SUPREME COURT OF FLORIDA

CASE NO. 02-145

Validation Appeal From A Final Judgment
Of The Fourteenth Judicial Circuit
Bay County, Florida

PANAMA CITY BEACH COMMUNITY REDEVELOPMENT AGENCY,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

INITIAL BRIEF OF APPELLANT

BRYANT, MILLER and OLIVE, P.A.
Randall W. Hanna (FBN 0398063)
Mark G. Lawson (FBN 773141)
Kenneth A. Guckenberger (FBN 0892947)
Michael S. Davis (FBN 099204)
The Exchange Building
201 South Monroe Street, Suite 500
Tallahassee, Florida 32301
Telephone: (850) 222-8611
Facsimile: (850) 222-8969

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INTRODUCTION

The Panama City Beach Community Redevelopment Agency (the "CRA") appeals a Final Judgment of the trial court dated December 7, 2001 denying, in part, a Complaint seeking validation of not to exceed $48,000,000 Pier Park Community Development District Bonds (the "Bonds"), an interlocal agreement providing for the sources of security for the Bonds, and certain other obligations in connection with the issuance of the Bonds. The CRA seeks to use the powers of Chapter 163, Part III, Florida Statutes, The Community Redevelopment Act of 1969 (the "Act") in order to participate in redeveloping a blighted area within the City's principal tourist area. The proposed redevelopment seeks to focus tourism and economic activity within the City of Panama City Beach (the "City") from a linear beachfront "strip" commonly associated with coastal communities to a concentrated town center, focused on expanded and renovated City parks and recreational facilities combined with private development of tourist and retail establishments.

The Complaint below sought to validate (i) the Bonds, (ii) an Interlocal Agreement known as the Public Improvement Partnership Agreement (the "PIPA")(A-1-Exh. A-1) between the City, the CRA, the Pier Park Community Development District (the "CDD") (a community development district created under Chapter 190, Florida Statutes located within the City and within the CRA's redevelopment

area) and The St. Joe Company ("SJC"), a private developer and a landowner within the CDD, and (iii) the underlying powers of the CDD, the City and the CRA to enter into the transactions related to the issuance of the Bonds.

The proceeds of the Bonds are intended to finance the cost of infrastructure improvements within the CRA's redevelopment area. Pursuant to the PIPA, the Bonds will be repaid from three pledged revenue sources: special assessments imposed upon private property within the CDD, together with limited contributions from the City and tax increment revenues from the CRA.

The sole issue on appeal is the third prong of the repayment plan: the tax increment revenues of the CRA's redevelopment area to pay for the critical infrastructure improvements within the CRA's redevelopment area. Specifically, while ruling on the validation below, the trial court held that the findings of blight by the City Council of the City made when creating the CRA did not, in the trial court's view, meet the statutory definition of a "blighted area" found in Chapter 163, Part III, Florida Statutes.

If not reversed, the decision of the trial court below severely endangers the ability of local governments in the State of Florida to institute community redevelopment plans through findings of blight, and particularly, transportation related blight, in conformance with the statutory criteria adopted by the Florida Legislature. The trial court refused to validate the CRA based upon a legal

conclusion that a portion of the redevelopment area, which has not been fully developed,

did not constitute a "blighted area" under the Act. Such a finding is unprecedented and is at odds with the plain meaning of the Act. The ruling of the trial court below should be reversed by this Court, and this Court should affirm the legislative determination by the City that the redevelopment area is blighted under the criteria of the Act and validate the obligations of the CRA under the PIPA.

REFERENCES TO THE PARTIES AND THE RECORD

The Appellant/Plaintiff, the Panama City Beach Community Redevelopment Agency, will be referred to as the "CRA," Plaintiff Panama City Beach will be referred to as "City", Plaintiff Pier Park Community Development District will be referred to as "CDD", and the Appellee/Defendant, State of Florida, will be referred to as the "Appellee." References to the Appendix will be cited by the symbol "A," followed by the tab number, followed by the page number. References to items attached as Exhibits to Appendices will be cited "A-___ - Exh.", followed by the Exhibit letter and page number. References to the transcript of the validation hearing on October 29, 2001 attached to the Appendix will be cited by the symbol "TO," followed by the page number. References to the transcript of the evidentiary hearing subsequently ordered by the trial court on December 6, 2001 will be cited by the symbol "T" followed by the page number.

JURISDICTION

Pursuant to Rule 9.030(a)(1)(B)(i), Fla.R.App.P., this Court has jurisdiction over

final orders entered in proceedings for the validation of bonds where provided by general law. On December 7, 2001, the Circuit Court for the Fourteenth Judicial Circuit, in and for Bay County, Florida, entered such a final order concerning the bonds the CDD proposed to issue and the validity of the PIPA, which evidenced certain obligations of the City, the CRA and the CDD.

Under § 75.01, Fla. Stat. (2001), a circuit court has "jurisdiction to determine the validation of bonds and all matters connected therewith." A suit for bond validation is a legislatively created cause of action that permits a public body corporate in the State of Florida to obtain an adjudication as to the validity of debt it proposes to incur and the regularity of proceedings taken in connection therewith. § 75.02, Fla. Stat. (2001). The validity of interlocal agreements and the determination of whether a public body has authority to incur its payment obligation, whether the purpose of the obligation is legal and whether proceedings authorizing the obligation were proper are permitted in bond validation proceedings. *State v. City of Daytona Beach,* 431 So.2d 981 (Fla. 1983).

This Court has mandatory jurisdiction to hear appeals from final judgments entered in a proceeding for the validation of bonds. Art. V., § 3(b)(2), Florida Constitution. Section 75.08, Fla. Stat. (2001) provides that either party may appeal

the trial's court's decision on the complaint for validation. The CRA timely filed its Notice of Appeal on January 16, 2002 (A-19).[1]

Therefore, under the circumstances of this case, the Circuit Court for the Fourteenth Judicial Circuit, in and for Bay County, Florida, had jurisdiction to determine the validity of the bonds, the PTPA and matters connected therewith, and this Court has the jurisdiction to review the decision of the trial court.

STATEMENT OF THE CASE

This appeal arises from a Final Judgment denying validation of the CRA's obligations under an interlocal agreement and the ability of the Plaintiffs to enter into such agreements. The Final Judgment validated the entire transaction *except* for the portion relating to the CRA[2]. In the Final Judgment, the trial court concluded that the City Council's determinations that the area was blighted were arbitrary and failed to meet the criteria set forth in the Act for a "blighted area," thus denying the validation of the CRA's obligations under the PIPA. The CRA

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[1] On December 17, 2001, the CRA filed a Motion to Alter or Amend Final Judgment. (A-13) The filing of the Notice of Appeal terminated that Motion and vested jurisdiction in this Court as to the CRA. *See* Rule 9.020(h)(3), Fla.R.App.P. The trial court retained jurisdiction over the motion to Alter or Amend Final Judgment filed by the CDD and the City pursuant to Rule 2 9.020(h)(3), Fla.R.App.P.

[2] The Supplemental Final Judgment further confirmed that the Final Judgment focused solely on the CRA by validating the Bonds and all other matters unrelated to the CRA. (A-21) No appeal has been filed regarding the Supplemental Final Judgment and those issues are not before this Court.

seeks to reverse the Final Judgment on appeal and obtain an order validating the legislative determination of a "blighted area" and all actions of the City and CRA associated therewith so that the CRA can fulfill its obligations under the PIPA.

