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**Citizens Advocating Responsible Environmental Solutions v. City of Marco Island**

**SC06-1577**

BETWEEN WHETHER YOU DEFER ENTIRELY TO THE LEGISLATIVE JUDGMENT OR WHETHER THERE ARE SOME CHECKS ON THE LEGISLATIVE JUDGMENT.

>> IN QUESTION QUESTION IS: WHERE WHETHER YOU YOU HAVE A FUNDAMENTAL DISAKBRAEMENT ABOUT WHAT THE JUDGMENT WAS?

>> YEAH.

IT IS NOT ABOUT THE ISSUE ABOUT WHETHER THE MONEY FROM THESE ASSESSMENTS ARE ALL -- FOR THIS PHASE OF THE BOND ARE ALL GOING TO GO TO THE EXPANSION OF THE SYSTEM TO SERVE THE NEW USERS VERSUS THE ISSUE OF WHETHER MONEY FROM THESE ASSESSMENTS ARE GOING TO GO TO IMPROVE THE SYSTEM TO BENEFIT EVERYBODY AND IT SEEMS THAT IF YOU, THAT WAS -- THERE WAS EVIDENCE PRESENTED, NOT ONLY, IT IS NOT JUST THE LEGISLATURE, THE MUNICIPALITY, BUT ALSO BEFORE THE TRIAL JUDGE ABOUT THAT.

>> RIGHT.

THE SPECIAL ASSESSMENT WAS DIVIDED UP INTO TWO PARTS. THE PART THAT I BELIEVE YOU ARE REFERRING TO IS CALLED THE CAPACITY COST PORTION OF THE ASSESSMENT WHICH CAME TO 6,298.

THAT PORTION OF THE COST IS THE PORTION OF THE COST THAT MAY NOT BENEFIT THE PROPERTY OWNERS DIRECTLY WHO ARE IN THE DISTRICT PROPER AND FOR MORE GENERAL COMMUNITY

CONCERNS SUCH AS EXPANSION OF THE WASTE WATER PLANT.

>> I WAS UNDER THE IMPRESSION, THERE WAS DISCUSSION, EVIDENCE, DIRECTLY RELATED TO, THERE WOULD BE ABC LATELY NO REASON FOR THE EXPANSION BECAUSE IT DIDN'T NEED ADDITIONAL CAPACITY WITHOUT THIS EXPANDED SERVICE OUT THERE AND THAT IT WAS ONLY FOR THE EXPANSION, NOT THE UPGRADING OF OTHER FACILITIES THAT THIS ASSESSMENT WOULD APPLY TO, THAT IS INCORRECT?

>> I BELIEVE THAT WITH ALL RESPECT, I BELIEVE THAT IS IN CORRECT.

>> HE KAY, TELL ME WHERE IT IS WRONG.

>> I BELIEVE THAT THE TESTIMONY WAS THAT THE EXPANSION WAS GOING TO BE NECESSARY WHETHER OR NOT THESE NEW USERS CAME ON-LINE.

>> I AM SORRY, I MEAN, THERE IS DIRECT TESTIMONY, QUOTES IN THE RECORD, IS THEIR NOT, WHERE THE ANSWER WAS NO.

3.5.

IT WAS GOING TO JUMP UP TO 5 OR 6 OR SOMETHING.

THERE IS DIRECT QUOTES WHERE THE OFFICER, NO, WE WOULD NOT EXPAND IT.

WE WOULD NOT NEED THIS ADDITIONAL CAPACITY WITHOUT THIS EXPANSION.

ARE YOU SAYING THAT IS NOT IN THIS RECORD?

>> WHAT IS ON THE RECORD, YOUR HONOR, THE PLANT IS DY LIBTATED.

>> ANSWER MY FIRST QUESTION. THAT IS NOT IN THE RECORD?

-- IS THAT NOT IN THE RECORD?

>> THAT IS IN THE RECORD, YOUR HONOR.

>> OKAY.

THAT IS BASIS THEN.

THERE IS A PROBLEM THEN.  
IT IS AN OLDER SYSTEM.  
I THINK THEIR POSITION IS  
THAT THE OTHER SIDE'S  
SPECIAL IS, YEAH, THAT IS  
GOING TO BE COVERED BY THE  
CURRENT USERS.  
WHATEVER WE NEED TO FIX OLD  
WARN OUT THINGS THE BURDEN  
OF THAT WILL BE SHARED  
EQUALLY, IS THAT NOT PART OF  
IT?

>> WELL, ALL WE HAVE ON THE  
RECORD IS A PROMISE FROM THE  
CITY FINANCE DIRECTOR THAT  
THEY WILL MEANING THE CITY  
WILL AT SOME POINT HAVE USER  
FEES TO BALANCE THAT OUT.

