IN THE SUPREME COURT OF THE STATE OF FLORIDA

TALLAHASSEE, FLORIDA

CASE NO. SC10-1220

NORTH PORT ROAD AND DRAINAGE DISTRICT, a dependent special district of the State of Florida,

Petitioner,

vs.

WEST VILLAGES IMPROVEMENT DISTRICT, an independent special district of the State of Florida,

Respondent.
_______________________________________/

ANSWER BRIEF OF RESPONDENT ON THE MERITS

On Discretionary Review from a Decision of the Second District Court of Appeal

CALDWELL PACETTI EDWARDS SCHOECH & VIATOR, LLP
One Clearlake Centre
250 South Australian Avenue, Suite 600
West Palm Beach, FL 33401
and
BURLINGTON & ROCKENBACH, P.A.
Courthouse Commons/Suite 430
444 West Railroad Avenue
West Palm Beach, FL 33401
(561) 721-0400
(561) 721-0465 (fax)
Attorneys for Respondent
pmb@FLAppellateLaw.com

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PREFACE

This proceeding involves discretionary review of a decision of the Second District Court of Appeal. The parties will be referred to by their proper names or as they appeared in the trial court. The following designations will be used:

(A) –Appendix Submitted as Record in Second DCA

(AA) – Appendix Attached to Answer Brief of Respondent

<u>**STATEMENT OF THE CASE AND FACTS**</u>

Respondent, West Villages Improvement District ("West Villages"), generally agrees with the Statement of the Case and Facts in Petitioner's Initial Brief, with the following supplementation and corrections:

West Villages is an independent special district of the State of Florida, located in Sarasota County, Florida. It was created by special act of the Florida Legislature, pursuant to Chapter 189, Fla. Stat., through enabling legislation, including Chapter 2004-456, Laws of Florida (not Chapter 2004-457, Laws of Florida as stated by Petitioner), and subsequent amendments.[1] West Villages was created as a water control district under the provisions of Chapter 298, Fla. Stat. (to the extent not inconsistent with its special act), and is authorized to perform any acts necessary "for the provision, acquisition, development, operation, and maintenance of those public infrastructure works and services authorized herein…." Ch. 2004-456, §2(3), Laws of Fla.

West Villages' boundaries and jurisdiction extend beyond the City of North Port ("City") into unincorporated Sarasota County (<u>see</u> Ch. 2006-355), contrary to the description in the Statement of the Case and Facts by North Port Road and

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[1] The enabling legislation for West Villages was amended in Chapter 2006-355, Chapter 2007-307 and Chapter 2008-284, Laws of Florida, and specifically states that it may be amended only by special act of the Florida Legislature. Chapter 2004-456, §2(4), Laws of Florida.

Drainage District ("North Port District") (IB p.11). The real property at issue in this case, however, is located within the City and is not utilized for nonpublic or private commercial purposes.[2]

The enabling legislation reflects that the legislature intended the role of West Villages to be cooperative with that of the local governmental entities. Ch. 2004-456 §3(3). West Villages is authorized to acquire real property, but (as to property within the City) can only obtain fee simple title with the approval of the City; and West Villages does not have the right of eminent domain outside its boundaries. Id. §3(2)(d). West Villages is authorized to acquire and construct (among other things) works or elements for water management and drainage, public roadways, water plants and systems, and wastewater systems. Id. §3(2)(e), (i), (l) and (m). However, upon the request of the City, it is required to donate these listed works

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[2] Parcel Numbers 0779-01-0300, 0779-01-0315, and 0779-01-0317 were dedicated by plat for "Wetland Preservation Tracts," "Water Management Tracts," and "Recreation Tracts," respectively (A1:2). Parcel Numbers 0779-02-0011, 0780-02-0011, 0780-02-0114, and 0780-02-0116 were dedicated by plat for "Gopher Tortoise Preserve Conservation Area," "Wetland Preservation Tracts," "Water Management Tracts," and "Recreation Tracts," respectively (A1:3). The Gopher Tortoise Preserve Conservation Area is encumbered by a perpetual Conservation Easement for gopher tortoise habitat conservation in favor of the Florida Fish and Wildlife Conservation Commission (A1:4). Parcel Numbers 0784-00-4020 and 0801-00-1010 were acquired by deed for the purpose of, and are being used for, the installation, construction and/or operation of a modern public road right-of-way, the West Villages Parkway, including appurtenant works, facilities, and improvements, such as utilities, landscaping, drainage, and signalization (A1:5).

(within the City) and turn over their operation to the City, subject to a developers' agreement with the City. Id. West Villages is also authorized to levy non-ad valorem assessments and issue bonds and notes secured by such non-ad valorem assessments. Id. §3(2)(q)(t).[3]

In the provision authorizing the acquisition of real property, the enabling legislation specifically addresses West Village's liability for, inter alia, non-ad valorem assessments. Id. §3(2)(d); (AA2):

> Any property interests owned by the district which are used for nonpublic or private commercial purposes shall be subject to all ad valorem taxes, intangible personal property taxes, or non-ad valorem assessments, as would be applicable if said property were privately owned.[4]

As noted previously, the property at issue in this case is not being utilized for nonpublic or private commercial purposes, see n.2 supra. Despite that unambiguous language of Chapter 2004-457, §3(2)(d), the City adopted an ordinance authorizing North Port District to levy non-ad valorem assessments against all governmental real property within its boundaries, regardless of the nature of its use.

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[3] West Villages is also authorized to acquire, construct, and operate "systems and facilities for school buildings and related structures," as further provided in its special act. Id. §3(2)(p).

[4] This provision is contained in the District's initial enabling legislation, Chapter 2004-456, Laws of Florida, and the subsequent 2006 and 2007 special act amendments, Chapter 2006-355 §1, and Chapter 2007-307 §1, Laws of Florida.

After the City adopted Ordinance No. 08-11,[5] which amended North Port's Enabling Ordinance to provide for the first time that it shall levy its non-ad valorem assessments against governmental real property, West Villages submitted timely written and verbal objections, see West Villages Improvement District v. North Port Road and Drainage District, 36 So.3d 837, 838 (Fla. 2d DCA 2010). Additionally, once the City established North Port District's non-ad valorem assessment rates and non-ad valorem assessment roll,[6] West Villages timely filed nine (9) administrative appeals challenging the 2008 non-ad valorem assessments levied against its nine (9) parcels of real property. See id. at 839. North Port denied those appeals, whereupon West Villages timely filed a Petition for Writ of Certiorari seeking review of that decision in the Circuit Court of the Twelfth Judicial Circuit in and for Sarasota County, Florida. See id. The Circuit Court denied West Villages' Petition in its Order rendered April 15, 2009. See id.

Thereafter, West Villages timely filed a Petition for Writ of Certiorari with the Second District Court of Appeal of Florida ("Second DCA"). See id. In its decision granting certiorari, the Second DCA held that the circuit court departed

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[5] North Port District asserts that it had the right to levy non-ad valorem assessments on governmental property within its boundaries by virtue of adopting Ordinance No. 08-11. However, that statement is inappropriately argumentative for a Statement of Facts.

[6] Although North Port District states throughout its Initial Brief that it assessed West Villages for both road and drainage services, North Port District levied only non-ad valorem assessments on West Villages' real property for **road services**.

from the essential requirements of law by failing to apply the principles established by this Court in Blake v. City of Tampa, 115 Fla. 348, 156 So. 97 (1934). See id. The Second DCA acknowledged that under home rule principles, municipalities have the general power to impose special assessments, but held that that authority did not permit them to impose those assessments on public property.

Furthermore, the Second DCA rejected North Port District's reliance on Remington Community Development District v. Education of Foundation of Osceola, 941 So.2d 15 (Fla. 5th DCA 2006) ("Remington"), finding it distinguishable:

> [North Port] thus argues that Remington stands for the proposition that unless there is a *statutory exemption*, all public property may be subjected to special assessments. We do not read Remington so broadly. The issue in Remington was whether a charter school qualified for the statutory exemption provided for in section 1013.51. But there is no holding in Remington that all public property is subject to special assessments absent a statutory exemption.

The Court also stated:

> We therefore reject [North Port District's] argument that Remington supports its position that it may lawfully impose non-ad valorem assessments on West Villages' property despite the absence of legislative authority. But to the extent that our conclusions conflict with the Fifth District's opinion in Remington, we certify conflict.

