IN THE SUPREME COURT OF FLORIDA
CASE NO. 88,218

LAKE COUNTY, FLORIDA, et al.,

Appellants,

v.

WATER OAK MANAGEMENT
CORPORATION, et al.,

Appellees.
_____________________________/

INITIAL BRIEF OF APPELLANT, LAKE COUNTY, FLORIDA

On Appeal from the Fifth District Court of Appeal
Case No. 94-02729

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PRELIMINARY STATEMENT

In an effort to assist this Court, this Initial Brief addresses the solid waste disposal special assessment, which was upheld by the Fifth District Court of Appeal, as well as the fire protection special assessment, which was struck by the Fifth District Court of Appeal, because the Fifth District Court's certified question to this Court included both issues.

STATEMENT OF FACTS AND CASE

Lake County, Florida (the "County") is a non-charter county operating under the authority of Article VIII, section 1(f), Florida Constitution. Under the br-oad home rule powers authorized in the 1968 Florida Constitution and implemented in Chapter 125, Florida Statutes, non-charter counties have all powers of self-government so iong as the exercise of such powers is not inconsistent with a general iaw or special act. Furthermore, the Florida Legislature has enumerated certain specific powers to counties, including the authority to provide for fire protection and solid waste collection and disposal. §§ 125.01(1)(d), (1)(k)1., Fla. stat., respectively. In furtherance of this constitutional and statutory authority, the County adopted various ordinances and resolutions to provide such services. The property owners, Water Oak Management Corp., et al. (the "Appellees") are challenging these special assessment programs as failing to provide a special benefit to the assessed properties.

Fire Protection Services

Under the County's constitutional and statutory authority, it currently provides comprehensive and consolidated fire protection services including both fire suppression activities and first response medical aid. The first response medical aid or rescue services stabilize and provide initial medical treatment until ambulance transport service can arrive. (Deposition of Craig Haun, p. 34, 11. 21-24, R. 2843). This subsequent ambulance treatment

and transport service is provided through contracts with local hospitals and is not funded by special assessments. (Deposition of Craig Haun, p. 36, 11. 13-20, R. 2845).

The County began its comprehensive approach to fire protection services in 1980 when it created five fire control districts to facilitate the provision of fire protection services. In the aggregate, the boundaries of the five fire control districts ultimately included all of the unincorporated areas and the municipal boundaries of the Town of Lady Lake. (Affidavit of Craig Haun, p. 2, para. 2, R. 1616). The County funded these districts through a special ad valorem tax levy, which was approved by the voters. In 1984, the method of funding fire protection services was changed when the voters of Lake County and the voters within each fire control district approved, by referendum, the imposition of a special assessment for fire protection. (Affidavit of Craig Haun, p. 3, para. 2, R. 1617). As a result of this voter approval, the County established, in 1985, a maximum assessment rate for various land uses within each fire control district.[1] The County provided and funded fire protection services from the proceeds of the special assessment levied within each fire control district.

On December 11, 1990, the County adopted Ordinance 1990-24 which consolidated the five separate fire control districts into

[1] For example, the maximum assessment rate for residential property within each fire control district was $35.00 per year. (Affidavit of Craig Haun, p. 3, para. 2, R. 1617). The assessment rates for other assessed property varies based on property use. (County Resolution No. 1992-155, R. 1787).

one municipal service taxing unit ("MSTU"),[2] including the entire unincorporated area of the County and the City of Minneola and Town of Lady Lake.[3] (Affidavit of Craig Haun, pp. 3-4, para. 5, R. 1617-1618). This ordinance, which consolidated the previously existing fire control districts into a single service unit, also authorized the collection of the fire and rescue special assessments pursuant to section 197.3632, Florida Statutes.

Solid Waste Disposal

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").[4] The Act is a comprehensive regulatory scheme for solid waste management which delegates the responsibility for solid waste management functions among the State, counties, and municipalities. The Act requires counties to provide for the disposal of solid waste generated within the county. Section 403.706(1), Florida Statutes, mandates: "The governing body of a county has the responsibility and power to provide for the operation of solid waste disposal facilities to

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[2] The County acknowledges that "MSTU" is an improper term for the funding mechanism imposed in this case. The County should have labeled the new unit as an "MSBU"--municipal service benefit unit. The substantive analysis for this case does not change, however, regardless of the label.

[3] The City of Minneola and the Town of Lady Lake each approved their inclusion within the County's MSTU. (Affidavit of Craig Haun, p. 4, para. 5, R. 1618).

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

meet the need of all incorporated and unincorporated areas of the county. . . ."

With the constitutional and statutory powers of self-government vested in non-charter counties and the statutory responsibility for solid waste management mandated to be performed by counties as a backdrop, the Lake County Board of County Commissioners adopted Ordinance Nos. 1938-13 and 1990-14. (Affidavit of Ronald Roche, pp. 2-3, para. 2, R. 1420-1421). These ordinances required all solid waste generated on property within Lake County to be disposed of at the County's approved solid waste facility, (Affidavit of Ronald Roche, pp. 2-3, para. 2, R. 1420-1421).

On December 11, 1990, the County adopted Ordinance 1990-26 cr-eating an MSTU for the provision of solid waste services within the unincorporated area of the County. (Affidavit of Ronald Roche, p. 3, para. 3, R. 1421). The same meeting at which the County adopted Ordinance 1990-26, the County also adopted Resolution 1990-153, providing notice of the County's intent to use the non-ad valorem assessment method contained in section 197.3632, Florida Statutes.[5] (Affidavit of Ronald Roche, p. 3, para. 3, R. 1421). Beginning with Fiscal Year 1992-1993, the County imposed special assessments for solid waste disposal services on all improved <u>residential property</u> within the unincorporated area of the County

[5] Although the County adopted Resolution 1991-91 on June 4, 1991, which initially approved the solid waste non-ad valorem assessment for Fiscal Year 1991-1992, the County ultimately decided not to go forward with the assessment and none was imposed for that year. (Affidavit of Ronald Roche, p. 3, para. 3, R. 1421).

which did not have an agreement with a franchised solid waste hauler or **was** not otherwise exempt. (Affidavit of Ronald Roche, p. 5, para. 8, R. 1423). Significantly, the County declared in Resolution 1992-166 that the properties subject to the assessment were specially benefited by the provision of solid waste management and disposal services in the amount of the assessment. (Affidavit of Ronald Roche, pp. 5-6, para. 8, R. 1423-1424). In the following year, 1993, the County expanded the scope of the solid waste management and disposal assessment to include imposition against all improved property (not just residential) within the unincorporated area. (Affidavit of Ronald Roche, p. 6, para. 10, R. 1424).

Within the County, the cost of providing solid waste disposal is presently funded in three ways. First, those property owners who have a contract with a solid waste hauler pay the cost of disposal directly to the hauler and the County imposes no special assessment against their property. The hauler then pays the cost of disposing that solid waste to the County through tipping fees. (Affidavit of Ronald Roche, p. 8, para. 15, R. 1426). Significantly, each of the Appellees in this case receive solid waste services through a hauler and the County does not impose a special assessment against them for solid waste disposal. (Affidavit of Ronald Roche, p. 9, para. 17, R. 1427).[6] Second,

[6] The County preserved its argument on standing in its Answer to the Amended Complaint but because the circuit court ruled, as a matter of law that both special assessment programs were valid, it never reached the standing issue.

those properties for which no contract with a hauler exists pay the cost of solid waste disposal through the County's special assessment. Third, beginning in 1993, property which has a contract with a hauler can voluntarily request **that** the cost be collected through the **special** assessment and thus have the collection charge of the hauler appropriately reduced. (Affidavit of Ronald Roche, p. 8, para. 15, R. 1426).

The Procedural History

The Appellees here are the property owners of homestead, single family residences, and an owner of a commercial mobile home park and they filed suit against the County, seeking declaratory and injunctive relief from both the fire protection and solid waste disposal special assessments.[7] (Amended Complaint, R. 1036-1065) (Attached hereto as "Appendix C"). Specifically, as to the fire protection assessment, the Appellees alleged that "[n]o local improvements exist, the cost of which may be apportioned among specially benefited properties, fire protection services are not local improvements which may be financed through the imposition of special assessments as part of the taxing power." (Amended Complaint, p. 12, para. 28(d), R. 1047). As to the solid waste disposal assessment, the Appellees argued that the assessment was an invalid service charge imposed against homestead property in

[7] The issue of whether the assessed services met the fair apportionment requirement for a valid special assessment **was** not before either the circuit court or the Fifth District Court of Appeal.

violation of the Florida Constitution. (Amended Complaint, p. 18, para. 39(b), R. 1053).

The County moved for summary judgment, arguing that both assessments were valid as a matter of law and that no material facts were in dispute. (R. 1290-1418). After a hearing on the motion, the circuit court entered summary final judgment in favor of the County on both the fire protection and solid waste disposal special assessments. (R. 3237-3260, attached hereto as "Appendix B"). The Appellees appealed to the Fifth District Court of Appeal (r. 3261-3287), which struck the County's special assessment imposed for fire protection services but upheld the imposition of a special assessment for solid waste disposal. The court stated, "While we find no error in Lake County's special assessment of all improved non-exempt property in the county for solid waste disposal, especially in light of the Supreme Court of Florida's recent decision in Sarasota County v. Sarasota Church of Christ, Inc., 667 So. 2d 180 (Fla. 1995), we cannot agree that Lake County's fire protection special assessment is a valid special assessment," Water Oak Manasement Corp. v. Lake Countv, 673 So. 2d 135, 136 (Fla. 5th DCA 1996) (footnote omitted) (attached hereto as "Appendix A"). Additionally, the court certified the following question to the Supreme Court of Florida:

> IS LAKE COUNTY'S FUNDING BY SPECIAL ASSESSMENT OF SOLID WASTE DISPOSAL AND/OR FIRE PROTECTION SERVICES VALID UNDER THE FLORIDA CONSTITUTION?

673 so. 2d at 139.

The County timely filed its Notice of Appeal from the decision in the Fifth District Court of Appeal and the Appellees have cross-appealed. This Court has reserved ruling on jurisdiction but established a schedule for briefs on the merits by order dated June 12, 1996.

SUMMARY OF THE ARGUMENT

This Court should vacate the decision of the Fifth District Court of Appeal in this case and affirm the decision of the circuit court, finding that both the County's special assessments for fire protection and solid waste disposal were valid as a matter of law.

The County's special assessments meet the requirements of providing a special benefit to the assessed properties and fairly and reasonably apportioning the costs of the services among the benefited properties. Most particularly, both the solid waste disposal and fire protection services are logically related to the use of and enjoyment of the assessed properties. As such, both services, as created and implemented by the County, confer a special benefit on the assessed properties. The County's special assessments for fire protection and solid waste disposal are further bolstered by over 20 years of Florida precedent specifically upholding these services as ones which may be validly funded with special assessments.

In addition, the Lake County Board of County Commissioners legislatively declared that both services confer this special benefit and those findings, in the absence of direct evidence to the contrary, are entitled to judicial deference. Likewise, the decision of a local, legislative body to fund services or improvements from special assessments is not subject to judicial review. The question which remains for the judiciary is not whether one funding source among many is better but whether the chosen funding source meets the requirements for that source.

Thus, in this case, the fact that the County had previously funded its fire protection and solid waste disposal services through non-special assessment revenue sources does not effect the validity of such special assessments.

Furthermore, this Court has specifically and recently clarified that whether a service or Improvement is provided throughout a community is not a fact to consider in evaluating an otherwise valid special assessment. The requirements for special assessments remain the same regardless of the size or shape of the geographic area in which the assessed services or improvements are provided. Thus, because the County's special assessments for fire protection and solid waste disposal specially benefit the assessed properties and they are fairly apportioned among those benefited properties, the fact that both services are provided community-wide does not invalidate the assessment programs.

ARGUMENT

1. INTRODUCTION

In the recent opinions of Citv of Boca Raton v. State, 595 so. 2d 25 (Fla. 1992), and Sarasota County v. Sarasota Church of Christ, 667 So. 2d 180 (Fla. 1995), this Court has provided clear direction as to the requirements of valid special assessments. As a result of the instant case and two other cases currently pending,' this Court now has the opportunity to provide further instruction on the constitutional structure and use of special assessments. Clear and consistent judicial guidance from this Court on the application of the requirements for a valid special assessment is imperative to maintain the stability of local government finance. Nowhere are the competing demands of our changing society on the financial capacity of government more clear and apparent than in the city halls and county courthouses. Special assessments are an established home rule revenue source available to local governments to fund several essential services and many capital improvements. Predictability in enforcing local government finance choices requires consistent and reliable rules.

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[8] Oral argument on the review of Harris v. Wilson, 656 So. 2d 512 (Fla. 1st DCA 1995), rev. pendinq, 666 So. 2d 143 (Fla. 1995), is scheduled for September 6, 1996 (Case No. 86,210). Similar to this case, the issue in Harris is the validity of a special assessment imposed on all improved residential property within the unincorporated area to provide solid waste disposal services. The judicial discretion to not order a refund of an invalid special assessment imposed in good faith has been certified by the First District Court of Appeal in Madison County v. Foxx, 672 So. 2d 840 (Fla. 1st DCA 1996), rev. pendinq, Supreme Court Case No. 87,594.

This Court took the opportunity in City of Boca Raton v. State, 595 So. 2d 25 (Fla. 1992), to summarize, for the first time, decades of case law into an articulated, clear, and succinct two prong test for valid special assessments. This Court declared, "First, the property assessed must derive a special benefit from the services provided. [cits. omitted] Second, the assessment must be fairly and reasonably apportioned among the properties that receive the special benefit." 595 so. 2d at 29.[9] This Court, in its City of Boca Raton decision, also clearly recognized that the benefit considerations primarily define the difference between a tax and a special assessment. This Court explained: "Taxes and special assessments are distinguishable in that, while both are mandatory, there is no requirement that taxes provide any specific benefit to the property; instead, they may be levied throughout the particular taxing unit for the general benefit of residents and property. On the other hand, special assessments must confer a special benefit upon the land burdened by the assessment." Id.

More recently, this Court took the opportunity to provide additional guidance as to the characteristics of valid special

[9] A separate "special benefit test" was generally not at issue in cases decided under the 1885 Florida Constitution because a county or municipality did not possess the home rule power to impose a special assessment and because a tax could be authorized by a special act. This absence of any constitutional distinction between a general law or a special act as the vehicle for statutory authorization for both taxing and regulatory powers of local governments had blurred the language used to describe the two-prong test articulated in City of Boca Raton. Thus, whether the charge was a special assessment within county or municipal home rule power or a tax preempted to the State was not an issue in decisions prior to the 1968 constitutional revision.

assessments through its opinion in Sarasota County v. Sarasota Church of Christ, 667 So. 2d 180 (Fla. 1995), by specifically clarifying four principles,

First, this Court in Sarasota County v. Sarasota Church of Christ recognized that the community-wide imposition of a special assessment program is not a factor in determining its validity. This Court stated as follows:

> 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. Rather, 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 is true regardless of whether the recipients of the benefits are spread throughout an entire community or are merely located in a limited, specified area within the community. See, e.g., South Trail (special assessment for fire services found to benefit all properties within the district,

667 So. 2d at 183 (emphasis in original).

Second, this Court clarified that merely because a specially assessed service had been funded through ad valorem taxes is not a factor in evaluating its validity. This Court commented:

> 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 at issue complies with the dictates of chapter 403 and is a more appropriate funding mechanism under the intent of that statute.

667 So. 2d at 186.

Third, legislative determinations as to the existence of special benefit and fair apportionment are entitled to judicial deference unless found to be arbitrary. 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." 667 So. 2d at 184.

Fourth, the special benefit concept includes the elimination of a burden caused by property use. In analyzing the special benefit of stormwater management, this Court declared:

> Because this stormwater must be controlled and treated, developed properties are receiving the special benefit of control and treatment of their polluted runoff. This special benefit to developed property is similar to the special benefit received from the collection and disposal of solid waste. [cits. omitted].

667 So. 2d at 186.

Even in light of this Court's clarifications in Sarasota County v. Sarasota Church of Christ, confusion as to the critical principles in determining the validity of a special assessment still exists. For example, the Fifth District Court of Appeal in the instant case appeared to be confused. It said, "If Lake County's fire protection services provide a benefit that is 'special,' then 'special' has a meaning the supreme court needs to explain more fully, for everyone's benefit. . . . [T]he boundaries, if any, of special assessment funding need to be drawn more clearly." Water Oak Management Corp. v. Lake County, 673 so. 2d 135, 139 (Fla. 5th DCA 1996). Thus, the substance of the

certified question that the Fifth District Court has asked is the following: what is the boundary line dividing services which are capable of providing special benefits to property from services which, by their nature, provide only a general benefit to the community and thus may not be funded with special assessments? See 673 So. 2d at 139.

