IN THE
SUPREME COURT OF FLORIDA

CITY OF NORTH LAUDERDALE CASE NO: SC00-1555

Appellant,

vs.

SMM PROPERTIES, INC., et al.,

Appellees.
_____/

AMICUS CURIAE BRIEF OF
THE VILLAGE CENTER COMMUNITY DEVELOPMENT DISTRICT

On Appeal From the Fourth District Court of Appeal
Case No. 98-03525

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THE INTEREST OF *AMICUS CURIAE* VILLAGE CENTER COMMUNITY DEVELOPMENT CENTER

The Village Center Community Development District ("VCCDD") was established to provide services to a retirement community known as The Villages pursuant to Chapter 190, Florida Statutes. The Villages stretches among three counties; Lake, Sumter, and Marion Counties. The Villages is a retirement community that provides within its boundaries enhanced security and all the services, amenities, conveniences, and necessities required by its residents. One of the purposes for creating the VCCDD was to provide property within The Villages an enhanced level of fire protection services and emergency medical services ("EMS") than was currently being provided by the various counties. As a result, property within The Villages receives an enhanced level of services not shared by other properties located outside The Villages.

In order for the VCCDD to provide this enhanced level of services, the District entered into Interlocal Governmental Agreements with Marion County and Sumter County pursuant to Section 163.01, Florida Statutes, (the "Interlocal Agreements"). Pursuant to the Interlocal Agreements, the VCCDD provides various fire protection and emergency medical services within those portions of The Villages located in unincorporated areas of Marion and Sumter County. Both Marion County and Sumter County have established Municipal Service Benefit Units ("MSBU") to fund fire protection services and emergency medical services within the respective

counties, and pursuant to the Interlocal Agreements, the VCCDD receives all or a portion of the MSBU assessments collected within The Villages by the counties to provide those services.

The Fourth District Court of Appeal's decision in SMM Properties v. City of North Lauderdale held that a court may separately analyze each of the services funded within an integrated fire services budget to ensure that each component survives the required special benefits test for a valid assessment. The court then proceeded to analyze the emergency medical services ("EMS") component in the integrated fire rescue program and determined that EMS services do not provide a special benefit to property and therefore could not be the subject of a special assessment.

The Court's resolution of this case will directly impact VCCDD's ability to provide these services, especially EMS, since the source of funding for VCCDD to pay for these services comes from the levying of MSBU special assessments by the counties served. More broadly, the decision in this case has the potential to greatly impact the manner in which other community development districts, counties, cities, and other districts in the State of Florida will and can provide such services since special assessment revenue is commonly the sole source of revenue available to fund the services involved. Accordingly, VCCDD submits this *amicus curiae* brief in support of the City of North Lauderdale; however, VCCDD will also present compelling, additional information on these

issues for the Court to consider so that all potentially affected interests will be heard.

SUMMARY OF ARGUMENT

This Court should reverse the Fourth District Court of Appeal's rulings in this case. That court incorrectly concluded without limitation that emergency medical services do not provide a special benefit to property. In addition, that court incorrectly concluded that a court may separately analyze each component in an integrated fire services budget to insure that each component survives the required special benefits test for valid special assessments.

A logical relationship does exist between the EMS services that are provided and the benefit to real property. This Court has previously determined that ambulance service, which is similar to EMS services, provides the requisite commensurate benefit required to specially assess a property. See Dryden v. Madison County, 696 So. 2d 728 (Fla. 1997), judgment vacated, 522 U.S. 1145 (1998), on remand, 727 So. 2d 245 (Fla. 1999) (affirming 696 So. 2d 728), cert. denied, 527 U.S. 1022 (1999). Further, the supreme court of another state has similarly upheld the imposition of a special assessment to pay for EMS services. See Vandiver v. Washington County, 628 S.W.2d 1 (Ark. 1982).

Florida courts have long recognized that services can provide the requisite special benefit to property. For instance, special

assessments for garbage collection and disposal, solid waste disposal, fire protection and first response medical aid have all been held to confer on property the required special benefit. It should logically follow from these cases that EMS services may also provide a benefit to property. However, the Fourth District incorrectly likened emergency medical services to that of the county health unit in Whisnant v. Stringfellow, 50 So. 2d 885 (Fla. 1951), and the construction and operation of a hospital in Crowder v. Phillips, 1 So. 2d 629 (Fla. 1941), which were determined to provide no direct, special benefit to the property assessed. The Fourth District confused the character of the improvements in Whisnant and Crowder and who those improvements benefit, with EMS services and its special benefit to property. The county health unit and the hospital considered in Whisnant and Crowder serve the general public. On the other hand, properties located within a certain geographical boundary that receive an enhanced level of EMS and fire protection services are specially benefitted by such services.

