IN THE SUPREME COURT
STATE OF FLORIDA
CASE NO. SC00-413

CITY OF WINTER SPRINGS, FLORIDA, a municipal corporation and public body corporate and politic of the State of Florida,

Appellant,

v.

THE STATE OF FLORIDA, and the Taxpayers, Property Owners and Citizens of the City of Winter Springs, Florida, Including Non-Residents Owning Property or Subject to Taxation therein,

Appellees.

ANSWER BRIEF

On Review Of A Bond Validation Decision Of The Eighteenth Judicial Circuit In And For Seminole County, Florida
Circuit Court Case No. 99-CA-2212-16G

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PRELIMINARY STATEMENT

This is a direct appeal from a circuit court order invalidating special assessment bonds for failure to comply with the essential requirements of the law. The circuit court specifically found that the special assessment did not confer a direct special benefit upon the land burdened by the assessment. The court further found that the assessment was not fairly apportioned among the properties which were to receive the benefit.

In this Answer Brief the Appellant, City of Winter Springs, Florida, will be referred to as "Appellant" or "City". Appellee, State of Florida, will be referred to as "State", and Appellees, Property Owners and Citizens of the City of Winter Springs, represented by Intervenors Eugene Lein and Thomas C. Lenzini, will be referred to as "Appellees" or "Intervenors".

References to Appellant's Appendix will be cited as (App. [section], [page]). References to Intervenors' Appendix will be cited as (Inv. App. [section], [page]).

STATEMENT OF THE CASE

The City filed a Complaint for validation of certain special assessment bonds in November of 1999. (App. 1) Eugene Lein and Thomas C. Lenzini moved to intervene on behalf of the property owners and citizens of the City of Winter Springs to oppose the validation of the bonds. (App. 2) On December 22, 1999, the circuit court granted Intervenors Motion to Intervene but denied their Motion to Continue the trial set for January 20, 2000. (Inv. App. 4).

After the conclusion of a one-day bench trial on January 20, 2000, the circuit court entered final judgment invalidating the bonds. (App. 4). The City timely filed this direct appeal. The Florida Supreme Court has mandatory jurisdiction pursuant to Article V, § 3(b)(2) of the Florida Constitution.

STATEMENT OF THE FACTS

Tuscawilla is a Planned Unit Development (PUD), which has been developed over the past thirty (30) years consisting of several separate subdivisions with approximately four thousand homes, a country club and golf course, and several commercial properties. As part of the overall plan, Winter Springs Boulevard dissects the development and connects the major arterial roadway to the west, Tuscawilla Boulevard, now being expanded to four lanes, with the City of Oviedo and the newly completed 417 Greenway toll road to the east. The City Manager best describes Winter Springs Boulevard as a thoroughfare, with a median in the middle and two lanes on either side. (App. 3, page 26).

The Tuscawilla subdivision is composed of a number of different independent developments, some of which have mandatory homeowners' associations and some of which do not. In the early 1990s, a group of Tuscawilla homeowners approached the City requesting authority to form a taxing district for the maintenance and improvement of Winter Springs Boulevard because the developer had stopped maintaining the common areas. (Inv. App. 2, pages 5-6)

[1]. The Tuscawilla Homeowners' Association, one of the several independent voluntary associations, retained the services of a consultant, Exterior Concepts, Inc., to prepare a preliminary report regarding maintenance and beautification of Winter Springs Boulevard. (Inv. App 2, page 8). The report was subsequently provided to the City with a request that the City create a special taxing district to implement the improvements and maintenance set forth in the preliminary report. (Inv. App 2, pages 10-11), (App. 3, pages 28-29).

To fund the requested improvements the City turned to Government Services Group, Inc. (G.S.G.), a consulting firm that specializes in providing management consultant services to local governments and the affiliated law firm of Nabors, Giblin and Nickerson, P.A. (N.G. & N., or "the Nabors law firm"), a law firm dedicated to the representation of local governments on issues of finance and taxation. (App. 3, page 21). Both firms represented that they had collectively developed a special expertise in structuring and implementing alternative revenue sources in Florida. (App. 3, page 21). The City entered into a management consulting agreement with G.S.G., which provided for management services, together with legal advice from the Nabors

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[1] The deposition of Donald Gilmore was admitted into evidence upon stipulation of the parties, the original having been previously filed with the court. (App. 3, pages 108-112).

law firm, and appraisal advice from the real estate firm of Pardue, Heid, Church, Smith & Waller, Inc. (P.H.C.S. & W). The City supplied G.S.G. with the preliminary report, prepared by the Tuscawilla Homeowners' Association, that set forth the location and type of the improvements to be made. (App. 3, pages 32-33).

