THE LINE BETWEEN SPECIAL ASSESSMENTS AND AD VALOREM TAXES: *MORRIS V. CITY OF CAPE CORAL*

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I. INTRODUCTION

In May 2015, the Florida Supreme Court decided *Morris v. City of Cape Coral*.[1] This opinion is one in a line of cases indicating where the fulcrum lies between the municipal home rule powers granted by Article VIII of the Florida Constitution and the limitations on those powers in the context of taxation under Article VII. Despite the vast increase of power granted to local governments under the 1968 Florida Constitution, ad valorem taxation remains within the province of the state legislature. *Morris* reaffirms that the test announced in *City of Boca Raton v. State*[2] controls whether a special assessment is a valid exercise of municipal home rule authority.[3] As long as this test is met, valuation data prepared by the county property appraisers for ad valorem tax purposes can be used in a special assessment formula without rendering the special assessment an unconstitutional tax. Because this valuation data is routinely compiled by and readily available from the county property appraisers, it is to a city's advantage to use that data in allocating special assessments.

This Article first gives a background on the law governing special assessments in Florida and the history of the constitutional provisions that shaped the law. The Article then discusses the facts and legal issues

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1. 163 So. 3d 1174 (Fla. 2015).
2. 595 So. 2d 25 (Fla. 1992), *modified*, Collier Cnty. v. State, 733 So. 2d 1012 (Fla. 1999).
3. *Morris*, 163 So. 3d at 1176 (citing the special assessment test from *City of Boca Raton*).

in the Florida Supreme Court's *Morris* decision. Finally, it predicts future implications for the efficient use of the property appraiser's database in light of *Morris*.

II. THE LAW GOVERNING SPECIAL ASSESSMENTS IN FLORIDA

A. Special Assessments Versus Ad Valorem Property Taxes as Local Government Revenue Sources

Cities impose special assessments to generate revenue to pay for services or capital improvements.[4] These special assessments are estimated by assessing a charge on properties that receive a special benefit from those services or improvements.[5] Special assessments and ad valorem property taxes are similar—for example, payment is mandatory and they are both levied on real property—but they are not the same.[6] The central distinction is that "special assessments must confer a specific benefit upon the land burdened by the assessment," while property taxes do not.[7]

Instead, property taxes may be imposed on properties throughout the local government to benefit the community at large.[8] In other words, property taxes may be levied to finance general government expenses, without regard to how the taxes benefit any particular property; however, with special assessments, there must be a connection between the assessed properties and the government expenses financed by the assessment revenue.[9]

Ad valorem property taxes are always levied in an amount based on property value.[10] When special assessments are levied based on value (at

4. *See* City of St. Petersburg, *Special Assessments*, http://www.stpete.org/billing_and_collections/special_assessments.php (last updated Mar. 15, 2015) (explaining why the City of St. Petersburg uses special assessments).

5. Answer Brief of Appellee at 24, Morris v. City of Cape Coral, 163 So. 3d 1174 (Fla. 2015) (No. SC14-350).

6. *Id.* (citing *City of Boca Raton*, 595 So. 2d at 29).

7. *Id.* (quoting *City of Boca Raton*, 595 So. 2d at 29).

8. *City of Boca Raton*, 595 So. 2d at 29 (explaining that unlike special assessments, property taxes "may be levied throughout the particular taxing unit for the general benefit of residents and property").

9. *Id.*

10. FLA. STAT. § 192.001(1) (2015) ("'Ad valorem tax' means a tax based upon the assessed value of property.").

least in part), they are sometimes challenged on the basis that they are, in substance, invalidly imposed property taxes.[11]

B. The Two-Prong Test for Valid Special Assessments Under Municipal Home Rule

The 1968 Florida constitutional amendments created broad municipal "home rule" powers, which were reiterated with the 1973 enactment of the Municipal Home Rule Powers Act.[12] The Municipal Home Rule Powers Act allows cities to exercise home rule authority for municipal purposes, as long as the power is not expressly prohibited by statute or the Florida Constitution.[13]

A special assessment is validly imposed under a city's home rule powers if it meets a two-prong test established by caselaw.[14] Under the "special benefit" prong, all of the assessed parcels must receive a special benefit from the improvements or services to be financed by the special

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11. St. Lucie Cnty.-Fort Pierce Fire Prevention & Control Dist. v. Higgs, 141 So. 2d 744 (Fla. 1962). *Higgs* was decided before the creation of the municipal home rule in the 1968 constitutional amendments. *Id.* Answer Brief of Appellee summarized *Higgs* as follows:

> In *Higgs*, the [county's] enabling law was unclear whether it authorized imposition of a tax or a special assessment, as the express language of the special law used both interchangeably. There, the county attempted to impose a "special assessment" under circumstances making it clear that it was designed to avoid the property tax exemption for homestead. The only component of the "special assessment" was property value. The county did not undertake any analysis whatsoever of how property value related to the benefits. Nor did the county make a legislative determination of fair apportionment. Since the county simply did not consider the issue, its decision to use property value was arbitrary.

Answer Brief of Appellee at 30, Morris v. City of Cape Coral, 163 So. 3d 1174 (Fla. 2015) (No. SC14-350) (citations omitted) (citing *Higgs*, 141 So. 2d at 744–46). Therefore, the "special assessment" was struck down as an invalidly imposed property tax. *Higgs*, 141 So. 2d at 746.

12. *City of Boca Raton*, 595 So. 2d at 27–28 (citing FLA. CONST. art. VIII, § 2(b); FLA. STAT. § 166.021 (1989)).

13. *Id.* at 28.

14. In addition to the home rule authority to impose special assessments, municipalities have authority to impose special assessments under Chapter 170, Florida Statutes. *Id.* at 29 (discussing special assessment enactment authority in Chapter 170). Chapter 170 does not preempt cities' home rule authority to impose special assessments under the two-prong common law test. *Id.* at 29–30. Indeed, Chapter 170 expressly states that it "'shall be construed as an *additional* and *alternative* method for the financing of the improvements referred to herein,'" and that it "'shall not repeal any other law relating to the subject matter hereof, but shall be deemed to provide a *supplemental, additional*, and *alternative* method of procedure for the *benefit* of all cities, towns, and municipal corporations of the state.'" *Id.* at 29 (emphasis added) (quoting FLA. STAT. §§ 170.19, 170.21 (1989)). Chapter 170 also provides: "*In addition* to other lawful authority to levy and collect special assessments, the governing body of a municipality may levy and collect special assessments to fund capital improvements and municipal services, including, but not limited to, fire protection . . . ." FLA. STAT. § 170.201(1) (2015) (emphasis added).

assessment revenues.[15] Under the "fair apportionment" prong, the cost of the improvements or services "'must be fairly and reasonably apportioned'" among the parcels receiving the special benefit.[16] The "special benefit" prong was not in dispute in *Morris v. City of Cape Coral*.[17] The property owners only argued that the special assessments failed the "fair apportionment" prong.[18]

The "fair apportionment" prong assesses whether the cost of the services or improvements funded by the assessment is distributed "fairly and reasonably" among the properties that stand to specifically benefit from the assessment.[19] The basis of apportionment a city chooses is immaterial and may vary by case.[20] "And though a court may recognize valid alternative methods of apportionment, so long as the legislative determination by the City is not arbitrary, a court should not substitute its judgment for that of the local legislative body."[21] The question is whether the amount assessed for each property is reasonably proportional to the benefit the property receives.[22]

C. Standard of Review

Apportionment of assessments is a "legislative function" of a city's governing body.[23] A city's legislative determinations of fair apportionment are presumptively valid, and courts must review them under a highly deferential standard.[24] A court cannot disturb a city's legislative determination unless it is arbitrary.[25]

In a validation proceeding, the city's legislative findings are, in and of themselves, "competent, substantial evidence sufficient to support the

