IN THE SUPREME COURT OF FLORIDA CASE NUMBER:

SC2024-0990 LT CASE NO: 2024-CA-000252

DEAN K. MATT,

Appellant,

v.

UNIVERSITY PARK RECREATION DISTRICT, Appellee.

ANSWER BRIEF OF UNIVERSITY PARK RECREATION DISTRICT

/s/Fred E. Moore
Fred E. Moore, Esquire
FBN: 0273480
Primary Email: fmoore@blalockwalters.com
Secondary Email: eservice@blalockwalters.com
Mark Barnebey, Esquire
Primary Email:: mbarnebey@blalockwalters.com
FBN: 370827
Blalock Walters, P.A.
802 11th Street West
Bradenton, FL 34205
Telephone: 941.748.0100
Facsimile: 941.745.2093
Attorneys for Appellee, UPRD

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STATEMENT OF THE CASE AND FACTS

Appellee, University Park Recreation District ("UPRD"), acknowledges the Statement of the Case and the Facts filed by Appellants within the Initial Brief. However, as that statement is unduly argumentative and lacks proper cites to the record, Appellee submits its own statement of the case and facts, as permitted by *Florida Rule of Appellate Procedure 9.210(c)*.

Recreation District-UPRD

The action below was brought by UPRD for the validation of certain bonds, the "2024 Bond", pursuant to Chapter 75, Florida Statutes. (UPRD A. 4-20) UPRD is an independent special district and a recreational district organized and existing in accordance with Chapters 418 and 189, *Florida Statutes.* (UPRD A. 280-298) UPRD was established pursuant to Ordinance No. 18-29, enacted by the Board of County Commissioners of the County, which became effective on August 2, 2018 (the "Establishment Ordinance") in response to a petition from residents of University Park Country Club. (UPRD A. 280-298) UPRD is governed by a Board of Supervisors ("BOS") that is comprised of five public officials. (UPRD A. 280-298) UPRD consists of the area that is within the Unnamed Exclusive Golf

and Country Club a/k/a University Park Development, as more particularly described in the Establishment Ordinance. (UPRD A. 280-298) UPRD was established for the purpose of acquiring and providing recreational facilities and services which includes financing, improving and managing the acquisition of a 27-hole golf course and practice facility, pro shop, a clubhouse with kitchen, administrative facilities, tennis courts, a croquet court, a fitness center, a golf cart storage facility, and associated facilities within the boundaries of UPRD. (UPRD A. 280-298)

On November 21, 2019, UPRD issued $24,000,000 University Park Recreation District Non-Ad Valorem Assessment Bonds, Series 2019 (the "2019 Bonds") to purchase a 27-hole golf course, tennis courts, dining facilities, a fitness center, and other country club facilities and amenities. (UPRD A. 280-298, 545-556) The 2019 Bonds were validated pursuant to a final judgment of the Circuit Court rendered on September 16, 2019, in Case No. 2019 CA 000845, from which no appeal was filed. (UPRD A. 280-298, 545-556)

UPRD intends to issue the 2024 Bond for the purpose of using the proceeds to renovate, improve, enhance, restore, and refurbish

the recreational and related facilities of UPRD (the "Project") for the benefit of the residents of UPRD. (UPRD A. 280-407) The need for the Project became a significant issue of concern for UPRD in the years after the purchase of the facilities. (UPRD A. 280-407, 545-556) In furtherance of these needs, UPRD developed a plan to improve, replace, and enhance the following assets: the golf course irrigation and infrastructure; kitchen renovation and modernization, fitness center renovation and modernization, club reception, activity rooms, and offices, and additional parking. (UPRD A. 280-407). During the period from early November 2023 to January 2024, UPRD conducted various meetings related to the necessary improvements and issuance of the 2024 Bond. (UPRD A. 280-407) Appellant was opposed to the proposed improvements and enhancement and the 2024 Bond issue from the beginning of the proceedings.

The Establishment Ordinance and Resolution.

