IN THE SUPREME COURT OF FLORIDA
CASE NO. SC00-1555

CITY OF NORTH LAUDERDALE,

Appellant,

vs.

SMM PROPERTIES, INC., et al.,

Appellees.
_____/

INITIAL BRIEF OF APPELLANT, CITY OF NORTH LAUDERDALE

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

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CERTIFICATE OF FONT SIZE

This Initial Brief is reproduced in 12 point Courier, a font that is not proportionately spaced.

STATEMENT OF FACTS AND CASE

Fire rescue services in the City of North Lauderdale[1] are provided through the City's Fire Rescue Division. At the time this case began, the City operated one station that housed two pumpers, one utility truck and two command vehicles. The City's Fire Rescue Division is a fully consolidated program that serves both the fire and emergency medical needs of property within the City. (R. at II-362)(Final Judgment at 2). All City firefighters are cross-trained to provide both fire suppression and emergency medical services. (R. at II-362)(Final Judgment at 2). The City also provides incentive pay to 23 public safety officers[2] so that they can be cross-trained in fire suppression and first response medical capabilities. These officers respond with the City's fire rescue personnel, thereby increasing the effectiveness and response capabilities of the City's Fire Rescue Division. (R. at V-917)(Affidavit of Rudy Neumann). Additionally, the City's response protocol generally requires that both fire and rescue-type vehicles respond to all calls for service. (R. at II-362)(Final Judgment at 2).

The rescue component of the consolidated Fire Rescue Division provides on-the-scene stabilization at the property to which the City is called. At the time this action was filed, emergency

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[1] The City is a municipal corporation, organized and operating under the laws of the State of Florida, with home rule powers under Article VIII, section 2(b), Florida Constitution and sections 166.021 and 166.041, Florida Statutes.

[2] The Fire Rescue Division is a division of the City's Public Safety Department.

medical and transport services were provided through a two-year contract with Broward County Government. The purpose of the contract with Broward County was to supplement and enhance the first response medical and firefighting capabilities of the City.[3] Under the agreement, the City was provided an Advanced Life Support ("ALS") response from two Broward County units: one medic transport unit stationed in the City's firehouse and one ALS fire engine company located elsewhere. This agreement resulted in the staffing of a minimum of four cross-trained firefighter-paramedics daily, thereby increasing the total number of the on-duty, cross-trained firefighter-paramedics in the City by 100 percent. The agreement required the City to upgrade a pumper truck to an ALS responder and for it to be staffed with at least one cross-trained firefighter-paramedic.

The City and Broward County both responded to major medical calls (advanced life support). The City's Fire Rescue Division responds with four firefighters and two public safety officers to structure fires. One of those four responding firefighters is always a paramedic. For medical emergencies, the City responds with four firefighters and one public safety officer. (R. at V-917)(Affidavit of Randy Neumann). Broward County responds to all emergency medical calls with two firefighter-paramedics. Additionally, Broward County and the City entered into a mutual aid

[3] The cost of the contract to this City was $318,000. That amount was included in the City's budget for purposes of the special assessment at issue here. See R. at V-917 (Affidavit of Randy Neumann).

agreement for fire emergencies at no additional cost to the City, thereby reducing response times in certain portions of the City. (R. at V-917)(Affidavit of Randy Neumann).

In 1996, the City chose to fund its fire rescue operations through the imposition of a non-ad valorem special assessment. Through Ordinance 96-6-901, the City declared that the special assessment could be used for "the funding of fire rescue services, facilities or programs providing special benefits to property within the City . . ." (R. at V-807)(Affidavit of John Stunson, Attachment B).[4] For example, the City made the following legislative declaration:

> Fire rescue services possess a logical relationship to the use and enjoyment of improved property by: (1) protecting the value of the improvements and structures through the provision of available fire rescue services; (2) protecting the life and safety of intended occupants in the use and enjoyment of improvements and structures within improved parcels; (3) lowering the cost of fire insurance by the presence of a professional and comprehensive fire rescue program within the City; and (4) containing the spread of fire incidents occurring on vacant property with the potential to spread and endanger the structures and occupants of improved property.

(R. at V-807-08)(Affidavit of John Stunson, Attachment B, Ord. 96-6-901, § 1.04(A)). In addition, the City specifically and legislatively determined that these special benefits extended to the entire integrated fire emergency medical services program.

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[4] Only real property on which there was located a structure was subject to the assessment; thus, no vacant property was assessed.

> The combined fire control and emergency medical services of the City under its existing consolidated fire rescue program enhances and strengthens the relationship of such services to the use and enjoyment of Buildings within improved parcels of property within the City.

(R. at V-808)(Affidavit of John Stunson, Attachment B, Ord. 96-6-901, § 1.04(B)). Finally, the City declared that

> [t]he combined fire control and emergency medical services of the City under its existing consolidated fire rescue program enhance the value of business and commercial property that is improved by the existence or construction of a Building which enhanced value can be anticipated to be reflected in the rental charge or value of such business or commercial property.

(R. at V-808)(Affidavit of John Stunson, Attachment B, Ord. 96-6-901, § 1.04(C)).

After notice and a public hearing, the City Council adopted a Final Resolution that established the rate of the fire rescue assessment against property located within the City for the ensuing fiscal year and indicated that the assessments would be collected on the property tax bill. (R. at V-887) (Affidavit of John Stunson, Attachment D).