15. Sarasota Cnty. v. Sarasota Church of Christ, Inc., 667 So. 2d 180, 183 (Fla. 1995).
16. *Morris*, 163 So. 3d at 1176 (Fla. 2015) (quoting *Sarasota Cnty.*, 667 So. 2d at 183).
17. *Id.* at 1178.
18. *Id.*
19. Answer Brief of Appellee at 24–25, Morris v. City of Cape Coral, 163 So. 3d 1174 (Fla. 2015) (No. SC14-350) (citing *City of Boca Raton*, 595 So. 2d at 29).
20. *City of Boca Raton*, 595 So. 2d at 31 (citing S. Trail Fire Control Dist. v. State, 273 So. 2d 380, 384 (Fla. 1973)). The "particular basis for apportioning a special assessment is a question of legislative expediency." Answer Brief of Appellee at 25 (citing *S. Trail Fire Control Dist.*, 273 So. 2d at 384).
21. City of Winter Springs v. State, 776 So. 2d 255, 259 (Fla. 2001).
22. *Id.*
23. *City of Boca Raton*, 595 So. 2d at 30.
24. *City of Winter Springs*, 776 So. 2d at 258, 259 (stating that a city's "legislative finding" is "entitled to a presumption of correctness"); Sarasota Cnty. v. Sarasota Church of Christ, Inc., 667 So. 2d 180, 184 (Fla. 1995).
25. *Sarasota Cnty.*, 667 So. 2d at 183–84.

final judgment."[26] Conflicting evidence that depends on the judgment of witnesses is not enough to disturb the city's legislative findings.[27] As in all bond validations, the court must consider the government's legislative determinations with a highly deferential standard of review.[28] The court cannot "substitute its judgment for that of the local legislative body."[29]

III. HOME RULE AND LOCAL GOVERNMENT FINANCING

A. Local Government Financing Under Previous Constitutions

Before the Municipal Home Rule Powers Act was enacted, municipalities were limited to those powers that were specifically delegated by the legislature.[30] Article VIII, Section 8 of the 1885 Florida Constitution provided that "the [l]egislature shall have power to establish, and to abolish, municipalities to provide for their government, to prescribe their jurisdiction and powers, and to alter or amend the same at any time."[31] Under this prior Florida Constitution, a municipality was powerless if the legislature did not grant the municipality the authority needed to act in a desired manner.[32] For example, a municipality was not able to raise revenue through the imposition of a tax unless the state legislature imposed such a tax or delegated the authority to do so directly to the municipality.[33] Article IX, Section 5 of the 1885 Florida Constitution provided that "[t]he [l]egislature shall authorize the several counties and incorporated cities or towns in the State to assess and impose taxes for county and municipal purposes, and for no other purposes."[34] This was the only way for the municipalities to raise revenue

26. Strand v. Escambia Cnty., 992 So. 2d 150, 156 (Fla. 2008); *see also* Rianhard v. Port of Palm Beach Dist., 186 So. 2d 503, 505 (Fla. 1966) (noting that admission of the supporting resolution authorizing bond issuance was sufficient evidence to support the bond validation judgment).

27. Rosche v. City of Hollywood, 55 So. 2d 909, 913 (Fla. 1952).

28. Panama City Beach Cmty. Redev. Agency v. State, 831 So. 2d 662, 665 (Fla. 2002); *accord* City of Parker v. State, 992 So. 2d 171, 178 (Fla. 2008) (noting that "'legislative determinations are entitled to a presumption of correctness'" in bond validations (quoting *Panama City Beach Cmty. Redev. Agency*, 831 So. 2d at 667)); *Panama City Beach Cmty. Redev.*, 831 So. 2d at 667 (explaining that in bond validations, the trial court reviews the government's "legislative findings to determine whether they [are] 'patently erroneous'" (quoting Boschen v. City of Clearwater, 777 So. 2d 958, 966 (Fla.2001))).

29. *City of Winter Springs*, 776 So. 2d at 259.

30. City of Boca Raton v. State, 595 So. 2d 25, 27 (Fla. 1992), *modified*, Collier Cnty. v. State, 733 So. 2d 1012 (Fla. 1999).

31. FLA. CONST. of 1885, art. VIII, § 8.

32. *See, e.g.*, Amos v. Mathews, 126 So. 308, 319–20 (Fla. 1930) ("If the [l]egislature has the power to levy the tax, it has the power to prescribe the use to be made of the revenue, so long as the use so prescribed is consistent with the Constitution.").

33. *Id.* at 318.

34. FLA. CONST. of 1885, art. IX, § 5.

under the prior Florida Constitution. However, as the population began to increase, municipalities needed more ways to raise revenue in order to maintain their stability.

In *City of Boca Raton*, the court recounted the history of municipal powers in Florida.[35] Under the 1885 Florida Constitution, the legislature had to delegate authority either in a general or special act in order to give power to municipalities.[36] The 1885 Florida Constitution further provided under Article VIII, Section 8, in part, that "[t]he [l]egislature shall have power to establish, and to abolish, municipalities to provide for their government, to prescribe their jurisdiction and powers, and to alter or amend the same at any time."[37]

Under the 1885 Florida Constitution, powers not expressly granted under the constitution to municipalities were deemed to be a reservation of authority to the legislature, called "Dillon's Rule,"[38] as expressed in John F. Dillon's *The Law of Municipal Corporations*.[39] In accordance with the 1885 Constitution, Florida courts routinely followed Dillon's Rule.[40]

B. Local Government Financing Under the Current Constitution

When the Florida Constitution was revised in 1968, municipalities, charter counties, and non-charter counties were all granted home rule powers.[41] The effect of this new provision was in essence to reverse the way municipalities derived their powers. Talbot D'Alemberte, the reporter for the Constitutional Revision Commission, explained: "The apparent difference is that under the new language, all municipalities have governmental, corporate and proprietary powers unless provided

35. *City of Boca Raton*, 595 So. 2d at 27.

36. *Id.*

37. FLA. CONST. of 1885, art. VIII, § 8.

38. *City of Boca Raton*, 595 So. 2d at 27.

39. JOHN F. DILLON, THE LAW OF MUNICIPAL CORPORATIONS § 55 (1872).

40. *City of Boca Raton*, 595 So. 2d at 27; *see, e.g.*, Williams v. Town of Dunnellon, 169 So. 631, 637 (Fla. 1936) (reasoning, "[w]hen power is granted by law to counties, districts, or municipalities, the exercise of the power must be in accord with the grant; and any doubt as to the grant or to the extent of a power so granted, should be resolved against the county, district, or municipality asserting the power"); Heriot v. City of Pensacola, 146 So. 654, 656 (Fla. 1933) (explaining that there is a universally recognized rule that powers granted to municipalities must be strictly construed, with ambiguities resolved against the municipality); Amos v. Mathews, 126 So. 308, 336 (Fla. 1930) (explaining that any inherent right of local self-government is still limited by legislative control); Malone v. City of Quincy, 62 So. 922, 924 (Fla. 1913) (stating, "[i]f reasonable doubt exists as to a particular power of a municipality, it should be resolved against the city").