Pursuant to the Establishment Ordinance,

> [t]he process for the levy and collection of non-ad valorem assessments for the construction, reconstruction, acquisition, or maintenance of [District] facilities and operation of the [District], its facilities and property may follow the procedures for levy provided in chapter 170 or chapter 197, *Florida Statutes*, and the procedures for

> collection provided in chapter 170 or chapter 197, *Florida Statutes*. Sec. 2-8-160(a) of the Establishment Ordinance. (UPRD A. 280-298)

UPRD is permitted to issue bonds. To do so, UPRD BOS is required to

> develop a detailed plan for the expenditure and repayment of the proceeds of each Bond issue. The repayment portion of each plan shall specify the annual amount of Bond repayment due from each Owner within UPRD. The plan must be the subject of a referendum prior to the issuance of a proposed Bond. (UPRD A. 280-298)

UPRD adopted resolution 2024-01 expressing its intent to issue Non Ad Valorem Assessment Bonds on November 3, 2023. (UPRD A. 310-319) UPRD has conducted the assessment process pursuant to the requirements of Chapter 170, *Florida Statutes*, by adopting Resolution 2024-02, on November 3, 2023, declaring special assessments, approving a methodology dated November 2023, prepared by PFM Financial Advisors LLC and setting a public hearing. (UPRD A. 321-352)

On December 8, 2024, UPRD BOS conducted a public hearing pursuant to the requirements of Section 170.08, *Florida Statutes*, sat as an equalization board and adopted Resolution 2024-07 which equalized and approved the assessments. (UPRD A. 354-407)

Bond Resolution and Validation Complaint.

On January 16, 2024, UPRD held a referendum on whether UPRD could issue non-ad valorem assessment bonds (i.e. the Series 2024 Bonds) to finance the costs of improvements to certain recreation facilities at the University Park Country Club. (UPRD A. 300-308) The referendum was duly noticed and voting was by a sealed ballot. (UPRD A. 300-308) Voting could be done in person or by absentee ballot. (UPRD A. 300-308) Ballots were counted and confirmed by an independent accounting firm. (UPRD A. 300-308) The referendum passed with 579 votes in favor and 363 votes against. (UPRD A. 300-308) The referendum passed 62% to 38%. On January 17, 2024, UPRD BOS duly adopted Resolution 2024-11 confirming the final vote of the referendum election. (UPRD A. 300-308)

In addition, on January 17, 2024, UPRD BOS duly adopted Resolution 2024-12 (the "Bond Resolution"), pursuant to which UPRD BOS proposed to issue the 2024 Bond under and pursuant to the Master Trust Indenture, dated as of November 1, 2019 (the "Master Indenture"), between UPRD and U.S. Bank Trust Company, National Association, and its successors in trust under the Master

Indenture, as trustee (the "Trustee"), to be amended and supplemented with respect to 2024 Bond to be issued thereunder by a supplemental trust indenture (a “Supplemental Indenture,” and together with the Master Indenture, as so amended and supplemented, the “Indenture”), which are each subject to such changes as shall be approved by UPRD BOS. (UPRD A. 41-46) The Trustee is bonded to the extent required by laws of the State of Florida, and has the power to accept and administer the trusts created by the Master Indenture and any and all Supplemental Indentures thereto, and shall certify that the disbursements of the proceeds of the 2024 Bond to be issued under the Master Indenture and any and all Supplemental Indentures thereto have been made pursuant to the terms thereof. (UPRD A. 41-46)

The proceeds of the 2024 Bond will be expended to pay for the cost of improvements to the University Park Country Club facilities. (UPRD A. 41-46) The principal of and interest on the 2024 Bond shall be payable from, and secured by, the Non-Ad Valorem Assessments to be levied and collected by UPRD with respect to the costs of the improvements of University Park Country Club, and certain other

amounts, all as provided in the Bond Resolution and Indenture. (UPRD A. 41-46)

Resolution No. 2024-02 of UPRD established the date of such public hearing and provided that notice thereof be given in accordance with requirements of Chapters 170 and 197, *Florida Statutes*, and other applicable provisions of law. (UPRD A. 57-88) Following the public hearing, UPRD BOS sat as an equalizing board for the purpose of hearing and considering any and all complaints as to such Non-Ad Valorem Assessments, adjusting, equalizing and fairly and reasonably apportioning such Non-Ad Valorem Assessments on the basis of ascertained special and peculiar benefit to the property, by justice and right, provide for the filing of a final assessment roll with UPRD BOS reflecting any equalized Non-Ad Valorem Assessments and declared such Non-Ad Valorem Assessments to be legal, valid and binding first liens against the property until paid. (UPRD A. 57-142)

On January 12, 2024, UPRD's bond counsel Robert Gang requested to discuss consideration of Resolution 2024-08, Authorizing a Second Supplemental [Trust] Bond Indenture [to amend Section 5.04 by eliminating the language prohibiting the

issuance of additional bonds]. (UPRD A. 470-454) On January 16, 2024, UPRD held a referendum on the 2024 Bonds. (UPRD A. 470-454)

The Intervenor.

The Appellant intervened in the proceedings below. (UPRD A. 247-171) On April 23, 2024, Appellant filed an answer to the Validation Complaint. (UPRD A. 247-171) The Appellant appeared at the April 29, 2024, hearing and participated in the presentation of evidence and legal argument. (UPRD A. 247-171, 545-556)

Bond Validation Hearing.

