

SUPREME COURT OF FLORIDA

BENJAMIN E. PARTRIDGE AND
BEVERLY MERRITT,

Appellants,

v.

ST. LUCIE COUNTY, ETC.,

Appellee.

FILED
CLERK
APR 23 1988
COURT

CASE NO. 73,206

APPEAL OF FINAL JUDGMENT CASE NO. 88-802-CA-02
IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT IN AND
FOR ST. LUCIE COUNTY, FLORIDA

Benjamin E. Partridge

BENJAMIN E. PARTRIDGE
7301 Georges Road
Fort Pierce, Florida 34951

Beverly Merritt

BEVERLY MERRITT
6601 Ocala Avenue
Fort Pierce, Florida 34951

TABLE OF CITATIONS AND PROOFS

1. Notice of proposed taxing unit.
2. Revised map of unit after changes.
3. Ordinance 88-45, dated May 3, 1988
4. Copy of staff memo showing change from tax to benefit.
5. Letter regarding use of engineer's assessment; value to be assessed to the County; question of validating proceedings before Court approval.
6. Letter dropping Spanish Lakes Country Club Village from the assessment.
7. Copy of County Code 1-13.5-6
8. Letter regarding construction interest credits.
9. Letter to Lakewood Park Property Owners from the County.
10. Tax information for taxpayers of St. Lucie County, showing millage amounts.
11. Copy of tax statement for one individual showing taxation over the 10 mil limit.
12. Letter from one property owner regarding inability to pay.

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TO PROTECT
PRIVACY AND CONFIDENTIALITY

STATEMENT OF THE CASE AND THE TRUE FACTS

1. This is an appeal of the bond validation given to St. Lucie County on September 15, 1988.

2. Our appeal was filed on October 18, 1988. This appeal has been upheld as timely because the Judgment was not recorded by the Clerk's office until September 21, 1988. The Judgment was not signed in open court by the presiding Judge.

3. Our appeal was also upheld as not being frivolous by the Florida Supreme Court.

SUMMARY OF ARGUMENT

1. A Taxing Unit was changed to a Benefit Unit without a }
proper hearing or public notice.
2. We have fought against this issue from the very first
public hearing.
3. We were not properly represented at the bond validation }
hearing.
4. Our appeal has already been ruled timely and not frivolous.
5. All properties benefitting from an improvement must be
assessed.
6. Bonds may not be issued until contracts for the work have
been signed.
7. The County was advised not to sell the bonds so soon.
8. The County cannot assess individuals for public benefits.
9. The County is now issuing credits and refunds for constr-
uction interest.
10. Many property owners were scared into prepaying.
11. The benefit of the project does not outweigh the cost. }
12. Ad valorem taxes may not be collected unless approved by
a referendum, if they are in excess of 10 mils. }
13. The County has not acquired the proper Rights of Way.

ARGUMENT

1. St. Lucie County advertised for and created a Municipal Service Taxing Unit on April 5, 1988. Shortly thereafter, they changed the name to a Benefit Unit. A Taxing Unit falls under the jurisdiction of the Florida Legislature and the criteria for a Taxing Unit had not been met. Realizing their mistake they passed Ordinance 88-45 on May 3, 1988 to change the County Code. Changing the County Code does not rectify the situation, especially changing it a month after the fact.

There is no mention of either the name change nor the Ordinance in the transcript of the bond validation hearing. The Ordinance is not mentioned in any of the proceedings. There is no proof of publication for this Ordinance in the Court file.

2. The County contends that we had ample opportunity to protest this Unit and we did take all the steps we could without any assistance. We have repeatedly tried to acquire legal help but we have not been able to find anyone to represent us.

3. Mr. Tom Walsh represented the State Attorney's office at the bond validation hearing on September 15, 1988. We felt that he represented our interests on that date but that he did not adequately research the various laws and codes and requirements and was not properly prepared in this matter. If he had been we feel he would have argued against the validation, and he did not.

