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FILED

IN THE SUPREME COURT OF FLORIDA SID J. WHITE

DEC 27 1996

BRUCE CHAMBERS

Appellant,

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

vs.

CASE NO. 89,448
(Circuit Court No. 96-911-CA02)

CITY OF PORT ST. LUCIE,
FLORIDA, a municipal
corporation of the State
of Florida,

Appellee

APPEAL FROM THE NINETEENTH JUDICIAL CIRCUIT
COURT IN AND FOR ST. LUCIE COUNTY, FLORIDA

ANSWER BRIEF OF APPELLEE

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TABLE OF CONTENTS

STATEMENT OF THE CASE.....1
STATEMENT OF THE FACTS.....3
SUMMARY OF ARGUMENT.....7
 POINT I.....8
 POINT II.....13

CONCLUSION.....18

TABLE OF CITATIONS

<i>Sean F. Murphy v. City of Port St. Lucie,</i> Case No. 84,917.....	3,4,11
<i>Delgado v. Strong,</i> 360 So.2d 73, 75 (Fla. 1978).....	8
<i>Strawgate v. Turner,</i> 339 So.2d 1112, 1113 (Fla. 1976).....	8
<i>Westerman v. Shell's City, Inc.,</i> 265 So.2d 43, 45 (Fla. 1972).....	8
<i>Dory Auerbach Realty Company v. Waser,</i> 359 So.2d 902, 903 (Fla. 3d DCA 1978).....	8
<i>Warner Cable Communications, Inc. v. City of Niceville,</i> 520 So.2d 245 (Fla. 1988).....	10,16
<i>Risher v. Town of Inglis,</i> 522 So.2d 355 (Fla. 1988).....	10,16
<i>Lodwick v. School District of Palm Beach County,</i> 506 So.2d 407 (Fla. 1987).....	10,16
<i>Taylor v. Lee County,</i> 498 So.2d 424 (Fla. 1986).....	10,16
<i>Rianhard v. Port of Palm Beach District,</i> 186 So.2d 503 (Fla.1966).....	10
<i>Schweigel v. State,</i> 382 So.2d 868 (Fla. 5th DCA 1980).....	13
<i>Kelly v. Kelly,</i> 350 So.2d 11 (Fla. 4th DCA 1977).....	13
<i>First National Bank v. Hunt,</i> 244 So.2d 481 (Fla. 4th DCA 1971).....	15
<i>McCoy Restaurants, Inc. v. City of Orlando,</i> 392 So.2d 252, 254 (Fla. 1980).....	16
<i>Partridge v. St. Lucie County,</i> 539 So.2d 472 (Fla. 1989).....	16
<i>State v. Division of Bond Finance,</i> 530 So.2d 289 (Fla. 1988).....	16

TABLE OF CITATIONS
(continued)

DeSha v. City of Waldo,
444 So.2d 16 (Fla. 1984).....16

State v. Daytona Beach,
431 So.2d 981 (Fla. 1983).....16

State v. City of Miami,
103 So.2d 185 (Fla. 1958).....16

City of Port St. Lucie v. State,
Case No. 94-766 CA-02.....17

STATEMENT OF THE CASE

In this Answer Brief, the Appellee, the City of Port St. Lucie, Florida, which was the plaintiff below in the 1994B Bond Validation proceedings, is referred to as the "City." The Appellant, Bruce Chambers, who was an intervenor in the proceedings below, is herein referred to as "Chambers."

Pursuant to Rule 9.220, Florida Rules of Appellate Procedure, the City submits copies of: certain exhibits introduced at trial, the final judgment, and the transcript of the final hearing below.

On July 26, 1996, the City filed a complaint (A-1) in the Circuit Court of the Nineteenth Judicial Circuit, in and for St. Lucie County, Florida, for validation under Chapter 75, Florida Statutes, of not exceeding \$25,900,000 Special Assessment Bonds, Series 1994B (Assessment District No. 1, Phase II). The Court issued an Order to Show Cause why the proposed bonds should not be validated. (A-2) The Order to Show Cause was duly published as required by Section 75.06, Florida Statutes. (A-3)

At the time originally set for the validation hearing on August 30, 1996, the Court announced it would treat the hearing as a pre-trial conference to determine preliminary issues, including who would be allowed to intervene in the action. (A-4) Chambers, filed a Motion to Intervene on September 5, 1996 alleging that he resides within Phase II of SAD #1. (A-5) On September 25, 1996, the Court entered an order granting Chambers' Motion to Intervene. (A-6) On that same date, the Court issued an "Omnibus Procedural Order" setting forth the time line for discovery and pre-trial motions. The

