

IN THE SUPREME COURT OF FLORIDA

QUIETWATER ENTERTAINMENT, INC.,  
FRED SIMMONS, MICHAEL A. GUERRA,  
JUNE B. GUERRA, WAS, INC., and  
SANDPIPER-GULF AIRE INN, INC.,

Petitioners,

v.

ESCAMBIA COUNTY, FLORIDA,

Respondent.

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CASE NO. SC05-215  
Lower Tribunal Case No.  
1D03-4396

**RESPONDENT'S AMENDED BRIEF ON JURISDICTION**

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## **STATEMENT OF THE CASE**

Respondent, Escambia County, Florida (hereinafter County), has no dispute with Petitioners' statement of the case insofar as the progression of proceedings in the lower tribunals, both in the trial court and in the First District.

## **STATEMENT OF THE FACTS**

In determining whether to accept jurisdiction based on express and direct conflict with a decision of this court or of another district court of appeal, this court is limited to the facts recited in the majority opinion of the First District.<sup>1</sup> *See Reaves v. State*, 485 So. 2d 829, 830, n.3 (Fla. 1986). Although Petitioners have generally recited the essential facts from the majority opinion below, they have left out several important facts.

The First District found that the lease fees collected by the Santa Rosa Island Authority (SRIA) are not deposited to the general fund of Escambia County. 890 So. 2d at 526. Furthermore, the Escambia County Code of Ordinances, specifically provided that the assessed services were for "special law enforcement protection and mosquito control within the MSBU." *Id.* citing §§ 46-218(a) and (b). The majority quoted the legislative findings of the County Commission that

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<sup>1</sup> *Quietwater Entertainment, Inc., et al. v. Escambia County, Florida*, 890 So. 2d 525 (Fla. 1<sup>st</sup> DCA 2005).

the Island<sup>2</sup> leaseholds are “uniquely classified real property interests,” and that the assessed services did “constitute a benefit to the residential and commercial leaseholds within the [MSBU].” *Id.* citing and quoting from § 46-204(5).

Most importantly, the majority opinion found that the Island had “unique tourist and crowd control needs requiring specialized law enforcement services” to protect leasehold values. *Id.* at 527. To the same effect, the majority found that mosquito control services enhanced “the habitation of the Island and the value of the leaseholds.” *Id.*

### **SUMMARY OF THE ARGUMENT**

Petitioners misconstrue the limited jurisdiction given to this court to review its decisions and those of the district courts of appeal. Looking only to the four corners of the majority opinion and to the facts recited in the majority opinion, this court must discern whether an express and direct conflict exists. The dissenting opinion can play no part in the process of review. Under review are the decisions reached by courts. This court is concerned with the precedential effect of an incorrect ruling of law, not the reasoning of the majority or of the opinions of this court or of the district courts of appeal.

Petitioners also confuse the logical relationship test crafted by this court in determining whether the assessed services provide a direct and specific benefit to

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<sup>2</sup> For brevity, Santa Rosa Island shall be referred to as Island.

leasehold property burdened by the assessment. Legislative findings of County imposing the special assessment will still be upheld unless palpably arbitrary. The logical relationship test concerns itself with the existence of competent, substantial evidence in the record to show that an assessed service confers a direct and special benefit to real property. Legislative findings are controlling factors as to whether a logical relationship exists.

The majority opinion can live in harmony with the decisions of this court and of the Fifth District Court of Appeal. This court has never enunciated a *per se* rule that law enforcement services can never be the subject of a special assessment. Special assessments to fund enhanced law enforcement services, coupled with unique tourist and crowd control problems, provide a direct and special benefit to Island leaseholders. The same is true with assessed services to control mosquito infestation of valuable leasehold interests on a barrier island.

## **ARGUMENT**

### **I. NO EXPRESS AND DIRECT CONFLICT WITH A COURT DECISION HAS BEEN SHOWN.**

As noted in the “Statement of The Facts,” this court can only look to the majority opinion and the facts recited from the record by the majority. *Reaves v. State, supra*. The concern is with the precedential effect of any decision which is incorrect and in conflict with those decisions that reflect a correct rule of law. *See*

*Wainwright v. Taylor*, 476 So. 2d 669 (Fla. 1985). After the April 1, 1980, amendment to the Florida Constitution, implied or inherent conflict is no longer reviewable and the conflict must be direct and express. See *Dept. of Health and Rehabilitative Services v. National Adoption Counseling Service, Inc.*, 498 So. 2d 888, 889 (Fla. 1986). Review by this court must be predicated on express and direct conflict from the wording of decisions of this court or district courts of appeal, but not from among opinions or the reasoning employed to reach a decision. See *Jenkins v. State*, 385 So. 2d 1356, 1359 (Fla. 1980). The expression of an opinion by a dissenting judge from a district court of appeal cannot be considered. *Byrd v. State*, 880 So. 2d 616 (Fla. 2004) (citing *Jenkins v. State*, *supra*).