After the imposition of the special assessment, several commercial property owners within the City filed suit against the City, challenging the validity of its fire rescue special assessment. On June 20, 1997, the trial court granted a partial summary judgment, finding that the City's fire rescue special assessment provided a special benefit to property. (R. at VI-1086). In July of 1998, a bench trial was held on the remaining

issues, including whether the assessment was fairly and reasonably apportioned among the benefited properties. Following the trial, the court entered a Final Judgment upholding the special assessment and concluding that the fire rescue assessment was fairly and reasonably apportioned among the benefited properties. (R. at V-391) (Final Judgment at 8). The commercial property owners appealed the Final Judgment to the Fourth District Court of Appeal. In June of 2000, the Fourth District Court, in an en banc opinion, reversed the ruling of the trial court on the issue of special benefit and held that the special assessment could not be used to fund the emergency medical services component of the City's integrated fire rescue program. However, the Fourth District Court of Appeal certified two questions of great public importance as follows:

> 1. Do emergency medical services (EMS) provide a special benefit to property?
>
> 2. Can a fire rescue program funded by a special assessment use its equipment and personnel to provide emergency medical services for accidents and illnesses under Lake County v. Water Oak Management Corp., 695 So. 2d 667 (Fla. 1997)?

SMM Properties, Inc. v. City of North Lauderdale, 760 So. 2d 998, 1004 (Fla. 4th DCA 2000). The City timely filed its Notice to Invoke Discretionary Jurisdiction of this Court.

SUMMARY OF THE ARGUMENT

The issue of this case is one that has an answer in the Florida law. The City's legislative decision to provide a level of medical service that is higher than first response medical aid, as a part of its firefighting function, is a natural and logical application of the case law precedent in Florida for fire rescue special assessments. Accordingly, the City's choice to fund its Fire Rescue Division with the imposition of a non-ad valorem special assessment is supported by the case law history in Florida.

The City's provision of fire and emergency medical services provides a special benefit to the assessed property. As this Court has recently recognized, a special benefit to property exists when there is a logical relationship between the special assessment and the benefit to property. In fact, this Court has already upheld special assessment programs for fire and rescue and for fire and ambulance services as conferring this special benefit to property. This case presents a natural and logical application of that precedent. The Fourth District Court, however, misapplied it.

Simply stated, the City's services provided through its Fire Rescue Division and funded with the special assessment are not general governmental services that cannot provide a special benefit to property. This Court, over the last 60 years, has made this conclusion quite clear. Only three years ago, this Court held that integrated fire and rescue services provided a special benefit to property. The Fourth District Court's interpretation of that holding in Lake County v. Water Oak Management Corporation, 695 So.

2d 667 (Fla. 1997), precludes the City from providing a higher level of rescue service and funding it with a special assessment. Such a result strains logic. According to the Fourth District Court, an individual firefighter can fight fires and provide initial medical treatment (rescue) and confer a special benefit to property. But, if that same firefighter fights fires, provides initial medical treatment (rescue), and is trained to provide more sophisticated medical treatment (advanced life support), the special benefit to property is diminished. This result ignores the case law in Florida as well as the reality of how firefighting units in this State operate.

The Fourth District Court also erred in its conclusion that the City's legislative findings of special benefit were arbitrary as a matter of law. Because of the constitutional separation of powers concepts, the judiciary's duty is to defer to legislative findings unless and until they are proven to be arbitrary. The trial court in this case found no such proof and ruled that the City's findings of special benefit were reasonable. In fact, even the Fourth District Court provides no factual reasons for why the City's findings were deemed to be arbitrary. The City believes that the Fourth District Court merely disagreed with the City's conclusions. Absent proof, such disagreement is insufficient authority for the court to substitute its judgement for that of the local legislative body.

Accordingly, this Court should reverse the holding of the Fourth District Court of Appeal and conclude that the City's fire rescue special assessment provides a special benefit to property.

ARGUMENT

I. THE CITY OF NORTH LAUDERDALE'S SPECIAL ASSESSMENT FOR FIRE RESCUE SERVICES CONFERS A SPECIAL BENEFIT TO REAL PROPERTY.

The City's special assessment for fire and rescue services fulfills the criteria for valid special assessments. A special assessment is a local government charge that is assessed against property because that property derives a special benefit from the expenditure of the money. See Atlantic Coast Line R. Co. v. City of Gainesville, 91 So. 118, 121 (Fla. 1922).[5] Special assessments may be imposed under the home rule powers of a county or municipality, without direct statutory authorization. See City of Boca Raton v. State, 595 So. 2d 25 (Fla. 1992). Such flexibility allows local governments to impose alternative revenue sources, like special assessments, to meet local needs and fit local facts.

Because a valid special assessment may be imposed under home rule powers alone, the rules for such assessments are generally derived from case law. Florida law requires that the assessed property derive a special benefit from the service or facility provided.[6] See City of Boca Raton v. State, 595 So. 2d 25, 29

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[5] By way of contrast, local governments use taxes, which must be levied pursuant to direct statutory authority to fund general governmental needs that are for the good of civilized society and provide only general benefits to the community. See, e.g., Klemm v. Davenport, 129 So. 904, 907-08 (Fla. 1930) (contrasting special assessments with taxes); Dressel v. Dade County, 219 So. 2d 716, 720 (Fla. 3d DCA 1969), affirmed, 226 So. 2d 402 (Fla. 1969).

[6] Special assessments must also meet the "fair apportionment" test; the cost of providing the assessment program

(Fla. 1992). The provision of fire rescue services provides a special benefit to the assessed properties because a logical relationship exists between the use and enjoyment of property and the services provided. See Fire District No. 1 of Polk County v. Jenkins, 221 So. 2d 740 (Fla. 1969)(upholding a special assessment for fire services); South Trail Fire Control District, Sarasota County v. State, 273 So. 2d 380 (Fla. 1973)(upholding a special assessment for fire and ambulance services); Sarasota County v. Sarasota Church of Christ, 641 So. 2d 900 (Fla. 2d DCA 1994), rev'd on other grounds, 667 So. 2d 180 (Fla. 1995)(upholding a special assessment for fire and ambulance services); Lake County v. Water Oak Management Corp., 695 So. 2d 667 (Fla. 1997)(upholding a special assessment for fire and rescue services).