Under the management consulting agreement, the City relied upon G.S.G. and the Nabors law firm to determine the apportionment of benefits and the methodology regarding the allocation of costs and, in the end, approved their recommendations. (App. 3, page 31). Government Services Group relied upon the City for the type of improvements and costs of the project. (Inv. App. 1, pages 32-33). The City relied upon the Tuscawilla Homeowners' Association and the advisory committee to set forth the location and type of the improvements to be made. (App. 3, pages 32-33); (Inv. App. 1, page 29). Pardue, Heid, Church, Smith and Waller, Inc. was engaged to provide analysis of the benefits derived from the proposed improvements. (App. 3, page 21); (Inv. App. 1, pages 31-32).

The concentration of most of the improvements were on Winter Springs Boulevard based on its status as the major thoroughfare going through the area. (App. 3, pages 37-38). Northern Boulevard, which the City conceded was certainly longer than Winter Springs Boulevard, was to receive only minor

signage. (App. 3, page 36-37). No traffic studies were performed on any roadway within the area that became the Tuscawilla Lighting and Beautification District. (App. 3, page 95).

On July 12, 1999, the City adopted Resolution 99-884. (App. 6). The Resolution created the Tuscawilla Lighting and Beautification District and identified the improvements to be made, the methodology to be used to apportion the costs and the amount of the individual assessment. (App. 6). Section 1.03(E) of Resolution 99-884 stated that the improvements

> "will provide a special benefit to all Tax Parcels located within the Tuscawilla Improvement Area…".

Section 1.03(G) concludes that the assessments

> "provide an equitable method of funding construction of the Tuscawilla Improvements by fairly and reasonably allocating the costs to specially benefited property …".
>
> (App. 6, §§ 1.03(E), 1.03(G)).

At the trial on the validation complaint, the chief executive officer of G.S.G., Robert Sheats,

[2] testified that the consultants did not attempt to ascribe benefits from the project to each residential unit because in their "professional opinion" the types of benefits, beautification and enhanced

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[2] The City had previously designated Camille Giantasio as the person with the most knowledge of the project and the methodology but Ms. Giantasio was unavailable at trial. Ms. Giantasio's deposition was admitted into evidence upon stipulation of the parties. (App. 3, page 108).

identity, spread equally throughout the entire community. (App. 3, page 69). Mr. Sheats noted that there was no attempt to differentiate between the benefit to one household as opposed to another household. (App. 3, page 69).

Jeffery Robbins, an appraiser with P.H.C.S. & W, formed an opinion that the improvements would "create a positive general overall benefit to the surrounding properties." (App. 3, pages 90, 93). Mr. Robbins testified that he based his opinion upon telephone calls to local real estate developers, residential appraisers and real estate agents. (App. 3, page 88-89). Mr. Robbins did not make a determination that there was any special benefit gained by the properties by virtue of the improvements. (App. 3, 94.) When asked why he did not perform any studies, Mr. Robbins explained that his assignment was two fold: first, to see if there was any general benefit to the surrounding communities as a result of these types of improvements; and second, to quantify the reasonableness of the one hundred and ten dollar fee. (App. 3, page 96).

Mr. Robbins further testified that he did not quantify any particular subdivision or home within a particular subdivision to estimate a particular impact. (App. 3, page 98). Mr. Robbins did not consider the benefit of the improvements to properties outside the defined Tuscawilla Lighting and Beautification District, however, he stated that, generally speaking, pride of ownership would certainly spill over into neighboring subdivisions outside the Tuscawilla Lighting and Beautification District. (App. 3, 98-99). Mr. Robbins testified that if you wanted to determine a special benefit, the analysis would require a valuation study of the homes in the particular area to conclude that there was an impact to the value which could be linked to the improvements but that he did not perform such analysis. (App. 3, page 100). His final conclusion was that the improvements would have a "general benefit" on the "community as a whole." (App. 3, page 101). When specifically asked by the trial judge whether his findings gave him any insight as to whether there was a specific benefit

to the parcels that would be burdened by the assessment, Mr. Robbins replied that he did not give a specific benefit. (App. 3, page 103).