This identical concern was raised by the Second District Court of Appeal in its decision reversed by this Court in Sarasota County v. Sarasota Church of Christ, 667 So. 2d 180 (Fla. 1995). The Second District Court worried that if services were "allowed to routinely become special assessments then potentially, the exemption of Churches from taxation w[ould] be largely illusory." Sarasota County v. Sarasota Church of Christ, 641 So. 2d 900, 903 (Fla. 2d DCA 1994), rev. in part, 667 So. 2d 180 (Fla. 1995). The Second District Court based its concern on "a review of . . . [the evidence] reveal[ing] that the significant majority of items presently comprising the [County's] ad valorem tax base are services by nature. A domino effect could ensue if the special assessments are continually expanded to include general services. . . ." Id.

In this case, the Fifth District Court's uncertainty as to the boundary line between services capable of being funded by special assessments and those not was clearly the major influence in its decision to invalidate the County's special assessments for fire protection services. This uncertainty focuses on the special benefit prong of the two-prong test for a valid special assessment.

While judicial standards of interpretation evolve by applying rules to specific facts, prior decisions of this Court provide ample guidance to soften the uncertainty as to the boundary line for special benefits. An analysis of this precedent leads to the inevitable conclusion that the special benefit boundary line encompasses both fire and rescue and solid waste special. assessments.

II. LAKE COUNTY'S SPECIAL ASSESSMENTS FOR SOLID WASTE DISPOSAL AND FIRE PROTECTION SERVICES PROVIDE A SPECIAL BENEFIT TO THE ASSESSED PROPERTIES.

The County's special assessments for solid waste disposal and comprehensive fire protection services fulfill the criteria for valid special assessments. Florida law requires that first, the assessed property 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, 121 (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"). The provision of solid waste disposal and fire protection services provides a special benefit to the assessed properties because a logical relationship exists between the use and enjoyment of

[10] Special assessments must also meet the "fair apportionment-" test; the cost of providing the assessment program must be fairly and reasonably apportioned among the benefited properties. Citv of Boca Raton v. State, 595 So. 2d 25, 29 (Fla. 1992). No issue is raised in this appeal as to the "fair apportionment" test with respect to the County's special assessments for fire protection and solid waste disposal.

property and the services provided. See Harris v. Wilson, 656 So. 2d 512 (Fla. 1st DCA 1995), rev. pending, 666 So. 2d 143 (Fla. 1995); Charlotte County v. Fiske, 350 So. 2d 578 (Fla. 2d DCA 1977) (court upheld special assessment for solid waste disposal); Fire District No. 1 of Polk County v. Jenkins, 221 So. 2d 740 (Fla. 1969) (court upheld special assessment for fire protection); South Trail Fire Control Dist., Sarasota County v. State, 273 So. 2d 380 (Fla. 1973)(court upheld special assessment for fire and ambulance services).

In addition to the special benefit concepts which the Court clarified in Sarasota County v. Sarasota Church of Christ, 667 so. 2d 180 (Fla. 1995), this Court has previously determined that a special benefit may exist in a variety of forms. For example, while the benefit required for a valid special assessment is evidenced by an increase in value, the special benefit concept also includes potential increases in value as well as added use and enjoyment of the property. Mever v. Citv of Oakland Park, 219 so. 2d 417 (Fla. 1969). In Meyer, the Court upheld a sewer assessment on both improved and unimproved property, stating that the benefit need not be direct nor immediate; but, the benefit must be substantial, certain, and capable of being realized within a reasonable time.

Furthermore, a special benefit need not be determined in relation to the current use of property. In City of Hallandale v. Meekins, 237 So. 2d 318 (Fla. 4th DCA 1970), aff'd, 245 So. 2d 253 (Fla. 1971), the owner of a dog track challenged a sewer assessment

imposed against property, a portion of which the owner used as a parking lot. The court rejected the property owner's challenge and 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 court stated that "[t]he special benefit is the availability of the [sewer] system and is permanent, but the use to which the property is put is usually temporary and changes from time to time." Id. at 322. Thus, "no necessary correlation [need exist] between the special benefit conferred upon property . . . and the present use being made of such property." Id. (emphasis added).

Finally, even special benefits that incidentally benefit properties which are not assessed will sustain valid special assessments. For example, in Charlotte County v. Fiske, 350 So. 2d 578 (Fla. 2d DCA 1977), the Second District Court concluded that Charlotte County's special assessment for solid waste collection and disposal provided a special benefit, noting, "The mere fact that the community at large, . . . peripherally may also enjoy the cleaner and garbage-free environment does not change this [special benefit]." Id. at 581.

In this case, the Fifth District Court of Appeal concluded that the County's comprehensive fire protection services, including rescue assistance, provided no special benefit to the properties assessed. The court declared:

> Although appellants' [Water Oak] property may "benefit" from the fire protection services offered, they do not meet the "special benefit-" requirement because there is no benefit accruing to the property in addition to those received by the community at large. [cits. omitted]

Water Oak Manasement Corp. v. Lake County, 673 So. 2d 135, 137 (Fla. 5th DCA 1996). Thus, the court concluded that "[t]here is little doubt based on prior case law that fire protection services provide a benefit to the properties assessed, Less obvious is whether the benefit is special." 673 So. 2d at 138 (cits. omitted). Unfortunately, in the Fifth District Court's struggle to find a definition of "special benefit," it either misunderstood or misidentified the direction to which the Florida courts have pointed in defining special benefit as including fire and rescue services.

A. A Special Benefit Is Present When A Logical Relationship Exists Between The Assessment Program and The Use And Enjoyment Of Real Property.

The boundary line of special benefit, which the Fifth District Court of Appeal struggled to find, not only embraces the cases upholding dozens of various special assessments, but is clearly articulated in the past precedent of this Court holding special assessments invalid on benefit grounds. See Crowder v. Phillips, 1 so. 2d 629 (Fla. 1941), and Whisnant v. Strinsfellow, 50 So. 2d 885 (Fla. 1951). For example, in Crowder v. Phillips, 1 So. 2d 629 (Fla. 1941), this Court determined that a hospital was not an improvement that could be funded by special assessments. The

hospital did not provide "special benefits to the real property located in the district." 1 so. 2d at 631. The Court reached this conclusion because "no logical relationship [existed] between the construction and maintenance of a hospital, important as it is, and the improvement of real estate situated in the district." Id. at 631 (emphasis added). The Court **clearly** acknowledged, however, "that a hospital is **a** distinct advantage to the entire community . . . ." Id. Thus, the difference between a special benefit and a general benefit in Crowder v. Phillips turned on whether **a** logical relationship existed between the service provided and the property assessed.

Similarly, in Whisnant v. Strinsfellow, 50 so. 2d 885 (Fla. 1951), this Court held that a county health unit could not be funded by special assessments because its existence provided no special benefit to property. The Court acknowledged the logical relationship to property standard articulated in Crowder V. Phillips as follows:

> See also Crowder v. Phillips, 146 Fla. 428, 1 so. 2d 629, 631, in which it was indicated that an improvement for which an "[assessment] for special benefits" is made must bear some logical relationship to the enhancement of the value of the real estate located in the taxing district.

50 so. 2d at 885. The Court then noted that "[a] county health unit is a source of benefits to all people of the county." 50 So. 2d at 885. However, according to the Court, "there would appear to be no 'special or peculiar benefit' to the real property located in the county by reason of its establishment -- no 'logical

relationship' between its establishment and . . . the real estate situated in the county." Id. at 885-86 (emphasis added).

Thus, general governmental services are constitutionally required to be funded by taxes, not special assessments because general governmental services fail to meet the special benefit requirement for legally imposed special assessments. General governmental services are those that have no logical relationship to the use and enjoyment of property and thus exclusively serve the general public good. Taxes "may be levied throughout the particular taxing unit for the general benefit of residents and property. On the other hand, special assessments must confer a special benefit upon the land burdened by the assessment." City of Boca Raton v. State, 595 So. 2d 25, 29 (Fla. 1992) (cits. omitted).

The logical relationship to the use and enjoyment of property clearly defines the boundary line between special and general benefits and resolves the Fifth District Court's confusion in this case. In a footnote, the court stated, "Fire services also provide a benefit. Less clear, however, is why first response medical care is a benefit to the property unless 'removing a sick person from the property' is the benefit." 673 So. 2d at 138, n.8 (emphasis in original). This confusion then led the Fifth District Court along a parade of horribles as it said, "If that is so, then the removal of bad people from property by law enforcement would be a benefit justifying special assessment funding for police protection. The county's recording function presumably also is fundable by special assessment as a service to the property. Even the courts, under

the same reasoning, could be funded by special assessment since the courts settle title disputes, adjudicate torts committed against property and on property and, through their injunctive power, can order all sorts of unwanted persons off property." Id. (emphasis in original).

The Fifth District Court's concerns, as advanced by this language, are unfounded. In contrast to the logical relationship to property standard for a special benefit, no relationship exists between a general common benefit and the taxpayer:

> A tax is not an assessment of benefits. It is, as we have said, a means of distributing the burden of the cost of government. The only benefit to which the taxpayer is constitutionally entitled is that derived from his enjoyment of the privileges of living in an organized society, established and safeguarded by the devotion of taxes to public purposes. [cits. omitted1 Any other view would preclude the levying of taxes except as they are used to compensate for the burden on those who pay them, and would involve the abandonment of the most fundamental principle of government that it exists primarily to provide for the common good.

Dressel v. Dade County, 219 So. 2d 716, 720 (Fla. 3d DCA 1969), aff'd, 226 So. 2d 402 (Fla. 1969) (quoting Carmichael v. Southern Coal & Coke Co., 301 U.S. 495 (1937)). General governmental services such as most law enforcement activities, the provision of courts, indigent health care, and county real estate recording functions are required to accommodate the "privilege of being in an organized society" and exist "primarily to provide for the common good." These services and other general functions required for an organized society, like elections and courthouses, possess no

logical relationship to the use and enjoyment of property and would therefore fail to meet the special benefit requirement for a valid special assessment.

In contrast, the use and enjoyment of property generates solid waste which must be managed and disposed. Additionally, a consolidated fire protection and rescue program protects structures, improvements, and their anticipated occupants as well as the real property on which they are sited.[11] These fire protection services provide a clear and logical relationship to the use and enjoyment of property.

B. The Legislative Finding That A Logical Relationship Or Special Benefit Exists Is Entitled To Judicial Deference.

In Sarasota County v. Sarasota Church of Christ, 667 So. 2d 180 (Fla. 1995), this Court stated that both prongs of the special assessment test clarified in Citv of Boca Raton v. State, 595 So.

[11] First response medical assistance is an integral part of a consolidated fire control service delivery system. Generally, and in this case, fire protection services and first response medical assistance are provided by the same equipment and personnel. See, e.q., Rule 4A-37.055(21), Fla. Admin. Code (requires all certified fire-fighters to successfully complete 20 hours of lecture and 20 hours of drill in "First Responder" training in emergency medical services). Thus, the two services, fire-fighting and first response medical attention, are inherently related. The costs to provide both services are integrated and no incremental cost is incurred to provide. first response medical assistance. In contrast, while some functions of law enforcement are similar to first response medical assistance in their relationship to property, most law enforcement activities are directed to the control of people who are mobile. Law enforcement activities are not limited to crime committed within structures, but wherever it may occur. Thus, in most law enforcement activities, no logical relationship exists between the enforcement of laws and specific property uses.

2d 25 (Fla. 1992), "constitute questions of fact for a legislative body rather than the judiciary." 667 So. 2d at 183. The Court also declared that

> [t]o eliminate any confusion regarding what standard is to be applied, we hold that the standard is the same for both prongs; that is, 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.

Id. at 184. See also 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 by the local improvements, the determination of the City officials as to such benefits must be sustained."). Acting as a legislative body, the Lake County Board of County Commissioners specifically found that both its solid waste disposal and fire protection special assessments conferred the required special benefits on the assessed properties.

For example, the County Commission specifically determined that special benefits accrue to the properties assessed for solid waste disposal. County Resolution No. 1992-166, stated:

> (A) The parcels of Improved Residential property described in the Assessment Roll, a copy of which is present at this September 2, 1992 public meeting and is incorporated herein by reference, which is hereby approved, are hereby found to be specially benefitted by the provision of the solid waste management and disposal facilities and services described in the Initial Assessment Resolution in the amount of the Solid Waste Management System Assessment set forth in the Assessment roll.[12]

[12] Similar findings were made in Resolution 1993-130 (R. 1601-1608).

(R. 1500-1501). Furthermore, affidavit testimony presented in the circuit court declared that assessed property derived the following special benefits from the County's solid waste assessment:

> the availability of solid waste disposal facilities to properly and safely dispose of solid waste generated on properties subject to the assessment; closure and long term monitoring of the disposal facilities required as a result of the disposal of solid waste generated from the properties subject to the assessment; a potential increase in value to improved properties by the availability of disposal services for solid waste generated by such properties; improved solid waste disposal services and management to owners and tenants of propertses subject to the assessment; and the enhancement of environmentally responsible use and enjoyment of the properties subject to the assessment.

(Affidavit of Ronald Roche, p. 9, para. 16, R. 14273. These findings are presumed to be correct and thus entitled to judicial deference unless those challenging them show that they are arbitrary.

As with the solid waste special assessments, the County Commission legislatively declared that its fire and rescue special assessment provided special benefits. The County declared that

> some of the benefits accruing to the real property by the provision of the fire and rescue services through the levy of this non-ad valorem assessment are:
>
> 1. <u>A reduction in fire insurance premiums</u>;
>
> 2. <u>The public safety is protected</u>; and
>
> 3. The public health is protected.

(County Resolution No. 1991-133, pp. 3-4, § 3, R. 1768-1769) (emphasis added). The Fifth District Court recognized that these same benefits were specifically upheld in Fire District No. 1 of Polk County v. Jenkins, 221 So. 2d 740 (Fla. 1969), but apparently, and inexplicably, concluded that they were insufficient to uphold the special assessment program here. 673 So. 2d at 138, n.8.

Interestingly, when the Fifth District Court rejected the County's determination of its fire protection special benefits, the court ignored language which itself cited from Fire Dist. No. 1 of Polk County v. Jenkins, 221 So. 2d 740 (Fla. 1969), upholding fire protection special assessments. The Fifth District Court quoted the following language from Polk County: "Fire protection and the availability of fire equipment afford many benefits. Fire insurance premiums are decreased; public safety is protected; the value of business property is enhanced by the creation of the Fire District, a trailer park with fire protection offers a better service to tenants . . .." 673 So. 2d at 137 (emphasis added) (quoting Polk County, 221 So. 2d 740, 741 (Fla. 1969)).

Thus, while the court acknowledged this Court's clarification in Sarasota County v. Sarasota Countv Church of Christ, 667 So. 2d 180 (Fla. 1995), on the standard for reviewing both legislative findings of special benefit and fair apportionment, it failed to apply this Court's standard correctly. The Fifth District Court, in examining the County's benefit findings on fire protection, referenced no evidence presented by the Appellees as to the lack of

special benefit. Rather, the court, merely concluded, on its own, that the County's legislative findings of benefit were arbitrary. The court said, "The determination that Lake County may fund its fire services for the entire unincorporated county plus two municipalities by special assessments based on a special benefit to all assessed properties seems 'arbitrary' to us." 673 So. 2d at 139. The Fifth District Court's substitution of its judgment for that of the County Commission is precisely what this Court was attempting to cure with its language in Sarasota County v. Sarasota Church of Christ, 667 So. 2d 180 (Fla. 1996).

The Fifth District Court's rejection of some of the same benefits which this Court has already declared sufficient for special benefits -- in the absence of evidence from the Appellees of arbitrariness and when this Court has approved community-wide special assessments and special assessments for fire and rescue services -- is an improper substitution of judicial judgment for the exercise of legislative discretion by the County Commission.

C. No Heightened Scrutiny Exists For An Otherwise Valid Special Assessment When The Assessment Is Imposed Throughout A Community.

The Fifth District Court of Appeal construed the case of Fire Dist. No. 1 of Polk County v. Jenkins, 221 So. 2d 740 (Fla. 1969), upholding special assessments for fire protection and control services and suggested that a community-wide special assessment program for fire protection services could not provide a special benefit to property. Water Oak Management, 673 So. 2d at 137-38.

According to the reasoning of the court, only a special assessment for fire protection services imposed in a discrete geographic area may provide a special benefit. Id. The Fifth District stated:

> For example, the creation of a special fire district, within a iimited area of the county, to bring fire services which formerly were distant, into close proximity with the property would seem to offer a special benefit of the kind the high court. had in mind in Polk County. On the other hand, for a county simply to conclude one day that its same historically provided county-wide fire services are of "special benefit" to the property located within its boundaries and, accordingly, to begin specially assessing all the properties to pay for their service seem not to be the kind of "special benefit" to property contemplated by the high court. [cits. omitted].

673 So. 2d at 137-138. This reasoning is not supported by historical case precedent and it is directly contrary to this Court's recent decision in Sarasota County v. Sarasotg Church of Christ, 667 So. 2d 180 (Fla. 1995) . This Court clearly declared that "[a]lthough 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 cost of services can never be levied throughout a community as a whole." Id. at 183 (emphasis added).

