IN THE SUPREME COURT OF FLORIDA

CASE NO. 93,802

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

Appellant,

v.

THE STATE OF FLORIDA, and THE
TAXPAYERS, PROPERTY OWNERS,
and CITIZENS OF COLLIER
COUNTY, FLORIDA, ETC.,

Appellees.

APPEAL FROM THE CIRCUIT COURT OF THE
TWENTIETH JUDICIAL CIRCUIT IN AND FOR
COLLIER COUNTY, FLORIDA

BRIEF OF THE FLORIDA ASSOCIATION OF COUNTY ATTORNEYS, INC., AMICUS CURIAE

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CERTIFICATE OF TYPE SIZE AND STYLE

The size and style of type to be used in this Amicus Curiae Brief will be 12-point Courier New.

STATEMENT OF THE CASE

This is a direct appeal by Collier County, Florida from a judgment of the Circuit Court of Collier County denying Collier County's complaint for validation of certain revenue certificates to be repaid from the revenue of an Interim Governmental Services Fee levied as a special assessment on benefitted properties in Collier County. Permission has been granted by the undersigned to file this brief amicus curiae on behalf of the Florida Association of County Attorneys, Inc. The Board of Directors with Florida Association of County Attorneys has authorized this Amicus Curiae Brief. The Florida Association of County Attorneys is keenly interested in this matter. The Court's decision in this case will determine counties' abilities to raise funds for many needed projects. Special assessments and fees are vital home rule revenue tools. Without these sources of home rule revenues, the counties of Florida would not be able to perform many vital and required projects. The preservation of the instant revenue source enables counties to preserve home rule power and to generate revenue in a fair and equitable manner.

STATEMENT OF THE FACTS

Under the general laws of Florida with respect to ad valorem taxation, no ad valorem tax may be imposed by a county in respect of improvements to real property for any fiscal year, until the first fiscal year commencing after the first January 1 following the substantial completion of such improvements to real property Fla. Stat. §192.042 (1998).

No ad valorem tax in respect of improvements to real property is payable prior to November 1 of the fiscal year following the first January 1 after the substantial completion of such improvements to real property.

If improvements to real property are substantially completed after January 1 of any fiscal year, the county is required to provide services for the duration of the fiscal year then in progress. The owners of property are not required to pay ad valorem taxes with respect to the improved property.

Article VII, Section 2, Florida Constitution, requires that all ad valorem taxation shall be at a uniform rate within each taxing unit. The provision of governmental services in respect to any taxable property, without the imposition of taxes thereon for the fiscal year within which such services are rendered, is not fair. The provision of free services to some properties imposes an inequitable and disproportionate tax burden upon the properties that are fully assessed the ad valorem tax during such

fiscal year. An equivalent assessment or service fee imposed on property which no current tax is due, equalizes benefits and burdens.

The only way for a county to equalize each service recipient's costs for such governmental services is to ensure that every such recipient of services participates in funding the cost of providing those governmental services.

Providing a means for payment, so that all properties receiving services pay an equal rate is in furtherance of the public good and is a public purpose.

Pursuant to the authority granted in Article VIII, Section 1, Florida Constitution, and Sections 125.01 and 125.66, Florida Statutes, and other applicable provisions of law, Collier County adopted its Ordinance 98-25 on March 31, 1998 providing for the imposition of an Interim Governmental Services Fee on or before September 15 of each year to pay the costs of providing governmental services (see section 4 of the Ordinance), and implementing the uniform method of collecting non-ad valorem assessments (see section 11 of the Ordinance). The interim governmental services fee are reviewed annually (see section 8 of the Ordinance).

Collier County intended to issue not more than $700,000 aggregate principal amount of its revenue certificates for the public purpose of providing funds to pay all or any part of the

cost of providing governmental services to the benefitted properties which have received the benefits of such governmental services from April 1, 1998 through July 1, 1998, without paying for such governmental services to the improved properties of the county.

The facts are explained in greater detail in the brief of Collier County and in the final judgment.

ISSUES ARGUED BY AMICUS

I.

THE SPECIAL ASSESSMENT THAT COLLIER COUNTY SEEKS TO HAVE VALIDATED IN THIS CASE SUPPORTS THE PUBLIC POLICY OF THE STATE OF FLORIDA THAT LOCAL GOVERNMENT BODIES RAISE AND EXPEND REVENUE IN A FAIR AND EQUITABLE MANNER.

II.

THE SPECIAL ASSESSMENT THAT COLLIER COUNTY SEEKS TO HAVE VALIDATED IN THIS CASE IS SUPPORTED BY SPECIFIC FINANCIAL BENEFIT TO THE PROPERTY ASSESSED AND IS REASONABLY APPORTIONED AMONG THE PROPERTIES BENEFITTED.

SUMMARY OF THE ARGUMENT

Public policy of the State of Florida supports the raising and expending of public revenues in a fair and equitable manner. The special assessment levied by Collier County in the instance case is fair and equitable. The special assessment in the instant case matches the payment for services provided to the property receiving the benefit for the services.