>> BUT WE ARE NOT DECIDING  
SOMETHING IN THE FUTURE.  
ALL WE ARE LOOKING AT, AND  
AGAIN, THIS IS A BOND  
VALIDATION PROCEEDING.  
THE ONLY WAY WE GET TO WHERE  
THE SPECIAL ASSESSMENT IS  
VALID BECAUSE IT IS GOING TO  
BE THOSE REVENUES THAT FUND  
THE BOND REPAYMENT, THERE  
WERE 15 DISTRICTS INVOLVED  
IN THE PLANT.

THE BON ISSUES IN THE CASE  
RELAYED ONLY TO TWO  
DISTRICT, SO WE ARE NOT  
GOING TO END UP IN THIS CASE  
VALIDATING WHAT THEY MIGHT  
DO IN THE FUTURE ONE WAY OR  
ANOTHER, YOU MOW YOU?  
MAY BE RIGHT, BUT HOW IS  
THAT BEFORE US PROPERLY IN  
THIS NARROW, VERY NARROW  
PROCEEDING, THIS DIRECT  
APPEAL PROCEEDING TO  
VALIDATE A BOND BASED ON  
SPECIAL ASSESSMENTS FWOR  
DISTRICT INS THAT ARE WHERE  
THE EXPANSION IS GOING TO  
OCCUR.

SO IS WHERE OUR JURISDICTION  
TO EVEN DECIDE THIS OTHER  
ISSUE THAT YOU SAY IS, WELL,  
THEIR PROMISE THAT THEY ARE  
GOING TO DO THIS.

WE DOP KNOW, MAYBE THEY  
WILL, MAYBE THEY WON'T.

THAT IS NOT BEFORE US.

>> THE FACT THAT IT'S NOT BEFORE IS BECAUSE IT IS NOT INCLUDED ON THE CURRENT VALIDATION SCHEME.

IF IT HAD BEEN INCLUDED IN THE CURRENT VALIDATION SCHEME.

>> YOU SEE VALIDATION SCHEME HAS TO DO WITH BONDS THAT ARE GOING TO GO TO LINK UP THESE AREAS THAT DIDN'T HAVE IT.

YOU KNOW?

AGAIN, YOU KNOW, REREAD THE BRIEFS, WE TRIED TO UNDERSTAND THIS.

WE READ THE RECORD.

I AM JUST, YOU KNOW, I AM HAVING DIFFICULTY WITH WHAT YOU ARE ASSERTING THAT WE ARE SUPPOSED TO DECIDE IN THIS CASE.

>> OKAY.

WHAT WE ARE ASKING THE COURT TO DECIDE, WE ARE ASKING THE COURT TO CONSIDER IS TO LOOK AT THE PREVIOUS DEFINITION OF ASH ARBITRARY AND IRRATIONAL IN THIS CONTEXT?

>> WELL, IT SEEMS TO ME, AND I DIDN'T GET THIS FROM YOUR PREVIOUS BRIEFS, BUT IT SOUNDS LIKE NOW YOU ARE ARGUING THAT THIS MONEY THAT WILL BE GENERATED BY THE BONDS IS NOT ONLY GOING TO BE USED FOR THE EXPANSION BUT IT IS ALSO GOING TO BE USED FOR THAT OTHER MAINTENANCE THAT YOU SAY IS NEEDED IN THE PLANT?

>> YES.

>> SO WHERE DO WE GET THAT FROM?

WHERE IN THE RECORD IS THEIR EVIDENCE THAT THAT IS WHAT IS GOING TO HAPPEN WITH THIS BOND MONEY?

>> LET ME LOOK FOR A RECORD CITATION HERE.

>> APPENDIX C EXHIBIT 4 IS WHERE THE DEFINITION OF CAPACITY COST IS DISCUSSED

IN THE CONTEXT OF THAT  
CAPACITY COST BEING \$6,280  
AND THE CAPACITY COST IS  
ATTRIBUTED TO THE COST OF  
PLANNING, ENGINEERING,  
CONSTRUCTION OF OTHER WASTE  
WATER FACILITY THAT IS MAY NOT  
BE WITHIN YOUR DISTRICT, AND  
THAT IS THE PROBLEM THAT WE  
HAVE.

THE TESTIMONY, THE RECORD  
EVIDENCE IS REPEAT WITH  
TESTIMONY ABOUT HOW THE CITY  
OF MARCO ISLAND  
DISTINGUISHED BETWEEN NEW  
USERS AND OLD USERS IN  
DEVELOPING THIS PLAN.

AND RIGHT NOW, THE  
OVERWHELMING BURDEN IS BEING  
PLACED ON THE NEW USERS.  
THERE IS NOTHING IN THIS  
PLAN.

NOTHING IN THE RECORD THAT  
INDICATES THAT EXISTING  
USERS ARE GOING TO BE PAYING  
FOR ANY PART OF THE OTHER  
EXPANSION THAT IT HAS TALKED  
ABOUT IN THE CAPACITY COSTS.  
AND I JUST POINT TO THE CITY  
OF THIS COURT, ARBITRARY AND  
IRRATIONAL.