To apportion the cost of the project to the homeowners, G.S.G. accepted the total costs as determined by the City and initially divided the total cost by the number of tax parcels in the District. (App. 3, pages 32-24). Camille Giantasio testified through her deposition that G.S.G. "assumed that each parcel would have one house on it." (Inv. App. 1, page 35). As a methodology for apportioning the costs, G.S.G. took all the properties within the improvement area and determined the average size of a single family home according to the tax rolls. (Inv. App. 1, page 36). Ms. Giantasio then assigned each single family home one Equivalent Residential Unit (ERU). (Inv. App. 1, pages 35-37). Giantasio then took the ratio of average square footage of multifamily to the average of square footage of single family and assigned each multifamily residence 0.6 ERU. (Inv. App. 1, page 27). Although G.S.G. had never before based a methodology on ERUs, G.S.G. chose this methodology based upon their opinion that the benefit of the improvements, neighborhood identity and safety features, benefit the neighborhood equally. (Inv. App. 1, pages 41-42, 44). Ms. Giantasio testified that she made no comparison and performed no studies regarding the benefits to different subdivisions within the improvement area or any individual lot analysis but rather assumed that the benefit was equivalent. (Inv. App. 1, pages 44-47).

Intervenors' appraiser, Steve Matonis, affirmed the testimony of the City's appraiser that there was, at best, a general overall benefit. Matonis explained that to conduct a proper analysis, studies pertaining to the use of Winter Springs Boulevard, the proximity of the improvements to the burdened property, the traffic flow, and other investigative type analysis would be necessary. (App. 3, page 116). While such studies are expensive, Matonis testified that a study could actually be as simple as sitting on the corner and determining how much traffic from surrounding developments,

and, in particular, Oak Forest, use Winter Springs Boulevard to travel to Oviedo and conversely, how many Oviedo residents use Winter Springs Boulevard to access the western part of the City of Winter Springs. (App. 3, page 116). Matonis testified that there was no methodology used by the City's experts to determine if the assessed property derived a special benefit from the improvements, or if the assessment was fairly and reasonably apportioned. (App. 3, page 127). Matonis answered that he could not find the assessment invalid because there was no assessment made. Matonis stated: "What's been done at this point in time is completely wrong. Makes no sense at all. There is no backup. There is no analysis that has been made at this point in time." (App. 3, page 127).

SUMMARY OF THE ARGUMENT

Appellant's thirty-one (31) page brief can be summed up in two words: *ipse dixit*. If we accept the City's position that it is clothed with a great presumption that it can do no wrong when it issues "legislative findings" to support its actions, we could dispense with the executive and judicial branches of our government. Notwithstanding the City's position, legislative findings, like judicial findings, must be supported with substantial competent evidence that allow a legislative body to produce findings that are rationally related to the legislative goal.

The trial court correctly found, based upon the evidence presented at the trial on the bond validation complaint, that the special assessment did not confer a direct special benefit upon the land burdened by the assessment and that there was no justification for the methodology used to determine the apportionment of the assessment. The court appropriately found that the "legislative findings" were mere conclusions and were not supported by the City's appraiser or consultants.

There is no evidence before this Court that the City's consultants produced analysis, studies, or plans that would support the City's legislative findings. Indeed, the City's appraiser acknowledges that he made no study or analysis and that to properly determine if the assessment proposed was equitable, he would necessarily have to do more investigation and study. The

Intervenors' appraiser summed it up simply stating that the City had done nothing to properly analyze the equity of the assessment.

STANDARD OF REVIEW

Judicial inquiry in bond validation proceedings is limited. Specifically, courts should: (1) determine if a public body has the authority to issue the subject bonds; (2) determine if the purpose of the obligation is legal; and (3) ensure that the authorization of the obligation complies with the requirements of law. State v. City of Port Orange, 650 So. 2d 1 (Fla. 1994).

The City would have this Court believe that the trial court could do nothing more than rubber stamp the legislative findings of special benefit and fair apportionment made by the City Commission. However, contrary to the City's assertions, it is the findings of the trial court that are presumed correct and are to be given the same weight as a jury verdict,[3] not the conclusions of the

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[3] "The findings of the trial court, as the trier of fact, come to this court clothed with a presumption of correctness, and where there is substantial competent evidence to sustain the actions of the trial court, the appellate court cannot substitute its opinion on the evidence but rather must indulge every fact and inference in support of the trial court's judgment, which is the equivalent of a jury verdict. See Lonergan v. Estate of Budahazi, 669 So. 2d 1062 (Fla. 5th DCA 1996) (the findings of the trial court are to be presumed to be correct and are to be given the same weight as a jury verdict); Hanks v. Hamilton, 339 So. 2d 1122 (Fla. 4th DCA 1976) (the trial judge sitting as the trier of the facts has the responsibility of determining the weight, credibility and sufficiency of the evidence, and these findings are clothed with a presumption of correctness), cert. denied, 352 So. 2d 171 (Fla.1977); Hertz International, Ltd. v. Richardson, 317 So. 2d 824 (Fla. 3d DCA 1975) (in reviewing the sufficiency of the evidence to support a conclusion of law and fact, the District Court of Appeal must accept the evidence in the light most favorable to the trial court's decision), cert. denied, 330 So. 2d 18 (Fla.1976); Mesick v. Loeser, 311 So. 2d 132 (Fla. 2d DCA 1975) (findings by lower court as trier of fact come to District Court of Appeal clothed with heavy presumption of correctness and where there is substantial competent evidence to sustain actions of trial court, District Court of Appeal cannot substitute its opinion on evidence but must indulge every fact and inference in support of judgment, which is equivalent of jury verdict), cert. denied, 328 So. 2d 843 (Fla.1976). Because it is the trial court who has the first-hand opportunity to hear and observe the witnesses as

City's consultants and the City Commission.

