IN THE SUPREME COURT OF FLORIDA

Case No. SC07-1400

CITY OF PARKER, a municipal corporation of the State of Florida, and CITY OF PARKER COMMUNITY REDEVELOPMENT AGENCY, a public body corporate and politic,

Appellants,

vs.

STATE OF FLORIDA, and the Taxpayers, Property Owners and Citizens of the City of Parker and Bay County, Florida, et. al.,

Appellees,

ON APPEAL FROM THE CIRCUIT COURT OF BAY COUNTY, FLORIDA, FOURTEENTH JUDICIAL CIRCUIT
Lower Tribunal No.: 07-000889-CA

AMICUS CURIAE BRIEF OF FLORIDA REDEVELOPMENT ASSOCIATION, INC., IN SUPPORT OF APPELLANTS

Filed with Leave of Court

David E. Cardwell
Florida Bar No. 205419
The Cardwell Law Firm
7380 Sand Lake Road, Ste. 500
Orlando, Florida 32819
Telephone (407) 876-6945
Facsimile (407) 876-4627

General Counsel for Florida Redevelopment Association, Inc.

Douglas J. Sale
Florida Bar No. 220991
Kevin D. Obos
Florida Bar No. 571660
Harrison, Sale, McCloy, Thompson, Duncan & Jackson, Chartered
Post Office Drawer 1579
Panama City, Florida 32402
Telephone (850) 769-3434
Facsimile (850) 769-6121

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INTRODUCTION

The Florida Redevelopment Association, Inc. ("FRA") is a non-profit, statewide organization consisting of municipalities, counties, community redevelopment agencies, consultants, financial firms, and individuals committed to the redevelopment of Florida's urban areas and small cities, and supports the ability of local governments to create and effectively use community redevelopment agencies ("CRAs") to redevelop and revitalize their urban areas, including the use of tax increment financing pursuant to Section 163.387, Florida Statutes (2007). FRA's mission is to promote the improvement of downtowns and other urban areas including small cities, through redevelopment and development activities under the Community Redevelopment Act of 1969, as amended (codified as Part III, Ch. 163, Florida Statutes (2007)) ("Redevelopment Act").

FRA supports the authority of counties and municipalities to establish CRAs and, through the establishment of a redevelopment trust fund, employ tax increment financing to serve the public interest.[1] The court below denied Appellants that opportunity based upon a misapplication of the law. The FRA and Appellants share a common interest in correcting that misapplication. FRA's appearance as amicus curiae will serve as a conduit

[1] *See* §163.387, Fla. Stat. (2007).

through which its members will have an opportunity to be heard on the issues in this appeal which potentially affect existing CRAs throughout the State,[2] and the municipalities and counties which created them.[3]

STANDARD OF REVIEW

Because this appeal requires the interpretation of the Redevelopment Act, the standard of review is de novo. *See Foundation Health v. Westside EKG Assocs.*, 944 So. 2d 188, 193-94 (Fla. 2006) (applying the de novo standard of review to questions of statutory interpretation).[4]

SUMMARY OF ARGUMENT

Through the Redevelopment Act the Legislature expressly granted to "counties and municipalities" the power to create CRAs and, through them, engage in tax increment financing of community redevelopment. In that same Act, the Legislature required "taxing authorities" to fund redevelopment. These two roles are obviously related, but separate.

Prior to a major policy shift in 2006 requiring millage parity between those creating the CRAs ("counties and municipalities") and those

[2] According to the DCA Special District Registry there are 181 CRAs in the State.

[3] According to Florida Department of Revenue, *2006 Florida Property Valuations & Tax Data* (June 2007) there are 31 municipalities in the State of Florida which do not levy ad valorem taxes.

