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

CITY OF NORTH LAUDERDALE,

Appellant,

vs.

SMM PROPERTIES, INC., et al.,

Appellees.
_____/

REPLY BRIEF OF APPELLANT, CITY OF NORTH LAUDERDALE

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

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I. THIS COURT HAS NOT ABANDONED THE "LOGICAL RELATIONSHIP" TEST FOR SPECIAL BENEFIT.

The Appellees spent a great deal of time in their Answer Brief asserting that this Court has abandoned the "logical relationship" test for special benefit and "returned" to a "unique benefit" test. This conclusion is a complete misunderstanding of the law in Florida. Florida has never recognized a unique benefit to property as the only criterion for a valid special benefit to property. Historically, that test has been one way in which a local government can show that property receives the requisite special benefit. But, this Court has also always recognized other ways in which a special benefit to property may exist. See e.g., Meyer v. City of Oakland Park, 219 So. 2d 417 (Fla. 1969) (recognizing that a special benefit may exist by increases in property values, potential increases in property values, and added use and enjoyment of property); and City of Hallandale v. Meekins, 237 So. 2d 318 (Fla. 4th DCA 1970), aff'd, 245 So. 2d 253 (Fla. 1971) (holding that special benefit need not be direct or immediate to property).

In fact this Court in Lake County v. Water Oak Management Corp., 695 So. 2d 667 (Fla. 1997), flatly rejected any unique benefit test for special assessments that fund services, provided throughout a jurisdiction. In this circumstance, the test is whether a logical relationship exists between the services and the benefit to real property. This Court expressly stated, "[T]he 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. "[R]ather, the test is whether there is a 'logical relationship' between the services provided and the benefit to real property." Id. Nothing since this Court's decision in Lake County has changed the test for special benefit that is applicable to this case.[1]

Specifically and contrary to the Appellee's assertion, the decision in Collier County v. State, 733 So. 2d 1012 (Fla. 1999), did not alter the test. In fact, the Collier County case did not even involve a special assessment. The governmental charge at issue there, as expressly recognized by this Court multiple times, was an "interim governmental services fee." The express purpose of that fee was to "provide the equivalent of a partial year assessment of ad valorem taxes on improvements to property substantially completed after January 1 that would not otherwise be subject to ad valorem taxation at its new increased value." Collier County, 733 So. 2d at 1015. The fee, as conceded by

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[1] The genesis of the logical relationship test was not the Lake County case; rather, that test dates back to the early 1940's. See Crowder v. Phillips, 1 So. 2d 629, 631 (Fla. 1941) (holding that a public hospital could not be funded by special assessments because "no logical relationship" existed between the hospital and the real property in the hospital district); see also Whistnant v. Stringfellow, 50 So. 2d 885, 885 (Fla. 1951) (holding that a public health unit could not be funded with special assessments because there would be no "logical relationship" to real property in the county).

Collier County, was imposed for the sole function of remedying a "windfall to certain citizens which was unfair to those taxpayers who did not receive the same advantage[]" of less than fair market valuation for taxes on improvements. Id. at 1016. "Those who are not assessed at full value obviously pay less than their proportionate share . . . . It was the County's desire to recapture this lost revenue which created the impetus for the Fee." Id. Clearly, the governmental charge in the Collier County case did not involve a particular special assessment for a particular improvement or service. Rather, because no constitutional, statutory, or judicial law existed on the issue of the validity of such an "interim governmental services fee," Collier County asserted at least three theories as to the defense of the charge.[2] One of those theories was that this Court should consider upholding the fee under a special assessment theory. This Court rejected that theory but this Court did not alter the test for special benefit and clearly did not "return" to a "unique benefits" test.

Furthermore, this Court just last week reiterated the applicability of the logical relationship test for special benefit. See City of Winter Springs v. State, Case No. SC00-413 (Fla. Jan. 11, 2001) (non-final opinion). In upholding a special assessment for neighborhood improvements, this Court stated:

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[2] Collier County argued that its interim governmental service fee was valid as either a user fee, as an impact fee for services, or as a special assessment.

> [I]n evaluating whether a special benefit is conferred to property . . . the test is whether there is a "logical relationship" between the services provided and the benefit to real property."

