

SUPREME COURT OF FLORIDA  
CASE NO. SC061577

**CITIZENS ADVOCATING  
RESPONSIBLE  
ENVIRONMENTAL SOLUTIONS,  
INC., DOUGLAS H. ENMAN and  
FRANCES ENMAN**

Lower Tribunal

Case No.: 06-261-CA

Appellants,

v.

BOND VALIDATION PROCEEDING

**THE CITY OF MARCO ISLAND,  
FLORIDA,**

Appellee.

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**ANSWER BRIEF OF APPELLEE,  
THE CITY OF MARCO ISLAND, FLORIDA**

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**This case is an appeal under Fla. R. App. P. 9.030(a)(1)(B)(i), from a  
Final Judgment of the Circuit Court, Twentieth Judicial Circuit, validating  
the City of Marco Island's proposed issuance of not to exceed \$1.5 million and  
\$3.5 million in special assessment revenue bonds.**

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## **PRELIMINARY STATEMENT**

The Appellee, the City of Marco Island, Florida will be referred to as the "City". Appellants, Citizens Advocating Responsible Environmental Solutions, Inc. and Douglas and Frances Enman, will be referred to collectively as "Citizens" or "Appellants". Defendant State of Florida will be referred to as the "State". References to the Initial Brief will be delineated as (IB - page #). References to the Appendix supplied by Appellants will be delineated as (A - Tab- page(s) - line(s)). Reference to the Supplemental Appendix supplied by the Appellee will be delineated as (Supp.A - Tab - page (s) - exhibit (s)).

## **SUPPLEMENTAL STATEMENT OF CASE AND FACTS**

Citizens' Statement of Case and Facts contains critical omissions that require the City to submit this Supplemental Statement of Case and Facts as well as a Supplemental Appendix.

This case is an appeal by Citizens of a bond validation proceeding conducted pursuant to Chapter 75, Fla. Stat. in which the City seeks to validate special assessment revenue bonds and supporting special assessments to fund expansion of the City's wastewater utility system. The Amended Complaint for Validation was filed by the City after Citizens had filed a separate lawsuit against the City seeking, *inter alia*, to declare unlawful the special assessments supporting the revenue bonds which are the subject of this validation. The Amended Complaint for Validation specifically named Citizens as party defendants. Citizens responded by filing a Motion to Dismiss.

The Trial Court entered Final Judgment validating the subject revenue bonds and supporting special assessments and denying Citizens' Motion to Dismiss. Citizens filed a Motion for Rehearing, which was denied. Citizens appealed the Final Judgment. The State did not appeal.

The City sought to issue its Not To Exceed \$1,500,000 Special Assessment Revenue Bond, Series 2006 (South Barfield Assessment Area Project) and its Not To Exceed \$3,500,000 Special Assessment Revenue Bond, Series 2006 (Tigertail



Assessment Area Project) (collectively, the "Bonds") in order to finance wastewater collection facilities and ancillary capital improvements (the "Wastewater Collection Improvements") and wastewater transmission, treatment, disposal and reuse facilities and ancillary capital improvements (the "Wastewater Treatment Capacity Improvements") to extend its public wastewater utility system (the "Utility System") to provide central wastewater collection and treatment service to owners of vacant parcels and owners and users of parcels served by on-site sewage treatment and disposal systems, including but not limited to, septic tanks and cess pits. (A - Tab A - page 6, Supp. A - Tab G - page 6). The Wastewater Collection Improvements and Wastewater Treatment Capacity Improvements are a part of a larger program by the City to extend its public utility system (the "Sewer Expansion Program").

The City Council duly adopted Assessment Resolutions pursuant to its home rule Assessment Ordinance.<sup>1</sup> By virtue of the Assessment Resolutions, the City Council created the South Barfield Assessment Area and the Tigertail Assessment

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<sup>1</sup>In 1999 the City enacted Ordinance No. 99-1, codified in the City's Code of Ordinances in Sections 2-281 through 2-379 (the "Assessment Ordinance"). (Supp. A - Tab G - page(s) 1-15 - Exhibit B). Pursuant to the Assessment Ordinance, the city council duly adopted Resolution No. 05-38 (the "South Barfield Initial Assessment Resolution") and Resolution No. 05-39 (the "Tigertail Initial Assessment Resolution"); and, after duly noticed public hearings held on August 1, 2005 adopted Resolution No. 05-54 (the "South Barfield Final Assessment Resolution") and Resolution No. 05-53 (the "Tigertail Final Assessment Resolution"). All of the foregoing for the purposes of the Complaint and this appeal are referred to as the "Assessment Resolutions."