On February 14, 2024, a Validation Complaint was filed with the circuit court, and on February 28, 2024, the Trial Court issued an Order to Show Cause why the 2024 Bond should not be validated. (UPRD A. 4-142) The final hearing on the bond validation complaint was held on April 29, 2024. (UPRD A. 143-145, 545-556) The final hearing started a few minutes after 11:30 a.m. and continued for a little more than one hour. No court reporter was present. Appellant was present representing himself. (UPRD A. 545-556)

UPRD admitted into evidence the Establishment Ordinance and all resolutions related to the decision to use bond financing to

renovate, enhance, and improve the recreational facilities owned by UPRD. (UPRD A. 545-556) UPRD called Kevin Plenzler, director of PFM Financial Advisors, LLC, who conducted and prepared the Master Assessment Methodology for UPRD. (UPRD A. 545-556) Kevin Plenzler elaborated on the facts, circumstances, and opinions contained in the Master Assessment Methodology and focused his testimony on the opinions contained in sections 1.6 and 1.7 of the Master Assessment Methodology. (UPRD A. 545-556) Kevin Plenzler testified that the continued enhancement of the recreational facilities of UPRD create special benefits peculiar to and based on the logical relationship to the assessable properties in UPRD because those recreational facilities are an integral part of the University Park development. (UPRD A. 545-556)

Kevin Plenzler elaborated that master-planned, amenitized, communities with a golf club, have higher values than other similar communities; particularly higher end communities with such facilities like the University Park community. (UPRD A. 545-556) Kevin Plenzler indicated that the difference between section 1.6 in Exhibit 5 and Exhibit 6 is due to the UPRD BOS requesting that section 1.6 be enhanced to provide further clarification regarding how

the residents benefit from the financed costs of the capital improvements which included golf course irrigation and infrastructure, kitchen renovations, fitness center renovations and administration and activity center improvements. (UPRD A. 545-556) The update was to compare the average as financed costs of all the improvements per unit to the average growth rate in home value. (UPRD A. 545-556) Kevin Plenzler provided that given the allocation methodology and the wide range of home values within UPRD, and for simplicity, this was done on a percentage comparison basis to show that the growth in home values exceeds the cost per unit and that this is reasonable given that reinvestment in the broader club assets regardless of any one persons' specific use of an amenity will protect and/or cast value to all properties on a relative basis. (UPRD A. 545-556)

Appellant questioned Kevin Plenzler as to Mr. Plenzler's understanding of the City of Boca Raton v. Florida decision. (UPRD A. 545-556) Appellant conceded the apportionment prong to Kevin Plenzler and did not challenge him on the allocation methodology used. (UPRD A. 545-556) Kevin Plenzler elaborated on the contents of his report as to the benefits exceeding the burden of the 2024

Series bond issuance and his understanding that Florida courts have found that mathematical perfection is probably impossible when estimating benefit (as discussed in Section 1.5, Section 1.6 and Section 1.7 of the Master Report) and specific allocation of assessment. (UPRD A. 545-556)

Kevin Plenzler's report demonstrates that special benefits exceed total burden of debt, and, again, referred Mr. Matt to Section 1.6 where he said that his analysis showed that "property values of UPRD properties have increased by 37.5% based on data via the Manatee County Property Appraiser." (UPRD A. 545-556)Kevin Plenzler stated further that the proposed assessments would amount to 1.6% of 8.3% (average 2.73%) of the market value of homes as of 2022. (UPRD A. 545-556) Appellant then made a comment that those are nice empirical interesting statistics, but this market data, yet again, is of no consequence in meeting his burden required by one of the two prongs required by *City of Boca:* demonstrating that *special benefits* conferred exceed the total burden of debt but did not ask a question. (UPRD A. 545-556) Kevin Plenzler then ended by stating that the proper and conventional description of debt allocation is the principal amount per unit at issuance. (UPRD A. 545-556) The

average principal amount of debt per unit associated with the proposed Series 2024 Bonds is $17,138. (UPRD A. 545-556)

Appellant then stopped his cross examination of Kevin Plenzler and began with his own commentary and making arguments concerning his case prior to being sworn in as a witness. (UPRD A. 545-556) Judge Edward Nicholas instructed Appellant that there would be a time and a place to make argument, but that he needed to place any evidence in the record that he believed was necessary. (UPRD A. 545-556)