The general rule is that findings of fact made by the legislature are presumptively correct and the court should not substitute its judgment for that of the legislative body. The Florida Supreme Court has explained, however, that the findings of fact made by the legislature must actually be findings of fact. Legislative findings are not entitled to the presumption of correctness if they are "nothing more than recitations amounting to conclusions and they are always subject to judicial inquiry." Seagram-Distillers Corp. v. Ben Greene, Inc., 54 So. 2d 235 (Fla. 1951). Legislative findings are not entitled to a presumption of correctness if they are "mere recitations of conclusions." Stadnik v. Shell's City, Inc., 140 So. 2d 871, 874 (Fla. 1962) (citing Moore v. Thompson, 126 So. 2d 543 (Fla.

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they testify, the trial court is in a superior position to weigh the evidence and credibility of the witnesses. Accordingly, it is not the function of an appellate court to substitute its judgment for that of the trial court unless there is a lack of competent substantial evidence to support the findings upon which a final judgment is based. Lonergan at 1063; see also Jordan v. Boisvert, 632 So. 2d 254 (Fla. 1st DCA 1994) (trial court's judgments are entitled to presumption of correctness, particularly where evidence is conflicting and there is substantial evidence to support trial court's findings and conclusion, and such findings will not be disturbed in absence of clear showing that trial court committed error or evidence demonstrates judge's conclusions were clearly erroneous); Liberty Mut. Ins. Co. v. Furman, 341 So. 2d 1056 (Fla. 3d DCA 1977) (findings rendered on conflicting evidence by a trial judge come to appellate court clothed with presumption of correctness, and absent a showing that they are clearly erroneous, will not be disturbed on appeal); Jeffreys v. Simpson, 222 So. 2d 224 (Fla. 1st DCA 1969) (judgment based on trial judge's evaluation of conflicting evidence and his determination of credibility of witnesses is clothed with a presumption of correctness and may not be disturbed on appeal except by clear showing that it is unsupported by competent and substantial evidence or otherwise constitutes an abuse of discretion)."
Smiley v. Greyhound Lines, Inc., 704 So. 2d 204 (Fla. 5th DCA 1998)

1960)).

The Florida Supreme Court again in Fisher v. Board of County Com'rs of Dade County, 84 So. 2d 572 (Fla. 1956) asserted that there must be some proof of the particular benefits received by the real property in question other than the dictum of the governing agency for a special benefit assessment to be valid Id. at 576. The actual cost of the improvement must be directly related to the 'special benefit' alleged to be received by the property improved. Id.

In Atlantic Coast Line RR. Co. v. City of Lakeland, 115 So. 669, 675 (Fla. 1927), the Florida Supreme Court explained that the question of whether property is in fact specially benefited does not rest exclusively in the judgment or upon the 'ipse dixit' of the municipal officers, but it is a question of fact to be ascertained and established as any other fact, and the proportion of the cost to be assessed against a particular lot must bear a reasonable and fair relation to the special benefits which actually accrued. Id. at 675. The legislature cannot by its fiat make a special benefit to sustain a special assessment where there is no special benefit. South Trail Fire Control Dist., Sarasota County v. State, 273 So. 2d 380 (Fla. 1973).

Appellant misrepresents the holding in Atlantic Coast Line RR. Co. v. City of Gainesville, 91 So. 118, 121 (Fla. 1922) by citing it for the proposition 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 of no dispute or controversy by evidence." See Appellant's Initial Brief at page 11. That quotation is from Page & Jones on Taxation by Assessment, § 553, pp. 896, 897 and is cited by the Court as additional authority for its statement of law that

> "[i]n the matter of street paving, it is presumed or assumed that all property abutting on a street to be improved will or may be benefited, and upon that theory such special assessments are permitted without having to establish that the property will be benefited."

91 So. at 121. The Court actually held:

> "[I]f property other than that actually abutting on the improved street is assessed for such improvements, the presumption of benefit from the improvements which attached to land abutting on the street vanishes, as such an assessment could only be upheld by showing that the property derived actual benefit from the improvements."

Id. at 121.