Area, respectively, and imposed special assessments (the "Special Assessments") against property located within such Assessment Areas to fund in part a proportionate share of the Sewer Expansion Program, and specifically that part associated with the Wastewater Collection Improvements and Wastewater Treatment Capacity Improvements needed in order to serve those areas. (A - Tab D - page 6, Supp A - Tab C - page 10, Tab E - page 10).

The Trial Court found that the City was embarking upon the extension of its central sewer system in order to "equitably, ecologically and economically manage the collection and disposal of wastewater and improve the water quality within and surrounding the City." (A - Tab D - page 6).

The costs of Wastewater Collection Improvements are in essence the pro rata costs for extending sewer lines, connecting new users within the Assessment Areas to the Utility System and making improvements in the field to extend the sewer service to those new customers. The costs of Wastewater Treatment Capacity Improvements are in essence the pro rata costs for expanding the City's wastewater treatment plant capacity to accommodate the connection of new users in the Assessment Areas to the Utility System. Both costs were contemplated by the City in developing the apportionment methodology for the Assessment Resolutions. In addition to the Wastewater Collection Improvements and Wastewater Treatment Capacity Improvements particular to individual Assessment Areas, the City has also

undertaken capital improvements required to update and modernize its wastewater treatment plant and associated facilities. Such additional capital improvements, which are necessary to serve existing customers regardless of whether additional customers are connected to the Utility System or not, will be referred to hereafter as "Plant Upgrades" (A - Tab I - page(s) 44, 75).

The costs of the Wastewater Collection Improvements and Wastewater Treatment Capacity Improvements are being assessed to new users in the Assessment Areas. The costs of ("Plant Upgrades") are not being assessed to the new users in the Assessment Areas, but are, rather, being paid for through the rate base and spread among all users of the Utility System, including existing customers.

This important distinction was explained at trial by the City Manager, Bill Moss, as follows:

A. "Yes. And it's admittedly fairly complicated because we have a very large utility that has very significant capital improvement requirements over the next ten years, but essentially there are really two major components of the assessment process. One is what we call the capacity cost and capacity cost one might think in terms of impact fees. It's the cost of providing the expanded capacity of the wastewater treatment plant to handle new connections. The other part of the assessment is what we call the construction costs and the construction costs are the costs associated with actually laying out the collection systems. So you have the construction cost which is one component and then the capacity costs which is the cost to expand the system to handle the new capacity." (A - Tab I - page 38 - line(s) 3-18).

A. "Existing customers were not going to be paying for the expansion portion. They were going to be paying for the upgrades that would have been required to the plant whether or not there was any expansion." (A, Tab I -page 44, line(s) 19-22).

The City's Finance Director further expanded on that distinction as follows:

A. "The costs that are attributable to the new customers are coming from assessments. Those costs that benefit the entire system such as the replacement of existing sewer plant will come from all of the customers on what's called a rate-based bond issue where the debt service will be included in the monthly user fees." (A, Tab I –page 75 line (s) 7-12).

The Trial Court determined that the City Council was authorized by Art. VIII, § 2, Fla. Const, § 166.021, Fla. Stat., the City's own Assessment Ordinance and other applicable provisions of law to provide for the Special Assessments. (A, Tab D - page 7).

The Trial Court found that at the duly noticed public hearings on August 1, 2005 at which the City Council adopted Final Assessment Resolutions which confirmed the Initial Assessment Resolutions and authorized and approved the Special Assessments for the South Barfield Assessment Area and the Tigertail Assessment Area, the City Council considered, *inter alia*, public comment, a memorandum from the City Manager of the City entitled "Septic Tank Replacement Program" and a peer review memorandum from the City's utility consultant. Such memoranda constituted competent substantial evidence to support the findings and determinations of the City Council as provided in the Assessment Resolutions. (A, Tab D - page 11). The City Manager's memorandum and peer review memorandum of the City's utility consultant are discussed *infra*

and found, respectively, at Supp. A - Tabs A and B and were introduced into evidence at Trial. (A - Tab I -page(s) 30 and 31).

