

IN THE SUPREME COURT
STATE OF FLORIDA

TERRY SUE TURNER,
Defendant/Appellant,

CASE NO. SC00-2296
Circuit Court Case No. 00-4060-CI-021

vs.

CITY OF CLEARWATER,
a municipal and public body corporate
and politic of the State of Florida,
Plaintiff/Appellee.

ON APPEAL FROM THE SIXTH JUDICIAL CIRCUIT
PINELLAS COUNTY, STATE OF FLORIDA

Hon. James R. Case

ANSWER BRIEF OF APPELLEE

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INTRODUCTION

The City of Clearwater, Florida (the "City") files this Answer Brief to affirm the decision of the trial court below validating its Infrastructure Sales Tax Revenue Bonds, Series 2000 (the "Bonds"). The proceeds of the Bonds are intended to finance the cost of replacing the Memorial Causeway Bridge (herein, the "2000 Project") connecting the mainland portion of the City of Clearwater with the City's Clearwater Beach area¹. The existing bridge is an old drawbridge that has become functionally obsolete.

(T-14)

At issue in this appeal is the meaning of Article II and Article IX of the Charter of the City of Clearwater (the "Charter") (A-Supp-1-3,20). Section 2.01(d) of Article II of the Charter imposes certain limitations on the actions of the City regarding disposition and development of certain lands without prior referendum approval for such actions. Article IX places some limitations on the broad home rule authority of the City to issue bonds, requiring a referendum if the bond issue exceeds \$1 million unless the bonds are revenue bonds for "public health, safety or industrial development and revenue bonds for refunding" (Emphasis Added).

¹ Although sometimes referred to as "Clearwater Beach" in the Appendices and the Transcript, this area is within the city limits of the City and is not separately incorporated.

The City Commission of the City determined on several occasions that the existing Memorial Causeway Bridge was functionally obsolete, and in light of the fact that the existing drawbridge is the main evacuation route from Clearwater Beach to the mainland and that it is presently a major site for pedestrian accident and related traffic problems, that it was necessary for the health and safety of the residents of the City that the timetable for the replacement of the bridge be accelerated and a new bridge constructed. (A-11, A-12, A-Supp-2)

The proposed improvements constituting the 2000 Project include the replacement of the existing Memorial Causeway Bridge using virtually the same footprint as is used for the existing bridge, with a realignment of the City's streets which provide access to the bridge to improve traffic flow. The Appellant seeks to challenge the Circuit Court's ruling in favor of the City by asserting that the financing of the 2000 Project is merely an advance funding to the State of Florida in order to accelerate the replacement of a State bridge within the City, and that such advance funding can not be in furtherance of the health and safety function of the City. Contrary to Appellant's assertions, the 2000 Project is consistent with the Charter's explicit exception for bond issues for public health and safety, and undertaking the 2000 Project does not require prior referendum approval.

Thus, the judgment of the trial court should be affirmed and the Bonds validated.

References to the Parties and the Record

In this brief, the Appellee/Plaintiff, the City of Clearwater, Florida, will be referred to as the "City," and the Appellant/Defendant, Terry Sue Turner, will be referred to as the "Appellant." References to the Appendix supplied by the Appellant will be cited by the symbol "A" followed by the tab number followed by the page number. References to the Supplemental Appendix supplied by the City will be cited by the symbol "A-Supp" followed by the tab number followed by the page number. References to the Transcript attached to the Appellant's Appendix will be cited by the symbol "T" followed by the page number.

COUNTER-STATEMENT OF THE FACTS

Appellant's Statement of the Facts makes several critical omissions that require the City to submit this Counter-Statement of the Facts and Supplemental Appendix to fully develop the record upon which the trial court validated the Bonds.

Background

The City of Clearwater originally adopted its Charter on December 12, 1978, and various provisions have been amended from time to time thereafter. (A-Supp-1) The Charter, enacted after the Florida Constitutional revisions of 1968, gave broad powers to the City to provide for the welfare of its citizens. Article I, Section 1.01 of the Charter states:

Section 1.01. Corporate existence and powers.

(a) General Powers. The City of Clearwater, Florida, (the "city"), as created by Chapter 9710, Special Laws of Florida, 1923, as amended, shall exist and continue as a municipal corporation, shall have all governmental, corporate and proprietary powers to enable it to conduct municipal government, perform municipal functions and render municipal services, and may exercise any power for municipal purposes except when expressly prohibited by law. In addition to the powers enumerated herein, the city shall be vested with all powers granted by general or special acts of the Legislature of the State of Florida and otherwise provided by law.

(b) Exercise of Powers. The city may exercise any of its powers or perform any of its functions and may participate in the financing thereof, by contract or otherwise, jointly or in cooperation with any one or more states or political subdivisions or agencies thereof, or the United

States or any agency thereof, or with any person as defined by law.

(c) Construction. The powers of the city under this charter shall be construed liberally in favor of the city. The city is empowered to do whatever is necessary and proper for the safety, health, convenience and general welfare of its inhabitants. The specific mention of a particular power in this charter shall not be construed as limiting the general power stated in this section of Article I.

The Charter, however, does impose some limitations on the otherwise broad home rule authority of the City. For example, Section 2.01(d) of the Charter places certain restrictions on the City regarding “development” of certain areas of the City near the location of the 2000 Project. (A-Supp-1, 3 through 6). In addition, some limitations are imposed on the City’s authority to issue bonds, by requiring a referendum on the issuance of bonds in excess of \$1 million unless the bond issue is for revenue bonds for public health, safety or industrial development or refunding. The Charter provision which is at the center of this appeal is Article IX, entitled "Fiscal Management Procedure," states:

The fiscal management procedures shall include provisions relating to the operating budget, capital program, providing for hearings on the budget, capital budget and capital program and the amendment of the budget following adoption. Such ordinance shall in addition contain a provision requiring that revenue bonds for projects in excess of one million dollars shall be put to public referendum with the exception of revenue bonds for public health, safety or industrial development and revenue bonds for refunding.

