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.

INITIAL BRIEF OF THE CITY OF WINTER SPRINGS, FLORIDA

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

Arthur J. England, Jr., Esq.
Greenberg Traurig, P.A.
1221 Brickell Avenue
Miami, Florida 33131

Anthony A. Garganese, Esq.
City of Winter Springs, Florida
Amari & Theriac, P.A.
Post Office Box 1807
Cocoa, Florida 32923-1807

George H. Nickerson, Jr., Esq.
Gregory T. Stewart, Esq.
Virginia Saunders Delegal, Esq.
Nabors, Giblin & Nickerson, P.A.
315 South Calhoun Street, Suite 800
Tallahassee, Florida 32302

Virginia B. Townes, Esq.
Akerman, Senterfitt & Eidson, P.A.
Republic Bank Bldg.-10th Floor
255 South Orange Avenue
Orlando, Florida 32802

Co-counsel for City of Winter Springs

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CERTIFICATE OF TYPE SIZE AND STYLE

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INTRODUCTORY STATEMENT

This is an appeal from a circuit court order invalidating special assessment bonds of the City of Winter Springs for the financing of local improvements in a discrete portion of the City known as the Tuscawilla Lighting and Beautification District. The sole ground for invalidation of the bonds was a determination by the circuit court that the special assessment which would provide revenue for repayment of the bonds was not in compliance with the law.

STATEMENT OF THE CASE

In November 1999, the City filed a complaint for validation of special assessment bonds. (App. 1). Certain of residents of the District intervened to oppose validation of the bonds. (App. 2). A bench trial ensued (App. 3), after which the circuit court entered a final judgment invalidating the bonds. (App. 4). This appeal followed.

STATEMENT OF THE FACTS

Appellant City of Winter Springs is a municipality of the State of Florida formed under Article VIII, section 2 of the Florida Constitution, and endowed with home rule powers under Chapter 166, Florida Statutes (1999). (App. 1 at 3).

On July 27, 1998, the City adopted Ordinance 98-704 to establish the general procedure for creation of Assessment Areas and funding improvements within those areas. (App. 5). That ordinance also called for the creation of a citizen's advisory committee which would report to the City Commission on a budget for desired neighborhood improvements and maintenance, on the imposition of special assessments to fund the improvements and maintenance, on the issuance of debt when required, and on the maintenance of the improvements. (App. 5 at § 2.02).

In due course and after authorized notice, the City, on July 12, 1999, adopted Resolution 99-884. (App. 6).[1] The Resolution created the Tuscawilla Lighting and Beautification District consisting of approximately 4,000 residential dwellings (both single and multi-family), a country club and golf course, and approximately 10 commercial properties. (App. 6). The primary roadway used for ingress and egress by

[1] The City also adopted Resolution 99-885 which imposed an annual assessment of $67.82 per ERU to fund the on-going operation and maintenance costs of the improvements (App. 3 at 14), but that assessment was not challenged below, ruled on by the circuit court, or in any manner before the Court in this proceeding.

all property owners of the District is Winter Springs Boulevard (App. 3 at 37), and the majority of landscape, signage and street lighting improvements are proposed for this roadway. (App. 3 at 37; 40). The Resolution was based on a report from the citizen's advisory committee, on a report from Government Services Group, a management consulting services firm for local governments, "which had been engaged to identify the special benefits of the improvements to parcels in the District, and an accompanying letter from a licensed real estate appraiser stating that the proposed improvements would have a beneficial impact on the value of properties within the District. (App. 3 at 21 and 87-90; App. 6 at § 1.03). Resolution 99-884 identified the improvements to be made, the methodology to be applied in apportioning their cost, and the amount of the special assessment to be imposed on each benefitted property within the District. (App. 6 at § 1.01, § 2.01 and § 3.04). The City estimated the cost of improvements to be approximately $2.5 million (App. 6 at § 2.01).

The City Commission made specific legislative findings in support of Resolution 99-884, including three of especial importance to the bond validation proceeding. It found that the District improvements

> will provide a special benefit to all Tax Parcels located within the Tuscawilla Improvement Area . . . by improving and enhancing the exterior subdivision boundaries, the interior subdivision areas, the subdivision identity, and the

> subdivision aesthetics and safety, thus enhancing the value, use and enjoyment of such property.

