IN THE SUPREME COURT OF FLORIDA

TALLAHASSEE, FLORIDA

CASE NO. SC00-1555

CITY OF NORTH LAUDERDALE,

Petitioner,

vs.

SMM PROPERTIES, INC., et al.,

Respondents.
_____/

RESPONDENTS' BRIEF ON THE MERITS

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CERTIFICATE OF TYPE SIZE AND STYLE

Respondents, SMM Properties, Inc., et al., hereby certify that the type size and style of this brief is 14 point Times New Roman.

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PREFACE

Petitioner has petitioned this Court to review a decision of the Fourth District Court of Appeal which certified questions to be of great public importance. Petitioner was the Defendant in the court below and Respondents were the Plaintiffs. Herein the parties will be referred to as they stood in the lower court or by proper name. Additionally, Petitioner, City of North Lauderdale, will be referred to as "the City" and Respondents will be referred to as "the property owners." The following symbols will be used:

(R) - Record-on-Appeal

(SR) - Supplemental Record-on-Appeal

(RA) - Respondents' Appendix

STATEMENT OF THE CASE

The City of North Lauderdale ("The City") adopted an ordinance which authorized and established procedures to fund the cost of an integrated "fire rescue" program through a special assessment levied on all property owners in the City (EX#4). The integrated program included: (1) fire suppression, (2) first-response medical aid, and (3) emergency medical services (EMS). The City determined that the integrated fire rescue program provided a special benefit to the assessed property by protecting the life and safety of occupants, lowering the cost of fire insurance and containing the spread of fire incidents (Ex#4, §1.04). The City also adopted a resolution which established the rate of the assessment (Ex#5).

Plaintiffs, various commercial property owners within the City("the property owners") whose property was being assessed, filed a lawsuit seeking declaratory relief and an injunction against the City, alleging that the assessment was an unconstitutional tax disguised as a special assessment (R4 717-30). The property owners conceded that, pursuant to the existing case law, the fire protection services' portion of the assessment conferred a special benefit upon their properties. They sought, however, a declaration that the portion of the assessment for emergency medical services was improper because the properties did not derive a special benefit from the service provided, and also sought a declaration that the assessment was not fairly or reasonably apportioned according to the benefits received (R4 727-30).

The trial court granted the City a partial summary judgment finding that the special assessment for the integrated fire rescue program conferred a special benefit to the assessed properties as a matter of law (R6 1086-87). The parties agreed that factual issues existed which required a non-jury trial on the apportionment issue. As a result of that trial, the court found that the methodology adopted by the City to apportion the special assessment among the properties was fair and reasonable (R2 361-69).

The property owners appealed to the Fourth District Court of Appeal. They claimed the trial court had erred in upholding the validity of the assessment for emergency medical services. They argued that the assessment for services did not provide a special benefit to the assessed properties, and that it was an invalid ad valorem tax clothed as a special assessment.

The Fourth District agreed in an en banc opinion. SMM PROPERTIES INC. v. CITY OF NORTH LAUDERDALE, 760 So.2d 998 (Fla. 4th DCA 2000). The Court reiterated the distinction between taxes and special assessments, and the fact that the latter must provide a special benefit to the assessed property. The court receded from its prior holding in CITY OF PEMBROKE PINES v. McCONAGHEY, 728 So.2d 347 (Fla. 4th DCA 1999), and held instead that each component of an integrated program that is funded by a special assessment must satisfy the special benefits test. 760 So.2d at 1003. The court concluded that assessments for fire

protection have typically been found to provide a special benefit to real property by lowering insurance premiums and enhancing the property's value. And, "first response medical aid" is one of the firefighters' routine duties, and therefore it is part and parcel of the fire protection component. However, the court held that the emergency medical services component of the City's integrated program did **not** provide a special benefit to the assessed property. Rather, it came within the general police power services which the City provided to all residents for their general health. The Court stated (760 So.2d at 1004):

> ...On the whole, **emergency medical transportation services benefit people, not property**. Thus, we hold that the City's legislative determination that the assessment for emergency medical services conferred a special benefit on property was arbitrary, and we find that the assessment "has the indicia of a tax because it is proposed to support many of the general sovereign functions contemplated within the definition of a tax." *Collier County*, 733 So.2d at 1018. (emphasis added)

The Fourth District distinguished this Court's opinion in LAKE COUNTY v. WATER OAK MANAGEMENT CORP., 695 So.2d 667 (Fla. 1997) upon which the City relied, because it concerned first response medical care, which is included within a firefighter's duty, and not emergency medical services, as here. Because the issue could affect many governmental entities, and many property owners in this State, the Fourth District stated that the issue should be finally decided by this Court.

Accordingly, the Fourth District certified the following questions to be of great public importance (760 So.2d 1004):

> **DO EMERGENCY MEDICAL SERVICES (EMS) PROVIDE A SPECIAL BENEFIT TO PROPERTY?**
>
> **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 677 (FLA. 1997)?**

STATEMENT OF THE FACTS

The City of North Lauderdale is a municipal corporation located in Broward County. For years Broward County provided emergency medical services throughout the County (5/13/97 Transcript, p.27). Those services were funded by ad valorem taxes collected by the County (Id. at p.28). When Broward County decided not to continue to provide emergency medical services for the municipalities within the County, the City of North Lauderdale entered into a contract to pay the County to continue providing those services (Id. at 24). Those contract services were funded by the City's general fund, which was substantially supported by ad valorem taxes.

The City subsequently decided that it did not want to continue paying for emergency medical services from its general fund. It hired Government System

Group, L.C. (GSG),[1] a company that provides management consulting services to local governments, to develop a program - one that would be upheld under Florida law - to fund not only the City's fire rescue program, but also the emergency medical services, through special assessments. GSG subsequently provided the City with its Fire Rescue Assessment Program Report, in which GSG suggested the idea of an "integrated program" encompassing both fire rescue and emergency medical services (Ex#3).

Based upon GSG's report, on June 25, 1996, the City adopted a "fire rescue" ordinance that authorized the funding of an integrated fire rescue and emergency medical services program through a special assessment on all property owners in the City (Ex#4, p.8). On July 30, 1996, the City passed a resolution actually imposing the special assessments on property owners within the City (Ex#5). **The services that were provided by the City after it adopted the fire rescue resolution and ordinance were the same as those provided before, the only difference was that payment for emergency medical services was now funded by special assessments from real property owners, rather than by the City's general revenues** (5/13/97 Transcript p.24;R4:925).