In addition to the special benefit concepts that this Court clarified in Lake County v. Water Oak Management Corp., 695 So. 2d 667 (Fla. 1997), the Court has previously determined that a special benefit may exist in a variety of forms. For example, while the benefit required for a valid special assessment is evidenced by an increase in value, the special benefit concept also includes potential increases in value as well as enhanced use and enjoyment of property. See Meyer v. City of Oakland Park, 219 So. 2d 417 (Fla. 1969). In Meyer, the Court upheld a sewer assessment on both improved and unimproved property, stating that a benefit need not

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must be fairly and reasonably apportioned among the benefited properties. See City of Boca Raton v. State, 595 So. 2d 25, 29 (Fla. 1992). No issue is raised in the appeal to this Court as to the "fair apportionment" test with respect to the City's special assessment for fire rescue.

be direct[7] nor immediate; but, the benefit must be substantial, certain, and capable of being realized within a reasonable time.

Furthermore, a special benefit need not be determined in relation to the current use of property. For example, in City of Hallandale v. Meekins, 237 So. 2d 318 (Fla. 4th DCA 1970), aff'd, 245 So. 2d 253 (Fla. 1971), a property owner challenged a sewer assessment, a portion of which the owner used as a parking lot. The court rejected the property owner's challenge and stated that "[t]he special benefit is the availability of the system and is permanent[.]" Id. at 322.

Finally, this Court declared in Lake County v. Water Oak Management Corp., 695 So. 2d 667 (Fla. 1997), that "[i]n evaluating whether a special benefit is conferred to property by the services for which the assessment is imposed, the test is not whether the services confer a 'unique' benefit or are different in type or degree from the benefit provided to the community as a whole[.]" Id. at 669. The test, rather, "is whether there is a 'logical relationship' between the services provided and the benefit to real property." Id.

In this case, the Fourth District Court of Appeal appeared to recognize these rules as they relate to special benefit in Florida. Unfortunately, in the court's struggle to apply them, it misunderstood that the Florida courts have already paved the way

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[7] This Court recently commented that a reduction in insurance premiums and the protection of property values are direct benefits to property from consolidated fire rescue services. See Collier County v. State, 733 So. 2d 1012, 1018 (Fla. 1999).

for the City here; that is, the City's fire rescue special assessment provides a special benefit to property. The Fourth District Court erred in ruling otherwise.

II. THE FOURTH DISTRICT COURT OF APPEAL MISAPPLIED THE FLORIDA PRECEDENT ON FIRE AND RESCUE SPECIAL ASSESSMENTS.

After almost 60 years of published opinions on the issue of funding fire and medical (rescue) services with special assessments, the courts have created a continuum of valid and invalid fire rescue assessments. That continuum is as follows:

1. "traditional" fire prevention, protection and suppression activities ("fire") confer a special benefit to property;

2. "traditional" fire services that also provide first response medical aid confer a special benefit to property;

3. "traditional" fire services that also provide emergency medical services confer a special benefit to property;

4. emergency medical services, without firefighting activities, may or may not, on a case-by-case basis provide a special benefit to property; and

5. a medical care facility, like a hospital, does not provide a special benefit to property.

The creation of this continuum began with Crowder v. Phillips, 1 So. 2d 629 (Fla. 1941), in which the Supreme Court of Florida held that a hospital was not a facility that could be funded by special assessments because the hospital did not confer a special benefit on the assessed property. Similarly, in Whisnant v.

Stringfellow, 50 So. 2d 885 (Fla. 1951), the Supreme Court of Florida concluded that the construction of a county health unit could not be financed with special assessments because the facility did not confer a special benefit on property.[8] In 1969, the Supreme Court in Fire Dist. No. 1 of Polk County v. Jenkins, 221 So. 2d 740 (Fla. 1969), upheld the use of a special assessment to fund fire protection and control services because they conferred special benefits on property.

Four years later, the Supreme Court of Florida upheld a special assessment for fire and ambulance services. See South Trail Fire Control Dist., Sarasota County v. State, 273 So. 2d 380 (Fla. 1973). That very assessment was challenged 20 years later by non-residential property owners. The assessment was again upheld. See Sarasota County v. Sarasota Church of Christ, 667 So. 2d 180 (Fla. 1995). Two years after that, this Court upheld the consolidated fire rescue special assessment in the Lake County case. See Lake County v. Water Oak Management Corp., 695 So. 2d 668 (Fla. 1997). In 1999, the Fourth District Court of Appeal upheld an assessment for fire and emergency medical services in the case of City of Pembroke Pines v. McConaghey, 728 So. 2d 347 (Fla.

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[8] Then, in 1962, the Supreme Court decided in the case of St. Lucie County-Fort Pierce Fire Protection & Control Dist. v. Higgs, 141 So. 2d 744 (Fla. 1962), that the fire control special assessments there were invalid because "no parcel of land was specially or peculiarly benefited in proportion to its value[.]" Id. at 746. Thus, the assessment failed because it was apportioned based on value, not because no special benefit was provided. See Lake County v. Water Oak Management Corp., 695 So. 2d 667, 670 (Fla. 1997) ("[w]e disapproved the assessment in Higgs based on the assessment's failure to meet the apportionment prong rather than the special benefit prong.").