This Court in Sarasota County v. Sarasota Church of Christ further clarified that the two-prong test for a valid special assessment -- that a special benefit be present and that the cost of its provision be fairly and reasonably apportioned -- remains the same "regardless of whether the recipients of the benefits are spread throughout an entire community or are merely located in a

limited, specified area within the community. See, e.g., South Trail (special assessment for fire services found to benefit all properties within the district)." 667 So. 2d at 183 (emphasis in original). See also Harris v. Wilson, 656 So. 2d 512, 515 (Fla. 1st DCA 1995), rev. pending, 666 So. 2d 143 (Fla. 1995) ("We are also 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.").

A trilogy of cases is generally cited by those challenging special assessment programs as standing for the proposition that an assessment imposed throughout a community cannot provide special benefits. See St. Lucie County-Ft. Pierce Fire Protection & Control Dist. v. Higgs, 141 So. 2d 744 (Fla. 1962); Fisher v. Board of Co. Comm'rs of Dade Co., 84 So. 2d 572 (Fla. 1956); City of Ft. Lauderdale v. Carter, 71 So. 2d 260 (Fla. 1954). The uncertainty of the Fifth District Court is based on its analysis of one of these cases - St. Lucie County - Ft. Pierce Fire Protection & Control District v. Higgs. These cases do not however even imply, much less hold, that community-wide special assessments cannot confer special benefits. Rather, each of these three cases involved a governmental attempt to avoid the assessed valuation homestead exemption from ad valorem taxation by the labeling of an ad valorem tax as an "assessment of benefits." In each case, the charge was described as a "tax" in the authorizing legislation and was imposed on all parcels of property at a rate based on the

assessed valuation of the property determined for purposes of ad valorem taxation.

The services provided were fire control in Higgs, garbage collection in Carter, and street paving and lighting in Fisher. These cases did not, however, turn on the special benefit prong of the test for valid special assessments. Rather, these cases were "fair apportionment" cases. This conclusion is obvious and apparent from the nature of the services provided. For example, no one could reasonably argue that street paving and lighting are improvements and services that do not possess a sufficient logical relationship to the use and enjoyment of abutting property to satisfy the special benefit requirement. See, e.g., Atlantic Coast Line R. Co. v. City of Gainesville, 91 so. 2d 118 (Fla. 1922). Thus, in Fisher v. Board of Co. Comm'rs of Dade Co., this Court held the street paving and lighting assessment invalid under the fair apportionment test after stating the issue as follows:

> The question readily appearing is whether a special improvement district can be created with authority to pave and repair streets and provide street lighting and assess the costs and maintenance thereof against all real property within the district, including homesteads, entirely on the basis of the ad valorem valuation of such real property without particular regard to the "special benefits" accruing to such property from the particular improvements.

84 So. 2d at 574 (emphasis in original). In St. Lucie County-Fort Pierce Fire Protection & Control Dist. v. Higgs, the case relied on by the Fifth District Court, the fire control assessments were

similarly held invalid for failing to meet the fair apportionment requirement. The Court stated:

> We agree with the learned circuit judge that the levy is a tax and not a special assessment for the reason he gave, namely, that no parcel. of land was specially or peculiarly benefited in wroportion to its value, but at that the tax was a general one on all property in the district for the benefit of all. Our view harmonizing with that of the circuit judge, it follows that we also accept his conclusion that the first $5000. of each homestead is exempt because only in the case of special assessments could it be reached.

141 so. 2d at 746 (emphasis added!. Finally, in City of Ft. Lauderdale v. Carter, the garbage assessment was held invalid for the following reasons:

> In the instant case the tax is laid against all the real and personal property in the city in accordance with its 'value. As respects real property, no distinction is made between occuwied or vacant wroperties, or, if occuwied. whether the property is being used for commercial or residential purposes. Moreover, the tax imposed does not attempt to bear anv proportionate relationship to the cost of the service to be rendered as to any particular property.

71 so. 2d at 261 (emphasis added).

These cases, at first blush, appear to invalidate all special assessments imposed community-wide. Such a conclusion would be a misreading of these cases and a misapplication of their holdings. Each case in the trilogy stands only for the propositions that (1) the ad valorem taxes could not be converted into something they were not by a mere label and that (2) the special benefit received by properties from the challenged services did not bear any logical relationship to their assessed values for ad valorem taxation

purposes. Thus, assessed **value** is not a reasonable or fair method to apportion the special benefit received by property from road paving, fire protection, and solid waste management.

No issue of fair apportionment exists in this appeal. The Fifth District Court held that the County's fire and rescue services failed to meet the special benefit prong of the City of Boca Raton v. State two prong test for **a** valid special assessment. Such **a** decision **was** clearly influenced by **a** misapplication and misunderstanding of the fair apportionment decision in one of the **cases** in the trilogy and a frustration created by an inability to articulate a boundary between essential services potentially capable of being funded by special assessments and those required to be funded by taxes.

D. Local Governments May Lawfully Create Assessment Programs For Services And Improvements Which Were Previously Funded Through Ad Valorem Taxes Or Other Revenue Sources.

This Court has many times confronted the proper role of the courts in reviewing the legislative determinations of local governments and has consistently exercised judicial deference and concluded that the propriety of revenue and funding decisions are ones for the local governing boards so long as the chosen method 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. Citv of Waldo, 444 So. 2d 16, 19 (Fla. 1984) (citizens opposed funding arrangement for 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.").

In the Fifth District Court's analysis of this issue, several problems exist. The court seemed to not focus on the specifics of how the County had previously funded both solid waste disposal and fire protection services. For example, the County's solid waste disposal services were previously funded through tipping fees, not ad valorem taxes. Furthermore, the County has funded its comprehensive fire services through special assessments since 1985. Between 1980 and 1985, the various districts which provided fire services were funded in part by a special ad valorem levy. In 1985, the County began to reorganize the various fire districts. The County held a referendum on whether the voters in the various fire districts would approve the imposition of a special assessment on their property for fire protection and rescue services. The voters approved this concept and the County began to impose special

assessments as the funding source for fire protection services. This funding source continued through the fire district consolidation process, ultimately unifying all fire protection activities into a single County fire department. The transition of the individual districts to a unified system and the County's decision to continue to fund such activities through special assessments are legislative determinations of the Board of County Commissioners based upon the revenue options available to them.

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

This judicial deference to legislative decisions on funding sources was, again, made clear by this Court in <u>Sarasota County v. Sarasota Church of Christ</u>, 667 So. 2d 180 (Fla. 1995). as it noted that the validity of special assessments is not questioned merely because services, which were previously funded by taxes, are now funded by special assessments. 667 So. 2d at 186. <u>See also Harris v. Wilson</u>, 656 So. 2d 512 (Fla. 1st DCA 1995), <u>rev. pending</u>, 666 so. 2d 143 (Fla. 1995) (court rejected argument that because solid

waste services had been previously funded with ad valorem property taxes that they could not be funded with special assessments).

III. THE FIFTH DISTRICT COURT OF APPEAL ERRED IN IGNORING THE 20 YEARS OF, FLORIDA CASE PRECEDENT UPHOLDING SPECIAL ASSESSMENTS FOR FIRE AND RESCUE: SERVICES.

The courts in Florida are clear. Consolidated fire and rescue services, such as first response medical aid, can provide special benefits to property. See Fire District No. 1 of Polk County v. Jenkins, 221 So. 2d 740 (Fla. 1969) (court upheld special assessment for fire services); South Trail Fire Control District, Sarasota County v. State, 273 So. 2d 380 (Fla. 1973) (court upheld special assessment for fire and ambulances services); Sarasota County v. Sarasota Church of Christ, 641 So. 2d 900 (Fla. 2d DCA 1994), rev'd on other grounds, 667 So. 2d 180 (Fla. 1995) (court upheld special assessment for fire and ambulance services).

For example, in Fire District No. 1 of Polk County v. Jenkins, a fire protection special assessment was imposed against mobile home rental spaces, some of which were vacant. The property owner challenged the assessment, in part, by claiming insufficient special benefits. This Court reversed the trial court's ruling on this issue and determined that fire protection provided special benefits, even to vacant mobile home spaces. In addition, in South Trail Fire Control District v. State, property owners in Sarasota County challenged fire and ambulance service special assessments. This Court, in upholding the special assessment for fire and ambulance, deferred to legislative findings which stated, "The

furnishing of protection against fire, and the furnishing of ambulance service . . . are hereby declared to be benefits to all property within the territorial bounds of the district[.]" 273 So. 2d at 382 (emphasis added). In both South Trail Fire Control District, and Sarasota County v. Sarasota Church of Christ, Inc., 641 So. 2d 900 (Fla. 2d DCA 1994), the funding of ambulance services through special assessments was upheld.

In this case, the nature of the rescue services provided by the County, incidental to its fire protection activities, is more limited than the medical transport activities upheld in these Sarasota County cases.[13] The ambulance services are provided through a contractual relationship which is not paid by the special assessment program for fire protection but is funded from other County revenue. Consequently, the County, through the "rescue" portion of the assessment provides only the stabilization of medical emergencies or extrication of people from property and structures. Any additional medical treatment, including ambulance transport is not funded by, nor provided under, the fire protection special assessment program. Furthermore, because the same personnel respond to both fire and rescue alarms and must be certified to carry out both fire fighting and first response

[13] Although not apparent from the decision, the term "ambulance service" is generally used to describe a much broader service delivery system than the first response medical aid function included in the County's comprehensive fire protection program. The broad term "ambulance service" would generally include medical transports which are not a component of the County's fire protection assessment and are funded from other revenue sources.

services, the availability of the rescue service is an integral part of the County's fire protection program.

The special benefits from the County's fire protection services are precisely those recognized by this Court in the Polk County and Sarasota County cases as constituting a sufficient special benefit. The availability of fire control and protection to the assessed property results not only from the actual calls for service to that property but also from the containment of fires on adjacent property which may ultimately spread to that property. (Affidavit of Craig Haun, p. 6, para. 12, R. 1620). In addition, affidavit testimony in this case demonstrated that fire service directly benefits the property through lower insurance premiums. (Affidavit of Harry Glass, pp. 1-2, R. 1820-1822). Ironically, although Appellee Water Oak contends that it receives no special benefit from fi-re services, it has actually required calls for service specifically tc its property on at least 42 occasions since 1990. (Affidavit of Craig Haun, pp. 7-8, para. i.4, R. 1621-1622).

The Fifth District Court of Appeal seemed concerned that because "people" are also benefited by the provision of fire and first response services, special. assessments may not be used to fund these services. This argument is contrary tc the Polk County, South Trail, and Sarasota Church of Christ, cases which stated that many of the benefits which constitute a special benefit relate to the owner or possessor of property. The enhancement of the use and enjoyment of property, the protection of public safety, the availability of better service to tenants, and reduction of

insurance costs, have all been determined to constitute a special benefit sufficient for the imposition of a special assessment and all logically relate to the use and enjoyment of property.

While the Fifth District Court stated that this case does not conform with South Trail Fire Control Dist., Sarasota County v. State, 273 So. 2d 380 (Fla. 1973), the court never expressly offers a distinction between this case and South Trail. Such an oversight is significant because in South Trail this Court upheld a special assessment program which funded both fire and ambulance services. See Sarasota County v. Sarasota Church of Christ, 641 So. 2d 900 (Fla. 2d DCA 1994)(struck stormwater but upheld fire and rescue special assessment). This Court analyzed and upheld the legislative declaration that "[t]he furnishing of protection against fire, and the furnishing of ambulance service in accordance with the purposes of the district are . . . benefits to all property within the territorial bounds of the district . . .." South Trail, 273 So. 2d at 382.

Furthermore, the disagreement of the Fifth District Court with the case precedent on fire and rescue special assessments seemed to be driven by the belief that rescue services incidentally provided in conjunction with a comprehensive and consolidated fire protection program fail to provide a special benefit to assessed properties. As a part of the comprehensive fire protection services provided by the County, the County fire department also responds to calls for service when preliminary medical treatment is required prior to the arrival of ambulances. These rescue calls

are responded to with the same personnel as "pure" fire-fighting calls. Likewise, a "pure" fire-fighting call is responded to with the same personnel as a "pure" rescue call. Although directed to the preservation of life, these first response medical services do provide a special benefit to property. Rescue services, when provided as part of fire activities, protect persons who reside, occupy or have reason to be present at such property; provide better service to actual and potential occupants of property; and enhance the public safety of property. Additionally, in a comprehensive fire protection program, both fire control and rescue services are fully integrated by supervisors, personnel and equipment and the incremental cost of the rescue component is negligible.[14]

Thus, the County's fire and rescue special assessment is logically related to the use and enjoyment of the assessed property. The County's legislative findings of special benefit are entitled to judicial deference and they have not otherwise been proven to be arbitrary. These benefits are bolstered by the history of Florida case law upholding the use of special assessments to provide consolidated fire protection services.

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[14] The Florida Legislature recently recognized that fire protection and rescue services can provide special benefits to property. The Legislature created a new section 170.201, Florida Statutes, which proclaims that "[i]n addition to other lawful authority to levy and collect special assessments, the governing body of a municipality may levy and collect special assessments to fund capital improvements and municipal services, including, but not limited to, fire protection, emergency medical services, garbage disposal, sewer improvement, street improvement, and parking facilities." ch. 96-324, Laws of Fla.

IV. THE LAKE COUNTY SOLID WASTE DISPOSAL SPECIAL ASSESSMENT PROGRAM IS SUPPORTED BY ESTABLISHED FLORIDA CASE LAW PRECEDENT.

A direct relationship exists between the solid waste generated from the assessed property and the services and facilities necessary to properly dispose of such waste. This relationship is bolstered by the County's legislative findings of a special benefit and made conclusive by the circuit court's determination that solid waste disposal provides a sufficient benefit to the assessed properties.

As with fire and rescue, the imposition of a special assessment to provide for solid waste disposal is not a novel issue in the State of Florida. The First, Second, and Third District Courts of Appeal have upheld special assessments for solid waste disposal. See Harris v. Wilson, 656 So. 2d 512 (Fla. 1st DCA 1995), rev. pending, 666 So. 2d 143 (Fla. 1995); Charlotte County v. Fiske, 350 so. 2d 578 (Fla. 2d DCA 1977); and Gleason v. Dade County, 174 So. 2d 466 (Fla. 3d DCA 1965). 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 property generates solid waste. The County's special assessment provides funding so that the County can relieve property of its solid waste burden, created by the use and enjoyment of that property.

The most recent case in Florida specifically upholding special assessments for solid waste disposal as providing a special benefit

is <u>Harris v. Wilson</u>, 656 So. 2d 512 (Fla. 1st DCA 1995). In <u>Harris v. Wilson,</u> indigent, residential property owners sued Clay County seeking relief from a solid waste disposal special assessment which was imposed on residential properties throughout the unincorporated area of the county. The First District Court of Appeal upheld the assessment despite the property owners' arguments that:

> (1) a special assessment may not be levied throughout an entire taxing unit, (2) that special assessments are not appropriate for the provision of certain services such as stormwater or solid waste, . . . and (3) that questions of fact were presented concerning the apportionment of benefits in light of the documents which were improperly rejected by the trial court.

656 So. 2d 512, 514. The court rejected the first argument and declared that "[p]roviding for the proper disposal of solid waste generated on properties subject to the assessment clearly provides a special benefit within the meaning of Article VII, Section 6 of the Florida Constitution." 656 So. 2d at 515 (quoting trial court). In addition, the First District Court analyzed Clay County's provision of solid waste disposal services with the following:

> [T]he residential property in the instant case which was subject to the assessment, received benefits which were different in degree and type from those received by other properties within the taxing unit. For instance, vacant land generates far less solid waste than improved property. Commercial properties are more easily serviced by commercial haulers who may be subjected to a tipping fee at the dump based on the volume produced. Improved residential property may clearly be

> differentiated from other types of properties in reference to solid waste generated.

656 so. 2d at 515-16.

Furthermore, in Charlotte County v. Fiske, 350 So. 2d 578 (Fla. 2d DCA 1977), residential property owners brought suit to avoid an ordinance which imposed a special assessment on their property for garbage collection and disposal. The circuit court in Charlotte County held that the special assessments were invalid, in part because they were imposed without the construction of any public improvement. The Second District Court 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 improvement is not necessary." 350 So. 2d at 580. Then, most significantly for this case, the court in Charlotte County commented, "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." Id. (footnotes omitted). The court's analysis on the improvement versus service question was purely an issue of special benefit: do certain services provide a sufficient special benefit to sustain a special assessment? Thus the court clearly stated "In sum, we ~~hold~~ that the assailed ordinance is valid and that the service charges provided for therein ~~may be assessed and levied as a~~ 'special

assessment.'" Charlotte County, 350 so. 2d at 581 (emphasis added).[15]

While the case of City of Fort Lauderdale v. Carter, 71 So. 2d 260 (Fla. 1954), is often cited for the proposition that special **assessments** cannot be imposed for solid waste management services because such services cannot provide a sufficient special benefit, that case was decided on apportionment grounds.[16] In City of Fort Lauderdale, the City imposed a charge against "all the real and personal property in the city in accordance with its value." 1 So. 2d at 261 (emphasis added). The City of Fort Lauderdale, in turn, used the proceeds of this charge "to defray the expenses of garbage, waste and trash collection," Id. In imposing the solid waste charge, the City of Fort Lauderdale made no distinction between "occupied or vacant properties, or, if occupied, whether the property is being used for commercial or residential properties." Id. Finally, this Court concluded that the property against which the City of Fort Lauderdale imposed the charge was not benefitted in proportion to its value and invalidated the charge **as** an unauthorized ad valorem tax on homestead properties. Id.