STATEMENT OF THE FACTS

The City is a coastal community with several miles of beachfront along the Gulf of Mexico. Parts of its primary tourist area have suffered from the linear sprawl that is characteristic of coastal development. (A-1-Exh. E-18). Although the City lacks a traditional "town center", a municipal pier, municipal beachfront and a municipal park/fairgrounds compose an area in the City where various festivals and special events are held and the general public congregates (A-1-Exh. E-17). The road infrastructure, street layout and parking facilities within this area of the City, however, are severely inadequate in their current form. The City's past use of the municipal pier, park facilities and some unpaved parking facilities focused the City on establishing redevelopment efforts in that area of the City. (A-1 -Exh. E-6-7)

In 1998, the City approached SJC, a major landowner of property contiguous to, and at some points between, City parks and recreation facilities in the area, about a redevelopment initiative that would, amongst other things, seek the acquisition of property for the single purpose of alleviating the transportation and parking problems and other blighted conditions in the areas surrounding the

City's facilities. (A-1-Exh.E-6) The City currently operates a large pier in the Gulf of Mexico together with Aaron Bessant Park (the "Fairgrounds") an adjacent 50-acre park that sits along Front Beach Road, one of the two major east-west roadways that bisect the City parallel to the beachfront. The usage of the Fairgrounds has been limited by its relatively unimproved condition and is used for only a few annual festivals and special events such as the community's annual seafood festival. (A-1 -Exh.E-14-1 *5)* The City determined that substantial capital improvements were needed to make the Fairgrounds a more useful community asset, and focused on the Fairgrounds as an area that would be large enough to be leveraged for redevelopment purposes. (A-1-Exh.E-15) In particular, the City determined that additional special events in the Fairgrounds were "critical" to sustain and expand tourism, particularly in non-peak seasons. (A-1-Exh.A-3) In addition to the Fairgrounds, the City also operates Frank Brown Park, a recently improved park that includes several state of the art softball facilities (T-65) that is adjacent to the other east-west major thoroughfare in the City, Back Beach Road. (U.S. 98) (A-1-Exh.E-6)

SJC owns virtually all of the land that is located between the Fairgrounds and Frank Brown Park. (A-1-Exh.A-4) From 1998 through 2001, the City and SJC negotiated to establish an economic development and redevelopment plan that would maximize the City's park assets for tourism and economic development and

alleviate blighting conditions that included "inadequate street layout, transportation and parking facilities.. ." (A-1-Exh.E-6)

As a result of ongoing negotiations that began in 1998, the City formally entered into a Memorandum of Understanding with SJC on March 10, 2000 (which was subsequently amended on October 13, 2000) (the "MOU") to address and prevent blight in the redevelopment area and promote redevelopment in the area. (A-1-Exh.E-6, A-13-Exh.B) In the MOU, the City found blighted conditions including, but not limited to,. inadequate street layout and parking facilities, roadways and public transportation. (A-i 3-Exh.A-1 -2)

To further its redevelopment efforts, the City had moved to acquire a certain parcel of property adjacent to the Fairgrounds (the "Florance parcel") by condemnation for expansion purposes in order to create a "town center" and improved recreational facilities and opportunities for private development. (A-13 Exh.B) The Fourteenth Circuit Court approved the acquisition by eminent domain of lands within the redevelopment area, for which the City expended $3,000,000. City of Panama City Beach v. Florance, Case No. 99-1755 (Fla. 14th Cir. Ct., December 7, 2000)[3]. (A-13-Exh.B)

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[3] Ironically, the condemnation order finding blight existed within the CRA and approving the condemnation came exactly one year to the day before the Final Judgment, which is the subject of the appeal and was the law of the Fourteenth Circuit.

Creation of the CRA and Adoption of Community Redevelopment Plan

Under the Act, local governments may establish redevelopment agencies to combat the problems associated with blighted areas within their municipal or county limits. The Act permits the use of tax increment financing as a means to pay for infrastructure improvements that prevent and alleviate blight within a redevelopment area.

On November 30, 2000, the City Council met to discuss the blighted conditions that existed within the City. This meeting was the culmination of what to that point had been four years of numerous public meetings and briefings aimed toward creating a centerpiece community redevelopment project. The particular problems associated with the area that would become the redevelopment area within the CRA (the "Redevelopment Area") were summarized for the City Council by the City's Assistant City Manager, Dennis Pickle. Prior to the City's consideration of a resolution creating the CRA and finding a blighted area within the Redevelopment Area, Mr. Pickle appeared before the City Council on November 30, 2000. (A-8-Exh.A) His summary overview presented to the City Council reiterated many of the facts well known to the members of the City Council, and included the following regarding the transportation difficulties facing the City:

> 1) that the roadway which bisects the Redevelopment Area from north to south is a clay road which is limited as far as weight and

> traffic count and that during large events, if it rains at all, it is virtually impassable after a couple of hours of traffic, limiting events during the rainy season, which is a maintenance problem and creates hazards to the vehicles; 2) that the poor roadway creates policing challenges due to vagrants using it; that only the city property is lighted and it is very hard to observe what is going on up and down the road; 3) that the lighting and parking in the Fairgrounds is limited and that it is not adequate; 4) on the Florance parcel, an attractive nuisance existed; *5)* that the buildings on the SJC parcel are functionally obsolete; and 6) that the property is underutilized and the Redevelopment Area as a whole represents from a public administrator's standpoint a reasonable opportunity for redevelopment. (A-8-Exh.A-3)

In Resolution 00-23 dated November 30, 2000 (A-1-Exh.D), the City Council of the City created the CRA and made a legislative determination that, in pertinent part, found:

> (C) Within the redevelopment area there exists faulty or inadequate street layout, inadequate parking or parking facilities; or roadways or other public transportation facilities incapable of handling the volume of traffic flows into or through the area, either at present or following substantial improvement within the area. The Redevelopment Area suffers from a predominance of defective or inadequate street layout, aging infrastructure and design and deterioration of site or other improvements.
>
> (D) The City Council hereby finds that one or more slum or blighted areas exist within the Redevelopment Area and that the rehabilitation, conservation or redevelopment or a combination thereof of such Redevelopment Area is necessary in the interest of the public health, safety, morals or welfare of the City. (A- 1 -Exh.D-2)

Based upon such findings and the individual knowledge of the area of the City Council members, the City then created the CRA with the members of the City Council sitting as the members of the CRA's board. Pursuant to § 163.360(4),

Florida Statutes, the CRA was authorized to prepare a Community Redevelopment Plan (the "Plan") for presentation to the City Council. The Plan was prepared and approved by the City and the CRA in Resolution 0 1-09 on February 22, 2001 (A-i -Exh.H) and amended on September 13, 2001 by Resolution 01-43 (A-1-Exh.I). Both Resolution 01-09 and Resolution 01-43 were adopted after advertised public hearings that again reaffirmed the legislative determinations regarding the blighted area required by the Act.

