

Special Assessments and the MSTU Concept

A presentation to Florida Court Clerks & Comptrollers New Clerk Academy

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Constitutional Millage Limitations and the MSTU Concept

general

Section (9)(a) of Article VII, Florida Constitution (1968), implements the local ad valorem taxation of real estate and intangible personal property as follows:

Counties, school districts, and municipalities shall, and special districts may, be authorized by law to levy ad valorem taxes and may be authorized by general law to levy other taxes, for their respective purposes, except ad valorem taxes on intangible personal property and taxes prohibited by this constitution.

The constitutional capacity of local government ad valorem taxing power is then constitutionally limited by the following millage ceilings contained in Article VII, section 9(b), Florida Constitution:

Ad valorem taxes, exclusive of taxes levied for the payment of bonds and taxes levied for periods not longer than two years when authorized by vote of the electors who are the owners of freeholds therein not wholly exempt from taxation, shall not be levied in excess of the following millages upon the assessed value of real estate and tangible personal property: for all county purposes, ten mills; for all municipal purposes, ten mills; for all school purposes, ten mills; for water management purposes for the northwest portion of the state lying west of the line between ranges two and three east, 0.05 mill; for water management purposes for the remaining portions of the state, 1.0 mill; and for all other special districts a millage authorized by law approved by vote of the electors who are owners of freeholds therein not wholly exempt from taxation. A county furnishing municipal services may, to the extent authorized by law, levy additional taxes within the limits fixed for municipal purposes.

To place the following analysis in constitutional context, note that the constitutional millage limitations are stated in terms of the purposes for which they are imposed: county purposes, municipal purposes, and school purposes. Such constitutional millage limitations do not reference a levy by a county or a municipality but are limitations placed upon the purpose of the ad valorem tax millage levy.

The initial case construing the ad valorem tax millage ceilings in the 1968 constitution revision was State ex rel. Dade County v. Dickinson, 230 So. 2d 130 (Fla. 1969). At issue was whether the county, since it possessed the charter power to provide services both countywide and for municipal functions, had the constitutional power to levy 20 mills of ad valorem taxes for both county and municipal purposes regardless of any millage levy by the municipalities within the county. The county argued that the plain meaning of the last sentence of section 9(b) of Article VII provided to it the power to levy in the aggregate 20 mills for county and municipal purposes in addition to any millage levied by the municipalities within the county since it was a county providing municipal services. The Court summarized the argument as follows:

Reduced to its simplest terms and excluding the referendum approach, this would mean that a Dade County citizen living in a municipality is subject to a maximum of ten mills levy by the County for county services, ten mills maximum levy by the municipality for its services, and an additional ten mills maximum for municipal services provided by the County under home-rule—a total of thirty mills for county and municipal purposes (to which one can add a ten-mill maximum for school purposes for a total of forty mills; school millage, of course, is not at issue here).

230 So. 2d at 135.

The Court held that it could not reconcile the county's position with what it perceived as the express will of the people reflected in Article VII, section 9(b) as follows:

It is our view that both the legislature and the people intended to limit ad valorem taxation for county and municipal purposes ***in all areas of the State*** to a twenty-mill maximum beyond which millages could be raised but only if approved by referendum of the tax-paying property-holders directly affected. Regardless of any question as to the wisdom of this approach in face of expanding needs for public services, the people have spoken both through the legislature and through their direct approval of Article VII, § 9(b) and their voice ought to be heard and heeded.

230 So. 2d at 135-36 (emphasis in original).

Summary of Constitutional Millage Limitations

The constitutional millage limitations of Article VII, section 9(b), can be summarized as follows:

- 10 mills for **municipal** purposes.
- 10 mills for **county** purposes.
- To the extent authorized by **law**, a county furnishing municipal services may levy additional taxes within the limits fixed for municipal purposes
- Special districts may levy a millage (1) authorized by law, and (2) approved by voters.
- The 10 mills for county purposes and municipal purposes may be exceeded if approved by electors (1) for two years for general governmental purposes, and (2) for payment of bonds.