[4] As distinguished from the limited review for substantial competent evidence that would apply to a review of the lower court's findings of fact. *City of Boca Raton v. State*, 595 So.2d 25, 31 (Fla. 1992).

contributing the funding ("taxing authorities"), there was no connection between the two roles. As a matter of policy, prior to 2006 the Redevelopment Act permitted a county or municipality to create a CRA and thereby re-direct public funds from the taxing authorities to the CRA, regardless of how much disparity there might be between the millage rate, if any, of the county or municipality creating the CRA and the other taxing authorities.[5] Appellant City of Parker established its CRA prior to millage parity becoming effective.

The court below failed to follow the unambiguous language of the Redevelopment Act and instead turned to legislative intent and inference to reconstruct the Act and impose upon Appellants an unauthorized version of millage parity. The lower court's intent and purpose is clearly shown by the fact that, although it acknowledges that millage parity does not apply to Appellants, it nonetheless concludes that the millage parity law and the

[5] The original policy emphasis for CRAs and redevelopment was on creating opportunities for private investment to address the evils associated with slum or blight, not on the jealousies between local governments - especially since local governmental contributions are measured solely by the increase in taxable value within the redevelopment area. However, with the maturation of early CRAs and the recent explosion in real estate values, the amount of those contributions has engendered sufficient jealousy between local governmental entities coveting the same dollars to produce a legislative response in the form of millage parity. Those same jealousies produced the instant suit. The difference is that the legislature, unlike the court below, is authorized to rewrite the law to meet changing policy considerations.

reasoning behind it support the Court's erroneous holding. Just the opposite is true. The very fact that the legislature adopted millage parity demonstrates that prior law, still applicable to Appellants, does not look to the amount or existence of a contribution by a municipality such as Appellant City of Parker to be a condition precedent to the exercise of redevelopment powers legislatively granted, including tax increment financing.

ARGUMENT

I.

The Legislative Findings that Tax Increment Financing of Redevelopment Enhances the Tax Base of the Taxing Authority Obligated to Support that Financing with Trust Fund Contributions Cannot be Construed to Preclude a Municipality which does not Levy an Ad Valorem Tax from Exercising the Community Redevelopment Powers Legislatively Granted to it, Including Tax Increment Financing.

Instead of looking to the words of the operative statutes authorizing the creation of the CRA and the financing sought to be validated, and giving those words their plain meaning where no ambiguity exists, the lower court resorted to legislative findings and implied intent, and embarked on an exercise in "imaginative reconstruction" of the statute.[6] A plain reading of

[6] *See* Richard A. Posner, *Statutory Interpretation-In the Classroom and in the Courtroom*, 50 U. Chi. L.Rev. 800, 817 (1983)

the Redevelopment Act should not result in resorting to the rules of statutory construction or searching behind the plain language for legislative intent.[7]

The lower court blurred two clearly distinct and fundamental principles made evident in the Redevelopment Act. Those principles are: First, the Legislature has granted to "counties and municipalities" the authority to create CRAs[8], adopt a community redevelopment plan[9] and create a redevelopment trust fund[10] to support tax increment financing[11] and serve a variety of public purposes.[12] Second, the Legislature has required "taxing authorities" to appropriate funds to a redevelopment trust fund because, in essence, a rising tide raises all ships.[13] The court below accepted Appellee Bay County's argument which employed legislative findings to confuse those two related, but discreet principles.

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[7] As this Court set forth in *Daniels v. Florida Dept. of Health*, 898 So.2d 61, 64-65 (Fla. 2005), "When the statute is clear and unambiguous, courts will not look behind the statute's plain language for legislative intent or resort to the rules of statutory construction to ascertain intent. In such an instance, the statute's plain and ordinary meaning must control, unless this leads to an unreasonable result or a result clearly contrary to legislative intent." (citations omitted).

[8] *See* §163.356, Fla. Stat. (2007).

[9] *See* §§163.360 and 163.362, Fla. Stat. (2007).

[10] *See* §163.387, Fla. Stat. (2007).

[11] *See* §163.385, Fla. Stat. (2007).

[12] *See* §163.335, Fla. Stat. (2007).

[13] *See* §163.353, Fla. Stat. (2007).