The Plan identifies specific problems of blight within the Redevelopment Area that include:

1. Only one paved road connecting the two main arterial roads for over three-fourths of a mile in either direction;
2. No internal road network within the Redevelopment Area;
3. An unpaved bisecting roadway which is used for large events at the Fairgrounds which has poor drainage, washes out easily and attracts illegal dumping and crime; and,
4. Inadequate existing parking, especially during Fairground events, which results in parking in public rights-of-way. (A-1Exh. E-23-24)

In the Plan, the City further elaborated on the existence of blight within the Redevelopment Area, and among others, determined that:

> (A) Together, fragmented ownership, poor traffic circulation, parking constraints and physical and economic degradation - a series of interconnected conditions - have effectively created an environment of blight within the Study Area.

* * * * *

> (H) Traffic between Back Beach Road and Front Beach Road is confined to a limited number of through routes, burdening these roads at peak visitation periods and constraining loading and unloading during festivals and special events.
>
> *   *   *   *   *
>
> (I) Parking availability is not matched to the requirements of ongoing beach use or the peak demands imposed by special events. These inadequate parking conditions are exacerbated by the difficult road access into the Study Area and the limited capacity and layout of the less than comprehensive current traffic circulation system. (A-1-Exh. E-26-28).

On January 19, 2001 and January 26, 2001, the City advertised for the disposition of certain fee simple and leasehold interests and for development proposals for development within the Redevelopment Area of the CRA. (A-1- Exh.K-3) SJC was the lone respondent and its plan to redevelop the Redevelopment Area was approved. (A-1-Exh.K-2)[4]

In March of 2001, in accordance with the Act, the City held public hearings and established, through its enactment of Ordinance No. 717 (A-1-J), a redevelopment trust fund for the Redevelopment Area. The City approved the designation of tax increment revenue from the\Redevelopment Area by the CRA to fund projects within the Redevelopment Area. (A-1-J-2)

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[4] When the City acquired the additional contractual right to acquire leasehold interests from the State of Florida in conformance with the Plan, the City again advertised on July 30, 2001 for proposals and SJC was again the only respondent. (A-i -Exh.L)

The Partnership Agreement

In September 2001, the City, the CDD and the CRA executed an Interlocal Agreement described as the Public Improvement Partnership Agreement (the "PIPA") (A-1-Exh.A-1) for the purpose of redeveloping the Redevelopment Area in accordance with the Plan. Although the PIPA was validated in large part by the trial court[5], the provisions of the PIPA relating to the contribution of CRA revenues to repay the Bonds were struck down by the trial court solely on the basis of the trial court's belief that the City's finding of blighted area was arbitrary. Thus, only the provisions of the PIPA as they relate to the CRA are subject to this appeal.

The PIPA called for acquisition of land and facilities to be publicly owned and for such acquired public lands to be combined with existing parks. The balance of privately owned land remains in private ownership within the CDD, but subject to a master plan for development. The PIPA also calls for a land acquisition from the State of Florida, whereby SJC contributes to the City an additional 51 acres of real property for the Fairgrounds. (A-1-Exh. A-61-67)[6] Under the PIPA, the CDD

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[5] In its Supplemental Final Judgment (A-21), the Court clarified that the only part of the entire transaction before it that was not validated was that related to the CRA.

[6] Exhibits C, E, H, J, L and W to the PIPA (A-1-Exh.A) applied only if certain transactions for land acquisition from the State did not occur. Such land acquisition was approved by the State and thus these Exhibits do not apply to the transaction any

longer.

is required to fund infrastructure improvements within the 173 acre CDD area and infrastructure improvements and maintenance of virtually all City facilities within the approximately 87 acres of parks and beachfront that are owned and/or leased by the City, as well as funding a maintenance allowance for Frank Brown Park. These lands comprise the 260 acres of the Redevelopment Area that is the subject of this appeal.

The infrastructure improvements to be made pursuant to the PIPA are traditional public infrastructure to be owned by the City and the CDD, including "Horizontal Infrastructure" such as roads, sidewalks, street lighting, utility lines and stormwater drainage facilities; "Beachfront Improvements" such as public restrooms, concession facilities, volleyball courts and other improvements to the City's public beachfront property; and "Park Improvements" to the Fairgrounds and the addition to Frank Brown Park, such as restrooms, public parking, pedestrian ways, stormwater drainage facilities, lighting, landscaping and sports fields.

The PIPA further called for the issuance of revenue bonds by the CDD, a local unit of special purpose government situated within the Redevelopment Area. Pursuant to Chapter 190, Florida Statutes, bonds issued by community development districts must be validated. The Bonds will fund the infrastructure improvements described above, including the construction of paved parking facilities and roadways. (A-1-Exh. A-71-75*)*
In filing the validation Complaint, the

City, the CDD and the CRA sought validation on the legality of the PIPA, of each Plaintiff entering into the PIPA and the issuance of the Bonds. The CRA specifically sought validation that:

1. The CRA was duly and validly created by the City and exists as a public agency under the laws of the State, and the City Council has the full power and authority to act ex-officio as an "Agency" as provided in the Act;
2. The CRA and the City have the power to adopt, approve and create and have validly adopted and approved and created the Plan, as amended, and the Redevelopment Trust Fund and the CRA has the power to pledge and has validly pledged the Tax Increment Revenues for the purposes described in the PIPA;
3. The Plan, including the First Amendment thereto, the Redevelopment Trust Fund and the pledge of the Tax Increment Revenues were validly done and adopted and are valid, legal and enforceable in all respects, and
4. The CRA has the power to incur its obligations under the PIPA, as set forth therein and (in the Complaint). (A-1-28)

The Validation Proceedings

By virtue of his answer (A-3) and his agreement to a joint stipulation of the parties (A-4) concerning the authenticity of the various documents in evidence, the State Attorney stipulated and agreed to all matters before the trial court at the Validation Hearing on October 29, 2001. Additionally, the joint stipulation authenticated all of the documents necessary to prove the existence and actions of the Plaintiff CDD and all other matters necessary to the proof of the action. (A-4) Neither the State Attorney nor any citizen objected to any portion of the validation

at the time of the validation hearing or the subsequent additional hearing ordered by the trial court.[7]

The matters authenticated by the joint stipulation were all accepted into evidence at the initial hearing of this matter. (TO-8) At the conclusion of the validation hearing, the trial court indicated that it wished to review the documents and would let counsel know if it had questions. (TO-16-17). A subsequent telephone

conference was called by the trial court and held amongst counsel, whereupon the trial court issued an Order announcing a concern over the issue of blight and scheduled a second evidentiary hearing (A-7) and additional submissions of the parties were made. (A-8, A-9, A-11)

At the evidentiary hearing on December 6, 2001, the trial court reiterated its concern that the area was not blighted (T-8). The Plaintiffs set forth several witnesses in response to the trial court's inquiry: 1) Owen Beitsch, an expert accepted for the purpose of rendering expert testimony as to planning, real estate analysis and community redevelopment matters (T-25) 2) the Mayor of the City, the former police chief, an expert accepted for the purpose of rendering expert testimony as to local law enforcement and traffic control and 3) Fred Greene, an

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[7] Motion to Intervene was filed on November 9, 2001, and withdrawn a day later by Harold McCardle. (A-S. A-6) After the Final Judgment was entered on December 7, 2001, a Motion for Intervention was filed by William H. Headrick on December 20, 2001 (A-15).

expert accepted for the purpose of rendering expert opinions as to traffic conditions and engineering.