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[15] This Court even recently recognized that solid waste is a proper- service for special assessments. See Sarasota County v. Sarasota Church of Christ, 667 So. 2d 180, 186 (Fla. 1995) ("This special benefit to developed property [of stormwater control] is similar to the special benefit received from the collection and disposal of solid **waste.").**

[16] See the discussion at Point II(C) of the Initial Brief of City of Fort Lauderdale and the other two cases in the trilogy of **cases** holding invalid as apportionment based on the assessed value of property for ad valorem taxation purposes.

The instant case is clearly distinguishable from City of Fort Lauderdale. First, the County's solid waste special assessment is not imposed indiscriminately on all real and personal property in the County. Rather, the assessment is potentially imposed only against improved real property (r. 1424), and then collected only from property which does not contract with a private franchised solid waste hauler. (Affidavit of Ronald Roche, pp. 8-9, para. 16, R. 1426-1427). Unlike City of Fort Lauderdale, the County does not calculate the amount of the assessment based on the ad valorem value of the assessed property. The County fairly and reasonably apportions the cost of providing solid waste disposal services among those properties which are benefited by the services based on the amount of solid waste anticipated to be generated by the property use.

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 specific authority to provide and regulate waste collection and disposal, and section 125.01(1) (r), Florida Statutes, grants the specific power to impose special assessments generally.[17] Also, specific

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[17] No general laws exist which limit the power of a county to impose special assessments for solid waste collection and disposal other than the procedural requirements of section 197.3632, Florida Statutes, when the non-ad valorem collection process is used. The circuit court specifically found that all these requirements were met.

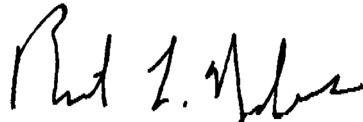
legislative authority exists for counties to impose special assessments for garbage and trash disposal under section 125.01(1)(q), Florida Statutes. A further indication that the Legislature recognizes the authority of counties to use special assessments for funding solid waste services is that the statutory 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.

Thus, the County's solid waste disposal special assessment is logically related to the use and enjoyment of the assessed property. The County's legislative findings of special benefit are entitled to judicial deference and they have not otherwise been proven to be arbitrary. These benefits are bolstered by the history of Florida case law upholding the use of special assessments to provide solid waste management services.

CONCLUSION

The Lake County special assessments for solid waste disposal and fire protection services are logically related to the use and enjoyment of property and thereby confer special benefits on the assessed properties. Consequently, this Court should vacate the decision of the Fifth District Court of Appeal and affirm the decision of the circuit court upholding both special assessments as a matter of law.

Respectfully submitted,



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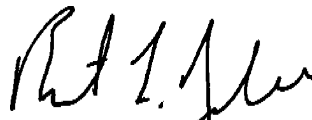
ATTORNEYS FOR APPELLANT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to DANIEL C. BROWN, ESQUIRE, Katz, Kutter, Haigler, Alderman, Davis, Marks, Bryant & Yon, P.A., Highpoint Center, Suite 1200, 106 East College Avenue, Tallahassee, Florida 32301; LARRY E. LEVY, ESQUIRE, Post Office Box 10583, Tallahassee, Florida 32302; DAVID G. TUCKER, ESQUIRE and NANCY STUPARICH, ESQUIRE, Escambia County, 14 West Government Street, Suite 411, Pensacola, Florida 32501; and GAYLORD WOOD, ESQUIRE, Wood & Stuart, 304 Southwest 12th Street, Fort Lauderdale, Florida 33315-1549, this 22nd day of July, 1996.



ROBERT L. NABORS

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Amended Complaint, Filed April 28, 1994 C

Appendix A

as to Counts II and III. At a hearing on the violation, appellant entered pleas of no contest to both counts. The trial court revoked probation and imposed concurrent sentences of nine years imprisonment on Counts II and III-to run consecutive to the earlier sentence in Count I. Appellant was given credit for all time served, including time served on Count I. The court entered written sentencing orders consistent with the sentences imposed at the hearing. This appeal follows.

Appellant submits that this court's earlier opinion does not constitute the law of the case which would permit the lower court to revoke probation as to Count II. Appellant states that it was not brought to this court's attention in the earlier appeal that he was never placed on probation as to Count II. We agree.

The trial court's initial analysis of the problem was correct. There should not be a VOP order entered when a probation "sentence" was never imposed. However, 'since the record reflects that the trial court intended to impose probation on Count II originally, this oversight may be corrected on remand but no violation of this court is justified based on conduct occurring before the correction is made.

REVERSED and REMANDED.

DAUKSCH and W. SHARP, JJ., concur.

WATER OAK MANAGEMENT CORPORATION, et al., Appellants,

v.

LAKE COUNTY, Florida, etc., et al., Appellees.

No. 94-2729.

District Court of Appeal of Florida, Fifth District.

May 10, 1996.

Owner of homestead property in unincorporated area of county brought action challenging imposition of special assessments for fire protection and solid waste disposal which were made by county. The Circuit. Court, Lake County, Mark J. Hill, J., entered summary judgment upholding validity of assessments, and owner appealed. The District Court of Appeal held that: (1) solid waste assessment was valid, but (2) fire protection assessment did not provide special benefit to landowners and was invalid special assessment under special benefit test.

Affirmed in part, reversed in part, and remanded, and question certified.

1. Municipal Corporations ⚷438

Term "special," as used to describe special benefits to property generated by provision of government service which will justify special assessment, does not mean benefit to property that it wouldn't otherwise enjoy, but means different in type or degree from benefits provided community as a whole.

See publication Words and Phrases for other judicial constructions and definitions.

2. Municipal Corporations ⚷430, 438

Special assessment need not be limited to specific area or class of property owners, and there may be special benefit, justifying special assessment, whether recipients are spread throughout entire community or are merely located in limited specified area within community.

3. Counties ⚷22

Fire protection services provided by county under plan which consolidated all of county's previously created fire control districts into single unit and authorized collection of special assessments did not provide special benefit to properties on which tire protection special assessment was imposed, and assessment was invalid under special benefit test; every piece of property and every person in unincorporated areas of county had access to same services, and special assessment merely funded undifferentiat-

ed service for county and was designed to reduce costs of service that would othenvise come from general revenue funded by ad valorem taxes.

Daniel C. Brown, of Katz, Kutter, Haigler, Alderman, Marks & Bryant, P.A., and Larry E. Levy, Tallahassee, for Appellants.

Robert L. Nabors, Gregory T. Stewart, and Virginia Saunders Delegal, of Nabors, Giblin & Nickerson, P.A., Tallahassee, and Rolon W. Reed and Sanford A. Minkoff, Tavares, for Appellee, Lake County, Florida.

Gaylord A. Wood, Jr., of Wood & Stuart, P.A., Fort Lauderdale, for Appellee, Ed Havill as Lake County Property Appraiser.

PER CURIAM.

Appellants, Water Oak Management Corporation, Sun QRS, Inc., and John Richard Sellars, appeal the summary fmal judgment of the lower court upholding the validity of Lake County's special assessments for fire protection and solid waste disposal.' While we find no error in Lake County's special assessment of all improved non-exempt property in the county for solid waste disposal, especially in light of the Supreme Court of Florida's recent decision in ***Sarasota County v. Sarasota Church of Christ, Inc., 667*** So.2d 180 (Fla.1995),[2] we cannot agree that Lake County's fire protection special assessment is a valid special assessment. Accordingly, we reverse the summary final judgment as it pertains to the special assessment for fire protection. We will, however, certify the issue of validity of this special assessment to our supreme court.

Fire protection services are authorized by the Florida Constitution under county home rule powers and under section 125.01(1)(d), Florida Statutes (1993). Pursuant to section 125.01(1)(q), the county may establish, merge or abolish municipal service taxing or benefit units (MSTU, MBTU) for any or all of its unincorporated areas, within which may be provided a wide variety of services ranging from fire protection to transportation to health care. The statute provides that funds for these services may be derived from service charges, special assessments or taxes.[3] With consent, the MSTU or MBTU can include all or part of a municipality.

In 1980, Lake County created various fire control districts within the county to facilitate the provision of fire protection services in the unincorporated area. Lake County funded these districts through a special *ad valorem* tax levy. In 1984, the voters of Lake County and the voters within each fire control district approved the imposition of a special assessment for fire protection. Consequently, in 1985 Lake County changed its fire control program to impose a special assessment against property for fire protection. Lake County also established the maximum amount of the assessment for various land uses. Lake County provided and funded fire control services in this manner until 1990.

On December 11, 1990, Lake County adopted Ordinance 1990-24 which created a single MSTU[4] consisting of the entire unincorporated area of Lake County, the city of Minneola, and the town of Lady Lake. This ordinance had the effect of consolidating all the county's previously created fire control districts into a single unit and authorized the collection of special assessments pursuant to section 197.3632, Florida Statutes (1993). Lake County's affidavit filed in support of the motion for summary judgment recites that the properties assessed are "benefitted" because they receive fire protection.5

1. Appellants contend these special assessments are void under Article VII, Sections 6 and 9. and Article X, Section 4. of the Florida Constitution.

2. *But see Harris v. Wilson, 656* So.2d 512. 519-20 (Fla. 1st DCA 1995) (Booth, J. dissenting), *review granted, 666* So.2d 143 (Fla.1995).

3. We read this section as being descriptive, not as authorizing all listed services to be funded by all of the devices identified. See *Madison County v. Foxx, 636* So.2d 39, 48 (Fla. 1st DCA 1994).

4. Municipal Service Taxing Unit. It is acknowledged by Lake County that this is incorrect nomenclature for such an assessment.

5. Lake County further argues that if no fire protection services were present in Lake County, the entire county would be rated a *ten* on the Insurance Services Office ["ISO"] schedule for insurance premiums, but, due to the proximity to hydrants, most Lake County properties are at some level less than ten. Appellants assert, how-

Lake County's fire protection budget is based on the fire department's overall costs of operation. The budget provides funding for fire stations, fire fighter salaries, equipment, training, and other general operating expenses. The fire protection special assessment is determined by setting the county fire protection budget, then deducting revenues received from other sources. The assessment covers approximately sixty-eight percent of the budget and eliminates the use of the county's general funds for this purpose. Lake County provides a number of services under the umbrella of "fire protection services" such as fire suppression activities, first-response medical aid, educational programs and inspections. The medical response teams stabilize patients and provide them with initial medical care. The fire department responds to automobile and other accident scenes and is involved in civil defense. Fire services are provided to all individuals and property involved in such incidents.

Appellant John Richard Sellars owns homestead property in unincorporated Lake county within the fire protection MSTU. The other appellants own commercial property in the fire protection MSTU. Appellants complain that because Lake County's fire service is equally available to and benefits all county residents, property owners or not, as well as non-Lake County residents, funding of fire protection by special assessment is invalid. Although appellants' property may "benefit" from the fire protection services offered, they do not meet the "special benefit" requirement because there is no benefit accruing to the property in addition to those received by the community at large. See ***South Trail Fire Control District, Sarasota County v. State,*** 273 So.2d 380, 383 (Fla. 1973). They also question whether certain activities such as emergency medical services and educational programs provide a benefit "accruing to the property" at all. *Id.*

Lake County relies on the supreme court's holdings in ***Fire Dist. No. 1 of Polk County v. Jenkins,*** 221 So.2d 740 (Fla.1969) and ***South Trail Fire Control District*** for the proposition that, as a matter of law, fire protection and related services provide a special benefit to the burdened property and are properly funded by a special assessment. In ***Polk County,*** the supreme court overturned a lower court decision declaring invalid a special act authorizing the funding of fire protection in a fire district within Polk County by special assessment on the lots of a mobile home park. In the course of that opinion, the court said:

> On the question of to what extent property may be said to be specially benefited by the creation and operation of a Fire District, much may be said. Fire protection and the availability of fire equipment afford many benefits.
>
> Fire insurance premiums are decreased; public safety is protected; the value of business property is enhanced by the creation of the Fire District, a trailer park with fire protection offers a better service to tenants. ...

Polk County, 221 So.2d at 741.

In ***St. Lucie County-Fort Pierce Fire Prevention and Control Dist. v. Higgs,*** 141 So.2d 744 (Fla.1962), however, the high court held that a special act creating a county-wide fire prevention district was invalid because no parcel of land was specially or peculiarly benefited in proportion to its value; rather, the assessment was a general one on all property in the county-wide district for the benefit of all. 141 So.2d at 746. The divergence in these cases simply suggests that the question of "special benefit" is, to a great extent, driven by the facts. ***Madison County v. Foxx,*** 636 So.2d 39, 49 (Fla. 1st DCA 1994).[7] For example, the creation of a spe-

ever, that Lake County neither installs or maintains hydrants.

6. The cases historically speak of a benefit to the property or land; however, in its recent *Sarasota Church of Christ* decision, the supreme court has begun to speak in terms of benefit to a particular "class of property owners." 667 So.2d at 183. If this change has substance, the implication for expansion of the use of special assessments is huge.

7. A more recent case upholding a fire assessment is the district court of appeal's decision in *Sarasota County v. Sarasota Church of Christ,* 641 So.2d 900 (Fla. 2d DCA 1994). That case, however, appears to rely principally on some applica-

cial fire district, within a limited area of the county, to bring fire services which formerly were distant, into close proximity with the property would seem to offer a special benefit of the kind the high court had in mind in ***Polk County.*** On the other hand, for a county simply to conclude one day that its same historically provided county-wide fire services are of "special benefit" to the property located within its boundaries and, accordingly, to begin specially assessing all the properties to pay for the service seem not to be the kind of "special benefit" to property contemplated by the high court. *Cf.* ***Murphy v. City of Port St. Lucie,*** 666 So.2d 879, 881 (Fla. 1995); *but* see Harris *v.* Wilson, 656 So.2d 512, 514 n. 4 (Fla. 1st DCA 1995), *review granted,* 666 So.2d 143 (Fla.1995).

Cl-31 There is little doubt based on prior case law that fire protection services provide a benefit [8] to the properties assessed. Less obvious is whether the benefit is special. In the instant case, Lake County urges that the requisite special benefit to the assessed properties is present because such services '<protect persons who reside, occupy or have reason to be present at such property, provides better service to actual and potential occupants of property, and enhances the public safety of such property." "Special" 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. *Cf.* § 170.01(2) (Fla.Stat.1995). We appreciate the point made by the Florida Supreme Court in its recent decision in ***Sarasota Church of Christ*** that a special assessment need not be limited to a specific area or class of property owners and that there may be a special benefit whether the recipients "are spread throughout an entire community or are merely located in a limited specified area within the community." 667 So.2d at 183. Even the supreme court took pains in ***Sarasota Church of Christ*** to identify the *special* benefit ***to the specially assessed property, ie.*** supplying a means of dealing with storm water runoff from the improved properties, which were the ones with impervious surface areas generating runoff. In ***Sarasota Church of Christ,*** the special assessment deemed valid was designed to provide a remedy for the special problems or burdens such improved properties create. In this case, however, as far as we can tell, every piece of real property, personal property and every person in unincorporated Lake County has access to the same basic garden variety Lake County fire protection services. The "special assessment" merely funds an undifferentiated service for the county in general and is designed to reduce costs of this service that would otherwise come from general revenue funded by *ad valorem* taxes.

We mention, finally, that the deference we must give to a county's legislative determination of "special benefit" [9] presents a problem in this case because it is unclear on this record that this legislative determination as to the special benefit of fire protection has ever been made by Lake County. We have been directed to no such recital and have

tion of estoppel. which we do not find helpful. *Id.* at 902.

8. The county attempts to assuage any fear that special assessments will be indiscriminately used to fund county services without regard to the ten mil cap by acknowledging that such special assessments must be limited to services that benefit the *property.* Appellants' riposte is that Lake County has already authorized, but (apparently) has not implemented, the use of special assessments to fund police protection, animal control, transportation, library services and recreation, These other hypothetical special assessments do raise the question of what constitutes a "benefit to the property," Waste disposal and storm water runoff services clearly provide a benefit to the property. Fire services also provide a benefit. Less clear, however, is why first response medical care is a benefit *to the* property. unless "removing a sick person from the property" is the benefit. If that is so, then the removal of bad people from property by law enforcement would be a benefit justifying special assessment funding for police protection. The county's recording function presumably also is fundable by special assessment as a service *to the property.* Even the courts, under the same reasoning, could be funded by special assessment since the courts settle title disputes, adjudicate torts committed against property and on property and, through their injunctive power, can order all sorts of unwanted persons off property.

9. *667* So.2d at 183-84.

found none.[10] The record indicates that the decision to switch from *ad valorem* to "special assessment" funding of fire services was done by referendum. Our decision does not depend entirely on this technical deficiency, however, because we conclude that even under the strict standard of deference articulated by the supreme court,[11] Lake County's "special assessment" for fire protection fails the special benefit test. Referring back to language quoted by the Florida Supreme Court in *South Trail Fire Control District:*

> [T]he power of the legislature in these matters is not unlimited. There is a point beyond which it cannot go, even when it is exerting the power of taxation. It cannot by its fiat make a local improvement of that which in its essence is not such an improvement, and it cannot by its fiat make a special benefit to sustain a special assessment where there is **no special** benefit.