Even though EMS services may not confer a benefit to property in every case, this Court should recognize that there are situations where EMS services do provide a special benefit to property. Such is the case in communities which provide an enhanced level of services within its boundaries. Many communities have become self-sufficient by providing services to their

properties that were previously provided for by the local government. In many instances, the services provided in the community are of an enhanced level. If properties within such communities receive an enhanced level of fire or EMS services over what is provided to other properties outside of that community, it follows that the properties in the community are conferred a special benefit. The Third District Court of Appeals found this to be the case when it upheld a special assessment levied on a community to provide guard gates and guard houses since it specially benefitted all the property within that community. See Rushfeldt v. Metropolitan Dade County, 630 So. 2d 643 (Fla. 3d DCA 1994), rev. denied, 639 So. 2d 980 (Fla. 1994). As a result, this Court should not consider a blanket prohibition on levying special assessments for EMS services where EMS services provide a special benefit to property.

Finally, this Court should not allow courts to separately analyze each component in an integrated service program to see if each confers a special benefit. If an integrated service program provides a special benefit to property as a whole, courts should not separately analyze each service in that integrated service program. As a practical matter, local governments bundle services in order to more efficiently provide those services and to more efficiently assess the costs of providing those services. No system of appraising benefits has yet been developed that is not

open to some criticism and therefore, allowing each service to be analyzed separately when the integrated program as a whole provides a special benefit to property would needlessly prevent local governments and community development districts from efficiently providing needed services to property. This Court should reverse the Fourth District Court of Appeal's decision in the City of North Lauderdale.

ARGUMENT

I. EMERGENCY MEDICAL SERVICES CAN PROVIDE A SPECIAL BENEFIT TO ASSESSED PROPERTIES BECAUSE THERE CAN BE A LOGICAL RELATIONSHIP BETWEEN THE SERVICES PROVIDED AND THE BENEFIT TO REAL PROPERTY.

In order for a special assessment to be valid, two requirements must be met. First, the assessed property must derive a special benefit from the service provided. Second, the assessment must be fairly and reasonably apportioned among the properties that receive the special benefit. See City of Boca Raton v. State, 595 So. 2d 25, 29 (Fla. 1992). At issue here is whether emergency medical services ("EMS") provide this requisite special benefit to the properties being assessed.

In Lake County v. Water Oak Management Corporation, 695 So. 2d 667, 669 (Fla. 1997), this Court stated that in order for property to derive a special benefit from the service that is the subject of the assessment, the test is whether there is a logical relationship between the services provided and the benefit to real property. A

benefit to property encompasses more than just an enhancement or increase in market value of the property. Benefits can include the added use and enjoyment of the property. See Meyer v. City of Oakland Park, 219 So. 2d 417, 420 (Fla. 1969).

A. Owning Property That Is Geographically Included in an Area Where Enhanced Services Are Provided Clarifies the Premise That These Services Provide a Benefit to That Property.

The correlation between services and the requisite benefit to land can be readily understood when one owns property in a community which provides special services within its boundaries. Providing enhanced EMS services to properties in that type of community can be likened to a service that runs with the property. It is only the property in those communities which have access to the enhanced EMS services through the use of special assessments. If one buys property in that community, the owner enjoys the enhanced services. If one sells the property, the enhanced EMS services do not follow the seller outside of that community. In contrast, in a county-wide EMS service program which just offers the basic level of EMS services, it does not matter where you buy property in the county, you get that basic level of EMS service. One can conclude then that properties paying the special assessment and receiving an enhanced level of EMS services are conferred a special benefit.

Even though EMS services may not confer a benefit to property

in every case, this Court should recognize that there are situations where EMS services do provide a special benefit to property. This benefit will translate into a higher market value for properties in the service area than comparable properties outside those communities. See Fire District No. 1 of Polk County v. Jenkins, 221 So. 2d 740, 741 (Fla. 1969) (receiving better fire protection service is a benefit to property since it will enhance the value of that property).

Even Justice Wells in his dissent in Lake County v. Water Oak Management Corporation, 695 So. 2d 667 (Fla. 1997), recognized, as did the Fifth District Court of Appeal in that case, that circumstances might exist where the services provided did benefit the property. Justice Wells explained that "the creation of a special fire district within the limited area of the county, which brought fire services which were formerly distant into close proximity with the property, would seem to offer a special benefit of the kind envisioned in Jenkins." Lake County, 695 So. 2d at 671. This reasoning would hold especially true in communities which provide an enhanced level of services that were once distant to its boundaries.