[1]GSG is a company created and partially owned by the law firm representing the City.

Under the City's integrated program, the fire protection component was provided by the City's fire station which had two pumpers, one utility truck and two command vehicles (R5:916). The City's firefighters were cross-trained to provide both fire protection and first response medical aid services (on the scene medical stabilization) (R5:916).

The rescue component of the City's integrated program, i.e., emergency medical services, was provided to the City through its contract with Broward County (R5:916). Those emergency medical services are entirely different from the first response medical aid provided by the City's firefighters. The term "emergency medical services" refers not to mere on-the-scene medical stabilization, but the assessment, treatment, and transportation of injured persons in medical emergencies. See §401.211 Fla. Stat.(1977). The County was to furnish the City with two of the County's emergency vehicles equipped to provide advanced life support (ALS), and each vehicle was staffed with two County employed paramedic/firefighters. "Advanced life support" involves much more than first response medical aid. People qualified in advanced life support are trained in the use of endotracheal intubation, the administration of drugs or intravenous fluids, telemetry, cardiac monitoring, and cardiac defibrillation. §401.23(1) (1977) Fla. Stat. One County vehicle was to be stationed at the City's fire station with the other vehicle stationed at another location, and one of those vehicles was to always respond to all major medical calls (R5:916).

While the City's firefighters, one of whom was cross-trained as a paramedic, also responded to major medical calls (R5:916), their role in providing medical care was limited to providing first response medical aid (5/13/97 Transcript, pp.20&29). If the City arrived on the scene before the County, they "take care of the person on the site, get them stabilized," until the arrival of the County's paramedics, who take over the care of the person and transport him or her to the hospital (5/13/97 Transcript, pp.20&29).

SUMMARY OF ARGUMENT

The Fourth District correctly held that emergency medical services do not provide a special benefit to property. Emergency medical services differ from first response medical aid. The latter, which is part-and-parcel of the services rendered by firefighters, provides on-the-scene medical care until the emergency medical crew arrives. Fire protection services, including first response medical aid for which there is no additional charge to the property owner, have been held to provide a special benefit to real property. However, emergency medical services, which involve the assessment, treatment and transportation of injured persons to the hospital, provide a benefit to people, not property. Emergency medical services and transport are essential to the health and well-being of all citizens. §401.211 Fla. Stat. Accordingly

the assessment for emergency medical services is an ad valorem tax dressed up as a special assessment, and was correctly declared invalid.

The Fourth District also correctly held that LAKE COUNTY v. WATER OAK MANAGEMENT CORP., 695 So.2d 667 (Fla. 1997) dealt with first response medical aid and not emergency medical services. Therefore, that case does not provide authority, as the City claims, for holding that emergency medical services can be the subject of a special assessment.

Even if the "logical relationship" test is applicable, there is no logical relationship between emergency medical services and a benefit to real property. In fact, COLLIER COUNTY v. STATE OF FLORIDA, 733 So.2d 1012 (Fla. 1999) held that emergency medical services do not provide a special benefit to real property. It is also the property owners' contention that COLLIER retreated from the "logical relationship" test and returned to the "unique benefit" test. Regardless of which test is applicable, emergency medical services fail to meet either test.

Since the City Council's conclusion that emergency medical services benefit real property is legally incorrect and arbitrary, the Fourth District did not err in reversing that determination.

ARGUMENT

CERTIFIED QUESTION NUMBER 1

DO EMERGENCY MEDICAL SERVICES (EMS) PROVIDE A SPECIAL BENEFIT TO PROPERTY?

Based upon the property owners' arguments set forth, infra, the first certified question must be answered in the negative.

A) Distinguishing Between a Special Assessment and a Tax

Florida's Constitution protects Florida property owners and taxpayers by limiting local governments in their ability to impose ad valorem (real property and personal property) taxes, the only form of taxation constitutionally committed to use by local governments. Florida taxpayers are guaranteed millage caps (10 mils) on ad valorem taxes (Article VII, §9(b) Fla. Const.) and their homesteads are exempt from the levy of such taxes (Article VII, §6(a) Fla. Const.). Accordingly, Florida's Constitution assures its taxpayers that, without voter approval, local governments may not tax their properties to fund operations beyond set limits.

The exception to this taxpayer protection lies in "assessments for special benefits," (Article VII, §6 Fla. Const.), where unlike the millage cap on ad valorem taxes, there is no cap on the amount that can be assessed for special benefits. LAKE HOWELL WATER & RECLAMATION DISTRICT v. STATE, 268 So.2d 897, 899

(Fla. 1972). Unpaid special assessments also become liens on the property assessed.[2] Accordingly, it is imperative for Florida courts to enforce its citizens' constitutionally guaranteed rights by precluding local governments from circumventing those rights by simply labeling something as a special assessment when it is actually a tax. The courts must scrutinize special assessments to assure that they are not for services whose revenue should be raised through ad valorem taxes, with its constitutional limitations on government taxing and spending.

To properly evaluate the validity of a special assessment, the differences between a special assessment and a tax must be addressed. In CITY OF BOCA RATON v. STATE, 595 So.2d 25 (Fla. 1992) and SARASOTA COUNTY v. SARASOTA CHURCH OF CHRIST, 641 So.2d 900 (Fla. 2d DCA 1994), reversed on other grounds, 667 So.2d 180 (Fla. 1995) the court explained those differences. Taxes are levied throughout a particular taxing unit for the general benefit of residents and property, and are imposed under the theory that a contribution must be made by the community at large to support the various functions of the government. Consequently, many citizens may pay a tax to support a particular government function from which they receive no direct benefit. Conversely, special assessments

[2]/The City's Fire Rescue Assessment Ordinance provides that assessment is a lien on the property assessed (Ex#4, §209). Section 3.02 of the Ordinance gives the City the right to foreclose on property for nonpayment of the special assessment, and to also recover attorney's fees and costs associated with the foreclosure action (Ex#4).

must confer a specific benefit on the land burdened by the assessment, and are imposed under the theory that the portion of the community that bears the cost of the assessment will receive a special benefit from the improvement or services for which the assessment is levied. 595 So.2d at 29, 667 So.2d at 183.

