047 w/app

IN THE SUPREME COURT
OF THE STATE OF FLORIDA

PETER FORSYTHE and ALISABETHE
JERGENS FORSYTHE,

Appellants,

v. Case No: 78,654

LONGBOAT KEY BEACH EROSION
CONTROL DISTRICT,

Appellees.

_____/

INITIAL BRIEF OF APPELLANT

**Appeal from Final
Order of Manatee County
Circuit Court**

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STATEMENT OF THE CASE AND OF THE FACTS

The action before the Court is a direct appeal of a bond validation proceeding pursuant to Rule 9.030(a)(1)(B)(i), Florida Rules of Appellate Procedure. This case was initiated in the Circuit Court of Manatee County, Florida to determine the validity of a proposed bond issue by the special district known as the **LONGBOAT KEY BEACH EROSION CONTROL DISTRICT** (hereinafter **DISTRICT**). Section 75.01, Florida Statutes (1989). Appellants, (Defendants/Intervenors below), **PETER FORSYTHE and ALISABETHE JERGENS FORSYTHE,** hereinafter **FORSYTHES,** intervened in the case as property owners and interested persons pursuant to Section 75.07, Florida Statutes (1989).

The **FORSYTHES**, by stipulation of all the parties, had a statement read into the record in the Circuit Court which essentially stated that the **FORSYTHES** were owners of real property located within the alleged district on Longboat Key, Florida, and that while they adopted and incorporated the arguments of the other defendants in the action they also independently challenged the validity of the subject district. (A-5)

The Town of Longboat Key is a municipality which encompasses the entire island of Longboat Key, Florida. The barrier island is situated off the southwest coast of Florida such that approximately the north one-half of the island is in Manatee County and the South one-half is in Sarasota County.

The subject special district does not encompass the entire island but does include portions of the island which are located in both Manatee and Sarasota Counties.

On July 31, 1990, the Town of Longboat Key adopted Ordinance 90-21. (A-6) The ordinance attempted to create a special district for the purpose of funding beach renourishment on Longboat Key. The ordinance specifically states that the district is a dependent special district.

On April 1, 1991, the Town adopted Ordinance 91-06 (A-10) in an attempt to correct the previous mistakes in the legal description of the boundary which were contained in Ordinance 90-21.

The **FORSYTHES** contended in the Circuit Court below that the district was in fact an independent special district and that, as such, could only be created by the Legislature. Additionally, the **FORSYTHES** argued that the district ordinances were invalid because of the faulty boundary description in 90-21 and the faulty adoption procedure of 91-06.

After a trial on these and other issues, the Circuit Court for Manatee County on August 13, 1991 issued a Final Judgment (A-1) which determined, among other things, that the district was a "dependent district," and that the ordinances were valid.

Appellants timely filed their notice of appeal on September 10, 1991, in accordance with §75.08, Florida Statutes (1989). To that end, the scope of this Initial Brief will be limited to two points on appeal summarized as follows:

SUMMARY OF ARGUMENT

The Circuit Court below erred in its determination that the Longboat Key Beach Erosion Control District was a dependent special district. The specific statutory language in Chapter 189 states that a district that includes more than one county is an independent special district. §189.403, Florida Statutes (1989)

In addition to the clear statutory language, the underlying legislative history supports the conclusion that the district is an independent special district.

The Town of Longboat Key's ordinances creating the district, in addition to being in conflict with the statutory definitions, were defective. The first ordinance 90-21 failed to accurately describe the district boundary, and the amending ordinance 91-06 was not adopted in accordance with the requirements of §166.041, Florida Statutes (1989).

The district is both defective in its creation and construction.

ARGUMENT

I. THE CIRCUIT COURT ERRONEONSLY DETERMINED THAT THE LONGBOAT KEY BEACH EROSION CONTROL DISTRICT WAS A DEPENDENT SPECIAL DISTRICT.

A. STATUTORY LANGUAGE

The Florida Legislature, in 1989, adopted a comprehensive revision to Chapter 189, Florida Statutes. That comprehensive revision is known as the Uniform Special District Accountability Act of 1989. The act essentially totally revamped the area of special district creation and operation and established very specific requirements for such.