B. Florida Courts Have Held That Security Services to a Community Provides a Special Benefit and EMS Services Are No Different.

Communities and neighborhoods which offer an enhanced level of a particular service have already been found to confer the special

benefit required to assess the property. In Rushfeldt v. Metropolitan Dade County, 630 So. 2d 643, 645 (Fla. 3d DCA 1994), rev. denied, 639 So. 2d 980 (Fla. 1994), the court found that a special assessment levied on a community to provide guard gates and guardhouses was valid since it specially benefitted all of the property within that community. This case is significant for two reasons. First, it recognizes that properties within such communities can be assessed for services which only they will receive. See Rushfeldt, 630 So. 2d at 645. Second, it holds that security guards and gates specially benefit all the property within that community. See id. Therefore, if providing an enhanced level of security in a community beyond normal police protection benefits that property, then providing an enhanced level of EMS services within that community above and beyond that which was previously provided also benefits that property.

C. Ambulance Services Can Provide a Commensurate Benefit to Property and Therefore Be the Subject of a Special Assessment.

The Fourth District Court of Appeals determined in the City of North Lauderdale case that emergency medical services do not confer a benefit on property. See SMM Properties v. City of North Lauderdale, 760 So. 2d 998, 1003-04 (Fla. 4th DCA 2000). However, this bright-line determination was erroneous because there can be a logical relationship between EMS services and the benefit to real property. In fact, this Court has previously reasoned that

ambulance services, which are similar to EMS services, can provide the requisite commensurate benefit required to specially assess a property. See Dryden v. Madison County, 696 So. 2d 728, 730 (Fla. 1997), judgment vacated, 522 U.S. 1145 (1998), on remand, 727 So. 2d 245 (Fla. 1999) (affirming 696 So. 2d 728), cert. denied, 527 U.S. 1022 (1999).

The Dryden case reached the Florida Supreme Court from various appeals that originated from the lower court's decision in Madison County v. Foxx, 636 So. 2d 39 (Fla. 1st DCA), appeal after remand sub nom, Dryden v. Madison County, 672 So. 2d 840 (Fla. 1st DCA 1996), approved, 696 So. 2d 728 (1997). The Foxx case was a consolidation of two separate cases, one brought by Foxx and the other brought by Dryden. The Foxx case originated when Foxx and Dryden challenged the validity of four county ordinances which levied special assessments for garbage services, landfill closure, ambulance service, and fire protection. See Foxx, 636 So. 2d at 41-42 (emphasis added). The Foxx court found that the county did not substantially comply with statutory guidelines in the enactment of the ordinances and thus, disallowed the special assessments. See id. at 48.

However, the Dryden Court found that while the county failed to follow the statutory guidelines in the enactment of the ordinances, the services that were the subject of the assessments, including ambulance service, "conferred a commensurate benefit" and

therefore, equitable considerations precluded a refund. See Dryden v. Madison County, 696 So. 2d 728, 729-30 (Fla. 1997). In essence, the Dryden Court recognized that where ambulance service, which is similar to EMS service, was of a special benefit, then a special assessment could be levied. This Court should not now recede from its earlier determination in Dryden on this matter.

D. Other Florida Courts Recognize That Other Services Can Provide the Requisite Special Benefit and EMS Services Are No Different.

Florida courts have held that various services do provide a benefit to property and thus, can be the subject of a special assessment. See Charlotte County v. Fiske, 350 So. 2d 578 (Fla. 2d DCA 1977) (garbage collection and disposal); Harris v. Wilson, 693 So. 2d 945 (Fla. 1997) (solid waste disposal); South Trail Fire Control District, Sarasota County v. State, 273 So. 2d 380 (Fla. 1973) (fire protection); Fire District No. 1 of Polk County v. Jenkins, 221 So. 2d 740 (Fla. 1969) (fire protection); and Lake County v. Water Oak Management Corp., 695 So. 2d 667 (Fla. 1997) (fire protection and first response medical aid).