Municipal Service Taxing and Benefit Unit Concept

Section 125.01(1)(q), Florida Statutes, provides as an enumerated county power, the power to establish and subsequently merge or abolish municipal service taxing or benefit units. Such provisions expressly provide that such power is intended to be authorization for all counties to levy additional taxes within the limits fixed for municipal purposes under the authority of the second sentence of Article VII, section 9(b), Florida Constitution.

A municipal service taxing unit is not constitutionally nor functionally a special district. It is purely a mechanism by which a county can fund a particular service from a levy of ad valorem taxes, not countywide, but within all or a portion of the unincorporated areas. It is a tax equity tool available to a board of county commissioners within its legislative discretion to place the burden of ad valorem taxes uniformly within a geographic area less than countywide. In terms of function and accountability, it is no different from any other revenue source appropriated and budgeted by a county. In the county budget, the municipal service taxing unit is used to segregate the ad valorem taxes levied within the taxing unit to ensure that funds derived from such levy are used to provide the contemplated services within the boundaries of the taxing unit as required by section 125.01(1)(q), Florida Statutes. A municipal service taxing unit analogy is the transportation trust fund created under section 336.022, Florida Statutes, which is used under section 129.02(2), Florida Statutes, in the county budget to account for transportation-related revenues and expenditures.

Subject to the consent by ordinance of the governing body of the affected municipality, an MSTU may include all or a part of the boundaries of a municipality. Under the general constitutional millage limits of 10 mills for municipal purposes, the millage levied by MSTUs and the municipality may not exceed in the aggregate 10 mills.

The distinction between a municipal service taxing unit and a municipal service benefit unit is that “benefit unit” is the correct terminology when the mechanism used to fund the county service is a service charge or a special assessment rather than an ad valorem tax. Again, both units are similar in that a municipal service benefit unit is an alternative mechanism available to a board of county commissioners to identify a precise geographic area in which to impose such service charges and special assessments and is not a special district in function or in status. The municipal service benefit unit is used within the county budget to account for such special assessments and service charges to ensure that such funds are used to provide the county services for which they were imposed. As discussed subsequently, a special assessment can be imposed directly by a municipality by the county and there is no requirement that an MSTU be created.

Special Assessments

general

It is well settled in Florida that a valid special assessment is not a tax.

The distinction between a special assessment and a tax is explained in Klemm v. Davenport, 129 So. 904, 907 (Fla. 1930):

A tax is an enforced burden of contribution imposed by sovereign right for the support of the government, the administration of the law, and to execute the various functions the sovereign is called on to perform. A special assessment is like a tax in that it is an enforced contribution from the property owner, it may possess other points of similarity to a tax, but it is inherently different and governed by entirely different principles. It is imposed upon 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 the property against which it is imposed as a result of the improvement made with the proceeds of the special assessment. It is limited to the property benefited, is not governed by uniformity, and may be determined legislatively or judicially.

(cits. omitted).

Another statement on the distinction between a special assessment and a tax is set forth by the Court in Sarasota County v. Sarasota Church of Christ, Inc., 667 So. 2d 180 (Fla. 1995), as follows:

Taxes are levied throughout a particular taxing unit for the general benefit of residents and property and are imposed under the theory that contributions must be made by the community at large to support the various functions of the government. Consequently, many citizens may pay a tax to support a particular government function from which they receive no direct benefit. Conversely, special assessments must confer a specific benefit on the land burdened by the assessment and are imposed under the theory that the portion of the community that bears the cost of the assessment will receive a special benefit from the improvement or service for which the assessment is levied.

667 So. 2d at 18 (cits. omitted).

A valid special assessment creates a lien against homestead property since two exceptions to the forced sale protection of homestead property in Article X, section 4(a), Florida Constitution, are “payment of taxes and assessments.”

Additionally, Article VII, section 6(a), Florida Constitution, clarifies that the homestead exemption from ad valorem taxation does not apply to “assessments for special benefits” as follows:

Every person who has the legal or equitable title to real estate and maintains thereon the permanent residence of the owner . . . shall be exempt from taxation thereon, except assessments for special benefits[.]

The ability of a county or municipality to impose special assessments by ordinance and that Chapter 170, Florida Statutes, is an alternative method of imposition was settled in City of Boca Raton v. State, 595 So. 2d 25 (Fla. 1992). In such decision, the Court rejected the argument that special assessments imposed by the municipality were invalid because the requirements of Chapter 170 were not followed:

This argument cannot prevail because it is evident that chapter 170 is not the only method by which municipalities may levy a special assessment.