In the Initial Assessment Resolutions, the City Council made the following legislative findings which are crucial to this appeal. The findings were the same for both the Tigertail Assessment Areas and South Barfield Assessment Areas.

Those for Tigertail were as follows:

"(E) The Council desires to create the Tigertail Assessment Area to fund, in part, the construction of the proportionate share of the Wastewater Collection Improvements therein and the proportionate share of the Wastewater Treatment Capacity Improvements the City anticipates will be needed to serve the Tigertail Assessment Area." (Supp. A - Tab C - page 10).

"(H) The development, construction, installation, delivery and funding of the Wastewater Collection Improvements and Wastewater Treatment Capacity Improvements will improve the environmentally sound use and enjoyment of property located within the Tigertail Assessment Area by providing a centralized means of collecting and disposing of treated wastewater generated within the Tigertail Assessment Area through the Utility System in a manner that diminishes and relieves the environmental burdens created by less effective means of treating wastewater currently in use, thereby providing a special benefit to such property." (Supp. A - Tab C - page 10).

"(I) The development, construction, installation, delivery and funding of the Wastewater Collection Improvements and Wastewater Treatment Capacity Improvements provides a special benefit to all property capable of development within the Tigertail Assessment Area by facilitating the development and/or redevelopment of such property." (Supp. A - Tab C - page 11).

"(J) The development, construction, installation, delivery and funding of the Wastewater Collection Improvements and Wastewater Treatment Capacity Improvements will immediately increase the available utility and use of

every parcel served by reducing the area of land needed to facilitate the location of on-site sewage treatment facilities thereon, thereby providing a special benefit to such property." (Supp. A - Tab C - page 11).

"(K) The Construction of Wastewater Collection Improvements and Wastewater Capacity Improvements will make available and accommodate increased consumption and demand for wastewater collection, treatment and disposal from individual parcels through connection to the Utility System, thereby providing a special benefit to such property." (Supp. A - Tab C - page 11).

"(P) The assessments to be imposed in accordance with this Resolution provide an equitable method of funding the Wastewater Collection Improvements and Wastewater Treatment Capacity Improvements by fairly and reasonably allocating the estimated Capital Cost and Project Cost to specially benefited property." (Supp. A - Tab C - page 13).

The same findings with respect to South Barfield are found at Supp. A - Tab E - page(s) 10-13.

In the Final Assessment Resolutions, the City Council made additional findings also crucial to the resolution of this appeal. Those for Tigertail were as follows:

"(A) The findings provided in Section 1.03 of the Initial Assessment Resolution are hereby ratified, confirmed, and incorporated as if set forth fully herein." (Supp. A - Tab D - page 2).

"(C) Pursuant to Section 2-326 of the Assessment Ordinance, the Council is required to repeal or confirm the Initial Assessment Resolution, with such amendments as the Council deems appropriate, after hearing concerns and receiving comments or objections of interested parties." (Supp. A - Tab D - page 2).

"(D) The Assessment Roll has heretofore been filed at the offices of the City Clerk, 50 Bald Eagle Drive, Marco Island, Florida, and made available for public inspection." (Supp. A - Tab D - page 3).

"(E) As required by the terms of the Initial Assessment Resolution, notice of a public hearing has been published and mailed to each property owner proposed to be assessed notifying such property owner of the opportunity to be heard; the proof of publication and an affidavit of mailing are attached hereto as Appendices A and B respectively." (Supp. A - Tab D - page 3).

"(F) A public hearing has been duly held and comments and objections of all interested persons have been heard and considered as required by law." (Supp. A - Tab D - page 3).

"(H) The benefits derived from the Wastewater Collection Improvements and Wastewater Treatment Capacity Improvements exceed the cost of the Assessments levied and imposed hereunder. The Assessment for any Tax Parcel within the Tigertail Assessment Area does not exceed the proportional benefits that such Tax Parcel will receive compared to any other Tax Parcel within such area." (Supp. A - Tab D - page 3).