Judge Edward Nicholas, Appellant, and Fred Moore then went through the exhibits that Appellant wished to have admitted into evidence to determine whether they were admissible. (UPRD A. 545-556) Appellant's exhibits were then reviewed with some being admitted into evidence. (UPRD A. 545-556)

Appellant, who is not a qualified expert, testified in a long narrative imploring Judge Nicholas to apply the applicable rule of law, arguing that the City of Boca is a necessary guardrail to protect Florida Landowners from rogue boards, bad actors, and bad decisions and that the bond validation requirements stemming from City of Boca should not be taken casually or watered down. (UPRD

A. 545-556) Appellant argued that the burden of City of Boca was not met in PFM's methodology report. (UPRD A. 545-556)

Appellant directed the Court to collateral issues related to the 2019 Bond indenture. (UPRD A. 545-556) From this, the pertinent part of the Establishment Ordinance, Section 2-8-161 Budgets; Financial Reporting; Planning Requirements), Mr. Matt read: "The UPRD shall maintain a five-year plan for the operation and maintenance of the Recreational Facilities and the development of new projects." (UPRD A. 545-556) Appellant testified, over objection by UPRD, that this provision is a guardrail to protect Landowners to make sure UPRD is doing proper planning, especially on the precipice of recommending adding $44 million of total debt burden to the UPRD Landowners. (UPRD A. 545-556) Appellant opined over objection, for improper opinion, relevance, and collateral nature of the issue, that UPRD had not done all things legally required to have its proposed bond validated. (UPRD A. 545-556)

Appellant stated that it is clear to him that UPRD did not even attempt to analyze if there are any special benefits and, if there are, that they exceed the total burden of debt the bonds would impose. (UPRD A. 545-556) Appellant opined that just because Kevin Plenzler

testified that special benefits exceed total burden of debt doesn't make it so and just because capital is spent doesn't automatically mean that special benefits are created. (UPRD A. 545-556)

Appellant testified concerning exhibit D-7, which is Section 5.04 from the 2019 First Supplemental Trust Indenture ("Section 5.04"), over objection for relevance and being a collateral matter. (UPRD A. 545-556) Appellant stated that this language from the 2019 Series Bonds prohibited UPRD from issuing additional bonds in the first place. (UPRD A. 545-556) Upon the conclusion of Appellant's testimony, the parties completed their closing arguments. (UPRD A. 545-556)

At the conclusion of the trial, and after hearing evidence from both UPRD and the Intervenor, the trial court ruled in favor UPRD and validated the bond. (UPRD A. 545-556) The trial judge did not review the video clips of the UPRD meetings introduced by the Intervenor prior to making his oral ruling in favor of the bond validation, but it is unknown whether they were reviewed prior to the execution of the final judgment. (UPRD A. 545-556) Thereafter on March 26, 2010, the trial court entered its written order, ultimately determining the

Appellants showed no cause for why the bonds should not be validated. (IB A. Order at 22). This appeal follows. (UPRD A. 545-556)

Post Hearing motions

After the bond validation hearing, Appellant filed a Motion for Rehearing and a Motion for New Judge on May 24, 2024. (UPRD A. 520-531, 532-544) The Circuit Court denied the Motion for Rehearing on June 4, 2024, and denied the Motion for New Judge on June 10, 2024. (UPRD A. 520-531, 532-544) On May 13, 2024, Appellant filed a Motion for Emergency Hearing to Stay the Judge's Pending Order from the April 29, 2024 Bond Validation Hearing, in which the Circuit Court was made aware that the Second Supplemental Trust Indenture was agreed upon by the Trustee and voted on by the BOS as shown by Resolution 2024-13 (UPRD A. 466-519)

SUMMARY OF THE ARGUMENT

The trial court applied the correct standards of law and there is competent substantial evidence supporting validation of the 2024 Bond through the Final Judgment. As the Final Judgment concluded, UPRD has the authority to issue bonds and the special assessments used to fund the bond issue are lawfully imposed and provide a special benefit to the assessed properties.

The major issue at trial, and Appellants' argument on appeal, is whether UPRD had the authority to issue the 2024 Bond in light of language in the 2019 Bond, a collateral matter, and whether the Project would confer a special benefit on the assessed properties. The trial court properly found that UPRD has the authority to issue bonds, like the 2024 Bond, and complied with the requirements of law. The trial court applied a deferential standard to UPRD's legislative determinations of special benefit and ruled in favor of UPRD based on the showing made at trial on these issues. The special assessments imposed meet the requirements of the law. Accordingly, the Final Judgment of the trial court should be affirmed.

