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.

REPLY 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

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Florida Statutes

Other Authorities

INTRODUCTION

Appellant, the Panama City Beach Community Redevelopment Agency (the "CRA") presented its basic argument in its Initial Brief. In this Reply Brief, the CRA responds to the counter-argument of the Appellee/Intervenor, William Hendrick.[1] All undefined capitalized terms shall have the meanings given to them in the Appellant's Initial Brief.

REPLY TO THE APPELLEE/INTERVENOR'S COUNTER-ARGUMENT

1. Reply to the Appellee/Intervenor's Statement of the Facts.

The Appellee/Intervenor's[2] "Statement of the Facts" contains several statements and citations that, if left uncorrected, could lead the Court to conclusions not supported by the Record. On page 3 of its Answer Brief, Appellee/Intervenor asserts that the City of Panama City Beach (the "City") contributes to the blighted conditions on the condemned Florance property. In fact, the Florance parcel was acquired by the

---

[1] The Answer Brief filed by the Appellee, the State of Florida, confessed error by the trial court and warrants no response herein.

[2] Appellee/Intervenor's appearance in this appeal is suspect and curious because he did not present any evidence or argument against validation and because he failed to appear before the trial court during the validation hearing or subsequent evidentiary hearings held by the trial court. He was admitted into the case over objection of the parties (A-16, A-17) after both the Final Judgment and the Supplemental Final Judgment were rendered and this appeal filed. (A-22) The Appellee/Intervenor failed to properly appear in the matter below in a timely fashion, although the CRA recognizes that such an appearance (if timely made) might otherwise be appropriate under §75.07, Florida Statutes.

City on December 7, 2000 (A-13-Exh. B), one week *following* the creation of the CRA (A-8-Exh. A-3). At page 2 and at page 4 of the Answer Brief, Appellee/Intervenor attempts to put forth the trial court's view of the Mayor of the City's testimony as if it was the factual predicate presented to the trial court below. Clearly, the trial court and the City disagree as to the current adequacy of the road network and transportation system within the Redevelopment Area. Notwithstanding the trial court's conclusions, however, the roads and parking are insufficient for the current use of the park and the municipal pier. (A-1 Exh.E-23-24, T-56)

2. Appellee/Intervenor misstates the standard of review for bond validations.

Appelleee/Intervenor contends that because the trial court held that blight did not exist, such a finding is now insulated on appeal, to be reversed only on a finding that the trial court was "clearly erroneous." Answer Brief of Appellee/Intervenor at pp. 7-8. As support for this proposition, the Appellee/Intervenor surprisingly cites this Court's decision in *City of Winter Springs v. State*, 776 So.2d 255 (Fla. 2001). The CRA would also cite *Winter Springs* for the standard of review applicable here, noting that the Appellee/Intervenor's characterization of such standard diverges from the facts of the case. Like this appeal, *Winter Springs* was an appeal of a validation final judgment, in that case a final judgment refusing to validate special assessment bonds.

In reversing the trial court's refusal to validate, this Court applied the following standard:

> This Court has held that "if reasonable persons may differ as to whether the land assessed was benefitted by the local improvement, the findings of the city officials must be sustained." *City of Boca Raton v. State*, 595 So.2d 25, 30 (Fla. 1992). Accordingly, the trial court failed to give appropriate deference to the legislative findings of the City and to the record evidence that provided support for these findings . . . Without any evidence or rational basis to overcome the presumption of correctness which attends the City's legislative findings, there can be no invalidation of the bonds.

Winter Springs, 776 So.2d at 259. We have a nearly identical fact pattern in this appeal of a trial court's refusal to give appropriate deference to legislative findings. Thus, the standard of review applied in *Winter Springs* should be applied in this appeal, where a trial court has also overreached into the legislative function that is solely that of the governing body, in this case that of the City and the CRA in the findings of "blighted area." *See also JFR Investment v. Delray Beach Community Redevelopment Agency*, 652 So.2d 1261 (Fla. 4th DCA 1995) and *Rukab v. City of Jacksonville Beach,* 27 FLW D468 at Note 4 (Fla. 1st DCA, Feb. 26, 2002). The "sufficiency of the evidence" level of review looks to the sufficiency of the evidence in front of the local legislative body (not that of the trial court as Appellee/Intervenor suggests) and is the standard of review that the CRA seeks here. There has been no

evidence presented by any opponent of the validation to overcome this presumption of correctness and thus the findings of the City and the CRA should be upheld here.