WHAT IS THAT, WHAT THAT IS  
DEFINITION?

THE DEFINITION THAT THAT  
COURT GAVE YOU READ IT,  
WHEN YOU ALLOCATE THE COST  
OF REPLACING ORIGINAL --  
SHALL REPLACING ORIGINAL  
FACILITY, IT IS ARBITRARY  
AND IRREASONABLE TO DISTINGUISH  
BETWEEN OLD AND NEW USERS.

>> LET ME QUOTE TO YOU THE  
TESTIMONY I SEE.

MAYBE YOU CAN RESPOND TO IT.  
THE DOCUMENTS THEMSELVES  
CONTRADICTED BUT THERE WAS  
QUESTION ASKED, I BELIEVE,  
IT WAS THE CITY MANAGER,  
WERE ANY OF THE EXISTING  
USERS BENEFIT FROM ANY  
EXPANSION OF A THE WASTE  
WATER TREATMENT FACILITY AS A  
RESULT OF THE ASSESSMENT,  
WE'RE HERE TODAY TO TRY TO

VALIDATE.

NO, SIR, WITH VERY TO MAKE IMPROVEMENTS IN THE PLANT ITSELF, BUT IN TERMS OF CAPACITY, THINK OUR A PASS IS ADEQUATE NOW. I DON'T SEE HOW THEY WOULD BENEFIT BY ADDING ADDITIONAL CAPACITY.

THEY MAY BENEFIT BY HAVING ADDITIONAL EQUIPMENT AT THE PLANT, MODERNIZING THE PLANT, BUT THEY ARE PAYING FOR THAT THROUGH WHAT M THEY ARE PAYING FOR THE MODERNIZATION OF THE WASTE WATER TREATMENT PLANT, BUT NOT PAYING ANY PORTION OF THE CAPACITY EXPANSION.

WHERE DOES THE RECORD CONTRABILITY CONTRADHAKT TESTIMONY?

>> THE RECORD DOES NOT CONTRADICT THAT TESTIMONY, BUT PIT IS WRONG TO PUT THE COST OF THE OTHER MODERNIZATION THAT WAS REFERRED TO IN A QUO FASHION SOLELY ON THE BACKS OF THE NEW USERS.

>> BUT THAT IS THE WHOLE POINT.

THE TESTIMONY WAS THEY ARE NOT DOING IT.

THE NEW USERS ARE PAYING FOR EXPANSION FROM 3500 GALLONS TO 5,000 GALLON, THEY ARE NOT PAYING FOR THE MODERNIZATION.

THE OLD USE -- ACTUALLY THE ENTIRE CITY IS PAYING FOR MODERNIZATION.

>> AND I CITED THE PART OF THE RECORD WHICH DEFINES WHAT THE CAPACITY COST IS AND THAT IS BEING OF OVER \$6,000 PER PROPERTY AND THAT IS BEING ACCESSED ONLY ON THE NEW USERS AND NOT ON THE EXISTING USERS.

>> ARE YOU SAYING THE DOCUMENT, THE ACTUAL DOCUMENTS THAT ARE THERE JUST ABSOLUTELY REFUTE AND

RENDER THE STATEMENT THAT JUSTICE CANTERO GRABBED TO BE FALSE.

THAT IS WHAT YOU ARE SAYING?

>> YEAH, HE READ THE WHOLE THING.

WHAT I AM ARGUING I BELIEVE IS CONSISTENT WITH WHAT HE HAS SAID.

HE IS TALKING ABOUT A PASS TIN CREASE.

>> AND TALKED ABOUT MODERNIZATION.

>> MODERNIZATION.

I AM DEFINING WHAT CAPACITY IS, WHICH IS A PORTION OF THE ASSESSMENT AND CAPACITY COST IS FOR MODERNIZATION WHICH MAY NOT BE IN YOUR DISTRICT HENCE YOU HAVE EXHIBIT -- THE NEW USERS PAYING FOR THE MODERNIZATION.

>> SO WHERE ON THE SDMOUMENT THAT IS APPENDIX?

>> YES.

>> SO THE DOCUMENT RENDERS THAT TESTIMONY FALSE IS WHAT YOU ARE SAYING?

>> YES.

>> OKAY.

>> LET ME ASK THIS YOU.

THERE IS ANOTHER QUOTE FROM THE CITY FY FANS DIRECTOR. HE SAID AND I QUOTE THE COST ATTRIBUTEABLE TO THE NEW CUSTOMERS ARE COMING FROM ASSESSMENTS FROM THE BONDS AND THE ISSUE.

THOSE CALLS THAT BENEFIT THE ENTIRE SYSTEM SUCH AS THE REPLACEMENT OF EXISTING SEWER PLANT WILL COME FROM ALL OF THE CUSTOMERS ON WHAT IS CALLED A RATE-BASED BOND ISSUE WHERE THE DEBT SERVICE WILL BE INCLUDED IN THE MONTHLY USER FEE.

