

FLORIDA SUPREME COURT COVER SHEET

I. *CASE STYLE:*

IN THE SUPREME COURT
OF THE STATE OF FLORIDA

CITY OF ZEPHYRHILLS, a
Florida municipal corporation,

Respondent,

CASE NUMBER: SC02-2615
Lower Tribunal Case Number:
2D01-4615

vs.

JOHNNIE JOLENE WOOD, and
ROBERT DAVID WOOD, her husband,
and LOUISE NEWMAN and PASCO
COUNTY, a political subdivision

Petitioners

II. *TYPE OF CASE:*

RESPONDENT'S JURISDICTIONAL ANSWER BRIEF

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ISSUE

Whether the Supreme Court of the State of Florida may exercise its discretionary jurisdiction on the decision of the Second District Court of Appeals in the above styled cause pursuant to Fla.R.App. P. 9.030(a)(2)(A).

TABLE OF CITATIONS

Fla.R.App.P. 9.030(a)(2)(A)

Fla.R.App.P. 9.030(a)(2)(A)(iii)

Contractors and Building Association of Pinellas County v. City of Dunedin,
329 So.2d 314 (Fla 1976)

State v. City of Port Orange, 650 So.2d 1 (Fla 1994)

Fla.R.App.P. 9.030(a)(2)(A)(ii)

Fla.R.Civ.P. 9.030(a)(2)

NOTE

The Petitioners' brief suggests that the Florida Supreme Court has jurisdiction pursuant to Florida Rules of Appellate Procedure, 9.030 (a)(2)(A)(iii). That provision applies to decisions that affect a class of constitutional or state officers. The Petitioners' argument seemed to center around the subsection above which grants discretionary review by the Supreme Court in cases in which the Appellate Court expressly construed a provision of the state or federal constitution. Because of that fact, the Respondent's answer brief shall direct itself to that question. The Respondent's brief is filed in response to Johnnie Jolene Wood and Robert David Wood's briefs for jurisdiction.

STATEMENT OF CASE AND FACTS

Trial was held in the Circuit Court of Pasco County regarding the Respondent's complaint to foreclose a lien or obtain a judgment against the Petitioners for water and sewer connection fees. The Petitioners, who were Defendants in the Trial Court, argued that the Respondent/City's connection fees were actually an illegal tax. The Trial Court agreed with the Petitioner/Defendant and held that the Respondent/Plaintiff's actions constituted an illegal tax because the City did not establish a sufficient nexus between the necessity of expanding water and waste water lines or plans for the monies that were demanded.

The Appellate Court reversed the Trial Court findings and held that the City had proved its case; specifically citing Contractors and Building Association of Pinellas County v. City of Dunedin, 329 So.2d 314 (Fla 1976). The case was remanded for further proceedings consistent with the Appellate Court's decision.

SUMMARY OF ARGUMENT

The Petitioners fail to invoke the discretionary jurisdiction of the Florida Supreme Court. The Second District Court of Appeals holding did not expressly construe the state or federal constitution. Rather its decision impliedly held that the state or federal constitution had no involvement in this particular case and that the Respondent/City had justified the fees.

ARGUMENT

In the Petitioner's brief requesting that the Supreme Court exercise its jurisdictional discretion to review the Second District Court of Appeals decision, the Petitioner specifically alleged that the Supreme Court's jurisdiction was Fla.R.App.P. 9.030(a)(2)(A)(iii). This particular provision pertains to the decision of a lower court that expressly affects a class of constitutional or state officers. The decision was not based on that, and therefore, I am presuming that the inclusion of that portion of the Rule was a typographical error. Rather, it appears that their argument is based on subsection (A)(ii) which concerns decisions by the District Court that expressly construes a provision of the State or Federal constitution.

In the instant case, the Trial Court held that the City's imposition of a connection (impact) fee on the Petitioners' redevelopment was an illegal tax. Specifically, the Trial Court found that an appropriate nexus had not been shown to qualify it for a user or impact fee. The Trial Court cited language from the State v. City of Port Orange, 650 So.2d 1 (Fla 1994) in which the Supreme Court stated, that "...impact or user fees, unlike taxes, do not need to be authorized by the constitution

or general law. But such fees must be charged in exchange in particular for some municipal service rendered to the party paying the fee....". The Trial Court then declared the City of Zephyrhills' fee to be an illegal tax.

The Respondent/City appealed the Trial Court's decision to the Second District Court of Appeals. The Second District Court of Appeals disagreed with the Trial Court's finding, and found that the City had presented sufficient evidence to show that the fees were charged for use of the City's water and waste water system. The City was therefore, according to the Second District Court of Appeals, entitled to a reversal of the Trial Court's decision and the matter was remanded back to the Trial Court for further proceedings including the City's right to foreclose its lien.

The Petitioners' attempt to pigeonhole the Second District Court of Appeals' decision to have it conform with the particular section of the rule for discretionary jurisdiction is improper. The Second District Court of Appeals' decision impliedly found that not only was the constitution not applicable, but that the City had offered sufficient proof to show the nexus between fee and service this as required by the Contractors and Builders Association of Pinellas County v City of Dunedin, Supra. This Court has held previously that user impact fees do not require constitutional authorization, [See State v. City of Port Orange, 650 So.2d 1(Fla. 1994)]. In fact, the

fee was held consistent with acts of other municipalities that use impact fees to fund the municipal water or wastewater systems.

CONCLUSION

In conclusion, the Supreme Court of the State of Florida discretionary review is limited by the Fla.R.Civ.P. 9.030(a)(2). The Petitioner's brief, and more particularly the Second District Court of Appeals' decision, reveals that none of the six subsections or categories are found in the Appellate Court decision, and, therefore, the Petition for Jurisdiction should be denied.

Dated this _____ day of December, A.D., 2002.

ESQUIRE

THOMAS P. McALVANAH,

Thomas P. McAlvanah, P.A.
Attorney for Respondent,
City of Zephyrhills
Florida Bar No.: 215899
5739 Gall Boulevard
Zephyrhills, Florida 33541
(813) 782-2002

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the Respondent's Jurisdictional Answer Brief has been furnished by U.S. mail on this _____ day of December, A.D., 2002 to the Defendants/Appellees; Johnnie Jolene Wood and Robert David Wood, 37511 Kossik Road, Zephyrhills, Florida 33541; Louise Newman, P.O. Box 34, Scaly Mountain, NC 38775; Pasco County Florida, Debra M. Zampetti, Esquire, 7530 Little Road, Suite 340, New Port Richey, Florida, 34654; Clerk of the Circuit Court, Sixth Judicial Circuit, in and for Pasco County, Florida.

ESQUIRE

THOMAS P. McALVANAH,

THOMAS P. McALVANAH, P.A.

Attorney for Respondent-

City of Zephyrhills

Florida Bar No.:215899

5739 Gall Boulevard

Zephyrhills, Florida 33542

(813) 782-2002

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the Respondent's Jurisdictional Answer Brief satisfies the requirement of the Fla. R. App.P. 780 So.2d 834 (Fla. 2000).

THOMAS P.McALVANAH, ESQUIRE

THOMAS P. McALVANA, P.A.

Attorney for Respondent-

City of Zephyrhills

Florida Bar No.: 215899

5739 Gall Boulevard

Zephyrhills, Florida 33541

(813) 782-2002