Id. at 841-42.

Thus, contrary to North Port District's assertion, the Second DCA did not find that its opinion conflicted with Remington. See West Villages Improvement District, 36 So.3d 837. Nor did the Second DCA state, as North Port District asserts, that the issue of conflict between West Villages and Remington is whether a special district may levy non-ad valorem assessments against government real property when there is no statutory exemption to prevent such a levy. See id. The Second DCA stated only that there may be a conflict between the two cases and that to the extent that such a conflict exists, the Second DCA certified conflict. See id.

The Second DCA also certified a question of great public importance, as follows:

> MAY A MUNICIPAL DEPENDENT SPECIAL DISTRICT, PURSUANT TO MUNICIPAL HOME RULE POWER, IMPOSE A NON-AD VALOREM SPECIAL ASSESSMENT UPON REAL PROPERTY OWNED BY A STATE GOVERNMENTAL ENTITY, IN THE ABSENCE OF EXPRESS OR NECESSARILY IMPLIED LEGISLATIVE AUTHORITY?

SUMMARY OF ARGUMENT

The North Port District does not have authority under principles of home rule power to impose non-ad valorem assessments on property owned by West Villages. West Villages is a special district created by an act of the state legislature, and municipalities (and their dependent districts), do not have authority equal to or superior to the state. Even under the home rule powers provision in the 1968 Florida Constitution, the legislature retains superior and all pervasive power, and is not subject to obligations unilaterally imposed upon it by municipalities.

The disposition of state funds and property are an attribute of sovereignty of the state, and local government cannot impose obligations upon them without express and unambiguous authorization from the legislature. This inherency doctrine is not dependent upon statutory or constitutional provisions, but rests upon broad grounds of fundamentals in government. Nothing in the constitutional or statutory provisions granting home rule power have changed that principle.

Additionally, Article VIII, §1(c), Fla. Const., provides that "no money shall be drawn from the treasury except in pursuance of appropriation made by law." Based on that provision, any authority for disposition of state funds must be made by a duly enacted statute. There is no statute authorizing the payment of the special assessments unilaterally imposed by North Port District and, therefore, that constitutional provision necessarily limits the authority granted by the Municipal

Home Rule Powers Act, §166.021(3)(b), Fla. Stat. For that additional reason, North Port District did not have authority to unilaterally impose the special assessments on the property owned by West Villages.

North Port District also lacked the authority to unilaterally impose the special assessments because the enabling legislation establishing West Villages contains a provision limiting its liability for special assessments to property utilized for non-public or private commercial purposes. The ordinance relied upon by North Port District as authority for its special assessments is inferior to state legislation and, therefore, is unenforceable. That fundamental principle of governmental authority has not been altered by either the constitutional or the statutory provisions granting home rule authority.

For the reasons stated above, the Second DCA's decision should be approved and the certified question should be answered in the negative.

ARGUMENT

POINT I

NORTH PORT DISTRICT IS NOT AUTHORIZED TO IMPOSE NON-AD VALOREM SPECIAL ASSESSMENTS UPON PROPERTY OWNED BY A STATE GOVERNMENTAL ENTITY.

Standard of Review

The standard of review in this case is de novo because it involves issues of law and questions of decisional conflict, Linn v. Fossum, 946 So.2d 1032, 1036 (Fla. 2006).

Introduction

North Port District contends that it is entitled to unilaterally impose a special assessment or non-ad valorem upon a special district of the State, relying on its home rule powers. However, its argument is inconsistent with the historical development of home rule authority and decisions of this Court construing the constitutional and statutory provisions which granted that authority. An analysis of those provisions and the case law leads to the conclusion that there are three separate grounds upon which North Port's argument must fail.

Historical Development and Judicial Interpretation of Municipalities' Home Rule Authority

Prior to the grant of home rule powers to municipalities by the 1968 Florida Constitution, municipal authority was provided by Article VIII, §8, Fla. Const. (1885). That provision stated:

> The Legislature shall have power to establish, and to abolish, municipalities to provide for their government, to prescribe their jurisdiction and powers, and to alter or amend the same at any time.

Under that provision, Florida applied what was known as "Dillon's Rule,"[7] under which local governments such as municipalities could only exercise those powers expressly granted, and those necessarily or fairly implied, in state statutes, see Williams v. Town of Dunnellon, 169 So. 631 (Fla. 1936); Heriot v. City of Pensacola, 146 So. 654 (Fla. 1933). Under "Dillon's Rule," powers not granted to a municipality were deemed to be reserved to the legislature, see City of Boca Raton v. State, 595 So.2d 25, 27 (Fla. 1992).

Practical difficulties arising from the development of Florida and population growth mandated a different approach to municipal power than that provided in the 1885 Constitution. After World War II, the legislature was flooded with local bills and acts designed to create a grant of authority to municipalities. Id. For example,

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[7] The term "Dillon's Rule" was derived from the treatise by John F. Dillon, The Law of Municipal Corporations, §55 (1st ed. 1872), see City of Boca Raton v. State, 595 So.2d 25, 27 (Fla. 1992).

in 1965, there were 2,107 local bills introduced in the legislature. Steven L. Sparkman, The History and Status of Local Government Powers in Florida, U. of Fla. Law Rev., Vol. XXV, p. 271, 286 (1973). This resulted in the inclusion of a provision in the Constitution of 1968 granting municipalities home rule powers. Article VIII, §2(b), Fla. Const. of 1968 provides:

> POWERS. Municipalities shall have governmental, corporate and proprietary powers to enable them to conduct municipal government, perform municipal functions and render municipal services, and may exercise any power for municipal purposes except as otherwise provided by law.

The effect of that provision was to establish that all municipalities were granted governmental, corporate and proprietary powers unless provided otherwise by law, see 26 A. Fla. Stat. Ann. 292 (1970) (Commentary by Talbot "Sandy" D'Alemberte), quoted in Boca Raton, supra, 595 So.2d at 27.

In the case sub judice, North Port District essentially argues that Art. VIII, §2(6), Fla. Const. (and subsequent implementing legislation), has granted it the status of an independent sovereign capable of imposing obligations on the state. That conclusion has been rejected by this and other courts for reasons fundamental to governmental structure.

In Lake Worth Utilities Authority v. City of Lake Worth, 468 So.2d 215, 217 (Fla. 1985), this Court stated:

> The clear purpose of the 1968 revision embodied in article VIII, section 2 was to give the municipalities inherent power to meet municipal needs. But "inherent" is not to be confused with "absolute" or even with "supreme" in this context. The legislature's retained power is now one of limitation rather than one of grace, but it remains an all-pervasive power, nonetheless.

It should be noted that Article VIII §2(b), Fla. Const., limits all its grants of authority with the term "municipal," i.e., limiting the powers granted "to conduct municipal government, perform municipal functions and render municipal services… for municipal purposes." [Emphasis supplied.] This Court stated in City of Miami Beach v. Fleetwood Hotel Inc., 261 So.2d 801, 803 (Fla. 1972),

> Although this new provision does change the old rule of the 1885 Constitution respecting delegated powers of municipalities, it still limits municipal powers to the performance of Municipal functions.

There is nothing in the language of the constitutional provision which authorizes a municipality to have authority equal to or superior to that of the state. In fact, to permit such a construction, as North Port District suggests, would violate inherent government principles as well as the Constitution of the United States.

This inherent limitation on home rule authority has been noted by other jurisdictions, most clearly (and colorfully) by the Supreme Court of Oregon in Straw v. Harris, 103 P. 777, 782 (Or. 1909):

> Whatever may be the literal import of the [Home Rule] amendments it cannot be held that the state has surrendered its sovereignty to the municipalities to the

> extent that it must be deemed to have perpetually lost control over them. This no state can do. The logical sequence of a judicial interpretation to such effect would amount to a recognition of a state's independent right of dissolution. It would but lead to sovereigntial suicide. It would result in the creation of states within the state, and eventually in the surrender of all state sovereignty- all of which is expressly inhibited by article 4, Sec. 3, of our national Constitution.[[8]]

See also, City of Portland v. Pacific Telephone & Telegraph Co., 5 F.Supp. 79, 81 (D. Or. 1933) (quoting same language).

