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.

REPLY 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

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ARGUMENT

The parties in this bond validation proceeding agree that there are only two issues for the Court's consideration: whether the property owners will receive a special benefit from the City's special assessment; and whether the assessment will be fairly and reasonably apportioned among the properties benefited. It is not surprising that they disagree on how the issues of "special benefit" and "fair apportionment" should be decided. It is surprising, though, that they also disagree on the standard by which the courts are to evaluate and resolve those two issues.

The parties' disagreement on the threshold issue of the standard of review is critical to this Court's review, if not virtually decisive of the outcome of the proceeding. For that reason, the standard of review is addressed as a threshold consideration in this reply brief.

For the Court's convenience, the initial brief of the City will be referenced as "IB __," and the answer brief of the validation opponents will be referenced as "AB __."

I. Legislative findings of special benefits by the City Commission are presumed valid unless they are shown to be "arbitrary."

In its initial brief, the City directed the Court's attention to several decisions of the Court which had established the standard by which the courts are to review the specific, ultimate issue in this case -- validation or invalidation of special assessment bonds. IB 11.

The standard set by the Court for this form of bond validation proceeding was crystallized with the following declaration in *Sarasota County v. Sarasota Church of Christ*, 667 So. 2d 180, 184 (Fla. 1995):

> To eliminate any confusion regarding what standard is to be applied, we hold that the . . . legislative determination as to the existence of special benefits and as to the apportionment of the costs of those benefits should be upheld unless the determination is arbitrary.

Fifteen months later when the Court again considered a special assessment, the Court premised its review of a special assessment on its having "previously resolved" the standard of review by holding that a legislative body's determination of special benefit and fair apportionment "will not be overturned absent a finding of arbitrariness." *Harris v. Wilson*, 693 So. 2d 945, 947 (Fla. 1997).

Despite the Court's crystal clear explication of the standard by which the courts are to review special assessments, the validation opponents devote the first six pages of their answer brief to asserting that the Court is obligated to presume that *the trial court's* findings are correct, as opposed to presuming the correctness of findings made by the City. AB 13-18. The authorities mustered for this proposition by the opponents are not bond validation cases, however, let alone from cases which involve special assessments.

For reasons nowhere explained, the validation opponents draw their proposed review standard from sources having nothing to do with special assessments: run-of-the-

mill appeals taken from either a jury trial[1] or bench trial proceedings in which the trial court has made factual findings based on witness credibility and the presence or absence of competent substantial evidence[2]; and appeals involving findings of fact by the Florida Legislature in a statutory enactment[3] and by a state agency in a promulgated rule.[4] The considerations which mandate a presumption of correctness for the judgments of trial courts in proceedings such as these have no application or bearing on the judgments of trial courts in bond validation proceedings involving special assessments. Unlike routine trials in which the evidence is developed in the first instance, or the two decisions from the 1950s and 1960s which reviewed trial court proceedings involving the validity of a

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[1] *Hertz Int'l, Ltd. v. Richardson*, 317 So. 2d 824 (Fla. 1975).

[2] *Smiley v. Greyhound Lines, Inc.*, 704 So. 2d 204 (Fla. 5th DCA 1998) (enforcement of a settlement agreement); *Jeffreys v. Simpson*, 222 So. 2d 224 (Fla. 1st DCA 1969) (validity of tax assessment); *Jordan v. Boisvert*, 632 So. 2d 254 (Fla. 1st DCA 1994) (specific performance of sale of real estate); *Liberty Mutual Ins. Co. v. Furman*, 341 So. 2d 1056 (Fla. 3d DCA 1977) (wrongful death damage award); *Mesick v. Loeser*, 311 So. 2d 132 (Fla. 2d DCA 1975) (distribution of partnership assets); *Hanks v. Hamilton*, 339 So. 2d 1122 (Fla. 4th DCA 1976) (real estate broker's commission dispute); *Lonergan v. Estate of Budahazi*, 669 So. 2d 1062 (Fla. 1996) (will contest).

