IN THE SUPREME COURT OF FLORIDA
CASE NO. 86,210

LIZZIE MAE HARRIS, WANDA M. TOWNSEND and ELLIS TOWNSEND,

Appellants,

vs.

DALE WILSON, JAMES JETT, LARRY LANCASTER, PATRICK McGOVERN and GEORGE BUSH, as constituting the Board of Clay County Commissioners; CLAY COUNTY, a Political Subdivision of the State of Florida,

Appellees.
_____/

APPELLEE'S ANSWER BRIEF

On Appeal from the First District Court of Appeal
Case No. 93-3445

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Table of Contents Con't Page

Florida Constitution

Table of Contents Con't Page

STATEMENT OF THE FACTS AND CASE

Clay County, Florida (the "County"), the Appellee here, is a charter county organized under the authority of Article VIII, section 1(g), Florida Constitution, and its duly adopted charter. (R. 97-111; App. C). Under the broad home rule powers granted by the Florida Constitution, charter counties have all powers provided to them under their charter so long as the exercise of such powers is not inconsistent with general law or a special act approved by the voters of a county. Art. VIII, § 1(g), Fla. Const.

In recognition of the problems related to solid waste management within the State, the Florida Legislature passed the Solid Waste Management Act of 1988 (the "Act").[1] (R. 471; App. B). The Act is a comprehensive regulatory scheme for solid waste management and establishes clear assignments of responsibility for solid waste management functions to the State, counties, and municipalities. Under the Act, counties must provide for the disposal of solid waste throughout their jurisdiction. Section 403.706(1), Florida Statutes, states as follows:

> The governing body of a county has the responsibility and power to provide for the operation of solid waste disposal facilities to meet the needs of all incorporated and unincorporated areas of the county.

Consequently, the constitutional powers of self-government vested in a charter county and the responsibilities for solid waste management legislatively mandated to be performed by counties

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[1] The Act was contained in Chapter 88-130, Laws of Florida, and is codified at Part IV, Chapter 403, Florida Statutes.

provided the backdrop for the actions of the Clay County Board of County Commissioners when it adopted the 1993 Partial Year Solid Waste Disposal Assessment Ordinance 92-26 ("Ordinance 92-26"). (R. 121-146; App. C, Ex. 2-A). Ordinance 92-26 authorized the imposition of a partial year solid waste disposal assessment on all residential property located within the unincorporated area of Clay County for the period of January 1 through September 30, 1993. (R. 130; App. C, Ex. 2-A). The purpose of the partial year solid waste disposal assessment was to fund the cost of providing solid waste disposal services and facilities for those properties subject to the partial year assessment. (R. 121-146; App. C, Ex. 2-A).

In accordance with statutory notice requirements, the Board of County Commissioners held a public meeting on December 8, 1992, and adopted the Final Assessment Rate Resolution imposing a partial year solid waste disposal assessment in the amount of $63.00 per residential dwelling unit. (R. 169-173; App. C, Ex. 2-E). The cost of providing disposal services and facilities for non-residential property and property within the municipal boundaries would be collected through their franchise hauler as tipping fees imposed at the disposal site.

The Appellants in this case are County residents who originally filed separate complaints challenging the partial year solid waste disposal special assessment. (R. 1-10; 46-58). The two cases were later consolidated without objection.[2] (R. 467-

[2] Appellant, Harris, filed her complaint on December 28, 1992, while Appellants, the Townsends, filed their complaint on March 2, (continued...)

468). On June 15, 1993, the County filed its Motion for Summary Judgment. (R. 92-184). On August 23, 1993, at the hearing scheduled for consideration of the Motion for Summary Judgment, the Appellants moved to continue the hearing, and the hearing on the Motion for Summary Judgment was rescheduled to August 31, 1993. On August 31, 1993, at the hearing on the Motion for Summary Judgment, the Appellants sought to submit various unsworn documents in opposition to the County's Motion for Summary Judgment. (Transcript, 21-23).[3] The circuit court refused to admit the documents into evidence, found that no genuine issue of disputed material fact remained in the case, and concluded that the County was entitled to judgment as a matter of law. (R. 474; 469-491; App. B). Final Summary Judgment was entered and the Appellants appealed to the First District Court of Appeal. The First District affirmed the circuit court's ruling and the Appellants then timely petitioned this Court to exercise its discretionary jurisdiction.

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[2](...continued)
1993. The Complaints were identical with the exception that the Townsends raised an issue as to the number of dwelling units on their property which were subject to the partial year solid waste disposal assessment. The County admitted in its Answer that there were only two dwelling units subject to the assessment. (R. 33-40). Therefore, this issue was resolved.

[3] The documents were attached to Plaintiff's Supplemental Response in Opposition to Motion for Summary Judgment and were not accompanied by an affidavit. (R. 439-463).

SUMMARY OF THE ARGUMENT

The circuit court properly granted the County's Motion for Summary Judgment and the First District Court of Appeal correctly affirmed that ruling.

The County was entitled to judgment as a matter of law because the County's solid waste disposal special assessment conferred a special benefit on the property assessed and the assessment was fairly and reasonably apportioned among the benefited properties. The courts in Florida have upheld special assessments for a variety of services and improvements, including solid waste management services. Furthermore, the courts in Florida have held that legislative determinations on benefit and apportionment are presumed to be valid unless they are proven to be arbitrary. The Board of County Commissioners here made specific legislative findings that the assessed properties received special benefits and that the assessment was reasonably apportioned among those properties. The Appellants failed to prove otherwise.