This Court's interpretation of Article VIII §2(b), Fla. Const., has acknowledged those limitations on its grant of authority to the municipalities. In Fleetwood Hotel, Inc., supra, several lessors challenged a rent control ordinance enacted by the City of Miami Beach after the 1968 Constitution was adopted. The circuit court held the ordinance was unconstitutional and this Court affirmed that decision, concluding that the city did not have the power to enact the ordinance, that the ordinance was an unlawful delegation of the municipality's legislative authority, and that the ordinance conflicted with existing state statutes. The first and third determinations apply with equal force in the case sub judice.

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[8] Article IV, §3 of the United States Constitution provides:

> New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or Parts of States, without the Consent of the Legislatures of the States concerned as well as of the Congress.

In Fleetwood Hotel, this Court noted that (261 So.2d at 804): "Local governments have not been given omnipotence by home rule provisions or by Article VIII, §2 of the 1968 Florida Constitution." This Court noted that there are certain matters that are by nature inherently reserved to the state and, therefore, are not proper subjects of local treatment, as they do not "touch the affairs that a city is organized to regulate, whether we have reference to history or to tradition or to the existing forms of charters." Id., quoting Adler v. Deegan, 167 N.E. 705, 713 (N.Y. Ct. App. 1929) (Cardozo, J., concurring). The court held that absent a legislative enactment authorizing the establishment of municipal regulations of landlord-tenant relationships, a city had no power to enact a rent control ordinance.

As to the third basis for invalidating the municipal ordinance in Fleetwood Hotel, this Court noted that the rent control ordinance conflicted with existing Florida Statutes governing the landlord-tenant relationship, Fleetwood Hotel, 261 So.2d at 806. As a result, the ordinance was invalid based on fundamental governmental principles regulating the relationship between the state and municipalities (Id.):

> Municipal ordinances are inferior in status and subordinate to the laws of the State and must not conflict therewith. If doubt exists as to the extent of a power attempted to be exercised which may affect the operation of a state statute, the doubt is to be resolved against the ordinance and in favor of the statute.

In the case sub judice, North Port District's attempt to unilaterally impose special assessments on state property is not justified by its home rule powers because the expenditure of state funds is a matter inherently reserved for the state, and there has been no legislative enactment authorizing municipalities to exercise that power. This argument is discussed in more detail, infra pp. 20-27. Moreover, as noted previously, the enabling legislation establishing West Villages specifically provides that property owned by the district is subject to special assessment by local governments only when used for non-governmental purposes. Therefore, as in Fleetwood Hotel, the City's municipal ordinance conflicts with the state statute and cannot be granted effect. This argument is discussed in more detail infra pp. 31-34.

In response to the Fleetwood Hotel decision, the legislature in 1973 enacted the Municipal Home Rule Powers Act, Chapter 166, Fla. Stat., which authorized the exercise of home rule powers by municipalities. However, that Act did not grant municipalities power equal to or superior to the state, nor did it alter fundamental principals applicable to state governmental authority.

After its passage, this Court examined the Municipal Home Rule Powers Act in the context of another challenge to a rent control ordinance enacted by the City of Miami Beach, see City of Miami Beach v. Forte Towers, Inc., 305 So.2d 764 (Fla. 1974). This Court noted that Chapter 166 was a broad grant of power to

municipalities in recognition and implementation of the provisions of Article VIII, §2(b), Fla. Const. The Court construed that statutory scheme as constituting the "missing authority required by Fleetwood Hotel" to empower municipalities to enact rent control legislation (305 So.2d at 767). However, this Court ultimately determined that the ordinance was unconstitutional because its provisions were confiscatory and denied due process.

This Court again addressed the limitations on home rule authority of municipalities in Dickinson v. City of Tallahassee, 325 So.2d 1 (Fla. 1975). In that case, the City of Tallahassee adopted an ordinance imposing a tax on all electricity, water and gas purchased within the city limits. §166.231(1), and (4), Fla. Stat., specifically authorized a municipality to levy a tax on the purchase of, inter alia, electricity, gas, and water. Subsection (4) of that statute provided that a municipality "may exempt from taxation" purchases of the taxable items by the United States government, the State of Florida, or any other public body. However, the City of Tallahassee did not provide an exemption for purchases by the state, resulting in the state challenging the ordinance on the basis that the city did not have the requisite authority to tax the state. The state argued that neither the constitutional nor statutory foundation for the tax expressly waived inherent sovereign immunity.

In Dickinson, this Court agreed with the state's position, citing case law decided prior to the enactment of the home rule constitutional provision, and quoted from Alford v. State, 107 So.2d 27, 29 (Fla. 1958), as follows (325 So.2d at 3):

> Although our statutes specifically exempt such State owned lands, such exemption is not dependent upon statutory or constitutional provisions but rests upon broad grounds of fundamentals in government. . . . [W]ithin constitutional limits, the Legislature may provide for the taxation of lands or other property of the State . . . . The question arises, however, whether the subject act actually does so provide. [Footnote omitted.]

In Dickinson, this Court noted that reliance on those cases decided under the predecessor Florida Constitution was appropriate because "the principle of immunity [from taxation] is not constitutionally dependent" (325 So.2d at 3, n.6). It characterized this legal principle as the "inherency doctrine" (325 So.2d at 4, n.8). This Court concluded that nothing in the development of the 1968 Constitution indicated that municipalities were to be granted the power to tax state property, and that there was no express grant of such authority in §166.231, Fla. Stat. The Dickinson decision also discussed the policy reasons for the inherency doctrine in terms of "fiscal management" and "constitutional harmonization," that compelled its conclusion that a municipality was not entitled to tax the state, despite the provisions of §166.231(1) and (4), Fla. Stat. (325 So.2d at 4). Those

practical considerations apply with equal force here (see discussion infra, pp. 34-35).

In Lake Worth Utilities Authority v. City of Lake Worth, 468 So.2d 215 (Fla. 1985), this Court addressed a municipal ordinance which dissolved a utility authority that had been created by a special act of the legislature. In that case, the City of Lake Worth dissolved the Lake Worth Utilities Authority, and took over the functions of that entity. The city claimed it was authorized to pass that ordinance under Chapter 166, Fla. Stat., because the special act creating the Lake Worth Utilities Authority constituted an attempt by the legislature to transfer municipal powers mandated by Article VIII, §2(b), Fla. Const. This Court rejected that argument noting that it (468 So.2d at 217): "[M]isapprehends the import of the 1968 [constitutional] revision and unduly denigrates the supremacy of the legislature as a state policy-making body." The opinion also notes that while the 1968 revision of the Florida Constitution was designed to give municipalities inherent power to meet municipal needs, that was not to be confused with granting it "absolute," or "supreme" power. Id. (quoted supra, p. 12).

In Lake Worth Utilities, this Court construed Article VIII, §2(b), Fla. Const. as granting home rule authority to municipalities but ruled that the phrase "except as otherwise provided by law" must be read as modifying the entire sentence preceding it. Id. This led to the conclusion that the enactment of the special act

establishing the Lake Worth Utilities Authority was a constitutional exercise of power specifically reserved to the legislature in Article VIII, §2(b), Fla. Const. and the municipality had no authority to override it.

Similarly here, the creation of West Villages Improvement District through a special act was a constitutional exercise of power specifically reserved to the legislature. North Port District was not empowered to override it by passing an ordinance which conflicted with the provisions in the enabling legislation limiting the liability for special assessments to parcels of property used for non-governmental purposes.

In City of Boca Raton v. State, 595 So.2d 25 (Fla. 1992), this Court determined that pursuant to Article VIII, §2(b), Fla. Const. and to the Municipal Home Rule Powers Act, a city can levy special assessments for capital improvements unless it is expressly prohibited by law. The court noted the exceptions recognized in §166.021(3)(a)-(d), Fla. Stat., which limited the municipality's home rule authority, but concluded that none of those exceptions applied to preclude the levy of special assessments. It must be noted, however, that there was no issue in City of Boca Raton regarding the authority of municipalities to levy special assessments on state or public property. Therefore, while West Villages acknowledges that North Port District had the authority to levy special assessments based on that decision, it does not agree that City of Boca

Raton establishes support for North Port District's attempt to levy special assessments on government property.