(App. 6 at § 1.03(E)). The Commission found that

> approximately 90 percent of the Tax Parcels located within the Tuscawilla Improvement Area are Single-Family Residential Parcels[; thus,] the number of ERUs attributable to Improved Parcels within the Tuscawilla Improvement Area is properly derived from an ERU Value based on the average Building area of the Single-Family Residential Units located within the Tuscawilla Improvement Area.

(App. 6 at § 1.03(F)). The Commission also found

> that the Tuscawilla Local Improvement Assessments . . . provide an equitable method of funding construction of the Tuscawilla Improvements by fairly and reasonably allocating the cost to specially benefitted property, based upon the number of ERUs attributable to each benefitted property in the manner hereinafter described.

(App. 6 at § 1.03(G)).

On August 9, 1999, the City adopted Resolution 99-887. (App. 7). This Resolution confirmed and ratified the findings of Resolution 99-884 and approved an annual special assessment of $42.18 per equivalent residential unit ("ERU") for each benefitted parcel within the Tuscawilla District. (App. 3 at 14; App. 7 at § 6 and § 8).

The City sought validation for the issuance of Special Assessment Revenue Bond Anticipation Notes in an amount not to exceed $2,300,000, and Special

Assessment Revenue Bonds in an amount not to exceed $2,500,000 (collectively, the "Bonds") to finance infrastructure improvements in the District. (App. 1). The improvements being proposed included the repair, replacement and upgrading of the District's primary entranceway, the placement of wing walls at each of the secondary entranceways into the District, and the installation of enhanced street lighting, signage and landscaping. (App. 3 at 10; App. 6 at § 1.01). The Bonds are to be repaid from special assessments imposed on the benefitted properties within the District. *Id.*

At the validation trial, the chief executive officer of the Government Services Group testified that the Resolution did not attempt to ascribe benefits from the project to each residential unit in the District, inasmuch as the benefits received from the proposed improvements would be spread equally throughout the District. (App. 3 at 69). The City's property appraiser testified that the proposed improvements would enhance and protect the value of all properties within the District. (App. 3 at 90). Validation opponents offered the testimony of a property appraiser who opined that, although he believed the City's apportionment determination was not invalid (App. 3 at 126) and everyone in the District would benefit (App. 3 at 114-18), he would have made an apportionment of assessments in one of two different manners, one of which was admittedly "very costly." (App. 3 at 122, 124, 126-27, 134-35).

In its final judgment invalidating the bonds, the circuit court ruled that the City's special assessment for the Bonds was not in compliance with law. (App. 4). The court held that the City failed to establish that the special assessment on properties confers a "direct" special benefit on the lands burdened with the assessments, that some landowners would receive a greater and disproportionate benefit than others, and that the methodology used to establish the benefits and apportionment of the assessments was flawed. (App. 4 at 2).

SUMMARY OF ARGUMENT

The City's findings in support of the special assessment resolution are presumptively valid, entitled to great weight, and supported by competent substantial evidence in the record. The trial court erred in overriding the legislative findings of the City Commission regarding the manner of assessment.

The trial court erred as a matter of law in holding that the Bonds did not provide a direct special benefit to the properties in the District, that direct, per-property proportionality of assessments was essential, and that the methodology of the City's property appraiser was improper.

ARGUMENT

The scope of judicial inquiry in bond validation proceedings is limited to determining whether the public body has the authority to issue bonds, whether the purpose of the obligation is legal, and whether the bond issuance complies with the requirements of law. *See, e.g., Poe v. Hillsborough County,* 695 So. 2d 672, 675 (Fla. 1997), and cases cited therein. Certain property owners in the District opposed validation of the Bonds on the ground that the assessment on property owners which would support the Bonds was not in compliance with law. It was conceded that the City had the authority to issue the Bonds (App. 3 at 8), and there was no suggestion that the purposes for issuance of the Bonds were not entirely proper.[2]

