IN THE SUPREME COURT OF FLORIDA

WASHINGTON SHORES HOMEOWNERS' ASSOCIATION, Ulysses Hood, Pastor Sam Hoard, Rufus Brooks, Johnny Robinson, Charlie Jean Salter, Bettye S. Smith, Jackie Perkins, Kat Gordon, Wardell Sims, James Jackson and Maurice Poitier, as

Appellants,

vs. CASE NO. 79,621

CITY OF ORLANDO,

Appellee.

_____/

ON APPEAL FROM A BOND VALIDATION JUDGMENT
OF THE ORANGE COUNTY CIRCUIT COURT

ANSWER BRIEF OF APPELLEE CITY OF ORLANDO

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TABLE OF CONTENTS

TABLE OF CITATIONS

STATUTES **PAGE(S)**

FLORIDA CONSTITUTION

PREFACE[1]

Appellants have included a footnote in Point I of their Argument that cites newspaper articles from the Orlando Sentinel (Br. at 18), and have included in their Statement of Facts and Appendix a portion of the deposition of Appellee's Director of Finance, George Michael Miller (A-13).

The newspaper articles were never made a part of the record below, and neither the State nor Appellants offered the newspaper articles or the deposition into evidence. Although the State did place the deposition of Mr. Miller into the court file, it is only the testimony of Mr. Miller as a witness at the hearing that should be considered in reviewing the final judgment rendered below on March 2, 1992, and attached as A-23 (the "Final Judgment"). Therefore, and in light of the foregoing, Appellee respectfully submits that the reference to such newspaper articles in Appellants' Argument and the inclusion of the deposition excerpt in the Statement of Facts and Appendix violate Florida Rules of Appellate Procedure 9.200(a) and 9.220, and should be disregarded as improper.

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[1]The abbreviation "A" used throughout this brief will refer to the Appendix to the Appellant's Initial Brief, and the abbreviation "SA" will refer to the Supplemental Appendix submitted with this Answer Brief. The abbreviation "Br." will refer to the Initial Brief of Appellants. The abbreviation "FJ" will refer to the Final Judgment.

STATEMENT OF THE CASE

The Statement of the Case presented in Appellants' Initial Brief (Br. at 2-4) does not convey an adequate understanding of the background of this controversy. To ensure that the Court is fully apprised of the factual and procedural matters that are relevant to the resolution of this appeal, the City of Orlando (the "City") submits the following statement of the case.

On December 9, 1991, at a duly noticed and publicly held meeting, the Orlando City Council (the "City Council") duly enacted on second reading its Ordinance No. 25329 (the "Ordinance") providing for the issuance of the City's Capital Improvement Special Revenue Bonds (the "Bonds"). (A-8.) The City Council expressly found that the City is authorized to issue the Bonds and use the proceeds thereof to pay the Cost of the Projects (as those terms are defined in the Ordinance). See Ordinance art. III(C).

On December 17, 1991, the City filed its Complaint seeking to validate the Bonds, naming as defendants the State of Florida (the "State") and the taxpayers, property owners, and citizens of the City, including nonresidents owning property or subject to taxation therein. (A-9.) The Complaint alleges that the Bonds are to be issued for the public purpose of paying the cost of acquiring, installing, and constructing the Projects. (A-8 at ¶ 6.)

The trial court entered an Order to Show Cause (the "Order"), which was duly published in the Orlando Sentinel, a newspaper published and of general circulation in the City, on

December 22 and December 29, 1991, and January 5, 1992. (A-10, 11.) After the State filed an answer with affirmative defenses opposing the validation of the Bonds (A-12), a hearing was conducted on January 27 and January 28, 1992 (A-17-19). On March 2, 1992, the trial court entered a Final Judgment validating the Bonds, expressly adjudicating that the issuance of the Bonds is for a valid public purpose -- i.e., paying the cost of acquiring, installing, and constructing the Projects described in Exhibit "A" to the Ordinance (the "Exhibit A Projects"), as more particularly described by evidence presented at the final hearing to limit that component of such Projects under the heading "Construction--Roadway Project" to the roadway project known as the John Young Parkway (State Road 423) (A-23); the Exhibit A Projects as so described are referred to herein as the "Validated Projects." Appellants now appeal from that Final Judgment.

