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IN THE SUPREME COURT OF FLORIDA

BOARD OF COUNTY COMMISSIONERS
OF LAKE COUNTY, FLORIDA, ETC., ET AL.,

Petitioners,

vs.

CASE NO. 88,218

DISTRICT COURT OF APPEAL
FIFTH DISTRICT NO. 94-0729

WATER OAK MANAGEMENT
CORPORATION, ET AL.,

Respondents.
_____/

AMICUS CURIAE
ESCAMBIA COUNTY, FLORIDA
BRIEF IN SUPPORT OF PETITIONER
BOARD OF COUNTY COMMISSIONERS OF
LAKE COUNTY, FLORIDA

ESCAMBIA COUNTY, FLORIDA

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STATEMENT OF THE CASE

Escambia County, Florida ("Escambia County") adopts the Statement of Case as it appears in the Initial Brief of Petitioner, Lake County, Florida.

STATEMENT OF THE FACTS

Escambia County adopts the Statement of Facts as it appears in the Initial Brief of Petitioner, Lake County, Florida.

SUMMARY OF THE ARGUMENT

The issue presented to this Court in Water Oak Management Corporation, et al.. v. Lake County. Florida. etc.. et al., 673 So.2d 135 (Fla. 1996) is whether Lake County's funding by special assessment of solid waste disposal and/or fire protection services is valid under the Florida Constitution. More specifically, this Court has been asked to identify the requisite "special benefit" that must be present to sustain the validity of a special assessment for fire protection as well as other governmental services.

A determination of "special benefit" received by land located in a municipal service benefit unit is a factual legislative determination to be made by a local governing body. Sarasota County v. Sarasota Church of Christ. Inc., 667 So.2d 180 (Fla. 1996). A local governing body's legislative determination is often based on facts and information presented by staff and members of the public during a public meeting and is presumptively valid. Harris v. Wilson, 656 So. 2d 5 12, 5 15 (Fla. 1 st DCA 1995); Association of Community Organizations for Reform Now/Acorn, et al. v. Citv of Florida City, 444 So.2d 37, 39 (Fla. 3rd DCA 1983); Meyer v. Citv of Oakland Park, 219 So.2d 417, 420 (Fla. 1969). "If reasonable men could differ over whether there was a special benefit, the court must defer to the determination of the city officials." Florida City at 39. Thus, a legislative determination will be upheld by a reviewing court unless it is arbitrary and a court should not substitute its judgment for the legislative determination of "special benefits" made by a local governing body. Sarasota County at 184; Harris at 515.

On the one hand, the complete absence of information or facts upon which to base a legislative determination may suggest a local governing body has acted in an arbitrary fashion. "There must be some proof of the benefits other than the dictum of the governing agency."

Fisher v. Board of County Commissioners of Dade County, 84 So.2d 944 (Fla. 1956). Conversely, should this Court now decide to require local governments to make legislative determinations of "special benefit," which are based on a detailed, extensive analysis or study rather than information and facts presented to the local governing body, it will in effect curtail a local government's home rule power to impose special assessments to finance the cost of certain governmental services. In addition, such a requirement would also further erode the deference given to local legislative decisions by reviewing counts. Harris; Florida City; Meyer.

It is possible this Court may find the "special benefit" necessary to uphold a special assessment imposed pursuant to Section 170.01, Florida Statutes (1995) differs from the "special benefit" necessary to uphold a special assessment imposed pursuant to Section 125.01 (l)(q) and (r), Florida Statutes (1995). The "special benefit" conferred on land located in a municipal service benefit unit pursuant to a local government's home rule powers should be broadly construed since a construction to the contrary would be inconsistent with the concept of self-government, which is the cornerstone of home rule in Florida.

For these reasons, this Court should find the Fifth District Court of Appeals' distinction between "benefits" and "special benefits" conferred on lands located in a municipal service benefit unit receiving fire protection or other governmental services to be a distinction without difference.

ARGUMENT

ISSUE I. THE FIFTH DISTRICT COURT OF APPEAL ERRED IN WATER OAK MANAGEMENT CORPORATION ET AL.. V. LAKE COUNTY. FLORIDA, ETC.. ET AL., 673 SO.2D 135 (FLA. 5TH DCA 1996), WHEN IT HELD LAKE COUNTY'S FIRE SPECIAL ASSESSMENT WAS INVALID BECAUSE THE SPECIAL ASSESSMENT FAILED TO CONFER A "SPECIAL BENEFIT" ON LANDS LOCATED IN THE MUNICIPAL SERVICE BENEFIT UNIT.