The 2000 Project

The City's concerns with the continued viability of the existing Memorial Causeway Bridge can be traced back at least until 1996, when the City Commission adopted Resolution Nos. 96-38 (A-11) and 96-39 (A-Supp-2), expressing the existing health and safety concerns about the existing bridge and declaring the replacement of the Memorial Causeway Bridge to be of the highest priority to the City. The existing bridge is a drawbridge with 10 foot wide lanes that has become functionally obsolete. It does not accommodate pedestrians because it lacks any type of barrier between the cars and the pedestrians, and forces the pedestrians into narrow sidewalks. Since the present Memorial Causeway Bridge is a drawbridge over the intercoastal waterway, it is subject to frequent openings during each day, resulting in frequent traffic congestion. (T-14)

In contrast, the 2000 Project is a high-span bridge that is about 70 feet high with 12 feet wide lanes. It has a sidewalk on the south side that accommodates the Pinellas Trail² going over to Clearwater Beach that is about 10 feet wide. The new bridge design includes barriers between the pedestrians and the vehicular traffic. Since it is not a drawbridge, there will be no delays in traffic flow resulting from opening and closing the bridge. Overall, the 2000 Project is designed to conform with present day

² The Pinellas Trail is a major pedestrian and bicycling trail that spans much of Pinellas County.

standards for similar bridge designs. (T-14,15)

Through the design phase, citizen input was essential, and was solicited by the City following the 1995 physical study of the existing bridge. (T-18, 19) The City's Public Works Administration and the State Department of Transportation held about 30 public meetings, seven of which were before the City Commission. (T-18) Before the design work was commenced, a need assessment was done for the 2000 Project. The need assessment took into account the many bridge openings for the vast scale of the bridge span, the fact that the vast scale of the bridge was unsafe and the fact that the bridge is the main evacuation route for the north beach island, Island Estates area and the Sand Key area. These factors were determined to reflect the detrimental nature of the existing bridge and the fact that not replacing it would be against the safety of the residents in those areas. (T-19) The City's Public Works Administrator testified that "given the fact that it's an evacuation route, the fact that it has substandard lanes, it has no barriers for pedestrians and there has been accidents where cars have fatally had accidents with pedestrians, and the fact that air quality is not enhanced by the fact that the cars are standing behind the traffic light and the fact that because of the openings, the traffic backs up on the mainland as well as on the beach area, it is very important to the health and safety of the residents for this project to go forward." (T-20) In further testimony, the City's Public Works Administrator stated that the existing bridge was one of the top ten accident locations in the City, and that the 2000 Project was

designed to avoid these fatal accidents. (T-21) The decision of the City Commission to seek the assistance of the State Department of Transportation in accelerating the timing of the 2000 Project followed a series of presentations made to the City Commission and was based solely on the factors affecting the health and safety of the residents. (T-39) At all times during which the City Commission took the 2000 Project under consideration, the Commission made it clear that their only concern was the health and safety of the residents of the City. (T-40) The purpose of the joint participation agreement with the State Department of Transportation (A-Supp-5) is to cause an acceleration of the timetable for a project such as the 2000 Project. (T-39)

Effect of *Spatuzzi v. City of Clearwater*

Certain citizens of the City filed suit against the City seeking a declaration that the 2000 Project could not be undertaken by the City with prior referendum approval. In that action Judge Case issued a decision entitled *Spatuzzi, et. al. v City of Clearwater*, Case No. 99-1080-CI-021, in favor of the City to the effect that no referendum approval was required by the Charter. (A-Supp-3) After the decision was issued, the City filed the instant bond validation proceedings, relying in part, on the decision in *Spatuzzi, supra*, which was then on appeal to the Second District Court of Appeals. Since no stay was requested or granted in *Spatuzzi*, the City was bound by the judicial determinations in that decision. As such, the Circuit Court was required to take mandatory judicial notice of this case as directed by Section 90.201, Florida

Statutes (2000). In the *Spatuzzi* decision, Judge Case found and determined the following central factual matters:

(1) The replacement of the Memorial Causeway Bridge is necessary and in the interests of the public health, safety and welfare of the citizens of the City of Clearwater.

(2) The replacement of the bridge is a joint project between the City and the Florida Department of Transportation. The Florida Department of Transportation agreed that the construction, reconstruction, and maintenance of the bridge, which is on a state facility, is necessary and practical and in the best interests of the citizens of the State of Florida.

(3) The existing Memorial Causeway Bridge is an aging drawbridge and serves as the primary evacuation route for the north end of Sand Key, all of Clearwater Beach and Island Estates. It was originally constructed in 1963 and is over 36 years old. The bridge handles an average of 38,000 vehicles per day, and the traffic volume increases to 50,400 vehicles per day during peak time periods.

(4) The existing Memorial Causeway Bridge is one of the top ten accident locations in the City, and is structurally deficient under current design standards.

(5) The level of service provided by the current bridge, as gauged by state standards, is estimated to be a “D,” if bridge openings and malfunctions are not considered, and drops to an “E,” if bridge openings and malfunctions are considered. The number of bridge openings of this bridge exhibits the highest annual daily traffic of any four-lane draw-span bridge along the entire west coast of Florida.

(6) For the previous decade the bridge and its intersection with Drew Street and Pierce Boulevard has been and continues to be considered one of the City's most dangerous intersections. The bridge lacks emergency auxiliary lanes and its traffic lanes are of substandard width with no functional median or barrier wall separating opposing lanes of traffic. The raised separation between pedestrians and vehicular traffic is negligible, and the metal bridge grate has a low skid resistance when compared to an asphaltic or concrete surface. Although the bridge is the primary evacuation route for the northern part of Sand Key, Clearwater Beach, and Island Estates, it is extremely susceptible to congestion delays and malfunctions.

(7) The proposed replacement bridge consists of a four lane, divided, high level fixed span bridge, to be built to current state standards with safety shoulders, raised separator between pedestrian and vehicular traffic, as well as an adequate sidewalk width for pedestrian and bicycle traffic, which will eliminate most of the problems now associated with the existing structure.

(8) The alignment of the new bridge was chosen from several alternatives, in part because of its minimal environmental impact, and because it closely follows the existing bridge alignment and approaches. In fact, the footprint of the new bridge will not materially extend the boundaries of the existing bridge and approaching roadways.

(9) Construction related to the new bridge project will actually result in a net increase in "open space" land within the area described in Section 2.01(d) of the Charter of the City of Clearwater. (A-Supp-3)

The trial court validated the Bonds in its Final Judgment. (A-5) In validating the Bonds, the trial court held that the 2000 Project does not require referendum approval

prior to the City's undertaking of the 2000 Project and that the City Commission determined that the 2000 Project was necessary for the continued health and safety of the citizens of the City and issuing the Bonds is within the health and safety provisions of the Charter. (A-5-3,4,5). This appeal followed.