In addition, the traditional requirements for valid special assessments are not altered when special assessments are imposed against homestead property. Neither the Florida Constitution nor the Florida Statutes even imply that additional scrutiny or requirements exist for homestead properties but not for other types of properties when special assessments are involved. This Court, just three months ago, expressly clarified this idea: special assessments for services may be imposed against tax protected property when special benefits and fair apportionment are present.

If either one of the requirements for special assessments is not present, then the special assessment is invalid, regardless of the nature of the property against which the assessment is imposed.

Finally, the Appellants failed to create any genuine issue of disputed material fact. Throughout this case, the Appellants have attempted to show, through documents properly excluded from consideration on summary judgment, the alleged invalidity of the apportionment method. Both the circuit court and the First District Court of Appeal concluded that the documents were untimely and improper, but that regardless, the documents failed to raise an issue of dispute on the apportionment method.

Thus, the County's special assessment for solid waste disposal services and facilities is valid as a matter of law.

ARGUMENT

I. THE FIRST DISTRICT COURT OF APPEAL'S DECISION AFFIRMING THE COUNTY'S SOLID WASTE DISPOSAL SPECIAL ASSESSMENT IS CONSISTENT WITH THIS COURT'S RECENT OPINION UPHOLDING STORMWATER SPECIAL ASSESSMENTS.

The Appellants' Initial Brief ignores the substance of this Court's recent opinion upholding stormwater special assessments and its direct resolution of the Appellants' assertions in this case. See Sarasota County v. Sarasota Church of Christ, Inc., 20 Fla. L. Weekly S600 (Fla. Dec. 21, 1995). Significantly, at least four of the Appellants' arguments are resolved by this Court's decision in Sarasota County v. Sarasota Church of Christ.

First, this Court conclusively determined that a special assessment program can be imposed throughout a community and not be deemed a tax. This Court stated, "Although a special assessment is typically imposed for a specific purpose designed to benefit a specific area or class of property owners, this does not mean that the costs of services can never be levied throughout a community as a whole." Sarasota County, 20 Fla. L. Weekly at S600. This Court further articulated that "the validity of a special assessment turns on the benefits received by the recipients of the services and the appropriate apportionment of the cost thereof . . . regardless of whether the recipients of the benefits are spread throughout an entire community or are merely located in a limited, specified area[.]" Id. Similar to Sarasota County's stormwater special assessment, the County in this case imposed its solid waste disposal special assessment on improved, residential properties

throughout the unincorporated areas. (R. 130; App. C, Ex. 2-C). This fact, just as in Sarasota County v. Sarasota Church of Christ, does not alter the requirements for a valid special assessment. Regardless of the geographic area in which a special assessment is imposed, a special assessment must provide a special benefit to the assessed properties and the assessment must be fairly and reasonably apportioned among the benefited properties. Sarasota County v. Sarasota Church of Christ, 20 Fla. L. Weekly at S600.

Second, the instant case is consistent with this Court's opinion in Sarasota County v. Sarasota Church of Christ as both cases involve special assessments for services. The Appellants have argued throughout this case that for a special assessment to be valid, it must either provide revenue only for a capital improvement or only for a new service when the assessment is imposed against homestead property.[4] (Initial Brief at 13-19). Both the instant case and the Sarasota County v. Sarasota Church of Christ case involve property protected from taxation and both involve special assessments for services. Thus, the Appellants' argument that special assessments for services, when imposed against tax exempt homestead properties, must meet new or additional criteria for them to be valid, ignores the conclusion in Sarasota County v. Sarasota Church of Christ. This Court

[4] For example, the Appellants conclude that "only traditional assessments, which increase the market value of property by providing an improvement serving that property, may legally burden the homestead." (Initial Brief at 5).

specifically upheld the imposition of special assessments for services on tax protected property. See 20 Fla. L. Weekly at S602.

Third, this Court's opinion in Sarasota County v. Sarasota Church of Christ, 20 Fla. L. Weekly S600 (Fla. Dec. 21, 1995), resolves the Appellants' assertion that if a service was previously funded by some other source, like ad valorem taxes or, as here, tipping fees, a legislative decision to change the funding mechanism to a special assessment is either suspect or invalid. (Initial Brief at 27-29). In fact, this Court in Sarasota County v. Sarasota Church of Christ refused to affirm the Second District Court of Appeal's conclusion that stormwater services should be funded only with ad valorem tax revenue. See 641 So.2d 900, 903 (Fla. 2d DCA 1994). This Court stated, "Although we do not find that the previous funding of stormwater services through taxation was inappropriate, we do find that the stormwater funding through the special assessment . . . is a more appropriate funding mechanism. . . ." 20 Fla. L. Weekly at S602.

Finally, this Court in Sarasota County v. Sarasota Church of Christ clarified that the questions of special benefit and fair apportionment are, in the first instance, questions for the legislative body imposing the special assessment. This Court held that "the legislative determination as to the existence of special benefits and as to the apportionment of the costs of those benefits should be upheld unless the determination is arbitrary." Sarasota County v. Sarasota Church of Christ, 20 Fla. L. Weekly S600, S601 (Fla. Dec. 21, 1995) (citing Meyer v. City of Oakland Park, 219

So.2d 417, 420 (Fla. 1969) ("[I]f reasonable men may differ as to whether land assessed was benefited . . ., the determination of the City officials as to such benefits must be sustained."). Acting as a legislative body, the Clay County Board of County Commissioners specifically found that its solid waste disposal special assessment conferred the required special benefits on the assessed properties and that its apportionment methodology was fair and reasonable.