The Legislature has made clear that the purposes and justification for requiring a "taxing authority" to annually appropriate to a redevelopment trust fund a sum of money (measured by the ad valorem tax increment the taxing authority will collect within the redevelopment area)[14] include the preservation and enhancement of the tax base of such "taxing authority".[15] The court below relied upon those legislative findings to hold that Appellant City of Parker and its CRA cannot utilize tax increment financing solely because it does not levy an ad valorem tax. No other obstacle stands in the way. Just because the Legislature has justified its requirement that a "taxing authority" contribute to a redevelopment trust fund by articulating findings that community redevelopment and tax increment financing will preserve and enhance the tax base of that "taxing authority,"[16] does not mean that a "municipality" without an ad valorem tax is precluded from embarking upon redevelopment and tax increment financing. If the Legislature had intended to so limit the authority of a municipality, it would have said so and has had ample opportunities in two recent overhauls of the Redevelopment Act.[17] Instead, it has repeatedly said that any "county or municipality" (as opposed

[14] *See* §163.387, Fla. Stat. (2007).
[15] *See* §§163.335(5) and 163.353, Fla. Stat. (2007).
[16] *Id*.
[17] *See* Ch. 2002-294 and Ch. 2006-307, Laws of Fla.

to a "taxing authority") may, through a CRA, utilize tax increment to accomplish community redevelopment.[18]

Said another way, if the Legislature had authorized (which it could have done) any county, municipality, Chapter 189 dependent special district or Chapter 163, Part I, interlocal agency to adopt a redevelopment plan and create a redevelopment trust fund, and if a dependent special district or an interlocal agency were to have set about redevelopment, would Bay County have been heard to argue that it should not be obligated to make annual contributions to the redevelopment trust fund solely because the dependent special district or the interlocal agency lacked the authority to levy an ad valorem tax? The narrow point is simply that the statutory program logically and clearly separates the entities obligated to make the trust fund payment ("taxing authorities") from the entities authorized to create a CRA and utilize tax increment financing ("counties and municipalities"). At least this was the law until June 7, 2007.[19] Although, the lower court admits that this new law does not apply to Appellants, still it erroneously cited the new law to support its reconstruction of the statute. In the lower court's own words:

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[18] *See* §163.385, Fla. Stat. (2007).
[19] *See* §163.387(1)(b)1, Fla. Stat. (2006) as amended by Ch. 2006-307, Laws of Fla.

> "Section 163.387(1)(b)1, Florida Statutes includes provisions that only apply to CRA's created after June 7, 2007. However, this section also supports the conclusion that Parker must levy taxes to utilize TIF."

(A-tab 1, p.15). To the contrary, (and to paraphrase the lower court,) what this section actually does support is the conclusion that if Parker had not created its CRA by June 7, 2007, then and only then would it be required to levy taxes in order to utilize tax increment financing.

II.

The 2006 Legislative Amendment Adding Millage Parity to the Redevelopment Act Does Not Apply; and, Moreover, the very Existence of this Major Policy Shift Demonstrates that the Prior Law which is Applicable Here Does Not Require the City of Parker to Levy an Ad Valorem Tax as a Condition Precedent to its Exercise of the Community Redevelopment Powers Legislatively Granted to it, Including Tax Increment Financing.

The lower court relied upon the recently enacted "millage parity"[20] revisions to the Redevelopment Act to support the conclusion that a municipality using its redevelopment powers to create a CRA and utilize tax

[20] In simplest terms, Section 163.387, Florida Statutes (2006), as amended by Chapter 2006-307, Laws of Florida, now provides that in a non-charter county where a redevelopment plan is adopted after June 7, 2007, a taxing authority is not obligated to contribute to the associated trust fund at a millage rate higher than the rate levied by the governing body (county or municipality) which created the CRA and the redevelopment trust fund. This new cap was dubbed "millage parity". This new cap does not apply to Appellants whose redevelopment plan was adopted and redevelopment trust fund was established prior to June 7, 2007 (see Initial Brief of Appellants, Statement of Case and Facts, pp. 7- 8).