Section 189.402 (1), Florida Statutes (1989), stated that:

> It is the specific intent of the Legislature that **dependent** special districts shall be created at the prerogative of the counties and municipalities and that **independent** special districts shall **only** be created by legislative authorization as provided herein. Emphasis supplied.

Thus, an independent special district may only be created by specific legislative authorization pursuant to Chapter 189. If an independent special district were to be created in any other fashion, it would be in direct violation of the statute and would constitute an illegal special district.

Chapter 189 was adopted in part to help

> "[i]mprove communication and coordination between special districts and other local entities with respect to ad valorem

> taxation, non-ad valorem assessment collection, special district elections and local government comprehensive planning,"

and to

> "[c]larify special district **definitions** and creation methods in order to ensure consistent application of those definitions and creation methods across all levels of government."

§189.402(2)(c) and (e), Florida Statutes (1989). Emphasis supplied.

The foregoing provisions were new in the 1989 Act. It is a change from the prior law and points out that the Act is intended to provide a clearer understanding of the definition of special districts. In fact, Chapter 189 goes on to provide **specific definitions** for the terms to be used in the Chapter.

Chapter 189 defines what it means when it uses the term "special district" in Section 189.403(1):

> "Special district" means a local unit of special-purpose, as opposed to general-purpose, government within a limited boundary, created by general law, special act, local ordinance, or by rule of the Governor and Cabinet.

Subsection (2) of the foregoing provision provides the definition of **"dependent special district"** as a district that meets at least one of the following criteria:

> (a) The membership of its governing body is identical to that of the governing body of a single county or a single municipality.
>
> (b) All members of its governing body are appointed by the governing body of a single

> county or a single municipality.
>
> (c) During their unexpired terms, members of the special district's governing body are subject to removal by the governing body of a single county of a single municipality.
>
> (d) The district has a budget that requires approval though an affirmation vote or can be vetoed by the governing body of a single county or a single municipality.
>
> This subsection is for purposes of definition only. Nothing in this subsection confers additional authority upon local governments not otherwise authorized by the provisions of the special acts or general acts of local application creating each special district, as amended.

Subsection (3) of Section 189.403 defines **independent special** district as

> "a special district that is not a dependent special district as defined in Subsection (2). **A district that includes more than one county is an independent special district."**

Emphasis supplied.

Thus, there are two parts to the definition of independent special district. First, if a district is one that does not fall within the criteria contained in Subsection (2) then the district is an independent special district. Second, if a district includes **more than one county** it is also an independent special district. There is no equivocation or reservation contained in this provision of the Statute. If the district boundaries cross county lines, then it is an **independent special district.**

Section 189.402(4)(a) states:

> That independent special districts are a

> legitimate alternative method available for use by the private and public sectors, as authorized by state law, to manage, own, operate, construct, and finance basic capital infrastructure, facilities and services.

Section 189.402(3)(b) goes on to point out that:

> It is in the public interest that any independent special district created pursuant to state law not outlive its usefulness and that the operation of such a district and the exercise by the district of its powers be consistent with applicable due process, disclosure, accountability, ethics, and government-in-the-sunshine requirements which apply both to governmental entities and to their elected and appointed officials.

This is a clear legislative policy statement that the Legislature wants to pay special attention to the creation and operation of independent special districts and thus, the Legislature has restricted the creation of such independent districts by specifying that "independent special districts shall only be created by **legislative** authorization." §189.402(1), Florida Statutes (1989). Emphasis supplied.

There have been abuses by districts in the past including illegal activities and defaults on bonds and other financial obligations. The Legislature enacted the new act to help control some of these problems. By requiring financial reporting and accountability, Chapter 189 really seeks to control the creation and operation of special districts and particularly independent special districts. That is why the reporting requirements are

much more extensive for independent special districts. Independent special districts are basically a suspect category and must meet the legislative criteria or their formation will be invalid.

Therefore it is the specific language of the Statute and stated intent of the Legislature that there **must** be specific legislative authorization to create an independent special district. There was no such legislative authorization for the **LONGBOAT KEY BEACH EROSION CONTROL DISTRICT.**

Thus, if the **LONGBOAT KEY BEACH EROSION CONTROL DISTRICT** is an independent district, it is an illegal district and has no power or authority to do anything much less to issue $14,000,000 worth of bonds.