4th DCA 1999), rev. denied, 741 So. 2d 1136 (Fla. 1999). That assessment funded a fire and emergency medical services program which is nearly identical to the services provided by the City here. One year later, that same Fourth District Court invalidated the assessment in this case.

The most recent of the cases from this Court, Lake County v. Water Oak Management Corp., is directly on point with this case. This Court determined that consolidated fire and rescue services can be funded with special assessments because those services have a logical relationship to the use and enjoyment of property. This Court defined the special benefit bright line for special assessments (as distinguished from the general benefit line for taxes) and determined that Lake County's fire rescue special assessment provided a special benefit to the assessed properties. See Lake County, 695 So. 2d at 670. The Lake County fire rescue assessment program, like the City's in this case was a consolidated program, funding more than mere fire protection and suppression activities. Even the Fourth District Court refers to the City's Fire Rescue Department as "integrated" at least four times in its written opinion. This Court recognized in Lake County that:

> Lake County provides a number of services under the umbrella of "fire protection services" such as fire suppression activities, first-response medical aid, educational programs and inspections. The medical response teams stabilize patients and provide them with initial medical care.

Id. at 668-69.

Contrary to the Fourth District Court's most current statement, the City's consolidated fire rescue special assessment fits squarely within the facts and holding of the Lake County decision.[9] In Lake County, the county provided comprehensive fire protection services through which the county's fire department also responded to calls for service when preliminary medical treatment and on-scene stabilization were required prior to the arrival of ambulances.

Similarly, in this case, the trial court specifically found that the City operates a "fully consolidated department;" that "[a]ll firefighters are cross-trained to enable them to provide emergency medical assistance in addition to their fire suppression activities;" and "that response protocol generally requires that both fire and rescue-type vehicles respond to all calls." (R. at II-361) (Final Judgment at 2). The fact that the City provided medical transport services pursuant to a contract with Broward County is consistent with the consolidated nature of the fire rescue services. The contract obligated the medical personnel to also provide firefighting and first response services along with the City's firefighters.

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[9] By way of contrast to the Fourth District Court's conclusion in this case, in 1999, that same court stated, "In Lake County, the supreme court, faced with almost identical facts, considered the variety of services consolidated into fire protection services and viewed fire protection services as a single entity. . . . we find Lake County to be controlling. . . ." City of Pembroke Pines v. McConaghey, 728 So. 2d 347, 351 (Fla. 4th DCA 1999), review denied, 741 So. 2d 1136 (Fla. 1999) (upholding a citywide special assessment imposed to fund an integrated fire rescue and emergency medial services program).

Because the fire rescue programs in Lake County and in the instant case provided rescue services as an ancillary[10] but integral part of the consolidated fire services, the facts of this case is a natural and logical application of Lake County. The only operational distinction between the instant case and Lake County is that in Lake County, medical transport ("ambulance") from the scene of the response was provided by another entity and funded by an ad valorem tax imposed by a hospital district and not the special assessments. Here, the City's program responds, treats and stabilizes individuals and, if necessary, provides emergency transport to the hospital. Furthermore, in Lake County, the county provided "a number of services under the umbrella of 'fire protection services,'" including "fire suppression activities, first-response medical aid, educational programs and inspections." See 695 So. 2d at 668. "The medical response teams stabilize patients and provide them with initial medical care. The fire department responds to automobile and other accident scenes and is involved in civil defense." Id. at 668-69.

The Fourth District Court of Appeal agreed that the City here provides the same services as were found to confer a special benefit to property in Lake County. Apparently, however, the court below believed that a higher level of service (emergency medical services versus first response medical aid) somehow equated to a

[10] Here, of the approximately $2.8 million Fire Rescue Assessment Budget, only $318,000 was identified by the Fourth District Court as being for emergency medical services.

diminished special benefit. Such a conclusion is contrary to the Lake County case.

III. THE CITY'S FIRE RESCUE ASSESSMENT HAS A LOGICAL RELATIONSHIP TO PROPERTY.

The issue on appeal here is whether the City's fire rescue services, funded from special assessment proceeds, provide special benefit to property or whether such services support only general governmental functions. General governmental services cannot be funded with special assessments. Such services can only be funded by taxes, levied to provide for the general good; questions of benefit or unlawful burden do not arise with taxes. See Klemm v. Davenport, 129 So. 904, 907-08 (Fla. 1930); Dressel v. Dade County, 219 So. 2d 716, 720 (Fla. 3d DCA 1969), affirmed, 226 So. 2d 402 (Fla. 1969). Furthermore, under the Florida Constitution, taxes require general law authorization and thus cannot be imposed by ordinance. See Art. VII, § 1(a), Fla. Const.

The test to be applied in drawing the boundary line between those services that provide the requisite special benefit to property (and can be funded with a special assessment) and those general governmental services required to be funded by taxes was declared by this Court in Lake County v. Water Oak Management Corp., 695 So. 2d 667 (Fla. 1997), when it stated, quite clearly:

> In evaluating whether a special benefit is conferred to property by the services for which the assessment is imposed, the test is not whether the services confer a "unique" benefit or are different in type or degree from the benefit provided to the community as

> a whole; rather, the test is whether there is a "logical relationship" between the services provided and the benefit to real property. Whisnant v. Stringfellow, 50 So. 2d 885 (Fla. 1951); Crowder v. Phillips, 146 Fla. 440, 1 So. 2d 629 (1941)(on rehearing).

Id. at 669 (footnote omitted). The Fourth District Court of Appeal placed a general governmental tag on all emergency medical services notwithstanding their integration with fire protection services that admittedly meet the special benefit test for a valid special assessment. This focus ignores the public safety component of an integrated fire protection program that is logically related to fire protection services and impermissively substitutes a judicial determination for a local government legislative decision on the level of public safety to be provided in a comprehensive and integrated fire protection service.