The testimony of each witness supports the proposition that the City Council's finding of blight in creation of the CRA, adoption of the Plan and enactment of the Redevelopment Trust Fund Ordinance was supported by substantially competent evidence. Mr. Beitsch testified, in his expert opinion, that the factual conditions were consistent with a finding of blight. (T-35-36). He further testified that: (1) the Plan and the PIPA will serve to alleviate the blight (T38); 2) the issues that created the blight were faulty or inadequate street layout, inadequate parking or parking facilities, roadways, public transportation facilities, (T-41); 3) that it is not the amount of the blighted conditions that is important, it is the effect that any amount of blight would have on development (T-45); and 4) that the proceeds of the bonds will finance improvements to address those issues of blight the City had identified (T-49).

Mayor Lee Sullivan, the former police chief of the City for over 20 years (TS2), testified as to the conditions which underlay the City's determination of blight (T-53). He testified to parking problems and crime conditions both as a fact and an expert witness (T-57-60). The parking was inadequate (T-6 1). He characterized the Fairgrounds property in question as "a 40 acre field with a ratty old building and a poorly done parking lot, across from a multi-million dollar public facility

(Frank Brown Park)" (T-65*).* In response to questions from the State, the Mayor testified to the following:

> (a) Present conditions and the presence of those "campers" [vagrants] there caused or constitutes a menace to the safety, morals and welfare of the citizens of Panama City Beach.
>
> (b) There exists in the redevelopment area defective or inadequate street layout.
>
> (c) There is a deterioration of the site and other improvements located on the site.
>
> (d) There are inadequate and outdated buildings or building density patterns on that site.
>
> (e) There are inadequate transportation and parking facilities located within that site. (T-68-69)

The trial court made it clear at the outset at that hearing that his focus was on the blight issue, stating:

> The bulk of it is not even in contest today. My focus is on the issues that were included in my order, and, of course, you can present any evidence that you want, but, you know, really I'm not in disagreement with very much of what was included in that memorandum, but the question of blight, or either, under your definition is what I'm looking at. And that's, I just wanted you to know that's my focus. (T-8)

Midway through the hearing, the trial court made it clear that what he was looking at was the definition of blight under § 163.340(8)(b), Fla. Stat., and particularly the phrase stating "or roadways incapable of handling the volume oftraffic flow into or through the area, either at present or following proposed construction." He invited further argument as to that issue (T-76).

In response to that declaration by the trial court, the CRA and the City recalled Mayor Sullivan. Mayor Sullivan then testified as follows:

1. In his opinion, both as the elected official sitting on the City Commission, as well as with his prior experience in traffic control, that both at the time the City made its determination to adopt Resolution 00-23 and subsequently, the transportation facilities, specifically the roadways at the redevelopment area were incapable of handling the volume of traffic flow into or through the area either at present or following the proposed construction. Specifically, he stated that the ingress and egress at the front of the pier area from the north side of the road on to Alternate Highway 98 (Front Beach Road) is not properly done, it is not clearly marked and it can (sic. cannot) on a regular basis, present a safe ingress and egress from the parking lot into, onto Alternate Highway 98. He expanded on his testimony and testified as to why the roads are inadequate and will be inadequate following construction of the redevelopment project. (T-78-79)
2. In response to a question from the State, the Mayor testified that the dirt road (bisecting the Redevelopment Area) as it contacts Back Beach Road, presents a problem and does not allow a safe entry onto Back Beach Road. (T-84)
3. That the current road network serving the park and within the park is inadequate. (T-88)

Fred Greene was qualified and accepted as an expert witness as to infrastructure, design and construction for planned communities (T-93). He testified that (1) in his opinion the existing street layout, parking and public transportation facilities would not accommodate what is proposed (T-96); (2) that in his opinion, if the proposed improvements were to be made, then the transportation facilities, street layout, and other improvements would be sufficient

to handle the traffic volume contemplated by the traffic study that had been prepared for the project as part of the development of regional impact study (T-96); and, (3) that the roadways, as they exist, could never meet public use under today's standards and that they pose a very bad hazard (T-97).

The State told the trial court that it could find no basis to object to any of the findings that had been made by the City Council, the CRA, and the CDD. (T-101)

The Final Judgment

On December 7, 2001, the trial court entered the Final Judgment that is the subject of this appeal. In the Final Judgment, the trial court focused on the issue of a blighted area under § 163.340(8), Florida Statutes (2001) and the adequacy of the City's determination that the redevelopment area was blighted. In so finding, the trial court narrowly fixated on the presentation made on November 30, 2000, ignoring the several legislative findings of the City[8], stating:

> It is a general rule of law that courts should presume that legislative findings, such as those of the city council, are correct and should be given great deference. But when it appears that those findings are arbitrary, the presumption of correctness is stripped away. The testimony of the Assistant City Manager utterly failed to establish that the District is a blighted area under Florida law. At worst, the District was characterized as 'generally underutilized'. Indeed, it is difficult to imagine that the evidence before the City met any accepted definition of blight.

[8] As demonstrated in the Exhibits to the Complaint for Validation (A-7), the City adopted several resolutions, the Plan and its Amendment that each make findings of a blighted area within the City.

*   *   *   *

> The Redevelopment Act was intended to provide for the rehabilitation of previously (sic) built-upon properties that have outlived their usefulness and are so economically impaired that no-one (sic) is interested in rehabilitating them; the cost of leveling the property and of putting in new infrastructure and buildings would be too much, particularly in urban areas of decay.

*   *   *   *   *

> The law should not be at war with common sense. The Court has tried mightily to reconcile the stated purpose of the Redevelopment Act with the facts before it. But when the Court places the evidence alongside the Act - reads all of it - it is plain and that the District does not qualify for re-development. It has never been developed! By and large it is vacant land begging to be built on.
>
> Plaintiffs' desire to extract a few words from the Act and to apply them to the District, irrespective of the obvious purpose of the Act, leads to an absurdity. The Redevelopment Act does not apply. The request for validation must be and is denied. (A-12-S-6)

Post-Judgment Proceedings

The CRA filed a Motion to Alter or Amend the Final Judgment on December 17, 2001. The City and the CDD jointly filed a <u>second</u> Motion to Alter or Amend the Final Judgment on December 17, 2001 seeking clarification as to the non-CRA related elements of the validation. On January 16, 2002, the CRA filed its Notice of Appeal (A-19), which mooted its Motion to Alter or Amend the Final Judgment. The trial court entertained the City and the CDD's Motion to Alter or Amend the Final Judgment on January 17, 2001, and issued a Supplemental Final

Judgment on January 18, 2001, affirming all portions of the validation *except* for those related to the CRA. (A-2 1)

STANDARD OF REVIEW

The standard of review in a validation proceeding under Chapter *75,* Florida Statutes is: (1) whether the public body has the authority to issue the bonds, (2) whether the purpose of the obligation is legal, and (3) whether the bond issuance complies with the requirements of law. *State v. Osceola County,* 752 So.2d 530 Fla. 1999); Poe v. Hilisborough County, 695 So.2d 672 (Fla. 1997), Taylor v. Lee County, 498 So.2d 424 (Fla. 1986).