The City, with the addition of the foregoing, agrees with the Statement of the Case set forth by Appellants, except as follows:

Appellants take out of context the statement that the trial court continued the hearing so the City "could close some of the open-ended provisions of its bond issue." (Br. at 3.) The reason Judge Baker continued the hearing was because it was late in the day and he wanted the parties to come back to continue the argument "when it's not late at night" so he could "think more clearly about what [the City was] doing." (A-17 at 91.) The statement to which Appellants refer was made at the end of the first day of hearings,

when Judge Baker repeated the testimony of Mr. Miller, who said that "the City of Orlando would be willing to close some of the open-ended provisions of its bond ordinance." (A-17 at 90.) Judge Baker found the testimony of Mr. Miller interesting and indicated that, if the City were to do what Mr. Miller had suggested, he thought it "would satisfy" the state attorney or "would remove a lot of her objections." (A-17 at 90.)

Appellants also take out of context statements of the City, at the outset of the second day of hearings, that the City would "be more specific in defining its projects for this validation." (Br. at 3.) What the City's counsel actually said was:

> With all due respect, Your Honor, the Plaintiff believes that it has sufficiently defined, described the types of projects for which said bonds could be used. However, in order to resolve the concerns of the State, the Plaintiff can be more specific in defining its projects for this validation.

(A-19 at 97.)

Appellants make reference to the March 2, 1992 correspondence from Judge Baker to the City's counsel. (Br. at 4.) This correspondence addressed provisions that were included in the Final Judgment in an effort to resolve concerns of Mr. James Muszynski that the Bonds could be used to finance projects other than the Exhibit A Projects. (A-22.) The City explained to the trial court, and to all who commented on the wording of the Final Judgment, that projects other than the Validated Projects may be financed from proceeds of Additional Bonds (as defined in the

Ordinance), but would not be considered projects validated by the Final Judgment. See FJ ¶ 7 (A-22).

STATEMENT OF THE FACTS

The City agrees with the Statement of the Facts set forth by Appellants (Br. at 5-13), except as follows:

Appellants assert that City Commissioners Nap Ford and Sheldon Watson "publicly have always opposed the John Young Project." (Br. at 5). This statement is not supported by the record and is not accurate; Appellants have never offered anything into evidence to corroborate such a claim.

Appellants refer to the December 2, 1991 City Council meeting at which the Ordinance was first read, and state that "no mention was made of any advertisement for the first session." (Br. at 5.) The December 2, 1991, meeting was a regular meeting of the City Council, notice of which was posted in accordance with section 286.011, Florida Statutes (the "Sunshine Law"). The City is required to advertise only the meeting at which the Ordinance was adopted. See § 166.041, Fla. Stat. The Ordinance was read for the second time and adopted at the City Council meeting of December 9, 1991 (A-8), which, as Appellants correctly concede, was advertised in the Orlando Sentinel on November 29, 1991 (SA-1).

On pages 6 and 7 of their Statement of the Facts, Appellants refer to testimony of the City's Director of Finance, Mr. George Michael Miller. (A-8.) Mr. Miller was instrumental in drafting the Ordinance, and understood when and which City Council actions were necessary to effectuate the Ordinance. Mr. Miller's statement that "the formal authorization of City Council to proceed with the

construction of the [John Young Parkway] project has not come before them at this date," is in fact a true statement. The City Council has not yet authorized construction to begin on the John Young Parkway Project. The City Council has, however, approved the John Young Parkway Project as a City roadway project to be constructed (A-1), and has included the John Young Parkway Project in both the City's Growth Management Plan (A-4) and Capital Improvement Program 1991-1996 (A-6). Furthermore, Mr. Miller went on to express his belief that the City Council, by approving the Ordinance, understood that the John Young Parkway Project was the significant road project anticipated by this bond financing.

Appellants also quote Mr. Miller, when asked if he would agree to identifying the road project, testifying that:

> The City Council has not yet acted, so I am not theoretically in a position to do that formally on behalf of the City of Orlando because that would require specific action by the City of Orlando, a properly noticed meeting.

(Br. at 6 (quoting A-17 at 19).) Mr. Miller was referring to the fact that, before any bonds could be issued under the Ordinance, there had to be City Council action beyond the mere enactment of the Ordinance, at which time the specific roadway project would be identified by supplemental ordinance or resolution.