>> MY RESPONSE TO THAT IS IT IS IN THE FUTURE TENSE.

WILL, I AM NOT SURE THAT THE CITY FINANCE DIRECTOR A CAN PREDICT THE POLITICAL WHIMS OF THE CITY COUNCIL.

THAT IS ALL BASED ON WHETHER THE CITY COUNCIL IS GOING TO VOTE FOR WHAT THE FINANCE DIRECTOR PREDICTS WILL HAPPEN.

>> BUT THAT IS WHY -- I GUESS THAT IF SOMETHING HAPPENS IN THE FUTURE, THAT ENDS UP' BEING AN UNFAIR ALLOCATION OF COST, I THINK, THIS CASE DOESN'T PUT THAT, YOU KNOW, I THINK YOU ARE STILL ABLE TO ARGUE IT. ALL WE ARE LOOKING AT HERE, AND I WOULD IMAGINE THAT IF THE MONEY AS COLLECTED AND THE BOND DOESN'T GO TO THE PURPOSES REPRESENTED IN THE RECORD, WOULD YOU HAVE ANOTHER CASE, WE ARE JUST LOOKING AT, I MEAN, THIS RECORD WITH WHAT HAS BEEN SAID BY THE CITY COUNCIL, YOU KNOW, WITH THE STUDY, AND THE FINDK, WHETHER THIS BOND, THE BOND SHOULD BE VALIDATED.

NOW, YOU KNOW, AGAIN, IF SOMETHING HAPPEN WHERE THE SPECIAL ASSESSMENTS ARE COLLECTED THEN IT IS USED FOR SOMETHING ELSE, I WOULD THINK WOULD YOU HAVE A PRETTY GOOD LAWSUIT. SO DO YOU SEE?

I WANT TO MAKE -- I DON'T THINK YOU ARE PRECLUDED, IF WHAT HAS BEEN SAID IN THE LAWSUIT DOESN'T OCCUR, FROM CHALLENGING THOSE OTHER METHODS OF FUNDING, THE MODERNIZATION.

DO YOU THINK YOU ARE?

>> NO, I WOULD NOT THINK WE ARE PRECLUDE BUT I WOULD HOPE THIS PARTICULAR LAWSUIT, BECAUSE WE HAVE 13 OTHER DISTRICTS TO VALIDATE WOULD SET GUIDELINES.

>> BUT, YOU KNOW, THAT IS THE PROBLEM.

THERE IS A REASON FOR THIS COURT TO HAVE DIRECT JURISDICTION OVER BOND

VALIDATION AND THE COURT,  
WHETHER WE HAVE STRAYED MORE  
THAN SOME MEMBERS MIGHT  
THINK WE SHOULD.

THE ISSUES RELATED TO IT ARE  
VERY NOW AND THAT IS WHY I  
WOULD HESITATE TO GO, WELL,  
YOU WANT US TO DO MORE, TALK  
ABOUT THESE FUTURE  
ASSESSMENTS AN, YOU KNOW, OR  
MAKE SOME OTHER DECISIONS  
THAT THEY ARE BOUND TO, I  
DON'T THINK THAT IS WITHIN  
OUR JURISDICTION.

>> ACTUALLY, YOUR HONOR, I  
BELIEVE WE ARE MAKING THE  
SAME ARGUMENT AS JUSTICE  
BELL INDICATED, HE WAS  
INDICATING WHAT THE CITY  
MANAGER SAYS WILL HAPPEN IF  
HIS TESTIMONY, IF THE CITY,  
OR AS THE CITY FINANCE  
DIRECTOR.

IF THE CITY FINANCE  
DIRECTOR'S TESTIMONY HAD  
BEEN, THIS IS HAPPENING,  
THIS IS PART OF THE PLAN  
RIGHT NOW.

THEN I THINK IT WOULD BE  
DIFFERENT.

>> DON'T THE CITY'S  
RESOLUTIONS AND THE BOND  
COVENANCE SAY THAT THAT IS  
WHAT IS GOING TO HAPPEN?  
WHAT THE CITY FINANCE  
DIRECTOR TESTIFIED TO IS  
CONSISTENT WITH WHAT THE  
CITY'S RESOLUTIONS AND THE  
BOND CONVENT SAY IS GOING TO  
HAPPEN.

AND SO WHAT JUSTICE PARIENTE  
IS SAYING IF THAT DOESN'T  
HAPPEN, THIN, MAY HAVE A  
CASE, BUT AT THIS POINT,  
THEY ARE CONNENTED BY  
RESOLUTION OF THE CITY  
GOVERNMENT SAYING THIS IS  
WHAT WE ARE GOING TO DO WITH  
THE MONEY, THIS IS HOW WE  
ARE GOING TO BIFURCATE THEM.  
WHAT IS WRONG WITH THE PLAN  
AS IT IS SET OUT?

>> BECAUSE THAT PLAN IS  
TOTALLY SUBJECT TO POLITICAL

WINS.