595 So. 2d at 29.

That the choice to fund a service or improvement wholly or partially with special assessments is a discretionary funding option available to the local government also is clear. As recognized by the Court in Harris v. Wilson, 693 So. 2d 945, 947 (Fla. 1997):

[A] previous method of funding for the services (such as the tax in Sarasota County or the tipping fees previously collected in this case) does not preclude the imposition of an assessment[.]

In Sarasota County v. Sarasota Church of Christ, Inc., 667 So. 2d 180 (Fla. 1995), the Court had found:

Notably, under the County's special assessment, the Churches and other owners of developed property are now required to contribute to the costs of the stormwater management facility based on their relative contribution of polluted stormwater runoff. Previously, the costs of stormwater services in the County were funded through a flat tax. Owners of both developed and undeveloped property paid for stormwater services without regard to the property's relative contribution of polluted runoff. Moreover, given that the Churches are exempt from taxation, they paid no money whatsoever towards the cost of the specific benefits received by these services. Although we do not find that the previous funding of stormwater services through taxation was inappropriate, we do find that the stormwater funding through the special assessment at issue complies with the dictates of chapter 403 and is a more appropriate funding mechanism under the intent of that statute.

667 So. 2d at 186.

The home rule power of a county or municipality to impose special assessments was settled and the two-prong test for their validity was articulated in City of Boca Raton v. State, 595 So. 2d 25 (Fla. 1992).

A valid special assessment can be imposed after the assessed improvement has been completed. Likewise, a special assessment can be reassessed where the original assessment is unenforceable because of error or irregularity.

In Anderson v. City of Ocala, 91 So. 182 (Fla. 1922), the Court upheld the reassessment of an invalid assessment under the following reasoning:

Authority for making re-assessments in such cases has generally been upheld upon the theory that the improvement tends to enhance the value of abutting property, and as a consequence there rests upon such abutting property an economic and moral obligation to contribute its just proportion of the expense incurred in the making of such improvement and the failure of the

original assessment does not operate to discharge such obligation.

91 So. at 186.

Lack of notice by a purchaser of an assessed parcel after the improvement has been completed and prior to the reassessment is not a defense to a valid special assessment. See Moody v. City of Vero Beach, 203 So. 2d 345 (Fla. 4th DCA 1967).

Judicial Construction of Special Benefit Requirement

The test to be applied in evaluating whether a special benefit is conferred on property by the provision of a service or the construction of a public improvement was articulated by the Court in Lake County v. Water Oak Management Corp., 695 So. 2d 667 (Fla. 1997), as follows:

In evaluating whether a special benefit is conferred to property by the services for which the assessment is imposed, the test is not whether the services confer a “unique” benefit or are different in type or degree from the benefit provided to the community as a whole; rather, the test is whether there is a ‘logical relationship’ between the services provided and the benefit to real property.

695 So. 2d at 669 (footnotes and cits. omitted).

This “logical relationship” to property test was first advanced in Crowder v. Philips, 1 So. 2d 629 (Fla. 1941), in which the Court held that a hospital could not be funded by special assessments under the following reasoning:

That a hospital is a distinct advantage to the entire community because of its availability to any person who may be injured or stricken with disease cannot be gainsaid, but there is no logical relationship between the construction and maintenance of a hospital, important as it is, and the improvement of real estate situated in the district.

1 So. 2d at 631.

The logical relationship to property test was reaffirmed in Whisnant v. Stringfellow, 50 So. 2d 885 (Fla. 1951), where the issue was the funding of a county health unit:

A county health unit is the source of benefits to all the people of the county. It is, in fact, as much ‘a current governmental need’ and ‘as essential to the public welfare as police protection, education or any other function of local government.’ But there

would appear to be no ‘special or peculiar benefit’ to the real property located in the county by reason of its establishment—no ‘logical relationship’ between its establishment and the improvement of the real estate situated in the county. It benefits everyone in the county, regardless of their status as property owners. It is a ‘governmental need’ for which the taxing power of the county may be obligated.