SUMMARY OF THE ARGUMENT

The record reflects that the City complied with all legal requirements for bond validation proceedings. On December 9, 1991, the City Council duly enacted the Ordinance providing for the issuance of the Bonds. Pursuant to section 166.041, Florida Statutes, that City Council meeting was advertised in the Orlando Sentinel on November 29, 1991, and the public was afforded the opportunity to appear, discuss, question, and object to the Ordinance before it was adopted by the City Council at that meeting.

Pursuant to chapter 75, Florida Statutes, the Complaint, filed December 17, 1991, properly named as defendants the State and the taxpayers, property owners, and citizens of the City, including non-residents owning property or subject to taxation therein.

The Order to Show Cause, entered by the Circuit Court on December 17, 1991, was properly published in the Orlando Sentinel on December 22 and December 29, 1991, and January 5, 1992. The Order listed the defendants as "THE STATE OF FLORIDA, AND THE TAXPAYERS, PROPERTY OWNERS, AND CITIZENS OF ORLANDO, FLORIDA, INCLUDING NON-RESIDENTS OWNING PROPERTY OR SUBJECT TO TAXATION THEREIN." The Order also designated the time and place to appear within the circuit where the Complaint was filed, and both the Complaint and Order were properly served on the state attorney, all as required by chapter 75, Florida Statutes.

Appellants' counsel and members of the Homeowners' Association were present at the validation hearing and were afforded an opportunity to present objections to the Bond issue, including objections as to public purpose. Appellants presented no objections that would constitute sufficient grounds for denying validation of the Bonds or the Validated Projects.

The City submits that financing the construction and acquisition of public roads within the City's municipal limits constitutes a valid municipal public purpose, and Bond proceeds may properly be used to pay such costs. Chapter 75 does not require identification of the public road project by its name or location in order to determine the validity of the Bonds. This Court has previously held that a bond resolution or ordinance may provide for roads generally, and that after validation and issuance of the bonds the issuing agency may determine the location of the roads to be constructed.

The City has fully complied with the notice requirements of chapters 75 and 166, Florida Statutes, and has, in both the Ordinance and Complaint, identified the Exhibit A Projects with detail sufficient for the circuit court to measure the legality of the Bonds and to make a determination as to the public purpose of the Bonds.

ARGUMENT

The issues for determination in a bond validation proceeding are whether the issuer has the authority to incur the bonded indebtedness, whether the use of bond proceeds for the projects will serve a proper public purpose, and whether the proceedings in connection with authorizing the bonds were proper and legal. See State v. City of Daytona Beach, 431 So. 2d 981, 983 (Fla. 1983). The circuit court ruled in favor of the City on all of these issues.

Appellants have limited the issue on appeal to whether the City provided timely and proper notice that funding for construction of the John Young Parkway Project was included in the proposed Bond issue. Appellants contend that the notice did not afford them an opportunity to raise objections before the City Council and the court below. (Br. at 28.)

Chapters 166 and 75, Florida Statutes, clearly prescribe the notice requirements for the adoption of municipal ordinances and for the validation of bonds, respectively. Analysis reveals that the City has complied with all applicable statutory notice requirements and has sufficiently identified the Exhibit A Projects.

POINT I

THE CITY COMPLIED WITH ALL PROCEDURES APPLICABLE TO THE VALIDATION OF THE BONDS AND IDENTIFIED THE PROPOSED PROJECTS WITH SUFFICIENT DETAIL TO ENABLE THE COURT TO MAKE A DETERMINATION OF PUBLIC PURPOSE

The primary purpose of validation proceedings is to test the power of the issuing agency to issue the bonds or to incur the proposed debt; this test usually involves an inquiry into whether the use of bond proceeds for a particular project constitutes a proper public purpose. See State v. City of Orlando, 576 So. 2d 1315 (Fla. 1991); State v. Suwannee County Dev. Auth., 122 So. 2d 190 (Fla. 1960) (citing State v. City of Tampa, 95 So. 2d 409 (Fla. 1957)). Chapter 75, Florida Statutes, sets forth the procedures applicable to bond validation proceedings. Pursuant to chapter 75, a governmental body may file a complaint against the State and the taxpayers, property owners, and citizens to determine its authority to issue bonds and the legality of all proceedings in connection therewith. See § 75.02, Fla. Stat. (1991).