STANDARD OF REVIEW

This Court's scope of review in bond validation cases is limited to the following issues: (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 the law. *See State v Osceola County*, 752 So. 2d 530 (Fla. 1999); *State v. Inland Protection Fin. Corp.*, 699 So. 2d 1352 (Fla. 1997); *Poe v. Hillsborough County*, 695 So. 2d 672 (Fla. 1997); *Northern Palm Beach County Water Control Dist. v. State*, 604 So. 2d 440 (Fla. 1992); *Taylor v. Lee County*, 498 So. 2d 424 (Fla. 1986). The Appellant has the burden of demonstrating that the record and evidence fails to support the trial court's conclusions when it validated the Bonds. *Wohl v. State*, 480 So. 2d 639,641 (Fla. 1985).

STATEMENT OF THE ISSUES

1. Did the City Commission rely on competent substantial evidence when finding that the 2000 Project benefitted the health and safety of inhabitants of the City and in furtherance of the City's health and safety functions?
2. Are the Bonds to be issued for the 2000 Project within the public health and safety exception to the Charter requirement of referendum approval of revenue bond issues in excess of \$1,000,000?
3. Does the 2000 Project constitute "development" within the meaning of Section 2.01(d) of the Charter and thus require referendum approval prior to the City undertaking the 2000 Project?

SUMMARY OF THE ARGUMENT

The City will reply to the five arguments made by the Appellant in her appeal by responding to Appellant's essential arguments. The Appellant's first argument is that there is no evidence in the Record to establish the findings of the Circuit Court in Paragraph Eighth of the Final Judgment. Unfortunately, the Appellant, in making this argument, ignores the testimony of the City's Public Works Administrator (see: Counter-Statement of Facts), as well as the prior legislative findings of the City Commission and the decision in *Spatuzzi, et. al. v. City of Clearwater, supra*, (A-Supp-3), as affirmed by the Second District Court of Appeals, No. 2D00-1482 (Fla. 2d DCA December 1, 2000) (A-Supp-4) which are binding on the City.

Appellant's second argument is that a project replacing a state facility, as a matter of law, does not fall within the exception of Article IX of the Charter. In advancing this argument, Appellant again ignores the judicial decisions binding on the City and the testimony of the City's Public Works Administrator regarding the relationship of the 2000 Project and the health and safety needs of the City and its residents.

Appellant's third argument is that competent evidence was not admitted at trial to demonstrate that the 2000 Project constituted an essential government function. This argument requires this Court to read into the Charter the judicially-created exception for "essential government functions." This is an exception that is derived from the 1885 Florida Constitutional prohibition of issuing any bonds without prior referendum approval. As part of this argument, Appellant urges this Court to equate "public health and safety" in the City's Charter with superceded case law creating an "essential governmental functions" exception to the 1885 Florida Constitutional ban on bond issuance without voter approval.

Appellant's fourth argument is essentially a restatement of Appellant's second argument discussed above, to the effect that the City's providing advance funding to accelerate the timing of the replacement of the Memorial Causeway Bridge with the 2000 Project does fall within the health and safety functions of the City.

Appellant's fifth argument is simply a restatement of her Arguments II through

IV to the effect that no legislative authority exists for the a City to provide advance funding for a State project by way of issuing bonds. Such an argument ignores the municipal home rule powers bestowed on municipalities by the present State of Florida Constitution, as is recognized by the Charter.

Appellant's arguments can be reduced to essentially two arguments. The first argument is that the facts, evidence and arguments of counsel elicited during the validation hearing did not provide competent evidence to support the Circuit Court's Judgment, and the other being that the Court must read into the Charter the requirements of outdated judicial decisions regarding the restriction on powers granted to municipalities prior to the adoption of the present State Constitution. The City will show that the historical interpretations given to the City's Charter that bonds for projects in excess of \$1,000,000 must either be approved in a referendum, or be determined by the City Commission in the exercise of its legislative function to be in furtherance of "public health, safety, industrial development or refunding" in numerous prior bond validations is the correct interpretation (A-Supp-7). Further, the imposition of an outdated standard for review of municipal actions as requested by the Appellant is not justified either by the language of the Charter, the issues before the citizens of Clearwater at the time the Charter was adopted, or relevant judicial authority.

The City will also show that the second argument raised by the Appellant -- that the project to be financed by the City with the proceeds of the bonds is not in

furtherance of public health or safety -- is also not supported by record evidence or case law. In response to this argument, the City will demonstrate that the testimony and documentary evidence introduced by the City in the course of the bond validation hearing reflects a broad scope of information delivered to the City Commission over seven City Commission meetings regarding the 2000 Project to be financed, including the health and safety implications of the 2000 Project. This information provided a foundation which was more than sufficient for the City Commission to base its legislative determinations that the 2000 Project was in furtherance of the public health and safety of its citizens and residents.

REPLY TO APPELLANT’S ARGUMENTS I THROUGH V

THE CITY RELIED ON SUFFICIENT EVIDENCE WHEN MAKING ITS FINDINGS THAT THE 2000 PROJECT WAS IN THE INTERESTS OF THE HEALTH AND SAFETY OF THE INHABITANTS OF THE CITY SO THAT THE FINDINGS WERE NOT SO CLEARLY WRONG AS TO BE BEYOND THE POWER OF THE CITY COMMISSION.

Although the Appellant recognizes in her Initial Brief at page 17 that a legislative finding can be sufficient to satisfy the requirements of Article IX of the City’s Charter, the Appellant has suggested that the City’s legislative findings are not sufficient. Essentially, the Appellant wants the City Commission to find that a project is not only in furtherance of public health or safety (or industrial development or refunding as the case may be) , but is also an “essential government function” to the public health and safety of its citizens, and that such findings be supported by competent substantial evidence. This addition to the historical legislative findings requirement imposed on the City Commission by its Charter that a project also be found to be an “essential government function” in addition to such projects satisfying the Charter’s public health and safety requirement is an attempt to harken back to the outdated concept of “essential government purpose” discussed later in this Answer Brief, and is not supportable by either historical facts or judicial precedence. The second portion of her argument seeks to utilize the wrong judicial standard for review of legislative determinations.

