IN THE SUPREME COURT OF FLORIDA

CASE NO. 93,802

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

Appellant,

v.

THE STATE OF FLORIDA and **GUY L. CARLTON**, as Tax Collector of Collier County, Florida , and the **TAXPAYERS, PROPERTY OWNERS,** and **CITIZENS OF COLLIER COUNTY, FLORIDA.**

Appellees.

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

ANSWER BRIEF OF THE STATE OF FLORIDA

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CERTIFICATE OF TYPE SIZE AND STYLE

The size and style of type to be used in this Answer Brief of the State of Florida will be 14-point Times New Roman.

SUMMARY OF ARGUMENT

The Interim Governmental Services Fee seeks to levy a special assessment on properties when there is no logical relationship between the services provided and the benefit to the real property. This conclusion is based upon the evidence presented at the validation hearing which failed to show a benefit to the property, and the prior decision of this court in Lake County v. Water Oak Management Corporation, 695 So. 2d 667 (Fla. 1997).

There being no special benefit to the property, the Interim Governmental Services Fee is a tax imposed by Collier County in violation of Article VII, Section 1(a), Florida Constitution (1968).

ARGUMENT

1). THE CIRCUIT COURT WAS CORRECT IN FINDING NO SPECIAL BENEFIT TO THE PROPERTY

The final judgment of the circuit court is based upon this court's decision in Lake County v. Water Oak Management Corporation, 695 So. 2d 667 (Fla. 1997) that for a special assessment to be valid, there must be a logical relationship between the services provided and the benefit to the real property. In addition to the above decision, the evidence presented at the bond validation hearing fails to establish that the "windfall" has a logical connection to the benefited property.

Collier County's Interim Services Fee was created to recoup the difference between what taxpayers pay for the services provided by the county when they own unimproved property and the services they receive after a certificate of occupancy is issued but before the improvements are placed fully on the tax rolls. This gap was classified as a "windfall" by the County and is the benefit that is the subject of the special assessment. The problem for the County, however, is that this "windfall" is not a benefit to the property, but to the taxpayer. The evidence presented by the County at the bond validation hearing supports this conclusion. Counsel for the County, in his opening remarks to the judge stated " We believe that this creates a windfall to that *property owner*". (emphasis Added) (Appendix p.133 lines 10-17). The County then attempts to pound the square peg of the benefit to the taxpayer into the round hole of benefit to the property. There is no logical relationship between the services provided and the benefit to real property. In fact, the County's own expert testified that they did not come up with a finding of a peculiar benefit to the property, and that the benefit inured to the property owner, not the property. (Appendix 166, lines 11-12, 22-23). In fact, the services were already being provided by the county. (Appendix 171, lines12-25). As there are no new services being provided, how can there be any special benefit *to the property?* The obvious answer is

that there is not. The circuit court was correct in saying that this was an issue that needed to be addressed by the legislature, not the courts.

This square peg into a round hole reasoning is exactly the circumvention by semantics that Justice Wells was concerned about in his dissenting opinion in Harris v. Wilson, 693 So. 2d 945 (Fla. 1997). This is especially true as the County gives a wink and a nod to the taxpayers by stating in it's brief that "the Ordinance thus compels a net*reduction* in the ad valorem taxpayer's burden", Appellants Brief at 38, but fails to point out to the same taxpayers that in the complaint for validation, the County was in no way obligated to reduce the millage rate of any ad valorem tax levy imposed and that the proceeds of the Certificates that were to be used to supplant ad valorem revenues *may* be carried forward to reduce ad valorem millage *in future years*. (Appendix p.8, paragraph 25, 26, p.16, paragraph 52, 53).

Of greater significance is this courts own decision in the*Water Oak* case that certain services cannot be the subject of a special assessment. As the court held in *Water Oak,* services such as general law enforcement activities, the provision of courts, and indigent health care are functions required for an organized society. Those services, however, provide no direct, special benefit to real property. *Water Oak* at 670. These three

services are three of the named services in the Interim Services Fee Ordinance. The other services in the Ordinance; elections, code enforcement, animal control, parks and recreation, medical examiner, and support services, are likewise the type of functions required of an organized society. There is simply no logical relationship between these services provided and a benefit to real property.