Because the Bonds and all obligations except that of the CRA were validated below, this appeal focuses only on the legality of the CRA's obligations and the legality of its creation. The standard of review of the City's findings when establishing the CRA is whether the City, in making such legislative findings, was clearly erroneous. Board of County Commissioners of Brevard County v. Snyder, 627 So.2d 469 (Fla. 1993); JFR Investment v. Delray Beach Community Redevelopment Agency, 652 So.2d 1261 (Fla. 4th DCA 1995).

STATEMENT OF THE ISSUE

Although the Redevelopment Plan and the PIPA have many components, the sole issue presented on this appeal relates to the City's repeated legislative determinations finding a "blighted area" within the City and its establishment of the CRA. Specifically, this Court is asked to confirm that the Community Redevelopment Act of 1969, Fla. Stat. § 163.330 - 163.462 (the "Act") authorizes a community redevelopment agency such as the CRA to pledge tax increment revenues for a community redevelopment plan that consists of the abatement of blight attributable to the factors enumerated in the Act, including inadequate transportation and parking facilities, faulty lot layout or inadequate street layout, even where some of the areas within the CRA are currently undeveloped land.

SUMMARY OF THE ARGUMENT

The Act authorizes a community redevelopment agency such as the CRA to pledge tax increment revenues for community redevelopment so long as (1) a finding of "blight" or "slum" conditions is made and (2) a finding that such redevelopment is necessary in the interest of the public health, safety, morals or welfare of the local government. § *163.355,* Fla. Stat. (2001). The Final Judgment seeks to substitute the trial court's judgment for that of the City Council in declaring that the City's finding of blight was unfounded and without justification. Such a finding is against the weight of Florida case law, which holds that such

legislative findings by local governments are only to be overturned when they are clearly erroneous. Where, as here, there is substantial competent evidence both in the legislative findings and in the proceedings below justifying the legislative determination by the City that the Redevelopment Area was a blighted area, such legislative action must be upheld.

The trial court's fixation on the portion of the Redevelopment Area that is undeveloped as not being blighted misses the essential portion of the Act. The Act clearly states that an area which is undeveloped, but which following proposed construction will lack adequate streets and parking, may be determined by the local government to be "blighted" and appropriate for the establishment of a community redevelopment plan under § 163.340(8)(b), Florida Statutes (2001). Where, as here, there exists inadequate roads and parking even before construction, the inadequacy of such facilities after the implementation of the planned commercial development should not be within question. Moreover, the Act specifically contemplates inclusion of open and vacant parcels within a redevelopment area. See § 163.360(8), Fla. Stat. (2001) The inclusion of open and vacant lands in a redevelopment plan is warranted when, as here, its inclusion will prevent the spread of blight. The ruling of the trial court must be overturned, and the legality of the City and the CRA's actions associated with the CRA and the obligations of the CRA under the PIPA should be validated.

ARGUMENT

I. The Community Redevelopment Act authorizes a community redevelopment agency such as the CRA to pledge tax increment revenues for a community redevelopment plan that consists of the abatement of a blighted area, even where some of the areas within the redevelopment area are currently undeveloped open land.

This appeal consists of one central question: was the City's declaration of a "blighted area" sufficient under § 163.340, Florida Statutes (2001). The standard of review on the City's findings when establishing the CRA is whether the City, in making such legislative findings, was clearly erroneous. *Board of County Comm issioners of Brevard County v. Snyder,* 627 So.2d 469 (Fla. 1993); *JFR Investment v. Deiray Beach Community Redevelopment Agency,* 652 So.2d 1261 (Fla. 4th DCA 1995). If a determination by a legislative body is "fairly debatable" and not clearly erroneous, then it should be upheld. *Id* As set forth below, the City's findings were not clearly erroneous and were, in fact, properly made by the City.

A. The Act permits creation of a community redevelopment agency where a blighted area is determined by a local governmental body from amongst alternative statutory categories.

The Florida Legislature adopted the Act in 1969 to deal with the problem of slum and blight conditions in counties and cities within the State of Florida. The constitutionality of the Act was confirmed by this Court in the landmark case of

State v. Miami Beach Redevelopment Agency, 392 So.2d 875, 891 (Fla. 1980) (provisions of the Act involving expenditure of public funds, sale of public bonds, use of eminent domain for acquisition and clearance, and substantial private and commercial uses after redevelopment, is in furtherance of a public purpose and isconstitutional). In *State v. Miami Beach Redevelopment Agency,* this Court cited with approval the United States Supreme Court's constitutional approval of redevelopment of blighted areas within the District of Columbia. *Id* at 890-891, citing *Berman v. Parker,* 348 U.S. 26, 75 S.Ct 98 (1954).

For a local government to use such powers, the statutory scheme of the Act requires a finding in a resolution of necessity by such local government seeking to establish a CRA of two elements: 1) that one or more slum or <u>blighted areas</u> exists within the territory of the local government and 2) that redevelopment, rehabilitation or conservation of such area is necessary in the interest of the public health, safety, morals or welfare of the local government's residents. § 163.355, Fla. Stat. (2001). It is the City's determination of blighted area under the first required element, which is the focus of this appeal. The definition of "blighted area" comes in two disjunctive parts:

> (8) "Blighted area" means <u>either</u>:
>
> (a) An area in which there are a substantial number of slum, deteriorated, or deteriorating structures and conditions that lead to economic distress or endanger life or property by fire or other causes or <u>one or more of the following factors</u> that substantially impairs or

arrests the sound growth of a county or municipality and is a menace to the public health, safety, morals, or welfare in its present condition and use:

1. Predominance of defective or inadequate street layout;
2. Faulty lot layout in relation to size, adequacy, accessibility, or usefulness;
3. Unsanitary or unsafe conditions;
4. Deterioration of site or other improvements;
5. Inadequate and outdated building density patterns;
6. Tax or special assessment delinquency exceeding the fair value of the land;
7. Inadequate transportation and parking facilities; and
8. Diversity of ownership or defective or unusual conditions of title which prevent the free alienability of land within the deteriorated or hazardous area; or[9]

(b) An area in which there exists faulty or inadequate street layout; inadequate parking facilities; or roadways, bridges, or public transportation facilities incapable of handling the volume of traffic flow into or through the area, either at present or following proposed construction.

§ 163.340, Fla. Stat. (2001) (emphasis supplied). Because transportation and parking are critical to any attempt at revitalization and redevelopment, the Act specifically in both subsection (8)(a)(7) and in subsection (8)(b) of § 163.340 recognizes the impact that transportation and parking can have on an area contemplated for redevelopment.

The Act permits alternative criteria for a "blighted area." A CRA may be

[9] The alternative definition of "blighted area" in subsection (b) of § 163.340(8) was added to the Act in 1981. *See* Ch. 81-44, Laws of Florida (1981).

created upon finding of either § 163.340(8)(a)10 or § 163.340(8)(b). It is under the alternative provisions of § 163.340(8)(b) (hereinafter "transportation blight"), and the factors listed in § 163 .340(8)(a) relating to the impairment of sound growth and a menace to public health, safety, morals and welfare (collectively, "growth impairment blight"), that the City made its findings, and upon which this appeal is based.

B. A Blighted Area based on transportation blight was properly established through the City's findings in the Plan and in the resolutions creating the CRA and adopting the Plan.