In Lake County, this Court held that the county's special assessment for fire rescue services provided a special benefit to property because "there [was] a 'logical relationship' between the services provided and benefit to real property." Id. at 669. The services provided in the Lake County case were described as the following:

> Lake County provides a number of services under the umbrella of "fire protection services" such as fire suppression activities, first-response medical aid, educational programs and inspections. The medical response teams stabilize patients and provide them with initial medical care. The fire department responds to automobile and other accident scenes and is involved in civil

> defense. Fire services are provided to all individuals and property involved in such accidents.

Id. at 669. This Court concluded that these services, including the "medical" or public safety components, were logically related to the special benefits to real property "by providing for lower insurance premiums and enhancing the value of the property." Id. at 669.

In this case, the City provides "integrated fire rescue" services which include: "(1) fire suppression, (2) first-response medical aid, and (3) emergency medical services (EMS)." SMM Properties, Inc. v. City of North Lauderdale, 760 So. 2d 998, 999 (Fla. 4th DCA 2000). The benefits that the City declared were conferred by these services included but were not limited to the following:

> (1) protecting the value of the improvements and structures . . .; (2) protecting the life and safety of intended occupants in the use and enjoyment of improvements and structures within improved parcels; (3) lowering the cost of fire insurance by the presence of a professional and comprehensive fire rescue program within the City[.]

(R. at V-807-08)(Affidavit of John Stunson, Attachment B, Ord. 96-6-901, § 1.04(A)). With the same benefits having been legislatively determined by the City as being conferred on real property by virtually the same services as in Lake County, it is difficult to understand how the Fourth District Court ruled that the public safety component was not logically related to fire protection services in face of the Lake County decision.

A. The Public Safety Component of an Integrated Fire Rescue Program Provides a Logical Relationship to Property Notwithstanding Any Incidental Benefits That Are Received By the Community As A Whole.

The Fourth District Court of Appeal quoted the "logical relationship" language from the Lake County case but then seemingly ignored it. In doing so, the Fourth District Court incorrectly concluded that the public safety component of an integrated fire rescue service represented by the provision of emergency medical services diminishes the special benefit to property. The Fourth District Court substituted its judicial judgment for that of the City Council's legislative decision that the integrated fire rescue program provided special benefits to assessed property by, among other ways, "protecting the life and safety of intended occupants in the use and enjoyment of improvements and structures within improved parcels." (R. at V-807-08) (Affidavit of John Stunson, Attachment B, Ord. 96-6-901, § 1.04(A)). Under fundamental constitutional separation of powers principles embodied in the Florida Constitution, this legislative declaration is entitled to judicial deference unless it is determined to be arbitrary.[11] Accordingly, the City Council's difficult legislative decision as to the funding of an essential service should not be disturbed unless it is contrary to established law or constitutional principles. There are many ways in which a special benefit can

[11] This conclusion is more fully discussed in Section IV of this Initial Brief.

exist while it ultimately inures to the benefit of people, as opposed to property and to the community as a whole, as well as specific parcels of property. For example, increases in property values, added use and enjoyment of property, potential increases in property values, decreases in property insurance premiums, the removal of a burden created by property use,[12] all ultimately inure to the benefit of people.

In the Fifth District Court's opinion striking Lake County's fire rescue assessment, the court articulated one of the issues to be resolved in the case as "whether certain activities such as emergency medical services and educational programs provide a benefit 'accruing to property' at all." See Water Oak Management Corp. v. Lake County, 673 So. 2d 135, 137 (Fla. 5th DCA 1996), quashed in part, 695 So. 2d 667 (Fla. 1997) (cits. omitted). The Fifth District Court, as the Fourth here, incorrectly resolved this issue, concluding that fire protection provides a sufficient special benefit to property but that the medical or public safety portion of that service did not specially benefit property. The Fifth District Court stated:

> Waste disposal and storm water runoff services clearly provide a benefit to property. Less clear, however, is why first response medical

[12] This concept is the special benefit that has been judicially recognized for both solid waste collection and disposal and stormwater improvements and maintenance. See, e.g., Harris v. Wilson, 693 So. 2d 945 (Fla. 1997); Sarasota County v. Sarasota Church of Christ, 667 So. 2d 180 (Fla. 1995).

> care is a benefit to the property, unless "removing a sick person from the property" is the benefit.

Water Oak Management Corp. v. Lake County, 673 So. 2d at 138, n. 8 (emphasis in original). This Court rejected that analysis, finding that even the "medical" component of Lake County's integrated fire rescue assessment had a logical relationship to real property. See Lake County, 695 So. 2d at 669, 670.

The Fourth District Court of Appeal attempted to bolster its "property versus people" standard by arguing that the emergency medical services portion of the City's fire rescue assessment program is provided "to all citizens in the city and does not [therefore] provide a special benefit to the assessed real property." See City of North Lauderdale, 760 So. 2d at 1001.

The "community as a whole" argument has also been rejected by this Court as the incorrect analysis for determining the existence of a special benefit. For example, almost 80 years ago, this Court stated a benefit is "special" when it exists "in addition to the general benefit accruing to all property or citizens of the commonwealth." Atlantic Coast Line R. Co. v. City of Gainesville, 91 So. 118, 121 (Fla. 1922) (emphasis added). This concept has been carried forward through the years. In 1977, the Second District Court upheld solid waste special assessments that were imposed on residential property in a certain portion of the county even though other properties received a general benefit from the assessment. See Charlotte County v. Fiske, 350 So. 2d 587 (Fla. 2d DCA 1977). Specifically, the court stated:

> the mere fact that the community at large, or the commercial properties within the service district, peripherally may also enjoy the cleaner and garbage-free environment does not change this [special benefit].