The Fifth District Court of Appeal erred in Water Oak Management Cornoration et al., v. Lake Countv. Florida. etc.. et al., 673 So.2d 135 (Fla. 5th DCA 1996) when it held Lake County's fire protection service special assessment failed the "special benefit" requirement under existing case law. In Sarasota County v. Sarasota Church of Christ, 667 So.2d 180, 183 (Fla. 1995), this Court held "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." This Court explained "a valid special assessment must meet two requirements: (1) the property assessed must derive a special benefit from the service provided; and (2) the assessment must be fairly and reasonably apportioned according to the benefits received." Id. at 184. The "special benefit" may not be the same as or similar to the benefit generally conferred on all property in the community from the governmental service. Rather, the "special benefit" must be distinguished from the benefits received by the community as a whole. City of Boca Raton v. State of Florida, 595 So.2d 25, 29 (Fla. 1992). Satisfaction of these requirements require determinations of fact by a legislative body and "should be upheld unless the determination is arbitrary." Sarasota County at 184.

A. LEGISLATIVE DETERMINATIONS OF "SPECIAL BENEFITS" ARE PRESUMPTIVELY VALID.

The Fifth District Court of Appeal erred in its review of Lake County's legislative finding of a "special benefit" when it attempted to draw a distinction between a "special benefit" and a "benefit" to land located within the fire protection district. The Fifth District Court of Appeal overlooked fundamental principles of local government law regarding the presumption of validity possessed by legislative determinations by local governments. Harris v. Wilson, 656 So.2d 512, 515 (Fla. 1st DCA 1995); Association of Community Organizations for Reform Now/Acorn. et al. v. City of Florida City, 444 So.2d 37, 39 (Fla. 3rd DCA 1983); Meyer v. City of Oakland Park, 219 So.2d 417, 420 (Fla. 1969).

The Fifth District Court of Appeal correctly noted the divergent result in special assessment cases and observed that the question of "special benefit" is, to a great extent, driven by the facts." Water Oak at 137. A local government's legislative determination of "special benefit" is a conclusion reached by the local governing body based on information and facts presented to the local governing body by staff and the public. A local governing body's legislative determination can be based on information, facts, correspondence, reports, and testimony by experts, or other consultants. Thus, a local governing body's legislative determination of "special benefit" is a factual finding rather than a conclusion of law.

However, in the absence of any information or facts before the local governing body, it is reasonable to conclude any resulting factual findings would be arbitrary. "There must be some proof of the benefits other than the dictum of the governing agency." Fisher v. Board of County Commissioners of Dade County 84 So.2d 944 (Fla. 1956). Thus, if a scintilla of information or

fact is presented to the local governing body and the local governing body makes a legislative determination of "special benefit," a reviewing court should conclude the legislative determination is not arbitrary if reasonable men could differ over whether there was a "special benefit". Sarasota Countv at 184; Florida City at 39.

A local government should not be required to engage in an extensive or exacting analysis or study to identify "special benefits" accruing to lands located in municipal service benefit units. Not only would a local governing body face the formidable task of quantification of a qualitative governmental service, but it would also face the task of completing numerous analysis, which would be very costly, if not prohibitive. For example, there are over ninety thousand (90,000) owners of land located in Escambia County's Fire Protection District, created by Escambia County's Fire Protection Ordinance,' who were assessed for fire protection services in fiscal year 1996.[2] A quantitative finding of a "special benefit" as suggested by the Fifth District Court of Appeal would require a budget allocation to pay for the cost of over ninety thousand (90,000) individual analysis of "specially benefited" lands.

Moreover, a finding of a "special benefit" to lands located in the municipal service benefit unit should have no expiration date. It is not necessary for a local government to engage in a continuing analysis and study of "special benefits" conferred on land located in the municipal service benefit unit each year. A local governing body only need to make a legislative

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'Sections 1-15-46 through **1-15-61,** Code of Ordinances, Escambia County, as amended by Ordinance 96-13, creating Sections l-l 5-62 through l-l 5-80, Code of Ordinances, Escambia County, Florida.

[2]Fire Protection System Year 1996, End of Month Status Report, located in the office of the Honorable Ernie Lee Magaha, Clerk of the Circuit Court of Escambia County, Florida.

determination of special benefit in a resolution adopted in a public meeting. To address any changes in the "special benefits" conferred on a specific parcel of land Escambia County's Fire Protection Ordinance, like most other county ordinances, contains an appeal process to correct errors in the determination or calculation of a fire protection service "special benefit," on a case-by-case basis. Although such an appeal mechanism may be more in the nature of a quasi-judicial review, the initial finding of "special benefit" remains legislative in nature and is presumed valid when based on legislative findings by the local governing body.

B. THE "SPECIAL BENEFIT" REQUIRED UNDER SECTION 170.01, FLORIDA STATUTES (1995) DIFFERS FROM THE "SPECIAL BENEFIT" REQUIRED PURSUANT TO SECTION 125.01(1)(q), FLORIDA STATUTES (1995).

The Fifth District Court of Appeal stated "'[s]pecial' doesn't mean a benefit to property that it wouldn't otherwise enjoy; it is supposed to mean different in type or degree from benefits provided the community as a whole." Water Oak at 138. The Fifth District Court of Appeal relies on Section 170.01, Florida Statutes (1995) as authority for its position. However, there is a difference between the requirement for a "special benefit" under Section 170.01 and the requirement for a special benefit under Section 125.01(1)(q) and (r), Florida Statutes (1995). Harris at 515.