It should logically follow from these cases that EMS services may also provide a benefit to property. However, the Fourth District Court of Appeal in City of North Lauderdale, likened emergency medical services to that of the county health unit in Whisnant v. Stringfellow, 50 So. 2d 885 (Fla. 1951), and the construction and operation of the hospital in Crowder v. Phillips,

1 So. 2d 629 (Fla. 1941), which were determined to provide no direct, special benefit to property.

The Fourth District's reliance on those cases is misplaced. First, what was actually the subject of the special assessments in those cases were buildings of a type that were open to the public at large. Even though improvements can be the subject of special assessments, see City of Hallandale v. Meekins, 237 So. 2d 318 (Fla. 4th DCA 1970) (sewer improvements), City of Treasure Island v. Strong, 215 So. 2d 473 (Fla. 1968) (erosion control systems), and Atlantic Coast Line R. Co. v. City of Gainesville, 91 So. 118 (Fla. 1922)(street improvements), the character of the improvements in Whisnant and Crowder are entirely different from the improvements concerning sewer, erosion control systems, and streets which serve specific parcels of land.

County health units and hospitals serve the general public. These facilities provide treatment to whomever walks in the door, whether you own property next door or are from out of state. Therefore, these facilities cannot be said to specially benefit particular pieces of property, because property ownership is not a prerequisite to using these facilities. Therefore, these special assessments fail because no special benefit accrues to the properties being assessed.

On the other hand, improvements for sewer, streets, and

erosion control systems do benefit the properties that are affected by such improvements. For instance, sewer improvements provide a direct, tangible benefit to the properties that have access to these systems. Properties not hooked up to the sewer systems will derive no benefit and should not be assessed. Likewise, only the properties assessed for EMS services and thus falling within the service boundary area, will have access to those services.

Further, the holdings in Whisnant and Crowder are even less applicable to situations such as communities which provide EMS services only to the property within its boundaries. In Whisnant, the court stated that a county health unit "benefits everyone in the county, regardless of their status as property owners." Whisnant, 50 So. 2d at 886. However, in a community which supplies enhanced EMS services only to the property within its boundaries, this benefit does not accrue to everyone in the county. Rather, it is only those who own property within that community who will receive such benefits, thereby enhancing that property's value.

Likewise, the Crowder court, in holding that a hospital does not confer a special benefit on property, stated that "a hospital is a distinct advantage to the entire community because of its availability to any person who may be injured or stricken with disease." Crowder, 1 So. 2d at 631 (emphasis added). Again, the Crowder court reached its decision based on benefits that are available to the entire public. In contrast, when a community only

provides enhanced EMS services to those who own property within that community, this benefit is not available to the entire public. Therefore, when enhanced services are targeted to properties within a community and those properties are the only ones that will receive the benefit, then those properties are conferred a benefit. See Vandiver v. Washington County, 628 S.W.2d 1, 6 (Ark. 1982) (upholding an assessment where only the properties that would receive the service where assessed).

Property value is directly correlated to the type, number, and quality of services that it receives. As a result, the market value of the properties in such communities is increased by receiving an enhanced level of EMS services and therefore, those properties can be the subject of a special assessment for these services.

E. Another Jurisdiction with Similar Constitutional Issues Holds That Special Assessments Can Be Used to Pay for EMS Services.

The Supreme Court of Arkansas similarly upheld the imposition of a special assessment to pay for EMS services. In Vandiver v. Washington County, 628 S.W.2d 1 (Ark. 1982), the county passed an ordinance which imposed an annual fee of $15 on each household, except those served by another company, to meet the cost of providing EMS services to those households. The Arkansas Supreme Court upheld the ordinance since the annual fee of $15 for EMS services was for a particular service that would only be provided

to those properties subject to the fee. See Vandiver, 628 S.W.2d at 6.[1] Therefore, this Court like the Arkansas Supreme Court should recognize that when an assessment for particular services is levied on those properties that will receive the service, then those properties are benefitted and can be validly assessed.

F. Even Though the Public at Large May Receive Some Benefit From the Services That Are the Subject of a Special Assessment, the Special Assessments Are Still Valid.

Just because the EMS services that are the subject of a special assessment might be provided to the errant passerby who is injured, that does not defeat the fact that it is the properties assessed that will in the aggregate have access to those services and derive those benefits. See Charlotte County v. Fiske, 350 So. 2d 578, 580-81 (Fla. 2d DCA 1977) (where certain properties were assessed for garbage disposal, the mere fact that the community at large, or the commercial properties within the service district, peripherally may also enjoy the benefits of the service, does not change that it is those properties assessed that are benefitted).