Contrary to the arguments set forth by the Appellant in its initial brief beginning at page 17, the cases cited by the Appellant in its Initial Brief, namely, *City of Jacksonville v. Savannah Machine & Foundry Company*, 47 So. 2d 634 (Fla. 1950) and *State v. City of St. Petersburg*, 198 So. 837 (Fla. 1940), do not support the concept that “essential government functions” must be read into the Charter. Rather these cases, along with *Nohrr v. Brevard County Educational Facilities Authority*, 247 So. 2d 304 (Fla. 1971) cited by the Circuit Court in the Final Judgment, stand for the proposition that a legislative determination once made will not be challenged by the courts absence a showing that such determination was “so clearly wrong as to be beyond the power of the legislature.” *Nohrr v. Brevard County Educational Facilities Authority, supra*, at 309. This concept of the validity of legislative determinations was well established in the “municipal purposes” cases cited in response to Appellant’s argument I above, and was clearly a recognized concept applicable to municipalities when the City’s Charter was adopted in December, 1978.

One of Appellant’s primary arguments in her Initial Brief is that the City Commission did not have significant competent evidence to support its decision that the particular road design to be constructed would further the health and safety of its citizens, and thus is beyond the scope of the exemption to the referendum requirement in the Charter. This bold proposition of the Appellant requires this Court to ignore the evidence submitted by the City as part of the validation hearing. *See generally*, City’s

Counter-Statement of Facts. The City would further submit to this Court that any decision its City Commission made regarding the 2000 Project should fit within the Charter exemption and that exactly these types of decisions were the ones contemplated by the voters when the Charter was adopted. Thus, even ignoring the body of evidence regarding the health and safety issues which were before the City Commission, the City submits that bonds for road improvements such as the 2000 Project should be validated in virtually all cases on the presumption that such projects necessarily involve the public's health and safety.

This determination, however, is made less difficult where, as here, the City fully contemplated a number of health and safety issues when embarking on the project, including the need for an efficient evacuation route (T-19), accident rates (T-21), pedestrian safety (T-14), and air pollution (T-19). These concerns were raised before the City Commission on at least seven occasions (T-21), and the City Commission made it very clear to the City staff working on the 2000 Project that it would only consider projects which addressed the health and safety concerns of the City Commission (T-40).

With such evidence supporting the fact that the 2000 Project would be beneficial to the health and safety of the inhabitants of Clearwater, the determination of the City

Commission and the trial court should not be overturned by this Court³. The Appellant has the burden of demonstrating that the record and the evidence fails to support the trial court's conclusions when it validated the Bonds. *Wohl v. State*, 480 So. 2d 639,641 (Fla. 1985). In the face of the ample evidence regarding the health and safety benefits of the Roadway Project, the findings of such benefits by the City Commission and the lower court should not be disturbed by this Court on this record.

In the Appellant's Initial Brief at page 17, the Appellant admits that the City Commission made a legislative finding that the 2000 Project was in furtherance of public health and safety. The legislative findings of the City Commission, set forth in Resolution No. 00-19 (A-12-1,2), were:

SECTION 1. FINDINGS. The City Commission hereby finds and determines:

A. The City Commission has received through one or more public hearings input, comments and advice from professionals generally recognized

³ This reasoning is completely consistent with other bond validation judgments rendered on behalf of the City of Clearwater since the adoption of its Charter in 1978 discussed in Appellee's second argument. *See* A-Supp-7. The Circuit Court has consistently applied the reasoning that since the legislative body of the City made a legislative determination that the project to be financed was in furtherance of the health and safety needs of the citizens and within the health and safety functions of the City, that prior referendum approval was not required by Article IX of the City's Charter. (A-Supp-1) In the sole bond validation case involving the City's Charter previously appealed to this Court in which a decision has been issued, this Court entered an order affirming the Circuit Court's final judgment pursuant to Florida Rule of Appellate Procedure 9.315(a). *Kelly v. City of Clearwater*, 650 So. 2d 990 (Fla. 1995). The validation judgment appealed from in the *Kelly* decision utilized this same standard for testing the City's authority to issue bonds under Article IX of the City's Charter.

to be experts in matters relating to bridge and road design and traffic flow patterns and needs, as well as comments from the citizens of the City in relation to the Series 2000 Project.

B. Based on the extensive information received by the members of the City Commission through such public hearings and in reports of the professionals engaged by the City, the City Commission hereby determines that the Series 2000 Project, as hereinafter approved, is necessary for the continued health and safety of the citizens of the City and visitors to the City and that the construction of the Series 2000 Project and the financing thereof with proceeds of the Series 2000 Bonds is in furtherance of the public health and safety of the citizens of the City of Clearwater.

As evidenced by the transcript and the Appendix presented by the Appellant, the Appellant did not offer any evidence contrary to that offered by the City at the validation hearing, and did not offer any evidence that the City Commission did not have sufficient facts before it so as to render its legislative determinations “so clearly wrong as to be beyond the power of the legislature”. *Nohrr v. Brevard County Educational Facilities Authority, supra*, at 309. The Appellant had the burden to demonstrate such a lack of facts before the City Commission, and clearly failed to carry her burden during the validation hearing. As a result, the Final Judgment rendered below should be affirmed by this Court.

REPLY TO APPELLANT'S ARGUMENTS II, III, IV AND V

THE CITY'S 2000 PROJECT IS WITHIN THE PUBLIC HEALTH AND SAFETY EXCEPTION OF ARTICLE IX OF THE CITY OF CLEARWATER'S CHARTER AND THUS THE BONDS WERE PROPERLY AUTHORIZED BY THE CITY.

Appellant challenges the issuance of the Bonds based on the City's alleged failure to comply with its own Charter because the 2000 Project does not constitute "essential government purposes" which the Appellant contends must be read into the definition of "public health and safety" under the Charter. In addition, the Appellant argues that the act of the City in advance funding a portion of the costs of a new bridge to be constructed by the State can not, as a matter of law, satisfy the "public health and safety" provisions of the Charter. These arguments misconstrue the Charter and attempt to apply case law superceded by the Constitutional revisions of 1968.