Although a special assessment is typically imposed for a specific purpose designed to benefit a specific area or class of property owners, this Court has previously held that this does not mean that the cost of services can never be levied throughout a community as a whole. 595 So.2d at 183. Rather, the validity of a special assessment turns on whether the real properties assessed are recipients of a special benefit, regardless of whether those benefits are spread throughout an entire community, rather than located in a limited, specific area within the community. Id. at 183.

1) Special Assessments Must Meet a Two-Pronged Constitutionality Test

A valid special assessment must meet two requirements: (1) the real property assessed must derive a special benefit from the service provided, and; (2) the assessment must be fairly and reasonably apportioned among the assessed properties according to the benefits received. SARASOTA COUNTY v. SARASOTA CHURCH OF CHRIST, 667 So.2d at 183. In evaluating whether a special benefit is conferred upon property by the services for which the assessment is imposed, this Court stated in LAKE COUNTY v. WATER OAK MANAGEMENT CORP., 695

So.2d 667 (Fla. 1997) that the test is not whether the services confer a "unique" benefit or one different in type or degree from the benefit provided to the community as a whole, nor does the benefit have to be a direct one, said the Court. Id. at 669. Rather, the Court stated the test is whether there is a "logical relationship" between the services provided and the benefit to real property. Id.

Two years later, in COLLIER COUNTY v. STATE, 733 So.2d 1012 (Fla. 1999), the Court appeared to retreat from the "logical relationship" test and return to a requirement that the services funded by a special assessment provide a direct, special or unique benefit to real property. It is the property owner's position in this case that, regardless of whether the "logical relationship" test or the "unique benefit" test is applied, emergency medical services do not provide the type of special or peculiar benefit required to enhance the value of real property in order to meet the first prong of the constitutionality test (discussed more fully, infra).

B) Improvements and Services Which Have Been Held to Provide a Special Benefit

The following type services and improvements have been held to provide the requisite special benefit for the imposition of a special assessment: garbage collection and disposal, [CHARLOTTE COUNTY v. FISKE, 350 So.2d 578 (Fla. 2d DCA 1977)]; sewer improvements, [CITY OF HALLANDALE v. MEEKINS, 237 So.2d 318 (Fla. 4th DCA 1970), aff'd. 245 So.2d (Fla. 1971); MEYER v. CITY OF

OAKLAND PARK, 219 So.2d 417 (Fla. 1969)]; solid waste disposal, [HARRIS v. WILSON, 693 So.2d 945 (Fla. 1997)]; street improvements, [ATLANTIC COAST LINE R. CO. v. CITY OF GAINESVILLE, 91 So. 118 (Fla. 1922); BODNER v. CITY OF CORAL GABLES, 245 So.2d 250 (Fla. 1971); STATE OF FLORIDA v. SARASOTA COUNTY, 693 So.2d 546 (Fla. 1997); SARASOTA COUNTY v. SARASOTA CHURCH OF CHRIST, INC., supra.];[3] fire protection; [FIRE DISTRICT NO. 1 OF POLK COUNTY v. JENKINS, 221 So.2d 740 (Fla. 1969)]; fire protection and first response medical aid; [LAKE COUNTY v. WATER OAK MANAGEMENT CORP., supra.]

1) Fire Protection Services, Which Have Been Held to Provide a Special Benefit to Real Property, Encompass First Response Medical Aid

Case law is well established that fire control or fire protection services create a benefit to real property because its value is enhanced as a result of the protection

[3]/SARASOTA COUNTY v. SARASOTA CHURCH OF CHRIST, INC., 641 So.2d 900 (Fla. 2d DCA 1994) involved stormwater utility services and "fire rescue". The Second District found that "rescue" was synonymous in that case with ambulance services, Id. at 902, and held that the church was estopped to challenge the fire-rescue assessment since it had "paid, seemingly without protest" for an assessment for those same services for many years. Accordingly, it did not reach the issue of whether ambulance services could be the bases of a special assessment. Id. at 902. For that reason, upon review by this Court, it merely addressed the assessment for stormwater utility services, and did not address whether the assessment for ambulance services was valid. SARASOTA COUNTY v. SARASOTA CHURCH OF CHRIST, 667 So.2d 180 (Fla. 1995). Likewise, in SOUTH TRAIL FIRE CONTROL DISTRICT, SARASOTA COUNTY v. STATE, 273 So.2d 380 (Fla. 1973), this Court did address whether an assessment for ambulance services was valid since the only issue before the Court was the validity of the appointment of the special assessment.

against fire damage, and because fire insurance premiums on the property are decreased. FIRE DISTRICT NO. 1 OF POLK COUNTY, supra. Also, fire protection, in combination with first response medical aid, has also been held to benefit the property assessed. LAKE COUNTY v. WATER OAK MANAGEMENT CORP., supra. As the Fourth District held, however, "first response medical aid" is one of the routine duties of a firefighter. Firefighters are certified by the Fire Marshall's office of the Department of Insurance pursuant to §633.35(2) Fla. Stat. and their primary responsibility is the prevention and extinguishment of fires, the protection and saving of life and property, and enforcement of fire prevention codes. §633.30 Fla. Stat.

The training of a firefighter requires 40 hours of first response medical aid. Fla. Admin. Code §4A-37.055(21). Pursuant to Florida statutes, a person who provides first response medical aid is defined as someone who must have training to render initial care to an ill or injured person, but who does not have the primary responsibility of either treating or transporting that person, §401.435 (1) Fla. Stat. First response medical aid is routinely provided by policemen, firefighters, lifeguards and certain volunteer organizations, all of which render "as part of their routine functions, on-scene patient care before emergency technicians or paramedics arrive." §401.435(2) Fla. Stat.

In this case, the City filed an affidavit of the Fire Chief which admitted that the first response medical aid services provided by the firefighters and the emergency medical care and transport services provided by the County are separate and distinct (R5:916).