See id. at 587.

In contrast, however, the Fourth District Court commented on the Lake County case, stating, "[A]lthough fire protection services are generally available to the community as a whole, the greatest benefit of fire protection services is to property owners. . . ." See City of North Lauderdale, 760 So. 2d at 1004 (emphasis added). The City's integrated fire and emergency medical services exhibit that logical relationship to the use and enjoyment of property and provide their greatest benefit to owners of improved property. This benefit is not diminished because the Fire Rescue Division also provides emergency medical services to property as well.

B. The City's Provision of A Level of Medical Service In Its Fire and Rescue Program That Is Higher than First Response Medical Aid Does Not Lessen The Logical Relationship of Such Consolidated Service to Property.

The courts in Florida have already recognized and declared the special benefits that are conferred on property by a special assessment program that is similar to the City's here.

> On the question of to what extent property may be said to be specially benefited by the creation and operation of a Fire District, much may be said. Fire protection and the availability of fire equipment afford many benefits.

> Fire insurance premiums are decreased; public safety is protected; the value of business property is enhanced by the creation of the Fire District; a trailer park with fire protection offers a better service to tenants, which would reflect in the rental charge of the spaces.

Fire Dist. No. 1 of Polk County v. Jenkins, 221 So. 2d 740, 741 (Fla. 1969). In addition, this Court recognized these same special benefits when it upheld the special assessment for "protection against fire and the furnishing of ambulance services" in Sarasota County. South Trail Fire Control District, Sarasota County v. State, 273 So. 2d 380, 382 (Fla. 1973). Furthermore, this Court in Lake County noted that there was a logical relationship between the services provided there (fire and rescue) and the benefit to real property. "[F]ire protection services do, at a minimum, specially benefit real property by providing for lower insurance premiums and enhancing the value of the property." Lake County, 695 So. 2d 667, 670 (Fla. 1997).

While the Fourth District Court of Appeal in this case recognized these special benefits as to both fire programs and first response fire rescue programs, the court inexplicably ruled that emergency medical services, a higher level of medical service, when provided as a part of the fire program do not confer the same logical relationship to property. Further, the Court held that not only did this higher level of medical service fail to provide a special benefit, but that it somehow negates the special benefit that exists from a consolidated fire rescue program as existed in Lake County. The Fourth District Court's conclusion defies logic.

The only operational difference between first response rescue and emergency medical services is the level of service being provided to property. When emergency medical services are provided as a part of an integrated fire department, property receives a higher level of service from better trained personnel than property receives with first response medical personnel. The Fourth District Court completely fails to explain how a higher level of service negates the special benefit to property that would otherwise exist. No explanation is provided because one does not exist.

A logical result of the Fourth District Court's conclusion is the following: a firefighter, who actively "fights" fires provides a special benefit to property so long as that firefighter waits for another individual, in another vehicle to arrive and provide high levels of medical services at the scene of the fire. However, if that same firefighter does not wait for another individual in another vehicle to administer high levels of medical care at the scene but instead uses his own training to provide the necessary medical care at the scene, the special benefit to property has been negated. Such a result is illogical and not supported by the law in Florida. Instead of attempting to understand the manner in which the City provided its emergency medical services, the Fourth District Court conveniently but erroneously analogized the City's emergency medical services to medical care facilities that do not provide a special benefit to property. The Fourth District Court noted:

> We find the emergency medical services provided by the City in this case analogous to the county health unit discussed in Whisnant v. Stringfellow, 50 So. 2d at 885, and the construction and operation of the hospital in Crowder v. Phillips, 1 So. 2d at 629, in that these services provide no direct, special benefit to property owners and most appropriately come within the general police power services which the City provides to all city residents for their general benefit.

City of North Lauderdale, 760 So. 2d at 1003.

The analogy is misplaced. In Crowder v. Phillips, 1 So. 2d 629 (Fla. 1941), this Court determined that a hospital was not an improvement that could be funded by special assessments. The hospital did not provide "special benefits to the real property located in the district." See Crowder, 1 So. 2d at 631. The Court reached this conclusion because "no logical relationship [existed] between the construction and maintenance of a hospital, important as it is, and the improvement of real estate situated in the district." Id. at 631. Similarly, in Whisnant v. Stringfellow, 50 So. 2d 885 (Fla. 1951), this Court held that a county health unit could not be funded by special assessments because the health unit provided no special benefit to property. In fact, the Court in Whisnant stated that the health unit "benefits everyone in the county, regardless of their status as property owners. It is a 'governmental need' for which the taxing power of the county may be obligated." Id. at 886.

The Court acknowledged the logical relationship to property standard articulated in Crowder v. Phillips and noted that "[a] county health unit is a source of benefits to all people of the

county[;]" however, according to the Court, "there would appear to be no 'special or peculiar benefit' to the real property located in the county by reason of its establishment -- no 'logical relationship' between its establishment and . . . the real estate situated in the county." Whisnant, 50 So. 2d at 885-86. In other words, the county health unit served only the general common good of the community.

By way of contrast, this Court in the Lake County decision specifically held that consolidated fire rescue services were not the kind of general governmental services that were at issue in Whisnant v. Stringfellow and Crowder v. Phillips. This Court in Lake County stated as follows:

> [W]e 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. Whisnant. 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.

Lake County, 695 So. 2d at 670; see also Collier County v. State, 733 So. 2d 1012, 1018 (Fla. 1999) (providing further examples of "general benefit" services like sheriff services, libraries, election services, and public health services).

When local governments are the primary provider of rescue and emergency medical services, fire departments have been the historic agency through which those services have been provided to property.