41. FLA. CONST. art. VIII, §§ 1(f), 1(g), 2(b). *See City of Boca Raton*, 595 So. 2d at 27 (explaining that "[a]s Florida's population began to boom after World War II, the legislature was flooded with local bills and population acts designed to permit municipalities to provide solutions to local problems," which resulted in the 1968 Florida Constitution's grant of home rule powers to municipalities).

otherwise by law, whereas under the 1885 Constitution, municipalities had only those powers expressly granted by law."[42]

One of the major changes to accompany this new grant of home rule powers was the constitutional authority given directly to the municipalities to impose ad valorem taxes. Under the current Constitution, Article VII, Section 1(a) provides: "No tax shall be levied except in pursuance of law. No state ad valorem taxes shall be levied upon real estate or tangible personal property. All other forms of taxation shall be preempted to the state except as provided by general law."[43]

In line with this, the current Constitution also expressly gives municipalities the authority to impose ad valorem taxes without the delegation of such power from the legislature. Article VII, Section 9(a) provides: "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."[44]

With the enactment of the Municipal Home Rule Powers Act, and the revisions to the Constitution made in 1968, municipalities are no longer dependent upon the legislature for authorization to take action, so long as such action is exercised for a valid municipal purpose.[45] While levying an ad valorem tax is one way a municipality is now able to exercise its power, imposing a special assessment is also a home rule power municipalities enjoy—as long as the property assessed receives a special benefit, and the assessment is "fairly and reasonably apportioned among the properties that receive the special benefit."[46] Despite this increase in power, ad valorem taxation remains within the sole province of the legislature.[47]

42. *City of Boca Raton*, 595 So. 2d at 27 (quoting FLA. STAT. ANN., CONST. art. 8, § 2, cmt. (b) (West 1970)).
43. FLA. CONST. art. VII, § 1(a).
44. *Id.* art. VII, § 9.
45. *City of Boca Raton*, 595 So. 2d at 28.
46. *Id.* at 29.
47. *Id.*

IV. POLICY CONCERNS WITH LOCAL GOVERNMENT FINANCE

A. Tension Between Home Rule and the Constitutional Limitation on Revenue Flexibility

Prior to the 1968 revision to the Florida Constitution, if the legislature did not expressly grant powers to a local government, the legislature, and not the local government, was considered to retain such powers.[48] With the adoption of Article VIII, the parameters of the home rule were laid out—subsection 1(f), 1(g), and 2(b) set forth the parameters of home rule for non-charter counties,[49] the parameters for charter counties,[50] and for municipalities, respectively.[51]

The *City of Boca Raton* case dealt with two issues, both of which were in play in Cape Coral's imposition of its special assessment. The first issue was whether the special assessment was a tax that the city could not impose because of the language of Article VII, Section (1)(a), Florida Constitution.[52] The second issue was whether through the enactment of Chapter 170, Florida Statutes, the legislature had preempted the authority to impose special assessments under any other circumstances, and thus fell within the exception in Article VIII, Section (2)(b),[53] which states that municipalities "may exercise any power for municipal purposes except as otherwise provided by law."[54]

In its determination that the special assessment proposed by Boca Raton was not a tax prohibited by Article VII, Section 1(a) of the Florida Constitution, the court looked to its 1930 decision in *Klemm v. Davenport*,[55] which stated:

> 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

48. *Id.* at 27.
49. FLA. CONST. art. VIII, § 1(f).
50. *Id.* art. VIII, § 1(g).
51. *Id.* art. VIII, § 2(b).
52. *City of Boca Raton*, 595 So. 2d at 26.
53. *Id.* at 29.
54. FLA. CONST. art. VII, § 2(b).
55. 129 So. 904 (Fla. 1930).

> benefited, is not governed by uniformity[,] and may be determined legislatively or judicially.
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> . . .
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> [I]t seems settled law in this country that an ad valorem tax and special assessment though cognate in immaterial respects are inherently different in their controlling aspects.[56]

In a discussion on the reallocation of constitutional power to local governments, the "severest limitation" is identified as the tax limitation in Article VII, Section 1(a), which "preempts all forms of tax except ad valorem taxation to the state," and the additional prohibition that no tax can be levied unless otherwise provided by law.[57] Therefore, Article VII hinders the home rule fiscally, limiting local government's constitutional power.[58]

In addition to the constitutional preemption in Article VII, Section (1)(a), the 1968 Constitution expanded the limiting language on millage caps from levies for school purposes to limitations to counties and municipalities.[59] The 1965 Constitution Revision Commission's recommendations did not include the city and county millage caps, which were added by the legislature, and later approved by the electorate.[60]

Further, the legislature retains the Article VIII limitations on home rule for counties operating under a charter in Subsection (1)(g)—counties "shall have all powers of local self-government not inconsistent with general law, or with special law approved by vote of the electors."[61] Thus, enabled by Article VII, Section (3)(a), the legislature can pass laws that affect the ad valorem tax base, such as expansions of real property classifications or exemptions from taxation.[62]

In 1992, the electorate approved an amendment through the initiative process authorized by Article XI, Section 3 to limit increases in assessed value (and therefore limit annual property tax increases) for

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56. *City of Boca Raton*, 595 So. 2d at 29 (quoting Klemm v. Davenport, 129 So. 904, 907–08 (Fla. 1930)).

57. Joni Armstrong Coffey, *The Case for Fiscal Home Rule*, 71 FLA. B.J., Apr. 1997, at 54, 55 (citing FLA. CONST. art. VII, § 1(a)).

58. *Id.*

59. Pamela M. Dubov, Comment, *Circumventing the Florida Constitution: Property Taxes and Special Assessments, Today's Illusory Distinction*, 30 STETSON L. REV. 1469, 1473 (2001).

60. *Id.*

61. FLA. CONST. art. VIII, § 1(g).

62. *Id.* art. VII, § 3.

homestead property with the Save Our Homes cap.[63] The legislature expanded the Save Our Homes cap to include commercial property, and to provide for "portability" of the cap for homestead property owners.[64] Against this backdrop, the City of Cape Coral ("the City") faced a steady erosion of its tax base and then a dramatic drop with the real estate market collapse in 2007–2008.[65] Like many other cities and counties, Cape Coral turned to special assessments for relief.[66]

The Summary of Reported Municipal Special Assessment Revenues, in June 2015, by the Office of Economic and Demographic Research of the Florida Department of Financial Services shows the extent that cities utilized these revenues. Between 2004 and 2013, the combined total of special assessment revenues for all cities rose from $179,903,627 to $375,627,920.[67] Similarly for counties, the combined revenues changed from 1993 through 2013 from $205,188,406 to $500,315,404.[68]

Even the legislature dealt with the problem of "fiscally constrained counties." On August 6, 2015, the Revenue Estimating Conference updated its estimated distributions in twenty-nine counties "to offset the reductions in ad valorem tax revenue resulting from two constitutional amendments approved in 2008," Amendment 1 and Conservation Lands.[69] For 2014–2015, the combined distribution was 22,752,630.[70]

Because special assessments may be collected by the ad valorem tax method,[71] the distinctions between the two can be blurred to taxpayers. They may appear on the same tax bill and be collected in the same manner.[72] Although it is permitted to spend the general ad valorem levy

63. Alan Johansen, *The Most Hated Tax: An Examination of Events in Florida That Precipitated the Major Property Tax Changes of 2007*, QUALITY CITIES, July/Aug. 2012, at 60, 61.

64. FLA. CONST. art. VII, § 4(d)(8), (g), (h).

65. Answer Brief of Appellee at 1–2, Morris v. City of Cape Coral, 163 So. 3d 1174 (Fla. 2015) (No. SC14-350).

66. *See id.* at 2–9 (discussing the City's considerations and implementations of various fire assessments and special assessments to combat the erosion of the City's tax base).

67. Fla. Dep't of Fin. Servs., *Summary of Reported Municipal Special Assessment Revenues: Local Fiscal Years Ended September 30, 1993–2013*, OFFICE OF ECON. & DEMOGRAPHIC RESEARCH Excel spreadsheet N415, AR415 (June 8, 2015), http://edr.state.fl.us/Content/local-government/data/government/data/data-a-to-z/specassessmu.xls (go to http://edr.state.fl.us/Content/local-government/data/data-a-to-z/s-z.cfm and click "Municipal Revenues: LFY 1993–2013").

68. *Id.*

69. *Revenue Estimating Conference: Fiscally Constrained Counties, Executive Summary*, OFFICE OF ECON. & DEMOGRAPHIC RESEARCH (Aug. 6, 2015), http://edr.state.fl.us/content/conferences/advalorem/FiscallyConstrainedCountiesSummary.pdf.