> 6. The rescue component of the consolidated program provides on-scene medical stabilization at the property locations at which they are called. Emergency Medical Services (EMS) and transport are provided through a two-year contractual arrangement with Broward County Government.... (emphasis added)

There is a tremendous distinction between first response medical aid, which is a service provided as part and parcel of a firefighter's normal training and duties, and the emergency medical services (EMS) and transport services provided by the County through its contract with the City. The latter services are not part of the firefighter's routine duties. They are provided by the County's emergency medical technicians or paramedics who have the primary responsibility of treating and transporting an ill or injured person to the hospital. The fact that the County's paramedics are also trained as firefighters is irrelevant. When they arrive on-the-scene, they do not fight fires. They provide medical care for patients. When acting in their role of providing emergency medical services and transport services to the hospital they are acting in a health care capacity, which constitutes a benefit to people, not real property. This is evidenced by the legislative intent set forth in the Emergency Medical Transportation Services Act, §401.211 Fla. Stat.:

> The legislature recognizes that the systematic provision of emergency medical services saves lives and reduces disability associated with illness and injury...[s]uch services are essential to the health and well-being of all citizens of the state. The purpose of this part is to protect and enhance the public's health, welfare and safety through the establishment of an emergency medical services state plan...and statewide inspection program created to monitor the quality of patient care. (emphasis added)

As the legislature has clearly recognized, the provision of emergency medical and transport services is a benefit to all citizens, not real property owners. It does not matter whether those services are provided by the firefighters or by the County in this case, they are not assessable. None of the above-cited cases dealing with assessments for fire control and first response medical services have ever held that emergency medical services are valid special assessments against real property.

It seems so clear that unlike fire protection services, emergency medical services benefit people, not real property. Emergency medical services are not unlike police protection, which is a governmental function essential to the public welfare, and which cannot be assessed against property owners. There is even language in this Court's LAKE COUNTY opinion which leads to that conclusion (695 So.2d at 670):

> ...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, those services provide no direct, special benefit to real property. Thus, such services cannot be the subject of a special assessment....

C) LAKE COUNTY v. WATER OAK MANAGEMENT CORP. Concerned First Response Medical Aid, Not Emergency Medical Services

While the City claims that this Court's opinion in LAKE COUNTY is "directly on point" (Petitioner's brief p.14), it clearly is not. LAKE COUNTY involved a special assessment for solid waste disposal and fire protection. The County consolidated all its separate fire control districts into a single unit and assessed all property owners within the County. The property owners argued that the fire protection services did not provide a special benefit because everyone in the County had access to fire protection services. The Fifth District agreed since the special benefit provided by the fire protection services was not different in type or degree from the benefit provided the community as a whole. WATER OAK MANAGEMENT v. LAKE COUNTY, 673 So.2d 135 (Fla. 5th DCA 1996).[4]

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[4]/In footnote 8, the Fifth District questioned whether first response medical aid was a benefit to the property, stating (673 So.2d at 138):

> Fire services provide a benefit. Less clear, however, is why first response medical care is a benefit *to the property*, unless "removing a sick person from the property" is the benefit. If that is so, then the removal of bad people from property by law enforcement would be a benefit justifying special assessment funding for police protection. The county's recording function presumably also is fundable by special assessment as a service *to the property*. Even the courts, under the same reasoning, could be funded by special assessment since the

(continued...)

This Court agreed with the Fifth District's conclusion that the solid waste disposal special assessment was valid. LAKE COUNTY v. WATER OAK MANAGEMENT CORP., 695 So.2d 667 (Fla. 1997). It disagreed however, that the special assessment for the fire protection services did not prove a special benefit. The Court reiterated that it had previously held in SOUTH TRAIL FIRE CONTROL DIST. v. STATE, 273 So.2d 380 (Fla. 1973) and in FIRE DIST. NO. 1 v. JENKINS, 221 So.2d 740 (Fla. 1969) that fire protection services provide a special benefit to real property. The Court stated that although fire protection services were generally available to the community as a whole, the greatest benefit was to owners of real property. Real property was specifically benefitted by the lowering of insurance premiums and enhancing the value of the property. Thus, the Court held, there was a logical relationship between the services provided and the benefit to the real property.

LAKE COUNTY is not directly on point, as the City argues. Nor does this case "fit squarely within the facts and holding of the LAKE COUNTY decision" (Petitioner's brief p.15). LAKE COUNTY differs because the fire protection services in that case included first response medical aid only, not emergency medical services.

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[4](...continued)

> courts settle title disputes, adjudicate torts committed against property and on property and through their injunctive power, can order all sorts of unwanted persons off property.

Since first response medical aid is a function provided by the firefighters, as part of their normal duties, the property owners were only paying for fire protection. (See 673 So.2d at 137). No additional assessment was being made for first response medical aid. The special assessment did not charge the property owners for services totally outside the firefighter's job, such as emergency medical services, as in this case.

LAKE COUNTY also differs from this case because, as the City admits at page 16 of its brief, in that case the emergency medical services [medical transport] were funded by ad valorem taxes collected by a hospital district, **and not by the special assessment**. That very fact constitutes an implicit acknowledgment in LAKE COUNTY that it would have been invalid to fund the medical transport component of the fire protection services by special assessment.

The City states that in CITY OF PEMBROKE PINES v. McCONAGHEY, 728 So.2d 347 (Fla. 4th DCA 1999), the Fourth District upheld an assessment for fire and emergency medical services (Petitioner's brief p.14). However, the Fourth District very clearly stated in its opinion rendered in this case (Id. at 1003):

> Contrary to the City's position, this Court in *Pembroke Pines* did not determine that emergency medical services conferred a special benefit to property.

The Fourth District indicated below that in PEMBROKE PINES it had mistakenly concluded from LAKE COUNTY that other services, combined with fire

protection services, did not have to be individually analyzed to determine whether they provide a special benefit to property. The court receded from that holding and, when confronted with the issue below, expressly held in an en banc opinion that emergency medical services, even when combined with fire protection services, do not provide a special benefit to property. Id. at 1004.