IT IS.

WILL THOSE, WILL THOSE OTHER THINGS ACTUALLY TAKE PLAINS THE FUTURE?

IT IS JUST BASICALLY A PROMISE.

WE ARE WORKING AT WHAT IS PROVIDED FOR RIGHT NOW IN THE DOCUMENTS AND RIGHT NOW ON THE DOCUMENTS, WE KNOW THROUGH READING THE TRANSCRIPTS THAT THE WHOLE DISCUSSION WAS

DISTINGUISHING BETWEEN EXISTING USERS AND NEW USERS.

>> HOW DO THEY GO ABOUT FINANCING THIS EXPANSION?

>> WELL, ONE OF THE WHOLE QUESTIONS THAT YOU HAVE IS IS THIS REALLY A HIDDEN TAX AND SHOULDN'T YOU GO TO A TAX WHERE EVERYBODY PAYS PART OF THE BURDEN?

>> SO YOUR POSITION IS THAT THEY SHOULDN'T BE ABLE TO MAKE THESES ASSESSMENTS FOR THIS SPECIFIC EXPANSION, THAT THIS SHOULD ONLY BE DONE THROUGH EVERYBODY INCLUDING EXISTING USERS AN EXISTING DISTRICTS?

>> RIGHT, YEAH.

>> BUT THERE IS NO LEGAL REQUIREMENT OF THAT, IS THERE?

>> THE ONLY LEGAL REQUIREMENT AS I READ THE DECISION WHEN THE BOND VALIDATION PAPERS ARE DEVELOPED THERE MAY BE NO DISTINGUISHING BETWEEN OLD AN NEW USERS AND THAT IS EXACTLY WHAT HAS HAP BENED HERE.

HAVEN'T WE CONSISTENTLY, THOUGH, IN OUR CASES DEALT WITH SITUATIONS WHERE THERE MAY BE THE EXTENSION OF SOME KIND OF UTILITIES BE IT WATER, WHATEVER INTO AREA, HAVEN'T WE ALWAYS ANSWERED THAT, THAT THAT DOES THEN REND EAR SUFFICIENT BENEFIT

TO THOSE PARTICULAR PROPERTY OWNERS AN SEPARATE AN APART FROM THE PEOPLE WHO LIVE IN THE CITY OTHERWISE AND HAVEN'T WE ALWAYS ALLOWED THAT KIND OF APPROACH, YOU MAY GET INTO A QUESTION OF WHETHER THERE IS A BENEFIT, BUT ONCE YOU DETERMINE THERE IS A BENEFIT, HASN'T THIS COURT ALWAYS ALLOWED THAT?

>> WELL, THE HISTORY, THE HISTORY OF THE COURT IN EARLIER DAY, IT WAS CALLED PRECOURIER BENEFIT TO THE PROPERTY.

RIGHT NOW, THE BENEFIT AS WE BELIEVE IT TO BE IS THAT A COMMUNITYWIDE BENEFIT.

>> FROM SEPTIC TANKS TO SES PITS THE GIVEN SEWER SYSTEM.

>> THERE IS SOME.

I MEAN, THERE IS SOME BENEFIT, BUT YOU HAVE TO LOOK AT THE EVERALL BENEFIT.

>> YOU ARE INTO YOUR REBUTTAL IF YOU WANT TO SAVE LITTLE BIT OF TIME.

>> I WILL SAVE A COUPLE MINUTES.

THANK YOU VERY MUCH.

>> THANK YOU VERY MUCH.

>>> GOOD MORNING.

I AM MIKE DAVIS WITH THE LAW FIRM OF BRYANT MILLER OLIVE REPRESENTING THE CITY OF MARCO ISLAND.

>> WOULD YOU GO RIGHT DIRECTLY TO WHAT HE IDENTIFIED THIS MORNING LUGE THE QUESTIONING THE REAL COMPLAINT, THAT IS THAT THIS REALLY IS NOT A SET IN STONE PLAN THAT THESE NEW FOLKS ARE GOING TO HAVE TO PAY FOR THIS MODERNIZATION THING, TELLS US, THERE IS DOCUMENTATION THAT JUST RENDERS THE SYSTEM THAT WE HAVE QUOTED TO BE INCORRECT.

>> THAT IS NOT TRUE, YOUR HONOR.

THERE IS NO SUCH DOCUMENTATION.

>> HE REFERRED TO A DOCUMENT.  
HAVE YOU LOOKED THAT?  
WHAT IS THAT DOCUMENTATION THAT HE TOLD YOU?

>> I THINK THE ONE HE IS REFERRING TO WAS THE EXHIBIT THAT HAS VARIOUS NUMBERS IN IT AS PROJECTIONS TO HOW MANNIS GOING TO BE SPENT. I MEAN, I DON'T SEE THAT IN THERE, YOUR HONOR. I SEE NOTHING IN THERE.