50 So. 2d at 885-86 (cits. omitted).

This dividing line between those services and improvements that meet the logical relationship to property test and those general governmental services and improvements required to be funded by taxes was described in Lake County v. Water Oak Management Corp., as follows:

Contrary to the assertions of the opponents to the assessment here, we do not believe that today’s decision will result in a never-ending flood of assessments. Clearly, services such as general law enforcement activities, the provision of courts, and indigent health care are, like fire protection services, functions required for an organized society. However, unlike fire protection services, those services provide no direct, special benefit to real property. Thus, such services cannot be the subject of a special assessment because there is no logical relationship between the services provided and the benefit to real property.

695 So. 2d at 670 (cits. omitted).

The decision in Lake County v. Water Oak Management Corp., recognized the home rule power of a county and municipality to impose special assessments to fund services, articulated the dividing line between assessable services and those required to be funded by taxes, and restated the logical relationship to property test to be applied in determining special assessment validity.

While special assessments are often funded within discrete geographic areas, the validity of a special assessment is not governed by the extent of the geographic area assessed.

The Court in Sarasota County v. Sarasota Church of Christ, Inc., 667 So. 2d 180 (Fla. 1995), stated this principle in upholding an assessment for stormwater services imposed in a substantial portion of the community as follows:

Although a special assessment is typically imposed for a specific purpose designed to benefit a specific area or class of property owners, this does not mean that the costs of services can never

be levied throughout a community as a whole. Rather, the validity of a special assessment turns on the benefits received by the recipients of the services and the appropriate apportionment of the cost thereof. This is true regardless of whether the recipients of the benefits are spread throughout an entire community or are merely located in a limited, specified area within the community.

667 So. 2d at 183.

Likewise, the fire control assessments imposed in Lake County v. Water Oak Management Corp., were imposed in all the unincorporated areas and within the municipal boundaries of two municipalities.

The concept of special benefit includes the elimination of a burden created by the use and enjoyment of property. Although not articulated specifically, such concept is implicit in the decision upholding the special assessments for stormwater services in Sarasota County v. Sarasota Church of Christ, Inc., 667 So. 2d 180, 186 (Fla. 1995):

Second, developed property, which is the only property assessed under the County's ordinance, contributes almost all of the contaminated stormwater runoff that is to be treated by the stormwater facilities. Because this stormwater must be controlled and treated, developed properties are receiving the special benefit of control and treatment of their polluted runoff. This special benefit to developed property is similar to the special benefit received from the collection and disposal of solid waste. [cits. omitted]

The decision in Sarasota County v. Sarasota Church of Christ, Inc., 667 So. 2d 180 (Fla. 1995), is a landmark decision on the form of a valid special assessment and articulates the judicial standard of review for determining special assessment validity.

Whether a particular service or improvement a special benefit to assessed property can turn on the nature of the improvement and the size of the assessed area.

For example, generally, enhanced landscaping or street lighting of a major road system does not possess a logical relationship to the abutting property in satisfaction of the special benefit test. However, in City of Winter Springs v. State, 776 So. 2d 255 (Fla. 2001), the Court upheld the funding by special assessments of enhanced landscaping, signage, and lightings at various locations within a discrete development. There, the special assessments were imposed within a district constituting approximately 4,000 homes, including a golf course and several commercial properties.

The Court recognized the following specific findings as to special benefit incorporated in the implementing resolution:

The Tusawilla Improvements will provide a special benefit to all Tax Parcels located within the Tusawilla Improvement Area . . . by improving and enhancing the exterior subdivision boundaries, the interior subdivision areas, the subdivision identity, and the subdivision aesthetics and safety, thus enhancing the value, use and enjoyment of such property.

776 So. 2d at 258.

The Court rejected the argument that the improvements did not confer a special benefit on property owners within the district since people outside the district may also benefit from the improvements:

This argument fails, however, because the mere fact that the opponents presented testimony that non-neighborhood residents drive through the District on their way to other parts of the City, and en route will incidentally benefit from improvements in the District such as new signs, landscaping and street lighting, does not invalidate the special assessment.

776 So. 2d 259 (cits. omitted).

The Court then concluded that “it is not unreasonable to conclude that there is a ‘logical relationship’ between the proposed beautification and lighting enhancements within the District and the special benefit of enhancing the values of individual properties situated therein.” 776 So. 2d at 259, n. 4.