1) There is no Logical Relationship Between Emergency Medical Services and a Benefit to Real Property

Even assuming the "logical relationship" test adopted by this Court in LAKE COUNTY still exists, it is the property owners' position that there is no logical relationship between the provision of emergency medical services and any benefit to their property. This Court, in setting forth the "logical relationship" test in LAKE COUNTY, cited to WHISNANT v. STRINGFELLOW, 50 So.2d 885 (Fla. 1951) and CROWDER v. PHILLIPS, 1 So.2d 885 (Fla. 1941). In WHISNANT, the Court held that the benefit from the assessment must bear some logical relationship to the enhancement of the value of the real estate. The Court concluded that a county health unit did not provide such benefit:

> A county health unit is the source of benefits to all the people of the county. It is, in fact, as much "a current governmental need" and "as essential to the public welfare as police protection, education or any other function of local government." State v. Florida State Improvement Commission, Fla., 48 So.2d 165, 166. But 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 improvement of the real estate situated in the county. It 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. State v. Florida State Improvement Commission, supra.

50 So.2d at 885-86. d 629 (Fla. 1941).

Likewise, in CROWDER, supra, this Court held that a hospital must be established with ad valorem taxes on all real and personal property, not with assessments for special benefits to real property located in the area:

> 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 cannot be gainsaid, but there is no logical relationship between the construction and maintenance of a hospital, important as it is, and the improvement of real estate situated in the district. The purpose is, of course, to provide a place where those who are so unfortunate as to be injured or to become diseased may receive the benefits of medical skill and modern apparatuses whether they be the owners of property or not, and such advantages cannot fall in the category of special benefits to real property for which assessments would be authorized.

1 So.2d at 631.

The Fourth District correctly held that the emergency medical services provided by the City in this case are analogous to the county health unit discussed in WHISNANT, supra, and the hospital discussed in CROWDER, supra. As in those cases, here there is no logical relationship between the provision of emergency medical services and a special benefit to real property. Emergency medical services

most appropriately come within the general police power services provided to all residents for their general benefit. The Fourth District correctly held that emergency medical services directly benefit people, not real property. Any benefit is to the people on the real property, not the property itself.[5] And, in many instances (here 28% of the time) the emergency medical calls have nothing to do with private property (Ex#3, p.12).

In contrast, fire protection services, which includes first response medical aid as part of the firefighters' normal duties, benefits buildings and land, whether or not occupied.[6] However, emergency medical services are unlike fire protection services. It cannot be said that they enhance the value of real property. Real property receives no special benefit from emergency medical services, and the Fourth District found that there was no evidence in the record to the contrary. 760 So.2d at 1004.[7]

The City argues that the Fourth District's ruling that emergency medical services are general governmental services provided to all citizens ignores the fact that

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[5]/See COLLIER COUNTY v. STATE, 733 So.2d 1012, 1018 (Fla. 1999), where this Court held that even assuming there was a benefit to the property owner from services funded by a special assessment, that benefit is not necessarily a benefit to the property.

[6]/Similarly, waste disposal facilities, stormwater management systems, sewer improvements, erosion control systems, solid waste disposal, and street improvements benefit the real property.

[7]/The Court cited the lack of evidence that emergency medical services decreased insurance premiums or in any way enhanced the value of real property. 760 So.2d at 1004.

the emergency medical services are being "integrated" with fire protection services, and that the latter satisfies the special benefit test. And, the City argues, an integrated fire protection program provides a "public safety component," i.e., it protects the life and safety of occupants of buildings (Petitioner's brief p.20). Therein lies the logical relationship to the use and enjoyment of property, the City argues. This argument overlooks several things. First, the City's "integration" argument is nothing more than an attempt to combine a service that does not provide a special benefit to property (EMS services) with one that does (fire protection services) and assess property owners for both. The City does not even argue that it could have enacted a separate ordinance assessing property for emergency medical services separate and distinct from fire protection services. That is because the invalidity of such an assessment would have been obvious. Instead, the City has attempted to disguise or camouflage emergency medical services as part of fire protection services by coming up with its "integrated program" idea in order to attempt to justify the assessment of emergency medical services against real property. The only problem is that regardless of how emergency medical services are "dressed up," they **are not** part of fire protection services. This "integrated program" idea being proposed by GSG to cities and counties throughout Florida almost succeeded, until the Fourth District realized its

mistake in CITY OF PEMBROKE PINES v. McCONAGHEY, supra, and receded therefrom in its opinion in this case.[8]

Second, contrary to the City's argument, any "public safety component," i.e., "protecting the life and safety **of occupants** of buildings," by its own definition provides a benefit to people, not property. If emergency medical services provides a special benefit to property, so does police protection services, and we know that the latter is a governmental service that cannot be assessed against real property. The City argues that just because a special benefit can inure to the benefit of people, does not mean it cannot also benefit property. Even assuming that to be true, emergency medical services provide no special benefit to property and none was proven below.

2) The Fact That Emergency Medical Services Are a Higher Level of First Response Medical Aid Does Not Mean They Can Be the Subject of a Special Assessment

The City claims that this Court held in LAKE COUNTY that a firefighter can provide first response medical aid and that confers a special benefit to property. Yet, the City argues, the Fourth District has held that if the same firefighter provides emergency medical services, there is no special benefit to property. The City distorts this Court's and the Fourth District's rulings. What those cases have held is that fire protection services provides a special benefit to real property, and first response

[8]/The City of Pembroke Pines' "integrated program" was also based on the recommendation of GSG as a means of being able to fund emergency medical services by a special assessment.

medical aid is part of the firefighter's normal duties. Therefore, the property owner is not being assessed any additional charge for first response medical aid. The property owner is paying the cost of fire protection services only.

Emergency medical services are different. They are not part and parcel of a firefighter's duties. In this case, the City pays the County $318,000 a year for emergency medical services, with a provision in the two-year contract for a 5% increase the second year. Payment of that $318,000 is being passed onto the property owners by way of the special assessment, over and above the assessed amount for fire protection. In LAKE COUNTY, the property owners were only assessed for fire protection services , unlike here.

The City argues that since first response medical aid, when combined with fire protection services, can provide a special benefit to real property, so can the combination of fire protection services and a higher level of medical care, i.e., emergency medical services. Once again, the City overlooks the fact that first response medical aid **is part of** the fire protection services rendered, nothing more. Second, the Fourth District correctly receded from its prior holding in CITY OF PEMBROKE PINES v. McCONAGHEY, 728 So.2d 374 (Fla. 4th DCA 1999) that a court does not have to separately determine whether another service, when combined with fire protection services, meets the special benefit test. Obviously, where a special assessment combines a service (EMS) that does not confer a special benefit upon real

property with a service (fire protection) that does confer a special benefit, the latter does not give constitutional validity to the former. Otherwise, special assessments could include numerous services that do not benefit real property combined with a service that does, solely to get around the constitutional requirement of a special benefit. The fact that a service does not confer a special benefit to real property does not change simply because it is combined with a service that does. Accordingly, emergency medical services must satisfy the special benefit test, separate and apart from fire protection services. That they cannot do.