Within this constitutional framework, Petitioners' attempt to invoke the discretionary jurisdiction of this court must fail. Citing the legislative findings of Escambia County, the majority opinion correctly identifies the uniqueness of the Island requiring specialized law enforcement services. The Island has unique tourist and crowd control needs that require specialized law enforcement services which protects the value of the leasehold property. Leasehold interests are subject to mosquito infestation and, given the propensity of mosquitoes to carry disease, an assessment to control infestation would enhance the habitation of the Island and the value of the leaseholds.

As argued by County below, Petitioners' neat bundling of *Lake County v. Water Oak Management Corp.*, 695 So. 2d 667 (Fla. 1997), *Collier County v. State*, 733 So. 2d 1012 (Fla. 1999), *City of North Lauderdale v. SMM Properties, Inc.*, 825 So. 2d 343 (Fla. 2002), and *Donnelly v. Marion County*, 851 So. 2d 256 (Fla. 5<sup>th</sup> DCA 2003), *rev. denied*, 860 So. 2d 978 (Fla. 2003), fails to acknowledge that the record before each court was much different in several aspects than that before the majority below. First, this court, in *Collier County*, was concerned with a scheme by a county to recoup lost tax revenues because of the delay in putting developed real property on the tax rolls. This court invalidated the interim governmental services fee because no benefit was sought to be conferred on real property by the assessment, but only a closing of the gap in lost revenues. Second, *City of North Lauderdale* and *Donnelly* were concerned with local governments using the special assessment for governmental services such as emergency medical services and general law enforcement services which would be provided to all taxpayers as opposed to benefiting property. Third, none of these decisions involved a barrier island with unique tourist and crowd control needs and mosquito infestation issues. Neither *Water Oak Management*, *Collier County*, *City of North Lauderdale*, nor *Donnelly*, would militate against the use of a special assessment to meet the special needs of barrier island leaseholder to protect the value of his leasehold.

The correct rule of law announced by this court is that “general law enforcement activities” or police power services that benefit all county residents, and which are funded from ad valorem taxes, will not sustain a special assessment. *See Water Oak Management*, 695 So. 2d at 670; *see also Collier County v. State*, 733 So. 2d at 1018 (“ . . . services funded by the assessment are the same general police power services the County provides to all county residents for their general benefit, funded from ad valorem taxes including: sheriff’s services . . .”) and *City of North Lauderdale v. SMM Properties, Inc.*, 825 So. 2d at 350 (quoting *City of Boca Raton v. State*, 595 So. 2d 25, 29 (Fla. 1992)) (“[Special assessment] is imposed on the theory that that portion of the community which is required to bear it receives some special or peculiar benefit in the enhancement of value of property . . .”). Contrary to the assertion by Petitioners (Brief, 7), no decision of this court has held that law enforcement services can never be the subject of a special assessment.

Thus, a court must only determine that the assessed services bear a logical relationship to the property being burdened by the assessment. The methodology employed to uphold this rule of law is immaterial. The majority upheld the Island special assessment by, first, determining that the County’s legislative findings were not palpably arbitrary and, second, by reasoning that the special assessment imposed on leaseholders benefited the value of their leasehold interests by making

them accessible to visitors and leaseholders themselves and by protecting them from disease carrying mosquitoes.

Of the recent major decisions of this court reviewing the propriety of a special assessment, only two have been struck down: the interim services user fee in *Collier County* and emergency medical services in *City of North Lauderdale*. All others have been upheld: downtown revitalization, *City of Boca Raton v. State, supra*; stormwater drainage, *Sarasota County v. Sarasota Church of Christ*, 667 So. 2d 180 (Fla. 1996); solid waste disposal, *Harris v. Wilson*, 693 So. 2d 945 (Fla. 1997); waste disposal and fire protection, *Water Oak Management, supra*; landscaping, signage and lighting, *City of Winter Springs v. State*, 776 So. 2d 255 (Fla. 2001). The district courts of appeal have also generally upheld special assessments during this same time period: extra police patrols, guardhouses and guard gates in *Rushfeldt v. Metro-Dade County*, 630 So. 2d 645 (Fla. 3d DCA 1994); sheriff's services and mosquito control on the Island, *Williams v. Escambia County*, 725 So. 2d 392 (Fla. 1<sup>st</sup> DCA 1999); fire and rescue services, *Workman Enterprises, Inc. v. Hernando County*, 790 So. 2d 598 (Fla. 5<sup>th</sup> DCA 2001); *contra Donnelly v. Marion County*, discussed *infra*.