"(I) The Council hereby finds and determines that the Assessments to be imposed in accordance with this Resolution provide an equitable method of funding the Wastewater Collection Improvements and Wastewater Treatment Capacity Improvements by fairly and reasonably allocating the cost to specially benefited property." (Supp. A - Tab D - page 4).

Exactly the same findings were made with respect to the South Barfield Assessment District and are found in the South Barfield Final Assessment Resolution at Supp. A - Tab F - page(s) 2-4.

The Trial Court found that prior to the adoption of the Assessment Resolutions, the City had its assessment methodology reviewed by an outside utility consultant, Public Resource Management Group ("PRMG"). The report of PRMG contained the following conclusions:

"We believe that the allocation of the Wastewater Treatment Capacity Improvements based on the proportionate capacity requirements of the

parcels that are associated with the Assessment Program is a reasonable basis to assign such capital cost to each parcel located within the Assessment Areas." (Supp. A - Tab A - page 3).

"It should be noted that there are a multitude of methods or bases for the apportionment of the cost of the Wastewater Improvements<sup>2</sup> to those properties benefiting from such improvements and it is a function of the local government to determine the method of cost apportionment. PRMG believes that the methodology anticipated to be used by the City in the apportionment of the cost of the Wastewater Improvements to the properties located in the Assessment Areas has a logical basis and does not appear to be arbitrary. The imposition of a valid special assessment deals with the benefit to be received by the property (which obviously occurs with the delivery of the facilities) and it must be a fair and reasonable apportionment of cost. After reviewing the information provided by the City as to the cost apportionment methodology to be used, we think that the City's approach to allocate cost to the parcels in the Assessment Areas is reasonable." (Supp. A - Tab A - page 4). (Emphasis added)

Robert J. Ori, the principal author of the PRMG report, testified at the Trial that the use of an equivalent residential connection or "ERC" method used by the City to allocate costs to the assessed properties was appropriate and reasonable. (A - Tab I - page(s) 110-111).

As the Trial Court found, the City Council also had before it when it adopted the Initial Assessment Resolutions a detailed report prepared by its City Manager outlining the assessment approach and rationale. That report was also introduced into evidence at the Trial. (A - Tab A - page 11, Supp. A - Tab B).

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<sup>2</sup> The Wastewater Collection Improvements as Wastewater Treatment Capacity Improvements



The City Manager, William Moss, testified at the Trial as follows concerning the apportionment of the cost of the Plant Upgrades:

Q. "Were existing customers of the waste water utility system going to be paying for the Wastewater Treatment Improvement?"

A. "Existing customers were not going to be paying for the expansion portion. They were going to be paying for the upgrades that would have been required to the plant whether or not there was any expansion." (A - Tab I - page 44).

Q "Will any of the existing users benefit from any expansion of the waste water treatment facility as a result of any of the assessments we're here today trying to validate?"

A. "No, sir. We have to make improvements in the plant itself: but in terms of our capacity, I think our capacity is adequate now. So, I don't see how they would benefit by having additional capacity. They may benefit by having additional equipment at the plant and modernizing the plant, but they're paying for that." (A - Tab I - page 56).

Q. "Through what?"

A. "They're paying for the modernization of the waste water treatment plant, but they're not paying any portion of the capacity expansion." (A - Tab I - page 56 - line(s) 15-17).

Rony Joel, the City's Utility Director, testified at the Trial as follows with respect to the Capacity Improvement:

Q. "All right, Sir. If the City had not undertaken the septic tank replacement program, had it not undertaken to connect the new customers in the new 15 districts, would it have been necessary to expand the capacity of the waste water treatment plant beyond 3.5 million gallons?"

A. "Absolutely not." (A - Tab I - page 93 - line (s) 1-7).

The City Finance Director, William Harrison, testified that prior to adoption of the Assessment Resolutions, the City worked with Boyle Engineering to come up with preliminary construction costs and then PRMG worked with the City in developing the assessment program to make sure that "the program would be financially reliable and meet the goals of fairness and equity to all customers." (A - Tab I - page(s) 74, 81 and 82).

Mr. Joel further testified at the Trial that the assessment methodology utilized by the City was fair and reasonable (A - Tab I - page 95).

The Trial Court determined that the Special Assessments do not arbitrarily or unreasonably distinguish between old and new users of the City's Utility System. (A - Tab D - page 21).