This discussion regarding the creation and construction of Article VIII, §2(b), Fla. Const. and the Municipal Home Rule Powers Act demonstrates that there are three arguments which support the Second DCA's holding that North Port District was not empowered to levy special assessments on state property. They include: 1) the doctrine that the control of state funds is an inherent attribute of sovereignty which was never delegated to the municipalities either by the Florida Constitution or the Municipal Power Home Rule Powers Act; 2) that North Port District's attempt to levy special assessments is prohibited by §166.021(3)(b), Fla. Stat., because the Florida Constitution prohibits state funds to be drawn from the treasury except pursuant to an appropriation made by law, Article VII, §1(c), Fla. Const.; and 3) North Port District's ordinance is invalid as it directly conflicts with the special act establishing West Villages. Each of these three arguments will be discussed separately below.

The Disposition of State Funds and Property are an Attribute of Sovereignty of the State

As noted by this Court in Dickinson, supra, there are certain characteristics of state sovereignty that exist independent of the constitution or statutes, and local government cannot exercise power upon them without a clear and direct expression of the state's intention to relinquish those powers. For example in Alford, supra, a

pre-home rule case, this Court held that the county was prohibited from levying taxes on land held for the state in the name of the Game and Freshwater Fish Commission. While noting that the legislature could provide for the taxation of lands or other property of the State, this Court concluded that the State had not done so and, therefore, the county could not impose taxes on the property of the Commission. This Court did not base its conclusion on any statutory or constitutional provision, but rather on "broad grounds of fundamentals in government" (107 So.2d at 29).

Another "attribute of sovereignty" is that the state is not responsible for interest on debts, Treadway v. Terrell, 158 So.512 (Fla. 1935), which is based in part on the principle that "the disposition of state funds and property" is an attribute of sovereignty, State ex. rel. Cray v. Stoutamire, 179 So.730, 733 (Fla. 1938). Similarly here, North Port District's attempt to impose special assessments on West Villages is an attempt to exercise power over an attribute of sovereignty of the State, i.e., the disposition of state funds and property, for which it has no authority.

North Port District does not have the legal authority to levy non-ad valorem assessments against real property owned by West Villages because there is no express or necessarily implied statutory authorization for such non-ad valorem assessments to be levied upon the state's real property. Such a violation of the

state's sovereignty by a local government requires explicit legislative authorization.

It has long been established in Florida that:

> With respect to special assessments... with the exception of property of the [federal] government… all other public property is assessable if so provided by legislation, for it is unquestionably competent for the lawmaking power to authorize lands of the state, or public property belonging either to municipal corporations or to other public quasi corporations, or to political subdivisions, to be subjected to special assessments. But public property will not be deemed to be so included unless by special enactment or necessary implication.

Blake v. City of Tampa, 115 Fla. 348, 354-55, 156 So. 97, 99 (Fla. 1934).[9]

Here, West Villages is an independent special district of the State of Florida, created by special legislative act and operating pursuant thereto and applicable

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[9] This Court noted as authority for that statement "cases cited in Hamilton, Law of Special Assessments, par. 281, at page 233." Id. One of the cases cited in that treatise is P.S. Fagan v. City of Chicago, 84 Ill. 227, 234 (Ill. 1876), where the court stated:

> But it may be said that this is not strictly a tax, but is a requirement on the owner simply to pay the amount that his property is increased in value by the improvement, and does not operate as a burden on the property. We are aware that such is the theory of these assessments, and that they differ materially from taxes; but it does not, therefore, follow, that public property may be assessed. A municipal corporation has no power to assess or exact from the State or the general government any sum for benefits conferred. The power to levy taxes or impose assessments for benefits can only be exercised on the governed, and not on the governing power, whether State or Federal.

provisions of Chapters 189 and 298, Fla. Stat. Thus, West Villages specifically comes within the protections of the Blake rule because it constitutes a protected class under Blake. See West Villages' enabling legislation at Ch. 2004-456, Laws of Florida, as amended by Ch. 2006-355, Ch. 2007-307, and Ch. 2008-284, Laws of Florida; §1.01(8), Fla. Stat. ("The words 'public body,' 'body politic,' or 'political subdivision' includes counties, cities, towns, villages, special tax school districts, special road and bridge districts, bridge districts, and all other districts in this state"); Andrews v. Pal-Mar Water Control District, 388 So.2d 4 (Fla. 4th DCA 1980) (a Chapter 298 water control district is "a political subdivision of the state"); Martin v. Dade Muck Land Co., 95 Fla. 530, 116 So. 449 (Fla. 1928) (the Everglades Drainage District, a Chapter 298 water control district created by special act of the legislature, is a "statutory subdivision of the state for special governmental purposes" and "a state agency"); Dade County v. Little, 115 So.2d 19 (Fla. 3d DCA 1959) (the Everglades Drainage District is a "statutory subdivision of the state for special governmental purposes," "a state agency," and "an arm or instrumentality of the sovereign state").[10]

[10] Water control districts are materially different from state-created port authorities, see Grimshaw v. South Florida Water Management District, 195 F. Supp. 2d 1358 (S.D. Fla. 2002). Therefore, the rationale of Canaveral Port Authority v. Dept. of Revenue, 690 So.2d 1226 (Fla. 1996), which applied only to ad valorem taxes, does not apply here, see Grimshaw, supra, 195 F. Supp. 2d at 1365 (noting that Canaveral Port Authority "left undisturbed," Andrews v. Pal-Mar, supra, which held that a Chapter 298, water control district was immune from

Blake has been reaffirmed in post-home rule Florida cases. In 2001, the First District Court of Appeal cited the Blake rule of law with approval:

> But the City does not contend that state property can be taxed, or that state property can be specially assessed, absent a statute authorizing special assessments specifically on state property, either explicitly or by "necessary implication." Blake v. City of Tampa, 115 Fla. 348, 156 So. 97, 99 (1934).

City of Gainesville v. State, 778 So.2d 519, 521-22 (Fla. 1st DCA 2001).

Subsequently, the Florida Supreme Court also reaffirmed Blake's holding:

> As a state agency, however, DOT would be exempt from special assessments absent a statute specially authorizing, either explicitly or "by necessary implication," special assessments on state property. See City of Gainesville v. State Dep't of Transp., 778 So.2d 519, 521-22 (Fla. 1st DCA 2001) (quoting Blake v. City of Tampa, 115 Fla. 348, 156 So. 97, 99 (1934)).

City of Gainesville v. State, 863 So.2d 138, 143 n.3 (Fla. 2003); see also id. at 144.

Furthermore, the Florida Attorney General has cited City of Gainesville v. State, 778 So.2d 519 (Fla. 1st DCA 2001), and Blake v. City of Tampa, 115 Fla. 348, 156 So. 97 (Fla. 1934), for the proposition that state property is not subject to special assessments absent explicit or necessarily implied statutory authorization,

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liability for ad valorem taxes, see also, Turner v. Florida State Fair Authority, 974 So.2d 470 (Fla. 2d DCA 2008).

Op. Att'y. Gen. Fla. 08-51 (2008);[11] see also, Op. Att'y. Gen. Fla. 90-85 (1990) ("State-owned lands are subject to special assessment by local government only when such liability is clearly provided by statute…. [Section] 170.01, merely authorizes a municipality to levy and collect special assessments for municipal improvements. The statute, however, does not expressly impose such liability on state-owned lands.") [footnote omitted]; Op. Att'y Gen. Fla. 90-47 (1990) ("It is generally recognized that state-owned lands are subject to special assessments if so provided by legislation. The legislative intent to impose such liability, however, must be clear. Section §403.0893(1), Fla. Stat., merely authorizes the city to impose stormwater utility fees; it does not expressly or by necessary implication… [authorize the city to levy a stormwater utility fee as a special assessment [on state lands.]") [footnotes omitted].

The continued vitality of Blake is due to the fact that it is based on "broad grounds of fundamentals in government," Alford, supra, 102 So.2d at 29; and is not "constitutionally dependent," Dickinson, supra, 325 So.2d at 3, n.5. It is based on the principle that control of state property is an attribute of sovereignty and only by an express delegation of authority can a municipality be empowered to impose financial obligations on it. Therefore, the law in Florida is well-established that a

[11] An opinion of the Attorney General is not, of course, binding, but "[I]t is entitled to careful consideration and generally should be regarded as highly persuasive," State v. Family Bank of Hallandale, 623 So.2d 474, 478 (Fla. 1993).

municipal dependent special district, such as North Port District, is prohibited from levying special assessments or non-ad valorem assessments on public or government real property unless provided by express or necessarily implied statutory authorization.