Article IX of the Charter of the City of Clearwater provides (emphasis supplied):

The fiscal management procedures shall include provisions relating to the operating budget, capital program, providing for hearings on the budget, capital budget and capital program and the amendment of the budget following adoption. Such ordinance shall in addition contain a provision requiring that revenue bonds for projects in excess of one million dollars shall be put to public referendum with the exception of revenue bonds for public health, safety or industrial development and revenue bonds for refunding.

Historical Review of the "Essential Government Function" Doctrine

The Appellant offers an interpretation of Article IX of the City Charter based on case law arising out of the 1885 Florida Constitution rather than the present Florida

Constitution adopted in 1968. Initially, the Appellant asserts at page 11 of her brief that municipalities do not have inherent authority to incur bonded indebtedness, and that they have only such authority as the legislature expressly or impliedly confers on them, and in support thereof, cites to *Merrill vs. St. Petersburg*, 109 So. 315 (Fla. 1926) and *Nuveen vs. Quincy*, 156 So. 153 (Fla. 1934). Indeed this was the case under the 1885 Florida Constitution.

The 1885 Florida Constitution, Article IX, Section 6, provided in part as follows:

... the Counties, Districts or Municipalities of the State of Florida shall have power to issue bonds only after the same shall have been approved by a majority of the votes cast in an election in which a majority of the freeholders who are qualified electors residing in such Counties, Districts, or Municipalities shall participate, to be held in the manner to be prescribed by law...

Article IX, Section 6, Fla. Const. (1885).

Clearly, under this prior Constitutional prohibition, units of local government could not incur any form of bonded indebtedness without prior referendum approval by the affected citizens. This Court became concerned about certain aspects of this Constitutional prohibition of incurring bonded debt following the boom-bust period of the 1920's and the early years of the Great Depression, and began a line of judicial authority which created the “essential government purpose” exception for counties to this constitutional prohibition. This Court reasoned that certain aspects of a county government, consisting of jails and courthouses, were so completely essential to the

very existence of county governments that the provisions of Section 6, Article IX of the 1885 Florida Constitution, as enacted by the citizens of Florida could not have been meant to hinder a county's financing of its jails and courthouses. *State v. County of Manatee*, 93 So. 2d 381 (Fla. 1957); *see also State v. Florida State Improvement Commission*, 60 So. 2d 747 (Fla. 1952); *State v. Broward County*, 54 So. 2d 512 (Fla. 1951). Each county must be granted the necessary powers to carry out its basic governmental functions irrespective of any provision of the Florida Constitution. As a result, a county in Florida could issue bonds to finance a county jail and county courthouse without receiving the prior approval of the citizens in a referendum.

The "essential government purpose" exception was rendered obsolete with the enactment of Article VII, Section 12, of the 1968 Florida Constitution, where the only constitutional prohibition against the incurring of bonded indebtedness is restricted to bonds bearing the full faith and credit of the governmental issuer which are directly supported by the levy of ad-valorem taxes. Such bonds secured by the levy of ad-valorem taxes still must be approved by prior referendum. After the 1968 Constitutional revisions, this Court has ruled that the "essential government purpose" doctrine is no longer applicable and was rendered invalid with the adoption of the 1968 Constitutional revisions. *State v. County of Dade*, 234 So. 2d 651 (Fla. 1970). When requested by the School Board of Sarasota County, in an appeal of a bond validation proceeding, this Court reiterated that the doctrine was no longer valid and refused to

reinstate it. *State v. School Board of Sarasota County*, 561 So. 2d 549 (Fla. 1990).

Municipal Borrowing under the 1885 Florida Constitution

In regard to municipalities, this Court historically took a slightly different approach prior to the 1968 Constitutional revisions. Since municipalities were a creature of the legislation which created them, usually by special acts, a municipality would be authorized to carry out its “municipal purposes.” These purposes were determined either by the special act which created a particular municipality, or by an ordinance enacted by a municipality in furtherance of any delegated powers in its special act. For example, this Court determined that since the special act applicable to the City of Pensacola authorized them to construct a municipal auditorium, wharves, docks and piers, that the construction and financing of such a project was a valid “municipal purpose”. As a valid municipal purpose, the City of Pensacola was authorized to issue bonds to finance these projects either secured by a levy of ad-valorem taxes following approval by a public referendum, or payable from non ad-valorem tax revenues of the City of Pensacola without prior referendum approval. *State v. City of Pensacola*, 43 So. 2d 340 (Fla. 1949). In *State v. City of Pompano Beach*, 47 So. 2d 515 (Fla. 1950), this Court determined that the construction and financing of a new city hall was a valid “municipal purpose” within the special act chartering the City of Pompano Beach, and that such project could be financed with the issuance of bonds payable solely from power and light company franchise revenues

could be issued without prior referendum approval. Similarly, in *State v. City of Miami*, 76 So. 2d 294 (Fla. 1954), this court determined that since the special act charter for the City of Miami authorized the city to undertake public improvements, including markets, that it was a valid “municipal purpose” of the city to construct a trade mart to be owned and operated by the city. Since this project was a valid “municipal purpose”, the City of Miami was then authorized to issue bonds to finance the project without prior referendum approval since the bonds were to be paid solely from the proceeds of a utility tax imposed on utilities within the city and thus not impose a general obligation on the taxpayers of the city.

The common thread in each of these cases, as well as similar cases of the time, is a legislative finding, either by the Florida Legislature as part of the municipality’s special act or by an ordinance or resolution adopted by the municipality in furtherance of its special act charter, that a particular project constituted a valid “municipal purpose”. None of these legislative determinations were subsequently questioned by this Court in any of these rulings, and were accepted as law applicable to each particular municipality. Thus, by 1949, once a legislative determination was made that a particular project was a “municipal purpose” for a particular municipality, that municipality was free to incur debt to finance that project without prior referendum approval so long as the bonds were not payable from the ad-valorem tax revenues of the municipality.