### **SUMMARY OF ARGUMENT**

There are no novel issues presented by this appeal. This is a simple case which turns upon the validity of the legislative findings in the City's Assessment Resolutions. Such findings were shown at trial to be based upon competent and appropriate expert evidence; the findings of the City Council are by no means arbitrary. Those findings are presumptively valid. Citizens have fallen woefully short of overcoming that presumption. As this Court has stated, Citizens' burden is to show that such determination was "so clearly wrong as to be beyond the power of the legislature." Nohrr v. Brevard County Educational Facilities Authority, 247

So. 2d 304, 309 (Fla. 1971). "Generally, 'legislative determinations are presumed valid and should be considered correct unless patently erroneous.' "Id., citing Boschen v. City of Clearwater, 777 So. 2d 958 (Fla. 2001); see also Workman Enterprises Inc. v. Hernando County, 790 So. 2d 598 (Fla. 5th DCA 2001).

This Court has consistently reiterated that the trial courts should not rule on anything that is within the purview of the legislature. Accordingly, it is the City Council, in furtherance of its legislative function, and not the courts that determines the method of apportionment. Absent a showing that the legislative findings and method of apportionment contained in the Assessment Resolutions were arbitrary or contrary to law, such determinations are not open to re-determination by the court in a validation proceeding. State v. City of St. Petersburg, 145 Fla. 206, 198 So. 837 (Fla. 1940) and City of Boca Raton v. State, 595 So. 2d 25 (Fla. 1992) at P 30. See also Panama City Beach Community Redevelopment Agency v. State, 831 So. 2d 662 (Fla. 2002) where this Court held that only where the legislative body's determinations and conclusions are clearly erroneous should the court refuse to validate bonds.

Likewise, in City of Winter Springs v. State, 776 So. 2d 255 (Fla. 2001) this Court held that while a court may recognize alternative methods of apportionment of a special assessment and any benefited programs, as long as the legislative determination of the city is not arbitrary, a court cannot substitute its judgment for

that of the local legislative body.

Here, as the Trial Court found, not only were the City Council's legislative findings not arbitrary they were based upon competent, substantial expert evidence. This Court is therefore compelled to sustain them and affirm the Final Judgment.

### **STANDARD OF REVIEW**

This Court's scope of review in bond validation cases is limited to determining the following issues: (1) whether the public body has the authority to issue bonds; (2) whether the purpose of the obligation is legal; and (3) whether the bond issuance of complies with the requirements of the law. See Keys Citizens for Responsible Government, Inc. v. Florida Keys Aqueduct Authority, 795 So. 2d 940, 944 (Fla. 2001); Murphy v. Lee County, 763 So. 2d 300, 302 (Fla. 2000). Citizens have the burden of demonstrating that the record and evidence fail to support the Trial Court's conclusions in the Final Judgment when it validated the Bonds and the legality and validity of the imposition, collection and use of the Special Assessments pursuant to the Assessment Ordinance and Assessment Resolutions. Wohl v. State, 480 So. 2d 639, 641 (Fla. 1985). The Final Judgment validating the Bonds and methodology and apportionment of the Special Assessments comes with a presumption of correctness, and Citizens must overcome that presumption.

## ARGUMENT

### **I. THE ASSESSMENTS UNDERLYING THE PROPOSED BONDS WERE EQUITABLY APPORTIONED**

- A. Deference to the legislative findings of the City Council is required where, as here, the Apportionment was determined to be equitable and that determination was not arbitrary (Response to Appellants' I-A)**
- B. The legislative Determination at Issue is not Arbitrary. (Response to Appellants' I-D)**

While a court may recognize alternative methods of apportionment of a special assessment and any benefited programs, as long as the legislative determination of the city is not arbitrary, a court cannot substitute its judgment for that of the local legislative body. See City of Winter Springs v. State, 776 So. 2d 255 (Fla. 2001). See also Workman Enterprises Inc. v. Hernando County, 790 So. 2d 598 (Fla. 5th DCA 2001) . In upholding the Special Assessments at issue in Workman, the Court recited the rule that the property owner has the burden of proof to overcome the presumption of correctness of a legislative determination and that such presumption can be overcome only by "strong, direct, clear and positive proof," citing the standard described in Rinker Materials Corporation v. Town of Lake Park, 494 So. 2d 1123 (Fla. 1986). Id. at 598. Appellants cite

*Charlotte County v Fiske*, 350 So. 2d 578 (Fla. 2d DCA 1977). In which the Court, in upholding an assessment, stated that the "legislative findings are entitled to great weight and ought not to be lightly tampered with or voided absent a clear showing that they are arbitrary, oppressive, discriminatory or without basis in reason." *Id.* at 578.