The Bonds sought to be validated by the City are "special assessment" bonds, for which the legal requirements are identified in *City of Boca Raton v. State*, 595 So. 2d 25, 29 (Fla. 1992):

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[2] The City's purpose for the Bonds is well-recognized as a basis for special assessments. *E.g.,* section 170.01(1), Fla. Stat. (1999) (authorizing municipalities to impose special assessments to fund "related [street] lighting, landscaping, street furniture, signage, and other amenities as determined by the governing authority of the municipality"); *Rushfeldt v. Metropolitan Dade County*, 630 So. 2d 643 (Fla. 3d DCA 1994), *review denied*, 639 So. 2d 980 (Fla. 1994) (guard gate facilities and security services are valid public purposes); *Northern Palm Beach County Water Control District v. State,* 604 So. 2d 440 (Fla. 1992) (neighborhood roadway and amenities are valid public purposes).

> There are two requirements for the imposition of a valid special assessment. First, the property assessed must derive a special benefit from the service provided. . . . Second, the assessment must be fairly and reasonably apportioned among the properties that receive the special benefit.

The City's Bonds met these requirements for a "special benefit" and a "fair apportionment."

STANDARD OF REVIEW

The determinations of the special benefit and the apportionment of benefits are legislative functions. *City of Boca Raton, supra* at 30. The trial court was obliged to uphold the findings of the City Commission unless the determination is clearly arbitrary. *Sarasota County v. Sarasota Church of Christ*, 667 So. 2d 180, 183-84 (Fla. 1995) (special benefit and fair apportionment are issues that "constitute questions of fact for a legislative body rather than the judiciary"). *See also Lake County v. Water Oak Management Corp.*, 695 So. 2d 667 (Fla. 1997) (legislative findings of special benefit are presumed to be valid unless they are proven to be arbitrary); *Harris v. Wilson*, 693 So. 2d 945 (Fla. 1997). *And see Atlantic Coast Line R. Co. v. City of Gainesville*, 91 So. 118, 121 (Fla. 1922), which held that

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

I. The special assessment formulated by the City provided a special benefit to the properties subject to assessment.

Florida law requires that properties assessed for special assessment bonds must derive a special benefit from the improvement being constructed or the service being provided. *See e.g., Collier County v. State,* 733 So. 2d 1012, 1017 (Fla. 1999); *City*

of Naples v. Moon, 269 So. 2d 355 (Fla. 1972). Special assessments constitute "charges assessed against the property of some particular locality because that property derives some special benefit from the expenditure of the money". *Atlantic Coast Line RR. Co. v. City of Gainesville*, 91 So. 118, 121 (Fla. 1922). This requirement of Florida law was met.

The trial court ruled that the City's special assessment is invalid because it fails to confer a "direct" special benefit on the assessed properties, and because benefits will run only to a portion of the land that is assessed. (App. 4 at 2). The court has misapplied the special benefit standard, however. It also failed to give appropriate deference to the legislative findings of the City Commission and to the evidence of record that provided support for those findings.

In *City of Boca Raton*, *supra*, the court upheld special assessment funding for infrastructure redevelopment of a downtown business district. The Court noted at the outset that the City made specific findings that the improvements being proposed would constitute a special benefit. 595 So. 2d at 30. It then held that

> 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.

Id. The Court upheld the validation of the bonds even though all of the properties were benefitted, some residential properties and all churches being excluded from the

assessment based on the opinion of the City's urban economic consultant that those properties would *become* subject to assessment if they at some future time were changed to a business use. 595 So. 2d at 31. The *City of Boca Raton* decision is significant for the principle that special assessment bonds do not require a "direct" benefit as the trial court mistakenly believed.[3]

In *Meyer v. City of Oakland Park*, 219 So. 2d 417 (Fla. 1969), the Court upheld a special assessment imposed on both improved and unimproved property to fund sewer improvements. As in *City of Boca Raton,* the Court started from the proposition that assessment is a legislative function which must be sustained if reasonable men can differ as to whether land assessed was benefitted. 219 So. 2d at 420. Holding that the findings of the City Council were entitled to a presumption of correctness, the Court held that the presumption could only be overcome by "strong, direct, clear and positive proof." *Id.* The Court then sustained a sewer assessment which was imposed even on vacant land, and it quoted with approval from its *Atlantic Coast Line RR* decision to the effect that

> the view usually taken on the subject as to what property is subject to special assessment for public improvements is the one from the standpoint of enhancement in the market or utility value of the real property affected.