2). THE INTERIM SERVICES FEE IS A TAX

In State v. City of Port Orange, 650 So. 2d 1 (Fla. 1994), this court reviewed a fee imposed upon owners of developed land for the maintenance of city roads. The City of Port Orange called the levy a user fee, this court disagreed, saying that semantics should not control the true identity and found that the fee was in actuality a tax. The court held that user fees, unlike taxes, are paid by choice. The court went on to see if the fee could be sustained as an impact fee as in Contractors and Builders Association of Pinellas County v. City of Dunedin, 329 So. 2d 314 (Fla. 1976). This court in *Contractors and Builders Association* found that impact fees are reasonable if limited to meeting the cost of expansion. This is cited to by Appellant, but what Appellant fails to point out is that the court in *Contractors and Builders Association* went on to say that users "who benefit especially, *not from the maintenance of the system*, but by the

extension of the system…should bear the cost of that extension." Id. At 320. (emphasis added). That is the difference in this case. The Interim Services Fee is not for the extension of the services *already provided*, it is to *maintain* the level of services *already provided.* The use of an impact fee in this situation was expressly rejected in *Contractors and Builders Association* when the court said in footnote 11, page 321, "In *Provo City*, an ordinance like Dunedin's was upheld even though the fees were used for "general operating expenses." We reject the view these cases represent." (citation omitted). No evidence was presented at the hearing that the fees are for expansion of any facilities and none of the services listed in the Interim Services Fee specifically provide for the expansion of services or facilities.[1] The fee is merely to supplement costs of services already provided. This court in *City of Port Orange* distinguished an impact fee from a tax by pointing out that fees are in exchange for governmental services that benefit the party paying the fee *in a manner not shared by other members of society*,

[1] Section 5.2 Sheriff-assessment imposed for cost of services; Section 5.3 Elections-assessment imposed for training poll workers, providing notice of election, processing absentee ballots; Section 5.4 Code Enforcement-assessment imposed for daily code enforcement; Section 5.5 Courts-assessment imposed for county cost of courts; Section 5.6 Animal Control-assessment imposed for investigation, confiscation and care of declared dangerous dogs; Section 5.7 Libraries-assessment imposed for operating cost of enlarged library; Section 5.8 Parks and Recreation-assessment imposed for operating cost of parks and recreational services; Section 5.9 Public Health-assessment imposed for costs of Public Health Unit; Section 5.10 Medical Examiner-assessment imposed for cost of services for Medical Examiner; Section 5.11 Public Works-assessment imposed for cost of road maintenance; Section 5.12 Support Services-assessment imposed for cost of support services.

and that they are paid by choice. A tax, however, is an enforced burden imposed by sovereign right for the support of the government, the administration of law, and the exercise of various functions the sovereign is called to perform. *Port Orange* at 3. While Appellant will point out that they claim this is a special assessment, not an impact fee, semantics should not be used in deciding the true nature of this assessment. Based upon the reasoning of *Port Orange* and *Contractors and Builders Association*, the Interim Governmental Services Fee is a tax because it is used to pay for existing services the sovereign is called on to provide for an orderly society, it does not provide any special benefit to the property, and it is mandatory.

CONCLUSION

The services provided in the Interim Services Fee are not the type of services that can be subject to a special assessment because there is no rational relationship between the services and the benefited property. In particular, the benefit the County seeks to confer is one that inures to the property owner, not the property. In addition, the Interim Services Fee is actually a tax which is imposed without legal authority because the fee is mandatory and is not limited to paying for the expansion of new or existing services, but pays for the maintenance of existing services..

Therefore, the State of Florida would respectfully request the court to affirm the judgment of the Circuit Court.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the forgoing has been furnished to David C. Weigel, Collier County Attorney, 3301 E. Tamiami Trail, Naples, Florida 34112; John P. Ferguson and C. Allen Watts, P. O. Box 2491 150 Magnolia Avenue Daytona Beach, Florida 32115-2491; Douglas L. Stowell, P.O. Box 11059 Tallahassee, Florida 32302; Daniel D. Eckert, Volusia County Attorney, 123 West Indiana Avenue, Deland, Florida 32720-4615, Joseph A. Morrissey and Mark A. Watts, Pinellas Attorney's Office, 315 Court Street, Clearwater, Florida 33756 this 23rd day of November, 1998.

Michael J. Provost
Assistant State Attorney