

IN THE FLORIDA SUPREME COURT
CASE NO. 07-1400

CITY OF PARKER, FLORIDA, and
CITY OF PARKER COMMUNITY
REDEVELOPMENT AGENCY,

L. T. Case No.: 07-000889-CA

Appellants,

vs.

BOND VALIDATION PROCEEDING

STATE OF FLORIDA, et. al,

Appellee.

This case is an appeal pursuant to Florida Rule of Appellate Procedure
9.030(a)(1)(B)(i), from a Final Judgment of the Fourteenth Judicial Circuit of the
State of Florida, in and for Bay County, Florida

ANSWER BRIEF OF STATE

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PRELIMINARY STATEMENT

The Appellee/Defendant, State of Florida, will be referred to as the "State".

The Appellant/Plaintiff, the City of Parker, Florida, will be referred to as the "City," and the Appellant/Plaintiff, City of Parker Community Redevelopment Agency, will be referred to as the "Agency." Collectively, the City and Agency may be referred to as Appellants.

The Appellee/Defendant, Bay County, Florida, will be referred to as the "County."

References to the Appendix submitted by the Appellants in the Initial Brief will be cited by the symbol "A," followed by the tab number, followed by the page or paragraph number (A-tab#; page#). References to items attached as Exhibits to items in the Appendices will be cited by the symbol "A," followed by the Exhibit letter and the page or paragraph number if necessary (A-tab#-ex.#; page#). References to the Supplemental Appendix submitted by the State will be cited by the symbol "SA," followed by the tab number, followed by the page or paragraph number (SA-tab#; page#).

SUPPLEMENTAL STATEMENT OF THE FACTS AND CASE

The State concedes the Appellants' Statement of the Facts and Case contained in their Initial Brief is accurate.

STANDARD OF REVIEW

The State concurs the Appellants have set forth the appropriate standards of review in their Initial Brief.

SUMMARY OF ARGUMENT

The holding of the Circuit Court results in an application of the Redevelopment Act which is inconsistent with previous validation proceedings and rulings.

ARGUMENT

Upon review of the Final Judgment and the Appellants' Initial Brief, the State submits that the trial court's ruling appears to be in conflict with the holding in prior cases having similar facts. The trial court based its denial upon the legal conclusion that the City of Parker must impose ad valorem taxes before it can use proceeds from the Redevelopment Trust Fund to pledge as funding for the Bonds.

As referenced in the Final Judgment (A-tab 1; 15), the State has previously been presented with a similar fact pattern in validation proceedings and did not

object to a municipality creating, establishing, planning and implementing, or financing, community redevelopment under the chapter 163, part III, Florida Statutes (2006) (the "Redevelopment Act") when the municipality itself did not (and does not now) impose an ad valorem tax. *See Panama City Beach Cmty. Redevelopment Agency v. State*, 831 So. 2d 662 (Fla. 2002) (hereinafter the "Pier Park validation"); While not referenced in the Final Judgment, the same situation existed in *City of Panama City Beach v. State*, No. 03-1849 (Fla. 14th Cir. Ct. Jul. 9, 2003) (hereinafter the "Front Beach Road validation").

Upon review of the record in the Pier Park validation and the Front Beach Road validation it is clear that the municipality in question (City of Panama City Beach) did not levy an ad valorem tax.¹ The representations made by the City at the Order to Show Cause hearing are accurate and confirmed by the record in these prior validations.

The argument offered by the County and adopted by the Court in its Final Judgment - that a municipality that timely creates a community redevelopment agency and adopts its community redevelopment plan, as has occurred in this case, now cannot issue bonds in reliance on the resulting tax increment because such

¹ Panama City Beach does impose an occupational license tax which is not an ad valorem tax. That occupational license tax was upheld in the Pier Park validation as a pledged revenue for the subject bonds. It does not, however, impose an ad valorem tax. Accordingly, that municipality makes no annual contribution to any redevelopment trust fund under the Redevelopment Act. (A-tab 2; 231-32, 239-40)

municipality does not itself choose to impose an ad valorem tax appears to be inconsistent with both the Pier Park and Front Beach Road validations.