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[3] The *City of Boca Raton* decision was recently cited with approval in the *Collier County* decision noted above.

219 So. 2d at 419.

The nature of a direct benefit to property is also seen in *City of Hallandale v. Meekins*, 237 So. 2d 318 (Fla. 4th DCA 1970), *aff'd*, 245 So. 2d 253 (Fla. 1971), where the owner of a dog track challenged a sewer special assessment imposed on property being used as a parking lot. The starting point for the court's analysis, as it was in the other cases, was the presumption of correctness accorded to legislative findings as to which reasonable men might differ. 237 So. 2d at 320-21. The court overturned the trial court's invalidation of the assessment and held that the dog track's present use of property as a parking lot was simply not determinative of whether the property is being benefitted. Rather, the court held, the availability of the sewer system in the future must be considered in the benefit analysis because "the use to which property is put is usually temporary and changes from time to time." 237 So. 2d at 322. The court held that there is "no necessary correlation between the special benefit conferred upon property . . . and the present use being made of such property." *Id.*

The same principle for evaluating the "special benefit" requirement of special assessments was applied in *Charlotte County v. Fiske*, 350 So. 2d 578 (Fla. 2d DCA 1977). At issue in that case was the creation of a sanitation district in which only the residential properties were assessed, while commercial properties were required either

to contract for sanitation services or obtain a permit to haul their own garbage. The court held that the legislative finding of the distinction between residential units and commercial units was not without reason, and those findings of "are entitled to great weight" and may not be set aside absent "a clear showing that they are arbitrary, oppressive, discriminatory or without basis in reason." 350 So. 2d at 580.

Based on the foregoing decisions, it is clear that the trial court erred as a matter of law in misapplying the special benefit test for validation of the City's Bonds. The validation opponents' reliance below on the recent *Collier County* decision as requiring a "direct" benefit for each property in the assessment district was entirely misplaced. In that case, the Court indeed described the applicable test for validation as requiring a "direct, special benefit," based on language to that effect in the Court's earlier *Lake County* decision. 733 So. 2d at 1017. The Court was contrasting the nature of the governmental body's imposition, however, to determine if the benefits were general such that they constituted a tax or whether they were specific to real property being assessment such the imposition constituted a special assessment. The Court concluded that the imposition by Collier County was a tax, since its alleged "assessment" was for all intents and purposes payable by all county residents for general services of the type which are funded by a general revenue tax. There was no

direct special benefit to the improved properties on which the assessment was placed, the Court held. 733 So. 2d at 1018.

An application of the proper special benefit test to the facts of this case would have required validation. The point of departure for evaluation of the City's Bonds is the specific findings of the City Commission, which declare that the assessment for the District would improve exterior subdivision boundaries, interior subdivision areas, subdivision identity and subdivision aesthetics, and would enhance the safety, the value, the use and the enjoyment of *all* properties within the District. (App. 6 at § 1.03(E)). Validation opponents adduced no evidence to counter these legislative findings, let alone to establish that no reasonable person could differ, and trial court made no determination as to the reasonableness of these findings.

Without any evidence or rational basis to overcome the presumption of correctness which attends the City's legislative findings, there can be no invalidation of the Bonds. The presumption does not stand alone as the basis for validating the Bonds, however. The rationality of the City's findings are supported by common sense. For example, it is indisputable (and validation opponents did not attempt to dispute) that enhanced safety comes from enhanced, lighted and marked roads through the District, and that these safety features specifically benefit all properties in the District. The City's findings are also supported by competent substantial evidence in

the record. For example, the City adduced evidence that the assessment for these Bonds will enhance the value of all properties in the District (App. 3 at 90), and value enhancement alone constitutes a recognized basis for meeting the specific benefit test. *See Atlantic Coast Line RR*, *supra*.

Based on the requirements of law and the record of this proceeding, the trial court erred in holding that the "special benefit" test for bond validation was not met.

