

ORDINANCES

Ordinances: Special Assessment

SMM Properties, Incorporated v. City of North Lauderdale,
760 S.2d 998 (Fla. Dist. App. 4th 2000)

When a multi-service ordinance, classified as a special assessment, is imposed on real property, it is necessary to dissect the ordinance by separating the various services into single components. To determine whether the assessment is proper, one must determine whether (1) the service benefits the assessed property, and (2) the assessment is properly apportioned. If the service does not meet both elements of the test, that portion of the ordinance is invalid.

FACTS AND PROCEDURAL HISTORY

Broward County provided Emergency Medical Response Services (Emergency Services) to the city of North Lauderdale (City) by placing two emergency vehicles at the City's fire station and two trucks at another station within the City. The City enacted an ordinance, in the form of a special assessment, to fund the program, and the special assessment was levied against all real property owners in the City. The City claimed the Emergency Services trucks would benefit all property owners by (1) protecting the value of improvements and structures, (2) protecting the life and safety of occupants, and (3) lowering the cost of fire insurance. Plaintiffs, a group of commercial-property owners, challenged the ordinance as an unconstitutional tax disguised as a special assessment. The trial court granted summary judgment in favor of the City and found the ordinance constitutional.

ANALYSIS

For a municipality to enact a special assessment against real property, it must satisfy two elements: (1) the services must benefit the assessed property, and (2) the assessment must be properly apportioned. *Sarasota County v. Sarasota Church of Christ, Inc.*, 667 S.2d 180, 183 (Fla. 1995). If the ordinance fails to

satisfy either element, the ordinance is invalid as an improper special assessment. If the ordinance passes scrutiny, it is considered a special assessment and can be limited to the benefited property.

Was There a Special Benefit to the Assessed Property?

Historically, emergency services do not provide special benefits to real property; however, courts have grappled with the issue when a special assessment ordinance couples emergency services with other services, such as fire rescue, garbage disposal, or education. To determine whether combined services benefit real property, “the test is whether there is a ‘logical relationship’ between the services provided and the benefit to real property.” *Lake County v. Water Oak Mgt. Corp.*, 695 S.2d 667, 669 (Fla. 1997).

The *SMM Properties* court separated the Emergency Services from the fire-protection services and found that, unlike fire protection, Emergency Services did not benefit particular real property. Rather, Emergency Services were a function of an organized society that should be supported by ad valorem taxes rather than special assessments. It is more likely that Emergency Services personnel would respond to a car accident or to a citizen’s health problem than to a real-property problem. As such, the ordinance did not satisfy the first part of the two-prong test. The court held that the portion of the ordinance that did not confer a special benefit to real property was invalid and classified the ordinance as an improper tax.

RESEARCH REFERENCES

- Eugene McQuillin, *The Law of Municipal Corporations* vol. 14, § 38 (Beth A. Jacobsthal & Al Maldonado eds., 3d ed., West 1998).
- Pamela M. Dubov, Student Author, *Circumventing the Florida Constitution: Property Taxes and Special Assessments, Today’s Illusory Distinction*, 30 *Stetson L. Rev.* 1469, 1484–1508 (2001).
- Dennis Hudson, Student Author, *City of Pembroke Pines v. McConaghey*, 728 S.2d 347 (Fla. 4th Dist. Ct. App. 1999), *rev. granted*, 741 S.2d 1136 (Fla. 1999), 29 *Stetson L. Rev.* 921 (2000).

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