The Atlantic Coast Line Court further explained:

> 'The true reason that property which is not benefited in an especial degree should not be assessed is to be found in the very nature of the assessing power. The only right which the Legislature possesses by virtue of its power to assess, is to assess property benefited by a public improvement in proportion to and not exceeding the benefits conferred by such improvement. To use such a power as a justification for a tax levied upon property which is not benefited by the improvement for which the assessment is levied, would be to attempt to support by the theory of the power of local assessment, an exaction which has none of the elements of the local assessment. Another reason that property not benefited cannot be assessed is found in the constitutional provisions which forbid the taking of property except by due process of law.' 'Taking under guise of taxation or of that branch of that power of taxation known as local assessment, in defiance of the essential elements of such power, is a taking of property without due process of law.'

Id.

The "legislative findings" which the City asserts are beyond challenge are nothing more than recitations of the conclusions of the consultants drafted into a resolution. The City cannot tax property under the guise of a special assessment based exclusively upon its own *ipse dixit* and unsupported conclusions. The trial court properly looked to the factual basis supporting the

legislative “findings” and concluded that there was no substantial competent evidence to support them.

ARGUMENT

In Collier County v. State, 733 So. 2d 1012 (Fla. 1999), The Florida Supreme Court affirmed the two prong test a special assessment must satisfy previously set forth in Lake County v. Water Oak Management Corp., 695 So. 2d 667 (Fla. 1997). First, the property burdened by the assessment must derive a special benefit from the services provided by the assessment. Id. at 1017. Second, the assessment must be fairly apportioned. Id.

The Court explained that the first prong requires "that the services funded by the special assessment provide a 'direct, special benefit' to the real property burdened." Id. (quoting Lake County v. Water Oak Management Corp., 695 So. 2d 667, 670 (Fla. 1997)). Those paying the fee must receive a direct benefit to the property in a manner not shared by those not paying the fee. Id. at 1019.

The second prong requires that the assessment must be properly apportioned as to the special benefit received by the assessed property. Lake County, 695 So. 2d at 669. "To be legal, special assessments must be directly proportionate to the benefits to the property upon which they are levied and this may not be inferred from a situation where all property in a district is assessed for the benefit of the whole on the theory that individual parcels are peculiarly benefited … ". St. Lucie County-Fort Pierce Fire Prevention and Control Dist. v. Higgs, 141 So. 2d 744 (Fla. 1962).

The Trial Court Correctly Found That The Special Assessment Provided No Direct Special Benefit To The Properties Subject To The Assessment.

The City raises two issues regarding the requirement that a special assessment must benefit the property it burdens. First, the City contends that the trial court misapplied the special benefit standard. Second, the City asserts that the trial court failed to give appropriate deference to the

legislative findings of the City Commission.

The City asserts that the Florida Supreme Court erred in Collier County when it stated that a special assessment must provide a "direct, special benefit" to the real property burdened by it. See Appellant's Initial Brief at page 13, and pages 15-16. The City would prefer to ignore the Collier County and Lake County cases and rely, instead, on City of Boca Raton v. State, 595 So. 2d 25 (Fla. 1992). The City opines that the Boca Raton decision holds that special assessment bonds do not require a "direct special benefit" as the trial court, the Collier County Court and the Lake County Court mistakenly believed. See Appellant's Initial Brief at page 13.

The trial court in Boca Raton ruled that the City of Boca Raton (Boca) lacked the authority to levy special assessments to pay the bonds. 595 So. 2d at 26. At the outset, the Florida Supreme Court noted that Boca had made specific findings that the improvements would provide a special benefit to the subject property. Id. at 30. The Court noted that the apportionment of benefits is a legislative function not to be disturbed simply because reasonable persons could differ, but did not stop there. Id. The Court set forth a detailed analysis of the testimony of Boca's consultants that supported Boca's findings and the self-correcting safety mechanism of an ad valorem methodology. Id. at 30 – 31. After a thorough review of the record, the Court concluded that there was competent substantial evidence to support Boca's findings. Id. at 31. Yes, the Court stated that Boca was not required to specifically itemize the dollar amount of benefit received by each parcel, but it did not, as Appellant asserts, change the standard that special assessment bonds must provide a direct special benefit to the burdened property.