STANDARD OF REVIEW

The scope of judicial inquiry in bond validation proceedings is limited to determining (1) whether the public body has the authority to issue bonds, (2) whether the purpose of the obligation is legal, and (3) whether the bond issuance complies with the requirements of law. See *Poe v. Hillsborough County*, 695 So. 2d 672, 675 (Fla. 1997) (citing *Rowe v. St. Johns County*, 668 So. 2d 196 (Fla. 1996)); Taylor v. Lee County, 498 So. 2d 424, 425 (Fla. 1986). Within the purview of the scope of validation is also the determination of the validity of the underlying securing revenue. *City of Boca Raton v. State,* 595 So. 2d 25 (Fla. 1992); *State v. City of Port Orange,* 650 So. 2d 1 (Fla. 1994); *State v. Sarasota County,* 693 So. 2d 546 (Fla. 1997).

UPRD agrees that this Court reviews the "trial court's findings of fact for substantial competent evidence and its conclusions of law de novo." *Strand v. Escambia County*, 992 So. 2d 150, 154 (Fla. 2008). "The final judgment of validation comes to this Court clothed with a presumption of correctness." Id.

ARGUMENT

I. UPRD HAS THE LEGAL AUTHORITY TO ISSUE THE 2024 BOND AND APPELLANTS ARGUMENT CONCERNING SECTION 5.04 OF THE 2019 BOND IS A COLLATERAL MATTER AND NOT A VALID BASIS TO DENY VALIDATION OF THE 2024 BOND.

"The function of a validation proceeding is merely to settle the basic validity of the securities and the power of the issuing agency to act in the premises. Its objective is to put in repose any question of law or fact affecting the validity of the bonds." *Keys Citizens for Responsible Gov't v. Fla. Keys Aqueduct Auth.*, 795 So. 2d 940 (Fla. 2001).

The Establishment Ordinance created UPRD as a recreation district under chapter 418, Florida Statutes. Pursuant to Section 418.22, Florida Statutes UPRD has the power:

> [**t]o issue bonds**, secured by ad valorem taxes or by pledge of both such taxes and other revenues of the district, **if approved at a referendum held in such district**, and to levy and collect ad valorem taxes, without limitation or with such limitation as may be imposed by charter, on all real property subject to city taxation within such district in order to pay the principal of and interest on such bonds as the same respectively fall due or to accumulate a sinking fund for the payment of principal and interest. (Emphasis supplied)

The very purpose of chapter 418, part II, Florida Statues, is to allow counties to designate a limited geographic area as a recreation

district **for the purpose of providing** the acquisition and **improvement of recreational facilities**. *See State v. Sunrise Lakes Phase II Special Rec. Dist.*, 383 So. 2d 631 (Fla. 1980). (Emphasis supplied).

Section 75.02, Florida Statutes, expressly states that the plaintiff in a bond validation proceeding "may determine its authority by law to issue bonds." This presupposes that the bonds will not be issued and specific payment provisions enacted until after the validation proceeding. *See Boatright v. City of Jacksonville*, 117 Fla. 477, 158 So. 42, 55 (Fla. 1934) The procedures relevant to bond validation are established by statute. Pursuant to *section 75.03, Florida Statutes*:

> [a]s a condition precedent to filing of a complaint for the validation of bonds or certificates of debt, the county, municipality, state agency, commission or department, or district desiring to issue them **shall cause an election to be held to authorize** the issuance of such bonds or certificates and **show prima facie that the election was in favor** of the issuance thereof, or, when permitted by law, adopt an ordinance, resolution or other proceeding providing for the issuance of such bonds or certifications in accordance with law. (Emphasis supplied).

Pursuant to *section 75.03*, UPRD held a referendum and adopted their bond resolution prior to filing the Validation Complaint.

Accordingly, UPRD was in compliance with the condition precedent provided by *section 75.03*.

"The function of this Court in a bond validation proceeding is to determine whether the authorizing body has the power to act and whether it exercises that power in accordance with the purpose and intent of the law." *State v. City of Miami*, 379 So. 2d 651, 654 (Fla. 1980). Recognizing the limited scope of bond validation procedures, the Court has routinely determined that matters raised outside this limited review are collateral and not to be addressed. Issues such as the determination of need of a project, its financial feasibility, or the business judgment of the governmental entity are collateral matters beyond the scope of review. *See Partridge v. St. Lucie County*, 539 So. 2d 472, 473 (Fla. 1989); *State v. Manatee County Port Authority*, 171 So. 2d 169, 171 (Fla. 1965); *Town of Medley v. State*, 162 So. 2d 257, 258-59 (Fla. 1964).