Order also rescheduled the final hearing to October 28, 1996. (A-7)

At trial, the Court received into evidence the ordinances authorizing the issuance of the bonds and assessments, the proofs of publication and other evidence showing the legality of the proceedings. There was no contradictory evidence on those points. The City further introduced the testimony of City Manager, Donald B. Cooper, who was accepted as an expert by the Court. The City Manager testified that the project was properly funded and there were no illegal expenditures. The Intervenors cross-examined Mr. Cooper but did not elicit any contradictory testimony.

At the conclusion of the proceedings, the trial court rendered its final judgment finding that all the requirements of law with regard to the issuance of the 1994B Bonds and the levy and collection of the 1994B Assessments had been satisfied and validated the 1994B Bonds and the 1994B Assessments. (A-8)

Chambers filed his Notice of Appeal in the Circuit Court on November 26, 1996. (A-9) Jurisdiction vests in this Court pursuant to Article V, Section 3(b)(2), Florida Constitution, Rule 9.030(a)(1)(B)(i), Florida Rules of Appellate Procedure, and Section 75.08, Florida Statutes.

STATEMENT OF THE FACTS

On July 25, 1994, the City enacted Ordinance No. 94-34 (the "Home Rule Ordinance") establishing the procedures for the City to follow in creating Special Assessment Districts and authorizing the levy and collection of special assessments upon those properties benefited by the service. (A-10) On the same date, the City enacted Ordinance No. 94-35 (the "Master Bond Ordinance") (A-11), authorizing the expansion of water and sewer service to those areas of the City not already served and providing for the issuance from time to time of special assessment bonds to finance the expansion program. Ordinance 94-35 anticipates multiple series of bond issues to fund the separate phases of the project.

Further, on the same date, the City held public hearings and adopted Ordinance No. 94-36 (A-12), authorizing the issuance of not exceeding \$17,600,000 Special Assessment Bonds, Series 1994A to finance the water and sewer expansion project into the area of the City designated as Special Assessment District No. 1, Phase I, and Ordinance No. 94-37 (A-13) authorizing the issuance of not exceeding \$25,900,000 Special Assessment Bonds, Series 1994B, to finance Phase II of Special Assessment District No. 1.

As a result of public input, the Council decided to hold Phase II in abeyance for one year and proceed only with Phase I (this meant that Ordinance No. 94-37 would not proceed for validation at that time). On July 28, 1994, the City filed a complaint for validation of not exceeding \$17,600,000 Special Assessment Bonds, Series 1994A (Phase I). (A-14) The City notes that this Court, in the case of Sean

F. Murphy v. City of Port St. Lucie, Case No. 84,917 (A-15), has already considered and affirmed the validity of Ordinance No. 94-34 and No. 94-35, the enabling ordinances and the final judgment validating the bond proceedings for the Series 1994(A) Bonds and 1994(A) Assessments for Special Assessment Area No. 1, Phase I.

This appeal involves the validation proceedings for Phase II of Special Assessment Area No. 1. After holding the Phase II project in abeyance for a year, the Council determined to hold it in abeyance a second year pending resolution of the Phase I appeal in the Supreme Court. Thereafter, on June 28, 1996, the City adopted Resolution No. 96-R34 (Assessment Resolution No. 1, Phase II) (A-16), which provided for the levy and collection of special assessments against the properties within SAD 1, Phase II, that would be specifically benefited by having central water and/or sewer service made available. Notice of a public hearing on the project and the assessment roll was duly published and mailed to the affected residents. On July 23, 1996, the City held a public hearing at which the affected property owners appeared before the City Council and were heard regarding: the propriety and advisability of making the proposed improvements, the manner of payment therefor, and the amount to be assessed against each parcel of property involved.

At the close of the public hearing, the City Council adopted Resolution No. 96-R37 approving the preliminary assessment roll. (A-17) Thereafter, on July 26, 1996, the City filed a complaint for validation of not exceeding \$25,900,000 Special Assessment Bonds, Series 1994(B), Assessment District No. 1, Phase II. (A-1) The trial

court issued an Order to Show Cause directing any defendant opposing the issuance of the bonds to appear at a hearing on August 30, 1996, to show cause why the complaint for validation should not be granted.