273 So.2d at 383. The determination that Lake County may fund its fire services for the entire unincorporated county plus two municipalities by special assessment based on a special benefit to all assessed properties seems "arbitrary" to us. *Sarasota Church of Christ,* 667 So.2d at 184. If Lake County's fire protection services provide a benefit that is "special," then "special" has a meaning the supreme court needs to explain more fully, for everyone's benefit. Given the proliferation of "special assessments" as a device for funding local government in Florida, the boundaries, if any, of special assessment funding need to be drawn more clearly.[12] Accordingly, we affirm the judgment in favor of Lake County as to the special assessment for solid waste disposal but reverse as to fire protection services and we certify to the supreme court the following question:

> IS LAKE COUNTY'S FUNDING BY SPECIAL ASSESSMENT OF SOLID WASTE DISPOSAL AND/OR FIRE PROTECTION SERVICES VALID UNDER THE FLORIDA CONSTITUTION?

AFFIRMED in part; REVERSED in part and REMANDED.

GOSHORN, GRIFFIN and THOMPSON, JJ., concur.

10. The following, which is the closest we can find, appears in one of the annual resolutions. Resolution No. 1991-113, contains the following language, which we think is descriptive of a benefit but not a "special benefit":

> **Section** 3. Findings **Regarding Need for Non-Ad Valorem Special Assessment Levy and** *Benefits* **Accrued.**
>
> A. The levy of a non-ad valorem assessment for the provision of.fire protection and rescue facilities, services and operations is necessary in order to fund a comprehensive, coordinated, economical and efficient fire protection program and rescue services within the "Lake County Municipal Service Taxing Unit for Fire Protection". which includes a portion of the unincorporated area of Lake County, the Town of Lady Lake and the City of Minneola.
>
> B. Some of the benefits accruing to the real property by the provision of the fire and rescue services through the levy of this non-ad valorem assessment arc:
>
> 1. A reduction in fire insurance premiums;
> 2. The public safety is protected: and
> 3. The public health is protected.

11. *Id.*

12. See 656 So.2d at 521 (Booth, J., dissenting).

STATE of Florida, Appellant,

v.

Quillis Lee FREEMAN, Jr., Appellee.

No. 95-1353.

District Court of Appeal of Florida, Fifth District.

May 10, 1996.

Defendant charged with possession of cocaine, possession of firearm by convicted felon, possession of drug paraphernalia, and possession of cannabis, moved to suppress evidence seized during search of his car. The Circuit Court, Orange County, Cynthia Z. MacKinnon, J., granted motion to suppress. The state appealed. The District

Appendix B

IN THE CIRCUIT COURT OF THE
FIFTH JUDICIAL CIRCUIT, IN
AND FOR LAKE COUNTY, FLORIDA

CASE NO. 93-1227-CA

WATER OAK MANAGEMENT CORPORATION, AS GENERAL PARTNER OF WATER OAR, LTD., a Florida limited partnership: SUN QRS, INC., a Michigan corporation, AS GENERAL PARTNER OF SUN COMMUNITIES FINANCE LIMITED PARTNERSHIP, a Michigan limited partnership; and JOHN RICHARD SELLARS, on behalf of themselves and others,

Plaintiffs,

vs.

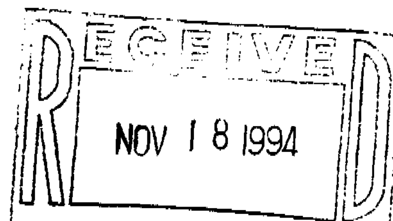
LAKE COUNTY, FLORIDA, a political subdivision of the State of Florida (including the Lake County Municipal Services Taxing Units for Fire Protection and Solid Waste), EDWARD HAVILL, as the Property Appraiser for Lake County, Florida, and T. KEITH HALL, as the Tax Collector for Lake County, Florida,

Defendants.

SUMMARY FINAL JUDGMENT

THIS CAUSE having come to be heard on the Motion for Summary Judgment filed by the Defendant, LAKE COUNTY, FLORIDA, directed to the Amended Complaint filed by the Plaintiffs. At issue is the validity of special assessments imposed by Lake County for the funding of fire protection and solid waste disposal services. A hearing on this motion was held on September 2, 1994.

Having heard the arguments of counsel and considered the matters of record, the depositions and the affidavits filed in



support of the motion, the court determines that there are no genuine issues of material fact and that the Defendant is entitled to a judgment as a matter of law.

I. FINDINGS OF FACT

LAKE COUNTY, FLORIDA (the "County") is a political subdivision of the State of Florida and a non-charter county empowered under the provisions of Article VIII, Section l(f) of the Florida Constitution. Among the express powers granted to the County are the authority to provide for fire protection (Section 125.01(1)(d), Florida Statutes) and solid waste collection and disposal (Section 125.01(1)(k)1., Florida Statutes). In furtherance of this authority the County adopted various ordinances and resolutions to provide such services. Each service will be discussed separately.

A. Fire Protection Services

Fire protection services are provided by the County through a system of fire stations staffed by full-time employees and volunteers. Incidental to its fire protection activities, the County also provides first response medical assistance ("rescue") consisting of the initial treatment and stabilization of injured individuals. More advanced emergency medical treatment and transport is accomplished by ambulance services which are not funded by the assessments at issue. Presently, fire services are provided in the unincorporated areas and within various municipalities.

The present system of fire service has evolved from a series of fire districts created in 1980.[1] The initial funding of these services was by a special ad valorem tax approved by the voters.

In 1984, the voters of the County approved the funding of fire services through the, use of special assessments. Pursuant to the referendum, the Lake County Board of County Commissioners (the "Board") amended Ordinance 1980-4 to provide that the Board shall be the governing body of *each* district and authorized the imposition of a special assessment against property to provide fire protection.[2] The Board also created a new Unincorporated Municipal Service Taxing Unit Fire Control District (Ordinance 1985-13), which included the remainder of the unincorporated area not within the other districts.

Pursuant to the requirements of the ordinances, the Board adopted Resolution 1985-65 on July 30, 1985, which imposed the assessments and authorized their collection in the same manner as ad valorem taxes.[3] The assessment imposed by Resolution 1985-65

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[1]These districts were created by Ordinance 1980-4.

[2]The districts were amended by the following series Of ordinances: Bassville Fire Control District (Ordinance 1985-7), Northwest Lake *County* Fire Control District (Ordinance 1985-8), Paisley Fire Control District (Ordinance 1985-9), Mt. Plymouth Fire Control District (Ordinance 1985-10), Pasco Fire Control District (Ordinance 1985-11), and South Lake Fire Control District (Ordinance 1985-12).

[3]All of the requirements for the collection of assessments in the same manner as ad valorem taxes as contained in Section 197.0126, Florida Statutes (1985), were complied with, including the providing of individual mailed notice, the written agreement with the Property Appraiser and the adoption at a public hearing. Section 197.0126, Florida Statutes, was subsequently repealed and replaced by Section 197.363, Florida Statutes.

was in the maximum amount for Fiscal Year 1985-1986 and for each subsequent fiscal year.[4]

On December 11, 1990, the Board adopted Ordinance 1990-24, which created a single Municipal Service Taxing Unit ("MSTU") that included the entire unincorporated area of Lake County and the City of Minneola and the Town of Lady Lake.[5] The ordinance consolidated the various previously created fire control districts into a single service unit and authorized the collection of the special assessments pursuanttothe provisions of *Section* 197.3632, Florida Statutes.[6]

On July 11, 1991, the Board adopted Resolution 1991-113, which approved the assessment roll for fire assessments for Fiscal Year 1991-1992 at the same rates as had been previously imposed under Ordinances 1985-7 through 1985-13, *inclusive,* and Resolution 1985-

---

[4]Fire assessments imposed pursuant to Resolution 1985-65 were also imposed in the same amount for Fiscal Years 1986-1987, 1987-1988, 1988-1989, 1989-1990 and 1990-1991.

[5]The Town of Lady Lake consented to its inclusion within the unit by Ordinance 90-36 and the vote of its residents on December 18, 1990 (Exhibit "E" to Motion for Summary Judgment). The City of Minneola consented to its inclusion within the unit by Ordinance 90-11 and the vote of its residents on December 18, 1990 (Exhibit "F" to Motion for Summary Judgment).

[6]At the same meeting, the County adopted Resolution 1990-152, which indicated its intent to impose non-ad valorem assessments for fire services. Notice of this meeting and the Board's intent to use the non-ad valorem collection method was published for four consecutive weeks. Similar resolutions were also adopted prior to January 1 for Fiscal Years 1992-93 (Resolution 1991-213) and 1993-94 (Resolution 1992-235). Notice of these hearings was published as required by Section 197.3632, Florida Statutes.

65.[7] Resolution 1991-113 expressly found that the properties subject to the assessment were benefited by the providing of fire and rescue services.

The Board subsequently adopted resolutions imposing the fire assessment for Fiscal Years 1992-93 and 1993-94 at the same rate as levied previously.

B. <u>Solid Waste Disaosal</u>

Among its obligations under Florida law, the County is to provide for the disposal of solid waste generated within its geographic boundaries. Section 403.706(1), Florida Statutes, provides:

> 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....

Pursuant to its responsibilities as required by Florida Statutes, the County adopted Ordinances 1988-13 and 1990-14, which required that all solid waste generated from property within Lake County be disposed of at the County's approved solid waste disposal facility.

Presently, the County provides for its solid waste disposal needs through the coordination of various facilities. All solid waste capable of being processed is transferred to a resource recovery facility where it is incinerated. The energy created by

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[7]Prior to this meeting, individual notice was mailed to all property owners subject to the assessment and notice was published in a local newspaper. Such notice complied with the requirements of Section 197.3632, Florida Statutes.

the incineration is sold and a portion of the resulting revenues is returned to the County. The revenue is used to reduce the costs of providing solid waste disposal. Those items of solid waste which cannot be incinerated are disposed of at the County landfill. The County also operates several drop-off centers where solid waste can be deposited for later processing by the County. The collection of solid waste is provided either by customers disposing of their solid waste at the County facilities or by a franchised hauler.

The assessment imposed by the County funds only the cost of solid waste disposal services and facilities and is imposed in the unincorporated areas of the County *on* improved residential property.[8] Non-residential property pays its cost of solid waste disposal through tipping fees at the County facility.

The development of the County's solid waste management system and the imposition of assessments for solid waste disposal were established through the adoption of various ordinances and resolutions. On December 11, 1990, the Board adopted Ordinance

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'Property owners who elect to haul their own solid waste to the County Facilities are subject to the solid waste disposal assessment. No additional charge is incurred by these property owners at the landfill. Customers who have contracts with franchised haulers pay a regulated rate for collection and disposal to the hauler. The hauler then pays for disposal through tipping fees. Owners who have such agreements do not pay a solid waste assessment. All Plaintiffs in this cause dispose of their solid waste through a contract with a hauler and are not subject to the assessment.

1990-26. This ordinance created an MSTU for the providing of solid waste services within the unincorporated area of the County.[9]

On December 17, 1991, the Board adopted Resolution 1991-217, which provided notice of the intent of the County to utilize the non-ad valorem assessment method for the collection of the solid waste assessments. Prior to this meeting, notice was published for four consecutive weeks." On or about August 25, 1992, the County adopted Ordinance 1992-7, which amended provisions of the Lake County Code relating to the management and disposal of solid Waste in Lake County. Ordinance 1992-7 authorized the imposition of an annual solid waste assessment and set forth the procedures for levying the assessment and the method of collection. Such method was pursuant to the non-ad valorem assessment collection procedures contained in Section 197.3632, Florida Statutes.

On September 2, 1992, the County adopted Resolution 1992-166, which established the rate of the solid waste assessment for Fiscal Year 1992-1993." The assessment was imposed on all improved residential properties within the unincorporated area of the County

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'Though the Board adopted Resolution 1991-91 on June 4, 1991, which initially approved the solid waste non-ad valorem assessment for Fiscal Year 1991-1992, the Board ultimately decided not to go forward with the assessment and none was imposed for that year.

[10]A similar resolution was adopted prior to January 1 for Fiscal Year 1993-94 (Resolution 1992-234). Published notice of this hearing was provided for four consecutive weeks as required by Section 197.3632, Florida Statutes.

"Prior to the adoption of Resolution 1992-166, individual mailed notice was provided to each property owner subject to the assessment and notice of the meeting was published in a newspaper of general circulation. The notice provided was in conformity with the requirements of Section 197.3632, Florida Statutes.

that did not have an agreement with a franchised solid waste hauler or was not otherwise exempt. Resolution 1992-166 expressly found that the properties subject to the assessment were specially benefited by the providing of solid waste management and disposal services in the amount of the assessment.

On August 24, 1993, the Board adopted Ordinance 1993-11, which allowed the expansion of the scope of the solid waste assessment to all improved property within the unincorporated area. On August 26, 1993, the Board adopted Resolution 1993-130, which constituted final approval of the assessment for Fiscal Year 1993-1994 and for the future assessment to be imposed for Fiscal Year 1994-1995.[12]

II. APPLICATION OF THE LAW

Article VIII, Section 1(f), of the Florida Constitution establishes the power of non-charter counties.

> NON-CHARTER GOVERNMENT. Counties not operating under county charters shall have such power of self-government as is provided by 'general or special law. The board of county commissioners of a county not operating under a charter may enact, in a manner prescribed by general law, county ordinances not inconsistent with general or special law, but an ordinance in conflict with a municipal ordinance shall not be effective within the municipality to the extent of such conflict.

A review of the powers granted under general law demonstrates the great breadth of power given to counties. These are primarily contained in Chapter 125, Florida Statutes. Section 125.01(1), Florida Statutes, provides:

"Prior to this meeting, mailed and published notice as required by and in conformity with Section 197.3632, Florida Statutes, was again provided by the County.

> 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: ***

There follows a lengthy, non-exclusive list of powers, one of which is itself a broad grant of power. Section 125.01(1)(w) provides that counties shall have the power to:

> Perform any other acts not inconsistent with law, which acts are in the common interest of the people of the county, and exercise all powers and privileges not specifically prohibited by law.

Also pertinent is Section 125.01(3)(a), which states:

> The enumeration of powers herein shall not be deemed exclusive or restrictive, but shall be deemed to incorporate all implied powers necessary or incident to carrying out such powers enumerated . . . .

There could not be a broader grant of self-government powers than that contained in Section 125.01. Thus, it is abundantly clear that the Legislature has provided counties with broad home rule powers to govern effectively, and not dependent on specific grants of authority by the state.[13] Chapter 125 provides a broad framework, intended to be implemented by the individual counties based upon their needs. Therefore, the focus in any examination Of county powers should be whether there is a specific authority

[13]The expansive scope of county home rule power has been repeatedly recognized by the Florida Supreme Court. See Speer v. Olson, 367 So.2d 207 (Fla. 1978): State of Florida v. Orange County, 281 So.2d 310 (Fla. 1973); and Taylor v. Lee County, 498 So.2d 424 (Fla. 1986).

which prohibits a county from taking a particular action, and not whether the county is specifically empowered to take that action.[14]

All County revenue sources are not taxes requiring general law authorization under Article VII, Section 1, of the Florida Constitution. The judicial inquiry when a revenue is derived by ordinance instead of general law is whether the charge is a tax under Florida case law. If it is a tax, general law authorization is required under the tax preemption provisions of Article VII, Section 1. If it is not a tax under Florida case law, then the imposition of a fee, charge or assessment is within the constitutional and statutory power of the County and may be enacted by ordinance."

If a special assessment complies with the requirements of Florida case law for a valid assessment, it is not a tax and may be imposed without express legislative authorization. Taxes and special assessments are distinguishable in that, while both are

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[14]In addition to the broad home rule powers possessed by counties under the Constitution, express legislative authority is also provided for the imposition of special assessments by Chapter 125, Florida Statutes. Both Sections 125.01(1)(q) and (r), Florida Statutes, expressly authorize the use of special assessments.

[15]An analogous legal debate between taxes requiring general law authority and charges imposed by ordinance pursuant to a county's home rule power is seen in the challenge to the validity of impact fees. In Home Builders v. Board of County Commissioners of Palm Beach County, 446 So.2d 140 (Fla. 4th DCA 1983), transportation impact fees were challenged on the basis that the fees were a tax imposed by ordinance in violation of Article VII, Section 1(a), the Florida Constitution. The impact fees were held not to be a tax in Home Builders since the county ordinance met the dual rational nexus test established for impact fees in Broward County v. Janis Development Corp., 311 So.2d 371 (Fla. 4th DCA 1975), and Contractors & Builders Ass'n of Pinellas County v. City of Dunedin, 329 So.2d 314 (Fla. 1976).

mandatory, there is no requirement that taxes provide any special benefit to property; instead, they may be levied throughout the particular taxing unit for the benefit of residents and property. Tucker v. Underdown, 356 So.2d 251 (Fla. 1978). Special assessments, however, must confer a specific benefit upon the property burdened by the assessment. City of Naples v Moon, 269 So.2d 355 (Fla. 1972).