II. The special assessment formulated by the City was fairly and reasonably apportioned among the properties that received the benefit of the improvements.

An improvement that specially benefits assessed properties must also be "fairly and reasonably apportioned among the properties that receive the special benefit." *City of Boca Raton*, *supra* at 29. No system for apportioning benefits has been devised that is not open to some criticism, and a host of elements enter into the proration of benefits, including

> Physical condition, nearness to or remoteness from residential and business districts, desirability for residential or commercial purposes, and many other peculiar to the locality where the lands improved are located.

Meyer, 219 So. 2d at 419-20.

The trial court held that there were disproportionate benefits to some property owners, and that the evidence and testimony from the City's expert witness "was

inadequate." (App. 4 at 2). Here, too, the trial court erred as a matter of law. First, the court failed to give required deference to the legislative findings. Second, the court failed to apply the standard of "competent substantial evidence." Third, the trial court misperceived the record testimony, for if any evidence was inadequate it was that of the validation opponents' expert, who admitted that the City's apportionment method was one of several reasonable alternatives to the one which he would chosen.

The trial court's error is brought into sharp focus with an analysis of the methodology which the City carefully and thoughtfully chose to allocate the costs of constructing improvements for the District. The method selected was a per unit basis applicable to all of the tax parcels in the District, using an "equivalent residential unit" factor as the measurement standard. This method of assessing benefits is presumptively valid in light of the City Commission's express findings to that effect. (App. 6 at § 1.03(G)). This method is, in any event, well-recognized for a variety of equitable distribution purposes,[4] is demonstrably fair and reasonable, and has been specifically recognized as valid for special assessment apportionment purposes by the Florida courts.

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[4] *E.g., Southern States Utilities, Inc. v. Florida Public Service Comm'n*, 714 So. 2d 1046, 1056 (Fla. 1st DCA 1998) (reiterating approval of "equivalent residential connections" for rate-making in water and wastewater utility cases).

The City's method for apportioning the costs of the proposed improvements was thoughtfully selected to assure equitable treatment to every land owner in the District. Inasmuch as the District contained single-family homes, multi-family dwelling units, and a few commercial properties, the City first sought to determine whether all three property uses would benefit from the proposed improvements on the same basis. It determined they would not, as its consultant testified at the trial:

> [W]e know for a fact from analysis that single-family produces a different impact on the road system and the community as more than say multi-family condos or apartments, that there's a different benefit realized.

(App. 3 at 69).

The City then analyzed the mix of properties within the District to find an appropriate basis for assessing the different property uses equitably. It determined that the average square footage of each single-family dwelling unit in the District — the vastly predominant form of property use — was 2,200 square feet. (App. 3 at 67). It then created a formula that assigned each single-family home an "equivalent residential unit" value of 1, and it extrapolated the ERU value to the multi-family dwelling units and to the commercial properties in the District based on square footage. (App. 6 at § 3.04). It then determined that vacant parcels would pay the

same as a single family dwelling unit, and that commercial property would in no event be assessed less than a single-family home. (App. 6 at § 3.04).

Validation opponents challenged the City's apportionment methodology on a number of grounds. None is competent or sufficient to overcome the presumption of rationality that applies to the City's findings.

In *Rushfeldt v. Metropolitan Dade County*, 630 So. 2d 643 (Fla. 3d DCA 1994), the court addressed a contention from property owners that fair apportionment required a different assessment for residents close to and remote from guard gate improvements and guard services in a gated neighborhood. The court categorically rejected that contention, holding there is no requirement for "tiered assessments based on a property's proximity to the entrance," and that distinction being suggested between residents in the neighborhood "could make it impossible to ever create a special taxing district." 630 So. 2d at 645.

The property owners opposing the validation in this case made essentially the same argument (App. 3 at 77-78, 143), and the *Rushfeldt* decision is a complete answer to their contention. The unit method of cost allocation used by the City in this case is precisely the method that was upheld in *Rushfeldt.*

Property owners opposing validation also argued that benefits should have been determined by the City on the basis of a valuation of each individual dwelling unit.