The properties assessed by Collier County in the instant case are specifically benefited by the services provided by the special assessment. The benefit is the monetary increase in value the properties have because the properties receive services while not on the ad valorem tax roll. The Collier County Commission was very careful to apportion the assessment among the benefitted properties by performing and adopting a detailed economic analysis.

ARGUMENT

I. THE SPECIAL ASSESSMENT THAT COLLIER COUNTY SEEKS TO HAVE VALIDATED IN THIS CASE SUPPORTS THE PUBLIC POLICY OF THE STATE OF FLORIDA THAT LOCAL GOVERNMENT BODIES RAISE AND EXPEND REVENUE IN A FAIR AND EQUITABLE MANNER.

Local elected officials have the responsibility to see that their citizens are treated fairly and equitably with respect to fiscal matters. This responsibility is required by the Florida Constitution, the Florida Statutes, and the decisions of Florida Courts. For example: Utility fees must be reasonably related to the costs of the service and may include only small profit which may be used for purposes other than the provision of the utility service. City of New Smyrna Beach v. Fish, 384 So.2d 1272 (Fla. 1980). Different utility rates may be charged to different classes of customer so long as the classification scheme is not arbitrary or unreasonable. State v. City of Miami Spring, 245 So.2d 86 (Fla. 1971).

Impact fees in Florida must meet the dual rational nexus test. The local government must demonstrate a reasonable connection between the need for reasonably anticipated costs of expansion and the growth in population. Also the local government must show a reasonable connection between expenditure

of funds collected and the benefits to the property charged the impact fee. St. Johns County v. N.E. Florida Builders, 583 So.2d 635, 637 (Fla. 1991).

For special assessments, the property assessed must first derive a special benefit from the improvement or service provided. Second, the special assessment must be fairly and reasonably apportioned among the property receiving the special benefits. City of Boca Raton v. State, 595 So.2d 25, 29 (Fla. 1991).

Article VIII Section 1(h) of the Florida Constitution prohibits the expenditures of ad valorem funds raised in municipalities for services that exclusively benefits unincorporated areas: "[P]roperty situated within municipalities shall not be subject to taxation for services rendered by the County exclusively for the benefit of the property or residents in unincorporated areas."

Section 125.01(7), Florida Statutes, similarly limits all County non-ad valorem revenues so that municipalities can not benefit exclusively unincorporated areas:

> "(7) No county revenues, except those derived specifically from or on behalf of a municipal service taxing unit, special district, unincorporated area, service area, or program area, shall be used to fund any service or project provided by the county when no real and substantial benefit accrues to the property or residents within a municipality or municipalities."

Article VII, Section 2, Florida Constitution requires that all ad valorem taxation shall be at a uniform rate within such taxing unit. Fair and equitable treatment is the touchstone in Florida for the raising and expenditure of revenues.

In the instant case, Collier County seeks to correct a gross inequity in the collection of ad valorem revenue and the payment for services provided by Collier County. The County is merely attempting to equalize each service recipient's costs for governmental services. The County wants to ensure that every recipient of services pays their fair share.

II. THE SPECIAL ASSESSMENT THAT COLLIER COUNTY SEEKS TO HAVE VALIDATED IN THIS CASE IS SUPPORTED BY SPECIFIC FINANCIAL BENEFIT TO THE PROPERTY ASSESSED AND IS REASONABLY APPORTIONED AMONG THE PROPERTIES BENEFITTED.

The trial court succinctly summarized the essential facts of this case:

> "It is axiomatic that the Government must provide all citizens of the County such general public services as police, courts, libraries, and fire protection. These basic services are provided whether the property is fully inhabited, vacant or under construction. Ad valorem taxpayers who are assessed at full value pay their proportionate share of these services based upon the millage rate established by the County. Those who are not assessed at full value obviously pay less than their proportionate share. Thus, those owners whose property is improved or occupied after January 1 may enjoy a windfall of up to 24 months of paying taxes at

> less than full value. It was the County's desire to recapture this lost revenue which created the impetus for the Fee."

(Plaintiffs Appendix No. 11 Trial Court Decision, Page 2)

The Trial Court invalidated the Fee based on the authority of Lake County v. Water Oak Management Corporation, 659 So.2d 667 (Fla. 1997).

The Trial Courts reading of Lake County was that it prohibited in all cases a special assessment for general governmental purposes.

The Trial Court stated:

> The current case law, even with its more compliant or empathetic interpretations, does not support Collier County's Complaint for Validation. And for that proposition the court only has to look at page 670 of Lake County v. Water Oak Management Corporation, for key language that not only defeats the County's petition, but likewise demonstrates this "Oracle of Delphi" type of dilemma:
>
> > Contrary to the assertions of the opponents to the assessment here, we do not believe that today's decision will result in a never-ending flood of assessments. Clearly, services such as general law enforcement activities, the provision of courts, and indigent health care are, like fire protection services, functions required for an organized society. However, unlike fire protection services, those services provide no direct, special benefit to real property [citation omitted]. Thus, such services cannot be the subject of a special assessment because there is no logical relationship between the services provided and the benefit to real property.