[3] *Seagram-Distillers Corp. v. Ben Greene, Inc.*, 54 So. 2d 235, 236 (Fla. 1951) (legislative findings discussion *dicta* inasmuch as the Court found it "unnecessary" to discuss or to decide the effect of legislative findings).

[4] *Stadnik v. Shell's City, Inc.*, 140 So. 2d 871 (Fla. 1962).

statute and an agency rule, "special benefit" and "fair apportionment" have been held by the Court to be issues that

> constitute questions of fact for a legislative body rather than the judiciary.

Sarasota County, 667 So. 2d at 183.

A moment's reflection makes clear why the standard of review proposed by the validation opponents is not appropriate in the special assessment arena. The essence of any special assessment is the set of choices which must be made by any governmental body in the face of competing ideas and policies, and the availability for a wide range of methodologies. In the area of special assessments, it is completely inappropriate to ask if reasonable persons could make a different set of determinations for assessing property, because it is *always* possible to suggest or justify alternative assessment predicates. Consequently, the Court has recognized that if the governmental body has done its homework and made findings of special benefit and fair apportionment, the courts may not second-guess those findings or substitute their judgment as to the level of support in the record for findings of that governmental body.

The findings of a governmental body in this unique area of the law must be shown to be "arbitrary" to be overturned. *Harris, supra.* The mere fact that the governmental body heard conflicting evidence with different degrees of weight is not enough to change

reasonable legislative decisions into arbitrary ones. *Rosche v. City of Hollywood*, 55 So. 2d 909, 913 (Fla. 1952). In this context, "arbitrary" means a "palpably arbitrary or grossly unequal and confiscatory" determination by the governmental body. *Sarasota County*, 667 So. 2d at 184, quoting *South Trail Fire Control District v. State*, 273 So. 2d 380, 383 (Fla. 1973).

The validation opponents point to competing evidence of special benefit and fair apportionment, and the trial court chose to accept the evidence on which the validation opponents relied. But the trial court did not and could not hold that the City's determinations were palpably arbitrary, given the measured and thoughtful steps which led to the City's ultimate determination and given the evidence which supported the City's choice of the manner and means for assessing property owners in the special assessment district.

(1) The City was approached by citizens of the community who requested that improvements be made and maintained within the Tuscawilla neighborhood. Those citizens, as the Tuscawilla Homeowners' Association, hired an expert to assist in developing recommendations on particular improvements that were needed for the Tuscawilla neighborhood. (App. 3 at 25, 32).

(2) The City hired a funding rate methodology consulting firm, Government Services Group, Inc., to assist it in developing a fair and reasonable funding formula for

an apportionment of proposed improvements. (App. 3 at 20-22). In turn, the consultants, hired a property appraiser to confirm that property values in the Tuscawilla neighborhood would be enhanced by the proposed improvements. See id.

(3) The City created a citizens' advisory task force with respect to improvements for the Tuscawilla neighborhood, to give the City recommendations of what improvements should be made, if any, and what costs would be reasonable for the improvements being recommended. (App. 5 at § 2.02).

(4) The consultants made a determination that each property use category (single-family, multi-family, and commercial) shared equally in the special benefit, and concluded that the cost of the improvements should be allocated among all of them by the common unit of measurement employed in similar situations -- the so-called Equivalent Residential Unit. (App. 3 at 69).

(5) Based on input from all of these advisory sources, the City held public hearings, considered assessment proposals, and adopted a Resolution which made legislative findings for the proposed assessment. (App. 3 at 21 and 87-90; App. 6 at § 1.03). In support of its Resolution, the City made findings that:

(a) the Tuscawilla improvements "will provide a special benefit to all Tax Parcels located within the Tuscawilla Improvement Area . . . by improving and enhancing the exterior neighborhood boundaries, the interior neighborhood areas, the neighborhood

identity, and the neighborhood aesthetics and safety, thus enhancing the value, use and enjoyment of such property" (App. 6 at § 1.03(E));

(b) "approximately 90 percent of the Tax Parcels located within the Tuscawilla Improvement Area are Single-Family Residential Parcels[so that] 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)); and

(c) "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)).