70. *Id.*

71. FLA. STAT. § 197.363(2) (2015).

72. *Id.*

for the same purposes as a special assessment, the base may not be the same.[73] While both are mandatory for tax payers, they are distinct.[74]

In a class action by religious organizations challenging Sarasota County's stormwater assessment, the Supreme Court of Florida reiterated the distinction between a special assessment and an ad valorem tax:[75]

> 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.[76]

Thus, churches, which are exempt from ad valorem taxes, may be subject to special assessments.[77] *Sarasota County* made the distinction between developed and undeveloped property, as well as between residential and non-residential, but not between exempt and non-exempt.[78] In fact, the court found that

> [t]o require that the stormwater utility services be funded through a general ad valorem tax, as requested by the religious organizations who filed this action, would shift part of the cost of managing the stormwater drainage problems, which are created by developed real property, to undeveloped property owners who neither significantly contributed to nor caused the stormwater drainage problems.[79]

The court also took the opportunity to clarify the appropriate standard of review.[80] Previous cases held that the legislative determination of benefits and apportionment "should be upheld unless

73. *See* Sarasota Cnty. v. Sarasota Church of Christ Inc., 667 So. 2d 180, 183 (Fla. 1995) (explaining that property must derive a special benefit from the services provided for by special assessments, but not for services provided for by taxes).

74. *Id.* (referring to City of Boca Raton v. State, 595 So. 2d 25, 29 (Fla. 1992), *modified*, Collier Cnty. v. State, 733 So. 2d 1012 (Fla. 1999)).

75. *Id.* at 182–83.

76. *Id.* at 183 (internal citation omitted) (quoting *City of Boca Raton*, 595 So. 2d at 29).

77. *Id.* at 182.

78. *Id.* at 182, 186.

79. *Id.* at 182.

80. *Id.* at 183–84.

the determination is 'palpably arbitrary or grossly unequal and confiscatory,'"[81] or upheld "'if reasonable people may differ.'"[82] Going forward, the court clarified that it would uphold the legislative determination regarding special benefits and apportionment unless the determination is arbitrary.[83]

Similarly, classes of real property interests that are not subject to ad valorem taxation may be subject to special assessments. In *Quietwater Entertainment*,[84] leasehold owners were not subject to ad valorem taxation by Escambia County, which owned the property in fee simple and imposed special assessments for law enforcement and mosquito control services.[85] The County's legislative findings regarded the leaseholds to be "uniquely classified real property interests" and concluded the assessed services did provide a benefit to residential and commercial leaseholds.[86] In applying the standard and analyzing the benefits, giving deference to the taxing authority's legislative determination, the court found that the leaseholds required specialized law enforcement services to protect the leasehold properties' values because the leaseholds were on an island with unique tourist control, and that the leaseholds required mosquito control services to enhance the island's habitation and the leaseholds' values because the island was subject to mosquito infestation.[87]

In making its determination on the proper apportionment in *Cape Coral*—i.e., assessments on fire protection and solid waste disposal—the Supreme Court of Florida relied on *Lake County v. Water Oak Management Corp.*[88] In *Water Oak Management*, the court stated that its decision would not "result in a never-ending flood of assessments."[89] The court explained that special assessments cannot be imposed on certain services required to maintain an organized society (e.g., services for law enforcement, the courts, and health care) because those services do not provide a benefit to the real property.[90] When the service does provide a direct benefit to

81. *Id.* at 184 (quoting S. Trail Fire Control Dist. v. State, 273 So. 2d 380, 383 (Fla. 1973) (internal citation omitted)).

82. *Id.* (referring to City of Boca Raton v. State, 595 So. 2d 25, 30 (Fla. 1992) ("if reasonable persons may differ"), *modified*, Collier Cnty. v. State, 733 So. 2d 1012 (Fla. 1999), and *S. Trail Fire Control Dist.*, 273 So. 2d at 384 ("if reasonable men may differ")).

83. *Sarasota Cnty.*, 667 So. 2d at 184.

84. Quietwater Entm't, Inc. v. Escambia Cnty., 890 So. 2d 525 (Fla. 1st Dist. Ct. App. 2005).

85. *Id.* at 526–27.

86. *Id.* at 526 (internal quotations omitted).

87. *Id.* at 527.

88. 695 So. 2d 667 (Fla. 1997); *see* Morris v. City of Cape Coral, 163 So. 3d 1174, 1178 (Fla. 2015) (stating that "the facts of the present case lie squarely within the facts of *Water Oak* [*Management*]").

89. *Water Oak Mgmt.*, 695 So. 2d at 670.

90. *Id.*

the real property, like fire protection services, special assessments may be imposed.[91]

In his dissenting opinion in *Water Oak Management*, Justice Wells wrote:

> Consistent with my separate dissenting opinions first in *Sarasota County v. Sarasota Church of Christ* . . . and then in *Harris v. Wilson* . . . and *State v. Sarasota County* . . . , I cannot concur with the majority's conversion of this state's local-government tax base to a general-assessment tax base, thereby demolishing constitutional provisions for ad valorem tax caps, homestead exemptions, and bonding referendums. The majority's path of demolition began in *Sarasota Church of Christ*, when it eliminated "special" from "special assessment." Today, the court broadens the path further. Most alarmingly the majority changes the test for determining what is a special assessment.[92]

B. Use of the Property Appraiser's Database as a Cost-Efficient Resource for Cash-Strapped Governments

A property appraiser's primary constitutional responsibility is to determine the value of each parcel in the county for ad valorem tax purposes.[93] This data must be created and maintained under Section 193.011, Florida Statutes, which prescribes the "[f]actors to consider in deriving just valuation."[94] The value attributed to each parcel may be derived from any one of several valuation approaches, or a combination of approaches, all of which are based on mass-appraisal techniques.[95] The property appraiser maintains electronic databases containing dozens of data points for each parcel—ownership information, land characteristics, status as improved or unimproved, improvement values, and extra feature values, among others.[96] The database is updated on a rolling basis and is available as a public record to any person or entity, including cities.[97]

By using information from that database to develop an apportionment system and resulting assessment roll (the list of all

91. *Id.*

92. *Id.* (referring to Harris v. Wilson, 693 So. 2d 945 (Fla. 1997); State v. Sarasota Cnty., 693 So. 2d 546 (Fla. 1997); Sarasota Cnty. v. Sarasota Church of Christ, Inc., 667 So. 2d 180 (Fla. 1995)).

93. *See* FLA. CONST. art. VII, § 4 (providing the requirement for "just valuation of all property for ad valorem taxation").

94. FLA. STAT. § 193.011 (2015).

95. *See id.* § 193.114(2) (listing the statutory requirements for a real property assessment).

96. *Id.* § 193.114(2), (6).

97. *Id.* § 193.114(4)–(5).

properties subject to the assessment and the amount imposed against each), a city avoids duplication of efforts and the costs associated with preparing or commissioning the apportionment metrics on its own. The voluminous database is prepared by the property appraiser during the course of his or her constitutional responsibilities, and can be accessed by a city at no additional cost to the property appraiser or the public, who ultimately pays for the data's creation and maintenance.[98] In other words, because the property appraiser already compiles a database that includes valuable and detailed information about all property within any one city, it makes the most economic sense for cities to leverage that database instead of creating a new one for calculating special assessments.

By statute, county property appraisers must prepare annual property assessment rolls that identify and value all real property in their respective counties and provide other information about the parcels and their improvements. [99] The assessment rolls must then be submitted to the Florida Department of Revenue (FDOR) to verify that the rolls comply with the statutory requirements.[100] The geographical information system (GIS) data used in preparing the assessment rolls, and the metadata for all GIS data layers (such as municipal boundaries, taxing district boundaries, and market area), must be included in the submission to the FDOR.[101]

As the FDOR explains, "[d]eveloping and maintaining metadata represents responsible stewardship of the investment Florida property appraisers have made in their [GIS]."[102] Because this information must already be prepared each year by the property appraisers at the taxpayers' expense, its efficient use by local governments (which may readily obtain the information) also evidences good stewardship of their assets. Costly annual updates to assessment rolls are unnecessary when adequate, reliable information is available from the property appraisers to support the special assessment test's "fair apportionment" prong. The increasingly sophisticated and specific information available from the property appraisers (such as as-built permit data) is already used by the

98. *Id.* § 193.114(5).

99. *Id.* §§ 192.011, 193.085, 193.114.

100. *Id.* § 193.1142.

