IN THE SUPREME COURT
STATE OF FLORIDA

TERRY SUE TURNER,
Defendant/Appellant,

vs.

CASE NO. SCOO-2296
Circuit Court Case No. 00-4060-CI-02 1

CITY OF CLEARWATER,
a municipal and public body corporate
and politic of the State of Florida,
Plaintiff/Appellee.
_____/

ON APPEAL FROM THE SIXTH JUDICIAL CIRCUIT
PINELLAS COUNTY, STATE OF FLORIDA

Hon. James R. Case

REPLY BRIEF OF APPELLANT

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STANDARD OF REVIEW

Appellee's statement of the Standard of Review is correct.

STATEMENT OF ISSUES

I. A MATTER NOT MADE OF RECORD CANNOT SERVE AS A FINDING IN A FINAL JUDGMENT.

II. ALL DOUBTS CONCERNING THE AUTHORITY OF THE CITY SHOULD BE RESOLVED IN FAVOR OF THE TAXPAYER AND VOTER.

III. THERE IS NO RECORD EVIDENCED TO ESTABLISH THAT THE PROJECT IS FOR A CITY FACILITY, AND IN THE ABSENCE OF SAME, APPELLEE HAS FAILED TO ESTABLISH AUTHORITY TO ISSUE REVENUE BONDS FOR THE PROPOSED PROJECT.

STATEMENT OF THE ISSUES

I. A MATTER NOT MADE OF RECORD CANNOT SERVE AS A FINDING IN A FINAL JUDGMENT.

ARGUMENT

The record does not reflect that at any time did Plaintiff move to have the Court take judicial notice of the case of Saatuzzi vs. City of Clearwater, Circuit Civil Case No. 99- 1080-CI-2 1. Said case having not been made a part of the record below cannot serve as a finding in the Final Judgment

Appellee has attached to its Answer Brief a Circuit Court opinion in Spatuzzi vs. Citv of Clearwater. et al,, supra. Appellant objects to such attachment in that said case was not made a part of the record below. (T-in To To)

A Circuit Civil Court opinion is not a matter subject to mandatory judicial notice. Section 90.201, Florida Statutes. While a Circuit Court decision may be judicially noticed, there are prerequisites and requirements to the Court taking judicial notice of same. Section 90.202(6); 90.203(1)(2) Florida Statutes.

Neither the trial court nor this Court is permitted to take judicial notice of a matter unless it is placed of record. Mobley vs. State, 143 So.2nd 82 1 (Fla. 1962). Appellant never introduced into evidence the circuit court decision upon which it

notice. Section 90.201, Florida Statutes. While a Circuit Court decision may be judicially noticed, there are prerequisites and requirements to the Court taking judicial notice of same. Section 90.202(6); 90.203(1)(2) Florida Statutes.

Neither the trial court nor this Court is permitted to take judicial notice of a matter unless it is placed of record. Moblev vs. State, 143 So.2nd 82 1 (Fla. 1962). Appellant never introduced into evidence the circuit court decision upon which it relies for the Findings of Fact in Paragraph Eighth of the Final Judgment in this cause.

Further, there is no evidence in the record to controvert the statements of Appellant's witness that the project is a "State facility" and therefore the Court's finding in Paragraph Eighth, that the project involves a "city facility" is unsupported by the record.

Further, there is nothing in the record to support Appellant's argument that this facility could be sold, encumbered or otherwise transferred by the City which would qualify the project as a "City facility". Rather, the record makes it abundantly clear that the City is building a State project over which it has no ownership interest or control following construction of the project.

Where a finding of the trial court's judgment is not supported by the evidence produced at trial, that portion of the judgment should be stricken.

II ALL DOUBTS CONCERNING THE AUTHORITY OF THE CITY SHOULD BE RESOLVED IN FAVOR OF THE TAXPAYER AND VOTER.

ARGUMENT

When defming the term "health and safety". A trial court is governed by the Rules of Statutory Construction and the Doctrine of "Expressio Unius Est Exclusio Alterius". Appellee has failed to respond to these points as set forth in Appellant's Initial Brief.

III. THERE IS NO RECORD EVIDENCED TO ESTABLISH THAT THE PROJECT IS FOR A CITY FACILITY, AND IN THE ABSENCE OF SAME, APPELLEE HAS FAILED TO ESTABLISH AUTHORITY TO ISSUE REVENUE BONDS FOR THE PROPOSED PROJECT.

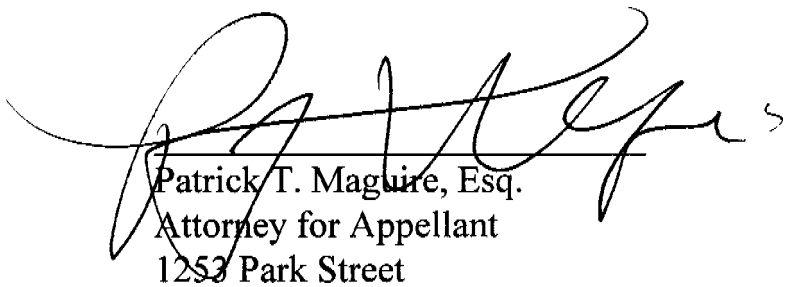
ARGUMENT

Appellee has pointed to no authority whereby Appellee may issue revenue bonds for the construction of a State facility which is not a safety priority of the State. Appellee's Answer Brief has failed to respond to the initial argument of Appellant on this point.

CONCLUSION

In conclusion, a Fifty-one Million Dollar Bond Project to improve minor functional deficiencies in a bridge that is not otherwise unsafe does not warrant circumventing the referendum requirements of the City's Charter. The trial court erred in giving broad meaning to the term "health and safety" and placing findings in the Final Judgment which are not supported in the record below.

Respectfully submitted,



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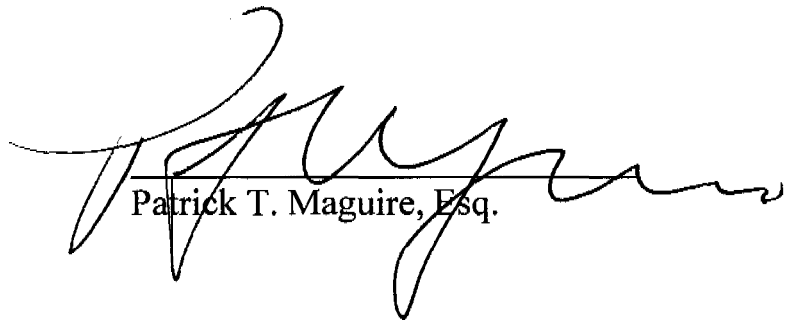
CERTIFICATION

The undersigned does hereby certify that this Reply Brief of Appellant used 14 point Times New Roman type and does hereby comply with Rule 9.2 1(a)(2), Florida Rules of Appellate Procedure and the Administrative Order of this Court dated July 13, 1998.



Patrick T. Maguire, Esq.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been furnished to C. Marie King, Esq., Asst. State Attorney, P. O. Box 5028, Clearwater, FL 33858; to Robert C. Reid, Esq., 201 S. Monroe Street, Suite 500, Tallahassee, FL 32301; to Pamela K. Akin, Esq., City Attorney, P. 0. Box 4748, Clearwater, FL 33758; and to Michael Davis, Esq., 101 E. Kennedy Blvd., Suite 2100, Tampa, FL 33602, by U.S. Mail, this 17th day of January, 2001.

Patrick T. Maguire, Esq.