Another example is Williams v. Escambia County, 725 So. 2d 392 (Fla. 1st DCA 1998), in which special assessments imposed for mosquito control and police protection on leasehold interests in Santa Rosa Island were upheld. The proceeds were applied to fund a portion of the costs of police functions and mosquito control programs provided within a benefit unit coterminous with Santa Rosa Island. In a larger geographic and less discrete area, both services would likely be considered governmental in nature and required to be funded from taxes.

Consistently, the Court in Quietwater Entertainment v. Escambia County, 890 So. 2d 525 (Fla. 1st DCA 2005), review denied, 905 So. 2d 892 (Fla. 2005), referencing Williams v. Escambia County, deferred to legislative findings that the special assessments imposed on leasehold interests for special law enforcement protection and mosquito control on Santa Rosa Island provided the requisite special benefit:

Given the record before us, we cannot say that the County Commission's legislative findings of special benefit are palpably arbitrary. Accordingly, we agree with the trial court that, given the unique nature and needs of the subject leaseholds, the special assessments are not invalid[.]

890 So. 2d at 527 (cit. omitted).

Compare Donnelly v. Marion County, 851 So. 2d 256 (Fla. 5th DCA 2003), where the issue was the legality of special assessments used to fund enhanced law enforcement and community resource facilities. In contrast to the confined area of Santa Rosa Island before the court in Quietwater Entertainment v. Escambia County, the assessed area in Donnelly v. Marion County consisted of a portion of the unincorporated area containing approximately 14,000 landowners. The Court declined to distinguish enhanced law enforcement services from general law enforcement services and held the special assessments failed to provide the requisite special benefit.

'Enhanced' law enforcement services provide no more direct, special benefit to real property than basic law enforcement activities. The defendants' argument confuses the nature of the service with the level or degree of such service. It is the nature of law enforcement services which precludes funding by way of special assessment because such services, while undoubtedly beneficial to individuals, do not directly benefit the real property being burdened.

851 So. 2d at 264 (cit. omitted); see also Rushfeldt v. Metropolitan Dade County, 630 So. 2d 643 (Fla. 3d DCA 1994), review denied, 639 So. 2d 980 (Fla. 1994).

Judicial Construction of Fair Apportionment Requirement

To satisfy the second prong test for a valid special assessment, the assessed costs are required to be apportioned among the benefited parcels in a manner consistent with the logical relationship to property provided by the service or improvement assessed. Consistent with the logical relationship to the assessed property standard, the method of apportionment can vary within the legislative discretion of the governing board of the local government.

As stated by the Court in Meyer v. City of Oakland Park, 219 So. 2d 417, 419-20 (Fla. 1969), quoting City of Ft. Myers v. State of Florida and Langford, 117 So. 97, 104 (Fla. 1928):

No system of appraising benefits or assessing costs has yet been devised that is not open to some criticism. None have attained the ideal position of exact equality, but, if assessing boards would bear in mind that benefits actually accruing to the property

improved in addition to those received by the community at large must control both as to benefits prorated and the limit of assessments for cost of improvement, the system employed would be as near the ideal as it is humanly possible to make it.

In Meyer v. City of Oakland Park the sewer improvements were apportioned based upon the “square footage of the respective property specially benefited” and the Court held:

If it appears that the application of the square footage results in substantial or at least a rough approximation to apportionment, it should be sustained. This method for the determination in proration of the special benefits in this project is approved.

219 So. 2d at 419.

As an example, in Sarasota County v. Sarasota Church of Christ, Inc., 667 So. 2d 180 (Fla. 1995), the Court concluded that the following method of apportioning stormwater services was not arbitrary and bore a reasonable relationship to the “benefits received by the individual developed properties” in the treatment and control of polluted stormwater:

Under the ordinance at issue, the County has attempted to apportion the costs of the services based on the relative stormwater contributions of different types of developed property. Developed properties are classified for purposes of assessment into two major classes, residential and non-residential. Additionally, a subcategory of residential properties exists for smaller dwelling units such as condominium units and mobile homes. As indicated previously, undeveloped property is not assessed for stormwater services. Residential property owners pay a flat fee for the services based on the number of individual dwelling units on the property; non-residential developed property owners pay a fee based on a formula that is designed to create a direct relationship between the method of assessing a non-residential unit and the average residential unit.