Even decisions predating the 1968 Florida Constitution recognized that the benefit requirement for assessments distinguishes *them* from a tax. As one early case put it:

> A "tax" is an enforced burden of contribution imposed by sovereign right for the support of the government, the-administration of the law, and to execute the various functions the sovereign is called on to perform. A "special assessment" is like a tax in that it is an enforced contribution from the property owner, it may possess other points of similarity to a tax, but it is inherently different and governed by entirely different principles. It is imposed upon the theory that that portion of the community which *is* required to bear it receives some special or peculiar benefit in the enhancement of value of the property against which it is imposed as a result of the improvement made with the proceeds of the special assessment. It is limited to the property benefited, is not governed by uniformity, and may be determined legislatively or judicially.
>
> * * *
>
> [I]t seems settled law in this country that an ad valorem tax and special assessment, though cognate in immaterial respects, are inherently different in their controlling aspects....

Klemm v. Davenport, 129 So. 904, 907, 908 (Fla. 1930). See also City of Boca Raton v. State, 595 So.2d 25 (Fla. 1992).[16]

As established by case law, there are two requirements for the imposition of a valid special assessment. 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 (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." Id. at 121). Second, the assessment must be fairly and reasonably apportioned among the properties that receive the special benefit.[17] 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). If a special assessment complies with the guidelines set forth in these and other Florida cases, they will be considered as distinct from

[16]The distinction between assessments and taxes is also recognized in Article X, Section 4, Florida Constitution, which allows the imposition of a lien on homestead property for "the payment of taxes and assessments." Further, Article VII, Section 6, Florida Constitution, provides that homestead exemption applies against taxes but not "assessments for special benefit."

[17]Plaintiffs have indicated to the Court at the hearing held on this cause and in their responses to interrogatories (Interrogatory No. 12, Exhibit "G" to the Motion for Summary Judgment) that they are not contesting the fair and reasonable apportionment of the assessments at issue but only whether a special benefit is derived from the services and facilities provided.

ad valorem taxes, even though they have many of the same elements as taxes. City of Naples v. Moon, 269 So.2d 355 (Fla. 1972).

The Florida Supreme Court has determined that the special benefit required for a valid special assessment consists of more than simply an increase in market value, but includes both potential increase in value and the added use and enjoyment of the property. Meyer v. City of Oakland Park, 219 So.2d 417 (Fla. 1969). In Meyer, the Court upheld a sewer assessment on both improved and unimproved property, stating that the benefit need not be direct or immediate but must be substantial, certain and capable of being realized within a reasonable time. Nor must the benefit be determined in relation to the existing use of the property. In City of Hallendale 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 use which could reasonably be made.

Numerous assessments for services and other improvements have been upheld as providing the requisite special benefit. Among these are: garbage collection and disposal, Charlotte County v. Fiske, 350 So.2d 578 (Fla 2nd DCA 1977); sewer improvements, City of Hallendale v. Meekins, supra and Meyer v. City of Oakland Park, supra; fire protection, South Trail Fire Control District, Sarasota County 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 protection and emergency medical services, Sarasota County v.

Sarasota Church of Christ, Inc., 19 F.L.W. D1380 (Fla. 2nd DCA June 24, 1994); erosion control systems, City of Treasure Island v. Strong, 215 So.2d 473 (Fla. 1968); and street improvements, Atlantic Coast Line R. Co. v. City of Gainesville, supra, and Bodner v. City of Coral Gables, 245 So.2d 250 (Fla. 1971).

A. Solid Waste Disposal Assessments

The imposition of a special assessment to provide for solid waste disposal is not a novel issue in the State of Florida. Both the Second and Third District Courts of Appeal have upheld special assessments for solid waste disposal. In Charlotte County v. Fiske, 350 So.2d 578 (Fla. 2nd DCA 1977), owners of residences 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 trial court held the special assessments invalid, in part because they were imposed without construction of any public improvement.[18] The Second District reversed, stating:

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[18] Plaintiffs argue in this cause, as was raised in Fiske, that a special assessment may not be imposed for a service but only capital improvements. In addressing this argument, the Second District stated:

> We summarily dispose of 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 improvement 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.

Id. at 580. This Court adopts the reasoning of the Second District as to this issue.

> To begin with, while the ordinance before us speaks of the assessment involved as a "special assessment," we are of the view that such a term is a broad one and may embrace various methods and terms of charges collectible to finance usual and recognized municipal improvements and services. Among such charges are what are sometimes called "fees" or "service charges," when assessed for special services. Moreover, they may take the form (at least for lien purposes) of "special assessment."

at 580. (emphasis supplied)

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> In sum, we hold that the assailed ordinance is valid and that the service charges provided for therein may be assessed and levied as a "special assessment."

at 581. (emphasis supplied)

Plaintiffs argue that the assessments considered in Fiske were actually service charges and that the Court did not address whether such assessments could impose a lien against homestead property within the meaning of Article X, Section 4, Florida Constitution. Contrary to the argument of Plaintiffs, the Second District clearly differentiated special assessments from service charges by the ability of a special assessment to constitute a lien against property. The Fiske court expressly found that the solid waste charge was a special assessment, citing with approval Gleason v. Dade County, 174 So.2d 466 (Fla. 3d DCA 1965), which specifically upheld a lien imposed by Dade County for solid waste assessments.

See also Dade County v. Federal National Mortgage Association, 161 So.2d 255 (Fla. 3d DCA 1964).[19]

B. Fire Protection Assessments

As with solid waste disposal, the issue of whether special assessments may be used to fund fire protection and related services has been repeatedly upheld by the Florida Supreme Court and found to provide the requisite special benefit to property. In Fire District No. 1 of Polk County v. Jenkins, 221 So.2d 740 (Fla 1969), a county imposed fire assessment was contested for allegedly failing to satisfy the special benefit requirement. The trial court held that the assessment constituted a tax which was not authorized under Florida law. In particular, the trial court found that the levy of a special assessment against mobile home rental spaces was arbitrary, discriminatory and disproportionate to any benefit derived by such space. The Supreme Court reversed the decision of the trial court and held that a sufficient special benefit was derived by the availability of fire services to justify the imposition of the special assessment. The Court stated:

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[19] 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 provided in Section 197.3632, Florida Statutes, for the collection of non-ad valorem special assessments on the ad valorem tax bill was enacted as part of the Solid Waste Management Act. Chapter 88-130, Laws of Florida. In addition, Section 403.7049(6), Florida Statutes, expressly authorizes the use of the non-ad valorem assessment collection method for the funding of certain solid waste management programs.

> On the question of to what extent property may be said to be specially benefited by the creation and operation of a Fire District, much may be said. Fire protection and the availability of fire equipment afford many benefits.
>
> Fire Insurance premiums are decreased; public safety is protected: the value of business property is enhanced by the creation of the Fire District; a trailer park with fire protection offers a better service to tenants, which would reflect in the rental charge of the spaces. It is not necessary that the benefits be direct or immediate, but they must be substantial, certain, and capable of being realized within a reasonable time.

at 741.

Plaintiffs argue that the calculation of the assessment, based upon the budgetary requirements of the service and not the relative fire hazard of the structure, renders the assessment invalid. This precise argument was considered and rejected by the Florida Supreme Court in the Polk County case:

> 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 Fire District is not permitted to make a profit upon the transaction: that is, to commercialize the power of taxation which must be exercised only for the public necessity or convenience. The budgetary requirements would be the measure of the value or benefit which is to be apportioned among the properties benefited.

at 742. (emphasis supplied)

In South Trail Fire Control District, Sarasota County v. State, 273 So.2d 380 (Fla. 1973), the Supreme Court again upheld the imposition of assessments for fire and ambulance services, *even*

though the percentage of the ***assessments*** apportioned to commercial property greatly exceeded both the percentage of ***value*** of commercial property within the District and the number of calls for **services.**

Recently, the Second District Court **of** Appeal upheld the validity of special assessments for fire and ambulance services in Sarasota-Countv v. Sarasota Church of Christ, 19 F.L.W. D1380 (Fla. **2d** DCA June 24, 1994). The Court stated:

> The first issue to address in this cause is that of Fire and Rescue Services (rescue services in this Opinion are ***synonymous With*** ambulance services). Even the Plaintiff, Churches, conceded this issue as a **"gray area".** Churches have two significant obstacles concerning this issue. The first is the existing case law as enumerated in Fire District No. 1 of Polk Countv v. **Jenkins, supra,** and South Trail Fire Control District, Sarasota Countv v. State, **supra.** Specifically, these cases have recognized fire and related services as valid special assessments.

The benefit derived from fire **services** provided by the County is precisely that recognized by the Supreme Court in the **Polk** County and Sarasota Countv cases as constituting a sufficient special benefit for the funding of such services by special assessments. Property benefits from the availability of fire protection, not only from the actual calls for service to that property but also from the containment of fires ***on*** adjacent property which may ultimately spread to that **property.**[20] In

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[20]**The** record establishes that numerous calls for fire service have been made to the property of the Plaintiff Water Oak Management. **See** Affidavit of Craig Haun (Exhibit **"B"** to Motion **for** Summary Judgment) and Water Oak Management **Corporation's** Response

addition, as demonstrated by the affidavits filed in support of the Motion for Summary Judgment,' the availability of fire protection services directly benefits the property through lower insurance premiums.[21]

The Court finds that the provision of fire protection and rescue services and solid waste disposal provide a special benefit to property as contemplated by the law and that they may be funded by the use of special assessments.[22]

Plaintiffs argue that the fire and solid waste disposal assessments imposed within Lake County may not be applied against homestead exemptions which particular property owners may be entitled to under the Florida Constitution and Florida Statutes. Contrary to the assertions of the Plaintiffs, the Constitution is clear that an assessment imposed for special benefits to property is not subject to homestead exemption. Article VII, Section 6(a), Florida Constitution, states:

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to Interrogatories (Exhibit "G" to Motion for Summary Judgment).

[21]The Affidavits of Craig Haun (Exhibit "B" to Motion for Summary Judgment) and Harry Glass (Exhibit "D" to Motion for Summary Judgment) demonstrated that a significant difference in insurance premiums results from the availability of fire protection service. The difference on a single-family frame home can result in an annual decrease in insurance as much as four times greater than the amount of the fire assessment.

[22]Plaintiffs' argument that if a particular service was ever funded by ad valorem taxes that special assessments may never be used is without merit. There is no such restriction on the use of special assessments in Florida law. If an improvement or service satisfies the special benefit requirement and is fairly apportioned, then special assessments may be used as a funding source.

> 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**, up to the assessed valuation of five thousand dollars, upon establishment of right thereto in the manner prescribed by law....[23]

(emphasis added).

The Court finds that the assessments imposed by the County for fire and solid waste disposal services are not taxes, but are assessments for special benefits within the contemplation of Article VII, Section 6(a), Florida Constitution, and Section 196.031(1), Florida Statutes, and, therefore, the homestead exemption provided therein is not applicable to these assessments. See Nordbeck v. Wilkinson, 529 So.2d 360 (Fla. 2d DCA 1988), which expressly held that homestead exemption was not applicable to special assessments.

Plaintiffs also argue that the imposition of a lien as of January 1 constitutes a retroactive tax.[24] Under the provisions of Florida Statutes, a special assessment may be collected in the same manner as ad valorem taxes.[25] However, in the imposition of the assessments collected under these provisions, it is essential that

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[23]The statutory implementation of homestead exemption in Section 196.031(1), Florida Statutes, contains the same limitations as contained within the Florida Constitution, that homestead exemption does not apply to "assessments for special benefits."

[24]Under the ordinances at issue, the assessments fund fire and solid waste disposal activities during the County's fiscal year (October 1 through September 30). However, the ordinances impose a lien for such assessment as of January 1.

[25]Section 197.3632, Florida Statutes.

its provisions be consistent with the procedures utilized for ad valorem taxes. Ad valorem taxes imposed on property within the jurisdiction of the local government, as with special assessments, are incorporated into each budget which is adopted during the summer prior to the County's fiscal year. It then funds services and improvements during the fiscal year of October 1 through September 30. Under the provisions of Sections 192.042 and 192.053, Florida Statutes, the date of assessment and the imposition of a lien for ad valorem taxes is January 1.

Further, Section 197,122, Florida Statutes, provides:

> (1) All taxes imposed pursuant to the State Constitution and laws of this state <u>shall be a first lien</u> superior to all other liens, on any property'against which the taxes have been assessed and <u>shall continue in full force from January 1 of the year the taxes were levied</u> until discharged by payment or until barred under chapter 95.

(emphasis added).

The imposition of a lien as of January 1 for the assessments at issue is consistent with the provisions relating to ad valorem taxes and is required pursuant to the provisions of Section 197.3632(8)(a), Florida Statutes. Therefore, the imposition of a lien as of January 1 does not violate any due process requirement in terms of retroactivity.

Plaintiffs also argue that Ordinance 1990-24 and various resolutions indicating the County's intent to utilize the non-ad valorem collection method for fire services were invalid due to the failure to include a specific legal description for the Town of Lady Lake. The legal description utilized in Ordinance 1990-24 and

the various resolutions specifically described the entire County's boundaries and then excluded those areas which would not be included within the MSTTJ nor subject to the assessment.[26] This legal description includes the Town of Lady Lake. The Court finds that the legal description included within the County's MSTU ordinance for fire protection services and within its various resolutions adequately described the area subject to the assessment and that there is no legal requirement that a particular municipality be described separately from the unit as a whole.

[26] The legal description utilized was derived from Section 7.35, Florida Statutes, which sets forth the boundaries of Lake County.

III. CONCLUSION

ORDERED AND ADJUDGED as follows:

1. That the fire and solid waste assessments imposed by Lake County are a valid exercise of local government power:

2. That the various procedural requirements for the imposition of the fire and solid waste assessments were complied with by Lake County:

3. That the various procedural requirements for the collection of the fire and solid waste assessments in the same manner as ad valorem taxes were complied with by Lake County;

4. That the fire assessment which provides for fire protection/rescue services provides a special benefit to those properties subject to the assessment;

5. That the solid waste assessment which provides for solid waste disposal services and facilities provides a special benefit to those properties subject to the assessment;

6. That the fire and solid waste assessments are not taxes, but are assessments for special benefits as contemplated by Article VII, Section 6 of the Florida Constitution and, therefore, the homestead exemption does not apply to these assessments;

7. That the fire assessment and solid waste assessment may be applied and constitute a lien against homestead property;

8. That the area subject to the various assessments has been adequately described in the ordinances and resolutions of the County.

Accordingly, this Summary Final Judgment is entered in the above cause in favor of the Defendant, LAKE COUNTY, FLORIDA, and against the Plaintiffs, such that all relief requested by the Plaintiffs is denied. As all relief sought by Plaintiffs has been denied, the Court also determines that Defendants EDWARD HAVILL, as Property Appraiser of Lake County, Florida, and T. KEITH HALL, as Tax Collector of Lake County, Florida, are also entitled to judgment. The Defendants shall go hence without day.

DONE AND ORDERED in Chambers, at Tavares, Lake County, Florida, this d16y of Nov, 1994.

CIRCUIT COURT JUDGE

Copies furnished to:

Gregory T. Stewart
Frank T. Gaylord
Daniel C. Brown
Larry E. Levy
Sanford A. Minkoff
Gaylord Wood

Appendix C

IN THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT, IN AND FOR LAKE COUNTY, FLORIDA

CASE NO. 93-1227-CA-101

WATER OAK MANAGEMENT CORPORATION, AS GENERAL PARTNER OF WATER OAK, LTD., a Florida limited partnership; SUN QRS, INC., a Michigan corporation, AS GENERAL PARTNER OF SUN COMMUNITIES FINANCE LIMITED PARTNERSHIP, a Michigan limited partnership; and JOHN RICHARD SELLARS, on behalf of themselves and others,

CLASS REPRESENTATION

Plaintiffs,

vs.

LAKE COUNTY, FLORIDA, a Political Subdivision of the State of Florida (including the Lake County Municipal Services Taxing Units for Fire Protection and Solid Waste), EDWARD HAVILL, as the Property Appraiser for Lake County, Florida, and T. KEITH HALL, as the Tax Collector for Lake County, Florida,

Defendants.

&MENDED COMPLAINT

COME NOW, the Plaintiffs, by and through their undersigned attorneys and sue the Defendants and say:

1. This is an action for declaratory judgment and supplemental relief.

APR 2 9 1994

Jurisdiction is vested in this Court pursuant to the provisions of Chapter 86, Florida Statutes, Section 26.012, Florida Statutes and Article V, Section 5, Florida Constitution. Plaintiffs seek supplemental relief by way of injunction and mandatory injunction or mandamus ordering refund of all monies paid by those Plaintiffs who have paid the charges levied or imposed by the Defendants pursuant to Lake County Ordinance No. 1990-24 and Chapter 21, Lake County Code, as amended by Ordinance No. 1992-7.