As additional support for the fact that **dependent districts** are intended by the Legislature to **not** cross county boundaries, the language in Section 189.405 is instructive. Section 189.405(1) states that

> "[i]f a dependent special district has an elected governing board , elections shall be conducted by the supervisor of elections of **the county wherein the district is located** in accordance with the Florida Election Code, Chapters 97 though 106."

Emphasis supplied. Note that the statute specifically states **"the supervisor of elections"** and **"the county wherein the district is located."** It does **not** say county or counties wherein the district is located. The Legislature intended for dependent special districts to be contained within one county only. This legislative language is consistent with the

definitions of the districts as presented by the Legislature.

It is incidentally, irrelevant as to whether the particular district we are talking about has an elected body or an appointed body; either kind of district can have either kind of governing body. The issue is, rather, whether the appropriate form of district has been selected. In this case, the district crosses county boundaries and cannot, by definition, be anything but an **independent special district.**

The State of Florida has taken the position that the **LONGBOAT KEY BEACH EROSION CONTROL DISTRICT** is a dependent district. This decision was reached by Ms. Sonia R. Crockett who is the Community Program Administrator for the Special District Information Program within the Department of Community Affairs in Tallahassee. Ms. Crockett's deposition is included in the Appendix to this brief. (A-18)

Ms. Crockett reached her decision that the subject district was a dependent district pursuant to a legal opinion she obtained from a staff attorney in the Department of Community Affairs. A copy of that memorandum and opinion is appended to Ms. Crockett's deposition.

The legal opinion presented by the staff attorney should be accorded little, if any, weight in this matter. First, the opinion is of an agency staff attorney, not the Attorney General, not the agency head, not the agency's general counsel or even deputy general counsel. It is merely the opinion of a staff attorney based on his limited research of the issue.

Second, the opinion creates ambiguity where none exists. The opinion attempts to analyze the issue of whether a district is an independent district or a dependent district if its boundaries cross county lines and resolves the issue by a strained interpretation of the language of the Statute. He concludes that the district must include **all** of both counties to be an independent district. His position is not supported by the plain and unambiguous language of the statute. If a district's boundaries cross county lines, then that district **must** be classified as an independent district. The opinion of the staff attorney ignores the plain and literal meaning of the Statute and confuses things by its over-analysis. There is no rule against using common sense to construe laws as saying what they obviously mean. This Court has consistently pointed out this fact and in the case of Holly v. Auld, 450 So.2d 217 (Fla 1984) reaffirmed this position when the Court pointed out that:

> [w]hen the language of a statute is clear and unambiguous and conveys a clear and definite meaning, there is no occasion for resorting to the rules of statutory interpretation and construction, **the statute must given its plain and obvious meaning.** Emphasis supplied.

This Court went on to say that the courts of the State of Florida are

> "without power to construe an unambiguous statute in a way which would extend, modify, or **limit** its express terms or its **reasonable and obvious implications.** To do so would be an abrogation of legislative power."

Florida Supreme Court in Holly, supra, citing American Bankers Life Assurance Company of Florida v. Williams, 212 So.2d 777 (Fla. 1st DCA 1968).

The point that this Court is made is that it is not necessary to lawyer-to-death every statutory sentence. Rather, when the language is plain and clear, it is the obligation of the courts of this state to enforce the statute as it is drafted.

Third, the staff attorney's opinion is not an agency statement which should be relied on. It is not a rule or a declaratory statement; it is not a directive from the agency head. It is not an opinion that ought to be accorded any level significance or weight by this Court.

However, even if the opinion were such a statement or policy position of the agency, this Court has stated in the case of Kimbrell v. Great American Insurance Company, 420 So.2d 1086 (Fla. 1982), concerning an agency's construction of a statute that:

> [w]hen the language of a statute is plain and its meaning clear, resort to this or any other rule of statutory construction is unnecessary.

Here, the staff attorney stretched things to go outside the statute to support a strained interpretation of the provision.