As the record reflects, the City, understanding that the state attorney and the courts would examine closely the purposes for which the Bonds will be issued, carefully complied with the requirements of chapter 75 and the standards established by this Court. See, e.g., State v. Suwannee County Dev. Auth., 122 So. 2d at 193 (stating that, generally, a petition for bond validation must set forth a description of the purpose for which the bond proceeds are to be used, and that description should be sufficiently detailed to enable a court to make the determination

as to whether the issuing agency may lawfully expend public funds therefor); see also State v. City of Orlando, 576 So. 2d 1315 (Fla. 1991).[2]

In accordance with chapter 75, the City's Complaint described the amount of the Bonds to be issued and the authority for incurring the bonded debt, the ordinance authorizing the Bond issue and its adoption, and all other essential proceedings had or taken in connection therewith. To identify the Projects, the City attached to the Ordinance and to the Complaint an exhibit listing each project. The City maintains that the Exhibit A Projects were identified with detail sufficient for the circuit court to measure the legality of the Bonds and to make a determination as to the public purpose of the Bonds. Compare City of Orlando, 576 So. 2d at 1317.

As the City argued below, financing the construction and acquisition of public roads within the City's municipal limits constitutes a valid municipal public purpose, and Bond proceeds may properly be used to pay such costs. See Pirman v. Florida State Improvement Comm'n, 78 So. 2d 718, 721 (Fla.), cert. denied, 349 U.S. 956 (1955). Further, chapter 75 does not require identification of a road project by its name or location in order to determine whether the purpose of the bonds is legal. As this Court explained in Pirman:

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[2]The City notes that the Bonds are not pool bonds; the Bond proceeds will not be loaned to other local governmental entities; and the primary purpose of the Bonds is not reinvestment.

> There is no requirement in the statutes or the Constitution that the location of such roads should be fixed and established prior to the validation or issuance of bonds. So far as the Constitution and the statutes are concerned, the resolution may provide for county roads generally and after the validation and issuance of the bonds, the county commissioners may determine the location of the roads to be constructed.

Id. (emphasis added). Thus, the City's general identification of roadway projects as one of the Projects permitted to be financed with Bond proceeds complied with chapter 75 and provided sufficient detail for a finding of public purpose. For purposes of validation, it was not necessary as a matter of law to further describe this component of the Projects.[3]

The case that Appellants claim to be "most applicable here" (Br. at 21), Baycol, Inc. v. Downtown Dev. Auth., 315 So. 2d 451 (Fla. 1975), is not relevant to the present case and serves only to confuse the issues. The issue in Baycol was whether the petitioner in an eminent domain proceeding was "estopped from attacking the purpose of the land acquisition in the eminent domain proceeding because the final judgment validating the bonds was inclusive of funds for the land acquisitions." Id. at 454. Observing that "the key to this determination vests in the adequacy of the notice

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[3]The City submits that, regardless of its concession at the validation hearing (to satisfy the state attorney) limiting applicability of the validation judgment to the John Young Parkway Project -- a roadway project previously approved in the City's Growth Management Plan and Capital Improvement Program, and a subset of the more inclusive category of roadway projects -- this Court should acknowledge, for the benefit of future bond validation proceedings, that it was unnecessary for the City to identify specifically the roadway projects for which the Bond proceeds are to be used.

afforded by the bond resolution and related proceedings," id., this Court held in Baycol that

> the petitioner, having received neither express nor de facto notice that its property was threatened with imminent acquisition in conjunction with the aforementioned bond issue, was not required to attack the propriety of the acquisition at the bond validation proceeding. Therefore, petitioner's challenge to the public purpose and necessity for the condemnation of its property in the eminent domain proceeding was both timely and appropriate.

Id. at 455 (emphasis added).

The issue in Baycol was not whether the notice was sufficient for purposes of the bond validation proceeding; rather, it was whether the notice in the bond resolution and related proceedings was adequate to estop the petitioner in an eminent domain proceeding from challenging the public purpose and necessity for condemning its property. The Baycol Court used State v. City of Boca Raton, 172 So. 2d 230 (Fla. 1965), to distinguish a situation where a bond resolution may serve as adequate notice to a landowner that bond proceeds would fund takings by eminent domain -- not to illustrate insufficiency of notice for purposes of bond validation.