Effect of the 1968 Constitutional Revisions on Municipal Borrowing

With the adoption of the revised Florida Constitution in 1968, municipalities were granted extremely broad home rule powers pursuant to Article VIII, Section 2, Florida Constitution (1968), where the only constitutional limitation placed on a municipality's authority to conduct municipal government, perform municipal functions and render municipal services, is that such power be exercised for valid "municipal purposes". Municipalities are no longer dependent upon the Legislature for further authorization. *State v. City of Sunrise*, 354 So. 2d 1206 (Fla. 1978). In the first decision by this Court following the adoption of the 1968 Constitution, this Court held that the City of Miami Beach did not possess the power to enact a rent-control ordinance. *City of Miami Beach v. Fleetwood Hotel, Inc.*, 261 So. 2d 801 (Fla. 1972). In response to the *City of Miami Beach* decision, the Legislature enacted in 1973 the Municipal Home Rule Powers Act, now codified as Chapter 166, Florida Statutes. In a subsequent case, this Court then upheld the power of the City of Miami Beach to enact a rent-control ordinance on the premise that Section 166.021(1) now authorized municipalities to exercise any power for municipal purposes except where expressly prohibited by law. *City of Miami Beach v. Forte Towers, Inc.*, 305 So. 2d 764 (Fla. 1974). In *State v. City of Sunrise, supra*, this Court acknowledged the vast breadth of municipal home rule powers when it said:

Article VIII, Section 2, Florida Constitution, expressly grants to every

municipality in this state authority to conduct municipal government, perform municipal functions and render municipal services. The only limitation on that power is that it must be exercised for a valid “municipal purpose.” It would follow that municipalities are not dependent upon the Legislature for further authorization. Legislative statutes are relevant only to determine limitations of authority.

State v. City of Sunrise, 354 So. 2d at 1209.

Adoption and Interpretation of City Charter

By 1978, the legal framework within which municipalities, such as the City of Clearwater, operated was fundamentally different from the legal framework that existed prior to the adoption in 1968 of the revised Florida Constitution. As observed by this Court in *State v. City of Sunrise*, *supra*, municipalities had evolved from highly restricted and regulated entities, essentially being nothing more than creatures of special acts of the Legislature, to fully mature governmental units with the ability and authority to exercise broad home rule powers. The only restrictions on a municipality’s incurring bonded indebtedness by this time was the Florida Constitutional requirement for a public referendum to approve bonds payable from ad-valorem taxes, any local charter restrictions enacted subsequent to the enactment of Chapter 166, Florida Statutes and the implicit Constitutional requirement that the incurrence of debt must be in furtherance of a valid municipal purpose. For example, this Court in *State v. City of Orlando*, 576 So. 2d 1315 (Fla. 1991), held that borrowing for the sole purpose of reinvestment to earn a profit without the concurrent capital projects to be financed with

such profits being identified, was not a valid municipal purpose. It was in this setting that the citizens of the City of Clearwater sought to impose some restrictions on the City's ability to issue bonds with the adoption of the Charter under which the Bonds which are the subject of this Appeal were authorized.

By 1978, the concept of an "essential government purpose" exception to the public referendum requirement, although widely recognized, had been rendered obsolete in light of the 1968 Florida Constitution revisions. *See State v. County of Dade, supra*. At the time the Charter was adopted on December 12, 1978, it was the undisputed state of the law that the City of Clearwater had virtually unlimited authority to issue bonds without public referendum so long as the City did not pledge its ad-valorem tax powers to secure the bonds and was issuing debt in furtherance of a valid municipal purpose.

The exception to the referendum requirement for bond issuance in the City's Charter is essentially a matter of first impression for this Court, although these Charter provisions are presently before this Court in another bond validation appeal in which no decision has been issued as of the time this Answer Brief was prepared. *Boschen v. City of Clearwater*, Case No. 96,874⁴ In interpreting Article IX of the Charter, it

⁴ The facts relating to the project which is the subject of the *Boschen* case and the facts relating to the 2000 Project may be viewed as distinguishable by this Court, even though the interpretation of Article IX of the Charter is central to both the *Boschen* case and the instant appeal before the Court.

should be read in conjunction with Article I, Section 1.01 of the Charter, which states:

Section 1.01. Corporate existence and powers.

(a) General Powers. The City of Clearwater, Florida, (the "city"), as created by Chapter 9710, Special Laws of Florida, 1923, as amended, shall exist and continue as a municipal corporation, shall have all governmental, corporate and proprietary powers to enable it to conduct municipal government, perform municipal functions and render municipal services, and may exercise any power for municipal purposes except when expressly prohibited by law. In addition to the powers enumerated herein, the city shall be vested with all powers granted by general or special acts of the Legislature of the State of Florida and otherwise provided by law.

(b) Exercise of Powers. The city may exercise any of its powers or perform any of its functions and may participate in the financing thereof, by contract or otherwise, jointly or in cooperation with any one or more states or political subdivisions or agencies thereof, or the United States or any agency thereof, or with any person as defined by law.

(c) Construction. The powers of the city under this charter shall be construed liberally in favor of the city. The city is empowered to do whatever is necessary and proper for the safety, health, convenience and general welfare of its inhabitants. The specific mention of a particular power in this charter shall not be construed as limiting the general power stated in this section of Article I.

The citizens of Clearwater did not intend that the then newly adopted Charter restrict the exercise of any "home rule powers" granted to the City by the Florida Constitution or by Chapter 166, Florida Statutes. Keeping in mind the recent history in Florida as well as then relevant judicial precedence, the citizens of Clearwater clearly wanted to provide some restrictions on the ability of the City to incur bond indebtedness without prior referendum approval, but yet did not want to force the City to continually seek the

approval of the citizens in a referendum for any and all bonds anticipated to be issued by the City. In light of these historical precedents, the City submits that its citizens intended for the City Commission, as the legislative body of the City, make the necessary determinations as to what projects would be within its “municipal purposes”, and further which of these projects were also in furtherance of its public health, safety or industrial development functions. Under Article IX of the Charter, those projects in furtherance of a valid municipal purpose which are legislatively determined by the City Commission to be in furtherance of the City’s public health, safety or industrial development functions could be financed by the City with the issuance of bonds payable from a revenue source other than ad-valorem taxes without the requirement of a referendum, and any project in furtherance of a valid municipal purpose could be so financed as long as the costs of the project was less than \$1,000,000.

In every bond validation judgment involving the interpretation of the City’s Charter since its adoption in 1978, the Circuit Courts in Pinellas County have consistently stated that the test under Article IX of the Charter is whether the project to be financed was in furtherance of the City’s health and safety functions. Those decisions which related to road or road-related projects were cited in the City’s Trial Memorandum (A-Supp-6), and copies of these decisions are included in the City’s Supplemental Appendix (A-Supp-7). Any suggestion by the Appellant that this Court should now ignore over 20 years of consistent interpretation of the City’s Charter and

now require the outdated concept of an “essential government purpose” be read into Article IX of the City’s Charter can only be based on a misinterpretation of historical facts and judicial precedence.