In Harris, the First District Court of Appeal stated "[w]e are unaware of any constitutional prohibition which would preclude a special assessment based on a county or municipality's home rule power from being assessed throughout an entire taxing unit." Id. The First District Court of Appeal proceeded to distinguish limitations placed as special assessments based on statutory language contained in Chapter 170, Florida Statutes from limitations that may apply to special

assessments enacted pursuant to a local government's home rule powers. Id.; Citv of Boca Raton.

A decision of whether to finance delivery of a particular governmental service by special assessment is a political decision to be made by a local governing body. See Town of Medlev 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). Once made, judicial review is limited to whether the special assessments enacted under home rule powers are valid under existing law and not whether the funding decision was sound. The range of government services that may be appropriate for financing through the imposition of a special assessment pursuant to home rule powers is broad. Section 125.01 (l)(q) and (r) provide:

> (1) The legislative and governing body of a county shall have the power to carry on county government. To the extent not inconsistent with general or special law, this power includes, but is not restricted to, the power to:
>
> *****
>
> (q) Establish...municipal service taxing or benefit units for any part or all of the unincorporated area of the county, within which may be provided fire protection, law enforcement, beach erosion control, recreation service and facilities, water, streets, sidewalks, street lighting, garbage and trash collection and disposal, waste and sewage collection and disposal, drainage, transportation, indigent health care services, mental health care services, and other essential facilities and municipal services from funds derived from service charges, special assessments, or taxes within such unit only... If ad valorem taxes are levied to provide essential facilities and municipal services within the unit, the millage levied on any parcel of property for municipal purposes by all municipal service taxing units and the municipality may not exceed 10 mills. This paragraph authorizes all counties to levy additional taxes, within the limits fixed for municipal purposes, within such municipal service taxing units under the authority of the second sentence of s. 9 (b), Art. VII of the State Constitution.
>
> (r) Levy and collect taxes, both for county purposes and for the providing of municipal services within any municipal service taxing unit, and special assessments; borrow and expend money; and issue bonds, revenue certificates, and other obligations of indebtedness, which power shall be exercised

in such manner, and subject to such limitations, as may be provided by general law.

Many courts have upheld special assessments levied for other enumerated governmental services. See generally Charlotte County v. Fiske, 350 So.2d 578 (Fla. 2d DCA 1977)(upholding garbage collection and disposal special assessments); City of Hallandale v. Meekins, 237 So.2d 318 (Fla. 4th DCA 1970) (upholding sewer special assessments) Meyer v. City of Oakland Park, supra, (upholding sewer special assessments); South Trail Fire Control District. Sarasota County v. State, 273 So.2d 380 (Fla. 1973) (fire protection and ambulance services); Fire District No. 1 of Polk County v. William Jenkins. Jr., 221 So.2d 740 (Fla. 1969)(fire protection and ambulance services) Sarasota County, supra, (fire and rescue services); Atlantic Coast Line R. Co. v. City of Gainesville, 91 So. 118 (Fla. 1922) (street improvements); Boder v. City of Coral Gables, 245 So.2d 250 (Fla. 1971); City of Naples v. Moon, 269 So.2d 355 (Fla. 1972) (parking facilities); City of Boca Raton, supra, (downtown redevelopment). A assessment imposed pursuant to a County's home rule powers satisfies the requirements for validity identified by this Court in Sarasota County, it too should be held valid regardless of the type of governmental service at issue.

CONCLUSION

Escambia County submits the Fifth District Court of Appeal erred when it attempted to create a distinction between a "benefit" and a "special benefit" conferred on land by fire protection services. The distinction is one without difference in view of the deferential standard of review afforded legislative determinations of "special benefit" by local governing bodies. The attempted distinction curtails a local government's ability to finance government services by the imposition of special assessments on specially benefited lands pursuant to its home rule powers. For the reasons stated herein, Escambia County requests this court reverse the decision of the Fifth District Court of Appeal and find the Lake County Fire Special Assessment valid.

Respectfully submitted this 19th day of July, 1996.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by United States Mail to Sanford A. Minkoff, Esquire, Minkoff & McDaniel, P.A., 226 West Alfred Street, Tavares, Florida 32778; Virginia Saunders Delegal, Esquire, Gregory T. Stewart, Esquire, and Robert L. Nabors, Esquire, Nabors, Giblin & Nickerson, Barnett Bank Building, Suite 800, 3 15 South Calhoun Street, Tallahassee, Florida 32301; Gaylord A. Wood, Esquire, Wood & Stuart, 304 S.W. 12th Street, Ft. Lauderdale, Florida 33315; Daniel C. Brown, Esquire, 106 E. College Avenue, Suite 1200, P. 0. Box 1877, Tallahassee, Florida 32302; and Larry E. Levy, Esquire, 215 S. Monroe St., Suite 803, P. 0. Box 10583, Tallahassee, Florida 32302, this 19th day of July, 1996.

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