Consequently, the fact that a local government may provide a more sophisticated level of medical services through its fire rescue department does not take that department outside the confines of the Lake County case. Simply because more highly trained individuals are hired by a local community and those persons are capable of performing both firefighting and advanced emergency medical care does not make the special benefit to property any less.

IV. THE FOURTH DISTRICT COURT OF APPEAL ERRONEOUSLY SUBSTITUTED ITS JUDGMENT FOR THAT OF THE CITY COUNCIL ON THE ISSUE OF SPECIAL BENEFIT.

Based on fundamental constitutional concepts of separation of powers,[13] legislative findings of special benefit are presumed to be valid unless they are proven to be arbitrary. See, e.g., Lake County v. Water Oak Management Corp., 695 So. 2d 667 (Fla. 1997)(upholding legislative findings of special benefit for fire rescue services); Harris v. Wilson, 693 So. 2d 945 (Fla. 1997)(upholding legislative findings of special benefit for solid waste services); Sarasota County v. Sarasota Church of Christ, 677 So. 2d 180 (Fla. 1995)(upholding legislative findings of special benefit for stormwater and fire rescue services). This Court in Sarasota County v. Sarasota Church of Christ, 677 So. 2d 180 (Fla. 1995), declared that both special benefit and fair apportionment are issues that "constitute questions of fact for a legislative

[13] See Art. II, § 3, Fla. Const.

body rather than the judiciary." See id. at 183. This Court further held that "the legislative determination as to the existence of special benefits and as to the apportionment of the costs of those benefits should be upheld unless the determination is arbitrary." See id. at 184. See also Meyer v. City of Oakland Park, 219 So. 2d 417, 429 (Fla. 1969)("[I]f reasonable men may differ as to whether land assessed was benefitted by the local improvements, the determination of the City officials as to such benefits must be sustained.").

This Court has also noted that the "question of what constitutes special benefit is a matter of judgment that courts should not overturn in the absence of a clear and full showing of arbitrary action or plain abuse." Harris v. Wilson, 693 So. 2d 945, 947 (Fla. 1997)(citing South Trail Fire Control District, Sarasota County v. State, 273 So. 2d 380 (Fla. 1973)). In South Trail, the Supreme Court noted quite strongly that findings of special benefits are "matter[s] . . . depend[ing] largely upon opinion and judgment as to what will, or will not, prove a benefit . . . and the Court should not substitute its opinion and judgment for that of the legislature in the absence of a clear and full showing of arbitrary action or a plain abuse." South Trail, 273 So. 2d 380, 383 (Fla. 1973).

The concept of judicially deferring to local legislative declarations is not new. The Supreme Court of Florida in the case of Atlantic Coast Line R. Co. v. City of Gainesville, 91 So. 118

(Fla. 1922), recognized the concept of judicial deference when it stated that

> the question of benefit to the property owner is not a judicial question unless the court can plainly see that no benefit can exist and this absence of benefit is so clear as to admit to no dispute or controversy by evidence.

See id. at 121 (emphasis added). Furthermore, upholding legislative findings of special benefit in the fire rescue context is also not new. For example, almost 25 years before Lake County, this Court decided the case of South Trail Fire Control District, Sarasota County v. State, 273 So. 2d 380 (Fla. 1973), which addressed the validity of assessments imposed by a fire district to fund "[t]he furnishing of protection against fire[] and the furnishing of ambulance service[.]" Id. at 382. The legislative body in South Trail had formally declared that those two services "benefit[ed] . . . all property within the territorial bounds of the district[.]" Id. This Court upheld those declarations, stating that

> "[t]he question of the existence and extent of special benefit . . . for which a special assessment is made is one of fact, legislative or administrative rather than judicial in character, and the determination of such question by the legislature or the body authorized to act . . . is conclusive, unless it is palpably arbitrary or grossly unequal and confiscatory, ..."

Id. at 383 (quoting 48 Am.Jur., Special or Local Assessments, § 29, pp. 588-59).

Acting as a legislative body, the City made clear, detailed and specific legislative declarations as to the provision of

special benefits to property from its consolidated fire rescue program. For example, the City declared that

> [f]ire rescue services possess a logical relationship to the use and enjoyment of improved property by: (1) protecting the value of the improvements and structures through the provision of available fire rescue services; (2) protecting the life and safety of intended occupants in the use and enjoyment of improvements and structures within improved parcels; (3) lowering the cost of fire insurance by the presence of a professional and comprehensive fire rescue program within the City; and (4) containing the spread of fire incidents occurring on vacant property with the potential to spread and endanger the structures and occupants of improved property.

(R. at V-807-08)(Affidavit of John Stunson, Attachment B, Ord. 96-6-901, § 1.04(A)). In addition, the City specifically and legislatively determined that these special benefits extended to the entire integrated fire emergency medical services program.

> The combined fire control and emergency medical services of the City under its existing consolidated fire rescue program enhance[s] and strengthens the relationship of such services to the use and enjoyment of Buildings within improved parcels of property within the City.

(R. at 808)(Affidavit of John Stunson, Attachment B, Ord. 96-6-901, § 1.04(B)). Finally, the City declared that

> [t]he combined fire control and emergency medical services of the City under its existing consolidated fire rescue program enhance the value of business and commercial property that is improved by the existence or construction of a Building which enhanced value can be anticipated to be reflected in the rental charge or value of such business or commercial property.

Id.

The burden was on the Appellees in this case to prove that these findings were arbitrary. They completely failed to present anything close to a "clear and full showing of arbitrary action or plain abuse" on the part of the City Council when it determined that each piece of assessed property received a special benefit from the City's fire and emergency medical services.