This method for apportionment focuses on the projected stormwater discharge from developed parcels based on the amount of “horizontal impervious area” assumed for each parcel and divides the contributions based on varying property usage.

667 So. 2d at 186.

As an additional example, in City of Winter Springs v. State, 776 So. 2d 255 (Fla. 2001), the Court approved the following method of apportionment of the cost of enhanced landscaping, signage, and lighting within the predominantly residential district:

Inasmuch as the District contains single-family homes, multifamily buildings, and a few commercial properties, the City first sought to determine whether all three property uses would benefit from the proposed improvements on the same basis. It determined they would not, as its consultant testified at the trial[.]

The City then analyzed the mix of properties within the District to find an appropriate basis for assessing the different property uses equitably. It determined that the average square footage of each single-family dwelling unit in the District—the vastly predominant form of property use—was 2200 square feet. It then created a formula that assigned each single-family home an ‘equivalent residential unit’ value of 1, and it extrapolated the ERU value to the multifamily dwelling units and to the commercial properties in the District based on square footage. It then determined that vacant parcels would pay the same as a single-family dwelling unit, and that commercial property would in no event be assessed less than a single-family home. This method, the City Commission found, had the effect of ‘fairly and reasonably allocating the cost to specially benefitted property, based upon the number of ERUs attributable to each benefitted property in the manner hereinafter described.’

776 So. 2d at 261.

The method of apportionment can include a combination of factors bearing on the characteristics of the benefitted property and its logical relationship to the improvement or service to be provided. For example, in City of Naples v. Moon, 269 So. 2d 355 (Fla. 1972), the apportionment was based upon the assessed value of the benefitted property as well as other factors such as relative floor space and proximity to the parking facilities. The Court upheld the apportionment factors against a challenge that they constituted an ad valorem tax as follows:

It is true that ad valorem assessments are factors in the calculus; however, these assessments merely form a logical valuation base against which the special assessment benefits may be multiplied. This occurs only after those benefits have been independently measured and reduced to numerical factors in the case of each property-holder.

269 So. 2d at 358.

The fundamental question is whether the method of apportionment is consistent with the same logical relationship to property possessed by the assessed improvement or service under analysis required to satisfy the special benefit prong. Thus, the method of apportionment of the assessed costs among benefited parcels may vary depending upon the nature of the improvement or service provided.

For example, in City of Boca Raton v. State, 595 So. 2d 25 (Fla. 1992), the assessments were imposed to construct a wide range of specifically enumerated improvements in a redevelopment of downtown portions of the municipality. The special assessments were apportioned among the benefited properties by relative property assessed values as documented on the latest real property assessment roll. The Court rejected the contention that the assessment was invalid because it would be applied on an ad valorem basis and recognized that the method of apportionment was a legislative function:

At the outset, we note that the City made specific findings that the improvements would constitute a special benefit to the subject property, that the benefits would exceed the amount of the assessments, and that the benefits would be in proportion to the assessments. The apportionment of benefits is a legislative function, and if reasonable persons may differ as to whether the land assessed was benefitted by the local improvement, the findings of the city officials must be sustained.

595 So. 2d at 30 (cit. omitted).

Failure to apportion the assessed costs in the manner consistent with the special benefit provided from the service or improvement can defeat an otherwise valid special assessment.

For example, in Fisher v. Board of County Commissioners of Dade County, 84 So. 2d 572 (Fla. 1956), special assessments to provide street paving and repair and street lighting were apportioned among all real property within the district, including homesteads, in proportion to the assessed valuation of each parcel. The Court stated that such method of apportionment raised the following issue:

Nothing could be more typical of pure ad valorem taxation. The question readily appearing is whether a special improvement district can be created with authority to pave and repair streets and provide street lighting and assess the costs and maintenance thereof against all real property within the district, including homesteads, *entirely* on the basis of the ad valorem valuation of such real property without particular regard to the “special benefits” accruing to such property from the particular improvements.