The City has all requisite powers to enter into an advance funding arrangement with the State Department of Transportation in connection with the 2000 Project. The Charter does not impose any restriction on the City’s ability to enter into joint participation agreements with other governmental entities. Section 166.111(1), Fla. Stat. provides that “[t]he governing body of every municipality may borrow money, contract loans, and issue bonds as defined in s. 166.101 from time to time to finance the undertaking of *any* capital or other project for the purposes permitted by the State Constitution and may pledge the funds, credit, property, and taxing power of the municipality for the payment of such debts and bonds.” *Emphasis added.* Chapter 339, Fla. Stat. specifically authorizes arrangements such as the Joint Participation Agreement between the City and the State Department of Transportation. (A-Supp-5) Specifically, §339.12(1), Fla. Stat. authorizes any governmental entity to “aid in any project or project phase included in the adopted work program by contributions to the department of cash, *bond proceeds*, time warrants, or other goods or services of value.” *Emphasis added.* In addition, §339.12(3), Fla. Stat. restricts any aid given by a governmental entity to be restricted in use to the project or phase of a project for which such aid is given. The only applicable Charter provision is Article IX, which requires

prior referendum approval for the issuance of bonds for projects in excess of \$1,000,000 unless such bonds are for *projects* in furtherance of public health and safety, industrial development or refunding purposes. Ample competent evidence was introduced during the validation hearing below as to the health and safety issues surrounding the 2000 Project, and the legislative findings of the City Commission regarding the health and safety issues of the 2000 Project. Clearly, the 2000 Project is a “project” in furtherance of the public health and safety needs of the citizens and residents of the City. Neither the Charter nor generally applicable State law restricts a city from undertaking any project in conjunction with another person, especially with another governmental entity. As a result, there is no Charter restriction on the City’s ability to issue bonds to advance fund the 2000 Project pursuant to a joint participation agreement since the 2000 Project is a project in furtherance of the health and safety needs of the citizens and residents of the City, and the City’s participation in the 2000 Project is in furtherance of the public health and safety functions of the City.

REPLY TO APPELLANT'S ARGUMENTS I

THERE IS COMPETENT EVIDENCE IN THE RECORD TO ESTABLISH THE FINDINGS OF THE COURT IN PARAGRAPH EIGHTH OF THE FINAL JUDGMENT.

The findings of the court contained in paragraph eighth of the Final Judgement are supported by competent evidence. Appellant here takes issue with the Circuit Court's findings that the 2000 Project is not "development" within the meaning of the Charter and that the 2000 Project is a "city facility". Appellant does not explain the significance of these terms. In point of fact, the significance lies in two Charter provisions found in Section 2.01(d) of the Charter; one which prohibits "development" of the land on which the 2000 Project will be built other than as "open space and public utilities" and the other which "prohibits the sale, donation or lease of such land for other than city facilities." (A-Supp-1-3,4,5)

The City presented uncontroverted testimony during the validation hearing to the effect that the existing bridge was functionally obsolete, was one of the top ten accident locations within the City, and is deficient under current design standards and that the 2000 Project will cure these deficiencies. The testimony was clear that the 2000 Project was to replace the existing bridge which was and is fully integrated into the City's street system. In addition, the Court was required pursuant to §90.201, Fla. Stat. (2000) to take judicial notice of the *Spatuzzi* decision which also directly affected the 2000 Project. *See generally* City's Counter Statement of Facts.

Appellant argues that the Appellee must therefore present evidence to show that the 2000 Project is a city facility or that the construction of the 2000 Project is not development. To the contrary, well established law compels the courts to conclude these questions in Appellee's favor.

Section 2.01(d)(6) of the City's Charter should be construed in conformity with the City's Land Development Code and similar provisions of law. The City's Land Development Codes derived and still derive their authority from the "Local Government Comprehensive Planning and Land Development Act", Fla. Stat., §163.3161, *et seq.*, and are to be consistent therewith. §163.3161(6), Fla. Stat. (1999); *see, also*, 1985 Op. Atty. Gen. Fla. 085-71 (August 28, 1985). The governing law provides that road-work within the boundaries of the right-of-way does not constitute development. §380.04(3), Fla. Stat. (1999).

Section 380.04(3) Fla. Stat. specifically excludes from the term development any work done on the maintenance or improvements of roads or the construction of sewers, mains, pipes and the like on established rights-of-way." *See Board of County Commissioners of Monroe County v. Department of Community Affairs*, 560 So. 2d 240 (Fla. 3d DCA 1990).

Roads and bridges are defined elsewhere in Florida Statutes and, while these definitions may not be binding, they are persuasive. The Florida Transportation Code defines a bridge as "... a structure, including supports, erected over a depression or an

obstruction, such as water or a highway or railway, and having a track or passageway for carrying traffic” §334.03(2), Fla. Stat. (1997). It also defines a “road” as a “... way open to travel by the public, including, but not limited to, a street, highway, or alley. The term includes associated sidewalks, the roadbed, the right-of-way, and all culverts, drains, sluices, ditches, water storage areas, waterways, embankments, slopes, retaining walls, *bridges*, tunnels, and viaducts necessary for the maintenance of travel” §334.03(23), Fla. Stat. (1997).

The Memorial Causeway Bridge is, and always has been a “way open to travel by the public” and falls within the definition of road as defined in the Florida Transportation Code. As such any work done to maintain or improve the bridge is not development under Florida law. To accept an assertion that any improvement to the existing bridge and associated approach roadways would be “development” and, therefore, permitted only by referendum, would preclude re-paving, repair of potholes, re-striping, improvement in design for safety’s sake, sidewalk repair or replacement, or other maintenance. It would mean that the existing 36 year old bridge can never be replaced without a referendum approving its replacement. This would lead to an absurd result and is surely not the result intended by the City’s Charter. The City’s Charter was never intended to prevent the improvement or replacement of an obsolete, substandard and arguably unsafe bridge.

The 2000 Project is a public utility and, therefore, outside of the scope of

§2.01(d)(7) of the Charter even if it constitutes “development.” Defining what is and what is not a “public utility” is not always an easy task. Some facilities or enterprises are, by statute, a public utility. Companies supplying electrical power or natural gas or telephone service are examples of statutory public utilities. However, when we leave statutorily defined public utilities it becomes more difficult to discern what constitutes a public utility.