Acting as a legislative body, the City Council for the City of North Lauderdale specifically found that its special assessment for the fire rescue services conferred the required special benefit on the assessed properties. Because of the Appellees' complete failure to show that these declarations amount to arbitrary action or plain abuse, and the fact that the trial court concluded that the City's findings were reasonable and not arbitrary, the Fourth District Court improperly substituted its judgment on the issue of special benefit for that of the City Council.

The Fourth District Court obviously disagreed with the conclusions embodied in the City's legislative declarations of special benefit; however, mere disagreement is not sufficient for invalidation. The court must make express factual findings of <u>why</u> the legislative declarations are arbitrary. The Fourth District Court's recitation of statutory definitions relating to first response medical aid, emergency medical services, emergency medical transport services, and advanced life support services, at most, attempted to define the services being provided. These definitions, however, in no way infer, much less prove, that the inclusion of emergency medical services in a fire rescue assessment

program was an arbitrary decision. In fact, in the absence of such proof, the Fourth District Court's duty was to uphold the validity of the findings.

This duty is heightened in cases such as this, when previous courts and the Florida Legislature agree with the findings made by the City Council here. For example, the very same Fourth District Court of Appeal had, just last year, concluded that virtually identical fire and emergency medical services, in a neighboring municipality, provided a special benefit to property. See City of Pembroke Pines v. McConaghey, 728 So. 2d 347 (Fla. 4th DCA 1999), review denied, 741 So. 2d 1136 (Fla. 1999). In Pembroke Pines, the Fourth District Court recognized the legislative findings made by the City of Pembroke Pines were, "as a matter of law" found to not be arbitrary. See 728 So. 2d at 351.

Not only has this Court on at least four separate occasions upheld legislative findings of special benefit in the fire rescue context and not only did the same district court in this case so conclude just 18 months ago, but the Florida Legislature has even declared that a municipality may use a special assessment to fund both fire and emergency medical services. In 1996, the Legislature enacted section 170.201, Florida Statutes, proclaiming that "[i]n addition to other lawful authority to levy and collect special assessments, the governing body of a municipality may levy and collect special assessments to fund . . . municipal services, including, but not limited to, fire protection, [and] emergency medical services[.]" Id. This legislative act is significant as

evidence that even the deliberative, legislative body of the entire state believes the emergency medical services can provide a special benefit to property and be the lawful subject of a special assessment.

The portion of the Fourth District Court's opinion that recedes from its earlier opinion in City of Pembroke Pines v. McConaghey, 728 So. 2d 347 (Fla. 4th DCA 1999), provides a perfect example of the reason for the judicial deference to legislative findings rule. In upholding the fire and emergency medical services assessment in City of Pembroke Pines, the Fourth District Court stated, "We find no legal authority for analyzing each particular item funded within the fire protection services budget separately to determine if each individual item survives the special benefit test." Id. at 351. "We find the . . . piecemeal review of the special assessment at bar was contrary to the precedent set by the supreme court in Lake County." Pembroke Pines, 728 So. 2d at 351. Then, the Fourth District in the instant case stated:

> [W]e recede from any suggestion in Pembroke Pines that the Supreme Court's holding in Lake County indicates that a court can never separately analyze each of the services funded within an integrated fire services budget to ensure that each component survives the required special benefits test.

City of North Lauderdale, 760 So. 2d at 1003.

The Fourth District Court misunderstood the City's argument and unfortunately issued an overreaching opinion because of that misunderstanding. The City did not and does not here argue that

its declarations could never be proven to be arbitrary nor that the courts do not have the authority to so find. Instead, the City argues that it is justified in relying on case law and on statutes in examining its local situation and determining that its fire rescue special assessment may be used to fund fire and emergency medical services. And, that when no proof exists that those findings are arbitrary, then the court cannot substitute its judgment for that of the local legislative body and conduct a "piecemeal" review of each individual component of a consolidated service delivery system. In this context, such a "piecemeal" review would violate the fundamental concepts of separation of powers in the Florida Constitution. See Art. II, § 3, Fla. Const.

Florida law has clearly resolved the issue in this case. The City's decision to provide a level of emergency medical service that is higher than first response medical aid through its firefighting function provides a special benefit to property. The case law in Florida supported the City's further decision to fund those services with a special assessment. The City Council legislatively found those services provided a special benefit to property and absent proof that this decision was "palpably arbitrary," the City's decision must stand.

CONCLUSION

The Fourth District Court of Appeal incorrectly concluded that the City's special assessment at issue here, in its entirety, did not provide a special benefit to property. This Court should reverse that ruling and conclude that the City's entire special assessment confers a special benefit to property.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to NEISEN O. KASDIN, ESQUIRE, and R. HUGH LUMPKIN, ESQUIRE, Keith Mack, LLP, First Union Financial Center, 12th Floor, 200 South Biscayne Boulevard, Miami, Florida 33131-2310; EDNA L. CARUSO, ESQUIRE, Caruso, Burlington, Bohn & Compiani, P.A., Suite 3A/Barristers Building, 1615 Forum Place, West Palm Beach, Florida 33401; ALAN P. DAGEN, ESQUIRE, Schantz, Schatzman & Aaronson, P.A., First Union Finance Center, Suite 1050, 200 South Biscayne Boulevard, Miami, Florida 33131-2394; JAMIE A. COLE, ESQUIRE, Weiss, Serota, Helfman, Pastoriza & Guedes, P.A. 3111 Stirling Road, Suite B, Fort Lauderdale, Florida 33312; and RANDALL N. THORNTON, ESQUIRE, Post Office Box 58, Lake Panasoffkee, Florida 33538-0058, this ___ day of September, 2000.

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