As to the trial court's deference to the City of Winter Spring's legislative findings, the trial court properly looked to the factual basis supporting the

legislative “findings” and concluded that there was no substantial competent evidence to support them. Conclusions are not findings of fact. See, Seagram-Distillers Corp. and Stadnik *supra*. Regarding special benefit, Section 1.03(E) of Resolution 99-884 “found” that the improvements will provide a special benefit to all Tax Parcels located within the Tuscawilla Improvement Area. (App. 6). While legislative findings of fact are “afforded a presumption of correctness” and “entitled to great weight” they must actually be findings of fact made by the legislature. They are not entitled to the presumption of correctness if they are nothing more than recitations amounting to conclusions and they are always subject to judicial inquiry. See, Seagram-Distillers Corp. *supra*. They are not entitled to the presumption of correctness if they are mere recitations of conclusions. See, Stadnik, supra. In order to sustain the assessment, there must be some proof of the benefits other than the dictum of the governing agency that the cost of the improvement is directly related to the 'special benefit' alleged to be received. See, Fisher, supra.

The individual charged with the task of determining whether the properties were benefited by the improvements was Jeffery Robbins. The City acknowledged that it placed its complete reliance upon the consultants and “basically approved what the recommendations to us were.” (App. 3, page 31).

Mr. Robbins provided the City and G.S.G. with a two page letter, that the Nabors law firm helped to draft, setting forth his conclusion that all properties within the district will be benefited. (Inv. App. 3) (App. 3, 91-92). The letter does not set forth a single fact in support of Robbins' conclusion.

Without the benefit of any studies and relying solely upon recommendations from outside consultants, the City Manager rationalized that every improvement on Winter Springs Boulevard is "going to affect every resident within the assessment district to some degree," and then acknowledged that the thoroughfare is the only thoroughfare going through the area and that it is "something that everyone uses and relative to the improvement and lighting they are all going to receive the benefit of that lighting." (App. 3, page 38). The City Manager himself lives "a few blocks from the district" and testified that he uses Winter Springs Boulevard on a "daily basis." (App. 3, page 40). The Trial Judge recognized the impact of the City Manager's statement and noted that a lot of people unrelated to the proposed beautification district used Winter Springs Boulevard. (App. 3, page 40). Winter Springs Public Director, Kip Lockcuff, added that there were some areas on Tuscawilla Road that were carved out of the District because they had "direct access to an arterial road and did not have to go through the improvement to get to their home." (App. 3, pages 49-50). However, these same property owners on the west side of the Tuscawilla Beautification District utilized Winter Springs Boulevard to go to Oviedo High School and the Oviedo Mall (App. 3, page 54). Because these property owners who utilized Winter Springs Boulevard were outside the district, they are not assessed notwithstanding the fact that they and "anyone who lives there in the community" would receive a benefit . (App. 3, pages 54-55).

More to the point is Lockcuff's response to the Trial Judge, who

recognized the shortcomings of the City's position. Lockcuff testified that the benefit was for "anyone that travels on Winter Springs Boulevard and walks on Winter Springs Boulevard," and not necessarily for the benefit of the residents that live along the boulevard, but that the "primary benefit would be for the users of the boulevard, not necessarily the residents." (App. 3, pages 52-53).

The City's staff was unable to identify any basis for the City Commission's specific legislative findings other than to refer to its reliance upon the recommendations of its consultants. There was no evidence or testimony, nor was there an attempt to adduce any evidence or testimony, that would support the legislative findings found in Resolution 99-884; in particular that there was a special benefit to all tax parcels, that the Tuscawilla improvement area is properly derived from an ERU value, or that the assessment provided an equitable method of funding construction improvements. In fact, the representative of G.S.G., with the most knowledge of the Tuscawilla Beautification District project, testified in her deposition that G.S.G. used the methodology involving Equivalent Residential Units (ERU) and square footage to determine the assessment value, but, in fact, G.S.G. had never used an "ERU equivalency" nor a "square footage" basis for residential assessments. (Inv. App. 1, page 36-38). Gianatasio further testified that, notwithstanding the findings of the Commission, the assessment was made based upon single-family residences versus multi-family residences with all single-family residences being assessed the same and mutli-family residences being assessed differently. (Inv. App. 1, page 36-38).

G.S.G.'s representative at trial, Robert Sheats, added nothing to the City's position and gave no support to the City's finding. Sheats noted that there was "no attempt to differentiate between the benefit to one household as opposed to another household." (App. 3, page 69). Sheats further

testified that there was no attempt to differentiate between the benefit to one household as opposed to another household. (App. 3, page 69). Sheats, as the head management consultant for the City, did not know the community in general, did not know where Arbor Glenn was located, did not know where Oak Forest was located, did not know where the Oviedo Mall was, did not know where High School was, did not know where Eagle's Watch was, and confirmed that no traffic study or appraisal studies were conducted. (App. 3, pages 71-76). When faced with the question of what benefit was received by cleaning up an outdated sprinkler system and performing new maintenance on Winter Springs Boulevard, Sheats responded, "fortunately, we don't have to answer that question." (App. 3, pages 79-80). The City produces no evidence to show that the Commission had any substantial competent evidence before it to make any legislative findings and certainly the testimony of its consultants do not support any other conclusion other than the findings were arbitrary and capricious and without basis.