Appellant's first argument does not attack UPRD's authority or power to issue the 2024 Bond pursuant to the law. Instead, Appellant seeks to attack the authority of UPRD by attacking a collateral issue related to language from the 2019 Bond; a

contractual matter between UPRD and the Trustee.[1] *See*, *e.g.*, *McCoy Restaurants, Inc. v. City of Orlando*, 392 So. 2d 252, 254 (Fla. 1980) (finding that validity of airline-aviation authority lease agreements was collateral to bond validation because airlines and other interested parties were not parties to action and trial court had no jurisdiction to determine validity of leases in bond validation proceeding); *Sunrise Lakes Phase II Special Recreation Dist.*, 383 So. 2d at 633 (same as to validity of operating contract for recreational facilities with condominium association); *City of Miami*, 103 So. 2d 185, 190 (Fla. 1958) (finding that trial court lacked jurisdiction to determine Dade County's power to acquire waterworks system of the City of Miami and to rule on tax exempt status of the property of the City's waterworks system; stating that bond validation statute did not give the court power to bring other parties into the proceedings).

[1] Bonds are issued to lenders or investors to raise money for a corporation or governmental body. To issue a bond, the issuer hires a third-party trustee, usually a bank or trust company, to represent investors who buy the bond. The agreement entered into by the issuer and the trustee is referred to as the trust indenture. A trust indenture is a legal and binding contract that is created to protect the interests of bondholders. See *Black's Law Dictionary*.

Again, "[t]he function of a validation proceeding is merely to settle the basic validity of the securities and the power of the issuing agency to act in the premises. Its objective is to put in repose any question of law or fact affecting the validity of the bonds." *Fla. Keys Aqueduct Auth.*, 795 So. 2d 940 (Fla. 2001).

Appellant's argument that UPRD lacks the power or authority should be rejected as it is collateral nature in nature and does not affect UPRD's authority to legal issue a bond. There is competent substantial evidence that UPRD has the authority to issue the 2024 Bond and that the bond validation is not premature due to any collateral contractual issue involving the earlier issued 2019 Bond.[2]

II. SUBTANTIAL COMPETENT EVIDENCE WAS ADMITTED SHOWING THAT THE 2024 BOND PROVIDES SPECIAL BENEFITS TO THE PROPERTIES WITHIN UPRD THAT EXCEED THE BURDEN OF DEBT OF THE PROPOSED BONDS.

Recreation districts are clearly authorized to issue special assessment bonds for financing public improvements so long as the special assessments satisfy two criteria required by Florida law. *See Citizens Advocating Responsible Envtl. Solutions, Inc. v. City of Marco*

[2] As pointed out by Appellant, UPRD and the bond holders have amended the contractual language of the 2019 Bond indenture clarifying UPRD's ability to issue additional bond debt.

Island, 959 So. 2d 203 (Fla. 2007). First, the assessed property must derive a special benefit from the improvement or service provided by the assessment. See *City of North Lauderdale v. SMM Props., Inc.,* 825 So. 2d 343 (Fla. 2002*)*; *City of Naples v. Moon,* 269 So. 2d 355 (Fla. 1972); *Atlantic Coast Line RR. Co. v. City of Gainesville,* 91 So. 118, 121 (Fla. 1922) (special assessments are "charges assessed against the property of some particular locality because that property derives some special benefit from the expenditure of the money"). Second, the special assessment must meet the "fair apportionment" test, that is, the costs of providing the improvements must be fairly and reasonably apportioned among the benefited properties. *See City of Boca Raton,* 595 So. 2d at 30. Appellant has not alleged or argued that there was an issue with the fair apportionment test but does argue that his property does not derive a special benefit.

In the present case, the Project serves a public purpose and provides a special benefit to property within UPRD. The purpose of a recreation district is to provide recreational facilities; in this case a 27 hole golf course, club amenities, kitchen, and fitness center, among other things. The Project provides a special benefit to those properties within the UPRD by improving and enhancing the

recreational amenities of the district increase and enhance the value of the properties within the community. It is therefore appropriate to use special assessments to fund the Project. See *City of Treasure Island v. Strong, 215 So. 2d 473 (Fla. 1968)* (upholding a special assessment for a beach erosion groin system, notwithstanding the fact that the City had failed to make such legislative determinations of special benefit); *Ocean Beach Hotel Co. v. Town of Atlantic Beach, 2 So. 2d 879 (Fla. 1941)*. As in *City of Treasure Island*, the degree and extent of the benefit is clear and obvious.