The staff attorney's opinion and the resultant conclusion by Ms. Crockett is also inconsistent with the agency's prior actions. Ms. Crockett has stated that she knew of only one other district that was similar to the Longboat Key District and

that district was the Rainbow Lakes Estates Municipal Service District. That district was created in 1969 by a special act of the Florida Legislature. Chapter 69-1298, Laws of Florida.

Rainbow Lakes is comprised of "a contiguous area of unincorporated land in Marion and Levy Counties." Id. Thus, by definition, the district does not include the cities of Ocala, Dunnellon, Williston, Silver Springs or the Ocala National Forest. Clearly then, Rainbow Lakes does not cover the "whole territories of the counties in question" as is required pursuant to the opinion of the staff counsel of the Department of Community Affairs.

Rainbow Lakes is an independent district. Such is indicated by the official list of special districts which has been appended hereto. (A-68) That listing of special districts indicates that the Rainbow Lakes Municipal Service District in Marion and Levy Counties is an independent special district. Longboat Key is a similar special district in that the district boundaries cross county lines of two counties but the boundaries of the district do not encompass the entire counties within the district.

Thus, this places the Department of Community Affairs in the position of asserting that Rainbow Lakes is an independent district while asserting that Longboat Key is a dependent district. The inconsistency of the agency cannot be reconciled with either logic, fact or the clear language of the statute and must be interpreted as a faulty determination on the part of the

agency.

The **LONGBOAT KEY BEACH EROSION CONTROL DISTRICT** argued in the Circuit Court that Rainbow Lakes is an independent district because it was set up by a legislative act. Such argument misses the mark. It is **because** Rainbow Lakes **is an independent district** that they **had** to create it by statute. Rainbow Lakes also meets virtually all of the criteria under the definitions list of §189.403(2). This is directly contrary to the rationale advanced by **DCA** as to **LONGBOAT KEY.**

The **LONGBOAT KEY BEACH EROSION CONTROL DISTRICT** has **not** been established in accordance with the requirements of Chapter 189 and, therefore, is a void and invalid special district. The Court should not provide its blessing to any bonds issued by such an invalid district.

B. LEGISLATIVE HISTORY

The direct legislative history of the Uniform Special District Accountability Act is somewhat limited. The Florida House and Senate Journals merely recite the introduction, reading and passage of the bill. There were minor amendments to the bill (the final Committee Substitute for House Bill 599) none of which are relevant to this case. Other information is available, however.

In late 1987 Dr. Mary Kay Falconer, a Chief Legislative Analyst of the Florida Advisory Council on Intergovernmental Relations (ACIR), completed a report entitled "Special District

Accountability in Florida, 87-5, November 1987." That report, the relevant portions of which are appended hereto, formed the basis for a series of recommendations concerning special districts in Florida. (A-69)

The purpose of the study was to investigate special district accountability to the State, local governments and the citizens of Florida. The study looked at the then current statutory requirements and examined the results of previous studies. The report then made specific recommendations designed to ". . . enhance the accountability of special districts. . . ."

The report raised

> . . . fundamental questions about state policy toward districts. It call[ed] into doubt the state's ability to effectively communicate with special districts and enforce the statutory provisions [then] in effect.

Prior to the ACIR report there had been four major studies of special districts in Florida. The first of the early studies was done by the Environmental Land Management Study Commission in 1973 and the last study was performed by the State Auditor General in 1981 and reported as "Performance Audit of the Local Government Financial Reporting System." (A-72-76)

The ACIR report consolidated and reviewed the recommendations that came out of the studies. One of the recommendations was that there was a need to "[c]larify definitions of independent and dependent special districts." (A-122)

That recommendation was not adopted by a statutory change

and somewhat conflicting definitions continued to exist until the passage of 89-169, supra. See, §§200.001 and 218.31, Florida Statutes (1987).

The Florida Advisory Council on Governmental Relations also developed and published "ACIR Special District Accountability Recommendations and Rationales, 87-6, November 1987." The publication was specifically meant to serve as "Technical Supplement I" for the ACIR report, "Special District Accountability in Florida." (A-79).