101. Fla. Dep't of Revenue, *2015 Assessment Roll Edit Guide for Parcel-Level Geographical Information System (GIS) Information*, FLA. DEP'T REVENUE 8 (Mar. 1, 2015), *available at* http://dor.myflorida.com/dor/property/gis/pdf/giseditguide0215.pdf. "'A metadata record is a file of information, usually presented as an XML document, which captures the basic characteristics of a data or information resource.'" *Id.* (quoting *Geospatial Metadata: What Are Metadata?*, FED. GEOGRAPHIC DATA COMM., https://www.fgdc.gov/metadata (last visited Apr. 21, 2016)).

102. *Data Downloads: Metadata Example*, FLA. DEP'T REVENUE, http://dor.myflorida.com/dor/property/gis/ (last visited Apr. 21, 2016).

property insurance industry to price coverage. Local governments may also use this information, as appropriate, to more precisely allocate special assessments among the specially benefited properties.

V. THE MORRIS V. CITY OF CAPE CORAL *BOND VALIDATION*

A. The Problem in *Morris* and the City's Response

Like many Florida cities, Cape Coral historically relied on ad valorem property taxes as its main revenue source.[103] However, Cape Coral has a very large residential tax base and a very small commercial tax base.[104] When the real estate market crashed in 2007,[105] Cape Coral could not fund its most basic services because residential property values plummeted, dragging ad valorem tax revenue down with them. Because the Florida Constitution limits tax increases on residential property,[106] Cape Coral could not right the sinking ship with ad valorem taxes alone.

By 2012, Cape Coral determined that its general fund would be depleted by 2016 if no action was taken.[107] To plug holes in Cape Coral's budget and to continue providing basic services, like fire service, Cape Coral turned to its Home Rule Powers in Article VIII, Section 2(b) of the Florida Constitution[108] and crafted a fire service special assessment ("fire assessments"). Fire service was chosen because the city determined that this area of the budget was particularly unstable and, if funded by the

103. *See* Johansen, *supra* note 63, at 60 (noting that property taxes often account for over seventy-five percent of a county's revenue).

104. *See CM's Message*, ON THE MOVE (City Hall, Cape Coral, Fl.), Fall 2005, at 3, *available at* http://www.capecoral.net/government/publications/community_newsletter/docs/Fall2005.pdf (stating that "[a]lmost [sixty] percent of [Cape Coral's] General Fund dollars come from property taxes, and [ninety-two] percent of those property taxes come from [Cape Coral's] residential tax base").

105. *See* Todd J. Zywicki & Gabriel Okloski, *The Housing Market Crash* (Mercatus Center at George Mason University, Working Paper No. 09-35, 2009), *available at* http://mercatus.org/sites/default/files/publication/WP0935_Housing_Market_Crash.pdf (explaining that beginning in 2007 and continuing into 2008, "[w]idespread foreclosures and a collapse in home prices in many areas of the [United States] spawned an ongoing global financial crisis"). House prices rose sixty-four percent in the four years prior to 2006 and then plunged thirty percent in the subsequent four years. Byron F. Lutz, Raven Molloy & Hui Shan, *The Housing Crisis and State and Local Government Tax Revenue: Five Channels* (FEDS, Working Paper No. 2010-49, 2011), *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1895664. Existing home sales rose thirty-four percent in the four years prior to 2005 then fell thirty-six percent in the four subsequent years. *Id.* The number of new houses rose twenty-four percent prior to their peak and then fell seventy-five percent. *Id.*

106. FLA. CONST. art. VII, § 4(d)(1).

107. Answer Brief of Appellee at 3, Morris v. City of Cape Coral, 163 So. 3d 1174 (Fla. 2015) (No. SC14-350).

108. FLA. CONST. art. VIII, § 2(b).

assessment, the strain on the general fund would be lessened to a great degree, enabling Cape Coral to continue to be solvent past 2016.[109]

At a public meeting in April 2013, Cape Coral authorized the city manager to engage Burton & Associates (Burton), a consulting firm specializing in local government and special assessments,[110] to help create the fire assessments.[111]

B. The Methodology Used by the Consultant Compared to the Traditional Model

Historically, the only way to apportion fire assessments was the demand method, also known as the "calls for service" method.[112] The method allocates the cost of serving different categories of properties based upon the past service use of those property categories, as measured by call data.[113] For example, if sixty percent of the historic fire rescue calls went to residential properties during the call study period, then sixty percent of the costs to be recovered through the assessment are imposed against residential property (often with all residential properties, regardless of size, location, or physical characteristics, paying the same amount). The remaining costs are allocated among the non-residential properties according to the properties, such as commercial, industrial, and institutional properties, according to the square footage.[114] Again, rates are based on the percentage of calls going to those property categories during the call study period.[115] Although some local governments have slightly modified the demand method, apportioning costs based on historic calls for service remained the sole method of apportionment for fire assessments for many years.[116] Florida courts have upheld the demand method as a valid means of apportionment for special assessments.[117]

In contrast to the demand method, Burton developed an apportionment system for Cape Coral based on "availability" or

109. Answer Brief of Appellee at 3–4.

110. Burton & Assocs., *Home*, BURTON & ASSOCIATES, http://www.burtonandassociates.com/ (last visited Apr. 12, 2016).

111. Morris v. City of Cape Coral, 163 So. 3d 1174, 1175 (Fla. 2015).

112. Chris Roe, *Florida Supreme Court Upholds Fire Services Funding Source*, 23 FLA. FIRE SVC., no. 7, July 2015, at 34, *available at* http://www.wmfr.org/wp-content/uploads/2015/07/ATT-July-16-2015-Assessment-Study.pdf.

113. *Id.*

114. *Id.*

115. *Id.*

116. *Id.*

117. Desiderio Corp. v. City of Boynton Beach, 39 So. 3d 487, 500 (Fla. 4th Dist. Ct. App. 2010).

"readiness-to-serve."[118] The availability method does not focus on the fire department's actual cost of responding to incidents.[119] Rather, this method acknowledges that there are substantial and measurable costs incurred annually from simply "maintaining a state of continual readiness, regardless of the number or nature of calls received."[120] These costs are fixed because they are typically consistent each year (other than inflation or periodic infrastructure and equipment expenses) and are unrelated to the physical characteristics of each property.[121] Every parcel, developed and undeveloped, benefits from that availability alone. This is evident in favorable property insurance rates stemming from an adequately staffed and well-funded fire department, and by the increased use and enjoyment of the property stemming from the knowledge that assistance remains available at a moment's notice.[122]

Burton concluded that the assessment should be imposed on all parcels in the city because they all receive a special benefit from the constant availability of the city's fire protection services, even in the absence of an actual call for service.[123] Burton reasoned that (1) the fire department stands constantly available and ready to respond to fires city-wide, and (2) it stands at the same response readiness level city-wide because fire stations are positioned around the city, thus (3) allowing an immediate response to fire and ability to provide medical aid, and (4) granting increased use and enjoyment of the property.[124] Burton emphasized that the access to on-call fire protection services benefits property independent of a need of actual service.[125] Burton further reasoned that some properties benefit more than others when it comes to certain aspects of availability and the actual use of the services—the improved properties.[126] These properties benefit linearly to the extent that they are improved, as measured by the value of improvements associated with each parcel.