4. The Supreme Court has already ruled that our appeal was timely filed and feel that we should have the right to be heard.

5. F.S. 170.01(g) provides for the payment of all or any part of the costs of any such improvements by levying and collecting

special assessments on the abutting, adjoining or contiguous or other specially benefitted property. Many parcels of property have been deleted from the rolls and many more have had the total cost reduced. However, the cost of the project has not been reduced to reflect these changes. Therefore a larger part of the cost will now fall on the rest of the County in general and they were never advised of this nor given a public hearing at which to voice their opinion of whether or not they would be willing to accept this cost.

6. F.S. 170.11 provides that bonds may not be issued until the contracts for such improvements have been finally let. As of this date the engineering work has not been completed and the County has no idea of the actual cost of the project. No contractor will submit a competitive bid if he knows how much money is already collected for a project. In common practice bonds are not sold until the project has been completed and the property owner is then given a chance to pay the assessment.

7. The County was advised not to issue any bonds or do any work on this project until the proper permits and procedures had been worked out did go ahead and issue the bonds on October 21, 1988.

8. The County violated County Code 1-13.5-6(d) which provides for the percentage of the benefits of the improvements accrues to the public shall be the percentage of the cost of improvements borne by the County. In this instance the County assessed this in the form of Common Areas. At first each property owner was assessed \$300.00 per lot.

This property is owned by Lakewood Park Property Owners Association, Inc.. That organization should have been assessed for this money as they are the owners. It cannot be spread among the property owners because not all property owners belong to the organization. This charge should accrue first to St. Lucie County and if not them then to Lakewood Park Property Owners Association, Inc..

9. The assessments include a charge for construction interest but since no construction has been carried on they County is in the position of crediting this back and refunding those who prepaid.

10. Many people were scared into prepaying this assessment by a letter mailed out by the County threatening the loss of their property if they did not pay in a timely manner. This was taken to mean immediate payment by some of our elderly people and many borrowed money to prepay.

11. The County is required to ensure that the benefit outweighs the cost of the project. The actual cost of the project should be figured with the amount of interest added for the financing. That interest will almost double the cost to each property owner. On that basis the cost is indeed far beyond the benefit.

12. F.S. 200.066 prohibits addition of an ad valorem tax in excess of 10 mils without a referendum. No referendum was held. This assessment appears on the tax bills as a tax. A tax, even collected in " the ad valorem manner" still is a tax.

13. The County has not acquired Rights of Way in this Unit and does not intend to in the future.

CONCLUSION

We have tried to work in the system, from attending the public hearings, writing letters and finally taking our case into the Court system. Our elderly will spend the last years of their lives in a struggle to survive, trying to pay for something they do not need, want and cannot afford.

We feel this project should not be undertaken because of the financial burden it places upon us. The benefit of paving and drainage does not outweigh the price of human misery. Even for the young people in our area this is a terrible burden. Some mortgage payments have gone up as much as \$150 per month.

The County does have the authority to create such a Project but they also have the obligation to ensure that the costs are fairly assessed and spread among those who will benefit. They also have an obligation to follow the law.

Paved roads are not a necessity of life. Food and Shelter are. People cannot live in improved ditches and they cannot eat asphalt.

If we have not followed the proper procedures it is because we are not professionals. If our Governing System worked as it is supposed to we would not be in this position. We have been denied a voice in our own affairs by the very people who are supposed to work for us. They are destroying us.

St. Lucie County must be held to the law. If the residents of an area of the County do not want and cannot afford a "Benefit" it ceases to be a "Benefit" and becomes an unbearable, unacceptable burden.

PROOF OF SERVICE

I hereby certify that a copy of the foregoing was mailed to Daniel S. McIntyre, 2300 Virginia Avenue, Ft. Pierce, Fla., Robert O. Freeman, 2100 Florida National Bank Tower, Jacksonville, Florida and James E. Alderman, 300 S. Sixth St., Ft. Pierce, Fla. 34950 this 21st day of November, 1988.



Beverly Merritt