Specifically, the County concluded the following with respect to special benefits:

> The parcels of Residential Property described in the Solid Waste Disposal Assessment Roll, . . ., are hereby found to be specially benefited by the provision of the Partial Year Solid Waste Disposal Assessment set forth in the Solid Waste Disposal Assessment Roll, ... The benefits provided to affected lands include by way of example and not limitation, the availability of facilities to properly and safely dispose of solid waste generated on improved residential lands, closure and the long term monitoring of the facilities, a potential increase in value to improved residential lands, better service to owners and tenants, and the enhancement of environmentally responsible use and enjoyment of residential land.

(R. 92-184; App. C, Ex. 2-E). In addition, the County, as a legislative body found that "[t]he imposition of a Partial Year Solid Waste Disposal Assessment is an equitable and efficient method of allocating and apportioning the Solid Waste Disposal Cost among parcels of Residential Property within the unincorporated area of the County." (R. 92-184; App. C, Ex. 2-A).

Not only are both of these legislative findings presumed to be valid under this Court's conclusion in Sarasota County v. Sarasota

Church of Christ, but the case law in Florida clearly supports these findings as well. Consequently, the County's solid waste disposal special assessment is valid as a matter of law.

II. THE FIRST DISTRICT COURT OF APPEAL'S DECISION AFFIRMING THE COUNTY'S SOLID WASTE DISPOSAL SPECIAL ASSESSMENT IS CONSISTENT WITH THE CONSTITUTIONAL REQUIREMENTS FOR VALID SPECIAL ASSESSMENTS.

The County's special assessment for solid waste disposal fulfills the constitutional criteria for valid special assessments. Florida law requires that first, the property assessed must derive a special benefit from the service provided. City of Naples v. Moon, 269 So.2d 355 (Fla. 1972); Atlantic Coast Line R. Co. v. City of Gainesville, 91 So. 118, 118 (Fla. 1922) (special assessments are "charges assessed against the property of some particular locality because that property derives some special benefit from the expenditure of the money"). In addition, the assessment must be fairly and reasonably apportioned among the properties which receive the special benefit. City of Boca Raton v. State, 595 So.2d 25 (Fla. 1992); South Trail Fire Control District, Sarasota County v. State, 273 So.2d 380 (Fla. 1973); Parrish v. Hillsborough County, 123 So. 830 (Fla. 1929).

The provision of solid waste disposal services and facilities provides a sufficient special benefit to the assessed properties because a logical relationship exists between the property assessed and the services provided. See Charlotte County v. Fiske, 350 So.2d 578 (Fla. 2d DCA 1977); Gleason v. Dade County, 174 So.2d 466 (Fla. 3d DCA 1965); Fire District No. 1 of Polk County v. Jenkins,

221 So.2d 740 (Fla. 1969); South Trail Fire Control Dist., Sarasota County v. State, 273 So.2d 380 (Fla. 1973). In addition, the County's apportionment methodology in this case is fair and reasonable. The court in Charlotte Co. v. Fiske, 350 So.2d 578 (Fla. 2d DCA 1977), and Fire District No. 1 of Polk County v. Jenkins, 221 So.2d 740 (Fla. 1969), upheld the exact same method for apportionment as the County used in this case. See Harris v. Wilson, 656 So.2d 512, 516 (Fla. 1st DCA 1995), rev. granted, 666 So.2d 143 (Fla. 1995).

A. Nothing In Florida Law Alters The Traditional Requirements For Special Assessments Imposed Against Homestead Property.

The Appellants' overriding argument on appeal exhibits a complete misunderstanding of the legal analysis for the validity of special assessments. The Appellants argue that special assessments imposed against homestead property for essential services should be unconstitutional. (Initial Brief at 5) ("Th[e] ruling should be that only traditional assessments, which increase the market value of property by providing an improvement serving that property, may legally burden the homestead."). The law in Florida is clear: a county may impose a special assessment for services against homestead property. If the special assessment provides a special benefit to the assessed property and is reasonably apportioned among the benefited properties, then the special assessment is valid. If the special assessment fails either of these tests, the assessment program is a tax for which general law authorization is

required. These principles, and only these principles apply, regardless of the nature of the property involved or the type of service or improvement provided.

A review of the constitutional and statutory law reveals no expression or implication that a county cannot impose a special assessment for services against homestead property. If a special assessment provides special benefits to the assessed properties and is fairly apportioned among those properties, the special assessment is valid.

In fact, the Florida Constitution itself resolved the conflict between special assessments and homestead property over 60 years ago. The 1885 Florida Constitution was amended in 1934 to state:

> Every person who has the legal title or beneficial title in equity to real property . . . and in good faith makes the same his or her permanent home, . . . shall be entitled to an exemption from all taxation, except for assessments for special benefits, ...

Art. X, § 7, Fla. Const. (1885) (emphasis added). In addition, under the current Florida Constitution, the recognition that special assessments may be imposed against homestead property continues. Article VII, section 6(a), Florida Constitution (1968), states:

> Every person who has the legal or equitable title to real estate and maintains thereon the permanent residence of the owner, or another legally or naturally dependent upon the owner, shall be exempt from taxation thereon, except assessments for special benefits[.]