(A-2) The Order to Show Cause was duly published as required by Section 75.06, Florida Statutes. (A-3)

Due to the number of motions to intervene that were filed and other pre-trial matters, the Court decided to treat the August 30 hearing as a pre-trial conference and not receive evidence or testimony on the issues presented by the complaint. (A-4)

Chambers filed a Motion to Intervene on September 5, 1996, alleging he is a property owner in Phase II. (A-5) The Court granted his motion. (A-6) On that same date, the Court issued an "Omnibus Procedural Order" setting forth a discovery time line and re-scheduling the bond validation trial to October 28, 1996. (A-7)

At trial, the Court received into evidence the ordinances authorizing the issuance of the bonds and assessments, the proof of publication and other evidence showing the legality of the proceedings. There was no contradictory evidence on those points. Further, the City introduced the testimony of City Manager, Donald B. Cooper, who was accepted as an expert by the Court. The City Manager testified that the project was properly funded and there were no illegal expenditures. The Intervenors cross-examined the City Manager but did not elicit any contradictory testimony.

At the conclusion of the proceedings, the trial court rendered its final judgment finding that all the requirements of law with regard to the issuance of the 1994B bonds and the levy and collection

of the 1994B Assessments had been satisfied. (A-8)

This appeal by Chambers follows.

SUMMARY OF ARGUMENT

POINT I

THE FINAL JUDGMENT VALIDATING THE SERIES 1994B SPECIAL ASSESSMENTS AND THE SERIES 1994B BONDS MUST BE UPHELD BECAUSE IT IS SUPPORTED BY SUBSTANTIAL, COMPETENT EVIDENCE. (RESTATED)

POINT II

THE FINAL JUDGMENT VALIDATING THE SERIES 1994B SPECIAL ASSESSMENTS AND THE SERIES 1994B BONDS SHOULD BE AFFIRMED BECAUSE THE ARGUMENTS RAISED BY APPELLANT ON APPEAL WERE NOT PRESENTED AT THE BOND VALIDATION TRIAL AND, EVEN IF PRESENTED, CONSTITUTE ISSUES OUTSIDE THE SCOPE OF JUDICIAL REVIEW IN A BOND VALIDATION PROCEEDING. (RESTATED)

POINT I

THE FINAL JUDGMENT VALIDATING THE SERIES 1994B SPECIAL ASSESSMENTS AND THE SERIES 1994B BONDS MUST BE UPHELD BECAUSE IT IS SUPPORTED BY SUBSTANTIAL, COMPETENT EVIDENCE. (RESTATED)

The trial court's final judgment validating the Series 1994B Special Assessment and the Series 1994B Bonds must be upheld because it is supported by substantial, competent evidence.

The standard to be applied by this Court upon review of a bond validation proceeding is well-established. The trial court's findings and judgment come to this Court clothed with a presumption of correctness, *Delgado v. Strong*, 360 So.2d 73, 75 (Fla. 1978), and may only be overturned if not supported by substantial, competent evidence. *Strawgate v. Turner*, 339 So.2d 1112, 1113 (Fla. 1976); *Westerman v. Shell's City, Inc.*, 265 So.2d 43, 45 (Fla. 1972); *Dory Auerbach Realty Company v. Waser*, 359 So.2d 902, 903 (Fla. 3d DCA 1978). Stated another way, the trial court's findings and judgment should be affirmed "if upon the pleadings and the evidence before the trial court, there was any theory or principle of law which would support the trial court's judgment." *Dory Auerbach Realty Company v. Waser*, 359 So.2d 902, 903 (Fla. 3d DCA 1978).

As the Court knows, a suit for bond validation is a legislatively created cause of action which permits a public body in the State of Florida to obtain an adjudication as to the validity of debt it proposes to incur. § 75.02, Fla. Stat. (1995). The proceeding begins with the City filing a complaint for validation and naming as parties defendant: the State, taxpayers, property owners and citizens of the public body, including nonresidents owning

property or subject to taxation therein. Section 75.02, Florida Statutes (1995).

Upon filing of the complaint, the Court issues an order directing the State and all persons in the defendant class who wish to oppose the issuance of the bonds to appear at a scheduled hearing and show cause why the complaint for validation should not be granted. Section 75.02, Fla. Statutes (1995). The order to show cause must then be published in a newspaper, once each week for two (2) consecutive weeks with the first publication being at least twenty (20) days prior to the hearing date. This publication constitutes constructive service on the defendant class and makes all members of the class parties to the proceedings. Section 75.06, Fla. Stat. (1995).