The publication contains the specific recommendations approved by the ACIR during its Council meetings on March 23, 1987 and September 17, 1987. It also includes the rationales supporting the specific recommendations.

The recommendations represent the ACIR effort to "enhance special district accountability." Every recommendation approved was required to contain or meet at least one of the following objectives: (A-81)

> Objective A: To improve the implementation of statutes currently in place that help insure the accountability of special districts to state and local governments.
>
> Objective B: To improve communication and coordination between state agencies with respect to required special district reporting and state monitoring.
>
> Objective C: To improve communication and coordination between special districts and other local entities with respect to ad valorem taxation, non-ad valorem assessment collection, special district elections and local government comprehensive planning.
>
> Objective D: To move toward greater uniformity in special district elections and non-ad valorem

assessment collection procedures at the local level without hampering the efficiency and effectiveness of the current procedures.

Objective E: To clarify special district definitions and creation methods in order to insure consistent application of those definitions and creation methods across all levels of government.

It is relevant to note that these objectives (which were the framework for the ACIR recommendations) were adopted, virtually verbatim, less than eighteen (18) months later in 89-169, supra, and which became the statement of legislative intent in §189.402(2)(a) through (e), Florida Statutes (1989).

It would seem reasonable to conclude that the ACIR study and recommendations were of a significant value and impact to the Legislature in the drafting of Chapter 89-169. In fact, eight of the members of the ACIR were state legislators. Additional support for this conclusion comes from the language of the specific recommendations of the ACIR.

The recommendations most relevant to the issue in this case appear in "Recommendation Set IV: Special District Definition and Formation Issues (Objective E)." See, Objective E above. (A-82)

Recommendation number 2 in Set IV, consists of four (4) subsections. Section 2a addressed the creation of independent districts indicating that independent districts could be created by Chapter 190 (Uniform Community Development Districts), §125.901, Florida Statutes (Juvenile Welfare Services District), indigent health care districts and "by the Legislature by special act as authorized in general law." The law that was adopted in

response to the recommendation is §189.404, Florida Statutes (1989). (A-83)

Recommendation 2b stated that dependent districts could only be created by municipalities or counties. Section 189.404(1), Florida Statutes (1989) seemed to be the embodiment of this recommendation.

Recommendation 2d required the submission of a "general statement to the Legislature" that sets out the purpose, authority and need for the district in order for the special act to be valid. This requirement was also adopted almost verbatim in 89-169, supra, and now appears in §189.404(2)(e), Florida Statutes (1989).

Lastly and most importantly is Recommendation 2c, to-wit:

> **Recommendation 2c: Special districts that include more than one county are independent special districts.** Emphasis supplied. (A-84)

This recommendation was essentially adopted verbatim by the Legislature in 1989 in 89-169, supra. The provision became part of §189.403, Florida Statutes (1989). Section 189.403 is a crucial element of the rationale behind the essentially new Chapter 189. Section 189.402(1), Florida Statutes (1989) states:

> [i]t is the intent of the Legislature through the adoption of this chapter to provide general provisions for the **definition,** creation and operation of special districts. Emphasis supplied.

The new statute placed the definitions for independent and dependent special districts in one chapter (189) of the Florida Statutes and cross referenced the definitions in other sections

of the statutes to keep the definitions consistent. (A-85)

Special district accountability cannot be obtained if one cannot properly identify the types of districts. The new definitions in Chapter 189 provide a relatively easy and useful approach to identifying district types.

If the district meets the criteria of §189.403(2), then it is a dependent special district. However, if it does not meet those specific criteria then it is an independent district. The Legislature then placed a **special caveat** that if the district includes more than one county **it is an independent district.**

As to these definitional provisions, ACIR Recommendation Set IV, 1b proposed definitions for "special district, independent special district and dependent special district." The definition of "special district" was essentially adopted and appears in §189.403(1), Florida Statutes (1989). (A-86)

An expanded version of the definition for "dependent special district" was adopted and appears in §189.403(2).

The recommended definition of "independent special district" was **not** adopted by the Legislature. The recommended definition contained several sub-parts and was essentially the converse of the definition of dependent special district.