Based on these conclusions, Burton created a two-tiered assessment that responded to those observations.[127] The first tier funds the fixed cost

118. Morris v. City of Cape Coral, 163 So. 3d 1174, 1179 (Fla. 2015).
119. Roe, *supra* note 112, at 34.
120. *Id.*
121. *Id.*
122. *Id.*
123. *Morris*, 163 So. 3d at 1175.
124. *Id.* at 1178; Answer Brief of Appellee at 4–5, Morris v. City of Cape Coral, 163 So. 3d 1174 (Fla. 2015) (No. SC14-350).
125. *Morris*, 163 So. 3d. at 1178.
126. *Id.* at 1179.
127. *Id.* at 1175.

of keeping the fire department ready to respond to calls for service[128] by calculating the cost of remaining ready and dividing it among the total number of properties in the city.[129] The second tier funds the variable costs associated with availability and with responding to calls for service by using the value of the improvements, as derived by the county property appraiser, as a metric for apportioning variable costs among the improved properties. [130]

C. The Adoption of the Special Assessment

Burton presented its preliminary findings at a public workshop, followed by a presentation of its final report at the City's public meeting on June 10, 2013.[131] At the June 10 meeting, the City also approved a proposed ordinance permitting the City to impose special assessments by resolution under its home rule powers.[132] This ordinance was considered a second time, and passed in July, while the special assessment resolutions were passed in August.[133]

D. Utilization of the Method by Other Cities

Brooksville, a city in Hernando County, became the first city to adopt the "availability," or "readiness," apportionment method for fire assessments.[134] Since Brooksville's adoption in 2012, Springfield, St. Petersburg, Haines City, Cocoa, Stuart, and North Port have all adopted fire assessments based on the availability premise.[135] Some cites made minor modifications to the approach in order to best address local needs and circumstances, which is within their home rule prerogative so long as the methodology remains "fair and reasonable," as determined by the local governing body.[136] Several of those assessment programs were validated in accordance with the procedure set forth in Chapter 75 of the Florida Statutes, without appeal.[137]

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128. *Id.* at 1179.
129. Answer Brief of Appellee at 6–7.
130. *Id.* at 6–8.
131. *Morris*, 163 So. 3d at 1175; Answer Brief of Appellee at 4.
132. *Morris*, 163 So. 3d. at 1176–77.
133. *Id.* at 1176.
134. Roe, *supra* note 112, at 34.
135. *Id.* at 35.
136. *Morris*, 163 So. 3d. at 1176.
137. *E.g.*, SPRINGFIELD, FLA., RES. NO. 15-07 § 5 (2015), *available at* http://springfield.fl.gov/Resolution%2015-07%20Annual%20Assessment%20Resolution%20Fire%20FY%202016.pdf (stating that the apportionment methods for the city of Springfield, Florida "have previously been judicially validated as for proper, legal and paramount public purposes and fully authorized by law

E. The Bond Validation Trial

Because of the deteriorated condition of Cape Coral's fire department, the City could not postpone buying vehicles, facilities, and other fire protection equipment.[138] The City determined that the best solution to this problem was to issue a bond secured by the fire assessments.[139] The City filed a complaint pursuant to Chapter 75, Florida Statutes, on August 28, 2013, seeking validation of its authority to issue the bond and pledge the fire assessments for repayment.[140]

Over the course of a four-day trial, the validation hearing was contested by various property owners who were opposed to the assessments.[141] At the end of the proceeding, the trial court determined that the fire assessments were validly imposed under the City's home rule authority and could lawfully be pledged to repayment of the contemplated bond issuance.[142]

VI. THE APPEAL: MORRIS V. CITY OF CAPE CORAL

After the bond validation hearing, several of the contesting property owners filed a direct appeal to the Florida Supreme Court, pursuant to Chapter 75, Florida Statutes.[143] After the briefing and oral argument, the court upheld Cape Coral's special assessment, thereby reaffirming the *City of Boca Raton* test,[144] and, notably, paid no attention to whether the assessment contained a value component.[145]

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by the Circuit Court of the Fourteenth Judicial District of the State of Florida in and for Bay County").

138. Answer Brief of Appellee at 10, Morris v. City of Cape Coral, 163 So. 3d 1174 (Fla. 2015) (No. SC14-350).

139. *Id.*

140. *Morris*, 163 So. 3d at 1176.

141. *Id.*

142. *Id.*

143. *Id.*; FLA. STAT. § 75.08 (2015).

144. *See* City of Boca Raton v. State, 595 So. 2d 25, 29 (Fla. 1992) ("There are two requirements for the imposition of a valid special assessment. First, the property assessed must derive a special benefit from the service provided. Second, the assessment must be fairly and reasonably apportioned among the properties that receive the special benefit." (internal citations omitted)), *modified*, Collier Cnty. v. State, 733 So. 2d 1012 (Fla. 1999); *see also supra* Part II(B) (discussing the two-prong test for valid special assessments).

145. *Morris*, 163 So. 3d at 1180.

A. Arguments of the Parties

1. The Property Owners' Initial Brief

The property owners' initial brief challenged five aspects of the trial court's judgment.[146] The brief argued that: (1) "[t]he trial court committed reversible error by including findings of fact in the final judgment which [were] not supported by substantial competent evidence";[147] (2) "[t]he trial court's finding that City Council complied with procedural due process [was] not supported by substantial competent evidence and [was] reversible error";[148] (3) "[t]he trial court committed reversible error by its denial of the property owners' *ore tenus* motion for continuance";[149] (4) "[t]here [was] no substantial competent evidence to support the finding by City Council and the trial court that tier 1 of the fire assessment complie[d] with the requirements of Florida Statute, [Section] 170.201";[150] and (5) "[t]here [was] no substantial competent evidence to support the finding by City Council and the trial court that tier 2 of the fire assessment complie[d] with the requirements of Florida Statute[, Section] 170.201."[151]

Points (4) and (5), through their development in the rest of the briefs and at oral argument, became the focus of the appeal. Specifically, in point (4), the property owners argued that tier 1 was arbitrary; and, in point (5)—that tier 2 was tantamount to an ad valorem tax.[152] While the tiers were often considered separately in the proceedings, especially by the property owners, the tiers are component parts of one special assessment.

In the initial brief, the property owners did not address the special assessment under the City's home rule powers. Instead, the plaintiffs conducted their analysis under the statutory grant of power from Chapter 170, Florida Statutes.[153] The City's ability to rely upon home rule authority instead of Chapter 170 became a focal point of the answer brief and the amicus briefs. However, in the end, it did not matter as much as the underlying question of whether the assessment was valid.

146. Appellants' Initial Brief at i–ii, Morris v. City of Cape Coral, 163 So. 3d 1174 (Fla. 2015) (No. SC14-350).
147. *Id.* at 9–16.
148. *Id.* at 17–23.
149. *Id.* at 24–28.
150. *Id.* at 29–34.
151. *Id.* at 35–41.
152. *Id.* at 32, 36.
153. *Id.* at 29, 35, 39.

a. Tier 1

The property owners argued that because large and small lots must pay the same amount of money under tier 1, the small lots subsidize the large lots.[154] The logic behind this assertion is that it costs more to fight a fire on a larger lot than on a smaller one (the fire chief reiterated this point during the bond validation hearing).[155] However, such reasoning shows a misunderstanding of tier 1. Tier 1 is not the variable cost of fighting the fire; it is the fixed cost of maintaining availability to fight fires.[156] Fixed costs are incurred even in the absence of calls for service, generally do not vary from year to year (other than to adjust for inflation), and are not determined by parcel-specific characteristics, such as lot size.[157] Nevertheless, the property owners argued that this result was unfair and, as a result, arbitrary.[158] However, unfair and arbitrary are not synonymous. Even if the system was determined to be unfair, that would not necessarily make the system arbitrary. Arbitrary is a measure of the enactment procedure of the assessment or the reasonableness of the assessment.[159] The property owners provided no argument to the first point, and because their argument regarding the second point misunderstood the mechanics of the special assessment, the property owners provided no argument to the second point.

b. Tier 2

Next, the property owners argued that because the second tier was based on value, it was not a special assessment, but rather an invalid ad valorem tax.[160] They anticipated the City's response by way of the *City of Boca Raton* case, which upheld a special assessment that used value as a component,[161] but did not adequately provide a counter argument. The only argument provided was that because the assessment in *City of Boca*

154. *Id.* at 30.
155. *Id.*
156. Morris v. City of Cape Coral, 163 So. 3d 1174, 1179 (Fla. 2015).
157. Answer Brief of Appellee at 15, Morris v. City of Cape Coral, 163 So. 3d 1174 (Fla. 2015) (No. SC14-350).
158. Appellants' Initial Brief at 29–34, Morris v. City of Cape Coral, 163 So. 3d 1174 (Fla. 2015) (No. SC14-350).
159. BLACK'S LAW DICTIONARY (Bryan A. Garner ed., 10th ed. 2014); MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY (11th ed. 2003).
160. Appellants' Initial Brief at 39.
161. City of Boca Raton v. State, 595 So. 2d 25, 25 (Fla. 1992), *modified*, Collier Cnty. v. State, 733 So. 2d 1012 (Fla. 1999).