In this case, the City of Port St. Lucie, on July 26, 1996, filed a complaint for validation of not exceeding \$25,900,000 Special Assessment Bonds, Series 1994B (Assessment Area No. 1, Phase II), naming the State, taxpayers, property owners and citizens of the public as defendants. The Court issued an Order to Show Cause directing any defendant opposing the issuance of the bonds to appear at a hearing on August 30, 1996, to show cause why the complaint for validation should not be granted.

Due to the number of motions to intervene filed and other pre-trial matters, the Court decided it would treat the August 30th hearing as a pre-trial conference and not receive evidence or testimony on the issues presented by the complaint. The Court re-scheduled the validation trial for October 28, 1996.

The scope of judicial review at the trial level, in a bond validation proceeding, is also well-settled in Florida. The issues properly before the Circuit Court are:

- (i) the public body's authority under the constitution and laws of Florida to issue the proposed bonds;
- (ii) the public body's authority to spend the proceeds of the bonds for the intended purpose;
- (iii) the validity of the taxes and assessments or other revenues pledged as security for the bonds and the proceedings relative thereto (including covenants relating thereto in the bond documents);
- (iv) the legality of the public body's legislative proceedings with respect to the bonds and the security therefor; and
- (v) compliance by the issuer with any legally required conditions precedent to the issuance of the bonds (such as the holding of a bond election).

Warner Cable Communications, Inc. v. City of Niceville, 520 So.2d 245 (Fla. 1988); *Risher v. Town of Inglis*, 522 So.2d 355 (Fla. 1988); *Lodwick v. School District of Palm Beach County*, 506 So.2d 407 (Fla. 1987); *Taylor v. Lee County*, 498 So.2d 424 (Fla. 1986).

To establish a prima facie case for validation, the City has to present evidence of a bond resolution which addresses the issues referenced above. The presentation of testimony in addition to such a supporting resolution is not required. *Rianhard v. Port of Palm Beach District*, 186 So.2d 503 (Fla. 1966). Once the City has presented a prima facie case, the burden shifts to those opposing the validation to prove invalidity or illegality.

At trial, the City presented evidence that its authority to

expand the water and sewer program, to create the Special Assessment Districts for expansion, and to fund the expansion program through the issuance, from time to time, of Special Assessment Bonds, had already been validated by the Circuit Court in the Phase I Appeal and upheld by this Supreme Court in *Sean F. Murphy v. City of Port St. Lucie*, Case No. 84,917. Toward that end, the City presented the following evidence: that its "Home Rule Ordinance", Ordinance No. 94-34, which authorizes the procedure for the City to follow in creating the special assessment districts had already been validated by the trial court in the Phase I Appeal and upheld by this Supreme Court in *Sean F. Murphy v. City of Port St. Lucie*, Case No. 84,917; that the "Master Bond Ordinance", Ordinance No. 94-35, which authorizes the water and sewer expansion program and the funding of the project through the issuance, from time to time, of special assessment bonds had already been validated by the Circuit Court in the Phase I appeal and upheld by this Court on appeal in *Sean F. Murphy v. City of Port St. Lucie*, Case No. 84,917.

The Court further received into evidence the following: proof of publication of the Order to Show Cause of the validation hearing; Ordinance No. 94-35 (Master Bond Ordinance); Ordinance No. 94-37 (1994B Series Bond Ordinance); Ordinance No. 94-34 ("Home Rule Ordinance"); proofs of publication from the Port St. Lucie News and the Fort Pierce Tribune of the Notice of Hearing on Ordinance Nos. 94-35, 94-37 and 94-34; Resolution No. 96-R34 (Assessment Resolution No. 1, Phase II); proofs of publication of the Notice of Public Hearing on the Preliminary Assessment Roll; certificate of mailing

to property owners of Notice of Public Hearing on Assessment Roll by City Engineer; Resolution No. 96-R37 (approving assessment roll is equalized and adjusted); and the Final Judgment in Case No. 84,882, this Court's Opinion in the Phase I Appeal.

There was no evidence received by the Court or presented to the Court which is contradictory to the above. Further, the City presented the testimony of City Manager, Donald B. Cooper, who was accepted as an expert by the Court. The City Manager testified that the project was properly funded and there were no illegal expenditures. The Intervenors cross-examined Mr. Cooper but did not elicit any contradictory evidence. As such, it is clear there was substantial, competent evidence supporting the Final Judgment and it should be affirmed by this Court on appeal.