In determining whether the special benefit test has been satisfied, courts properly defer to the enacting body's legislative findings unless the decision was arbitrary. In *City of Boca Raton*, the Florida Supreme Court summarized this standard as follows:

> We note that the City made specific findings that the improvements would constitute a special benefit to the subject property, that the benefits would exceed the amount of the assessments, and that the benefits would be in proportion to the assessments. The apportionment of benefits is a legislative function, and if reasonable persons may differ as to whether the land assessed was benefited by the local improvement, the findings of the city officials must be sustained. *595 So. 2d at 30*. See also *Citizens Advocating Responsible Envtl. Solutions, Inc.,* 959 So. 2d at 206-207 ("The City's legislative findings, namely that the service to be provided by the special assessment confers a special benefit on the land burdened by the assessment,

> and that costs are properly apportioned among the properties receiving the benefit, are entitled to presumption of correctness and will be upheld unless arbitrary. (*Sarasota County v. Sarasota Church of Christ,* 667 So. 2d 180, 184 (Fla. 1995) ("The standard is the same for both prongs; that is, the legislative determinations as to the existence of special benefits and as to the apportionment of the costs of those benefits should be upheld unless the determination is arbitrary.").

The findings of special benefit determined by the BOS for UPRD is a recognized indicia of special benefit to be a basis for the levy of a special assessment. *See Meyer v. City of Oakland Park*, 219 So. 2d 417 (Fla. 1969); *City of Winter Springs v. State,* 776 So. 2d 255 (Fla. 2001); *Sarasota County*, 693 So. 2d 546 (Fla. 1997); *City of Hallandale v. Meekins*, 237 So. 2d 318 (Fla. 4th DCA 1970); *City of Boca Raton,* 595 So. 2d 25; *Atlantic Coast Line RR. Co.,* 91 So. 118; *City of Treasure Island,* 215 So. 2d 473; *Ocean Beach Hotel Co.,* 2 So. 2d 879; *Moon,* 269 So. 2d 355. Based upon established law, these legislative findings are entitled to deference by the trial court absent a determination that they are palpably arbitrary. Sarasota County v. *Sarasota Church of Christ,* 667 So. 2d 180 (Fla. 1995). As such, all legislative determinations are entitled to a presumption of correctness and should be upheld if supported by competent, substantial evidence in the record. *Id.*

In order to satisfy the first requirement for a valid special assessment, the property subject to the special assessment must receive a special benefit from the improvement or service. However, the special assessment need not provide a "unique benefit"; "rather the test is whether there is a 'logical relationship' between the services provided and the benefit to real property." *Lake County v. Water Oak Mgmt. Corp.*, 695 So. 2d 667, 669 (Fla. 1997); *City of Boca Raton*, 595 So. 2d at 29 ("special assessments must confer a specific benefit upon the land burdened by the assessment").

A special benefit can be derived by property through a variety of means. As stated in *Meyer*:

> The term "benefit," as regards validity of improvement assessments, does not mean simply an advance or increase in market value, but embraces actual increase in money value and also potential or actual or added use and enjoyment of the property. Vacant lots and lands, may, and usually do, receive a present special appreciable benefit from the construction of a sewer in proximity with and accessible by them for sewerage purposes sufficient to sustain an assessment made on the basis of benefits. A reasonable approach to the question of best possible use is a determination of what can be done with the property by improvements which are reasonably attainable and which can enhance the value under all present circumstances or those foreseeable in the very near future. 219 So. 2d at 420.

In fact, in *Meyer*, the Florida Supreme Court upheld a special assessment imposed on both improved and unimproved property to fund sewer improvements stating that the benefit need not be immediate but, must be substantial, certain, and capable of being realized within a reasonable time. *Id*.

A special benefit has been found to be derived from a variety of services and improvements to real property, including water, sewer, downtown redevelopment, road, street lighting, beach restoration, and even parking. See *Meyer*, 219 So. 2d 417; *City of Boca Raton*, 595 So. 2d 25; A*tlantic Coast Line RR. Co.*, 91 So. 118; *Ocean Beach Hotel Co.*, 2 So. 2d 879; Moon, 269 So. 2d 355; *Rushfeldt v. Metro. Dade County*, 630 So. 2d 643, 645 (Fla. 3d DCA 1994). The purpose for which UPRD seeks to impose the special assessments at issue is the restoration, repair, enhancement and improvement to the recreational facilities of UPRD. There was competent, substantial evidence to support the Court's finding of special benefits. The Project will not only enhance the taxable value of property but its marketability. Further, the Project will increase the use and enjoyment of the properties through the provision of recreational amenities for the use of those property owners.

In the present case, UPRD made legislative findings that the Project provided a special benefit to real property located within the UPRD as stated in Resolution 2024-02 and 2024-07, specifically including section 1.6 and 1.7 of Master Assessment Methodology. It is up to the business judgment of UPRD as to how to fund the Project, and such business judgment is a collateral matter not subject to challenge in a bond validation proceeding.