In Dickinson, this Court utilized the term "inherency doctrine" as the basis for its conclusion that the state's immunity from taxation was not constitutionally dependent (325 So.2d at 4, n.8).[12] This Court premised its ruling on "fundamentals in government," and noted the compelling policy reasons including "fiscal management and constitutional harmonization" (325 So.2d at 4). This Court noted that the state would have no way to anticipate the revenue needed to appropriate funds to meet the various tax burdens from local government which would be authorized by a contrary holding, and its rationale applies with equal force to special assessments imposed on state property by local governments (Id.):

> Thus, it is inconsistent with sound governmental principles to suggest that a state which cannot finance itself on a deficit basis would indirectly authorize an indeterminate amount of revenue to be taken from all of its citizens for the benefit of some of its municipal governments. A more logical approach to

[12] The "inherency doctrine" argued herein is consistent with the sovereign immunity argument presented in the Amicus Curiae Brief submitted by the Office of the Attorney General, et al. Sovereign immunity is premised, in part, on the principle that "there can be no legal right as against the authority that makes the law on which the right depends," Cauley v. City of Jacksonville, 403 So.2d 379, 381 (Fla. 1981). Special districts created by the legislature are entitled to sovereign immunity, Eldred v. North Broward Hosp. Distr., 498 So. 2d 911 (Fla. 1986).

> intergovernmental finance would require, as the State contends, a clear and direct expression of the State's intention to subject itself to selective, local tax burdens. [Footnote omitted.]

Similarly here, only a clear and direct expression of the state's intention to subject itself to special assessments by local governments can be reconciled with practical considerations of fiscal management and "constitutional harmonization." No such authority has been granted by the legislature and, therefore, North Port District is not empowered to levy its special assessments on the West Village Improvement District's property. Cf. §298.36, Fla. Stat. (providing express legislative authority to Chapter 298 water control districts to levy non-ad valorem assessments against state lands).[13] That is the holding in Blake, and it remains controlling precedent, as this Court recently recognized in City of Gainesville, supra.

The Municipality Lacks Authority to Impose a Special Assessment on State Property Because it is Prohibited by the Constitution

In addition to the state's inherent right to control the disposition of its funds and property, Article VII, §1(c), Fla. Const., provides: "No money shall be drawn

[13] "The benefits, and all lands in said district belonging to the state, shall be assessed to, and the taxes thereon shall be paid by, the state out of funds on hand, or which may hereafter be obtained, derived from the sale of lands belonging to the state. This provision shall apply to all taxes in any district including maintenance and ad valorem taxes, either levied under this or any other law, and to taxes assessed for preliminary work and expenses, as provided in s. 298.349, as well as to the taxes provided for in this section" §298.36(1), Fla. Stat.

from the treasury except in pursuance of appropriation made by law." This Court has construed that provision to require that any authority for the disposition of state funds must be made by a duly enacted statute, Advisory Opinion to Governor, 22 So.2d 398, 400 (Fla. 1945); see also Chiles v. Children A, B, C, D, E, and F, 589 So.2d 260, 265 (Fla. 1991) ("This Court has long held that the power to appropriate state funds is legislative and is to be exercised only through duly enacted statutes"); State v. Fla. Police Benevolent Association, 613 So.2d 415, 418 (Fla. 1992) ("Exclusive control over public funds rests solely with the legislature").

In this case, North Port District seeks to compel a special district of the state to pay the special assessments out of its funds despite the fact that there is no express legislative grant of authority for it to do so. It is clear that the state has not authorized such an expenditure. In fact, the state has specifically established in West Villages' enabling act that only the property of West Villages which is used for non-governmental purposes will be subject to special assessments by local governmental entities. Therefore, special assessments for property utilized for governmental purposes may not be paid with state funds.

The Municipal Home Rule Powers Act specifically provides that municipal bodies have the power to enact legislation concerning any subject upon which the state legislature may act except "…(b) any subject expressly prohibited by the constitution." Article VII, §1(c), Fla. Const. expressly prohibits the state from

expending its funds except pursuant to a duly enacted express statute. Therefore, North Port District is not authorized by the Municipal Home Rule Powers Act to impose its special assessment on the property owned by West Villages.

In a different context, this Court ruled that under home rule principles, a municipality is granted broad powers, but is not authorized to engage in any act which might result in the expenditure of state funds without express legislative authority. In American Home Assurance Co. v. National Railroad Passenger Corp., 908 So.2d 459 (Fla. 2005), one of the issues was whether a municipal utility authority, the Kissimmee Utility Authority ("KUA"), had the authority to enter into a contract with a railroad to indemnify it for all damages or losses to the railroad or third parties which occurred at a railroad crossing in front of an entrance to a municipal electric utilities plant. This Court determined that §768.28, Fla. Stat. did not apply, because the issue was not tort recovery, but rather an indemnification provision based on a contract between the KUA and the railroad.

This Court also rejected the claim that the issue was controlled by Pan-Am Tobacco Corp. v. Dep't of Corrections, 471 So.2d 4 (Fla. 1984), because that case addressed contractual liabilities of the state, which were expressly limited by, inter alia, Article VII, §1(c), Fla. Const., which requires specific statutory authority for the expenditure of funds and authority to enter such a contract. This Court ultimately concluded that the KUA could validly enter into an indemnification

agreement with the railroad, but that it could not rely on sovereign immunity to defeat its obligations under the contract.

In a specially concurring opinion, Justice Cantero (joined by Justices Anstead and Bell), discussed the historical differences between the sovereign immunity of the state and that of municipalities, and noted (908 So.2d at 479):

> My conclusion that section 768.28 does not prohibit municipalities from indemnifying private parties is confirmed by the lack of any effect on state funds of a judgment against municipalities. Section 768.28 limits damages amounts because the state will have to pay any judgments. That is not the case, however, for judgments against municipalities. Here, any judgment against KUA will be paid from KUA funds. As KUA acknowledges, the state will not pay a dime. [Emphasis supplied.]

Therefore, both the majority opinion and the special concurrence in American Home Assurance support the conclusion that a municipality is not authorized to take action which might impact the expenditure of state funds in violation of Article VII, §1(c), Fla. Const. Even though the relationship between the municipality's exercise of authority (by contract) and the state treasury was much more attenuated in American Home Assurance than in the case sub judice, this Court clearly indicated that the constitutional provision would have applied if state funds were implicated in the contractual agreement. That ruling clearly supports West Villages' position herein.

Therefore, for the reasons discussed above, North Port District's unilateral attempt to impose special assessments on West Villages' property is not authorized because there is a constitutional provision prohibiting expenditures of state funds without an explicit statute, and there is no such statute here. The only statute on the subject is the enabling statute creating West Villages, which does not authorize payment of the assessments at issue herein. Therefore, for this additional reason, the Second DCA properly determined that North Port District did not have home rule authority to enforce its ordinance against West Villages.

North Port District's Ordinance Must Fail Because it Conflicts with a State Statute

As noted previously, this Court held in Fleetwood Hotel, supra, that despite Article VIII, §2(b), Fla. Const., municipal ordinances are still inferior and subordinate to the laws of the state and are unenforceable if they conflict therewith (261 So.2d at 806). This Court reiterated that doctrine in Rinzler v. Carson, 262 So.2d 661, 668 (Fla. 1972):

> Municipal ordinances are inferior in stature and subordinate to the laws of the state. Accordingly, an ordinance must not conflict with any controlling provision of a state statute, and if any doubt exists as to the extent of a power attempted to be exercised which may affect the operation of a state statute, the doubt is to be resolved against the ordinance and in favor of the statute. A municipality cannot forbid what the legislature has expressly licensed, authorized or required, nor may it

> authorize what the legislature has expressly forbidden. In order for a municipal ordinance to prohibit that which is allowed by the general laws of the state there must be an express legislative grant by the state to the municipality authorizing such prohibition. [Citations omitted.]

While Fleetwood Hotel and Rinzler were decided prior to the enactment of the Municipal Home Rule Powers Act, those principles still apply.