POINT II

THE FINAL JUDGMENT VALIDATING THE SERIES 1994B SPECIAL ASSESSMENTS AND THE SERIES 1994B BONDS SHOULD BE AFFIRMED BECAUSE THE ARGUMENTS RAISED BY APPELLANT ON APPEAL WERE NOT PRESENTED AT THE BOND VALIDATION TRIAL AND, EVEN IF PRESENTED, CONSTITUTE ISSUES OUTSIDE THE SCOPE OF JUDICIAL REVIEW IN A BOND VALIDATION PROCEEDING. (RESTATED)

As grounds for reversal, Chambers raises four points:

(1) that the City does not have the authority to issue the 1994B Bonds and Assessments because the enabling ordinance, Ordinance 94-29, read and approved on June 27, 1994, is void because it was only published and considered by the City Council on one occasion;

(2) that the City failed to answer three (3) written interrogatories and should be sanctioned for such with an Order Compelling an Answer;

(3) that the bond validation hearing was improper because of the trial judge's demeanor and attitude; and

(4) that the City failed to comply with Chapter 286, Florida Statutes, and the Sunshine Law with respect to public business concerning the 1994B bonds and assessments.

At the outset, the City notes Chambers failed to raise any of the foregoing arguments at the bond validation trial (A-18) and in fact, did not even appear or make a presentation at the bond validation trial (see transcript of bond validation proceeding (A-18)). It is a fundamental principle of appellate procedure that questions not timely raised and ruled upon by the trial court will not be considered for the first time on appeal. *Schweigel v. State*, 382 So.2d 868 (Fla. 5th DCA 1980); *Kelly v. Kelly*, 350 So.2d 11 (Fla. 4th DCA 1977).

Chambers did appear and raise his arguments at an "Evidentiary Hearing" held prior to the Bond Validation trial. Chambers has erroneously submitted the transcript of the Evidentiary Hearing as the transcript of the Bond Validation proceeding. (See Chambers' Addendum to his Appendix). However, as is evident from the transcript, the purpose of the "Evidentiary Hearing" was to determine whether an individual, Sean Murphy, had submitted fraudulent evidence in his attempt to intervene in the action.

The only reason the judge heard from any other party is because several of the Intervenors had filed a letter immediately prior to the Evidentiary Hearing raising numerous unsubstantiated allegations against the City (see pages 4 through 16 transcript). The judge asked they come forward with evidence to support these allegations. Chambers then presented the arguments he has raised here on appeal and the judge found they were not serious.

The exhibits attached to Chambers' Brief as his Appendix were never introduced as evidence in either the bond validation proceeding or the "Evidentiary Hearing" and therefore are not part of the record on appeal. The City has filed a Motion to Strike Appellant's Appendix on that ground, relying upon Rules 9.220 and 9.200, Florida Rules of Appellate Procedure. Rule 9.220 discusses the purpose of the appendix and what may be included in it, stating in pertinent part, "[t]he purpose of an appendix is to permit the parties to prepare and transmit copies of such portions of the record deemed necessary to an understanding of the issues presented". Rule 9.200 states that "[t]he record shall consist of the original documents,

exhibits and transcript of proceedings, if any, filed in the lower tribunal. . ."

Based upon Rules 9.220 and 9.200, the appendix may only contain exhibits that were introduced at trial. Since the exhibits included in Chambers' Appendix were never introduced at the bond validation trial, they should be stricken and not considered by this Court in this appeal. See e.g. *First National Bank v. Hunt*, 244 So.2d 481 (Fla. 4th DCA 1971) (exhibits referred to in the appellant's brief cannot be considered in the appellate court where the exhibits were never admitted in evidence).

Thus, not only is Chambers raising arguments for the first time on appeal as grounds for reversal, but also is relying upon exhibits in support of his arguments which are not part of the record and may not be considered by this Court.

Even more importantly, however, is the fact that, assuming arguendo, Chambers had raised these issues at trial, they could not have been considered by the trial court because they involve issues outside the scope of the trial court's review in a bond validation proceeding. In fact, it would have been a reversible error had the court considered the arguments.