The City's establishment of transportation blight should be without much controversy. Improving and re-engineering inadequate parking and faulty traffic patterns are an important, if not critical, part of many redevelopment plans. Like numerous other states, Florida's redevelopment statute contains provisions regarding transportation blight. By one observer's count, as of the year 2000, 42 states had redevelopment acts that contain a category of blight for faulty or obsolescent planning that includes insufficient street capacity, overcrowding, insufficient parks or recreational facilities. See Hudson Hayes Luce, The Meaning of Blight: A Survey of Statutory and Case Law, 35 Real Property, Probate and Trust Journal 389, 397 (2000). Under § 163.340(8)(b) Fla. Stat., the Act permits a

[10] In 1998, the Legislature amended the definition of "blighted area" in §163 .340(8)(a) to add subsections (8)(a)(5) (inadequate and outdated building density patterns) and 8(a)(7) (inadequate transportations and parking facilities). See 1998 Laws of Florida, Ch. 98-21, § 2.

declaration of blighted area for transportation blight if one of the following occurs, either at present <u>or following proposed construction</u>: 1) faulty or inadequate street layout 11, 2) inadequate parking facilities, 3) roadways, bridges, or public transportation facilities incapable of handling the volume of traffic flow into or through the area.

Although the Act would be satisfied with any one of the three alternative prongs of the transportation blight definition, the City established all three methods under both current and future conditions to make the necessary 'findings' to create the CRA and adopt the Plan. *See* "Statement of the Facts - Creation of the CRA" above. The poor street layout, with little or no access between two main parallel roads is inadequate. The limited paved parking facilities are inadequate, forcing the community to use unpaved field parking or trespass on SJC or other nearby property. (A-1-Exh.E-23-24) When the Fairgrounds are used, the traffic volume

[11] Florida's provision for faulty or inadequate street layout is not unique, and is mirrored in the definitions of blighted area in the redevelopment acts of the following states, which all include "defective or inadequate street layout" within their definitions of blighted area: Alabama (Ala.Code § 1 1-99-2(1)(b)), Arizona (Ariz.Rev.Stat.Ann § 36-1471(14)(b)), Colorado (Col.Rev.Stat. § 31-25-103 (2)(b)), Delaware (Delaware Code Ann.tit. 31 § 4501 (3)(d)), Georgia (Ga.Code Ann. § 8-4-3(1)(B)(i)), Idaho (Idaho Code § 50-2018(i)), Iowa (Iowa Code § 403.17(5)), Kentucky (Ky.Rev.Stat.Ann. § 99-340(2)), Louisiana (La.Rev.Stat.Ann. Title 33, Cli. 12, § *4625(P)),* Mississippi (Miss.Code Ann. 43-35-3(i)), Montana (Mont.Code.Ann § 7-15-4206(2)(e)), New Mexico (N.M.Stat.Ann. § 3-46-10), Ohio (Ohio Rev.Code Ann. 725.01(B)), South Dakota (S.D. Codified Laws Ann. § 11-7-3), Texas (Tex. Code Ann. §

374.003(3)), Vermont (Vt.Stat.Ann.Tit.24 § 3201(3)) and Washington (Wash.Rev.Code § 35.81.010(2)).

overwhelms the roadways and leads to unwanted parking in the right of ways and adjacent neighborhoods. Moreover, with the proposed development within the CDD, each of these current transportation blight conditions would dramatically worsen without a redevelopment of the transportation facilities within the Redevelopment Area. The Act specifically contemplates such forward-looking

determinations of blight “at present or following proposed construction.” § 163.340(8)(b), Fla. Stat. (2001) Given the scope and objective of the development in the Plan - increasing events at the Fairgrounds to between 10-15 events annually, construction of a 39-acre outdoor commercial recreation attraction such as a water park, construction of a 36 acre shopping center with 400,000 square feet of retail use with 2,000 parking spaces and construction of a 32 acre shopping center with 250,000 square feet of retail use with 1,150 parking spaces - the finding of transportation blight is fully supported and well-documented. See A-i Exh.E. Under these circumstances, the finding of transportation blight by the City was proper.

The trial court committed error below by focusing exclusively on the evidence before the City Council at the time of the November 30, 2000 City Council Meeting. In its order setting a further evidentiary hearing, the trial court specifically noted its request "to supplement the record with transcripts of the testimony taken at the hearings in which the city made the requisite findings that

slum or blighted conditions exist...” (A-7-4) Such submission was made to the trial court. (A-8-Exh. A) In the Final Judgment, the trial court focused primarily on the evidence before the City Council solely on that day. In the trial court’s view, “[t]he testimony before the City Council fell woefully short of establishing that (the Redevelopment Area) is a slum area containing a preponderance of dilapidated or obsolete buildings or that it is a blight area having a substantial number of slum buildings. It certainly did not support the sweeping ‘findings’ made by the City.” (A-12-3)

The overview provided by Assistant City Manager to the City Council (A-1-Exh. A-3) was the culmination of four years of working on the redevelopment project by the City Council. It was not designed to be an evidentiary hearing in the traditional sense. The Act *does not require* such a hearing, but merely a finding of a blighted area by the local government under § 163.355, Fla. Stat. (2001). A resolution finding a blighted area may be adopted with a "minimum of formality and evidence" because the City's elected officials are presumed to be "knowledgeable about conditions in their city." *State v. Miami Beach Redevelopment Agency, supra,* 392 So.2d at 892. The trial court ignored the substance of the Plan and the several resolutions finding blight, and instead improperly seized upon the lack of formality in the overview as the basis to substitute its judgment for that of the City Council when, in fact, the City Council

had been well aware of the blighted area for several years and had made previous findings to that effect. (A-13-Exh.A)

The trial court's narrow focus on the November 30, 2000 hearing regarding the creation of the CRA failed to give deference to the City's legislative findings and ignored evidence in the Plan'[2], the PIPA and other evidence presented to the trial court. See *State v. Miami Beach Redevelopment Agency,* 392 So. 2d at 884

(ratification of findings by resolutions subsequent to designation by County of redevelopment powers was permissible and not an impediment to bond validation).

C. A Blighted Area based on growth impairment blight was properly established through the City's findings in the Plan and in the resolutions creating the CRA and adopting the Plan.

The provisions in the Act for determining a blighted area allow a local government alternative methods for making the "blighted area" findings required for creation of a CRA and establishment of a redevelopment plan. Assuming, *arguendo,* that the City's findings were insufficient under § 163 .340(8)(b), there was still sufficient grounds for the City to find a blighted area under §

163.340(8)(a) to warrant reversal of the Final Judgment.

[12] In focusing on the transcript of November 30, 2000 City Council meeting (which only made its way into the record at the request of the trial court in its Order Setting Evidentiary Hearing (A-7)), the trial court overlooked, in particular, the findings made by the City contained in Article III of the Plan. (App. -1 -Exh.E14-29) Article III of the Plan provides substantial factual information and analysis required by the Act which further supports the City's findings relative to the Redevelopment Area.