Id. (emphasis added). While this constitutional language clearly limits assessments against homestead property to those providing

"special benefits," the language does not further limit the assessments to particular types of programs which provide special benefits. The Florida Constitution does not limit valid special assessments imposed against homestead property to those which fund only capital improvements. Thus, special assessments for services may exist, under the Florida Constitution, so long as they provide "special benefits." See Sarasota County v. Sarasota Church of Christ, 20 Fla. L. Weekly S600 (Fla. Dec. 21, 1995) (special assessments for services may be imposed against tax-exempt properties).

Furthermore, the Florida Legislature statutorily implemented the homestead exemption in Chapter 196, Florida Statutes. The particular provision relating to the homestead exemption is section 196.031(1), Florida Statutes, which mirrors the limitations contained within the Florida Constitution. That section provides:

> Every person who, on January 1, has the legal title or beneficial title in equity to real property in this state . . . and who resides thereon and in good faith makes the same his permanent residence, or the permanent residence of another or others legally or naturally dependent upon such person, is entitled to an exemption from all taxation, except for assessments for special benefits[.]

§ 196.031(1), Fla. Stat. (emphasis added). The Florida Legislature granted the authority to municipalities and counties to place special assessments (which are identified in the statute as "non-ad valorem assessments") on the annual property tax bill for collection. § 197.3631, Fla. Stat. Consistently, section 197.3632, Florida Statutes, defines a "non-ad valorem assessment"

as "only those assessments which are not based on millage and which can become a lien against a homestead as permitted in s. 4, Art. X of the State Constitution." As these constitutional and statutory provisions illustrate and as the cases evidence, special assessments for services may be imposed against homestead property.

Consequently, the issue in this case does not concern the propriety of special assessments as a local government funding mechanism and this issue in this case does not concern the existence of homestead protection from the imposition of special assessments. Both of these issues are settled in Florida law and the only issue for this Court is whether the First District Court of Appeal correctly affirmed that the special assessments in this case were valid as a matter of law.

The cases to which the Appellants cite as support for their argument that homestead property requires additional criteria or scrutiny for the imposition of special assessments, simply do not apply here. For example, while Fisher v. Dade County, 84 So.2d 572 (Fla. 1956),[5] involved the validity of a special assessment for various street improvements, Dade County created an invalid apportionment method for the assessment program. Dade County determined the entire cost of the improvements and apportioned that cost among the benefited properties on an ad valorem basis. The Supreme Court of Florida concluded that this assessment could not be valid even though special benefits were conferred on the

[5] Initial Brief at 15.

assessed properties. Consequently, the assessment was an unconstitutional ad valorem tax imposed against homestead property.

Similarly, the Appellants assert that the case of City of Fort Lauderdale v. Carter, 71 So.2d 260 (Fla. 1954), controls the issues here. They contend that the case stands for the proposition that special assessments cannot be imposed to fund solid waste disposal services because such services cannot provide a sufficient special benefit. (Initial Brief at 15, 27). The Appellants misunderstand this Court's language because the Supreme Court decided the City of Fort Lauderdale v. Carter case on apportionment grounds. In City of Fort Lauderdale v. Carter, the City imposed a charge against "all the real and personal property in the city in accordance with its value." 71 So.2d at 261 (emphasis added). The City, in turn, used the proceeds of this charge "to defray the expenses of garbage, waste and trash collection." Id. Furthermore, in imposing the solid waste charge, the City made no distinction between "occupied or vacant properties, or, if occupied, whether the property [wa]s being used for commercial or residential properties." Id. Finally, the Supreme Court concluded that the property against which the City imposed the charge was not benefited in proportion to its value and invalidated the charge as an unauthorized ad valorem tax on homestead properties. Id.

The instant case is clearly distinguishable from City of Fort Lauderdale v. Carter. First, the County's solid waste disposal special assessment is not imposed indiscriminately on all real and personal property in the County. Rather, the assessment is imposed

only on improved, residential property in the unincorporated areas of the County. (R. 130; App. C, Ex. 2-A). Also, unlike City of Fort Lauderdale v. Carter, the County does not calculate the amount of the assessment on any ad valorem or market value of the assessed property. The County fairly and reasonably apportions the cost of providing solid waste disposal services and facilities among those properties which are benefited by the services.

In each of these cases, the assessment was apportioned on the basis of the **value** of the property for which the court held that no relationship existed between the special benefit derived and the property's fair market value. These cases did not, in declaring that the special assessment failed to meet the constitutional tests for special assessments, declare that homestead property could never be specially **assessed** for services and facilities. In addition, the Supreme Court in State v. Halifax Hosp. Dist., 159 So.2d 231 (Fla. 1963), and Crowder v. Phillips, 1 So.2d 629 (Fla. 1941),[6] invalidated the assessments. The Court, in each case, determined that the hospital services and improvements provided only general benefits because no logical relationship existed between the hospitals **and** the use **and** enjoyment of the assessed properties. The Court did not address the applicability of the homestead exemption to special assessments.

Finally, the Appellants argue, based on Hanna v. City of Palm Bay, 579 So.2d 320 (Fla. 5th DCA 1991), that if all properties assessed for solid waste disposal receive the same type of service

[6] Initial Brief at 17, 14.

then the properties are not sufficiently benefited. (Initial Brief at 18). This benefit definition was the statutory definition of "special benefit" provided in Chapter 170, Florida Statutes, under which the City of Palm Bay imposed its street improvement special assessment. The court in Hanna v. City of Palm Bay determined that the City could not impose the special assessment under any other authority (e.g., home rule) and because the City's assessment failed to meet the statutory definition, an insufficient special benefit existed, Here, the County has imposed its solid waste disposal special assessment under its home rule authority and is not statutorily restricted to one form or definition of special benefit as the court determined in Hanna v. City of Palm Bay.