>> WHAT WAS THE ARGUMENT MADE TO THE TRIAL COURT JUDGE DURING THE VALIDATION PRECEDINGS IN OPPOSITION HERE?

>> IN OPPOSITION, THE ARGUMENT WAS MUCH THE SAME AS WHAT HAS BEEN MADE HERE BY OPPOSING COUNSEL. THERE IS NO EVIDENCE, YOUR HONOR, THIS IS ABSOLUTELY NO EVIDENCE TO REBUT THE TESTIMONY THAT WAS DISCUSSED IN COUNSEL'S ARGUMENT. THERE WAS NO POSING TESTIMONY.

>> SO THE ARGUMENT THERE WAS YOU ARE STICKING ALL OF THESE PEOPLE THAT ARE GOING TO BE ACCESSED FOR THIS EXPANSION WITH ALL OF THIS OTHER MODERNIZATION AND ALL OF THAT?

>> I BELIEVE THAT WAS THE ARGUMENT.  
I TRIED IT AND THAT WAS THE ARGUMENT.

THE PROBLEM IS THERE IS NOTHING TO CONTRADICT THE TESTIMONY ON THE RECORD.

>> LET ME GO LUGE THE BACKDOOR ON THIS ONE. IS THEIR DOCUMENTATION THAT DEMONSTRATES, NOT TESTIMONY, DOCUMENTATION THAT DEMONSTRATES THAT THE MODERNIZATION ASPECTS ACCORDING TO THE TESTIMONY WILL BE BORN UNIFORMLY AND NOT BY THE NEW CONNECTION. IS THEIR SOME DOCUMENTATION

WE CAN LOOK AT FOR THAT.

LET'S GO REVERSE.

I BELIEVE IN THE EXHIBITS

BEING DISCUSSED.

I WOULD HAVE TO LOOK AT IT

TO TELL YOU.

I AM GOING BY MEMORY.

I BELIEVE THAT THAT IS IN

THAT EXHIBIT.

>> OKAY.

>> AGAIN, OBVIOUSLY, THAT

WAS A PROJECTION, THOSE

THINGS CHANGED.

THOSE NUMBERS CHANGED AS

TIME GUESS ON, BUT I THINK

THE RECORD IS CLEAR, THERE

IS NOTHING IN THE RECORD TO

INDICATE THAT THE FOLKS THAT,

THAT THIS ASSESSMENT MONEY

IS GOING TO BE SPENT ON THE

MODERNIZATION.

SO THIS REALLY IS A GARDEN

VARIETY ASSESSMENT.

YOU AGREE THAT IF IT WERE,

USED NOT FOR THE PURPOSE

THAT IS BEING REPRESENTED

WHICH IS TO AGAIN PAY BACK

THE 1.5 MILLION AND 3.5

MILLION, IT WAS USED

DIFFERENTLY, WOULD THEY HAVE

A BASIS TO COME BACK INTO

COURT?

>> YES, YOUR HONOR.

I BELIEVE THEY WOULD.

>> LET ME SEE IF I CAN

DELINEATE WHAT I THINK YOUR

OPPONENT IS SAYING.

THAT EXHIBIT THAT HE POINTED

TO, IT SAYS BASICALLY THAT

THOSE PROJECTS THAT ARE

UPLAID AND CAPACITY TO

COLLECTION AN TREATMENT

SYSTEM COMPLIES THIS

COMPONENT AND IT ENDS UP

SAYING THAT THIS IS GOING TO

COST \$38 MILLION.

THEN THE NEXT PART OF THOSE

TWO, THE NUMBER OF PARCELS

THAT ARE BEING AFFECTED, ARE

THOSE PARCELS THE NEW UPLAID

PAR SELL, I ASSUME, IT COMES

TO 3,000 OR SO, SO THOSE

3,000, FOR EACH OF THOSE

6,000 PARCELS, THEIR SHARE

IS ABOUT 6,000 DOLLARS.

YES, THAT IS CORE REMEMBER.

>> THAT IS CORRECT.

BUT I THINK THE PROBLEM HERE

AS HE SEES IT IS THAT THIS

SAYS UPGRADE AND CAPACITY

ADDITION, AND SO IF THOSE

SIX PEOPLE WHO ARE THE

ADDITIONAL CAPACITY PEOPLE

ARE PAYING FOR THOSE, BOTH

OF THOSE COMPONENTS IN THE

\$38 MILLION.

I THAT I IS WHAT HIS

ARGUMENT IS, AND SO HOW DO

YOU ADEGREES THAT?

BECAUSE YOU KNOW IT WOULD BE

READ IN THE WAY HE IS

SAYING.

>> YES.

I THINK THAT WAS ADDRESSED

IN THE TESTIMONY.

IT WAS EXPLAINED UNTHINK

TESTIMONY THAT IS IN THE

RECORD THAT YOU HAVE GOT TWO

COMPONENTS.