(App. 3 at 115). That methodology, however, has been specifically rejected as appropriate for assessment purposes. In *Cape Development Company v. City of Cocoa Beach*, 192 So. 2d 766, 771 (Fla. 1966), the Court addressed a contention that a valid assessment required the City to "have each parcel of land affected show a dollar and cents comparison of benefits derived to assessment[.]" The Court saw no merit in that contention, pointing out:

> There are over a thousand parcels of property affected in this improvement project, and to require a municipality to itemize and set forth opposite each parcel the amount in dollars said parcel would benefit from said improvements is unduly tedious and beyond the requirements. . . .

192 So. 2d at 773. The Tuscawilla District has over 4,000 residential unit parcels![5] *And see City of Hallandale v. Meekins*, *supra,* upholding sewer assessments where benefits were determined by the City Commission "without consideration of the use to which the individual parcels were put."

The issue before the trial court was not whether tiered or individualized calculations were required, for those methods of apportionment have been determined by the courts not to be required or appropriate for a district such as this one. Nor was the issue before the trial court whether the apportionment method used by the City

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[5] Indeed, the validation opponents' expert witness testified that this method for apportionment would be prohibitively expensive. (App. 3 at 134).

was a method preferred by the opponents' expert witness. The issue before the trial court was simply whether the City's apportionment method was fair and reasonable, based on legislative findings and the evidence of record in validation trial.

As a starting point for evaluation of the City's methodology, the trial court was obliged to accept the City's legislative findings on apportionment unless there was clear evidence of arbitrary action or inequity. Patently, that showing could not be made. The City Commission apportioned assessments based on a commonly-used method of equitable assessment — the equivalent residential unit — after determining that properties of that nature comprised approximately 90% of all tax parcels in the District. (App. 6 at § 1.03(F)). This method, the City Commission found, had the effect of "fairly and reasonably allocating the cost to specially benefitted property." (App. 6 at § 1.03(G)).

Beyond the threshold requirement of deference to legislative findings that are presumptively reasonable, there was record evidence which supports the legislative findings. For one thing, there was testimony that nearly all property owners in the District use the Winter Springs Boulevard entry for access to their property.

> The majority of people and to some degree I would say every individual that lives in the district is going to use that road.

(App. 3 at 37). For another, the City brought forward expert witness testimony that the location of any particular properties in relation to the improvements was not an appropriate factor for allocation, because

> the main benefit of the improvements . . . was to provide an enhanced identity to the community, safety, and landscaping. All of those are the types of benefits that in our professional opinion spread equally throughout the entire community.

(App. 3 at 69). This testimony was bolstered by the expert's observation on cross-examination that "[t]he other enhancements, such as street lights, which enhances the safety of the community, . . . are equally enjoyed also by everybody in that community" (App. 3 at 70), and by the confirming opinion of the City's Utility Public Works Director that enhanced street lighting would fill gaps in the existing lighting system and thereby "improve both vehicular and pedestrians for safety." (App. 3 at 51). The court erred in holding that the City's methodology was not reasonable, and in denying validation on that basis.

The validation opponents also argued with respect to apportionment that the community at large benefitted from the neighborhood improvements, and their expert witness testified that he would have conducted the apportionment task in a different manner. Irrespective of whether the community at large benefitted from the District improvements, and irrespective of whether the methodology suggested by the

opponent's expert had individual merit, neither of the arguments asserted for invalidation could have the legal effect of nullifying the City's apportionment methodology.

The mere fact that the community at large benefits from a special assessment program does not nullify the special benefit to a particular locality.

> [T]he mere fact that the community at large, or the commercial properties within the service district, peripherally may also enjoy the [benefits from the improvements] does not change [the validity of the benefit].

Charlotte County v. Fiske, 350 So. 2d at 581. *And see Atlantic Coast Line RR*, *supra* at 121.