The Act provides in § 163 .340(8)(a) a finding of “blighted area” where.....

one or more of the following factors that substantially impairs or arrests the sound growth of a county or municipality and is a menace to public health, safety, morals or welfare in its present condition and use:

1. Predominance of defective or inadequate street layout;

2. Faulty lot layout in relation to size, adequacy, accessibility, or usefulness;

3. Unsanitary or unsafe conditions;

4. Deterioration of site or other improvements;

5. Inadequate and outdated building density patterns;

6. Tax or special assessment delinquency exceeding the fair value of the land;

7. Inadequate transportation and parking facilities; and

8. Diversity of ownership or defective or unusual conditions of title which prevent the free alienability of land within the deteriorated or hazardous area

Of the eight alternative factors contributing to blight, the record below reflects that only one (tax delinquency) was not present in the Redevelopment Area. As discussed above, the street layout, transportation and parking concerns were numerous. The deterioration of the area *(T-65),* its unsafe conditions with vagrants, (T-68-69), and the problems associated with the current park uses and the adjoining

SJC property also existed and standing alone, justify the findings of the City. (T-97)13 Problems associated with the deterioration of the buildings on the

[13] Factors No. 1 (inadequate street layout) and No. 7 (inadequate transportation and parking facilities) are virtually identical to the provisions for transportation blight in § 163 .340(8)(b) and for the reasons set forth above, also serve as grounds for a finding of blighted area under § 163.340(8)(a).

site and the diversity of ownership on the land were also found by the City. (A-i-Exh.D-1 8-19,20-22,24-25) The Act considers such factors when trying to confront conditions that impair the growth of such an area.

The same faults in the trial court's reasoning discussed in Section B above apply to its dismissal of the applicability of a finding of a blighted area under § 163 .340(8)(a). The trial court ignored the totality of the evidence in front of it and

improperly sought to substitute its judgment for that of the City Council when taking issue with the testimony of the witnesses. The trial court's review of the alternative factors for a finding of growth impairment blight disregards the text of the statute, which states that there may be grounds independently for a blighted area finding, as denoted by "<u>or one or more</u> of the following factors" in the statute. Thus, even if the City did not sufficiently establish the existence of a blighted area under § 163.340(8)(b) when establishing the CRA, it could nevertheless proceed under § 163.340(8)(a) because of the unsanitary and unsafe conditions in the Redevelopment Area, the faulty lot layout and arrangement of the parcels in the Redevelopment Area as well as the inadequate street layout, transportation and parking facilities located in the CRA's Redevelopment Area.

D. <u>The trial court erred by holding that the City's findings of a blighted area were arbitrary when the findings were not clearly erroneous</u>.

The Final Judgment should be reversed because it applied the wrong standard when denying validation of the CRA's creation. When determining whether or not to create the CRA, the City Council of the City was following procedures authorized by state law. Thus it was performing a legislative, rather than quasi-judicial function. As such, the City Council's actions should be sustained so long as they are fairly

debatable and not clearly erroneous. *JFR Investment v. Deiray Beach Community Redevelopment Agency,* 652 So.2d 1261, 1262 (Fla. 4th DCA *1995), citing Board of County Commissioners of Brevard County v. Snyder,* 627 So.2d 469, 474 (Fla. 1993). In *JFR Investment v. Delray Beach Community Redevelopment Agency, supra,* the City of Delray Beach declared 2,000 acres to be slum or blighted areas and established a community redevelopment agency to rehabilitate that area. In upholding the propriety of the City's determination in establishing the CRA, the trial court recognized the deference that should be given to a City's declaration of whether it has blighted areas within its municipal limits.

The city council was acting as a legislative body in adopting policy regarding the subject portion of the city and was not making a determination regarding an individual parcel when it decided to designate the general area for redevelopment. Therefore, the trial court properly considered the substantial evidence presented to the court. The city's decision must be sustained unless clearly erroneous.

JFR Investment v. Deiray Community Redevelopment Agency, 652 So.2d at 1262 (emphasis supplied). *See also Holloway v. Lakeland Downtown Development Authority,* 417 So.2d 963 (Fla. 1982) (affirming findings of "slum" and "blight" made by authority created by special act of the Legislature where authority followed the Act's definitions of "slum" and "blight"); *Boschen v. City of Clearwater,* 777 So.2d 958 (Fla. 2001) (affirming City's determination of public

health and safety; such findings warrant deference from court reviewing such' action).

A legislative declaration of public purpose is presumed valid and should be deemed correct unless so clearly erroneous as to be beyond the power of the legislative body. *Bosehen v. City of Clearwater, supra; Pepin v. Div. of Bond Finance,* 493 So.2d 1013 (Fla. 1986); *State v. Housing Finance Authority of Polk*

County, 376 So.2d 1158, 1160 (Fla. *1979);Nohrrv. Broward County Educational Facilities Authority,* 247 So.2d 304, 309 (Fla. 1971); *State v. Ocean Highway and Port Authority,* 217 So.2d 103, 105 (Fla. 1968). The burden of showing a declaration of public purpose to be "clearly erroneous" is on the party challenging such a legislative declaration. *Pepin v. Div. of Bond Finance,* 493 So.2d at 1014.

In the Final Judgment, the trial court states that the legislative findings of the

City Council shall be given great deference, but declares that “when it appears that those findings are arbitrary, the presumption of correctness is stripped away.” (A-

15-5) In reality, however, the trial court's rendition of the Final Judgment gave no deference to the legislative findings of the City Council made on numerous occasions after numerous public hearings, and instead seeks to substitute its judgment on the City's economic redevelopment for that of the City.[14] Such action oversteps the review of the evidence that should be made under these circumstances. This Court stated, when evaluating the legality of the City of Miami Beach's ambitious plans for redevelopment of its South Beach area more than 20 years ago, that: "The wisdom of authorizing the cataclysmic demolition and redesign of neighborhoods or even whole districts is not for the Court to determine." State v. Miami Beach Redevelopment Agency, 392 So.2d at 891.

As shown above, the City had legitimate street design, traffic flow and parking concerns under the existing depressed economic and site conditions surrounding and existing within the Redevelopment Area. In addition, the factors associated with growth impairment blight relating to public health, safety, morals and welfare and impairment of sound growth existed in the Redevelopment Area. Neither the State nor any Intervenor offered any evidence or challenged the legislative findings of the City or the testimony of the witnesses. To implement the Plan, land must be acquired and exchanged between the City, the State of Florida

[14] The trial court candidly invaded the City's legislative policy making arena when it concluded that giving effect to the Act's grant of authority to find and address transportation blight would result in the Redevelopment Area having "paved streets while thousands of Bay County taxpayers drive on dirt roads." (A-15-6)

and SJC, and significant infrastructure must be built to achieve the economic development goals and the highest utilization of the City's park assets, which currently suffer from either poor road access and/or inadequate parking conditions. (A-1-Exh.E-22-25) These findings were not clearly erroneous and are supported by substantial findings of the City, its staff and its experts.

> It is not for the courts to oversee the choice of the boundary line nor to sit in review on the size of a particular project area. Once the question of the public purpose has been decided, the amount and character of land to be taken for the project and the need for a particular tract to complete the integrated plan rests in the discretion of the legislative branch.

Berman v. Parker, supra, 348 U.S. at 35-36, 75 S.Ct at 104. *See also Lyons v. City of Camden,* 243 A.2d 817 (N.J. 1968) (affirming legislative determination of blight and redevelopment project area as a matter of “practical judgment, common sense and sound discretion” and that local authorities, not the courts, have the power to

make that determination). On these grounds of deference to the legislative findings of the City, the Final Judgment should be reversed and the creation of the CRA and its obligations under the PIPA should be validated.

E. The trial court erred by holding that the City's findings regarding blight cannot exist where a portion of the CRA is undeveloped land.