In City of Miami Beach v. Rocio Corp., 404 So.2d 1066 (Fla. 3d DCA 1981), the Third District held that while the Florida Condominium Act, Chapter 718, Fla. Stat., did not expressly or by implication preempt the subject of condominium conversion to state government, the city ordinances concerning such conversions conflicted with that Act and, therefore, were unenforceable. The opinions conclude that the existence of the conflict invalidated the city ordinance, even though the Municipal Home Rule Powers Act did not state that such a conflict limited municipal authority. The Third District stated (404 So.2d at 1070):

> Although the legislature has extended municipal powers in the Municipal Home Rule Powers Act, the issue of conflict with state law has not been addressed….The principle that a municipal ordinance is inferior to state law remains undisturbed. Although legislation may be concurrent, enacted by both state and local governments in areas not preempted by the state, concurrent legislation enacted by municipalities may not conflict with state law. If conflict arises, state law prevails.

Subsequently, this Court invalidated municipal ordinances based on conflict with state law in two cases, citing Rocio Corp with approval, see Thomas v. State,

614 So.2d 468 (Fla. 1993); Wyche v. State, 619 So.2d 231 (Fla. 1993). Therefore, even under home rule power, a municipal ordinance cannot be valid if it conflicts with a state statute.

Here, there is no question that the ordinance enacted by the City conflicts with the enabling legislation that created West Villages (as amended). The enabling legislation provides that (AA2):

> Any property interests owned by the district which are used for nonpublic or private commercial purposes shall be subject to all ad valorem taxes, intangible personal taxes, or non-ad valorem assessments, as would be applicable if said property were privately owned.

Chapter 2004-456 §3(2)(d), Laws of Florida.

The necessary and obvious implication of that language is that property interests owned by the district which are used for public or governmental purposes are not subject to non-ad valorem assessments, such as those North Port District sought to impose here. Interpreting this special act provision otherwise would render the provision meaningless and superfluous, which cannot have been intended. See State v. Goode, 830 So.2d 817, 824 (Fla. 2002)("[A] basic rule of statutory construction provides that the Legislature does not intend to enact useless provisions, and courts should avoid readings that would render part of a statute meaningless"); see also Tabb v. Florida Birth-Related Neurological Injury Compensation Ass'n, 880 So. 2d 1253, 1260 (Fla. 1st DCA 2004) (construction of

statute that renders it superfluous contravenes accepted statutory construction doctrine that each part of statute should be given significance and effect and should not be construed as "mere surplusage"). There is no rational way to harmonize the statute with the City's ordinance and, therefore, the ordinance must be held invalid to the extent it attempts to impose non-ad valorem assessments on property interests of the district utilized for public and governmental purposes.

Legal, Financial, and Policy Implications

The North Port District argues that if the decision below stands, the taxpayers within its boundaries will be unfairly required to pay for the services provided to West Villages (IB p.9). North Port District argues that this will create a "windfall" for local governments. Id. at 30-31. Furthermore, North Point District argues that if it excludes local government real property from its formulation of non-ad valorem assessment rates, it cannot accurately analyze the benefits and burdens to assessed property, thus exposing itself to legal challenges for invalid non-ad valorem assessments. Id. at 31.

First, since private taxpayers must ultimately bear the burden of any assessments levied by a city against another government, if the decision below is overturned, the ultimate tax burden for taxpayers will be ***increased*** because of greater administrative costs (for example, the fee paid to the property appraiser and tax collector from each taxing entity's assessments, see §197.363, §197.3632,

§298.401, Fla. Stat.) at the various taxing layers. Next, because tax certificates cannot be sold against government real property and mandamus is the only remedy for enforcing such special assessments against public property, see Blake, 115 Fla. at 355-56, the enforcement of special assessments on government property by mandamus legal proceedings will result in additional significant costs to taxpayers.

Third, if the assessments below are permitted, the true purpose and intent of a city's special assessments or non-ad valorem assessments, as well as the identity of the taxing entity, would be obscured as the assessments are filtered through the various taxed governmental entities down to the public. Finally, as more fully explained below, the cities' assessments against other governments' real property will be allowed to be imposed upon an inappropriate taxing base, such as the City's current assessment against West Villages' lakes, roadways, and a gopher tortoise preserve conservation area for arterial road maintenance, as was done in the instant case.

There is No Conflict Between the Case Sub Judice and Remington

As the Second DCA determined, there is no conflict between its decision and Remington Community Development District v. Education Foundation of Osceola, 941 So.2d 15 (Fla. 5th DCA 2006). The Remington decision involves facts, governmental entities, and legal issues that are materially different than those in the case sub judice.

In Remington, the Remington Community Development District ("CDD") challenged a summary judgment, which held that a charter school was exempt from special assessments levied by the CDD. The Remington court addressed two issues. First, the Fifth District considered whether the ***charter school*** was entitled to the discretionary exemption from non-ad valorem assessments applicable to ***public schools*** provided by §1013.51, Fla. Stat. The court held that the charter school was not entitled to that exemption since §1013.51, Fla. Stat., which provided the exemption for public schools, was not applicable to charter schools. The legislature expressly excluded charter schools from all of the provisions of Chapter 1013, Fla. Stat., in §1002.33(16)(a), Fla. Stat.

The second issue addressed in Remington was whether the liens for the assessments could be enforced against the charter school's real property by forced sale. Relying on Blake, the Fifth District concluded that only mandamus could be used to enforce the lien.

The Remington court did not pass upon the issue at bar here, which is whether home rule powers authorized a municipal dependent special district to levy non-ad valorem assessments on state property without express or necessarily implied legislative authorization. In fact, the Remington opinion never mentions home rule powers, constitutional or statutory, but limits its discussion to the interpretation of statutes, none of which apply in this case. Moreover, the parties

involved in Remington, a community development district operating under Chapter 190, Fla. Stat., and a charter school are entirely different from the parties here, i.e., a municipal dependent special district operating under a municipal ordinance and an independent special district created by special act.[14]

Despite the fact that Remington did not mention home rule powers, North Port District relies on it as supporting its position in this case. The Second DCA rejected North Port District's contention that Remington holds that unless there is a statutory exemption, a special district may levy a special assessment against another local government entity. The Second DCA stated:

> We do not read Remington so broadly. The issue in Remington was whether a charter school qualified for the statutory exemption provided for in section 1013.51. But there is no holding in Remington that all public property is subject to special assessments absent a statutory exemption.

Id. Because Remington did not hold that special assessments may be levied against public property if there is no statutory exemption, the Remington

[14] There is another critical factual distinction between Remington and the case sub judice. In Remington, the assessments at issue were levied on the property between 1994 and 1999, while the property was owned by private individuals, the P.M. Wells Family. It was not until 2000 that the real property was transferred to the charter school (941 So.2d at 16). The Fifth District expressly declined to reach the argument whether the charter school was subject to the assessment liens because they were in place before it took title to the property (941 So.2d at 17). Here, in contrast, the assessments were levied while West Villages had title to the property.

decision does not alter the principles of law established in Blake nor conflict with the Second DCA's decision in the case sub judice.

In summary, the Second DCA properly concluded that North Port District does not have authority to levy non-ad valorem special assessments on the property owned by West Villages. Additionally, there is no conflict between the Second District's opinion and Remington, supra. Therefore, this Court should approve the Second District's decision and answer the certified question in the negative.

POINT II

THERE ARE ADDITIONAL GROUNDS TO UPHOLD THE SECOND DISTRICT'S DECISION.

[These arguments need only be addressed if this Court rejects Respondent's position in Point I supra. In that event, this Court could consider these additional arguments or remand the case to the Second District with instructions to address them.]

A. North Port District did Not Comply with Mandatory Statutory Notice Provisions

As described more fully in Section IV. E. of West Villages' Petition for Writ of Certiorari in the Second DCA, Petitioner failed to comply with the mandatory notice and hearing requirements in §197.3632(4)(b), Fla. Stat., for the adoption, levy, and assessment of its non-ad valorem assessments and, therefore, the non-ad valorem assessments are not valid.

North Port District was required to comply with §197.3632(4)(b), Fla. Stat., because its Enabling Ordinance was revised to change its assessment methodology to make governmental real property subject to its assessments for the first time, and because its assessment rates were increased (A1:6). See §197.3632(4)(a)1., Fla. Stat.; Atlantic Gulf Communities Corp. v. City of Port St. Lucie, 764 So.2d 14, 19 (Fla. 4th DCA 1999) ("subsection 197.3632(4)(a)1 comes into play when the amount of an assessment is raised or the methodology for determining the assessment is changed"). North Port District failed to comply with §197.3632(4)(b), Fla. Stat., in three (3) ways discussed below.