This court, at the time it decided *Water Oak Management* and *Collier County*, did not disapprove of *Rushfeldt v. Metropolitan Dade County, supra*, in which the Third District upheld a special taxing district which funded additional

police protection. The special assessment funded guardhouses, guard gates, and extra duty patrols within a walled community. 630 So. 2d at 644-645. In much the same way, the barrier island is a walled community. It has unique tourist and crowd control issues because of its isolation and attractiveness as beachside property. The leaseholds for residential and commercial purposes receive a special benefit from specialized law enforcement services to meet those unique needs. Significantly, the Fifth District in *Donnelly*, 851 So. 2d at 265 n.9, recognized the unique nature of the Island leasehold interests when it distinguished the opinion of the First District in *Williams v. Escambia County*, *supra*, which upheld the special assessments under attack here. Moreover, *Donnelly* eschews any distinction between the nature of law enforcement and the level or degree of service by stating that law enforcement always protects people. 851 So. 2d at 264. Yet, no decision of this court has so held. This court requires only that law enforcement services provide a direct and special benefit to property, if it is to be the subject of a special assessment.

Had the Island special assessments been imposed countywide for sheriff's services and mosquito control, then the majority's decision would conflict with this court's precedent and with *Donnelly*. However, the special assessments are limited to leasehold interests on the Island to protect the value of those leasehold interests through specialized law enforcement and mosquito control. The majority opinion

has not staked its fortune solely on the fact that the Island is not subject to ad valorem taxation. That is just one factor considered in this unique situation. Although these assessed services may incidentally benefit non-resident and County visitors, the special assessment is not a disguised, evil tax. *See City of Winter Springs*, 776 So. 2d at 259 (special assessment for beautification resulting in positive influence on property market value is not invalid because visitors and non-residents could use the improvements).

## **II. COUNTY'S LEGISLATIVE FINDINGS ARE NOT PALPABLY ARBITRARY.**

Escambia County Code of Ordinance ' 46-204 contains legislative findings that the assessments on the Island are not substitutes for taxes. Section 46-204(5) makes a specific finding of a special benefit to both residential and commercial leaseholders on the Island. This finding constitutes a legislative determination that the assessments imposed on Petitioners relating to law enforcement and mosquito control are valid and constitutional. As such, the determination of a special benefit is primarily a legislative function and is to be given deference unless palpably arbitrary. *See Sarasota County v. Sarasota Church of Christ, Inc., supra; see also Harris v. Wilson, supra; City of Winter Springs v. State, supra; Workman Enterprises, Inc. v. Hernando County*, 790 So. 2d at 600 (legislative determination of the existence of special benefits is to be upheld unless arbitrary).

Petitioners erroneously cite *Sarasota Church of Christ, Inc.*, for the contention that the legislative findings in ' 46-204 must satisfy the logical relationship test as opposed to the palpably arbitrary test. (Brief, 7). However, County's legislative findings, unlike the legislative findings in *City of North Lauderdale, supra*, are supported by record evidence which, as admitted by Petitioners, is undisputed. The majority cited these legislative findings that the leasehold interests are uniquely classified real property interests not subject to ad valorem taxation. 890 So. 2d 526 citing ' 46-204(3). A benefit is conferred upon the leaseholders which is equal to or exceeds the annual assessment. *Id.* citing ' 46-204(5). Moreover, *Sarasota Church of Christ* does not supplant the palpably arbitrary test with the logical relationship test. 667 So. 2d at 184.

### **CONCLUSION**

Petitioners have failed to show any express and direct conflict with any decision of this court or with the Fifth District Court of Appeal in *Donnelly*. Moreover, the MSBU confers a unique and special benefit on leaseholders, whether residential or commercial, located on the Island and satisfies the logical relationship test. No concerns of double taxation are present because of the unique circumstances of the Island being owned by County. Review should be denied.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to Thomas J. Gilliam, Jr., Esq., Danny L. Kepner, Esq., Shell, Fleming, Davis & Menge, P.A., P. O. Box 1831, Pensacola, FL 32591-1831, by U. S. Mail, this 16<sup>th</sup> day of March, 2005.

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**CERTIFICATE OF TYPE SIZE AND STYLE**

The undersigned attorney hereby certifies that this brief was prepared using a 14 Times New Roman font in accordance with Fla. R. App. P. 9.210(a)(2).

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