3. Appellee/Intervenor misconstrues the blighted area finding regarding current conditions within the City.

Appellee/Intervenor confuses the issue regarding the current transportation conditions that, contrary to Appellee/Intervenor's unsupported assertions, do constitute transportation blight of critical concern to the City before any proposed development. The City's current traffic patterns reflect what is typical of many coastal communities' main transportation "strip." In fact, these types of coastal resort areas have been specifically identified by the Legislature in its findings and declarations of necessity under the Act:

> It is further found that coastal resort and tourist areas or portions thereof which are deteriorating and economically distressed due to building density patterns, inadequate transportation and parking facilities, faulty lot 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).

The Redevelopment Area currently has many of the problems typically associated with such coastal "strips", worsened dramatically by the fact that one of the last large parcels of land directly along the strip is, in fact, largely undeveloped and

served by one clay road, making the heavily congested beachfront thoroughfare, Front Beach Road, effectively the only road for several critical miles in and around the City's prized beaches and parks. This Court should not be swayed by Appellee/Intervenor's contention that no traffic problems exist in the City at the moment. To the contrary, the City currently has a textbook case of "transportation blight." Without major relief through the Plan, the City stands to see further deterioration of the area, as a result of not addressing a pressing need for transportation relief. The current transportation problems and blighted conditions, as identified by the Plan, 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)

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 Redevelopment Area and the limited

capacity and layout of the less than comprehensive current traffic circulation system. (A-1-Exh. E-26-28).

While Appellee/Intervenor contends that the City and the CRA failed to demonstrate present blighted area conditions, it is simply ignoring the body of the evidence in front of the City when the decision was made, the information and findings in the Plan and the other evidence in the record that the trial court also ignored.

4. Recent legislative modifications to the Act demonstrate that the City was in compliance with the requirements of the Act at the time it took such action.

The core of the trial court's holding is that it disagreed with the City's findings of "blighted area" and the manner in which the evidence supporting "blighted area" was considered and made. In the 2002 regular legislative session, the Florida legislature significantly revised §163.340(8), Florida Statutes defining "blighted area." *See* CS/HB 1341, enrolled March 21, 2002. The bill has not been signed by Governor Bush as of the date of this Reply Brief. Even assuming it is signed, such changes apply prospectively, and do not directly impact the appeal. *See* §10, CS/HB 1341. The modifications made by the Legislature, however, are instructive as to the requirements of the Act at the time the City made its findings of "blighted area" and by contrast support the CRA's contention that the establishment of the CRA was

entirely proper under the Act. The "transportation blight" formerly which supported a finding of "blighted area" by itself in subsection 8(b) of §163.340, is now combined with the other factors in former 163.340(8)(a) (and other newly-created factors) in one section that eliminates the alternative subsections (a) and (b), and is contained all in §163.340(8). See §2, CS/HB 1341. Under the revised statute, transportation blight must be combined with at least one other factor. Id. The changes to the Act also require a showing by "government-maintained statistics or other studies" to establish economic distress or endangerment to life or property. Id. These changes undoubtedly will make establishing a community redevelopment agency more complicated and may deal with Appellee/Intervenor's concern that raw pinelands in other areas of the panhandle could be determined to be blighted areas under the Act. They illustrate, however, that the current state of the Act did not have such a requirement, and this Court should not build one into the Act in this matter pursuant to the policy arguments advanced by Appellee/Intervenor, especially where the Legislature has revised the Act to limit the ability of local governments to create community redevelopment agencies in the future by the Act's new requirement for more formal statistical studies and analysis.

