improvements paid by the property. Similarly, Chapter 170 provides that the local government may determine when and how special assessments imposed under that statute will be payable; this similar time of payment provision has never been constitutionally impermissible. *See* Section 170.09, Florida Statutes (1990).

III. THE CITY WAS NOT REQUIRED TO MAKE A SPECIFIC DETERMINATION OF THE DOLLAR AMOUNT OF BENEFIT TO BE RECEIVED BY EACH ASSESSED PROPERTY

The City Council determined that the project would provide special benefits to the properties being assessed. App. at 23. The City is not required to specifically itemize a dollar amount of benefit to be received by each parcel. In *Cape Development Co. v. City of Cocoa Beach*, 192 So. 2d 766 (Fla 1966), the Court, interpreting the special assessment provisions of Chapter 170, stated:

> There are over a thousand parcels of property affected in this improvement project, and to require a municipality to itemize and set forth opposite each parcel the amount in dollars said parcel would benefit from said improvements is unduly tedious and beyond the requirements set forth in the statutes; the interpretation by the appellants that such is necessary is, in our opinion, a strained and illogical interpretation of the requirements of the statute. 192 So. 2d at 773.

In *City of Treasure Island v. Strong*, 215 So. 2d 473 (Fla. 1968), cited by Cross-Appellants as authority for requiring specific itemization of the benefits, the point at issue appears to have been whether <u>any</u> formal determination (general or specific) of the special benefits was made by the City of Treasure Island. In any event, the Court held that:

> When ... there is an inherent and obvious legislative determination in the enabling provision that the benefits flowing from a particular improvement are of the kind as would usually accrue to particular properties, it is not absolutely incumbent upon the taxing authority to make a determination that each property ownership will be specially benefitted by the improvements. 215 So. 2d at 479.

The City Council of Boca Raton made a legislative determination that the benefits from the project would accrue to the property in the downtown area (other that the excluded parcels). The Benefit Evaluation Report clearly indicates that the benefits are of the kind that would usually accrue to particular properties located in the assessment area. Thus, just as in *Treasure Island* it was not necessary to make "a separate determination of the special benefits to each of the projects abutting" the improvement, so in the instant case it is not necessary to make a specific itemization of the dollar benefit to each parcel. *See also City of Hallandale v. Meekins*, 237 So. 2d 318, 321 (Fla. 1970)("Furthermore, in preparing the assessment roll, a municipality is not required to itemize and set forth opposite each parcel the amount in dollars said parcel would benefit from the improvements.")

Statements be the Court in the *Treasure Island* and *Hallandale* cases suggesting that in certain circumstances an itemization of the benefits might be required are not applicable to the instant case. *Ft. Myers v. State*, 117 So. 97 (Fla. 1928) is also not on point. Astral cites *Ft. Myers* to support its contention that because the project consists of a variety of improvements differing in geographical location, a separate benefit determination for each component of the project is required.

Treasure Island, Hallandale and *Ft. Myers* are not applicable because of the type of benefits conferred by the Visions 90 project. The distinction made in *Treasure Island* and

Hallandale depends upon the kind of benefit flowing from the proposed project. 215 So. 2d at 479. If the kind of benefits are not such that they would usually accrue to each of the various properties, then a specific itemization may be required. The types of special benefits to be received from the City's project are, as indicated by the Benefit Evaluation Report, of the kind that usually would accrue to each of the properties in the downtown area. Thus, it is appropriate to consider the improvements to constitute a single projects for purposes of determining that the properties are specially benefited and to make a specific rather than itemized determination that each assessed property will receive special benefits in excess of its assessments and in proportion to the benefit received.

CONCLUSION

For the reasons stated above, the Circuit Court erred in denying validation of the Bonds. The Appellant requests that this Court review the decision of the Circuit Court and direct the Circuit Court on remand to enter an Order validating the Bonds.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a true and correct copy of the foregoing, together with the Appendix required by Rule 9.220, Fla. R. App. P, was mailed this 10th day of June 1991 to:

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