The City did not attempt to validate the Bonds in an effort to estop Appellants from later raising public purpose issues in collateral proceedings. Moreover, to the extent Appellants rely on Baycol as authority for the premise that the Final Judgment in the bond validation proceeding will estop a later public purpose challenge in eminent domain proceedings to take land for the John Young Parkway Project, the point may be moot. The City has already

obtained a favorable ruling on the public purpose issue with regard to the taking of property along the planned route for the John Young Parkway; and that ruling was obtained without any objection as to public purpose by any member of the Washington Shores Homeowners' Association, and without relying on the Final Judgment in this bond validation proceeding. City of Orlando v. J. K. McLean, No. CI-91-10165 (Fla. 9th Cir. Feb. 10, 1992) (in which Bettye S. Smith, an Appellant in the instant case, is a named party defendant). Furthermore, the City included in the Final Judgment, to the Appellants' counsel's satisfaction, a stipulation that the Final Judgment does not address issues raised by Appellants in Committee of Organized Groups ("COG") v. The City of Orlando, Florida, No. 88-962-ORL-CIV-20 (M.D. Fla. filed Oct. 24, 1988). See FJ ¶ 24 (A-23).

Baycol can be further distinguished from this case by the fact that the bond resolution in Baycol was required to be approved by a bond referendum, and thus was subject to the notice requirements of chapter 100, Florida Statutes. The City's authority to incur the indebtedness evidenced by the Bonds at issue here is derived from article VIII, section 2 of the Florida Constitution and chapter 166, Florida Statutes, which provides for authorization of bonds by ordinance or resolution and does not require referendum approval.[4]

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[4]See art. VIII, § 2, Fla. Const. (providing that municipalities may exercise any power for municipal purposes, except as otherwise provided by law); § 166.101(8), Fla. Stat. (defining the term "project" as "a governmental undertaking approved by the governing body," including "any capital expenditure which the governing body

Appellants were present at the validation hearing and were afforded an opportunity to present objections to the Bond issue, including objections as to public purpose. Because Appellants presented no objections that would constitute sufficient grounds to deny validation of the Bonds or the Validated Projects[5], the Final Judgment should be affirmed.

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of the municipality shall deem to be made for a public purpose"); § 166.111, Fla. Stat. (authorizing the governing body of a municipality to issue bonds "to finance the undertaking of any capital or other project permitted by the state Constitution"); § 166.121, Fla. Stat. (providing for the issuance of bonds by resolution or ordinance); § 166.141, Fla. Stat. (providing that Part II of chapter 166 "shall be full authority for the issuance of bonds authorized herein").

[5]Appellants assert that, "[h]ad proper procedures been used, the public--or Council--might have questioned whether local taxpayers are disadvantaged by financing arrangements between the City and the State, even if both approved them." (Br. at 17.) However, a bond validation proceeding is not the appropriate forum for Appellants to address these issues. See State v. City of Daytona Beach, 431 So. 2d 981, 983 (Fla. 1983) (holding that "questions concerning the financial and economic feasibility of a proposed plan are to be resolved at the executive or administrative level and are beyond the scope of judicial review in a validation proceeding").

POINT II

ADEQUATE NOTICE WAS GIVEN WITH RESPECT TO CITY COUNCIL MEETINGS AND THE BOND VALIDATION HEARING, AND APPELLANTS WERE AFFORDED A SUFFICIENT OPPORTUNITY BE HEARD, THEREBY SATISFYING REQUIREMENTS OF DUE PROCESS OF LAW.

The City has conducted all proceedings related to validation of the Bonds in accordance with applicable law, including the notice requirements prescribed by chapters 75 and 166, Florida Statutes. The City Council enacted the Ordinance in accordance with applicable law, and did so prior to filing the Complaint for validation of the Bonds. See § 75.03, Fla. Stat.

The notice and hearing requirements for the adoption of municipal ordinances are set forth in section 166.041(3)(a), Florida Statutes. That statute provides that "a proposed ordinance may be read by title, or in full, on at least 2 separate days and shall, at least 10 days prior to adoption, be noticed once in a newspaper of general circulation in the municipality." At two duly noticed, publicly held, regular meetings of the City Council on consecutive Mondays, the City read the Ordinance and opened up both public meetings for questions and discussion before proceeding with motions in favor of passing the Ordinance. The December 9, 1991, City Council meeting -- the second of the two regular meetings at which the Ordinance was read, and the one at which it was finally enacted -- was properly and timely advertised on November 29, 1991 in the Orlando Sentinel. (SA-1.)