Raton was not a fire assessment, that case could not be applied in the instant case.[162]

In short, the initial brief did not successfully attack the special assessment, but it did lay the groundwork for evaluating its validity.

2. Cape Coral's Answer Brief

The initial argument of the answer brief was that because the property owners did not raise the home rule in their initial brief, they had waived that argument on appeal.[163] Nevertheless, the answer brief went on to provide arguments for why the property owners were mistaken in their analysis, even if they had not waived the home rule.[164] The latter part of the brief focused on the principal issue of defending tier 1 and 2 from the claims of the property owners.[165]

a. Tier 1

In response to the claim that tier 1 was arbitrary, Cape Coral's brief pointed out that tier 1 covered only the department's fixed costs, which the initial brief did not address. In fact, the brief addressed only variable costs, which were not covered by tier 1.[166] Cape Coral also pointed out that review on the issue was limited not to whether a better system could possibly be designed, but whether the City had acted arbitrarily.[167] Further, the structure of the assessment was settled on only after "extensive data, [analyses], reports[,] and presentations by staff and consultants, all of which were uncontroverted."[168] Specifically, the City retained the consulting firm of Burton & Associates to perform an assessment study.[169] The brief argued that because the method was reasonable, and because Cape Coral put significant time into the development of the method, the methodology was not arbitrary.[170]

162. Appellants' Initial Brief at 40.
163. Answer Brief of Appellee at 19, Morris v. City of Cape Coral, 163 So. 3d 1174 (Fla. 2015) (No. SC14-350).
164. *Id.* at 23–32.
165. *Id.* at 26–32.
166. *Id.* at 6.
167. *Id.* at 21, 25.
168. *Id.* at 27.
169. *Id.* at 3–4.
170. *Id.* at 15.

b. Tier 2

In response to the claim that tier 2 is a tax, Cape Coral first pointed out that tier 2 does not stand alone.[171] It is not a pure value-based assessment because it is joined with tier 1 to make one assessment that has both a value component and a non-value component. Cape Coral pointed to the distinction between taxes and special assessments.[172] "'[S]pecial assessments must confer a specific benefit upon the land burdened by the assessment . . . .'"[173] Taxes do not.[174] Further, the value is not an invalid manner of apportionment.[175]

Cape Coral argued that the only question was "whether the allocation [was] reasonably proportional to the benefit the property receive[d]."[176] To that end, Cape Coral argued that access to fire service was related to improvement value because the benefit that each property owner received depended on the value of the structure that would otherwise be lost to fire.[177]

B. Amicus Support

Amicus briefs on behalf of Cape Coral were written by the City of North Port, and by the City of Coco Beach and the Florida League of Cities (the League), jointly.[178] The City of North Port responded to the initial brief by arguing that municipal home rule provided the authority for the special assessment, not Chapter 170.[179] Coco Beach and the League also argued that the municipal home rule provided the authority for the special assessment and emphasized that a legally imposed special assessment was not a tax.[180]

171. *Id.* at 28.
172. *Id.* at 24.
173. *Id.* (quoting City of Boca Raton v. State, 595 So. 2d 25, 29 (Fla. 1992), *modified*, Collier Cnty. v. State, 733 So. 2d 1012 (Fla. 1999)).
174. *Id.*
175. *Id.* at 29 (citing *Boca Raton*, 595 So. 2d at 32).
176. *Id.*
177. *Id.*
178. Brief of Amicus Curiae, City of North Port, Florida, in Support of Appellee, Morris v. City of Cape Coral, 163 So. 3d 1174 (Fla. 2015) (No. SC14-350); Brief of Amicus Curiae, Florida League of Cities and City of Cocoa, Florida, in Support of Appellee, Morris v. City of Cape Coral, 163 So. 3d 1174 (Fla. 2015) (No. SC14-350), *available at* https://efactssc-public.flcourts.org/casedocuments/2014/350/2014-350_brief_111109.pdf.
179. Brief of Amicus Curiae, City of North Port, Florida, at 5–6.
180. Brief of Amicus Curiae, Florida League of Cities and City of Coco, Florida, at 4–3.

C. Oral Argument

Oral argument began with Justice Canady asking counsel for the property owners to clarify their positions as to whether the special assessment was invalid because Chapter 170 was not complied with or that it was invalid, even under the home rule.[181]

The property owners conceded that the statute was not controlling[182] and then argued that the statutory analysis was the same analysis for the home rule—a point that had only been in their reply brief.[183] Nevertheless, this was enough to satisfy the court such that the substantive issues could be addressed.[184]

Justice Pariente then asked the property owners to describe an appropriate alternative method of creating this special assessment.[185] The property owners replied that a special assessment by square footage would be appropriate.[186] This answer incurred some push-back from Justice Pariente, who invoked the allegory of the "three little pigs" to establish that whether a house was made out of nearly fire-proof stone or flammable wood, for example, mattered more than its square footage.[187] The property owners argued that the cost to respond was constant when the square footage was constant.[188] Justice Canady countered that assertion by asking about the benefit instead of the cost.[189] He pointed out that the benefit was different depending on the value of the structure.[190] Justice Canady gave the example of the difference between a barn and a high tech manufacturing facility of exactly the same square footage.[191] The barn, if lost, would only be worth a few hundred thousand dollars. The high tech manufacturing facility, on the other hand, would be worth a few million dollars. Thus, even though it might cost the fire department the same to respond, the two property owners were receiving vastly different benefits.[192]

181. *Scott Morris, et al. v. City of Cape Coral* 01:18–01:39 (Fla. Supreme Court, Gavel to Gavel Video Portal, oral argument Dec. 4, 2014), http://www.wfsu.org/gavel2gavel/viewcase.php?eid=2208 [hereinafter *Morris* Oral Argument].
182. *Id.* at 01:40–02:05.
183. *Id.* at 02:04–02:20.
184. *Id.* at 02:21–02:53.
185. *Id.*
186. *Id.* at 02:55–03:08.
187. *Id.* at 02:55–03:06.
188. *Id.* at 05:25–05:33.
189. *Id.* at 05:35–05:41.
190. *Id.*
191. *Id.* at 05:41–05:55.
192. *Id.* at 05:55–06:15.

The undercurrent of this dialogue between counsel and the court centered around analyzing better methods of designing special assessments. Justice Canady, however, refocused the debate on whether the particular manner chosen by the City was arbitrary, which was the question at issue before the court.[193]

Counsel for the property owners did not provide a clear answer to that question. Instead, the plaintiffs changed tack and argued that tier 1 was unfair because undeveloped lots could not receive a benefit from fire services.[194] Justice Lewis challenged this by referencing a drainage case where the court held that drainage could benefit undeveloped lots.[195]

Without a clear answer to the argument about undeveloped lots, counsel went back to arguing that square footage was a more fair method.[196] Justice Lewis asked what evidence counsel had that small footprint buildings were being prejudiced.[197] Counsel stated he had no evidence, but blamed the lack of evidence on the short nature of bond validations.[198]

The property owners then discussed the second tier and the *Higgs* case.[199] They argued that this exact type of special assessment had not been analyzed in caselaw before.[200] The court responded that while that may be the case, the assessment before the court was logical.[201]

Cape Coral argued that all property, developed or not, received an equal benefit because of the fire service's readiness to respond.[202] And, that readiness cost money.[203] Specifically, Cape Coral emphasized that

193. *Id.* at 06:25–06:48.

194. *Id.* at 07:18–07:50.