The definition that was adopted was essentially the definition proposed by Dr. Falconer in her article in the Stetson Law Review. Falconer, "Special Districts: The 'Other' Local Governments - Definition, Creation and Dissolution," 18 Stetson Law Review 583 (1989). On page 609, Dr. Falconer's proposed

definition for "dependent special district" was adopted almost verbatim.

Dr. Falconer then defined "independent special district" as "a district that is not labeled dependent according to the above criteria." Supra. This is essentially what Section 189.403(3) now says.

Dr. Falconer then pointed out that:

> [a]nother clarification might specify that multi-county districts and districts with representatives from more than one jurisdiction in its governing board are considered to be **independent**. Emphasis supplied.

The Legislature apparently agreed with Dr. Falconer's approach because the language ultimately adopted virtually does just what she suggested.

In essence then, a district would qualify as an independent district if it does not meet the dependent distinct criteria in §189.403(2) or if the district boundaries include more than one county.

The boundaries of the **LONGBOAT KEY BEACH EROSION CONTROL DISTRICT** include more than one county. It is an independent district.

If the statutory language is not clear enough, then the logic of the matter should be convincing.

The reason districts that extend beyond the boundaries of one county are defined as independent by the Legislature is that such classification makes sense. It makes sense to give special attention to an entity that, as in this case, affects two county

governments, two property appraisers, two tax collectors, two supervisors of elections and of course, citizenry of two different counties. In the case of Sarasota (a charter county) and Manatee (a non charter county) it is safe to say that the citizens of Manatee and Sarasota Counties have view points which are significantly different. The results of the original straw ballot on the beach renourishment issue shows that the Sarasota part of the key were about evenly divided (1377 YES/1354 NO), while the Manatee County end were two to one against the beach renourishment proposal. (686 YES/1294 NO). (A-87)

Additionally, because of the disparity in the financial reporting requirements of dependent/independent districts, it makes sense to classify the Longboat Key District as an independent district. The millage rate (tax rate) of dependent districts is ". . . added to the millage of the governing body to which it is dependent." §200.001(8)(d), Florida Statutes (Supp. 1990).

Independent districts, however, report their millage separately from the general purpose local government. See, Falconer, at 592, §218.31(7), Florida Statutes (1989). It makes sense for the **LONGBOAT KEY DISTRICT** to report separately rather than having to allocate portions of the reports between the two counties.

Lastly, special district activities (both operations and financial) inherently have an impact on the comprehensive planning activities of the counties involved. When a district

crosses county boundaries, it makes sense to require the district to go through the special procedures required of special acts. A special act creating a district is subjected to the special procedures in legislative committee hearings **and** the proponents of the district are required to address the fifteen (15) requirements contained in §189.404(3), Florida Statutes (Supp. 1990).

This means that a municipality that intends to establish a multi-county district has to go to the Legislature and show why it should be entitled to the special classification of independent special district. This process allows a full and fair review of the proposed district by not only the legislative staff, but also by the elected representatives of the citizens of the counties involved.

When one looks at the Longboat Key ordinance, one sees all the correct buzz words from the definition in §189.403(2), Florida Statutes (1989). What is not contained in the ordinance, however, is an explanation of why, as the **District** claims, the clear language of §189.403(3), Florida Statutes (1989) does not apply to the **LONGBOAT KEY BEACH EROSION CONTROL DISTRICT**?

The explanation is simple. The Town/District did not want to be subjected to the scrutiny of the legislative process. They knew that if they had to answer the tough questions about the gerrymandered district boundaries and if they had to get the agreement of the two counties as required by §189.404(2)(e)(4), Florida Statutes (1989) that the district would never have

passed.

The Town/District **knew** that the people of Longboat Key did not want the beach renourishment district. They **knew** because a straw ballot that had been done prior to the adoption of the district ordinance **defeated** the beach renourishment issue. (A-87)

The Town's response was to ignore the will of the people and to gerrymander a special district consisting mainly of commercial, beach front and multifamily properties. The Town knew if they had to go to the Legislature for a special district act that their chances of success were **nil**. So what did they do? They cheated.