Clearly, then, the potential liability of homestead property for the burden of legally imposed special assessments existed before the 1968 revision to the Florida Constitution and continues without constitutional change. While the 1968 Florida Constitution capped the millage on ad valorem taxes, the ability to impose special assessments on homestead property remained untouched. Furthermore, no special rule or standard of review exists for the validity of special assessments imposed against homestead property. Decades of Florida cases exist which critically examine special assessment programs and require that assessments meet only two criteria: that the assessed properties receive a special benefit and that the assessment is fairly and reasonably apportioned among the benefited properties. When special assessments meet these two criteria, whether the assessments fund services or improvements,

the assessments may be constitutionally imposed against property, homestead and otherwise.

B. Clay **County's Special Assessment For Solid Waste Disposal Provides A Special Benefit To The Assessed Properties As A Matter Of Law.**

The imposition of a special assessment to provide for solid waste disposal is not a novel issue in the State of Florida. The Second and Third District, and now the First District, Courts of Appeal have upheld special assessments for solid waste disposal services and facilities. See Charlotte County v. Fiske, 350 So.2d 578 (Fla. 2d DCA 1977); Gleason v. Dade County, 174 So.2d 466 (Fla. 3d DCA 1965) and Harris v. Wilson, 656 So.2d 512 (Fla. 1st DCA 1995). The special benefit which the County's solid waste assessment confers is the relief of a specific burden caused by the use and enjoyment of property. Simply stated, using improved, residential property generates solid waste. The County's special assessment provides funding to relieve improved, residential property of its solid waste burden generated by the use and enjoyment of that property.

For example, in Charlotte County v. Fiske, 350 So.2d 578 (Fla. 2d DCA 1977), residential property owners within the West Charlotte Sanitation District brought suit to avoid an ordinance which imposed a special assessment on their property for garbage collection and disposal. The circuit court in Charlotte Countv v. Fiske held that the special assessments were invalid, in part

because they were imposed without the construction of any public improvement. The Second District reversed and concluded:

> We summarily dispose of [t]his third reason, viz., that the ordinance imposes a special assessment without construction of a public improvement, by saying that the construction of a public imwrovement is not necessary. The "improvement" involved may well be simply the furnishing of or making available a vital service, e.g., fire protection or, as here, garbage disposal.

350 So.2d at 580 (footnote omitted, emphasis added). The court further held that "fees" for waste and garbage collection may be special assessments for lien purposes, citing Gleason v. Dade County, 174 So.2d 466 (Fla. 3d DCA 1965), which specifically upheld a lien imposed by Dade County for solid waste special assessments. See also Dade County v. Federal National Mortsase Association, 161 So.2d 255 (Fla. 3d DCA 1964).

The Appellants mistakenly distinguish Charlotte County v. Fiske, 350 So.2d 578 (Fla. 2d DCA 1977), from the instant case on grounds that Charlotte County v. Fiske did not involve the issue of special benefit. (Initial Brief at 27) (the Fiske "decision ignored special benefit as well as all other established criteria for a valid assessment."). In addition, the Appellants contend that the court in Charlotte County v. Fiske did not decide the issue of whether special assessments for solid waste disposal could impose a lien against homestead property within the meaning of Article X, section 4, Florida Constitution. (Initial Brief at 26-27). Both of these assertions are erroneous.

First, Charlotte County v. Fiske involved benefit issues. The court in Charlotte County v. Fiske expressly decided the question

of whether a special assessment could be imposed for solid waste disposal services or whether a special assessment could only be imposed for capital improvements. The court stated, "We summarily dispose of his third reason, viz., that the ordinance imposes a special assessment without construction of a public improvement[.]" 350 So.2d at 580 (emphasis added). The court's analysis on the improvement versus service question is purely an issue of benefit: do certain services provide a sufficient special benefit to sustain a special assessment?

Second, the Appellants' distinction that the court in Charlotte County v. Fiske did not address a "homestead" issue is misplaced. Any court which concludes that a special assessment is valid, inherently concludes that the special assessment may be imposed against homestead property. Under the Florida Constitution,

> [e]very person who has the legal or equitable title to real estate and maintains thereon the permanent residence of the owner, . . ., shall be exempt from taxation thereon, except assessments for special benefits[.]

Art. VII, § 6(a), Fla. Const. (emphasis added). Thus, if charges meet the requirements for valid special assessments, they may be imposed against homestead property. No additional tests, requirements or analyses are required.

The Supreme Court of Florida has determined that the benefit required for a valid special assessment does not mean simply an increase in market value but includes potential or added use and enjoyment of the property. Mever v. City of Oakland Park, 219

So.2d 417 (Fla. 1969).[7] In Meyer v. City of Oakland Park, the Supreme Court upheld a sewer assessment on both improved and unimproved property, stating that the benefit need not be direct or immediate but it must be substantial, certain, and capable of being realized within a reasonable time. Furthermore, the benefit need not be determined in relation to the existing use of the property. In City of Hallandale v. Meekins, 237 So.2d 318 (Fla. 4th DCA 1970), aff'd, 245 So.2d 253 (Fla. 1971), the Court indicated that the proper measure of benefits accruing to property from the assessed improvement was not limited to the existing use of the property, but extended to any future property use which could reasonably be made.