First, §197.3632(4)(b), Fla. Stat., expressly requires that the Mailed Notice of the public hearing on the adoption of the non-ad valorem assessment roll that must be sent to each assessed property owner subject to the assessment and shall include "the unit of measurement to be applied against each parcel to determine the assessment." Here, the Notices of 2008 Proposed Non-Ad Valorem Assessments mailed to West Villages list the term "parcel" as the Unit of Measurement (A1:8). The usage of this term as the Unit of Measurement is inaccurate and does not define the Unit of Measurement or show the methodology to be used to determine the total amount of the non-ad valorem assessment. Accordingly, because the Unit of Measurement is not shown in the Mailed Notices, the Notices fail to comply with §197.3632, Fla. Stat. See Atlantic Gulf Communities Corp., 764 So.2d at 21

(stating the principle of law that "Because it failed to comply with the procedural requirements of §197.3632(4), Fla. Stat., the City was precluded from collecting the stormwater fee by utilizing the uniform method for the collection and enforcement of non-ad valorem assessments").

Second, §197.3632(4)(b), Fla. Stat., expressly requires that the Mailed Notice of the public hearing on the adoption of the non-ad valorem assessment roll that must be sent to each assessed property owner shall include "the number of such units contained within each parcel." Here, North Port District's Notices of 2008 Proposed Non-Ad Valorem Assessments mailed to West Villages list the value "1.00" as the Number of Units (A1:8). The usage of this value as the Number of Units is inaccurate and does not reflect the Number of Units for the parcel or show the methodology to be used to determine the total amount of the non-ad valorem assessment. Accordingly, because the Number of Units within the parcel is not shown in the Mailed Notices, the Notices fail to comply with §197.3632, Fla. Stat. See Atlantic Gulf Communities Corp., 764 So.2d 14.

Third, §197.3632(4)(b), Fla. Stat., requires the local government to publish notice of the public hearing on the adoption of the non-ad valorem assessment roll in a newspaper, which published notice shall contain "the proposed schedule of the assessment." Here, the schedule of assessments listed in North Port District's August 17, 2008 published notice of the public hearing on the adoption of the non-

ad valorem assessment roll (A1:7) is different from the schedule of assessments attached to Resolution No. 08-R-47 passed on September 11, 2008, which adopted its non-ad valorem assessment rates and roll (A2:12). This inconsistency in the assessment rates between the published notice and the schedule attached to the adopted Resolution, requires the conclusion that the published notice fails to comply with §197.3632, Fla. Stat. See Atlantic Gulf Communities Corp., 764 So.2d 14.

Section 197.3632(4)(b), Fla. Stat., contains numerous mandatory safeguards for the adoption, levy, and assessment of non-ad valorem assessments. "The mandatory context of the notice fulfills the statutory intent that taxpayers know how much they will be required to pay and for how long. Without such information, a taxpayer cannot make an informed decision on whether to oppose the tax, campaign for amendments, or silently accede to it." Id. at 20. In this case, North Port District failed to comply with §197.3632, Fla. Stat., in various regards as explained above and, therefore, its non-ad valorem assessments are not valid.

B. North Port District's Services Do Not Benefit West Villages

As described more fully in Section IV. F. of West Villages' Petition for Writ of Certiorari in the Second DCA, North Port District's services underlying its assessments do not provide any benefits to West Villages' real property; therefore, the non-ad valorem assessments are not valid. As explained by this Court, a

special assessment is valid only if (i) it is fairly and reasonably apportioned and (ii) the assessed property receives a special benefit from the services provided, City of Boca Raton v. State, 595 So.2d 25 (Fla. 1992).

As shown in the Notices of 2008 Proposed Non-Ad Valorem Assessments (A1:8) and North Port District's schedule of assessments attached to Resolution No. 08-R-47 passed on September 11, 2008, North Port District assessed West Villages' real property only for (i) Base Administrative Services Component 1 and (ii) Base Road Services for road maintenance performed on the City's arterial and collector roads (A2:12). However, as explained below, based on the nature of West Villages' assessed property, the property does not benefit from these services because the property does not generate any vehicular trips (the basis for determining benefits) on said arterial or collector roads.

Parcel Numbers 0779-01-0300 and 0780-02-0011 are specifically designated on the plats of Gran Paradiso, Infrastructure and Gran Paradiso, Phase I, respectively, as "Wetland Preservation Tracts" (A1:2,3). As a result, those tracts do not generate any vehicular trips at all and, therefore, do not receive any benefits from the services provided by North Port District.

Parcel Numbers 0779-01-0315 and 0780-02-0114 are specifically designated on the plats of Gran Paradiso, Infrastructure and Gran Paradiso, Phase 1, respectively, as "Water Management Tracts" (A1:2,3). These tracts are comprised

of lakes, ponds, or other water bodies, including banks and a small area of land bordering such water bodies for access and maintenance purposes. They have never had any wooden or other docks located within the tracts and, therefore, are not considered "boatable." As a result, those tracts do not generate any vehicular trips at all, and do not receive any benefits from the services provided by North Port District.

Parcel Numbers 0779-01-0317 and 0780-02-0116 are specifically designated on the plats of Gran Paradiso, Infrastructure and Gran Paradiso, Phase 1, respectively, as "Recreation Tracts" (A1:2,3). Since the tracts are designed for "recreational purposes" for the residents of the platted subdivision, the subject tracts do not generate any vehicular trips at all on the City's ***arterial or collector*** roads, and do not receive any benefits from the services provided by North Port District.

Parcel Number 0779-02-0011 is specifically designated on the plat of Gran Paradiso, Phase 1 as a "Gopher Tortoise Preserve Conservation Area" (A1:4). Since the purpose and use of the subject tract is for a "gopher tortoise preserve conservation area," the subject tract does not generate any vehicular trips at all. The subject real property is also encumbered by a gopher tortoise habitat Conservation Easement in favor of the Florida Fish and Wildlife Conservation Commission, which Easement states that "conservation of this area will conserve

suitable gopher tortoise habitat" and that "No right of access by the general public to any portion of the Property is conveyed by this Conservation Easement" (A1:4). Therefore, the subject gopher tortoise preserve conservation area does not receive any benefits from the services provided by North Port District.

Parcel Numbers 0784-00-4020 and 0801-00-1010 were conveyed to West Villages Improvement District by Special Warranty Deed and are being used for the installation, construction and/or operation of a modern public road right-of-way, the West Villages Parkway, and appurtenant works, facilities and improvements, including utilities, landscaping, drainage and signalization (A1:5). Because the tracts are being used for a public roadway, which itself is an arterial road, the subject real property itself does not generate any vehicular trips on the City's ***arterial or collector*** roads and may even reduce the traffic on the City's arterial and collector roads. Therefore, West Villages' real property does not receive any benefits from the services provided by North Port District.[15]

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[15] In the proceedings below, North Port District relied on the Assessment Methodology Report prepared by Government Services Group attached to Resolution No. 08-R-47 ("GSG Report"), to show that West Villages' assessed parcels receive a benefit from North Port District's services (A2:12). The GSG Report merely lists general assumptions as to benefits received by government property and contains no findings as to West Villages' specific property. In fact, the Report supports the conclusion of no benefits, since it states that benefits are based on "number of trips generated by a parcel" (Report p. 10). It also shows in Table 9 on page 13 that streets, roads, and lakes generate no trips (A2:12). While the North Port District's Director provided testimony at the September 11, 2008

To constitute a valid special assessment, there must be both proper apportionment ***and*** a special benefit conferred by the services provided to the assessed real property, see City of Boca Raton v. State, 595 So.2d 25 (Fla. 1992). It is clear based upon the foregoing that Petitioner's Base Administrative and Base Road Services for the City's arterial roads confer no special benefit upon West Villages' assessed real property.

C. Seven Parcels of West Villages Real Property are Exempt from the Assessments Because they Constitute "Common Elements" Within a Platted Subdivision

As set forth more fully in Section IV. D. of the Petition for Writ of Certiorari in the Second DCA, West Villages contends alternatively that pursuant to §193.0235, Fla. Stat., the platted real property owned by West Villages described below is exempt from non-ad valorem assessments levied by North Port District, because such real property constitutes "common elements" within a platted residential subdivision and such assessments must be prorated to the residential lots within the subdivisions. The argument in this section applies only to West Villages' platted real property.[16]

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hearing, he said nothing as to benefits received by West Villages' real property, but simply concurred with the GSG Report.