The most damning testimony refuting the City's position that the property assessed derived a special benefit and the assessment was fair and reasonable, came from its own appraiser, Jeffrey Robbins. Robbins was one of the three primary components upon which the City based its legislative findings. Robbins offered no support to the City. Robbins made a general conclusion that there "would be a positive general overall benefit to the surrounding properties," (App. 3, page 90), and admits that his opinion was based on a "limited study" of the developers, realtors, and appraisers, and their "perception" of the impact. (App. 3, page 91). Robbins testified that he did not make a determination that there was any special benefit gained by the properties by virtue of the improvements (App. 3, page 94) and further testified that, to do a proper analysis to determine if there was a special benefit brought about by the improvements, one would have to do a comparable

sales analysis considering adjustments for economical difference and sales, as well as location and other physical characteristics, which he did not do. (App. 3, page 95). Robbins acknowledged that, while there may be a general pride of ownership to surrounding properties within the District, properties outside the Tuscawilla District, including Oak Forest, Arbor Glenn and others would share the "pride of ownership" resulting in the overall conclusion that the assessment was a general benefit. (App. 3, page 98).

It is of particular interest that Robbins, the important component in establishing legislative findings relative to ERUs, had no knowledge of the ERU as part of the methodology in making the assessment. Robbins was not even aware that square footage or an ERU was part of the methodology utilized in making the assessment. (App. 3, pages 99-100).

Intervenors' appraiser, Steve Matonis, reaffirmed the testimony of the City's appraiser. Matonis explained that, to conduct a proper analysis, studies pertaining to the use of Winter Springs Boulevard, the proximity of the improvements to the burdened property, traffic study, and investigative type analysis would be necessary. (App. 3, page 116). While such studies are expensive, Matonis explained that a study could actually be as simple as sitting on the corner and determining how much traffic from surrounding developments, and, in particular, Oak Forest, use Winter Springs Boulevard to travel to Oviedo and conversely, how many Oviedo residents use Winter Springs Boulevard to access the western part of the City of Winter Springs. (App. 3, page 116). The Intervenors established that it was pure speculation to assume that there was a special benefit without doing detailed studies that considered, for instance, the diminished benefit to property further from the entry feature and the lighting improvements on Winter Springs Boulevard. (App. 3, pages 119-120).

Contrary to the City's assertion, Matonis did not disagree with the City's appraiser on the

choice of methodology. He simply states that there was no methodology used by the City's expert to determine if the property assessed derived a special benefit, or if the assessment was fairly and reasonably apportioned. In response to the City, Matonis answered that he could not find the assessment invalid because there was no assessment made. Matonis stated, "what's been done at this point in time is completely wrong. Makes no sense at all. There is no backup. There is no analysis that has been made at this point in time." (App. 3, page 127).

It is incumbent upon this Court, not the parties' respective counsel, to determine the standard by which a special assessment must be measured. This Court has referred to the necessary correlation between the benefit and the assessed property as a "special benefit," "direct special benefit," "logical relationship," and "peculiarly benefited," all in the Lake County v. Water Oaks Management Corp. decision. In Collier County, the Court speaks of a "direct special benefit," "special benefit," "specific benefit," "peculiar benefit," "especial benefit," and "benefit not shared by those not paying the fee." Whatever semantics the Court applies the underlying principle is that the improvements being paid for by the special assessment must confer a benefit upon the property that is burdened by the costs of the improvements that is different from the benefit the improvements confer upon properties which are not burdened by the assessment.

The Nabors law firm was careful to draft the ordinances under the City's home rule power as enunciated in § 166.021, Florida Statutes rather than

under the statutory authority of § 170.01 after their success of broadening municipal powers in City of Boca Raton v. State, 595 So. 2d 25 (Fla. 1992). The City relies on § 170.01 to support its authority to issue the bonds but quickly seeks to distance itself from that sections requirement that the improvements funded by the special assessment must provide a benefit to the assessed property "which is different in type or degree from benefits provided to the community as a whole." § 170.01(2), Fla. Stat. (1999).

In any event, the benefit must be direct, special, peculiar, especial; in other words, different than the general benefit enjoyed by property not burdened by the assessment. The testimony in this case clearly established that any benefit conferred upon the property burdened assessed by the improvements was the same general benefit enjoyed by anyone who uses Winter Springs Boulevard. There was no evidence, much less competent substantial evidence, to support the City's conclusion that the improvements will provide a special benefit to all tax parcels located within the improvement district. The City's conclusions were based on their consultants' conclusions which were supported only by their professional opinions. There simply are no facts behind the City's "findings" to support the conclusion that the improvements provide any benefit to the burdened properties.

