IN THE SUPREME COURT OF FLORIDA

THE STATE OF FLORIDA, and the Taxpayers, Property Owners and Citizens of Sarasota County, including nonresidents owning property or subject to taxation therein, and all others having or claiming any right, title or interest in property to be affected by the issuance of the Bonds, herein described, or to be affected thereby,

Plaintiff/Appellant,

v.

CASE NO. 96-2055-CA-01
APPEAL NO. 88,872

SARASOTA COUNTY FLORIDA a political subdivision of the State of Florida,

Defendants/Appellees.

ON APPEAL FROM THE CIRCUIT COURT
OF THE TWELFTH JUDICIAL CIRCUIT
IN AND FOR SARASOTA COUNTY, FLORIDA

APPELLANT'S REPLY BRIEF

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REPLY TO STATEMENT OF CASE AND FACTS

Appellant accepts the Statement of the Case and Facts as set forth in the initial brief and as added to by Appellee in their Answer Brief.

REPLY

I

THE COUNTY DOES NOT HAVE SUFFICIENT AUTHORITY TO ISSUE STORMWATER IMPROVEMENT BONDS WITHOUT OBTAINING REFERENDUM APPROVAL

The Florida Constitution protects property owners in the State of Florida from excessive taxation by requiring referendum approval before any bonds can be issued which mature more than 12 months after issuance and are payable from ad valorem taxation. The Florida Constitution, Article VII, §12. The people of the State of Florida rely upon this Court to protect their homes and property by enforcing this Constitutional protection. Many exceptions to this Constitutional protection have been approved which have left our poorest landholders vulnerable to losing their land through excessive taxation. This Court is urged to protect the citizens' Constitutional rights and not further extend exceptions to the referendum requirement.

The Courts have approved many exceptions over the years to this Constitutional protection requiring referendum approval before further debt may be attached to citizens* lands. Complex lease-purchase arrangements have been approved which obviated the necessity for ad valorem referendum approval. State of Florida, v. School Board of Sarasota, 561 So.2d 549 (Fla. 1990). Special Assessments have been upheld as being an exception to the referendum requirement for a variety of services, including: Erosion Control, Citv of Treasure Island v. Strong, 215 So.2d 473 (Fla. 1968), solid waste disposal, Harris v. Wilson, 656 So.2d

512 (Fla. 1st DCA 1995), sewer improvements, **Meyer v. City of** Oakland **Park**, 219 So.2d 417 (Fla. 1969), garbage collection, **Charlotte County** v. **Fiske**, 350 So.2d 578 (Fla. 2d DCA 1977), and even stormwater runoff for developed land with impervious surfaces, Sarasota Countv **v. Sarasota Church** of **Christ**, 667 So.2d 180 (Fla. 1995). Now this Court is being urged to extend the special assessment exception to stormwater runoff for undeveloped land with pervious surfaces as well. The State would urge the Court to draw the line here and protect the Constitutional rights of the citizens of Sarasota County and require the County to obtain referendum approval.

Unlike the Church of **Christ** case which approved special assessments for stormwater runoff on developed land with impervious surfaces, the County now wishes to extend its special assessments to include undeveloped land with pervious land as well. All land in Sarasota County, except that in its natural state, will be assessed under this scheme. Since this assessment will affect virtually all privately owned land in Sarasota County, it is hard to conclude that this assessment is anything but a tax. See **Hanna** v. Citv of Palm Bav, 579 So.2d 320 (Fla. 5th DCA 1991) and **Water** Oak **Management Corporation** v. **Lake County**, 673 So.2d 135 (Fla. 5th DCA 1996).

When virtually all the land receives the benefit of preventing stormwater runoff, how can the County argue that the property assessed receives a special benefit? If the assessed property receives no special benefit, then it does not satisfy

the first requirement of special assessments as this Court defined in Citv v. Boca Raton v. State, 595 So.2d 25 (1992).

REPLY

II

THE STORMWATER IMPROVEMENT ASSESSMENT IS NOT FAIRLY ASSESSED

The County alleges that this Stormwater Improvement is properly assessed because they are, "fairly and reasonably allocating such costs to specifically benefitted property classified on the basis of the stormwater burden expected to be generated by the physical characteristics and use of such property". See State App. A, Assessment Ordinance, Section 1.03(E). This means that the assessment is being made without regard to the value of the property. Properties that are more valuable will not be assessed more as they would under ad valorem taxation. This is patently unfair as it will adversely impact the poorer landholders in the county. This tax is regressive in nature and will have the affect of imposing a greater burden upon the property owners that own the least valuable properties and will unjustly enrich the wealthier landowners because they will not have to pay their fair share.

Those landholders that are having difficulty meeting their day to day expenses may not be able to afford this additional assessment for which they have had no right to vote on. Failure to pay this assessment will result in the loss of their land.

The County intends to collect the assessments under the provisions of Section 197.3632 and 197.3635, Florida Statutes, The Uniform Assessment Collection Act. These special assessments will be added to the ad valorem tax bill and collected right along with ad valorem taxes. The same strict collection and enforcement mechanisms which are available for the collection of ad valorem taxes will be used to collect these assessments. See Section 197.3632(8), Florida Statutes. Therefore, this assessment is not fairly apportioned as it will most severely affect those landholders least able to bear the burden of the cost and may subject them to the loss of their lands.

CONCLUSION

The Stormwater Assessment scheme designed by the County, herein, goes well beyond that which was approved by this Court in the **Church of Christ** case. Now the County will add their special assessments to undeveloped land with pervious surfaces as well as the previously approved developed land with impervious surfaces. This will affect virtually all the privately held lands in the County. The County also intends to collect this assessment in the same manner in which it collects ad valorem tax. These two facts make it difficult to conclude that this assessment scheme is anything but a tax. It is urged that the Court not further erode the Constitutional protection of **Article** VII, Section 12 and protect the Constitutional rights of the citizens of Sarasota

County by requiring referendum approval before further debt can be added to the properties of the landholders of this county.

Respectfully submitted
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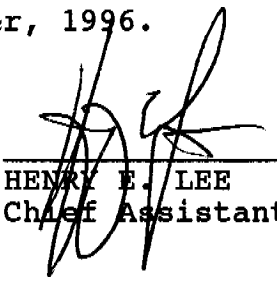
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by ~~hand~~/mail to Jorge L. Fernandez, County Attorney, 1660 Ringling Blvd., Second Floor, Sarasota, FL 34236 and George H. Nickerson, Jr., Esq., 315 S. Calhoun Street, Suite 800, Tallahassee, FL 32301, Attorneys for Defendants/Appellees, dated this 10 day of October, 1996.



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