This Court addressed this very issue in Fire District No. 1 of Polk County v. Jenkins, 221 So. 2d 740 (Fla. 1969). The Jenkins court, in ruling on whether the availability of fire protection

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[1] Like Florida, Arkansas requires that property subject to a special assessment must receive a special benefit. See W.T. Rainwater v. Haynes, 428 S.W.2d 254, 257 (Ark. 1968) (holding "assessments are justified by the peculiar and special benefits which the improvements bestow upon the property assessed").

specially benefits trailer park property, found that because fire insurance premiums are decreased, public safety is protected, the value of business property is enhanced, a trailer park with fire protection offers a better service to its tenants which would be reflected in higher rental charges for the spaces, the property is specially benefitted. See Jenkins, 221 So. 2d at 741. Notably, the Jenkins court in finding that fire protection confers a benefit to property, stated that "public safety is protected." Consequently, a benefit to property can still occur even when the public is also being protected.

G. Florida Courts Should Embrace a Policy of Encouraging Enhanced Care for the Elderly.

Finally, this Court should consider how pervasive retirement communities are in Florida and how a blanket prohibition on levying special assessments for EMS services could affect the elderly. No one can argue that people who have reached their retirement age and are settling into retirement communities require greater medical care than the rest of the population. As a result, retirement communities are making available to its residents an enhanced level of care, which often includes an enhanced level of EMS services. These enhanced services offered by retirement communities confer a benefit on the properties within its boundaries. This Court should not foreclose the opportunity for gated, retirement communities and other communities which provide enhanced services within its boundaries to offer its retired residents the best access to EMS

and other services through special assessments.

II. EMS SERVICES ARE OFTEN BUNDLED AND A COURT SHOULD NOT ATTEMPT TO DISSECT THE SERVICE PACKAGE.

A court should not be allowed to unbundle and separately analyze each service packaged in an integrated service program to see if each component provides a special benefit to property. No case law supports what the Fourth District did in SMM Properties v. City of North Lauderdale. In fact, the Fourth District had previously found that no legal authority existed "for analyzing each particular item funded within the fire protection services budget separately to determine if each individual item survives the special benefit test." See City of Pembroke Pines v. McConaghey, 728 So. 2d 347, 351 (Fla. 4th DCA 1999), rev. denied, 741 So. 2d 136 (Fla. 1999). The Fourth District in Pembroke Pines then held that "the trial court erred by dissecting the services funded by the special assessment and then invalidating the entire special assessment based on a finding that one particular element of the fire protection services failed to satisfy the special benefit test of Lake County." Id. Then the same court a year later in City of North Lauderdale receded from that decision for no apparent reason or change in the law. See SMM Properties v. City of North Lauderdale, 760 So. 2d 998, 1003 (Fla. 4th DCA 2000). The Fourth District's stance on this issue in Pembroke Pines is the more reasoned approach.

If each service in an integrated service program is allowed to

be separately analyzed to see if it meets the special benefits test, then every bundled services program funded by a special assessment will be under attack. If the bundled services as a whole provide a special benefit, the requisite special benefit to property has been achieved. As a practical matter, services are frequently bundled for efficiency. The bundling of services allows a local government to more efficiently provide those services and to more efficiently cover the costs of providing those services. Allowing courts to separately analyze each component would defeat efforts by local governments to become more efficient.

Every service and improvement can provide a benefit to people and property, but courts should not get so specific as to determine whether it is the people or the property which is benefitted. As stated in City of Fort Myers v. State, 117 So. 97, 104 (Fla. 1928), "No system of appraising benefits . . . has yet been developed that is not open to some criticism." Imagine the accounting nightmare if courts tried to slice services out of a bundled services package. In situations such as this, a court should give deference to the findings and conclusions of a local government. If an integrated service program as a whole confers a special benefit to property, then courts should affirm the use of special assessments to pay for those services without attempting to determine if each provides a special benefit. This Court should reverse the Fourth District Court of Appeal's decision in City of North Lauderdale.

CONCLUSION

Emergency medical services can provide a special benefit to property and therefore, can be the subject of a special assessment. Even if this Court determines that in certain situations EMS services might not confer a benefit to property, this Court should not establish a bright-line test which prohibits the use of special assessments to pay for EMS services in unique situations such as gated, retirement communities and other communities which provide an enhanced level of services to the properties within its boundaries. Moreover, this Court should not allow trial courts to dissect a bundled services package to determine if each service provides a special benefit to property. Courts should be required to analyze the services package taken as a whole.

Based on the legal authorities and arguments set forth herein, this Court should: 1) find that emergency medical services may provide a special benefit to property; and 2) find that courts should analyze services as a whole rather than separately analyze each service within a bundle of services provided in a package.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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RANDALL N. THORNTON