The Order to Show Cause was also properly and timely published in the Orlando Sentinel on December 22 and December 29, 1991, and January 5, 1992. Chapter 75, Florida Statutes, which sets forth the notice by publication requirements for bond validations, provides:

> The court shall issue an order directed against the state and the several property owners, taxpayers, citizens and others having or claiming any right, title or interest in property to be affected by the issuance of bonds or certificates, or to be affected thereby, requiring all persons, in general terms and without naming them and the state, through its state attorney or attorneys of the circuits where the county, municipality or district lies, to appear at a designated time and place within the circuit where the complaint is filed and show why the complaint should not be granted and the proceedings and bonds or certificates validated.

§ 75.05(1), Fla. Stat. (emphasis added).

The Order listed the defendants as "THE STATE OF FLORIDA, AND THE TAXPAYERS, PROPERTY OWNERS, AND CITIZENS OF ORLANDO, FLORIDA, INCLUDING NON-RESIDENTS OWNING PROPERTY OR SUBJECT TO TAXATION THEREIN," and referenced the Complaint, which was on file with the court and had attached to it the Ordinance, including the list of Exhibit A Projects. The Order also designated the time and place to appear within the circuit where the Complaint was filed, and both the Complaint and Order were properly served on the state attorney. Thus, notice of the bond validation proceeding was legally sufficient, and Appellants were in fact represented at the hearing and afforded an opportunity to state their objections.

Unlike the situation presented in Gross v. Fidelity Fed. Sav. Bank, 579 So. 2d 846 (Fla. 3d DCA 1991), this is not a case

where the City chose constructive service by publication because personal service could not be effected. Chapter 75 provides:

> By this publication, all property owners, taxpayers, citizens, and others having or claiming any right, title or interest in the county, municipality or district, or the taxable property therein, are made parties defendant to the action and the court has jurisdiction of them to the same extent as if named as defendants in the complaint and personally served with process.

§ 75.06, Fla. Stat. (emphasis added). For purposes of affording due process in bond validation proceedings, it would be unreasonable to compel the City to seek out and personally serve every potentially interested party, or to personally name each potentially interested party in the notice by publication. Instead, section 75.06 dictates the form and the manner in which notice is to be given. Through the enactment of chapter 75, the legislature effectively determined that this statutorily prescribed notice was a "reliable means of acquainting interested parties of the facts that their rights are before the court." (Br. at 24 (quoting from Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306 (1949)).)[6]

Appellants argue that, until the validation hearing, "the Homeowners did not know whether they were interested parties whose rights were before the court." (Br. at 24 (citing Town of Bay Harbor Islands v. Driggs, 522 So. 2d 912, 915 (Fla. 3d DCA 1988)).) The issue in Town of Bay Harbor Islands v. Driggs was whether

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[6]A predecessor to section 75.06, which also provided for notice of bond validation proceedings by publication, was upheld as constitutional. See State v. Special Rd. & Bridge Dist. No. 4, 127 Fla. 631, 173 So. 716, 718 (1937).

Driggs was in fact an interested person who had standing to challenge inadequate notice. Id. at 916. In this case, the City does not contest Appellants' assertion that members of the Homeowners' Association are interested parties. The City submits that, by complying with the aforementioned statutory provisions, it apprised all "interested parties of the pendency of the action and [afforded] them an opportunity to present their objections," Mullane, 339 U.S. at 314, thus satisfying constitutional requirements of due process.

Appellants' assertion that the City Council lacked sufficient information about the roadway project to enact the Ordinance, or to select the John Young Parkway Project as the roadway project to be financed with Bond proceeds, is unfounded and unsupported by the evidence. As the evidence demonstrates, the John Young Parkway Project is an approved transportation element of the City's Growth Management Plan, and has been included in the City's Budget through adoption of its Capital Improvement Program 1991-1996. Both the Growth Management Plan and the Capital Improvement Program were adopted by the City Council at duly held, publicly noticed hearings, and were made part of the City's public records. The City Council had considered the details of the John Young Parkway Project, including its estimated cost and planned location, prior to the time it adopted the Ordinance, but broadly described the roadway project for bond validation to retain planning flexibility. As noted in Point I of the City's argument

(supra at 12-13 (discussing Pirman)), that flexibility is permitted by law.