Slip op. at 7, n. 4 (quoting Lake County v. Water Oak Management Corp., 695 So. 2d 667, 669 (Fla. 1997)).

Finally, the language used by the Court in the Collier County case to describe special benefit assists the City here. The Court indicated that

> 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.

Id. at 1017-18 (quoting Lake County v. Water Oak Management Corp., 695 So. 2d 667, 670 (Fla. 1997)). The City's fire and emergency medical services, provided through the City's Fire Rescue Division, confer this direct, special benefit to real property.

II. THE PROVISION OF EMERGENCY MEDICAL SERVICES ALONG WITH FIRE PROTECTION SERVICES CONFERS A SPECIAL BENEFIT TO PROPERTY.

The Appellees would have this Court adopt a black letter rule that only those costs that are directly associated with the most basic level of firefighting can be deemed to provide a special benefit to property. The Appellees concede that fire protection provides a special benefit to property. The Appellees also concede

that first response medical aid, when provided as a part of fire protection confers a special benefit to property. But, somehow, a more highly trained firefighter - one who is also a paramedic or emergency medical technician - no longer completely confers a special benefit to property. The emergency medical services, provided as a part of the City's Fire Rescue Division, are not "extra" services for which property owners are charged "extra." Those services constitute the level of fire rescue service that is provided by the City.

As expressly recognized by the Appellees, one of the purposes of a firefighter in the State of Florida is to protect and save lives. Section 633.30(1), Florida Statutes, states quite clearly that the "primary responsibility" of a certified firefighter "is the prevention and extinguishment of fires, the protection and saving of life and property, and the enforcement of municipal, county, and state fire prevention codes, as well as of any law pertaining to the prevention and control of fires." Id. The City's Fire Rescue Division, through its cross-trained firefighters are simply able to fulfill one of their purposes in a more effective and efficient manner than if those same firefighters only provided first response medical aid.

In attempting to distinguish highly trained (in a medical sense) firefighters from those with basic first response medical knowledge, the Appellees misstate the record in this case. The

County's emergency medical technicians who were assigned to the City's Fire Rescue Division, under contract, were also certified firefighters. The significance of this fact cannot be overstated. The City's contract emergency medical technicians were not housed in a hospital in the City, simply waiting for an emergency call of a medical nature. In fact one of the contract units was housed in the City's fire station. Furthermore, the contract personnel clearly responded to medical emergencies but they were also firefighters, certified to fight fires when needed. The record clearly reflects that the result of the firefighter-paramedics working as a part of the City's Fire Rescue Division assisted in increasing the pure firefighting capability of the City. As a result of the contract, the City received free mutual aid for firefighting from the County. The fire chief, Randy Neumann, provided affidavit testimony that this mutual aid led to a reduction in response times within certain portions of the City.

The flaw of the Appellees argument is best shown by its natural result. The Appellees' argument leads directly to a black letter rule that, local conditions and circumstances notwithstanding, only a basic level of fire protection and medical assistance (equivalent to what a lifeguard provides) can confer a special benefit to property. Any level of service that is higher than that could not be reasonably found to continue to provide a

special benefit to property. Such a result is illogical and is neither supported by the facts of this case nor the law in Florida.

III. THE APPELLEES CONTINUE TO MISUNDERSTAND THE APPROPRIATE LEGAL STANDARD FOR REVIEWING THE CITY COUNCIL'S LEGISLATIVE FINDINGS.

Throughout the Appellees' Answer Brief are references to the fact that the Court should not uphold the City's special assessment here because the City failed to prove that the combination of emergency medical services and fire protection each provided a special benefit to property. The law in Florida is quite clear that the burden is on the Appellees here, not the City, to prove that the actions and findings of the City were arbitrary. The City's actions and legislative findings are presumed to be reasonable and the courts should defer to those findings unless and until a challenger can prove they are arbitrary. See, e.g., Lake County v. Water Oak Management Corp., 695 So. 2d 667 (Fla. 1997); Harris v. Wilson, 693 So. 2d 945 (Fla. 1997); Sarasota County v. Sarasota Church of Christ, 667 So. 2d 180 (Fla. 1995); South Trail Fire Control District, Sarasota County v. State, 273 So. 2d 380, 383 (Fla. 1973) (upholding a special assessment for fire protection and ambulances services, noting that "the Court should not substitute its opinion and judgement for that of the legislature in the absence of a clear and full showing of arbitrary action or plain abuse.").