GOT A ROUGHLY \$68 MILLION

PROJECT, ABOUT \$30 MILLION

OF IT IS FOR THE PLANT

UPGRADES THAT ARE GOING IN

THE RATE BASE, NOT GOING ON

THE ASSESSMENT.

ABOUT \$38 MILLION ARE GOING

IN THE ASSESSMENT.

THAT WAS THE ONLY, THAT IS

THE ONLY TESTIMONY IN THE

RECORD.

S THAT YOU THE TESTIMONY.

>> THE RATE BASE IS

EVERYBODY?

>> THE RATE BASE IS

EVERYBODY.

THE FINANCE DIRECTOR WENT ON

TO TALK ABOUT HOW WE DMI A

BOND ISSUE IN THE FUTURE

BASED ON THE RATE BASE.

THEY MAY PUT PIT ON THE

UTILITY BILLS.

>> AND WE ARE NOT GOING TO

BE DETERMINING THIS CASE THE

WAY THEY FINANCE THAT OTHER

IMPROVEMENTS IS PROPER OR

IMPROPER.

THAT IS NOT BEFORE US.

SO WHEN WE ISSUE AN OPINION

ASSUMING WE UPHOLD THE TRIAL COURT, WE ARE DOING IT ON THE BASIS THAT THE ASSESSMENTS THAT ARE GOING TO THEN BE USED TO PAY BACK THE BOND ARE ASSESSMENTS THAT WILL SOLELY FOR THE EXPANSION OF THE SYSTEM.

>> THAT IS CORRECT.

>> ALL RIGHT.

GAIN.

JUST WANT TO MAKE SURE.

IF IT DOESN'T, IT IS A REMEDY.

>> THAT IS ANOTHER, THAT IS A WHOLE ANOTHER CASE.

THAT IS RIGHT.

>> THE OPPONENT ALSO SAYS TO YOU, HE SAYS THAT THIS IS REALLY JUST GENERAL BENEFIT.

>> YES.

>> THIS IS THE CASE LAW SAYS THAT YOU MUST HAVE SOME KIND OF SPECIFIC BENEFIT.

WHAT IS THE CITY'S RESPONSE.

>> THE ANSWER TO THAT JUSTICE YOU LEWIS IS THAT THE CASES THAT THIS CASE HAS COME DOWN WITH PARTICULARLY IN THE LAST TEN YEARS HAS SIDED IN THE BRIEFS HAS SAID THAT THE DETERMINATION OF SPECIAL BENEFIT IS A LEGISLATIVE DETERMINATION FOR THE LOCAL GOVERNING AUTHORITY UNLESS IT IS ARBITRARY, IN THIS CASE, WE HAVE GOT THAT DETERMINATION MADE IN THE RESOLUTIONS AN BACKED UP BY EXPERT TESTIMONY IN THE RECORD CITED ON THE BRIEFS, ADDITIONALLY, THIS COURT HAS SET OUT A CATEGORY, A GENERAL CATEGORY OF PROJECTS THAT YOU CAN'T FINANCE WITH SPECIAL ASSESSMENTS ON THE LAKE COUNTY CASE.

CAN'T FINANCE GENERAL GOVERNMENTAL OPERATIONS, FOR EXAMPLE.

>> HAVE HE EVER HELD THAT YOU CAN'T DO THIS WITH REGARD TO INSTALLING OF THE

SEWER SYSTEM TO REPLACE  
SEPTIC TANKS.

>> NO.

JUSTICE LEWIS, YOU HAVE NOT.

>> HAVE WE DONE THE OPP SIT?

WHAT IS THE CASE CLOSESTS?

>> WELL, A COUPLE OF CASE  
THAT ARE CLOSE ON POINT AND  
THE ONE IS THE PORT SAINT  
LUCIE CASE WHERE THIS COURT  
UPHELD AN ASSESSMENT FOR  
EXPANDING SEWER LINES, A  
SPECIAL ASSESSMENT.

MARKY VERSUS POINT YOU ST.  
LUCIE IN 1995, A COUPLE OF  
OTHER CLOSES THAT ARE REALLY  
CLOSE INVOLVE SOLID WASTE  
ASSESSMENTS.

IN THE PARIS VERSUS WILSON  
CASE IN 1997 -- HARRIS  
VERSUS WILSON CASE.  
THIS COURT UPHELD A  
COUNTYWIDE FOR MAINTENANCE  
OF A SOLID WASTE FACILITY.

HERE, WE'RE DEALING WITH  
LIQUID WASTE, NOT SOLID  
WASTE, BUT THE CONCEPT IS  
THE SAME AND ALSO POINT OUT  
IF THERE IS ANYTHING IN THE  
RECORD THAT COULD, COULD BE  
FROM WHICH AN INFERRANCE  
COULD BE DRAWN THE MONIES  
BEING SPENT IN SOME WAY  
OTHER THAN WHAT THE  
TESTIMONY IS THAT IS BEING  
SPENT WHICH IS CLOSING  
COUNSEL'S ARGUE AM.