The Trial Court Correctly Found That The Special Assessment Was Not Reasonably Apportioned Among The Properties That Were To Receive The Benefit Of The Assessment.

In St. Lucie County-Fort Pierce Fire Prevention and Control Dist. v. Higgs, 141 So. 2d 744 (Fla. 1962), the Florida Supreme Court disapproved a special assessment because it failed to meet the apportionment prong rather than the special benefit prong. The Court held that "[t]o be legal, special assessments must be directly proportionate to the benefits to the property upon which they are levied." Id. at 746. The Higgs' Court agreed with the trial judge that the assessment was a tax and not a special assessment because no parcel of land was "specially or peculiarly benefited in proportion to its value", but rather the tax was a general one on all property in the district for the benefit of all. Id.

Similarly, in the case before the Court, all the testimony regarding benefit proves at best that there was a general benefit conferred to the whole area and to everyone who travels on Winter Springs Boulevard. Without proper analysis establishing the special benefit derived from the assessment improvements the consultants faced the impossible task of apportioning the total cost of the project in proportion to the benefits conferred to the property.

The methodology of apportionment used by the City assumed that each single family residence, regardless of size or value, received an equal benefit from the improvements and that each multi family residence, regardless of size or value, received an equal benefit six tenths (0.6) the size of the benefit

conferred to a single family residence. There is no factual support for the consultants' conclusions, which found their way into the City's Resolution, that the assessment based on ERUs provide an equitable method of funding construction and fairly and reasonable allocate the costs to specially benefited property.

Intervenors' expert testified that it was pure speculation on the part of the City's consultants to assume that there is a special benefit without doing detailed studies. (App. 3, page 119). The City's consultants chose to apportion the benefits on an ERU methodology based on their assumption that all properties would benefit equally. However, the benefit they ascribed to the properties was increased property value based on increased neighborhood identity. As Matonis explained, if the benefit is increased property value, and you want to fairly apportion that benefit to the properties, the assessment must be directly proportionate to the property values. (App. 3, page 121). This is not the case of one expert having a different opinion about fair apportionment. Rather, the evidence established that there was no basis for the City's conclusion that each single family residence would equally benefit from the improvements and that the benefit would be four tenths (0.4) greater that that of a multi family residence. In response to the question of whether Matonis was saying that the consultants' analysis was wrong or if he would do it

differently Matonis responded: “I’m saying that what’s been done at this point in time is completely wrong. Makes no sense at all. There’s no backup. There’s no support. There’s no analysis that’s been made at this point in time.” (App. 3, page 127).

Matonis explained that even if the benefit is increased property value as the City contends, the people with more valuable homes will benefit more than the people with less valuable homes. (App. 3, pages 122-123, 134). If the benefit is the use of the improved roads themselves and the added safety of additional lights, the people who use Winter Springs Boulevard would benefit more than the residents who do not. Again, no traffic study was performed to determine proportionate use within the district much less use by properties lying outside the assessment district. The City’s consultant with G.S.G., Camille Giantasio, said it best when she answered: “The benefit was equal. Equivalent. I **assumed** it was equivalent.” (Inv. App. 1, page 44).

CONCLUSION

The trial court correctly found, based upon the evidence presented at the trial on the bond validation complaint, that the special assessment did not confer a special benefit to the land burdened by the assessment and that there was no justification for the methodology used to determine the apportionment of the assessment.

For the reasons expressed herein, Appellees respectfully request that the Final Judgment Denying Complaint For Validation be affirmed.

Respectfully submitted,
April 28, 2000

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via U.S. Mail to: **Arthur J. England, Jr. , Esquire**, Greenberg Traurig, P.A., 1221 Brickell Avenue, Miami, Florida 33131; **George H. Nickerson, Jr., Esquire, Gregory T. Stewart, Esquire,** and **Virginia Saunders Delegal, Esquire**, Nabors, Giblin & Nickerson, P.A., 315 South Calhoun Street, Suite 800, Post Office Box 11008, Tallahassee, Florida 32302, **Anthony Gargenese, Esquire**, Amari & Theriac, P.A., Post Office Box 1807, Cocoa, Florida 32923-1807; **Virginia Bullerman Townes, Esquire**, Akerman & Senterfitt, P.A., Post Office Box 231, Orlando, Florida 32802, and **Beth Richards-Rutberg, Esquire**, Assistant State Attorney, 100 East First Street, Sanford, Florida 32771; this 28th day of April 2000.

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Clifton H. Gorenflo, Esq.