> This is the fundamental key to our case. The Fee in this case is to be used to pay for law enforcement, courts, libraries, Supervisor of Election services, code enforcement public health and many other general support services. These are the types of benefits the supreme court has clearly stated do not meet the standard for special assessments.

(Plaintiff's Appendix No. 11, Trial Court Decision, Pages 3 and 4.)

The majority and the dissent in Lake County both cited to Crowder v. Phillips, 1 So.2d 629 (Fla. 1941) and Whisnant v. Stringfellow, 50 So.2d 885 (Fla. 1951), for the proposition that general governmental services cannot provide the needed logical relationship between the services provided and a benefit to real property. The crucial distinction missed by the trial court was that Lake County, Whisnant and Crowder are cases where all the property in a County were subject to the assessment in question. The Collier County Interim Governmental Services Fee is assessed on a few properties in the County. It is assessed only on those properties fully receiving governmental services, but not yet fully on the ad valorem tax roles. As Whisnant describes a special assessment:

> "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." (emphasis supplied.) Whisnant, 50 So.2d at 895.

The interim fee is classically a special assessment because it is limited to those properties receiving the windfall. Collier County was scrupulous in limiting the Interim fee to the windfall amounts. (See Plaintiff's Exhibit No. 5. The Tischler & Associates Study.) The assessed amounts were limited to marginal cost increases necessitated by properties receiving a Certificate of Occupancy. The ordinance properly gave credits for homestead and other exemptions. Credits were authorized for the amount of any ad valorem taxes paid. The minority's fear in Lake County that the local government tax base is being converted to a general-assessment tax base is simply not implicated by this Collier County Ordinance. The Constitution provisions for ad valorem tax caps, homestead exemptions and bonding referendums are not remotely challenged by the Collier County assessment because of its deliberately limited reach.

This Court's analysis of the interim governmental service fee should be guided by the traditional standard of benefit and apportionment. First, the Court should focus on the special benefit to the assessed properties. As aptly put by one commentator:

> "The fundamental point about special benefit to the property is that the system, facility, service, or improvement provided is not, per se, the special benefit. Instead, it is simply the mechanism from which the special benefit to the property from the mechanism must be ascertainable." (emphasis supplied.)

Dispelling the myths: Florida's Non-Ad Valorem Special Assessment Law, 20 Fla. St. U.L. Rev. 823, 854 (1993).

The special benefit to the properties in this case is the windfall they receive by not being fully on the ad valorem roles while fully receiving the general governmental services.

Florida Courts have previously recognized such monetary items as being a special benefit. Such similar monetary benefits include decreases in insurance premiums, increases in rental values, enhanced protection of public safety, and enhancement in the value of business property. See Fire Dist. No. 1 v. Jenkins, 221 So.2d 740, 741 (Fla. 1969); TEDC/Shell City, Inc. v. Robins, 690 So.2d 1323, 1325 (Fla. 3d DCA 1997) (Recognizing a federal income tax credit as a benefit that prevented taxpayers from recovering ad valorem tax exemption.)

The second prong for determining the validity of the instant special assessment is whether or not the apportionment is a reasonable and fair one. Again, Collier County was scrupulous in legislatively determining a reasonable apportionment. (Plaintiff's Appendix No. 5, Tischler & Associates Study.)

The instant non-ad valorem special assessment is not a tax. Taxes other than the ad valorem tax are pre-empted to the State. Any other tax must be authorized by the State. All taxes must be levied in accordance with general law. Article VII, Sections 1 and 9, Florida Constitution. Collier County's authority to levy

these assessments does not stem from its powers of taxation. Collier County levies the non-ad valorem special assessments pursuant to its constitutional home rule powers, Article VIII, Section 1, Florida Constitution.

This non-ad valorem special assessment is valid because (1) the services confer a special and ascertainable benefit to the property levied upon and (2) the assessment is reasonably apportioned among the property benefitted by the levy.

CONCLUSION

The judgment of the Circuit Court should be reversed. The Court should specifically opine that the Collier County Interim Governmental Service Fee is a valid special assessment or fee.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been sent by U.S. Mail this 2 day of November, 1998, to: C. Allen Watts, Esq. & John P. Ferguson, Esq., Cobb, Cole & Bell, Post Office Box 2491, Daytona Beach, Florida 32115-2491, Attorneys for Appellant; David Weigel, Esquire & Heidi F. Aston, Esquire, County Attorney's Office, Collier County Government Center, 3301 Tamiami Trail East, Naples, Florida 34112, Attorneys for Appellant; Michael Provost, Esquire, State Attorney's Office, Collier County Government Center, 3301 Tamiami Trail East, Naples, Florida 34112, Attorney for Appellee; Douglas L. Stowell, Esquire, Stowell, Anton & Kraemer, 36474 Emerald Coast Parkway, Suite 4101, Post Office Box 489, Destin, Florida 32540, Attorney for Appellee.

Respectfully submitted,

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