D) In COLLIER COUNTY, FLORIDA v. STATE OF FLORIDA, 733 So.2d 1012 (Fla. 1999), This Court Held That Emergency Medical Services Do Not Provide a Special Benefit to Real Property

In COLLIER COUNTY, the County passed an Ordinance[9] to provide for a pro rata assessment or fee on improvements to property that were substantially completed after January 1. The County argued that since those improvements were not subject to ad valorem taxation until the following January 1, improved property owners received a windfall because they were not being taxed, even though the County was required to provide services to the improved property. The County's pro-rata

[9]/A certified copy of Collier County's Ordinance 98-25 was included in the property owner's Appendix file with the Fourth District. The ordinance is a proper document for the Appellate Court to judicially notice pursuant to §§90.201-204 Fla. Stat. (1995) and CITY OF MIAMI v. FOP MIAMI LODGE 20, 571 So.2d 1309, 1318-19, n.10 (Fla. 3d DCA 1990). A copy of the Ordinance is likewise included in Respondents' Appendix before this Court (RA1-22).

assessment was for the number of weeks during the year after which the improvements were "substantially completed," and was based on the cost of providing the following services:

> (1) The office of the Sheriff; (2) elections; (3) code enforcements; (4) courts and related agencies; (5) animal control (6) libraries; (7) parks and recreation; (8) public health; (9) medical examiners; (10) public works; and (11) support services. (emphasis added)

Importantly, subsection §5.12 of the ordinance provided that "support services" included **emergency medical services** (RA 16).

The trial court concluded that the assessment was actually an unauthorized tax, stating (733 So.2d at 1016):

> It is axiomatic that the government must provide all citizens of the county such general public services as police, courts, libraries and fire protection. These basic services are provided whether the property is fully inhabited, vacant or under construction.
>
> * * *
>
> [The] fee in this case is to be used to pay for law enforcement, courts, libraries, supervisor of election services, code enforcement, public health and many other general support services [including emergency medical services]. These are the types of benefits the Supreme Court has clearly stated do not meet the standard for special assessments. (emphasis added)

This Court agreed with the trial court's analysis. Id. at 1016. The Court affirmed the trial court's ruling that the ordinance imposed an impermissible tax, rather than a valid special assessment, impact fee, or user fee. Id. at 1017. The Court

explained that in LAKE COUNTY it had held that the first prong of the test for a valid assessment required a "direct, special benefit." The Court stated that the first prong was not satisfied by simply proving a rational relationship between the need for the services and the assessment. In other words, the fact that the County was actually providing services to the improved property was itself insufficient to establish a special benefit. Otherwise, the Court stated, "the distinction between taxes and special assessments would be forever obliterated," Id. at 1017. As applied here, the fact that emergency services are provided to the property owner's property cannot itself create a special benefit to the property.

The Court also stated that LAKE COUNTY, supra, "made clear" that general services provided to all residents for their general benefit did **not** satisfy the special benefit requirement. Id. at 1017. The Court distinguished the fire protection services provided in LAKE COUNTY because they provided a direct, special benefit by lowering insurance premiums and enhancing the value of real property. Id. at 1017. However, the Court reiterated that other general services may be like fire protection services in that they are services required for an organized society, but they are unlike fire protection services because they provide no direct special benefit to real property. Accordingly, the Court stated that it had held in LAKE COUNTY that "such services cannot be the subject of a special assessment." Id. at 1017-1018.

Since the services funded by Collier County's ordinance were the same services provided to all county residents for their general benefit and funded by ad valorem taxes, the Court held that the fee charged for those services to improved property had the indicia of a tax. Additionally, the Court held, "the provision of these services provided no direct, special benefit to the improved property." Id. at 1018.

The Court also determined that the fee imposed by the Collier County ordinance was not a valid "user fee," which is similar to special assessments in that it must result in a special or **unique** benefit to the person required to pay the fee. Id. 1018. The Court likewise concluded that the fee was not a valid "impact fee," which requires a "**unique**" benefit to those paying the fee. Id. at 1018-19. The Court stated (Id. at 1019):

> As explained above, the services to be funded by the [ordinance]... provide no direct benefit to the property. Those paying the fee are not benefitted by the services provided in a manner not shared by those not paying the fee. Instead, the services to be funded by the fee are the same general police-power services provided to all county residents. Moreover, the fee would not provide the source for any capital improvements to the county's existing facilities, but instead would defray the operating cost for the county to exercise its sovereign functions. Just as the fee fails to meet the requirements of a special assessment, so does it fail to qualify as a valid [impact] fee.

This Court's opinion makes very clear that the services that were to be funded by the Collier County ordinance provided no direct, special benefit to the property. Section 5.12 of that ordinance indicates that emergency medical services were part of

the "support services" that were to be funded by the ordinance (RA16). Accordingly, this Court has squarely held that emergency medical services are services provided to all residents and do not provide a direct, special benefit to real property.

E) COLLIER COUNTY Has Retreated From the "Logical Relationship" Test and Has Returned to the "Unique Benefit" Test

The property owners suggest to the Court that in COLLIER COUNTY the Court receded from the "logical relationship" test and returned to the "unique benefit" test. That analysis is buttressed by the property owners' reading of this Court's decisions in special assessment cases over the years. While the property owners believe emergency medical services fail to meet either test, they believe the applicable test is the "unique benefit" test.

1) The Evolution of This Court's Decisions in Special Assessment Cases

Since 1994, there has been a divergence between the majority and dissenting opinions of this Court's Justices in special assessment cases. In the Court's three leading special assessment cases, SARASOTA COUNTY v. SARASOTA CHURCH OF CHRIST, INC., 667 So.2d 180 (Fla. 1995); STATE OF FLORIDA v. SARASOTA COUNTY, 693 So.2d 546 (Fla. 1997), and LAKE COUNTY v. WATER OAK MANAGEMENT CORP., supra, the Court was divided four to three. Each of the majority opinions in those cases was written by Justice Overton, who was joined by Justices Kogan, Shaw and Anstead. In each case, Justices Wells, Grimes and Harding dissented. In each case the minority found the "special assessment" to be nothing more than a tax.