increment financing must itself impose an ad valorem tax. In doing so, the lower court failed to appreciate the fact that millage parity was a major policy shift carefully crafted by the 2006 Legislature.[21] Not only were the 2006 amendments not made retroactive, the lawmakers intentionally left open a window for "counties and municipalities" meeting certain deadlines[22] to implement community redevelopment under the pre-2006 statutory scheme which did not require millage parity. This window permitted "counties and municipalities" which had already begun considering a redevelopment initiative to quickly complete the process under the old rules. The City of Parker met those deadlines[23] and is entitled to validate its bonds under the pre-millage parity law.

Moreover, if the lower court was led into error in part by a misguided sense of fair play (that is to say, because the City of Parker does not impose an ad valorem tax it should not have a CRA), even this purpose is not accomplished by the lower court's ruling - not to mention that by failing to give effect to the plain meaning of the applicable statutes and reconstructing those statutes to deny the City of Parker a power granted by the Legislature, the lower court abrogated the Legislature's power. *See Nicoll v. Baker*, 668

[21] *See* §163.387 (1)(b)1, Fla. Stat. (2006) as amended by Ch. 2006-307, Laws of Fla.
[22] *See* §163.387(1)(b), Fla. Stat. (2007).
[23] *See supra* note 20.

So.2d 989, 990-991 (Fla. 1996). Unlike the carefully considered millage parity formula developed by the Legislature[24] which even the lower court acknowledged does not apply to the instant case[25], the lower court's novel approach is a "zero-sum" formula. Under this all or nothing approach, the City of Parker need only adopt a single mill of ad valorem tax to authorize its CRA to receive whatever millage, however great, is levied by the other "taxing authorities". In sum, if the lower court denied validation because it perceived a fairness issue, that issue has been better addressed by the Legislature in a more reasoned and complete fashion through a major policy shift - millage parity. Moreover, the Legislature has expressly delayed implementation of millage parity for a brief window to allow a county, or a municipality such as the City of Parker and its CRA, to adopt a community redevelopment plan and continue to utilize tax increment financing contributions by all "taxing authorities" without regard to the levy, if any, imposed by the governing body that created the CRA, here, the City of Parker.

To buttress its statutory reconstruction that a "county or municipality" using the Legislature's complete grant of statutory authority to create a CRA and embark on tax increment financing must somehow also be a "taxing

[24] *See* §163.387(1)(b)1.a, Fla. Stat. (2007).
[25] *See* Final Judgment (A-tab 1, p.15).

authority" that actually contributes to the CRA's trust fund, the lower court seized upon the definition of "taxing authority" to present a straw-man argument for the Appellants which it then easily ignored.[26] The City of Parker is a "taxing authority" as that term is defined the Redevelopment Act because, regardless of whether it levies an ad valorem tax, it is authorized to do so.[27] On one level the fact that the City of Parker is a taxing authority would appear to answer Bay County's complaint that only a taxing authority can create a CRA that utilizes tax increment financing. But this convenient answer is the straw-man. Bay County's real complaint, and the apparent basis for the ruling below, is more fundamental – namely, that it is unfair for the City of Parker, which levies and collects no ad valorem tax, to finance community redevelopment with trust fund contributions from Bay County

[26] The Final Judgment of the lower court stated: "The City's response to this argument is that section 163.340(24), Fla. Stat. (2006), defines '*Taxing Authority*' to mean '*a public body that levies or is authorized to levy an ad valorem tax on real property located in a community redevelopment area.*' The City claims this must support a conclusion that Chapter 163, Part III, Florida Statutes (The Community Redevelopment Act) does not require it to levy ad valorem taxes to utilize TIF to fund the CRA bonds." (A-tab 1, p.11).