2. Plaintiff WATER OAK MANAGEMENT CORPORATION ["WATER OAK"] is a Florida Corporation, and is the general partner of WATER OAK, LTD., a Florida limited partnership, having its principal place of business in Lake County, Florida. From 1986 until December 1, 1993, WATER OAK owned real property in Lake County, Florida, and in the Town of Lady Lake, Florida, known as Water Oak Country Club Estates, used throughout that period as a residential rental mobile home park. From 1986 to the present, WATER OAK also owned and continues to own real property situated in Lake County, Florida, and in the Town of Lady Lake, Florida, currently in use as a golf course.

3. Plaintiff SUN QRS, INC. ["SUN QRS"] is a Michigan corporation authorized to transact and transacting business in Florida, and is the general partner of SUN COMMUNITIES FINANCE LIMITED PARTNERSHIP, a Michigan limited partnership authorized to transact and transacting business in Florida. From and after December 1, 1993, SUN QRS, as successor in interest to WATER OAK, is the owner of real property in Lake County, Florida, and in the Town of Lady Lake, Florida, known as Water Oak Country

Club Estates, currently in use as a residential rental mobile home park.

4. Plaintiff JOHN RICHARD SELLARS ["SELLARS"] is a natural person, and is a citizen and resident of Lake County, Florida, who owns real property situated in the unincorporated area of Lake County, which property is devoted to use as the place of abode for himself and his family. Plaintiff SELLARS is thus the owner of real property which is a homestead as referred to in Article X, Section 4, and Article VII, Section 6 of the Florida Constitution. As a result, Plaintiff SELLARS is entitled to homestead exemption under Article VII, Section 6, and under Article X, Section 4 of the Florida Constitution.

5. Defendant, LAKE COUNTY, FLORIDA, ["LAKE COUNTY'] is a political subdivision of the State of Florida, with the elected Board of County Commissioners of Lake County, Florida, as its head. Defendant, LAKE COUNTY, through its Board of County Commissioners, enacted Ordinance No. 1990-24, which created the Lake County Municipal Service Taxing Unit for Fire Protection (the "UNIT'), effective on October 1, 1991. (References made herein to Defendant, LAKE COUNTY, shall include the Lake County Municipal Services Unit For Fire Protection and for Solid Waste unless specifically stated otherwise).

6. Defendant T. KEITH HALL is the duly elected Tax Collector of Lake County, Florida.

7. Defendant EDWARD HAVILL is the duly elected Property Appraiser

of Lake County, Florida. Plaintiffs do not seek any relief against EDWARD HAVILL in this action. He is named as a Defendant only as a result of the Court's determination that he is an indispensable party.

8. Commencing in or about 1979, Defendant LAKE COUNTY began a process of creating dependent special taxing districts within all, and portions of, the unincorporated area of Lake County. Such districts were created to provide for a number of services, such as recreation, street lighting, drainage, and fire and rescue protection. LAKE COUNTY enacted Lake County Ordinances 79-8, 80-3, 80-4, 80-5, 80-12, 80-14, and 89-5. Lake County Ordinances 79-8, 80-3, 80-4,80-5, SO-12, SO-14, and 84-9 created and subsequently amended provisions regarding fire and rescue districts. Said ordinances authorized the levy of ad valorem taxes, not to exceed certain millage limits, to fund the districts' operations. Lake County Ordinance 89-5 provided for the levy of an ad valorem tax, not to exceed certain millage limits, to fund the operation of the Municipal Services Taxing Unit ["MSTU"] created thereby.

9. In 1989, LAKE COUNTY adopted Lake County Ordinances 1989-9(A-G), which amended the various county ordinances creating fire and rescue service districts, the amendments purporting to substitute "special" or "non-ad valorem" assessments against real property, in lieu of previously-authorized ad valorem tax assessments, to fund the districts' operations, and said amendments purporting to authorize collection of such "special" or "non-ad valorem" assessments through the means of placing the assessments on

the Lake County Tax Roll and purporting to create liens for such assessments against property subjected the assessments.

10. In 1990, Defendant LAKE COUNTY adopted Lake County Ordinance 1990-24, merging all fire districts into one MSTU, as more particularly alleged below. LAKE COUNTY also adopted Lake County Ordinance 1990-26, creating an MSTU for all of unincorporated Lake County for solid waste collection and disposal, and purporting to authorize "special" or "non-ad valorem" assessments against real property, to fund the MSTU's operations, and purporting to authorize collection of such "special" or "non-ad valorem" assessments through the means of placing the assessments on the Lake County Tax Roll and purporting to create liens for such assessments against property subjected the assessments. In 1990 LAKE COUNTY also adopted Lake County Ordinance 1990-25, creating an MSTU for all of unincorporated Lake County for, inter alia, law enforcement services, recreational services, transportation, stormwater management, animal control patrol services, and "other essential facilities and municipal services within the unincorporated area of Lake County." Ordinance 1990-25 likewise purported to authorize "special" or "non-ad valorem" assessments against real property, to fund the MSTU's operations, and purported to authorize collection of such "special" or "non-ad valorem" assessments through the means of placing the assessments on the Lake County Tax Roll and purporting to create liens for such assessments against property subjected the assessments. LAKE COUNTY also adopted Lake County Ordinance 1990-27, creating an MSTU for all of unincorporated Lake

County for water supply and wastewater treatment. Said ordinance likewise purported to authorize "special" or "non-ad valorem" assessments against real property, to fund the MSTU's operations, and purported to authorize collection of such "special" or "non-ad valorem" assessments through the means of placing the assessments on the Lake County Tax Roll and purporting to create liens for such assessments against property subjected the assessments.

11. Through the enactment and amendment of the various ordinances alleged hereinabove, and others, Defendants have been engaged in a plan, scheme or design to attempt improperly to fund governmental services provided for the general benefit of all citizens of the unincorporated area of the county, which services are constitutionally required to be funded through ad valorem taxes or other taxes and fees authorized by law, by means of charges improperly characterized as "special" or "non-ad valorem" assessments. Defendants have been engaged in a plan, scheme or design to thereby avoid the constitutional millage caps imposed on county governments in the levy of ad valorem taxes to fund governmental operations; and Defendants have been engaged in a plan, scheme or design to thereby avoid the constitutionally-provided protection of homesteads from liens and forced sale for debt, and from taxation on the first $25,000.00 of value of such homesteads.

12. As part of, and in furtherance of, the plan, scheme or design alleged hereinabove, the Defendant LAKE COUNTY, through its Board of County Commissioners,

enacted Ordinance No. 1990-24, which created the Lake County Municipal Service Taxing Unit for Fire Protection [the "Unit"], effective on October 1, 1991. Ordinance No. 1990-24 provides for the imposition of charges characterized and described therein as "special assessments" on real property situated within this Unit. The real properties of Plaintiffs WATER OAK, SUN QRS, and SELLARS lie within this Unit.

13. Ordinance No. 1990-24 authorizes the Defendant LAKE COUNTY, through the Unit, to impose charges described therein as "special assessments on . . . real property . . . in order to fund the provision of fire protection facilities, services and operations." These charges are to be, and have been, collected by Defendant T. KEITH HALL. Pursuant to the ordinance, Defendants have imposed the charges referred to as "special assessments" for the years 1991, 1992 and 1993. Pursuant to the ordinance, Defendants intend to levy these "special assessments" for fire protection against each Plaintiffs real property for the year 1994.

14. Plaintiffs WATER OAK and SELLARS have paid to the Defendant T. KEITH HALL, Tax Collector, the charges levied pursuant to Ordinance No. 1990-24 for the years 1991, 1992, and 1993.

15. All charges levied pursuant to Ordinance No. 1990-24 were included in tax notices mailed to Plaintiffs WATER OAK and SELLARS, and mailed to all owners of real property in the Lake County Municipal Service Taxing Unit for Fire Protection, in 1991 (for the year 1991), in 1992 (for the year 1992), and in 1993 (for the year 1993).

Pursuant to the ordinance, all unpaid charges become a lien against property, including homestead property, by the inclusion of these charges on the Lake County tax roll and by their inclusion in the notice of taxes issued by the Defendant T. KEITH HALL pursuant to Section 197.3632, Florida Statutes.

16. Ordinance 1990-24 fails to provide for the homestead tax exemption described in Article VII, Section 6, Florida Constitution and Section 196.091, Florida Statutes and fails to provide for the homestead exemption described in Article X, Section 4, Florida Constitution.

17. Ordinance No. 1990-24 cites Section 125.01(1)(q) and (r), Florida Statutes, as its statutory authority for the levy of the described "special assessments."

18. Defendant LAKE COUNTY, through its Board of County Commissioners, adopted Lake County Resolution No. 1990-152, which expressed the intent of the Defendant LAKE COUNTY to utilize the uniform method for the levy, collection and enforcement of these non-ad valorem assessments pursuant to Section 197.3632, Florida Statutes. The fire protection assessments were placed on the Lake County non-ad valorem assessment roll by the Defendant T. KEITH HALL for tax years 1991, 1992, and 1993, and were levied and collected in the manner authorized by Section 197.3632, Florida Statutes, for those tax years. Proceeds from these assessments were remitted to the Defendant LAKE COUNTY.

19. As a part of, and in furtherance of, the plan, scheme or design alleged

hereinabove, the Defendant LAKE COUNTY, through its Board of County Commissioners, has also enacted Ordinance 1992-7, which amended Chapter 21, Lake County Code, and authorized the Defendant LAKE COUNTY to impose "Solid Waste Management System Assessments," characterized therein as non-ad valorem assessments, against "Improved Residential Properties" as defined and referred in Ordinance 1992-7, located within the unincorporated area of Lake County.

20. Plaintiff SELIARS' real property is "Improved Residential Property" as defined by Ordinance 1992-7. Defendant LAKE COUNTY directed the collection of the "Solid Waste Management Assessment" under Ordinance 1992-7 by means of its inclusion on the Lake County non-ad valorem assessment for the year 1992 and 1993; ostensibly pursuant to Section 197.3632, Florida Statutes. Plaintiff SELIARS has paid or is subject to paying to Defendant T. KEITH HALL the "Solid Waste Management System Assessment" which Defendant LAKE COUNTY levies pursuant to Chapter 21, Lake County Code, as amended by Ordinance 1992-7.

21. Pursuant to Chapter 21, Lake County Code, as amended by Ordinance 1992-7, Defendant LAKE COUNTY intends to levy this "non-ad valorem assessment" against "Improved Residential Property for the year 1994, by means of including the assessments on the Lake County non-ad valorem assessment roll.

22. Charges levied pursuant to Chapter 21, Lake County Code, as amended by Ordinance No. 1992-7, were included in tax notices mailed to owners of "Improved

Residential Property" located in unincorporated Lake County in 1992 (for the year 1992) and in 1993 (for the year 1993), and are levied where any such owner fails to have, or cancels, a contract for waste removal with a county-approved waste hauler. Pursuant to the amended Lake County Code, such assessments become a lien against property, including homestead property, by the inclusion of these charges on the Lake County tax roll and by their inclusion in the notice of taxes issued by the Defendant T. KEITH HALL pursuant to Section 197.3432, Florida Statutes.

23. Chapter 21, Lake County Code, as amended by Ordinance 1992-7, fails to provide for the homestead tax exemption described in Article VII, Section 6, Florida Constitution and Section 196.091, Florida Statutes, and fails to provide for the homestead exemption described in Article X, Section 4, Florida Constitution.

24. Chapter 21, Lake County Code, as amended by Ordinance 1992-7, cites Article VIII, Section 1 of the Florida Constitution, and Sections 125.01, 125.66, and 403.706(1), Florida Statutes, as general authority to provide for the operation of solid waste management and disposal facilities.

25. Chapter 21, Lake County Code, as amended by Ordinance 1992-7, fails to cite its specific authority to levy the "Solid Waste Management System Assessments" described therein.

26. Pursuant to Chapter 21, Lake County Code, as amended by Ordinance 1992-7, "Solid Waste Management System Assessments" were placed on the Lake County

non-ad valorem assessment roll by the Defendant T. KEITH HALL for the tax year 1992 and 1993, and were levied and collected in the manner authorized by Section 197.3632, Florida Statutes, for those years. Proceeds from these assessments were remitted to the Defendant LAKE COUNTY.

COUNT I

DECLARATORY JUDGMENT.

27. Plaintiffs reallege the allegations contained in paragraphs 1 through 18.

28. The action of the Defendants in imposing the charges described as "special assessments" in 1991, 1992, and 1993 pursuant to Ordinance No. 1990-24 was illegal, null and void for the following reasons:

a. Neither Chapter 125, Florida Statutes, nor Sections 125.01(1)(q) and (r), Florida Statutes, which are cited as authority for the ordinance, authorize the levy of the charges described in the ordinance as "special assessments" which become liens against real property. The charges provided for in the ordinance are not assessments for special benefits, but are service charges.

b. Lake County is attempting to collect a charge for services rendered or performed by characterizing a service charge as a special assessment, thus allowing the use of the tax roll lien procedure and enforcement against property instead of persons. Such action and the ordinance, are illegal, null and void in that the charges provided for in Ordinance No. 1990-24 are not special assessments.

c. With the enactment and enforcement of Ordinance 1990-24, Defendants are attempting to circumvent the homestead protection provided for in Article VII, Section 6, and Article X, Section 4, Florida Constitution, by wrongfully characterizing the imposed charges as "special assessments." The properties on which such "special assessments" are imposed receive no special or peculiar benefit. Thus, the "special assessments" imposed pursuant to Ordinance No. 1990-24, and Ordinance No. 1990-24 itself, are unconstitutional infringements against homestead property as described in Article X, Section 4, Florida Constitution and are violative of Article VII, Section 6, Florida Constitution.

d. No local improvements exist, the cost of which may be apportioned among specially benefitted properties. Fire protection services are not local improvements which may be financed through the imposition of special assessments as part of the taxing power.

e. A general, undefined benefit flowing to virtually all property in the county is insufficient to support the levy of broad, special assessments.

f. No special or peculiar benefits flow to property assessed pursuant to the ordinance.

g. The charges levied, not being legitimate special assessments, cannot become liens against real property, including homestead property, as referred to in Article X, Section 4, Florida Constitution and Article VII, Section 6, Florida Constitution.

Accordingly, the charges and Ordinance No. 1990-24 are illegal, invalid, null and void.

h. Ordinance No. 1990-24 and the resolutions and actions of the Defendants pursuant thereto purport to impose charges which become liens as of January 1, of each year. Ordinance 1990-24, however, was not effective until October 1, 1991. Therefore, no act of the Defendant LAKE COUNTY, acting through its Board of County Commissioners, purporting to act as the governing board of the Lake County Municipal Service Taxing Unit for Fire Protection, could have validly occurred prior to October 1, 1991, no lien for such assessments could have arisen for 1991, and the requirements and pre-conditions for collection of the service charges as a non-ad valorem special assessment pursuant to Section 197.3632, Florida Statutes, could not have been complied with in order to collect special assessments against property situated within the Unit for the tax year 1991.

i. Because no acts or resolutions occurring prior to October 1, 1991 in pursuance of Ordinance 1990-24 and the creation of the Lake County Municipal Services Taxing Unit for Fire Protection could have been valid, ail 1991 acts and resolutions purportedly made by Defendants LAKE COUNTY, through its Board of County Commissioners, as the governing body of the Lake County Municipal Service Taxing.Unit for Fire Protection, previous to October 1, 1991 are illegal, null and void.

j. Lake County Resolution 1990-152 is defective in that it fails to adequately describe the Lake County Municipal Services Taxing Unit for Fire Protection, which is a necessary precondition to the imposition of a levy under section 197.3632, Florida

Statutes, by failing to describe the boundaries of the Town of Lady Lake, Florida, which municipality was to be incorporated into the Unit.

29. Because no valid act of the Lake County Municipal Service Taxing Unit for Fire Protection could have occurred prior to October 1, 1991, Defendant LAKE COUNTY failed to comply with Sections 197.3632(3)(a), 197.3632(4)(a), 197.3632(4)(b), and 197.3632(5), Florida Statutes. Thus, the 1991 charges imposed through Ordinance No. 1990-24 could not become a lien against property, nor could they be validly be collected by means of inclusion on the 1991 Lake County non-ad valorem assessment roll.

30. The Defendant LAKE COUNTY similarly failed to comply with the provisions of Section 197.363, Florida Statutes, and thus the charges imposed through Ordinance 1990-24 can not become a lien against property to enforce collection.