In SARASOTA COUNTY v. SARASOTA CHURCH OF CHRIST, supra, the Court upheld a Sarasota County special assessment for stormwater services rendered

to all developed property with impervious surfaces. The dissenting opinion written by Justice Wells criticized the majority's statement that the recipients of benefits of a special assessment can be spread throughout the entire community as being contrary to the Court's prior opinions and as making the distinction between a special assessment and a tax illusory. 667 So.2d at 187.

In STATE OF FLORIDA v. SARASOTA COUNTY, 693 So.2d 546 (Fla. 1997), the Court upheld Sarasota County's extension of the special assessment for stormwater services from all developed property with impervious surfaces to all developed property. The dissenting opinion, again authored by Justice Wells, stated that the majority had gone even further in totally eviscerating the ad valorem tax limitations of the Florida Constitution, by stripping from property owners their constitutional right to vote on an increase in ad valorem taxes. By eliminating the impervious surface requirement, it was even more clear that the distinction between a tax and assessment had disappeared. Id. at 549. The dissent criticized the majority's conclusion that since developed property caused stormwater runoff, which must be treated by stormwater facilities, this necessarily resulted in the property receiving a special benefit. In other words, said the dissent, the majority had simply held that the very fact that particular services were rendered to property equated with it receiving a special benefit, i.e., the special benefit "derived from" the services rendered the property. Id. at 549. Justice Wells strongly disagreed, stating:

> ...[M]y overarching [sic] concern is that these decisions by the majority that ever-increasingly widen the hole in the constitutional dike foster government that is not straightforward or honest about its revenue-raising. Electors have every reason to be frustrated when their constitutionally guaranteed properties are flooded.

In LAKE COUNTY v. WATER OAK MANAGEMENT CORP., supra, as previously discussed, the Court upheld the County's special assessments for fire protection and solid waste disposal services. The dissent stated that the majority had begun in SARASOTA COUNTY v. SARASOTA CHURCH OF CHRIST, supra, to eliminate "special" from "special assessment." 695 So.2d at 670. The dissent found most alarming the fact that the majority had changed the test for determining whether a special assessment was valid, and took issue with the majority's new test, i.e., whether there was a "logical relationship" between the services provided and the benefit to the real property. By adopting that test, the dissent said, the majority "subtly revises history and definitely erases the distinction between a special assessment and a tax...." Id. at 671. The dissent stated Id.:

> ...[W]hile both *Whisnant* and *Crowder* mention the need for a "logical relationship" for a special assessment to be valid, the majority takes this statement out of context. For in each of these cases this Court recognized that a logical relationship alone is not enough; the special assessment must also provide a special or peculiar benefit to the real property located in the district. *Whisnant*, 50 So.2d at 995-886. *Crowder*, 146 Fla. at 441-443, 1 So.2d at 631. To hold otherwise spurns the historical test for determining whether a levy is a special assessment

> announced in *City of Boca Raton v. State*, 595 So.2d 25 (Fla. 1992).

The dissent stated that in CITY OF BOCA RATON, the Court had revalidated the "peculiar benefit" test, and that there was no way to reconcile the majority's new "logical relationship" test with the well-established "peculiar benefit" test. *Id*. at 672.

The next relevant decision of this Court is COLLIER COUNTY, supra, which was decided in mid-1999 by the Court with three new Justices. It appears that the dissenters in the prior cases (Justices Wells and Harding), had now convinced the three new Justices (Pariente, Lewis and Quince), plus the two remaining majority Justices in the prior cases (Shaw and Anstead), to follow their lead. In COLLIER COUNTY, a unanimous court clarified that LAKE COUNTY held that the first prong of the special assessment test requires that the services funded by the special assessment provide a "direct, special benefit" to the real property burdened; that the benefit provided is not to be shared by persons not required to pay the fee; that the benefit must be "unique" to those paying for it; and that the services funded by the assessment must not be the same services provided to all residents. Id. at 1017-18. The Court also appeared to recede from the "logical relationship test" by stating that a special benefit is not proven by simply demonstrating a "rational relationship" between the fact that services are provided to the property and the assessment. 733 So.2d at 1017.

This Court's very latest reaffirmance of the "unique benefit" test occurred in VOLUSIA COUNTY v. ABERDEEN AT ORMOND BEACH, 760 So.2d 126 (Fla. 2000). The Court stated that COLLIER COUNTY had "reaffirmed the specific-need/special-benefit standard," stating that the Court had held the fee invalid in that case because "it did not provide a **unique benefit** to those paying the fee" and because "the services to be funded by the fee are the same general police-power services provided to all County residents" Id. at 134-135.

Based upon the above analysis of this Court's opinions, the property owners suggest that this Court, in both COLLIER COUNTY and VOLUSIA COUNTY, has receded from the "logical relationship" test and reaffirmed the "unique benefit" test. Throughout its brief, the City argues that under LAKE COUNTY the "special benefit" does not have to be different in type or degree from the benefits provided to the community as a whole, and that only a "logical relationship" between the services provided and the benefit to real property is required (Petitioner's brief p.11). However, in COLLIER COUNTY and VOLUSIA COUNTY this Court held that the services funded by a special assessment must provide a direct, specific and unique benefit to the property and cannot be the same services provided to all residents. Nowhere in COLLIER COUNTY is there any mention that a "logical relationship" is sufficient. Rather, the Court held that a "rational relationship" between the assessment and the demand for services is insufficient. 733 So.2d at 1017.

The City also argues, based upon prior case law, that a special benefit does not require an increase in the value of the property (Petitioner's brief p.10). COLLIER COUNTY appears to hold otherwise because in several places it requires "enhancement of the value of the property." 733 So.2d at 1017. The City also argues that LAKE COUNTY, supra, held that the benefit need not be a "direct" benefit to the assessed properties (Petitioner's brief p.11). However, COLLIER COUNTY held exactly the opposite, i.e., that the assessment must provide a "direct, special benefit" 733 So.2d at 1017-18.