- C. Whether existing users have worn out the Existing Wastewater Treatment Plant is a false issue, not material or relevant to this case. (Response to Appellants' I-B)**
- D. Existing users and not the new users are paying for the Plant Upgrades unrelated to additional capacity, and new users are paying for additional capacity through assessments. (Response to Appellants' I-C)**
- E. The Community as a whole does not benefit from the additional capacity paid for by the assessments so that the benefits are indeed special. (Response to Appellants' I-E)**
- F. It is not the arguments of the City, it is the findings of the City Council supported by competent evidence which compelled entry of the Judgment here on appeal and compel that judgment to be sustained. (Response to Appellants' I-F)**

The crux of Citizens' dispute with the Final Judgment on appeal is contained in their I-B, C and E. The answer to these issues is simple. It does not matter if existing users have "worn out" the Utility System because the evidence is unrebutted that expansion of Utility System capacity (i.e. the Wastewater Treatment Capacity Improvements) is necessitated by the Sewer Expansion Program, and existing users are not, therefore, being charged for such expansion. The existing users are, instead, paying thorough their utility bills for the Plant Upgrades, which are not necessitated by the expansion program, but are rather due to the age of the Plant. Indeed, the unrebutted testimony of the City Finance Director clearly stated it in this manner: "The costs that are attributable to the new customers are coming from assessments. Those costs that benefit the entire system such as the replacement of existing sewer plant will come from all of the customers on what's called a rate based bond issue where the debt service will be included in the monthly user fees." (A - Tab I - page 75).

Citizens argue that it is not lawful to apportion to new users of the Utility System the entire cost of the Wastewater Collection Improvements and the Wastewater Treatment Capacity Improvements and cite in support Contractors and Builders Association of Pinellas County v. City of Dunedin, 329 So. 2d 314 (Fla.1976); Hanna v. City of Palm Bay, 579 So. 2d 320 (Fla. 5th DCA 1991); and City of Ft. Myers v. State, 95 Fla. 704, 117 So. 97 (1928). In Hanna the Court held

that it was unlawful to assess the entire cost of repaving all of the City streets upon abutting property owners. Hanna has been distinguished by this Court's decision in Murphy v. City of Port St. Lucie, 666 So. 2d 879 (Fla. 1995) in that Hanna involved a program to resurface *all* of the streets in the city and an assessment of *all* the properties, whereas in Murphy (as in the instant case) what was proposed was extension of an existing water and sewer system into designated areas of the city not presently served by any system.

In Harris v. Wilson, 656 So. 2d 512 (Fla. 1st DCA 1995), the court also distinguished Hanna because Hanna was based upon the language of Chapter 170 and did not, as in Harris, (and as is the case here) involve a home rule assessment. In Harris the court upheld an assessment which was throughout the assessment unit and, while distinguishing Hanna as a Chapter 170 program, also held that the apportionment of benefits is a legislative function and that if reasonable persons may differ as to whether the properties assessed were benefited, the legislative determination must be upheld.

In Contractors and Builders Ass'n of Pinellas County v. City of Dunedin, 329 So. 2d 314 (Fla. 1976), the city was arbitrarily imposing on new users the entire cost of replacing a plant which will be used by all. That is not what is occurring here.<sup>3</sup> Only the new users in the Assessment Areas will pay for the

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<sup>3</sup> Although it would be legally permissible for the City to recover the entirety of all



increased wastewater plant capacity necessitated by the demand created by the new users in the Assessment Areas. The City Manager explained it in this manner: "Existing customers were not going to be paying for the expansion portion. They were going to be paying for the upgrades that would have been required to the plant whether or not there was any expansion." (A - Tab I - page 44).