As regards the methodology suggested by the opponents' expert witness, several points are worth noting. First, of course, the choice of apportioning assessments by one or another methodology is not for the validation opponents; that is a City responsibility in the first instance which must be upheld if reasonable men could differ. *E.g., Meekins*, *supra*. A mere disagreement of experts as to the choice of methodology is legally inconsequential. *Rosche v. City of Hollywood*, 55 So. 2d 909, 913 (Fla. 1952) ("[i]f the evidence as to benefits is conflicting and depends upon the judgment of witnesses, the findings of the City Commission will not be

disturbed"). In fact, the validation opponents' expert witness recognized that his opinion on methodology did not invalidate the one selected by the City:

> Q. [City counsel] Are you saying that these assessments are invalid?
>
> A. [Opponents' expert] No. I'm not saying that any assessment is invalid. It happens all the time. I'm just saying that this particular assessment with four thousand plus homes was not treated properly, in my opinion.

(App. 3 at 126-27).

Second, the testimony of the validation opponents' expert did not provide a competent record foundation to displace the proportional assessment method which had been adopted by the City. His opinion expressed only a personal preference for other methods, one of which he acknowledged would be very costly, but readily accepted the viability and validity of other methods for apportioning special assessments. (App. 3 at 127, 134).

Finally, the trial court was mistaken in holding that the testimony of the City's property appraiser was "inadequate." Validation opponents had challenged his testimony on the basis that he did ground his opinion on data which he had gathered first-hand, but rather that he relied on others to give him the underlying factual foundation for his opinion. (App. 3 at 95). This was not a sound basis for challenge, though. An expert witness can always rely on others for the foundation of his opinion.

E.g., section 90.704, Fla. Stat. (1999); *Geralds v. State*, 674 So. 2d 96, 100 (Fla. 1996) (no taint to expert testimony based on materials prepared and compiled by another because he "based his independent conclusion largely on the objective evidence"); *Peninsula Federal Savings and Loan Ass'n v. DKH Properties, Ltd.*, 616 So. 2d 1070, 1079 (Fla. 3d DCA 1993) (reversing a trial court determination that an expert's testimony was inadmissible unless "based solely on his own information, on his own investigation and the information that he has himself been able to acquire independently . . . .").

The trial court erred in substituting its judgment for that of the locally-elected officials. Notwithstanding opinion testimony from the opponents' expert on his preferred method of apportioning the assessment, the presumptively valid legislative findings of the City were supported by competent substantial evidence in the record.

CONCLUSION

For the reasons expressed, the Court is respectfully requested to hold the City's special assessment Bonds are valid and may be issued.

Respectfully Submitted,

Arthur J. England, Jr., Esq.
Florida Bar No. 022730
Greenberg Traurig, P.A.
1221 Brickell Avenue
Miami, Florida 33131
Telephone: (305) 579-0500
Facsimile: (305) 579-0723

- and -

George H. Nickerson, Jr., Esq.
Florida Bar No. 0175164
Gregory T. Stewart, Esq.
Florida Bar No. 203718
Virginia Saunders Delegal, Esq.
Florida Bar No. 0989932
Nabors, Giblin & Nickerson, P.A.
315 South Calhoun Street, Suite 800
Post Office Box 11008
Tallahassee, Florida 32302
Telephone: (850) 224-4070
Facsimile: (850) 224-4073

- and -

Anthony A. Garganese, City Attorney
Florida Bar No. 988294
City of Winter Springs, Florida
Amari & Theriac, P.A.
Post Office Box 1807
Cocoa, Florida 32923-1807
Telephone: (407) 639-1320
Facsimile: (407) 639-6690

- and -

Virginia B. Townes, Esq.
Florida Bar No. 0361879
Akerman, Senterfitt & Eidson, P.A.
Republic Bank Building, 10th Floor
255 South Orange Avenue
Post Office Box 231
Orlando, Florida 32802
Telephone: (407) 843-7860
Facsimile: (407) 843-6610

Co-counsel for City of Winter Springs

By:_____
Gregory T. Stewart, Esq.

CERTIFICATE OF SERVICE

I certify that a copy of this initial brief was mailed on April ___, 2000 to:

Beth Richards-Rutberg, Esq.
Assistant State Attorney
Office of the State Attorney
100 East First Street
Sanford, Florida 32771

Michael D. Jones, Esq.
Leffler & Associates, P.A.
301 West State Road 434, Suite 317
Winter Springs, Florida 32708

_____

Gregory T. Stewart, Esq.