These findings are not rote recitations of an abstract public purpose, as the validation opponents charge. They are specific, factual, and fully supported by the studies and opinions of consultants, experts and citizens of the community.

This information was presented to the circuit court. The court was obliged to validate the assessment through a presumption in favor of the City's findings, unless it could reasonably conclude that the benefit and apportionment determinations made by

the City were palpably arbitrary. No such conclusion could be reached on this record. Indeed, the trial court never accorded the City's findings the presumption of validity that was required, undoubtedly believing from arguments made by the opponents that the court was free to act as an independent trier of fact and re-weigh the evidence on which the City had grounded its Resolution. That manner of review, of course, is inconsistent with the review standard prescribed by this Court in *Sarasota County,* in *Harris,* and in *Rosche*.

II. The trial court improperly overturned the City's determination that its assessment would provide special benefits and fair apportionment.

Having started their arguments here on the wrong foot by asserting the wrong standard of review, the validation opponents continue to march out of step through the balance of their challenge to the City's assessment. In consequence, their defense of the trial court's invalidation of the assessment does not provide any basis for the Court to displace the City's findings with those of the trial court.

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

In its initial brief, the City called the Court's attention to several of its prior decisions as what does and does not constitute a "special benefit" to properties subject to a special assessment. IB 12-15. The invalidation opponents attempt to distinguish some

of those cases, but they totally ignore three which are highly relevant to their specific arguments in this case: *Meyer v. City of Oakland Park*, 219 So. 2d 417 (Fla. 1969); *City of Hallandale v. Meekins,* 237 So. 2d 318 (Fla. 4th DCA 1970*), aff'd*, 245 So. 2d 253 (Fla. 1971); and *Charlotte County v. Fiske*, 350 So. 2d 578 (Fla. 2d DCA 1977).

In *Meyer*, the Court sustained a special assessment imposed in part on vacant land, holding that special assessment is judged by enhancement in market or utility value. In *Meekins*, the Court sustained a special sewer assessment imposed in part on a parking lot for which no sewer services were possible or needed, holding that a special assessment analysis takes into the account the use to which property *will be put* and not just its present use. The court held there is "no necessary correlation between the special benefit conferred upon property . . . and the present use being made of such property." 237 So. 2d at 322. These cases mandate validation of the special assessment here, and they refute the contention of validation opponents that assessments must provide a "direct" special benefit to property.

In *Fiske,* the Court sustained a special assessment which distinguished between residential and commercial properties and imposed the assessment only on residential units. That case, and the other two, refute the contention of validation opponents that an assessment must be made in direct relation to property value at the time of the assessment.

The primary thrust of the argument presented by the validation opponents on the issue of "special benefit" is that the evidence used by the City to decide if a special benefit exists for the District properties was countered with evidence contrary to that of the City's experts and consultants, and not detailed enough. AB 22-29.[5] This argument, of course, is nothing more than a "weight of the evidence" argument, dependent for validity on the opponents fallacious argument that this Court is obliged to give the trial court's order a presumption of correctness. Inasmuch as the premise for this argument is fallacious, the argument resting on that premise falls of its own weight.

The validation opponents also contend that the special assessment is flawed because it will benefit the community outside the District to the same degree that it will benefit those inside the District. AB 30. The mere fact that the opponents presented testimony that non-neighborhood residents drive through the Tuscawilla District on their way to other parts of the City, and *en route* will incidentally benefit from improvements in the District such as new signs, landscaping and street lighting, does not invalidate the special assessment. The Florida courts have long held that a special benefit is not lost merely because other properties incidentally benefit. For example, in *Fiske* the court held: "The mere fact that the community at large, or the commercial properties within

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[5] In context, the reference to "community" the testimony that was given meant the Tuscawilla neighborhood itself — the very area in which the City is imposing the special assessment.