THIS WAS TRIED BEFORE A  
CIRCUIT JUDGE.

THE CIRCUIT JUDGE WAS  
ENTITLED TO EVALUATE THAT  
EVIDENCE AND EVALUATE THE  
INFERRANCES FROM THAT  
EVIDENCE, WHICH HE DID, SO  
OBVIOUSLY, IF THERE WERE ANY  
INFERRANCES TO THE CONTRARY,  
THEY WERE DISCOUNTED BY THE  
CIRCUIT JUDGE.

THERE IS CERTAINLY EVIDENCE  
IN THE RECORD ABUNDANT  
EVIDENCE TO SUPPORT THE  
CITY'S INTENTION AND THE  
CITY'S PLAN AND HOW THE CITY  
IS GOING TO SPEND THE MANY.

>> WELL THE BOND DOCUMENTS  
THEMSELVES --

>> ABSOLUTELY.

ABSOLUTELY, YOUR HONOR.

SO AGAIN, WE THINK THIS IS A  
CLEAR CASE.

THERE IS NO NOVEL ISSUE OF  
LAW IF THERE ARE ANY FACTUAL  
ISSUES, THEY WERE RESOLVED  
BY THE TRIAL COURT WHAT THE  
CITY MAY DO IN THE FUTURE IS  
NOT BEFORE THE COURT, AND  
WHICH WOULD URGE THE COURT  
TO SUSTAIN THE JUDGMENT ON  
APPEAL.

>> THANK YOU.

>> REBUTTAL?

>> JUST BRIEFLY, I WOULD  
ARGUING THAT THE MOST VALID  
IN THE CASE IS THE CITY OF  
EDEN CASE WHICH PROHIBITS  
OLD USERS AN NEW USERS IN  
INDICATES THAT IS IN OF  
ITSELF ARBITRARY AND  
IRRATIONAL.

WAY SO ASK THE COURT TO  
UPHOLD AND CONTINUE TO  
FOLLOW THE POLICY RATIONALS.

>> LET ME ASK YOU, WOULD YOU  
HAVE TO AGREE THAT IF YOU  
ARE EXPANDING SOMETHING, YOU  
ARE PUTTING SOMETHING IN  
THAT DOES NOT EXIST,  
BASICALLY, THAT IS WHAT WE  
ARE DOING.

WE ARE PUTTING THIS WOULD  
PUT IN A SEWER SYSTEM  
SOMEPLACE WHERE IT DOES NOT  
EXIST, CORRECT?

>> RIGHT.

>> RIGHT.

>> SO WHY SHOULDN'T THOSE  
PEOPLE WHO ARE GOING TO BE  
USING THIS ITEM THAT DOES  
NOT EXIST, WHY SHOULDN'T  
THEY HAVE TO PAY FOR IT AND  
NOT THE PEOPLE WHO ARE NOT  
GOING TO BE USING THAT  
PORTION OF THE SYSTEM.

>> SURE.

YES.

THEY OUGHT TO PAY THEIR FAIR  
SHARE, BUT THEY SHOULD NOT  
HAVE TO PAY FOR REPAIRING

THE DEGRADATION OF THE PLANT  
THAT THEY HAD NOTHING TO DO  
WITH

>> OKAY, LET'S GO BACK THEN.  
WE HAVE CENTERED IN ON YOUR  
QUESTION.

NOW THE EXPLANATION IS, THIS  
IS ONLY THE PORTION OF THE  
CAPACITY, THAT THE OTHER 30  
MILLION AND UPGRADES OF YOUR  
MODERNIZATION ARE NOT PART  
OF THIS, NOW, THAT IS THE  
RESPONSE.

NOW, WHAT IS WRONG WITH THE  
RESPONSE THAT AS YOU SEE IT?

>> YEAH, AS ICYTED BEFORE TO  
THE RECORD, I DON'T BELIEVE  
THE RECORD BARES THAT OUT.  
I ALSO BELIEVE THAT --

>> YOU HEARD TESTIMONY THAT  
THIS IS GOING TO BE USED FOR  
THAT?

>> GOING, YOU KNOW, GOING TO  
BE USED.

>> IS THEIR TESTIMONY  
CONTRARY TO WHAT HE SAYS?  
THERE IS TESTIMONY THAT IT  
IS GOING TO BE USED FOR  
THAT, YES, YOUR HONOR.

>> OKAY.

>> BUT THAT IS JUST  
PREDICTION INTO THE FUTURE.  
I BELIEVE YOU BY MAKING A  
DECISION CONSISTENT WITH THE  
EDEN, WE CAN ACTUALLY HOLD  
OFF FUTURE LAWSUITS.  
I THINK THAT IS GOOD.

>> ALL RIGHT.

>> THANK YOU VERY MUCH.

>> THANK YOU.

>> YOU HAVE USED UP YOUR  
TIME.

WE THANK YOU FOR YOUR  
ARGUMENTS.

WE WILL TAKE IT UNDER  
ADVISEMENT.