[16] West Villages' platted real property is identified by the Parcel Numbers 0779-01-0300, 0779-01-0315, 0779-01-0317, 0779-02-0011, 0780-02-0011, 0780-02-0114, 0780-02-0116. This argument does not apply to the property identified by Parcel Numbers 0784-00-4020 and 0801-00-1010, which is not platted property.

Section 193.0235, Fla. Stat., which became effective on January 1, 2004, prohibits ad valorem taxes and non-ad valorem assessments from being separately assessed against the common elements in a platted residential subdivision. Instead, that statute requires the assessments to be prorated to the residential lots within the subdivision. Section 193.0235, Fla. Stat., entitled "Ad valorem taxes ***and non-ad valorem assessments*** against subdivision property," states:

> (1) Ad valorem taxes ***and non-ad valorem assessments*** shall be assessed against the lots within a platted residential subdivision and not upon the subdivision property as a whole. An ad valorem tax ***or non-ad valorem assessment***, including a tax ***or assessment*** imposed by a county, municipality, ***special district***, or water management district, may not be assessed separately against common elements utilized exclusively for the benefit of lot owners within the subdivision, regardless of ownership. The value of each parcel of land that is or has been part of a platted subdivision and that is designated on the plat or the approved site plan as

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The platted real property designated by Parcel Numbers 0779-01-0300, 0779-01-0315, and 0779-01-0317 was dedicated to West Villages in fee simple absolute in a platted residential subdivision, the plat of Gran Paradiso, Infrastructure (A1:2). This real property was specifically designated on said plat as "Wetland Preservation Tracts," "Water Management Tracts," and "Recreation Tracts," respectively.

The platted real property designated by Parcel Numbers 0779-02-0011, 0780-02-0011, 0780-02-0114, and 0780-02-0116 was dedicated to West Villages in fee simple absolute in a platted residential subdivision, the plat of Gran Paradiso, Phase 1 (A1:3). This real property was specifically designated on said plat as "Gopher Tortoise Preserve Conservation Area," "Wetland Preservation Tracts," "Water Management Tracts," and "Recreation Tracts," respectively.

> a common element for the exclusive benefit of the lot owners shall, regardless of ownership, be prorated by the property appraiser and included in the assessment of all the lots within the subdivision which constitute inventory for the developer and are intended to be conveyed or have been conveyed into private ownership for the exclusive benefit of lot owners within the subdivision.

Section 193.0235, Fla. Stat., clearly applies both to ad valorem taxes and non-ad valorem assessments. The intent of the statute is to protect the common elements in platted residential subdivisions from being sold for nonpayment of ad valorem taxes or non-ad valorem assessments by transferring the burden of paying the taxes and assessments to the residential lots. See Op. Att'y Gen. Fla. 2007-32 (2007); Op. Att'y Gen. Fla. 2004-31 (2004); and Op. Att'y Gen. Fla. 2003-63 (2003).

West Villages' platted real property constitutes "common elements" within a platted residential subdivision as defined in §193.0235, Fla. Stat.[17] The Wetland

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[17] Section (2) of §193.0235, Fla. Stat., states: As used in this section, the term "common element" includes:

(a) Subdivision property not included within lots constituting inventory for the developer which are intended to be conveyed or have been conveyed into private ownership.

(b) An easement through the subdivision property, not including the property described in paragraph (a), which has been dedicated to the public or retained for the benefit of the subdivision.

(c) Any other part of the subdivision which has been designated on the plat or is required to be designated on the site plan as a drainage pond, or detention or

Preservation Tracts and Water Management Tracts fall within the definition of "common elements" in §193.0235(2)(c), Fla. Stat., because these tracts as designated on the plats qualify as a "drainage pond" and a water "detention or retention pond." The Recreation Tracts and Gopher Tortoise Preserve Conservation Area come within the "catch-all" definition of "common elements" in §193.0235(2)(a), Fla. Stat., because they are subdivision property ***other than*** lots constituting inventory for the developer to be conveyed into private ownership.

The legislative history of this statute also shows that it was intended to apply to "recreational" areas. See House of Rep. Staff Analysis, HB 1721 w/ CS (Apr. 22, 2003) ("The bill creates a requirement that the property appraisers prorate the value of taxes and special assessments against ***recreational facilities***, easements, and other common elements of a subdivision and include such prorated value among the lots within the subdivision conveyed or intended to be conveyed into private ownership") [Emphasis added]. The legislative history further shows that this statute was intended to apply to "lakes" in residential subdivisions. See id. ("According to a representative of the Sponsor, this legislation is intended to address situations like the ones which have occurred in various residential subdivisions located in Pinellas County. In one such instance, the East Lake

retention pond, for the exclusive benefit of the subdivision. [Emphasis supplied.]

situation, an individual purchased a neighborhood lake at a tax sale, erected a bright pink fence around it and suggested that neighbors buy the property back for $30,000, per family") [Footnotes omitted].

West Villages' said real property is also "for the exclusive benefit of lot owners within the subdivision" as specified in §193.0235, Fla. Stat. Pursuant to West Villages' enabling legislation, its platted real property is for the benefit of the platted subdivision. Under its enabling legislation, West Villages must act in accordance with its Plan of Improvements for its applicable Unit of Development. Under the Plan of Improvements, all property acquired by West Villages is for the benefit of the real property located within the Unit of Development. Therefore, by law, West Villages' platted real property is for the benefit of the platted subdivision lot owners, as contemplated by the exclusive use provisions in §193.0235, Fla. Stat.

Therefore, West Villages' platted real property constitutes "common elements" in a platted residential subdivision "for the exclusive benefit of lot owners within the subdivision," as set forth in §193.0235, Fla. Stat. Accordingly, North Port District's non-ad valorem assessments cannot be separately assessed against West Villages' seven (7) platted parcels, but rather must be prorated to the residential lots within the subdivisions pursuant to §193.0235, Fla. Stat., making

West Villages' said platted real property exempt from North Port District's non-ad valorem assessments.

CONCLUSION

Wherefore, based upon the foregoing, Respondent, West Villages Improvement District, respectfully requests that this Court approve the decision of the Second District and answer the certified question in the negative.

AMENDED CERTIFICATE OF SERVICE

I HEREBY CERTIFY a true copy of the foregoing was furnished to TERRY E. LEWIS, ESQ., 515 N. Flagler Dr., Ste. 1500, West Palm Beach, FL 33401; MAGGIE D. MOONEY-PORTALE, ESQ., 1001 Third Ave. West, Ste. 670, Bradenton, FL 34205; ROBERT C. ROBINSON, ESQ. and JACKSON C. KRACHT, ESQ., 2070 Ringling Blvd., Sarasota, FL 34237; ROBERT L. NABORS, ESQ. and BETHANY A. BURGESS, ESQ., 1500 Main Dr., Ste. 200, Tallahassee, FL 32308; and HARRY "CHIP" MORRISON, JR., ESQ., 301 S. Bronough St., Ste. 300, Tallahassee, FL 32302-1757; ARTHUR S. HARDY, ESQ. and HUNTER W. CARROLL, 1777 Main St., Ste. 500, Sarasota, FL 34236, by mail, on January 28, 2011.

John A. Weig, Esq.
Kenneth W. Edwards, Esq.
Margaret E. Wood, Esq.
CALDWELL PACETTI EDWARDS SCHOECH & VIATOR, LLP
250 South Australian Avenue, Suite 600
West Palm Beach, FL 33401
and
BURLINGTON & ROCKENBACH, P.A.
444 West Railroad Avenue, Ste. 430
West Palm Beach, Florida 33401
(561) 721-0400
(561) 721-0465 (fax)
Attorneys for Respondent
pmb@FLAppellateLaw.com

By:___________________________
PHILIP M. BURLINGTON
Florida Bar No. 285862

CERTIFICATE OF TYPE SIZE & STYLE

Respondent hereby certifies that the type size and style of the Answer Brief of Respondent on the Merits is Times New Roman 14pt.

PHILIP M. BURLINGTON
Florida Bar No. 285862