195. *Id.* at 09:30–09:58 (referencing Martin v. Dade Muck Land Co., 95 Fla. 530 (Fla. 1928) (holding that unoccupied, undeveloped, or vacant residential properties generally benefit in value from services provided to those and surrounding properties)).

196. *Id.* at 10:10–11:13.

197. *Id.* at 11:24–11:33.

198. *Id.* at 11:34–13:02.

199. *Id.* at 14:00–14:56. *See generally* Lake Cnty. v. Water Oak Mgmt. Corp., 695 So. 2d 667, 671 (Fla. 1997) (explaining that there must be a logical relationship "between the services provided and the benefit to real property" when evaluating a special assessment); St. Lucie Cnty.-Fort Pierce Fire Prevention & Control Dist. v. Higgs, 141 So. 2d 744, 746 (Fla. 1962) (finding that special assessments must be proportionate to the benefits of the property they are levied upon and those benefits cannot be computed by the ratio of the assessed value of a certain parcel against the total value of all property); Fisher v. Bd. of Cnty. Comm'rs, 84 So. 2d 572, 574, 576 (Fla. 1956) (finding a charge levied upon all property in the city was an ad valorem tax as opposed to a special assessment because no property was assessed for receiving a special benefit).

200. *Morris* Oral Argument, *supra* note 181, at 18:19–18:53.

201. *Id.* at 18:54–19:35.

202. *Id.* at 22:31–22:58.

203. *Id.* at 24:01–24:40.

readiness was a fixed cost of fire departments; it was unchanged for all lots, regardless of the size of the lots.[204]

Cape Coral argued that under its home rule power and pursuant to *City of Boca Raton*, the two-tiered method was the fairest way to proceed.[205] The court began a line of questioning about whether an orange grove would be charged under tier 2.[206] Cape Coral explained that an orange grove might be changed depending on how the assessment was designed.[207] Further, Cape Coral pointed out that its assessment would not charge orange groves because Cape Coral did not have that sort of property in its jurisdiction.[208]

In closing, Cape Coral pointed out that other cities, including Brooksville, Stuart, North Port, Coco Beach, Haines City, and St. Petersburg, had used similar methods, although St. Petersburg was not using its assessment.[209]

The property owners, on rebuttal, argued that other cities had not done what Cape Coral was doing.[210] However, Justice Pariente asked whether those cities would be unable to continue their programs should the court rule for property owners.[211] The property owners admitted that was the case and ended their argument.[212]

VII. THE SUPREME COURT UPHOLDS VALUE-BASED ASSESSMENTS

Justice Perry delivered the opinion of the court.[213] Five justices concurred, and Justice Canady concurred in result.[214] In the opinion, the court affirmed the fire assessment's validity and corroborated its prior caselaw regarding special assessments with value components.[215] The court's review included the following issues: "(1) whether the municipality has the authority to issue the assessment; (2) whether the purpose of the assessment is legal; and (3) whether the assessment

204. *Id.*
205. *Id.* at 27:00–27:56 (citing City of Boca Raton v. State, 595 So. 2d 25 (Fla. 1992), *modified*, Collier Cnty. v. State, 733 So. 2d 1012 (Fla. 1999)).
206. *Id.* at 28:00-28:20.
207. *Id.* at 29:47–31:30.
208. *Id.* at 30:54–30:56.
209. *Id.* at 36:55–38:33.
210. *Id.* at 38:48–39:28.
211. *Id.* at 39:29–39:38.
212. *Id.* at 39:38–40:52.
213. Morris v. City of Cape Coral, 163 So. 3d 1174, 1175 (Fla. 2015).
214. *Id.* at 1180.
215. *Id.* at 1179–80.

complies with the requirements of the law."[216] The court found the authority for the special assessment to come from the home rule, despite Chapter 170,[217] and determined that the provision of fire protection services was a legal purpose.[218]

The analysis for whether the assessment complies with the requirements of the law is whether there is (1) a logically related benefit and (2) proper apportionment.[219]

A. Logically Related Benefit

The court held some special assessments that funded fire protection services were invalid due to a lack of a specific benefit.[220] Those special assessments had been held to be taxes, and thus not within the authority of a city.[221] However, in *Water Oak Management*, the court reaffirmed its test that services do not need to confer a "unique" benefit to be valid, but instead, there must be a logical relationship between the services provided and the benefit to real property.[222] The court pointed out that in *Higgs*, the decision did not turn "on the benefit prong, but on the apportionment prong."[223] In this case, Cape Coral established that the property received a special benefit.[224] The court found that the benefit was almost identical to the benefit in *Water Oak Management*, specifically that fire service had a positive correlation to property values.[225]

B. Proper Apportionment

The court reaffirmed that the special assessment must not be in excess of proportional benefits to be legal.[226] The court rejected the property owners' arguments that tier 1 was illegal because it was a flat

216. *Id.* at 1176 (citing City of Winter Springs v. State, 776 So. 2d 255, 257 (Fla. 2001)).

217. *Id.* at 1177 (citing City of Boca Raton v. State, 595 So. 2d 25, 28–29 (Fla. 1992), *modified*, Collier Cnty. v. State, 733 So. 2d 1012 (Fla. 1999)).

218. *Id.* at 1177 (citing Lake Cnty. v. Water Oak Mgmt. Corp., 695 So. 2d 667 (Fla. 1997); S. Trail Fire Control Dist., Sarasota Cnty. v. State, 273 So. 2d 380 (Fla. 1973); Fire Dist. No. 1 of Polk Cnty. v. Jenkins, 221 So. 2d 740 (Fla. 1969)).

219. *Id.* at 1176 (citing Sarasota Cnty. v. Sarasota Church of Christ, 667 So. 2d 180, 183 (Fla. 1995)).

220. St. Lucie Cnty.-Fort Pierce Fire Prevention & Control Dist. v. Higgs, 141 So. 2d 744, 745–46 (Fla. 1962).

221. *Id.*

222. *Morris*, 163 So. 3d at 1177–78 (citing *Water Oak Mgmt.*, 695 So. 2d at 669).

223. *Id.* at 1178 (citing *Water Oak Mgmt.*, 695 So. 2d at 670).

224. *Id.*

225. *Id.* (citing *Water Oak Mgmt.*, 685 So. 2d at 669).

226. *Id.* at 1178–79 (citing S. Trail Fire Control Dist., Sarasota Cnty. v. State, 273 So. 2d 380, 384 (Fla. 1973)).

rate and that tier 2 was illegal because it was a tax.[227] It pointed out that while this sort of bifurcated approach was new, it closely resembled the approach approved in *Sarasota Church of Christ*.[228] The court found that both the flat rate and the variable rate were reasonable; thus, the methodology was not arbitrary.[229]

The court held that the methodology was valid, non-arbitrary, and considered established insofar as opposing parties failed to present any competent, persuasive evidence to dispute or call into reasonable question the court's findings and determinations.[230]

VIII. CONCLUSION

Morris reaffirms that local governments may use property value in apportioning special assessments if, under the circumstances, the use of value bears a fair and reasonable relationship to the manner in which the assessments are allocated among the specially benefited properties. In addition, the court's opinion specifically validates the two-tier readiness-to-serve methodology as an alternative to the call-based formula for special assessments to fund fire protection costs. Unlike the call-based formula, which requires local governments to annually retain consultants to apportion fire assessments, the readiness-to-serve methodology uses valuation data readily available from the property appraiser's office, allowing local governments to annually apportion fire assessments in-house. This provides local governments with a more efficient, lower-cost way to use special assessments to raise revenue for fire protection.

The variety and types of data, as well as the standardization of data reporting available for local governments to use, is increasing rapidly. Local governments can efficiently use this data in crafting new, locally appropriate funding solutions tailored to their local problems and situations. Judicial review of these legislative decisions should be deferential in accordance with the home rule principles.

227. *Id.* at 1179–80.
228. *Id.* at 1179 (citing Sarasota Cnty. v. Sarasota Church of Christ, 667 So. 2d 180, 186 (Fla. 1995)).
229. *Id.* at 1179–80.
230. *Id.* at 1180.