Courts have looked at the nature of the use to assist them in determining whether a public utility exists. “... Aside from the statutory definition, the term ‘public utility’ implies a public use, carrying with it the duty to serve the public and treat all persons alike, without discrimination, and it precludes the idea of service which is private in its nature, whether for the benefit and advantage of a few or of many.” *Higgs v. City of Fort Pierce*, 118 So. 2d 582 (Fla. 2d DCA 1960).

Bridges have been viewed as utilities whether they are toll bridges or are financed by ad valorem taxes. *State v. Florida State Improvement Commission*, 75 So. 2d 1 (Fla. 1954). In that case which was primarily concerned with the funding for the construction of the bridge, the Florida Supreme Court stated that “... the financing of such a utility as a bridge may be accomplished by tolls or by ad valorem or a combination of both or by some other means.” *Id.* at 3.

The proposed bridge constituting the 2000 Project is for public use. One of its uses is to provide an evacuation route off the islands of Sand Key, Clearwater Beach

and Island Estates for residents, guests, employees, and every other member of the public, without exception, who needs to evacuate. It will also provide a safer and more dependable access route for police, fire, and other emergency vehicles. It will serve the public as a whole as opposed to any private use. Its construction will be financed through the use of federal funds, state transportation funds and local taxes – primarily “Penny for Pinellas” tax revenues – levied on the population as a whole.

(T-43-45) (A-8, A-10, A-Supp-8) Under the two cases cited above both the existing bridge and its proposed replacement constitute “public utilities.”

Section 2.01(d) of the City Charter exempts public utilities from its application. Although the reason for this exemption is not specified, one can only conclude that its framers and the electorate which approved it realized the importance of projects affecting public safety and welfare, and recognized the absurdity of requiring referendum approval of maintenance or replacement of the bridge.

Finally, the 2000 Project is clearly a “city facility” and, therefore, may be sold, transferred or donated, notwithstanding, section 2.01 (d)(7) of the city charter, and without prior referendum approval. Notwithstanding the fact that a portion of the 2000 Project will also form a part of State Highway 60, the 2000 Project also forms a part of the integrated street system of the City. It is thus no stretch of common sense that the 2000 Project and the related access roads are to be considered “city facilities”. See *Welker v. State of Florida*, 93 So. 2d 591 (Fla. 1957).

In *Spatuzzi, et. al., v. City of Clearwater, supra*, the Court determined that Section 2.01(d) of the Charter, as a matter of law, does not require prior referendum approval before the City can undertake the 2000 Project. Absent a conclusion that the parties in the *Spatuzzi* case and in the instant bond validation proceeding are either the same parties or that such parties are in privity to each other through a holding that since the bond validation proceeding is technically an action against all citizens and residents of the City of Clearwater through the State Attorney and the plaintiffs in *Spatuzzi* were citizens and residents of the City, the doctrine of *res judicata* would not apply. However, the doctrine of *stare decisis* governs decisions of the same legal question in actions between strangers to the prior action. *McGregor v. Provident Trust Co. of Philadelphia*, 162 So. 323 (Fla. 1935). The rule of *stare decisis* is merely the embodiment of a legal maxim to the effect that a principal or rule of law which has been established by a decision of the court of controlling jurisdiction will be followed in other cases involving similar situations, and it relates only to the determination of questions of law, rather than binding effects of the determination of fact. *Forman v. Florida Land Holding Corp.*, 102 So. 2d 596 (Fla. 1958). Of course, should this Court determine that the parties in the *Spatuzzi* case and in the instant bond validation proceeding are in fact the same or in privity, then the doctrine of *res judicata* would apply, and the determinations of both factual matters and questions of law in the *Spatuzzi* case would apply to the instant case. In either case, the legal conclusion in

Spatuzzi that Section 2.01(d) of the City's Charter does not require the City to obtain prior referendum approval prior to undertaking the 2000 Project was binding on the Circuit Court in the instant action. *McGregor v. Provident Trust Co. of Philadelphia*, *supra*.

A final judgment rendered by a court of competent jurisdiction, on the merits, is conclusive and binding on the rights of the parties and all other persons in privity with the parties. *Forman v. Florida Land Holding Corp.*, *supra*. The judgment in the *Spatuzzi* case is final and binding on the City, and the conclusion of law set forth in the judgment were binding on the Circuit Court in the instant case under the doctrine of *stare decisis* as discussed above. The Circuit Court's decision in *Spatuzzi* was later affirmed by the Second District Court of Appeals in a per curiam opinion issued December 1, 2000. (A-Supp-4) The City raised the *Spatuzzi* decision in its Complaint (A-1) and in its Trial Memorandum (A-Supp-6). Since the decision was binding on the City, the Court was required to take judicial notice of the decision in accordance with §90.201, Florida Statutes (2000). No formal action was required of either the Court or any party to the validation proceeding for the Court to take such mandatory judicial notice of the decision. It is fitting and proper that a court should take judicial notice of other actions which bear a relationship to the case at bar, as many times judicial notice is the only way that the court can determine whether to apply the doctrine of estoppel by judgment or issue preclusion in a given case. *Falls v. National Environmental*

Products, 666 So. 2d 320 (Fla. 4th DCA 1996).

CONCLUSION

For all of the foregoing reasons, the trial court's decision validating the Bonds should be affirmed. This Court should enter an order validating the Bonds.

Respectfully submitted this 22nd day of December, 2000.

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CERTIFICATE OF SERVICE

A true and complete copy of the foregoing Answer Brief of Appellee was delivered to (i) C. Marie King, Assistant State Attorney, by mailing a copy to her at P.O. Box 5028, Clearwater, Florida 33718-5028, and (ii) Patrick T. Maguire, Esq., counsel for Terry Sue Turner, by mailing a copy to him at 1253 Park Street, Clearwater, Florida 33765, this 22nd day of December, 2000.

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CERTIFICATION

The undersigned does hereby certify that this Brief used 14 point Times New Roman type and does hereby comply with Rule 9.210(a)(2), Florida Rules of Appellate Procedure and the Administrative Order of this Court dated July 13, 1998.

ROBERT C. REID

SUPPLEMENTAL APPENDIX

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