In Workman, the Court held that the property owner has the burden to rebut the presumption of correctness of special assessments and such presumption can be "overcome only by strong, direct, clear and positive proof." Id. The court held that the evidence presented at trial must be viewed in the light most favorable to the county, citing Rinker Materials Corporation v. Town of Lake Park, 494 So. 2d

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capital improvements for extending its wastewater collection facilities and expanding, upgrading and modernizing its wastewater treatment facilities through its utility rates (See Contractors and Builders Association of Pinellas County v. The City of Dunedin, 329 So. 2d 314 (Fla. 1976) at 319), the City Council, in an attempt to more equitably distribute the costs associated with such overall expansion activities, may employ a combination of methods to fund such costs. For example, the prorata costs for Wastewater Collection Improvements and Wastewater Treatment Capacity Improvements may be recovered through special assessments similar to those which are the subject of this validation proceeding; new users not included in Assessment Areas may be required by the City to pay comparable impact fees for the cost of capital improvements necessary to serve their properties; and, all customers, new and old alike through their monthly utility rates, may share in funding a real and substantial portion of the capital costs necessary to extend collection facilities and expand, up-grade and modernize wastewater treatment facilities benefiting all customers and not otherwise funded by special assessments or impact fees. The use of such an approach by local governments in Florida to share the costs of such capital facilities amongst all of the wastewater utility system users, both present and future, is not novel.

1123 (Fla. 1986).

In City of Boca Raton this Court stated the rule as follows: "The apportionment of assessments is a legislative function, so if the evidence as to benefits is conflicting, as is generally the case, and is predicated on the judgment of expert witnesses, the findings of the city officials will not be disturbed." Here the City's expert, Robert Ori, acknowledged that there were a multitude of methods or bases for apportionment of the costs of construction improvements but the method used by the City had a logical basis and was not arbitrary. (Supp. A - Tab A - page 4).

In City of Ft. Myers, the Court, unsurprisingly, invalidated a stormwater assessment levied against properties not served by the improvements and which, unlike here, could not possibly derive any benefit from the improvement for which they were being assessed.

This case is strikingly like Murphy v. City of Port St. Lucie, 666 So. 2d 879 (Fla. 1995) in which this Court rejected an argument that the special assessments did not confer a special benefit to the assessed homeowner, but rather were part of a city-wide program intended to confer a community-wide benefit.

This Court in Murphy also distinguished City of Ft. Myers where the city attempted to assess only properties which abutted the streets for all services, regardless of whether they had received storm sewer, catch basin, or manhole

improvements and *St. Lucie County-Fort Pierce Fire Prevention and Control District v. Higgs*, 141 So. 2d 744 (Fla. 1962), where the county attempted to assess *all* properties in order to provide fire protection to the entire county.

## CONCLUSION

Two overarching well established principles govern this case and compel affirmance. First, as this Court determined long ago in Contractors and Builders Association of Pinellas County v. City of Dunedin, 329 So. 2d 314 (Fla. 1976), there is nothing wrong with transferring to the new uses of a municipal water or sewer system a fair share of the costs that the new use of the system involves. Second, as this Court has held in numerous cases, such as City of Winter Springs v. State, 776 So. 2d 255 (Fla. 2001), as long as the legislative determination of the City as to the apportionment of that cost is not arbitrary, a court cannot substitute its judgment for that of the City Council. The record is unrebutted that the City has fairly, reasonably and methodically approached the difficult political challenge of apportioning the costs of funding wastewater capital facilities in a fashion which complies with principles of well settled Florida case law. The validation Final Judgment should be affirmed.

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**CERTIFICATE OF SERVICE**

I CERTIFY that a copy of the foregoing has been furnished, by mail, this \_\_\_\_ day of September, 2006 to Samuel L. Gold and Kevin L. Dees of Gold & Dees, P.A., 405 Fifth Avenue South, Suite 9, Naples, Florida 34102 and Michael J. Provost, Esquire, Assistant State Attorney, 3301 Tamiami Trail, Bldg L 5<sup>th</sup> Floor, Naples, Florida 34112

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**CERTIFICATE OF FONT COMPLIANCE**

I CERTIFY that the font size and style in the Appellee's Answer Brief is 14 Times New Roman and that Appellee's Brief complies with the font requirements of *Fla. R.App.P.* 9.210(a) (2)

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