The Town established an independent special district as a dependent special district through a carefully drawn ordinance. It appears clear that the drafters of the ordinance had read Chapter 189. The buzz words are there. What is not there, is the basic fact that the district is a multi-county district and therefore **must** be an independent special district.

No amount of drafting expertise can change the essential fact that the **LONGBOAT KEY BEACH EROSION CONTROL DISTRICT** fails to meet the essential requirements of the law.

The decision of the Circuit Court must be reversed and the proposed bond issuance denied.

II. THE ORDINANCES CREATING THE DISTRICT ARE INVALID.

The initial town ordinance establishing the **LONGBOAT KEY BEACH EROSION CONTROL DISTRICT** was Ordinance 90-21. (A-6) This

is the ordinance that Appellants alleged contains faulty boundary descriptions, references and maps. The Town of Longboat Key adopted Ordinance 91-06 (A-10) on April 1, 1991 in an attempt to correct the previous mistakes in the legal description of the boundary contained in 90-21. Ordinance 91-06, however, violates the statutory requirement of the proper procedure for municipalities to adopt ordinances.

Section 166.041, Florida Statutes (1989), in Subsection (2), states:

> Each ordinance or resolution shall be introduced in writing and shall embrace but one subject and matters properly contained therewith. The subject shall be clearly stated in the title. **No ordinance shall be revised or amended by reference to its title only. Ordinances to revise or amend shall set out in full the revised or amended act or section or subsection or paragraph of a section or subsection.** Emphasis supplied.

Thus, the attempt in Ordinance 91-06 to revise or amend parts of Ordinance 90-21 without setting out in full the revised or amended act or section or subsection clearly violates the basic procedural requirement for adoption of such amendments or revisions.

Ordinance 91-06 is in violation of §166.041 and therefore is void. Since 91-06 is void and 90-21 is admittedly defective (inherently admitted by the Town's perceived need to amend and clarify the boundary description), the creation of the district was defective and thus void.

Section 166.041 is a significant statute in that it allows municipalities to enact legislation which operates to

substantially affect the property rights of the individuals subject to such municipal ordinances. Where statues provide the procedural requirements for the deprivation of property rights, such requirements cannot be regarded as immaterial or a matter of convenience rather than substance and the provisions of such a statutes must be strictly followed. Neal v. Bryant, 149 So.2d 529 (Fla. 1962).

It is improper to validate bonds which are issued on the basis of substantively and procedurally defective ordinances such as those cited herein.

III. CONCLUSION

A democratic government is created by a grant of power from the people that are ultimately to be subjected to that government. As part and parcel of the grant of authority to the government the people have required that certain things occur, that certain rules be observed by government in exercising its sovereign power and authority over its people. One of the most important of those rules is known as due process. That is, the government may only exercise its authority and power if it acts according to the procedures set out in the law. In this case, the Town of Longboat Key failed to follow the required procedural guidelines as set out in the statutes concerning the creation of a district. The Town also failed to follow the procedural guidelines that are required concerning the adoption of the ordinances. The Town simply failed to follow the required

procedural guidelines throughout the process.

The solution is simple. If Longboat Key wishes to create a district to re-nourish its beaches and to issue bonds to be paid for from the taxes of the district then it has to follow the rules of the game. It has to grant procedural due process to all the parties involved. It has to grant the opportunity for all the affected people to participate in the process by voting, or by way of debate, or, at a minimum, having the information available to clearly indicate exactly who is affected, and what is being done, and where the lines are drawn that are of a material and significant impact to many of the residents and property owners on Longboat Key.

The Town of Longboat Key took a straw ballot and the straw ballot was overwhelmingly against the beach re-nourishment program as pushed by the Town Council. The Town Council then opted to go around the clear expression of the people of the Key by carving out a special district that, the Town Council hoped, would be able to pass electorial muster. The bottom line is that what the Town Council attempted to do was to create a carefully determined (although faulty) district boundary that would insure the success of such a referendum. The Town Council, in its efforts, failed to do what is **absolutely essential** in such cases. The Town Council failed to follow the requirements of procedural due process and basic fairness. If the Council is to be allowed do what it wishes to do then it must follow the rules. It must properly (and accurately) inform the people of what the district