The courts in Florida have upheld a variety of services and improvements as providing a special benefit to property for the purposes of imposing a special assessment. Among these are the following: garbage collection and disposal, Charlotte County v. Fiske, 350 So.2d 578 (Fla. 2d DCA 1977); sewer improvements, Citv of Hallandale v. Meekins, supra and Meyer v. City of Oakland Park, supra; fire protection and ambulance services, South Trail Fire Control District, Sarasota Countv v. State, 273 So.2d 380 (Fla. 1973) and Fire District No. 1 of Polk County v. Jenkins, 221 So.2d 740 (Fla. 1969); fire and rescue services, Sarasota County v. Sarasota Church of Christ, 641 So.2d 900 (Fla. 2d DCA 1994); street

[7] Obviously, this Court's jurisprudence on the nature of special benefit is contrary to the Appellants' assertion of what the rule of law should be. The Appellants contend that "assessments are based on the theory that the property owner receives added value in the form of the improvement benefitting the property . . . ." (Initial Brief at 19-20).

improvements, Atlantic Coast Line R. Co. v. Citv of Gainesville, supra, and Bodner v. City of Coral Gables, 245 So.2d 250 (Fla. 1971); parking facilities, Citv of Naples v. Moon, supra; downtown redevelopment, City of Boca Raton v. State, supra; and stormwater management services, Sarasota County v. Sarasota Church of Christ, 20 Fla. L. Weekly S600 (Fla. Dec. 21, 1995).

Furthermore, in the instant case, a direct relationship exists between the solid waste generated from the assessed property and the services and facilities necessary to properly dispose of the waste. This relationship is bolstered by the County's legislative findings of a special benefit and made conclusive by the determination of both the circuit court and the First District Court of Appeal that solid waste disposal provides a sufficient benefit to the assessed properties. 656 So.2d 512, 516 (Fla. 1st DCA 1995) ("We , . . find . . . no error in the trial court's determination that the assessed property derived a special benefit.") .

Not only have the Florida courts recognized that solid waste services may be funded with special assessments, the Florida Legislature has also clearly contemplated the funding of solid waste disposal services through special assessments. Section 125.01(1)(k), Florida Statutes, grants counties the authority to provide and regulate waste collection and disposal, and section 125.01(1)(r), Florida Statutes, grants the power to impose special assessments generally. Also, specific legislative authority exists for counties to impose special assessments for garbage and trash disposal under section 125.01(1) (q), Florida Statutes. A further

indication that the Legislature recognizes the authority of counties to use special assessments for funding solid waste services is that the statutory method for the collection of non-ad valorem assessments on the ad valorem tax bill contained in section 197.3632, Florida Statutes, was enacted as part of the Solid Waste Management Act of 1988. See Ch. 88-130, Laws of Fla. Special assessments are obviously one option for the funding of solid waste disposal services envisioned by **general law.**

C. Clay County Fairly And Reasonably Apportioned Its Solid Waste Disposal Special Assessment.

The second prong of the test for a valid special assessment requires that the assessment be fairly and reasonably apportioned. The Florida rule on apportionment of special assessments is clear:

> Apportionment of the cost of a public [service] is essential to the validity of the assessment therefor, **and the assessment** must represent a fair proportional part of the total cost of the [service].

South Trail Fire Control District of Sarasota County v. State, 273 So.2d 380, 384 (Fla. 1973). The standard of "fair apportionment" means simply that the ultimate assessment method is reasonable and rational. This standard does not require a perfect correlation between benefit and cost and, in this **regard,** this Court in South Trail Fire Control Dist. v. State further noted, "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. , . ." Id. **at 383** (quoting Mever v. Citv of Oakland **Park, 219** So.2d **417, 419-420** (Fla. 1969)). While perfect

apportionment is not required, the courts in Florida do mandate that the assessment imposed not exceed the benefit received. Citv of Treasure Island v. Strong, 215 So.2d 473, 475-76 (Fla. 1968).

In this case, the apportionment of the County solid waste disposal assessment is fair, rational and not excessive. The apportionment was based upon the requirements for providing solid waste disposal services and facilities to improved, residential properties in the County's unincorporated areas. The amount of the assessment reflects the actual cost of providing disposal services and facilities to the properties subject to the assessment and that cost is equally distributed among the assessed properties. (R. 92-184; Ex. 3, paras. 2,3). The courts in Florida have previously upheld this method of apportionment as reasonable and fair. In Charlotte County v. Fiske, 350 So.2d 578 (Fla. 2d DCA 1977), the court specifically addressed the question of fair apportionment for a solid waste disposal special assessment. The court, in upholding the reasonableness of the apportionment method, stated:

> Thirdly, the entire cost of the services to the residential units is equally distributed among such units. It necessarily follows, therefore, that since all residential units bear equal prorata shares of the costs for equal prorata shares of the service, the proportionate "benefits" equal the apportioned costs. The general rule relating to "special assessment," viz., that the "special benefit" must be commensurate with the "special charge," is accordingly satisfied.

Id. at 581 (emphasis added, footnote omitted).

This Court further described "fair apportionment" in Fire District No. 1 of Polk Countv v. Jenkins, 221 So.2d 740 (Fla. 1969), by stating:

> It is also contended that the special assessment was illegal in that the amount determined was based upon the budgetary requirement of the Fire District and no effort was made to determine the relative fire hazard involved in mobile home parks as opposed to other uses.
>
> * * *
>
> The budgetary requirements would be the measure of the value or benefit which is to be apportioned among the properties benefited. This involves the exercise of judgment which was determined by the legislative authority.