31. The action of the Defendants in imposing the charges described as "special assessments" in 1989 and 1990 pursuant to Ordinance Nos. 1989-9(A-G) was illegal, null and void for the following reasons:

a. Neither Chapter 125, Florida Statutes, nor Sections 125.01(1)(q) and (r), Florida Statutes, which are cited as authority for the ordinance, authorize the levy of the charges described in the ordinance as "special assessments" which become liens against real property. The charges provided for in the ordinance are not assessments for special benefits, but are service charges.

b. Defendant LAKE COUNTY is attempting to collect a charge for

services rendered or performed by characterizing a ~~service charge~~ as a special ~~assessment,~~ thus allowing the use of the tax roll lien procedure and enforcement against property instead of persons. Such action and the ordinance, are illegal, null and void in that the charges provided for in Ordinance Nos. 1989-9(A-G) are not special assessments.

c. With the enactment and enforcement of Ordinance Nos. 1989-9(A-G), Defendants are attempting to circumvent the homestead protection provided for in Article VII, Section 6, and Article X, Section 4, Florida Constitution, by wrongfully characterizing the imposed charges as "special assessments." The properties on which such "special assessments" are imposed receive no special or peculiar benefit. Thus, the "special assessments" imposed pursuant to Ordinance Nos. 1989-9(A-G), and Ordinance Nos. 1989-9(A-G) themselves, are unconstitutional infringements against homestead property as described in Article X, Section 4, Florida Constitution and are violative of Article VII, Section 6, Florida Constitution.

d. No local improvements exist, the cost of which may be apportioned among specially benefitted properties. Fire protection services are not local improvements which may be financed through the imposition of special assessments as part of the taxing power.

e. A general, undefined benefit flowing to virtually all property in the county is insufficient to support the levy of broad, special assessments.

f. No special or peculiar benefits flow to property assessed pursuant to

the ordinance.

g. The charges levied, not being legitimate special assessments, cannot become liens against real property, including homestead property, as referred to in Article X, Section 4, Florida Constitution and Article VII, Section 6, Florida Constitution. Accordingly, the charges and Ordinance Nos. 1989-9(A-G) are illegal, invalid, null and void.

32. The Defendant LAKE COUNTY failed to comply with the provisions of Section 197.363, Florida Statutes, and thus the charges imposed through Ordinance Nos. 1989-9(A-G) cannot become a lien against property to enforce collection.

33. Because of the acts of the Defendants alleged herein, Plaintiffs are presently in doubt as to their rights and liabilities and are entitled to have such doubts resolved through this action.

WHEREFORE, the Plaintiffs pray that the Court take jurisdiction of this cause and the parties and enter judgment for the Plaintiffs declaring that Ordinance Nos. 1989-9(A-G) and Ordinance 1990-24, the resolutions of the Lake County Board of County Commissioners thereunder, the acts of the Defendants thereunder, and the charges levied and collected from the Plaintiffs thereunder are illegal, null and void, and granting the Plaintiffs their attorney's fees and costs of suit.

COUNT II

WRIT OF MANDAMUS OR MANDATORY INJUNCTION

34. Plaintiffs reallege the allegations contained in paragraphs 1 through 18,

and 27 through 32.

35. The sums collected from Plaintiffs by Defendants under Ordinance 1990-24 for the tax years 1991, 1992, and 1993, and in 1989 and 1990 pursuant to Ordinance Nos. 1989-9(A-G), were illegally levied and collected contrary to both the Florida Constitution and Section 197.3632, Florida Statutes. Plaintiffs are entitled to restitution of these sums from Defendants through a refund of the sums under the Constitution and laws of Florida, and under the 14th Amendment to the Constitution of the United States.

WHEREFORE, Plaintiffs petition that the Court take jurisdiction of this cause and of the parties and enter a writ of mandamus or mandatory injunction directing Defendants to refund such illegally collected sums to the Plaintiffs, and grant the Plaintiffs their attorney's fees and costs of suit.

COUNT III

INJUNCTION

36. Plaintiffs reallege the allegations contained in paragraphs 1 through 18, and 27 through 32.

37. Defendants intend to and will continue to illegally levy and collect charges under Ordinance 1990-24 in the illegal and void manner alleged herein. This levy and collection is contrary to the Florida Constitution and is contrary to Section 197.3632, Florida Statutes.

WHEREFORE, Plaintiffs pray that the Court take jurisdiction of this cause and of the

parties and enter its decree enjoining Defendants and their agents and successors from collecting said charges as herein alleged, and granting to Plaintiffs their attorney's fees and costs of suit and such other relief as may be just and proper.

COUNT IV

DECLARATORY JUDGMENT

38. Plaintiff SELLARS realleges the allegations contained in paragraphs 1 through 11, and 19 through 26.

39. The action of the Defendant LAKE COUNTY in imposing, or threatening the imposition of, the charges described as "non ad-valorem assessments" in 1992 and 1993 pursuant to Chapter 21, Lake County Code, as amended by Ordinance No. 1992-7 on owners of "Improved Residential Property", who are not under contract with a county-approved waste hauler, was and is illegal, null and void for the following reasons:

a. Neither Article VIII, Section 1, Florida Constitution, nor Sections 125.01, 125.66 or 403.706(1), Florida Statutes, which are cited as general authority, authorize the levy of the charges described in the ordinance as "non-ad valorem assessments" which can become liens against real property. The charges provided for in the ordinance are not assessments for special benefits, but are service charges.

b. Defendant LAKE COUNTY is attempting to collect a charge for services rendered or performed by characterizing a <u>service charge</u> as a <u>special assessment</u>, thus allowing the use of the lien procedure of the Lake County tax roll process; and through

such process, the enforcement against property instead of persons. Such action and the code as amended by the ordinance, are illegal, null and void in that the charges provided for therein are not true special assessments.

c. With the enactment of Ordinance 1992-7, Defendant LAKE COUNTY is attempting to circumvent the homestead protection provided for in Article VII, Section 6, Florida Constitution, and Article X, Section 4, Florida Constitution by wrongfully characterizing the imposed charges as "non-ad valorem assessments." The properties on which such assessments are imposed receive no special or peculiar benefit. Thus, the "non-ad valorem assessments" imposed pursuant to Chapter 21, Lake County Code, as amended by Ordinance No. 1992-7 and Ordinance No. 1992-7 itself are unconstitutional infringements against homestead property as described in Article X, Section 4, Florida Constitution and Article VII, Section 6, Florida Constitution.

d. No local improvements exist, the cost of which may be apportioned among specially benefitted properties. Solid waste management and disposal services are not local improvements which may be financed through the imposition of special or "non-ad valorem assessments" as part of the taxing power.

e. A general, undefined benefit flowing to some "Improved Residential Properties" in unincorporated Lake County is insufficient to support the levy of broad, special assessments.

f. No special or peculiar benefits flow to property assessed pursuant to

Chapter 21, Lake County Code, as amended by Ordinance 1992-7.

g. The charges levied, not being legitimate special assessments, cannot become liens against real property, including homestead property as referred to in Article X, Section 4, Florida Constitution and Article VII, Section 6, Florida Constitution. Accordingly, the charges and Chapter 21, Lake County Code, as amended by Ordinance No. 1992-7 are illegal, invalid, null and void.

40. Because of the acts of the Defendants alleged herein, Plaintiff SELLARS is in doubt as to his rights and liabilities and is entitled to have such doubts resolved through this action.

WHEREFORE, Plaintiff SELLARS prays that the Court take jurisdiction of this cause and the parties and enter judgment for Plaintiff SELLARS declaring that

i) Chapter 21, Lake County Code, as amended by Ordinance 1992-7,

ii) the resolutions of the Lake County Board of County Commissioners thereunder,

iii) the acts of the Defendants thereunder, and

iv) the charges levied and collected from Plaintiff SELLARS thereunder,

are all illegal, null and void.

Plaintiff SELLARS also prays that the Court grant his attorney's fees and costs of suit.

COUNT v

INJUNCTION

41. Plaintiff SELLARS realleges the allegations contained in paragraphs 1 through 11, 19 through 26, 39 and 49.

42. Defendants intend to and will continue to illegally levy and collect charges under Chapter 21, Lake County Code, as amended by Ordinance 1992-7, in the illegal and void manner alleged herein. This levy and collection is contrary to both the Florida Constitution and Section 197.3632, Florida Statutes.

WHEREFORE, Plaintiff SELLARS prays that the Court take jurisdiction of this cause and of the parties and enter a decree enjoining Defendants and their agents and successors from collecting said charges as herein alleged, and granting to Plaintiff SELLARS his attorney's fees and costs of suit and such other relief as may be just and proper.

COUNT VI

CLASS REPRESENTATION ALLEGATIONS

43. Plaintiffs reallege the allegations contained in paragraphs 1 through 42.

44. Plaintiff WATER OAK is a member of a class of owners of real property devoted to non-homestead use and lying within the boundaries of the Lake County Municipal Service Taxing Unit for Fire Protection created by Ordinance 1990-24. Plaintiff WATER OAK has been charged the sums characterized as "special assessments" for fire protection.

45. Plaintiff SUN QRS is the successor in interest to Plaintiff WATER OAK in regard to the property known as "Water Oak Country Club Estates" and in use as a residential mobile home park, and is a member of a class of owners of real property devoted to non-homestead use and lying within the boundaries of the Lake County Municipal Service Taxing Unit for Fire Protection created by Ordinance 1990-24. Plaintiff SUN QRS is subject to being charged the sums characterized as "special assessments" for fire protection.

46. Plaintiff SELLARS is a member of a class of owners of real property who have, or are entitled to, homestead exemption as to their property under Article VII, Section 6, and Article X, Section 4, of the Florida Constitution. This class' real property lies within the boundaries of the Lake County Municipal Service Taxing Unit for Fire Protection created by Ordinance 1990-24 and within the districts covered by Ordinances 89-9(A-G).

47. Plaintiff SELLARS is also a member of a class of owners of "Improved Residential Property" subject to the "non-ad valorem assessments" imposed pursuant to Chapter 21, Lake County Code, as amended by Ordinance 1992-7. Plaintiff SELLARS is subject to the "Solid Waste Management System Assessments" imposed pursuant to Chapter 21, Lake County Code, as amended by Ordinance No. 1992-7.

48. The members of the class described above number in the thousands. The members of the class are therefore so numerous that separate joinder of each member is impracticable.

49. The claims of Plaintiffs WATER OAK, SUN QRS, and SELLARS raise questions of law and fact common to the claims of each member of the class, including but not limited to, the claim that the charges characterized by the Defendants as special assessments for fire protection are:

i) not special assessments as defined by governing Florida law;

ii) an attempt by the Defendants to evade the exemptions and protections granted by the Florida Constitution to homestead owners;

iii) an improper and illegal attempt to impose liens on real property;

iv) an illegal use of the taxing power to collect service charges; and

v) invalid, as to Ordinance 1990-24, for the tax year 1991, for the additional reasons set forth herein.

50. Additionally, Plaintiff SELLARS' claims raise questions of law and fact common to the claims of each member of the class, including but not limited to, the claim that the charges characterized by the Defendants under Lake County Ordinance 1992-7 as "non-ad valorem assessments" or "Solid Waste Management System Assessments" are:

i) not special assessments as defined by governing Florida law;

ii) an attempt by the Defendants to evade the exemptions granted by the Florida Constitution to homestead owners;

iii) an improper and illegal attempt to impose liens on real property; and

iv) an illegal use of the taxing power to collect service charges.

51. Plaintiffs WATER OAK, SUN QRS, and SELLARS' claims are typical of the claims of the members of the class of owners of real property lying within the Unit created by Ordinance 1990-24, or within the districts covered by Ordinance 89-9(A-G), or subject to Chapter 21, Lake County Code, as amended by Ordinance 1992-7, relative to "Improved Residential Property," in that the Plaintiffs' claims of invalidity of the charges and their levy and collection by the Defendants rest on facts which are not unique to the Plaintiffs, but are common to all members of the class.

52. The Plaintiffs have resources and Plaintiffs' counsel possess the experience to adequately represent the members of the class with respect to the claims stated in this complaint.

53. By virtue of the nature of Plaintiffs' claims, the prosecution of separate claims by class members would create a risk of inconsistent adjudications concerning individual class members, and could establish incompatible standards of conduct for the Defendants in relation to class members.

54. Adjudication of the Plaintiffs' claims would, as a practical matter, be dispositive of the interests of the members of the class,

55. The Defendants have acted as alleged herein on grounds generally applicable to all members of the class, thereby making declaratory and injunctive relief concerning the class as a whole appropriate.

56. The Plaintiffs' claims are maintainable on behalf of the class under

Florida Rule of Civil Procedure 1.220(b)(1)(A),(B), and (2).

57. Plaintiffs WATER OAK, SUN QRS, and SELLARS each have a substantial interest in being free of:

i) the illegal imposition of liens upon their real property for the charges which have been wrongly characterized as "special assessments," and

ii) the improper use of the taxing power and of the tax collection process which Defendants illegally purport to use for the collection of such charges imposed.

58. Additionally, Plaintiff SELLARS has a substantial interest in being free of:

i) the illegal imposition of liens upon his real property under Chapter 21, Lake County Code, as amended by Ordinance 1992-7, and

ii) the improper use of the taxing power and of the tax collection process which Defendants illegally purport to use for the collection of charges imposed through Chapter 21, Lake County Code, as amended by Ordinance No. 1992-7.

59. Plaintiffs' interests are common to all owners of real property lying within the Unit created under Ordinance No. 1990-24 and the districts covered by Ordinances 89-9(A-G), and common to all owners of real property subject to the charges imposed by Chapter 21, Lake County Code, as amended by Ordinance No. 1992-7.

60. Plaintiffs and the members of the class sought to be represented are owners of real property situated in Lake County, Florida. If the charges described as

"special assessments" and "non-ad valorem assessments" are not paid, their property will be subject to lien and forced sale for the levies imposed through Ordinance No. 1990-24 or Ordinances 89-9(A-G), or through Chapter 21, Lake County Code, as amended by No. 1992-7. Plaintiffs own either homestead property or commercial property which are subject to liens by either Ordinance No. 1990-24 or 89-9(A-G) or Chapter 21, Lake County Code, as amended by Ordinance No. 1992-7.

61. The approximate number of class members who receive homestead exemption is several thousand. The members of the class number several thousand. The approximate total number of parcels of real property in Lake County, Florida, is 80,000.

62. The Plaintiffs and all members of the class have paid, or are subject to the payment of, the charges imposed through Ordinances 1990-24 or Ordinances 89-9(A-G), or, the charges imposed by Chapter 21, Lake County Code, as amended by Ordinance No. 1992-7, or all such charges. The question of the legality and validity of these ordinances, the amended Chapter 21, Lake County Code and the levies provided pursuant thereto will determine the legality of the payments and the right to refund of each.

63. The class is described as all current and prior owners of real property lying in the Lake County Municipal Service Taxing Unit for Fire Protection as defined in and created by Lake County Ordinance 1990-24, all current and prior owners of real property lying in the districts covered by Ordinances 89-9(A-G), and all current and prior owners of "Improved Residential Property" (as defined by Ordinance No. 1992-7) lying within

unincorporated Lake County and currently or previously subject to the "Solid Waste Management System Assessment," including both:

i) owners who are entitled to homestead exemption under Article VII, Section 6 and Article X, Section 4, of the Florida Constitution, and

ii) owners of other real property lying within said districts and units.

64. Plaintiffs WATER OAK, SUN QRS, and SELLARS are proper persons to represent the class through class representation.

WHEREFORE, Plaintiffs pray as follows:

1. That the Court take jurisdiction of this cause and the subject matter thereof, and enter a declaratory judgment as sought.

2. That the Court enter its declaratory judgment finding Ordinance No. 1990-24, and Ordinance Nos. 89-9(A-G), and Chapter 21, Lake County Code, as amended by No. 1992-7, to be invalid, null and void for the reasons stated in this Complaint.

3. That the Court find that this cause may be maintained as a class action and the Plaintiffs referred to are proper persons to represent the class through class representation.

4. That the Court find that the class includes all persons owning property in Lake County, Florida, who have paid the charges imposed pursuant to Ordinance No. 1990-24 or who have paid the charges imposed under Ordinance Nos. 89-9(A-G), and all persons owning "Improved Residential Properties" in Lake County, Florida, who have paid the

charges imposed pursuant to Chapter 21, Lake County Code, as amended by Ordinance No. 1992-7, and all persons who are subject to the impositions levied pursuant to the code and these ordinances.

5. That the Court enter a temporary injunction enjoining the Defendant T. KEITH HALL from taking any action attempting to further collect or threatening to collect the charges wrongly designated "special assessments" or "non-ad valorem assessments" in Ordinance No. 1990-24 and Ordinance Nos. 89-9(A-G) and those charges wrongly designated "non-ad valorem assessments" in Chapter 21, Lake County Code, as amended by Ordinance No. 1992-7, and on final judgment, enter a permanent injunction enjoining the further enforcement of Ordinance 1990-24 and Chapter 21, Lake County Code, as amended by Ordinance 1992-7.

6. That the Court by way of supplemental relief order the Defendants to refund to the class members all monies paid to the Defendant T. KEITH HALL pursuant to Ordinance No. 1990-24, Ordinance Nos. 89-9(A-G), and Chapter 21, Lake County Code, as amended by Ordinance No. 1992-7, and that Defendants refund same to the designated representative of the class for disbursement to each member of the class.

7. That the court award a reasonable attorney's fee to be paid from the proceeds of said refund and tax costs against the Defendants.

Dated this 28th day of April, 1994.

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Attorneys for Plaintiffs

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,** Minkoff & McDaniel, P.A., 226 West Alfred Street, Tavares, Florida **32778; FRANK T. GAYLORD,** Interim County Attorney, Post Office Box 7800, Tavares, Florida 32778; **GREGORY T. STEWART** and **ROBERT L NABORS,** Nabors, Giblin & Nickerson, Bamett Bank Building, Suite 800, 315 South Calhoun Street, Tallahassee, Florida 32301, this 28th day of April, 1994.

DANIEL C. BROWN