As already outlined under Point I, the scope of judicial review in a bond validation proceeding is limited to the following issues:

- (i) the public body's authority under the constitution and laws of Florida to issue the proposed bonds;
- (ii) the public body's authority to spend the proceeds of the bonds for the intended purpose;
- (iii) the validity of the taxes and assessments or

other revenues pledged as security for the bonds and the proceedings relative thereto (including covenants relating in the bond documents);

- (iv) the legality of the public body's legislative proceedings with respect to the bonds and the security therefor; and
- (v) compliance by the issuer with any legally required conditions precedent to the issuance of the bonds.

Warner Cable Communications, Inc. v. City of Niceville, 520 So.2d 245 (Fla. 1988); *Risher v. Town of Inglis*, 522 So.2d 355 (Fla. 1988); *Lodwick v. School District of Palm Beach County*, 506 So.2d 407 (Fla. 1987); *Taylor v. Lee County*, 498 So.2d 424 (Fla. 1986).

Any issues or matters outside of those referenced above are collateral and outside the scope of a bond validation proceeding. *McCoy Restaurants, Inc. v. City of Orlando*, 392 So.2d 252, 254 (Fla. 1980). Examples of collateral issues include, but are not limited to: (1) the wisdom or expedience of undertaking a particular project and incurring debt as a means of financing; (2) the financial and economic feasibility of the project proposed to be financed with bond proceeds; and (3) the financial feasibility of the proposed bond issue. Such questions are deemed by the courts to be legislative matters and may not properly be raised during such proceedings. *Partridge v. St. Lucie County*, 539 So.2d 472 (Fla. 1989); *State v. Division of Bond Finance*, 530 So.2d 289 (Fla. 1988); *DeSha v. City of Waldo*, 444 So.2d 16 (Fla. 1984); *State v. Daytona Beach*, 431 So.2d 981 (Fla. 1983); *State v. City of Miami*, 103 So.2d 185 (Fla. 1958).

It is clear the arguments raised by Chambers are outside the scope of review. One involves an alleged discovery violation (his

allegation that the written interrogatories were not answered) and another the trial judge's alleged demeanor and attitude toward Chambers. Neither of those issues involves the City's authority to issue the bonds and the validity of the ordinances authorizing the issuance. Similarly, the validity of Ordinance 94-29 is not at issue in this case. The enabling ordinances in this case are Ordinance No. 94-34, 94-35 and 94-37. Ordinance No. 94-29 does not involve the property subject to validation here; instead, it involves the transfer of the utility system to the City of Port St. Lucie from the prior owner, St. Lucie County. The validity of Ordinance No. 94-29 has already been approved by the trial court in Bond Validation proceedings in *City of Port St. Lucie v. State*, Case No. 94-766 CA-02. (A-19)

Likewise, whether a violation of Chapter 286, Florida Statutes, (which in part governs attorney/client meetings between the city and its counsel) occurred has nothing to do with the validity of the ordinances authorizing the issuance of the 1994B Bonds. Even, assuming arguendo, that the meetings were relevant, it is clear the meetings referenced by Chambers involved a condemnation action not the subject matter of these proceedings.

CONCLUSION

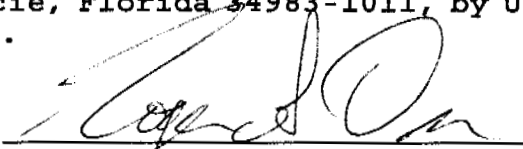
The project to be funded by the City from the proceeds of the assessments and bonds that were validated by the trial court below has been very controversial and has generated political opposition within the City of Port St. Lucie. The Intervenors, including Chambers, seek to use the bond validation proceedings to continue their political opposition to the project. But it is not the function of the courts in bond validation proceedings to substitute their judgment for the political judgment of the elected officials, but is rather to look at the legality of the proceedings only. Chambers has made no showing that the City has failed to meet the legal requirements to levy the assessments and issue the bonds validated by the trial court below.

There is substantial, competent evidence in the record to support the trial court's conclusion that all requirements of the law with respect to the 1994B Bonds and the 1994B Assessments were satisfied.

Chambers has failed to demonstrate any error on the part of the trial court in the proceedings below. The City respectfully submits that this Court should affirm the judgment of the trial court.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Answer Brief of Appellee together with the Appendix has been furnished to Bruce Chambers, 749 N.W. Cardinal Drive, Port St. Lucie, Florida 34983-1011, by U.S. Mail this 26th day of December, 1996.



Roger G. Orr



Debra A. (Rescigno) Baron