Id. at 742 (emphasis added).

In the present case, the County based the special assessment on the budgetary requirements of providing disposal services and facilities to the assessed properties and the costs were apportioned equally among all residential properties. The Affidavit of Robert M. Wilson submitted in support of the Motion for Summary Judgment stated:

> 5. The amount of the assessment imposed upon improved residential property within the unincorporated area of Clay County is equal to the cost of the processing and disposal of solid waste generated from such residential property for the period of January 1, 1993 through September 30, 1993. The assessment is equally imposed upon all improved residential property located within the unincorporated area of Clay County. No profit is included within the partial year solid waste disposal assessment. The amount of the assessment is apportioned to the properties subject to the assessment in an amount equal to or less than the benefit received by such properties.

(R. 92-184; Ex. 2, para. 5) (emphasis added). This method of apportionment is identical to the methodology upheld in both the Charlotte County v. Fiske and Fire District No. 1 of Polk County v. Jenkins cases discussed above.

Furthermore, in City of Boca Raton v. State, 595 So.2d 25 (Fla. 1992), the Supreme Court discussed the role of the judiciary in analyzing the apportionment of a special assessment, and stated:

> At the outset, we note that the City made specific findinss that the improvements would constitute a special benefit to the subject property, that the benefits would exceed the amount of the assessments, and that the benefits would be in proportion to the assessments. The apportionment of benefits is a legislative function, and if reasonable persons may differ as to whether the land assessed was benefitted by the local improvement, the findings of the city officials must be sustained. Rosche v. City of Hollywood, 55 So.2d 909 (Fla. 1952).

Id. at **30** (emphasis added). See also Sarasota County v. **Sarasota** Church of Christ, 20 Fla. L. Weekly S600 (Fla. Dec. 21, 1995).

The apportionment of the assessments in question and the findings made by the Board of County Commissioners of Clay County in its legislative capacity establish that both the special benefit and the fair apportionment tests have been satisfied. The solid waste disposal assessment is a special assessment which complies with the requirements of Florida law.

III. THE COURTS CANNOT SUBSTITUTE THEIR JUDGMENT FOR THE COUNTY'S VALID EXERCISE OF ITS LEGISLATIVE DISCRETION.

A. The County's Legislative Findings Are Presumed To Be Valid.

The Appellants persistently urge this Court to determine that the County's special assessments are invalid on public policy grounds. First, the Appellants assert that because the County has not levied all its constitutional millage, the solid waste disposal

services must be funded from tipping fee or ad valorem tax revenue rather than from special assessment proceeds.* Whether a particular service or improvement may be funded or has in the past been funded by ad valorem taxes or any other revenue source is not dispositive of this case. The decision as to which of the legally available revenue sources will be used is a legislative determination for the County and the courts cannot substitute their judgment for that decision.

This Court has many times confronted the proper role of the judiciary in reviewing the legislative determinations of local governments and has consistently concluded that the propriety of revenue and funding decisions are ones for the local governing boards so long as the chosen method and use is valid. See Town of Medley v. State, 162 So.2d 257, 258-259 (Fla. 1964); Partridge v. St. Lucie County, 539 So.2d 472 (Fla. 1989); State v. Dade County, 142 So.2d 79 (Fla. 1962). For example, in Partridge v. St. Lucie County, 539 So.2d 472 (Fla. 1989), the appellant challenged the validation of special assessment bonds which were to finance street and drainage improvements. The appellant argued that the these improvements were unnecessary and unaffordable. The Court rejected this argument and concluded by saying, "The questions raised by appellants are essentially political questions which fall exclusively within the power of the Board of County Commissioners." Id. (emphasis added); see also DeSha v. City of Waldo, 444 So.2d 16, 19 (Fla. 1984) (citizens opposed funding arrangement for

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[8] Initial Brief at 23.

municipal services on policy grounds and were "merely seeking a second hearing in . . . Court of policy matters already decided, after proper public hearing and discussion.").

Whether this Court, in its judgment, believes that a particular service should be funded in a particular manner is beyond its authority.[9] The social, political, and financial decisions of the Board of County Commissioners in deciding to impose special assessments for solid waste services are exclusively legislative decisions of the County. Once made, this Court's review is limited solely to whether such assessments are valid under the law of Florida and does not extend to the wisdom of funding these services in this manner.

Not only is the decision of how to fund the cost of essential services and facilities a legislative decision for local governments, so are the determinations of special benefit and fair apportionment. This Court, just three months ago, clarified that "the legislative determination as to the existence of special benefits and as to the apportionment of the costs of these benefits should be upheld unless the determination is arbitrary." Sarasota Counts v. Sarasota Church of Christ, 20 Fla. L. Weekly S600, S601 (Fla. Dec. 21, 1995). The County's legislative findings were declared in public documents, debated at public hearings, and are supported by the case law on special assessments. Thus, absent sufficient proof from the Appellants that these findings are arbitrary, the findings are presumed to be valid.

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[9] The question which remains for the judiciary is whether the special assessments are valid under Florida law.

B. Appellants Failed To Create Any Genuine Disputed Issue Of Material Fact Requiring Judicial Rejection Of The County's Findings.

The Appellants argue that the circuit court improperly failed to consider certain documents and that these documents create disputed issues as to the arbitrariness of the County's apportionment method. (Initial Brief at 29-34). However, the documents referred to by the Appellants were properly excluded by the circuit court and the First District Court of Appeal so found. Furthermore, even if the documents should have been considered upon summary judgment, they provide insufficient proof to overcome the presumption of validity for the County's legislative findings.