Some of the legislative findings of the City were embodied in City Ordinance 96-6-901 in which the City declared:

> **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[3] 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 the City under its existing consolidated fire rescue program enhance the value of business and commercial property that is improved by the existence or

[3] Under the City's assessment program for fire rescue, only real property with improvements were assessed -- no vacant or unimproved property was charged.

> 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).

The Appellees obviously disagree with these legislative findings that both fire protection and emergency medical services, when provided as a part of the City's Fire Rescue Division, provide a special benefit to property. However, the Appellees have produced no evidence that those findings were arbitrary. Absent such proof, mere disagreement is not enough to strike the findings of special benefit. See Winter Springs v. State, Case No. SC00-413, slip op. at 7 (Fla. Jan. 11, 2001) (non-final opinion) ("'if reasonable persons may differ as to whether the land assessed was benefitted by the local improvement, the findings of the city officials must be sustained.'") (quoting City of Boca Raton v. State, 595 So. 2d 25, 30 (Fla. 1992)).

The fact that Florida law recognizes the presumption that legislative findings are valid and reasonable is not a legal principle that is intended to leave the legislatures of the state without checks and balances. The exact opposite is true. The very presumption of reasonableness is rooted in the fundamental constitutional principles of separation of powers. It is the function of the legislature to study issues, create programs, consider citizen input, allocate resources, and make choices among reasonable alternatives. While legislative declarations are

obviously subject to judicial scrutiny, that scrutiny is limited to second guessing the legislative process only when the results are clearly established to be palpably arbitrary.

Furthermore, the City recognizes that its fire protection and emergency medical services program was not enacted under Chapter 170 of the Florida Statutes. However, the fact that the Florida Legislature has enacted a provision authorizing municipalities to impose special assessments against property to fund emergency medical services is evidence of the reasonableness of the City's decision. See § 170.201, Fla. Stat. ("a municipality may levy and collect special assessments to fund . . . fire protection[] [and] emergency medical services"). The reasonableness of the City's decision is also bolstered by various cases that over the years have allowed local governments to fund fire protection and some level of emergency medical services through special assessments. See Fire Dist. No. 1 of Polk County v. Jenkins, 221 So. 2d 740 (Fla. 1969); South Trail Fire Control Dist., Sarasota County v. State, 273 So. 2d 380 (Fla. 1973); Sarasota County v. Sarasota Church of Christ, 667 So. 2d 180 (Fla. 1995); and Lake County v. Water Oak Management Corp., 695 So. 2d 667 (Fla. 1997). Moreover, the very same district court of appeal, as this case below, had decided in City of Pembroke Pines v. McConaghey, 728 So. 2d 347 (Fla. 4th DCA 1999), rev. denied, 741 So. 2d 1136 (Fla. 1999), that the findings of the city there as they related to special benefits

conferred by fire protection and emergency medical services were not arbitrary. In light of this statutory and judicial support, not to mention expert consultant studies for the City's legislative findings of special benefit on its consolidated fire protection and emergency medical services program, the City's findings were exceedingly reasonable. And, without proof to the contrary, they must stand.

CONCLUSION

Because the City's fire rescue special assessment program confers a special benefit to property, this Court should reverse the ruling of the Fourth District Court of Appeal and answer its questions in the affirmative.

Respectfully submitted,

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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, and SUSAN L. TREVARTHEN, ESQUIRE, Weiss, Serota, Helfman, Pastoriza & Guedes, P.A. 3111 Stirling Road, Suite B, Fort Lauderdale, Florida 33312; RANDALL N. THORNTON, ESQUIRE, Post Office Box 58, Lake Panasoffkee, Florida 33538-0058; WILLIAM PHIL McCONAGHEY, ESQUIRE, 621 Southwest 72nd Avenue, Pembroke Pines, Florida 33023-1074; and FRANK SHEPHERD, ESQUIRE, Pacific Legal Foundation, Post Office Box 522188, Miami, Florida 33152-2188, this ___ day of January, 2001.

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CERTIFICATE OF TYPEFACE COMPLIANCE

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