The trial court's skepticism over the Plan and the PIPA led to a holding regarding undeveloped land that, if not reversed by this Court, would gut the applicability of the Act in many areas of the State, in contravention of the

intention and authorization of the Legislature. At the core of the Final Judgment is the Court's misapplication of the Act and misplaced belief that because a portion of the CRA contains vacant, undeveloped land, the finding of blight cannot be justified. The Final Judgment states, in pertinent part:

> "The Re-development (sic) Act was intended to provide for the rehabilitation of previously built-upon properties that have outlived their usefulness and are so economically impaired that no-one (sic) is interested in rehabilitating them; the cost of leveling the property and of putting in new infrastructure and buildings would be too much, particularly in urban areas of decay.

*　　　*　　　*　　　*　　　*

> But when the Court places the evidence alongside the Act -- and reads all of it - it is plain that the District (sic) does not qualify for redevelopment. It has never been developed! By and large it is vacant land begging to be built on." (A-12-6)

The Final Judgment's characterization of what the Act does (and does not) encompass does not square with the text of the Act. In the legislative findings of the Act, "the elimination of traffic hazards," "improvement of traffic facilities" and aggravation "of traffic problems" are all enumerated in the findings and declarations of necessity. § *163.335(1),* Fla. Stat. (2001). The Florida Legislature specified costal tourist areas like the City as prime candidates for use of the redevelopment powers of the Act. Coastal resort and tourist areas such as the City "which are deteriorating and economically distressed due to building density patterns, inadequate transportation and parking facilities, faulty layout, or

inadequate street layout, could through the means provided in this part, be revitalized and redeveloped in a manner that will vastly improve the economic and social conditions of the community." § *163.335(4),* Fla. Stat. (2001).

Moreover, the Act specifically contemplates the acquisition of areas of undeveloped, open land. *See* § 163.360(8), Fla. Stat. (2001) ("If the community redevelopment area consists of an area of open land to be acquired by the county or the municipality. . .). Ultimately, every community redevelopment plan must reach a point where clear land is consolidated for the redevelopment contemplated by the Act. Here, the City, CRA and CDD effectively avoided the condemnation of a parcel of land critical to the success of a redevelopment project by negotiating a partnership with SJC. The trial court's distinction between redevelopment and development ignores the very fact that the Act contemplates acquisition and inclusion of such open land if it benefits and furthers the Plan and alleviates blight or the spread of blight within a redevelopment area.

In the Redevelopment Area, the open land held by SJC effectively aggravates the traffic and transportation problems located along and between the City's premier tourist attractions - its municipal pier, the Fairgrounds, Frank Brown Park and the beachfront. SJC's land blocks the traffic flow between the City's two east-west arterial roads and the City's beachfront park and its park and recreation facilities along the north side of the Redevelopment Area, a problem

that would only worsen if the proposed commercial development within the Redevelopment Area is otherwise constructed. The vacant land and the clay access road that bisects the land also contribute to vagrancy problems. The City desires to redevelop a portion of its beachfront, develop a central core tourism area, expand and improve its existing parkland and link such parks that are currently disjointed and not easily accessible. To accomplish these goals, the inclusion of the property owned by SJC is critical not only for the road development that will be part of the Plan as implemented by the PIPA, but also the commercial assessment payments which will come from the commercial property developed within the Redevelopment Area and which will be used to improve the City's facilities. The inclusion of the open property owned by SJC is necessary to accomplish these redevelopment and economic development goals.

The objective of any community redevelopment plan is to clear the way for development in the area, including through means of condemnation and demolition, to acquire <u>clear and open lands</u> for development. See State v. Miami Beach Redevelopment Agency, supra, 392 So.2d at 883. Where, as here, open land is contributing to the existence of the transportation blight and growth impairment blight within the area, it is properly included in the Redevelopment Area. See Babcock v. Community Redevelopment Agency, 306 P.2d 513 (Cal. Ct. App. 1957) (redevelopment blighted area may include lands, or buildings not detrimental to

public health, safety or welfare so long as inclusion is necessary for the effective redevelopment of the area of which they are a part); *Forbes v. Board of Trustees,* 712 A.2d *255* (N.J. Super. Ct. App. Div. 1998) (not every property within the redevelopment area must be shown to be itself substandard); *Lyons v. City of Camden,* 243 A.2d 817 (N.J. 1968) (prohibiting municipality from including properties which are not blighted defeats the legislative purpose of area redevelopment; issue is whether the area as a whole qualifies for a designation of blight); *Miller v. City of Tacoma,* 378 P.2d 464 (Wash. 1963) (fact that some lands in blighted area were vacant does not invalidate redevelopment statute).

The trial court's conclusion that the vacant nature of the land prevented its inclusion within the Redevelopment Area is without any support in the Act and, in fact, contravenes the express purposes of the Act. The Legislature has not restricted the inclusion of vacant lands in redevelopment areas, and there is no authority in the Act for the trial court to impose such a restriction. On these grounds, the Final Judgment should be reversed.

CONCLUSION

For the foregoing reasons, the portion of the Final Judgment refusing to validate the CRA and its obligations under the PIPA should be reversed and the creation of the CRA and its obligations under the PIPA should be validated.

Randall W. Hanna (FBN 0398063)
Mark G. Lawson (FBN 773141)
Kenneth A. Guckenberger (FBN 0892947)
Michael S. Davis (FBN 099204)

Bryant, Miller And Olive, P.A.
The Exchange Building
201 South Monroe Street, Suite 500
Tallahassee, Florida 32301
Telephone: (850) 222-8611
Facsimile: (850) 222-8969

Counsel for Appellant

CERTIFICATE OF SERVICE

I DO CERTIFY that a copy of the foregoing Initial Brief of Appellant has been served on the Division of Bond Finance of the State Board of Administration, 1801 Hermitage Boulevard, Suite 200, Tallahassee, Florida 32308; Jonathan T. Johnson, Esq., Hopping Green & Sams, P.A., 123 South Calhoun Street, Post Office Box 6526, Tallahassee, Florida 32314 and William D. Tyler, Esq., Nabors, Giblin & Nickerson, P.A., Suite 1060, 2502 Rocky Point Drive, Tampa, Florida 33607, counsel for the CDD; Randall W. Hanna, Mark G. Lawson and Michael S. Davis, Bryant, Miller and Olive, P.A., The Exchange Building, 201 South Monroe Street, Suite 500, Tallahassee, Florida 32301, counsel for the City; Jim Appleman, State Attorney for the Fourteenth Judicial Circuit, 910 Harrison Avenue, Panama City, Florida 32401 and William A. Lewis, Assistant State Attorney for the Fourteenth Judicial Circuit, 910 Harrison Avenue, Panama City, Florida 32401, counsel for the State; and Jeffrey P. Whitton, counsel for Intervenor pursuant to Order Granting Motion to Intervene by the trial court entered January 25, 2002; all by U.S. Mail on this ___ of February, 2002.

Randall W. Hanna (FBN 0398063)
Bryant, Miller and Olive, P.A.
The Exchange Building
201 South Monroe Street, Suite 500
Tallahassee, Florida 32301

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.

Randall W. Hanna (FBN 0398063)
Bryant, Miller and Olive, P.A.
The Exchange Building
201 South Monroe Street, Suite 500
Tallahassee, Florida 32301