It is indisputable that the City of Panama City Beach did not, and has never imposed an ad valorem tax (the record in the Pier Park validation and the Front Beach Road validation reveals this fact was before the Court in those cases² and was also known by the parties to these proceedings). The decision of whether or not to impose an operating millage does not appear to strip the power of counties or municipalities to create and use tax increment financing to accomplish community redevelopment objectives under the Act as it existed at the time of the plan's adoption. Although the law in that regard was modified by the Legislature in 2006 to limit that circumstance in the future, the same situation applied in the Pier Park validation and the Front Beach Road validation, and continues to apply for the instant case. The State did not attempt to raise such an issue in the Pier Park validation in 2001 or the Front Beach Road validation in 2003 and will not now take an inconsistent position. The fact the legislature amended §163.387(1)(b)1 in 2006, suggests to the State that no such obligation to tax

² For example, Exhibit D to the Complaint for Validation in the Front Beach Road validation, duly received into evidence at trial, expressly stated: "The City does not have an operating mileage rate so it will not contribute to the redevelopment trust fund." (SA-tab 2; 54). None of the ad valorem tax collection tables or data relied upon by the community redevelopment plans in either the Pier Park or the Front Beach Road validations reflect the Panama City Beach imposed or anticipated imposing an ad valorem property tax.

existed **if** the redevelopment plan met those deadlines set forth in the statute. If the obligation to the tax already existed before this amendment as the trial court's ruling seems to hold, the amendment need not have been so extensive.

It is the duty of the State to fairly consider the pleadings, demand strict proof, and consistently apply the applicable law in its role in all validation proceedings. The legal conclusion by the trial court seems to result in an inconsistent application of the Redevelopment Act.

Except for the alleged error of the Court upon which the Appellants' appeal is based, the State concurs with the remainder of the Final Judgment.

CONCLUSION

The Legislature in 2006, chose to modify its policy on whether and to what degree a municipality must contribute tax increment into a community redevelopment trust fund under the Redevelopment Act, and it expressly provided for a transition period in section 163.387(1)(b)1., Fla Stat. (2006), to achieve that change in policy. The State takes no position on the policy implication of the Redevelopment Act or its recent modification by Legislature. In this case, the trial court apparently ignored the fact that the City of Parker had adopted its community redevelopment plan before that change in policy was to take effect and attempted to reconcile prior bond validations with certain identical fact patterns by suggesting that the issue had not been raised in these earlier cases. The crux of the matter in

this case is whether a municipality who has duly adopted a community redevelopment plan prior to June 7, 2007, and thereafter established a community redevelopment trust fund, and pledged revenues derived therefrom for community redevelopment purposes, is obligated to levy an ad valorem tax or not. The holdings of the prior cases suggest the municipality is not so obligated.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by hand delivery to **Michael S. Davis**, Bryant Miller Olive P.A., One Tampa City Center, suite 2700, Tampa, Florida 33602, **Mark G. Lawson**, **Christopher B. Roe** and **Theresa B. Proctor**, Bryant Miller Olive P.A., 101 North Monroe Street, Suite 900, Tallahassee, Florida 32301, **Terrell K. Arline**, Bay County Attorney, 810 W. 11th Street, Panama City, Florida 32401, **Gregory T. Stewart**, Nabors, Giblin and Nickerson, P.A., 1500 Mahan Drive, Suite 200, Tallahassee, Florida 32308, **Douglas J. Sale and Kevin D. Obos**, Harrison Sale McCloy Thompson Duncan & Jackson, Chartered., 304 Magnolia Avenue, Panama City, Florida 32402, and **David E. Cardwell**, The Cardwell Law Firm, 7380 Sand Lake Road, Ste. 500, Orlando, Florida 32819, this 30th day of August 2007.

/S/ William A. Lewis

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CERTIFICATE OF FONT COMPLIANCE

I CERTIFY that the font size and style in the Appellant's Initial Brief is 14 Times New Roman and that State's Answer Brief complies with the font requirements of Florida Rule of Appellate Procedure 9.210(a)(2).

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