Based upon the foregoing analysis, it is the property owners' position that the Court has come full circle, and has returned to the "unique benefit" test in COLLIER COUNTY and VOLUSIA COUNTY. Of course, only this Court can say for sure whether that is true. Regardless of which test this Court concludes is the applicable one, however, emergency medical services fail the test because they benefit people, not property.

F) The Fourth District Did Not Merely Substitute Its Judgment for That of The City Council, Where the Latter's Determination That the Assessed Properties Received a Special Benefit From Emergency Medical Services is Legally Incorrect and Arbitrary

Neither the Fourth District nor this Court is bound to blindly accept, as determinative, the City's conclusion in its ordinance and resolution that the assessed properties have been specially benefitted. As this Court stated in FISHER v. BOARD OF COUNTY COMMISSIONERS OF DADE COUNTY, 84 So.2d 572, 576 (Fla. 1956):

> The question of whether property abutting upon a street is in fact specially benefitted by the paving of the street does not rest exclusively in the judgment or upon the ipse dixit of the municipal officer...who asserts authority over municipal affairs, but it is a question of fact to be ascertained and established as any other fact.

In SOUTH TRAIL FIRE CONTROL DISTRICT v. STATE, 273 So.2d at 383, the Court held that a legislative or administrative determination as to existence of a special benefit is not conclusive if it is arbitrary in which case judicial relief may be had against its enforcement, stating:

> The legislature may avail itself, for the purpose of such determination [of a special benefit] of any information which it deems appropriate and sufficient. But the power of the legislature in these matters is not unlimited. There is a point beyond which it cannot go, even when it is exerting the power of taxation. It cannot by its fiat...make a special benefit to sustain a special assessment where there is no such special benefit.

And in FIRE DISTRICT NO. 1 OF POLK COUNTY v. JENKINS, 321 So.2d at 742, the Court stated:

> Administrative determinations under legislative authority...as to contemplated benefits to and the apportionment of burdens on, the property so specifically assessed, are not conclusive.

See also ALACHUA COUNTY v. STATE, 737 So.2d 1065 (Fla. 1999) where this Court rejected the County's legislative determination that a charge was a proper "privilege fee," and found instead that as a matter of law it ws an unconstitutional tax.

The City's fire rescue assessment ordinance, §1.04, sets forth the City's determinations of special benefit as follows:

> SECTION 1.04. LEGISLATIVE DETERMINATIONS OF SPECIAL BENEFIT.
>
> It is hereby ascertained and declared that the fire rescue services, facilities, and programs of the City provide a special benefit to property within the City that is improved by the existence or construction of a Dwelling Unit or Building based upon the following legislative determinations:
>
> (A) 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.

> (B) 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.
>
> (C) The combined fire control and emergency medical services of he 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.

The above-quoted language in the City's ordinance was based upon GSG's Fire Rescue Assessment Program Report, which contains verbatim Subsection (A) with its four parts and Subsection (B), supra, as "assumptions" made by GSG to support a finding of special benefit (Ex#3, p.16). The City's expert who participated in drafting GSG's report admitted that GSG and the City did no analysis to determine whether the emergency medical services provided real property with any added value, added enjoyment or lower insurance rates (R4:696-97). The expert admitted that GSG and the City did no benefits analysis whatsoever in determining whether the property received benefits as a result of the emergency medical services provided (R4:696-97). Therefore, there was absolutely no basis to support the City's finding in its ordinance of a special benefit.

Moreover, three of the four factors listed under Subsection (A), supra, as providing a logical relationship with the assessed property pertain to fire protection

and not emergency medical services.[10] The only factor that could even possibly be argued to apply to emergency medical services is (A)(2) which pertains to "protecting the life and safety of intended occupants in the use and enjoyment of improvements and structures within improved parcels." The very choice of the language used (protecting the life and safety of occupants) indicates that (A)(2) refers to a benefit to people, not real property. Subsections (B) and (C), supra, which state that combined fire control and emergency medical services enhance the use and enjoyment of buildings and enhance the value of the property, have no record support. As indicated, the City's expert admitted that he did not determine whether emergency medical services added any value or enjoyment to the properties assessed (R4:696-97).

The City argues (Petitioner's brief p.31) that its ordinance determined that the 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." The property owners are unsure what that statement even means. Also, there is no record support for the statement. Additionally, the very same statement could be said to apply to police protection services, and everyone admits a

[10]/The City admitted that emergency medical services do not lower insurance rates.

special assessment could not be enacted to require property owners to fund the cost of police protection services.

The City also argues that its ordinance stated that the combined fire rescue program enhances the rental charge or value of business or commercial property. There is no record support for that statement. And again, if emergency medical services can enhance real property by enhancing its value, so can police protection services. In fact, both services benefit people not property, unlike fire protection services, which this Court has held benefits real property.

The City argues that in CITY OF PEMBROKE PINES v. McCONAGHEY, supra, the Fourth District ruled that the City's findings that emergency medical services provided a special benefit to property were not arbitrary. However, as previously noted the Fourth District receded from McCONAGHEY in the opinion it rendered in this case.

The City next cites to §170.201 Fla. Stat., which was enacted by the Legislature in 1996, and provides that a city may levy and collect special assessments to fund emergency medical services. It is submitted that COLLIER COUNTY, and the Fourth District's decision below (760 So.2d at 1404) indicate that to the extent that §170.201 Fla. Stat. could be read to allow an assessment without showing a special benefit to property, it would be unconstitutional. The legislature cannot by its fiat legislate a special benefit that does not exist. However, the Court need not address the

constitutionality of that statute, because the special assessment involved in this case was not enacted under §170.201, which became effective October 1, 1996, after the City adopted the special assessment involved here.

CERTIFIED QUESTION NUMBER 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 WATER OAK MANAGEMENT CORP., 695 So.2d 677 (Fla. 1997)?

For all of the above reasons argued under the first certified question, supra, this certified question must also be answered in the negative. If the City wants to provide emergency medical services as part of an integrated fire rescue program, it must pay for the emergency medical component from its general fund (ad valorem taxes), not fund it by a special assessment.

CONCLUSION

For all of the foregoing reasons, both certified questions should be answered in the negative.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY a true copy of the foregoing was furnished by mail November 30, 2000, to the addressees listed on the attached Service List.

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