[27] *See* §166.211, Fla. Stat. (2007) and Art. VII, Sec. 9, Fla. Const. (At least there is no indication in the record that the City of Parker is somehow not authorized to levy an ad valorem tax).

measured by the county's ad valorem tax increment.[28] Fair or not, this was the law until millage parity finally and completely took effect on June 7, 2007, and even the court below concedes that millage parity does not apply to the City of Parker in this case.[29] Under the law applicable to the City of Parker here, a municipality, without more, is expressly and completely authorized to make a finding of necessity[30], create a CRA[31], adopt a redevelopment plan[32] and create a redevelopment trust fund into which "taxing authorities" are required to appropriate increment revenues[33] regardless of whether that municipality itself levies and collects a disproportionately smaller or even no ad valorem tax. If this were not the prior law (still applicable to the City of Parker in this case), the hue and cry of unfairness and lack of equity which ultimately led to the legislative mandate of millage parity would not have existed. The very existence of the new millage parity requirement demonstrates that prior law, still applicable here, permits a city with little or no ad valorem tax to create a

[28] During closing argument of the June 11, 2007 Order to Show Cause hearing, counsel for Appellee Bay County said "it seems unfair that a City that does not have ad valorem tax could use tax increment financing to basically accomplish the same ends and take the County's tax revenue, and therefore, avoid having to tax there own residents" (A-tab 2, pp. 228-229).
[29] *See supra* note 25.
[30] *See* §163.355, Fla. Stat. (2007).
[31] *See* §163.356, Fla. Stat. (2007).
[32] *See* §§163.360 and 163.362, Fla. Stat. (2007).
[33] *See* §§163.340(22) and 163.387, Fla. Stat. (2007).

CRA and compel disproportionate contributions from other taxing authorities. For the future, beginning June 7, 2007, the Legislature addressed Bay County's fairness argument by enacting millage parity. For the present, the City of Parker and its CRA are entitled to proceed with redevelopment, including the use of tax increment financing.

CONCLUSION

For the foregoing reasons, the City of Parker and its CRA are entitled to proceed with redevelopment as authorized by clear legislative grant, including the use of tax increment financing, and the portion of the lower court's Final Judgment refusing to validate the bonds should be reversed.

Respectfully submitted this _____ day of August, 2007.

Attorneys for Florida Redevelopment Association, Inc.

David E. Cardwell
Florida Bar No. 205419
The Cardwell Law Firm
7380 Sand Lake Road, Ste. 500
Orlando, Florida 32819
Telephone (407) 876-6945
Facsimile (407) 876-4627
General Counsel

_____

Douglas J. Sale
Florida Bar No. 220991
Kevin D. Obos
Florida Bar No. 571660
Harrison, Sale, McCloy, Thompson, Duncan & Jackson, Chartered
Post Office Drawer 1579
Panama City, Florida 32402
Telephone (850) 769-3434
Facsimile (850) 769-6121
Special Counsel

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished this ___ day of August, 2007, by U.S. Mail, to the following:

Mark G. Lawson, Esq.
Bryant Miller Olive, P.A.
101 North Monroe Street, Suite 900
Tallahassee, Florida 32301
Attorneys for Appellant

Timothy J. Sloan, Esq.
Harmon & Sloan, P.A.
427 McKenzie Avenue
Panama City, Florida 32401
Attorney for Appellant

William A. Lewis, Esq.
Chief Assistant State Attorney
Fourteenth Judicial Circuit
421 Magnolia Avenue
Panama City, Florida 32401
Attorney for Appellee State of Florida

Terrell K. Arline, Esq.
Bay County Attorney
810 W. 11th Street
Panama City, Florida 32401
Attorney for Appellee Bay County

Gregory T. Stewart, Esq.
Nabors, Giblin & Nickerson, P.A.
1500 Mahan Drive, Suite 200
Tallahassee, Florida 32308
Attorney for Appellee Bay County

_____
Douglas J. Sale
Florida Bar No.: 220991

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this brief complies with the type-face requirements of Florida Rule of Appellate Procedure 9.210(a)(2) because this brief has been double-spaced and prepared using 14-point Times New Roman.

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Douglas J. Sale

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