Appellants' discussion of County of Palm Beach v. State, 342 So. 2d 56 (Fla. 1977), is inapposite. Curative action by the City Council is unnecessary because no procedural defects occurred, either in enacting the Ordinance or in presenting the Complaint for bond validation. Appellants, and the public in general, have been afforded a meaningful opportunity to be heard at every stage and in all fora. Duly noticed public hearings were held before the City Council on August 12, 1991 (at which the Growth Management Plan was adopted), on September 16, 1991 (at which the Capital Improvement Plan was adopted), on December 2, 1991 (at which the City Council first read the Ordinance), and on December 9, 1991 (at which the Ordinance was enacted). The Bond validation hearing before the Circuit Court on January 27 and January 28, 1992, was also publicly noticed, and all interested persons, including Appellants, were afforded an opportunity to speak.

The Ordinance also requires that, prior to the issuance of any series of Bonds, the City Council must adopt, at a duly noticed and publicly held meeting, a supplemental ordinance or resolution authorizing the issuance of the particular series of Bonds and specifying, among other things, the Projects to be financed with the proceeds of the series of Bonds to be issued. See Ordinance § 6.02. Thus, the public has been afforded numerous opportunities and will be afforded yet another opportunity before the City

Council to raise any objections as to the use of Bond proceeds for the construction of the John Young Parkway Project.

The limited scope of the bond validation proceeding does not leave Appellants without a forum in which to object to the John Young Parkway Project, or any other specific roadway project to be financed with Bond proceeds, on grounds other than lack of public purpose. Appellants' primary objection apparently relates to the alignment of the John Young Parkway -- a legislative issue to be addressed by the City Council, not by the court in a validation proceeding. Such an objection may be raised in a properly noticed public hearing at which the City Council undertakes to determine whether to issue a series of Bonds to finance a specific roadway project. Thus, Appellants will have another opportunity to present their concerns and objections regarding the John Young Parkway and the alignment thereof to the City Council before the issuance of Bonds to finance the John Young Parkway Project.

POINT III

APPELLANTS HAVE RAISED ISSUES THAT ARE COLLATERAL TO AND BEYOND THE SCOPE OF A BOND VALIDATION PROCEEDING.

The City agrees with Appellants' concession that the issue of whether the City may have discriminated against the Washington Shores Homeowners' Association or its members, and any other issues raised in pending federal litigation, are collateral to and beyond the scope of this bond validation proceeding.

Yet, throughout Appellants' Brief there are repeated insinuations that racial discrimination played a part in the alleged lack of notice and due process. The City vehemently denies such charges. The Orlando City Council has seven members, of which three are women, two are black, and one is Hispanic. The City prides itself on its record of fair treatment of minorities.

Certain members of the Homeowners' Association have, to date, been unsuccessful in contesting the construction and alignment of the John Young Parkway Project on constitutional grounds of discrimination. The City submits that Appellants should not be permitted to relitigate, in this bond validation proceeding before a state court, collateral issues that have already been advanced (thus far without success) in federal court. Cf. Pirman, 78 So. 2d at 719 (characterizing the appellants' challenge to that bond validation on collateral issues as "another example of taxpayers and property owners attempting to substitute their judgment or have the Court substitute its judgment for that of the

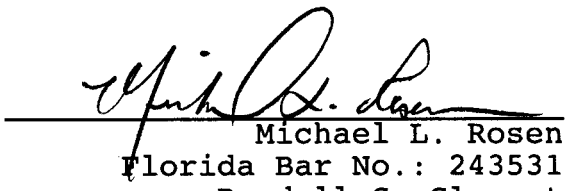
constituted authorities vested with the power to designate the location of a road").

CONCLUSION

Because the issues raised on appeal are limited to the sufficiency of notice regarding the John Young Parkway Project only, and Appellants have failed to demonstrate that the City did not comply with the requirements of law for providing notice in bond validation proceedings, the judgment entered below should be affirmed in all respects. Alternatively, if the Court determines that the John Young Parkway Project should not be validated, the City requests that the Court affirm the bond validation in all other respects, including the Ordinance and all of the Validated Projects except the John Young Parkway Project.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. mail this 1st day of June, 1992, to Gabe Kaimowitz, Esquire, 3173 Whisper Lake, #A, Winter Park, Florida 32792, Lawson L. Lamar, Esquire, State Attorney, Ninth Judicial Circuit, and Carol Levin Reiss, Esquire, Assistant State Attorney, 250 North Orange Avenue, Orlando, Florida 32801.



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