84 So. 2d at 574 (emphasis in original).

The special assessments were held invalid since they were imposed for the support of government and not an assessment against particular properties for a special benefit.

Compare Harris v. Wilson, 693 So. 2d 945 (Fla. 1997), in which special assessments for solid waste disposal apportioned only on developed residential property on a per residential dwelling unit basis were held valid with City of Fort Lauderdale v. Carter, 71 So. 2d 260 (Fla. 1954), in which special assessments for solid waste disposal and collection apportioned on the basis of assessed value were held invalid.

The Court in City of Fort Lauderdale v. Carter reasoned as follows:

In the instant case the tax is laid against all the real and personal property in the city in accordance with its value. As respects real property, no distinction is made between occupied or vacant properties, or, if occupied, whether the property is being used for commercial or residential purposes. Moreover, the tax imposed does not attempt to bear any proportionate relationship to the cost of the service to be rendered as to any particular property. Furthermore, no special or peculiar benefit results to any specified portion of the community or the property situate therein. It seems clear, therefore, that the charge levied against all real and personal property in the city is a general tax imposed for the support of the government and not an assessment against particular properties for special benefits. The levy, therefore, is without constitutional authority insofar as it applies to homestead property.

71 So. 2d at 261.

In contrast, the Court in Harris v. Wilson upheld the apportionment of solid waste disposal services among improved property based upon the solid waste to be generated by the property use:

The amount of the assessment imposed upon improved residential property within the unincorporated area of Clay County is equal to the cost of the processing and disposal of solid waste generated from such residential property for the period of January 1, 1993, to September 30, 1993. The assessment is imposed equally upon all improved residential property located within the unincorporated area of Clay County. No profit is included within the partial year solid waste disposal assessment. The amount of the assessment is apportioned to the properties subject to the assessment in an amount equal to or less than the benefit received by such properties.

693 So. 2d at 948.

The Court in Lake County v. Water Oak Management Corp., 695 So. 2d 667 (Fla. 1997), characterized the decision in St. Lucie County-Fort Pierce Fire Prevention and Control District v. Higgs as follows:

Specifically, the assessment in that case was actually a tax because it had been wrongfully apportioned based on the assessed value of the properties rather than on the special benefits provided to the properties. In sum, we disapproved the assessment in Higgs based on the assessment's failure to meet the apportionment prong rather than the special benefit prong.

695 So. 2d at 670.

Judicial Standard of Review

The Court in Sarasota County v. Sarasota Church of Christ, Inc., 667 So. 2d 180 (Fla. 1995), clarified the standard of review to be applied by the judiciary in determining whether legislative conclusions regarding benefits and apportionments should be sustained as follows:

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

667 So. 2d at 184.

Such standard of review highlights the importance of clear legislative findings of both special benefit and fair apportionment in the implementing ordinance and resolutions. The

cases are replete with statements of judicial deference to legislative findings of both prongs of the test for a valid special assessment.

For example, the Court in Harris v. Wilson, 693 So. 2d 945 (Fla. 1997), acknowledged reliance upon the following findings of legislative determination supporting the solid waste disposal assessments:

The trial court also had before it the ordinances adopting the assessment, which made specific findings as to (1) the rationale for not imposing the partial year solid waste disposal assessment within the municipal boundaries, and (2) how the residential properties subject to the partial year solid waste disposal assessment were benefitted by the processing and disposal of the solid waste generated from their properties. Further, the board expressly made various findings of benefit in the Final Assessment Resolution. These included the availability of solid waste disposal facilities to properly and safely dispose of solid waste generated on improved residential lands, closure and long-term monitoring of the facilities, a potential increase in value to improved residential lands, service to owners and tenants, and the enhancement of environmentally responsible use and enjoyment of residential land.

693 So. 2d at 946.

Additionally, the Court acknowledged the following:

In 1992, Clay County enacted an ordinance imposing a partial year special assessment (ordinance 93-26) applicable only to residential properties in the unincorporated areas of the county for the maintenance of county solid waste facilities. The assessment was for \$63 per residential dwelling unit. Commercial properties and undeveloped properties were not subject to the assessment. Appellants are homeowners subject to the assessment.