Kevin Plenzler, UPRD's expert witness, testified that the continued enhancement of the recreational facilities of UPRD will create special benefits peculiar to and based on the logical relationship to the assessable properties in UPRD because those recreational facilities are an integral part of the University Park development. Mr. Plenzler's testimony was unrefuted. Appellant presented no expert testimony of his own concerning the special benefit derived. Appellant merely kept repeating that the factors of *Boca* were not met, despite Mr. Plenzler's clear testimony.

III. APPELLANT'S DUE PROCESS RIGHT WAS NOT VIOLATED BY ANY ACTION OF THE JUDGE AS APPELLANT APPEARED AT TRIAL, PRESENTED ALL EVIDENCE HE INTENDED TO PRESENT, AND HAD THE OPPORTUNITY TO MAKE ALL LEGAL ARGUMENTS.

The basic due process guarantee of the Florida Constitution provides that "[n]o person shall be deprived of life, liberty or property without due process of law." *Art. I, § 9, Fla. Const.* The Fifth Amendment to the United States Constitution guarantees the same. As this Court explained in *Department of Law Enforcement v. Real Property*, 588 So. 2d 957, 960 (Fla. 1991), "[p]rocedural due process serves as a vehicle to ensure fair treatment through the proper administration of justice where substantive rights are at issue." Procedural due process requires both fair notice and a real opportunity to be heard. *See id.* As the United States Supreme Court explained, the notice must be "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. The notice must be of such nature as reasonably to convey the required information, and it must afford a reasonable time for those interested to make their appearance." *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314, 94 L. Ed. 865, 70 S. Ct. 652

(1950) (citations omitted). Further the opportunity to be heard must be "at a meaningful time and in a meaningful manner." *Mathews v. Eldridge*, 424 U.S. 319, 333, 47 L. Ed. 2d 18, 96 S. Ct. 893 (1976); *accord Fuentes v. Shevin*, 407 U.S. 67, 80, 32 L. Ed. 2d 556, 92 S. Ct. 1983 (1972) (stating that procedural due process under the Fourteenth Amendment of the United States Constitution guarantees notice and an opportunity to be heard at a meaningful time and in a meaningful manner).

The resolution authorizing the issuance of 2024 Bond and the evidence adduced at the bond validation hearing were sufficient to give the citizens and taxpayers, including Appellant, adequate knowledge concerning the purposes for which the bonds were to be issued. *See Fla. Keys Aqueduct Auth.*, 795 So. 2d 940 at 950.

Appellant complains that several irregularities occurred during the hearing because the trial judge did not accept his arguments, agree that the evidence presented by Appellant, and on two occasions the trial judge showed bias in the way Appellant perceived he was treated during and after the hearing. Appellant argues that the judge demonstrated bias by speaking to him condescendingly. The limited record that does exist does not show any behavior that would trigger

a due process issue and shows that the trial judge acted reasonably in light of the Appellant's position and tactics. *See Winterfield v. Palm Beach*, 455 So. 2d 359, 363 (Fla. 1984).

CONCLUSION

The 2024 Bond in this case was properly validated by the trial court. Appellee, UPRD, respectfully requests that this Court affirm the Final Judgment of the trial court in all respects.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the forgoing has been furnished via Electronic Mail to Dean K. Matt, 7006 Lancaster Ct., University Park, FL 34201, muchodeanaero@aol.com and Cynthia Evers, Esquire, at cevers@sao12.org, on this 29th day of October, 2024.

/s/Fred E. Moore
Fred E. Moore, Esquire
FBN: 0273480
Primary Email: fmoore@blalockwalters.com
Secondary Email: eservice@blalockwalters.com
Mark Barnebey, Esquire
Primary Email:: mbarnebey@blalockwalters.com
FBN: 370827
Blalock Walters, P.A.
802 11th Street West
Bradenton, FL 34205
Telephone: 941.748.0100
Facsimile: 941.745.2093
Attorneys for Appellee, UPRD

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the foregoing Answer Brief complies with the Florida Rules of Appellate Procedure.

/s/Fred E. Moore
Fred E. Moore, Esquire
FBN: 0273480
Primary Email: fmoore@blalockwalters.com
Secondary Email: eservice@blalockwalters.com
Mark Barnebey, Esquire
Primary Email:: mbarnebey@blalockwalters.com
FBN: 370827
Blalock Walters, P.A.
802 11th Street West
Bradenton, FL 34205
Telephone: 941.748.0100
Facsimile: 941.745.2093
Attorneys for Appellee, UPRD