the service district, peripherally may also enjoy the cleaner and garbage-free environment does not change this [special benefit][.]" 350 So. 2d at 581. In *City of Boca Raton v. State*, 595 So. 2d 25 (Fla. 1992), the Court rejected an argument that some benefitted properties were excluded from the assessment altogether.[6]

Interestingly, the validation opponents fail to recognize an inherent flaw in their contention that incidental benefits to non-assessment payers invalidates the special assessment. If that were a basis for invalidating special assessments, then no special assessment could *ever* be imposed for a district or area smaller than the jurisdictional boundaries of the governmental body. Virtually every capital improvement project will incidentally benefit some property not subject to a particular assessment. Street lighting, for example, benefits *anyone* driving through the lighted area.

In any event, this Court has long since crossed that bridge. Almost 80 years ago the Court defined special assessments as "charges assessed against the property of some particular locality because that property derives some special benefit from the expenditure of the money collected by the assessment *in addition to the general benefit accruing*

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[6] In a slightly different but analogous context, the courts have held that impact fees on new development are valid even when they incidentally benefit non-fee paying properties. *E.g., Home Builders v. Board of County Commissioners Palm Beach County*, 446 So. 2d 140 (Fla. 4th DCA 1983); *Hollywood, Inc. v. Broward County*, 431 So. 2d 606 (Fla. 4th DCA 1983).

to all property or citizens of the commonwealth." *Atlantic Coast Line Ry. Co. v. City of Gainesville*, 91 So. 118, 121 (Fla. 1922) (emphasis added).

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

In its initial brief, the City explained the methodology by which it determined that the assessment was fairly apportioned among the properties benefitted, and set forth the case law which supports the validity of that methodology. IB 18-28. The validation opponents again assert their "general benefit" theory (AB 31), but they devote their argument largely to challenging the City's apportionment methodology. AB 32-33. Their argument boils down to a battle of experts — theirs versus the City's.

There are several answers to the opponents' contention regarding methodology. First, the existence of "conflicting evidence" provides no legal basis to support the trial court's choice of experts, as there is no presumption favoring his choice. The determination of *the City* is what must be evaluated, and that determination is grounded both on well-reasoned factual findings and well-established precedent.

The City's assessment methodology -- using Equivalent Residential Units -- finds direct support in *Rushfeldt v. Metropolitan Dade County*, 630 So. 2d 643 (Fla. 3d DCA 1994), *review denied*, 639 So. 2d 980 (Fla. 1994). There the court upheld "the propriety

of the unit method utilized for special assessments" imposed in the taxing district. 630 So. 2d at 645. The City had identified the *Rushfeldt* decision in its initial brief (IB 21), yet the validation opponents nowhere mention or discuss that case in their answer brief. In the same vein, the validation opponents blithely continue their argument for "tiered assessments" although, as the City noted in its initial brief, tiered assessments were also specifically rejected as a requirement for special assessments in *Rushfeldt.* IB 21.

The *Rushfeldt* decision is particularly pertinent here, because the court there sustained the very same improvements which are at issue here -- street lights, landscaped green areas, and better roads. 630 So. 2d at 645.[7] To the same effect is *Northern Palm Beach County Water Control District v. State*, 604 So. 2d 440 (Fla. 1992), also cited in the City's initial brief but never mentioned in the opponent's answer brief, which also upheld special assessments for signs, landscaping, irrigation and street lighting in a mixed-use community with more than 2,000 residential properties.

CONCLUSION

The trial court erred as a matter of law in treating this validation proceeding as a routine tort or declaratory action lawsuit, and failing to follow this Court's directive as to the standard to be applied in reviewing the City's special assessment. The law governing

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[7] The improvements in this case will include the primary neighborhood entranceway, wing walls at the secondary entranceways, median landscaping, street light upgrades, and roadway sign monuments for the Tuscawilla neighborhood.

this appeal is straight-forward, and has uniformly sustained assessments on facts and findings identical to those here. Accordingly, the Court is respectfully requested to reverse the order of the trial court, and to hold that the City's special assessment bonds are valid and may be issued.

Respectfully Submitted,

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