693 So. 2d at 946.

Enforcement of Special Assessment Lien

As discussed previously, under clear constitutional provisions, a valid special assessment is a lien against the benefited property, including homestead property.

A special assessment, whether imposed for capital projects or services, can be collected on the annual ad valorem tax bill as a “non-ad valorem assessment” pursuant to the statutory collection procedure specified in section 197.3632, Florida Statutes (the “Uniform Collection Method”). Additionally, the implementing ordinance can provide that the special assessment lien can be enforced against real property by alternative proceedings in the nature of a foreclosure.

A common characteristic of the special assessment lien that facilitates both alternative collection procedures is that a special assessment lien has the same dignity as a tax lien and can be superior in priority to other liens or prior mortgages.

Collection of Special Assessments

As discussed previously, the implementing ordinance can provide that the special assessment lien can be collected on the ad valorem property tax bill pursuant to the Uniform Collection Method or by alternative proceedings in the nature of a foreclosure.

The Uniform Collection Method was enacted in 1988 and is codified in section 197.3632, Florida Statutes. In such codification, special assessments are statutorily defined as “non-ad valorem assessments” to distinguish them from the ad valorem taxation of real and tangible personal property.

If the statutory procedures of section 197.3632 are followed by the local government, the non-ad valorem assessments can be included in the combined notice for ad valorem taxes authorized in section 197.3632. For example, section 197.3632(8)(a) provides that non-ad valorem assessments collected pursuant to the Uniform Collection Method are subject to all collection procedures provided in Chapter 197, Florida Statutes, including discounts for early payments, prepayment by installments, and the issuance and sale of tax certificates and deeds for non-payment. Section 197.3632(5)(a) places the obligation on the local governments to “certify a non-ad valorem assessment roll on compatible electronic medium to the tax collector.” Additionally, a local government using the Uniform Collection Method for the first time is required to adopt a resolution prior to January 1 expressing its intent to use such collection procedure or to receive consent of the property appraiser or tax collector prior to March 1.

Since governmental property is either immune or can be exempt from the payment of taxes, the courts have held that an alternative mechanism has to be resorted to in the collection of special assessments imposed against governmental property.

In Blake v. City of Tampa, 156 So. 97 (Fla. 1934), the municipality filed a foreclosure action against local school district trustees to enforce a special assessment improvement lien for the cost of street improvements abutting the school premises. The Court stated the issue as whether public property owned by a school district could be sold in an equity proceeding to pay the city for a proportionate share of the cost of the improvements to an abutting street. The

special act granting the city the power to issue special assessments specifically provided that any school district or political subdivision was subject to the same duties and liabilities with respect to the assessments affecting its real estate as private owners and was subject to liens for such assessments to the same extent as a private owner.

The Court in Blake v. City of Tampa held that, based upon the legislative authority before the Court, the school property was subject to the special assessment imposed by the municipality as follows:

With respect to special assessments, it is recognized by the weight of authority in the United States that with the exception of property of the general government, such as may be used for a custom house, post office, or other public building, all other public property is assessable if so provided by legislation, for it is unquestionably competent for the law-making 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.

156 So. at 99.

However, the Court recognized that the remedy was not an execution and sale pursuant to the foreclosure process but a mandamus action to compel payment:

So while a lien for a special assessment may be placed against property as such, irrespective of its then ownership or possession, it is well settled that property in use for public or governmental purposes cannot be sold on execution or other legal process. . . .

In cases where a valid special or local assessment against state, county, school, or other publicly held and used property has been imposed in consideration of an authorized local improvement, for an amount proportioned according to benefits, the amount of the installments should be paid out of the treasury of the owning and holding public agency or other public authority whose duty it is to have charge of, care for, keep up or maintain the property in use for public purposes and mandamus will ordinarily lie to compel such payment.

156 So. at 99-100.

The evolving issue in the imposition of special assessments against governmental property is the type of legislative authorization required and whether a collection distinction is required between state agencies, local governments, and other political subdivisions.

As to school districts, the holding in Blake v. City of Tampa was modified in section 1013.51, Florida Statutes, by a preemption of local government authority in the imposition of special assessment and other development extractions. Such legislation is couched in terms of authorization for expenditures by a school board by agreement for additional offsite improvements necessary to serve the educational facility.