The trial court concluded that the "transportation blight" findings by the City "can not (sic) be the law." (A-12-5) In fact, the City specifically complied with the Act

as of the time the City made its findings, and comported with the more general direction of this Court that such findings may be made with a minimum of formality and evidence. *State v. Miami Beach Redevelopment Agency,* 392 So.2d 875 (Fla. 1980). Appellee/Intervenor's parade of horribles need not be considered where, as here, the Legislature has provided a modification of the statute that formalizes the process for making findings of "blighted area" for purposes of creating community redevelopment agencies. But such a legislative change also demonstrates that the City was in compliance with the Act and governing case law at the time it made its findings, and the CRA and its obligations should thus be validated here.

5. The proximity of the vacant land in the Redevelopment Area to the core tourist area of the City distinguishes it from the vacant pinelands elsewhere in the State.

Both Appellee/Intervenor and the trial court seem confounded by the statutory definitions of "blighted area" provided in the Act and contend that it cannot apply to raw land, notwithstanding its impact on the City. In the Answer Brief, Appellee/Intervenor on at least two occasions resorts to Webster's Dictionary to provide definitions which diverge from those that have been provided by the Legislature in the Act. (Answer Brief of Appellee/Intervenor at 12, 17). Webster need not be consulted where, as here, the Legislature provided an explicit and detailed definition for "blighted areas" in § 163.340(8), Florida Statutes (2001) that included

current and prospective transportation inadequacies, and provided a definition for "redevelopment" of areas that meet these criteria in § 163.340(9), Florida Statutes (2001), whether such property is currently developed or not. Contrary to Appellee/Intervenor's argument, there is absolutely no requirement in the Act that land must first be developed to be included in the findings of "blighted area." Appellee/Intervenor and the trial court simply disagreed with the Legislature's present definitions of "blighted area" and seek to ignore the text of the Act. Such statutory construction via Webster's definitions when "blighted area" and redevelopment are defined by the Act should not be persuasive on this Court.

Appellee/Intervenor's argument that the amount of the undeveloped land in the Redevelopment Area is too great to satisfy the requirements of the Act is without any basis in the Act. The Act is designed to combine large parcels of land to effectuate development. *State v. Miami Beach Redevelopment Agency, supra*, 392 So.2d at 883. Unlike the acres of undeveloped pinelands cited by the trial court and in the Appellee/Intervenor's Answer Brief as being problematic, the undeveloped land in the Redevelopment Area sits proximate to critical portions of a congested coastal community, surrounded by water. This proximity to congested coastal areas in this case are clearly distinguishable from the raw pinelands analogy used by the trial court and the Appellee/Intervenor. The necessity to include this parcel in a redevelopment

area within this coastal tourist community is both obvious and logical.[3] While the City and the CRA sought validation of the CRA's creation and obligations under the PIPA, such validation does not invite the Court to step in the shoes of the City Council to make policy decisions as Appellee/Intervenor argues should be the standard for such review. *See* Answer Brief of Appellee/Intervenor at p. 11. The trial court's desire to invade the province of the City Council in determining blighted areas and setting the boundaries of the CRA contravenes this Court's explicit direction as to the deference that should be accorded such decisions in *Winter Springs* and *Delray Beach, supra.*

[3] The Plan contains a Boundary Justification that explains many of the reasons for the inclusion of the vacant parcel in the Redevelopment Area. (A-1-Exh. E-17-19). Foremost amongst these reasons are the traffic implications of linear development along the coast, the inability to expand due to SJC's ownership of the land and the significant public investment in the municipal pier and the surrounding beaches and municipal parks.

CONCLUSION

Community redevelopment through the Act has provided local governments throughout the State of Florida with the means to revitalize and develop areas that have become blighted for a variety of reasons. The trial court below improperly invaded the purview of the City to use such legislative powers, and should have only overturned such legislative decisions of the City when they were clearly erroneous. If, as here, the determination of the City in finding "blight" was fairly debatable, then the trial court should have deferred to the findings of the City and not injected its own opinions into the case, which appear, by the trial court's own admission, to have been influenced by Judge Hess' keen interest in his own neighborhood. (Answer Brief of Appellee/Intervenor at p. 16, TO-17) The determinations of blighted areas is granted by the Act to the local government, not to the trial judge, who improperly used the validation proceeding under Chapter 75 in the trial court below as a means to modify or influence a local government's policy determination.

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 April, 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