The procedures which govern a court's consideration of a motion for summary judgment axe contained within Rule 1.510, Florida Rules of Civil Procedure. The specific information which may be reviewed by a court in determining whether a disputed material fact exists and the proper form of that information are also contained within the Rule, which provides:

> The motion shall state with particularity the grounds upon which it is based and the substantial matters of law to be argued and shall be served at least 20 days before the time fixed for the hearing. The adverse party may serve opposing affidavits by mailing the affidavits at least 5 days prior to the day of the hearing or by delivering the affidavits to the movant's attorney no later than 5:00 p.m. two business days prior to the day of the hearing. The iudgment sought shall be rendered forthwith if the pleadings, depositions. answers to interrogatories, and admissions on file together with the affidavits, if any, show that there is no genuine issue as to any material fact and that

the moving party is entitled to a iudgment as a matter of law.

Rule 1.510(c), Fla. R. Civ. P. (emphasis added). The language of Rule 1.510, Florida Rules of Civil Procedure, reflects a clear intent to allow courts to consider only that information which has either been admitted by the parties (e.g., admissions or answers to interrogatories), or which establishes the existence or non-existence of material facts in dispute through timely affidavits. The documents submitted by the Appellants to the circuit court do not comport with the intent of the Rule as they were not timely filed nor were they accompanied by an affidavit.

The Appellants attempted to file, as an exhibit to their Supplemental Response to Defendants' Motion for Summary Judgment, various documents purportedly obtained through discovery. (Transcript 21-23). No accompanying affidavit was provided with those documents and the only discussion concerning what they allegedly represented was by Appellants' attorney in her own memorandum. Id. As such, submission of the documents was not in compliance with Rule 1.510, Florida Rules of Civil Procedure. See DeMesme v. Stephenson, 498 So.2d 673 (Fla. 1st DCA 1986) (upheld exclusion of documents attempted to be filed in conjunction with the motion for summary judgment as beyond the time limits of Rule 1.510 and as not in the form of an affidavit).

Furthermore, Florida Rule of Civil Procedure 1.510(e) states:

> Supporting and opposing affidavits shall be made on personal knowledse, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or bv further affidavits.

Id. (emphasis added). This last requirement, by its language, excludes any document from the record on a motion for summary judgment which is not one of the enumerated documents or is not a certified attachment to a proper affidavit. The Appellants' documents in this case are none of these items. Likewise, in the instant case, the Appellants sought to introduce uncertified documents which were attached to the Appellants' own memorandum of law opposing the Motion. (R. 447-463). The assertions as to what these uncertified documents purportedly meant were not based upon the personal knowledge of the attorney and counsel improperly sought to interject herself as a witness in this cause. As the documents were not timely filed nor in a form required by the Rule, they properly were not considered by the circuit court.

However, even if the court improperly excluded the proposed documents, they do not rebut the presumption of validity for the County's legislative findings. The proposed documents reveal at most a process--not an ultimate conclusion capable of factual dispute. Virtually every proposed document indicates in the body of its text that the document is a "draft"; its calculations were an "exercise"; its conclusions are "projections" and "preliminary";

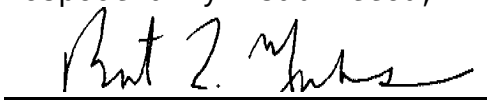
and the method needs "revisions". (R. 447-463). These words, even in the context of their respective documents, do not indicate finality; they reveal only on-going mathematical calculations and not the ultimate apportionment., Furthermore, the County even presented the Affidavit of Rick Patterson, who assisted in preparing the apportionment methodology, stating that the methodology had evolved and changed throughout the implementation process. (R. 92-184, Ex. 3, paras. 2,3). Such an evolution of calculations and formulas does not show arbitrariness on the part of the County; rather, such a process reveals the County's effort to determine fairness and reasonableness.

Further, while the circuit court properly determined that the documents should not have been considered under Florida Rule of Civil Procedure 1.510, in ascertaining the existence of material facts in dispute, as discussed above, it nevertheless submitted them to the appropriate test had they been proper for consideration and found that they did not raise a material fact in dispute which would preclude entry of summary judgment. The First District Court of Appeal affirmed the circuit court's exclusion of the documents but also concluded that even if the circuit court should have considered them, the documents were "insufficient to raise a material dispute concerning the legislative determination of the county." (App. A).

CONCLUSION

This Court should affirm the opinion of the First District Court of Appeal upholding Clay County's solid waste disposal special assessment as providing a special benefit to the assessed properties and as being fairly apportioned among them.

Respectfully submitted,



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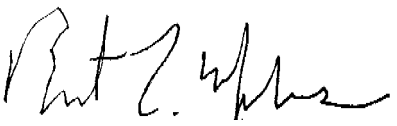
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to GLORIA A. EINSTEIN, ESQUIRE, Jacksonville Area Legal Aid, Inc., 1488 Park Avenue, Orange Park, Florida 32073; APRIL CARRIE CHARNEY, ESQUIRE, Gulfcoast Legal Services, Inc., 1750--17th Street, Unit I, Sarasota, Florida 34234; LARRY E. LEVY, ESQUIRE, The Levy Law Firm, Post Office Box 10583, Tallahassee, Florida 32302; and MARK ALIFF, ESQUIRE, Assistant Attorney General, Office of the Attorney General, Tax Section, The Capitol, Tallahassee, Florida 32399-1050, this 8th day of March, 1996.



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