IN THE FLORIDA SUPREME COURT
CASE NO. SC07-1400

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

Appellants,

vs.

STATE OF FLORIDA, ETC., ET AL.

Appellees.

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

BOND VALIDATION PROCEEDING

This case is an appeal under Florida Rules 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

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

PRELIMINARY STATEMENT

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."

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

References to the Appendix submitted by the Appellants 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#).

STATEMENT OF JURISDICTION

Pursuant to Florida Rules of Appellate Procedure 9.030(a)(1)(B)(i), this Court has jurisdiction over final orders entered in proceedings for the validation of bonds where provided by general law. On June 25, 2007, the Circuit Court for the Fourteenth Judicial Circuit, in and for Bay County, Florida, entered such a final order concerning the proposed issuance of bonds by the City. (A-tab 1).

Under section 75.01, Florida Statutes (2006), a circuit court has "jurisdiction to determine the validation of bonds . . . and all matters connected therewith." Furthermore, the Court has the power to determine whether a "public body has authority to incur the payment obligation, whether the purpose of the obligation is legal, and whether proceedings authorizing the obligation where proper." *State v. City of Daytona Beach*, 431 So. 2d 981, 983 (Fla. 1983). The validity of an interlocal agreement is also a proper subject of such proceedings. *See id*. at 982-83.

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), Fla. Const. Section 75.08, Florida Statutes (2006), provides that either party may appeal the trial court's decision on the complaint for validation. The City and Agency timely filed their Notice of Appeal on July 23, 2007. (A-tab 24).

STATEMENT OF CASE AND FACTS

The City and the Agency appeal a Final Judgment of the trial court dated June 25, 2007 denying, in part, a Complaint seeking validation of not to exceed $40,995,891 City of Parker, Florida Capital Improvement Revenue Bonds (the "Bonds"), the interlocal agreement between the City and Agency providing for

repayment of the Bonds (the "Interlocal Agreement")[1] and certain other matters in connection therewith. The Agency seeks to use the powers of chapter 163, part III, Florida Statutes (2006) (the "Redevelopment Act" or "Act"), in order to redevelop that area of the City that the City Council of the City of Parker (the "City Council") determined to contain blighted area conditions (the "Redevelopment Area" or "Area"). The proposed community redevelopment focuses upon the City's major transportation corridors within which exist blighted area conditions as determined by City Council.

The complaint below sought to validate (1) the designation of the Redevelopment Area, (2) the creation and establishment of the Agency, (3) the City Council's legislative determinations that blighted area conditions exist within the Redevelopment Area, (4) the authority of the City Council and the Agency to undertake community redevelopment and effectuate accomplishment thereof by exercising the powers granted by the Redevelopment Act and other applicable provisions of law, and the legality of the actions taken by the City and the Agency in connection therewith, (5) the sufficiency and legality of the community redevelopment plan adopted by the City Council and the proceedings taken in connection therewith, (6) the inapplicability of the requirements established in section 163.360(6)(b) Florida Statutes, (7) the validity of the revenues pledged to the repayment of the bonds (the "Pledged Revenues"), the ordinance establishing a

[1] Resolution No. 07-256 (City)/ Resolution No. 07-02 (Agency). (A-tab 14).

community redevelopment trust fund as authorized by the Act for deposit of tax increment revenues and the Interlocal Agreement, (8) the legality of the purpose of the Bonds to be issued and of all covenants and proceedings in connection therewith, and (9) the legal authority to enter into the Interlocal Agreement and to issue the Bonds. (A-tab 3; 12).

The proceeds of the Bonds are intended to finance in part the cost of infrastructure improvements within the Redevelopment Area. (A-tab 16; 10); (A-tab 12B; 12-15, 33-34). Pursuant to the Interlocal Agreement, the Bonds will be repaid from the tax increment generated within the Redevelopment Area pursuant to the Act and other revenues legally available to the City. (A-tab 15; 3-5).

The trial court refused to validate the Bonds based upon a legal conclusion that, because the City does not levy ad valorem taxes, the City and Agency may not utilize the tax increment financing regime in the Act to fund the contemplated community redevelopment. (A-tab 1; 16). The trial court did, however, find in favor of the City and Agency on all other factual and legal issues. (A-tab 1; 1-11).

The City is a small community situated on Florida's Gulf Coast, east of Panama City, on a peninsula separating St. Andrews Bay on the west and East Bay on the east. (A-tab 5; 12). Faced with its own particular blighted area conditions and the resulting social problems, the City established the required framework through the Redevelopment Act to finance the identified improvements.

To initiate the community redevelopment process under the Act, the City

Council adopted Resolution No. 06-251 on May 22, 2006, authorizing a study to consider and analyze whether a finding of necessity would be appropriate for certain portions of the City described therein. (A-tab 4; 1).

Subsequent to such authorization, the City retained a consulting team to conduct interviews, to consider and assemble factual information concerning the existence of blighted area conditions, to examine the indicia of blighted area conditions identified within the study area defined therein, and to provide a study which tabulates and documents such findings. (A-tab 5; 3). The consulting team provided a written report of its findings and conclusions in the City of Parker Findings of Necessity Report for a Community Redevelopment Area, dated November 30, 2006 (the "Findings of Necessity Study"). (A-tab 5). The Findings of Necessity Study evidenced that "blighted area" conditions as defined within the meaning of section 163.340(8) of the Redevelopment Act existed within the study area. (A-tab 5; 53). Prior to finalizing the Finding of Necessity Study, the consulting team additionally conducted a series of well attended public meetings. (A-tab 2; 175).

On December 18, 2006, the City Council considered public comment, and the results of the Findings of Necessity Study, and adopted Resolution No. 06-254, which (a) identified and determined that the area described contained blighted area conditions as defined in section 163.340, Florida Statutes (2006), (b) provided the finding of necessity required by section 163.355, Florida Statutes (2006), and (c)

determined it was necessary, appropriate, proper and timely to create the Agency.[2] (A-tab 6). Resolution No. 06-254 was adopted after a duly noticed public hearing and timely mailed notice to all affected taxing authorities in compliance with sections 163.346 and 166.041, Florida Statutes (2006). (A-tab 12A).

On December 19, 2006, the City Council adopted Ordinance No. 06-311, which ordinance provided that the City Council shall be the Board of Commissioners of the Agency. (A-tab 9). The members of the Board of Commissioners of the Agency were duly designated, have assumed office, and are empowered to act as described therein. (A-tab 9; 2). Pursuant to sections 163.346 and 166.041, Florida Statutes, Ordinance No. 06-311 was adopted after a duly noticed public hearing and timely mailed notice to all affected taxing authorities. (A-tab 12A).

On December 19, 2006, the Agency adopted Resolution No. 06-01, which resolution found that the City of Parker Community Redevelopment Plan (the "Redevelopment Plan" or "Plan") complied with the requirements of the Redevelopment Act and recommended to the City Council that the Redevelopment

[2] In *State v. Miami Beach Redevelopment Agency*, 392 So. 2d 875, 882 (Fla. 1980), this Court describes the presumption that city commissioners are knowledgeable about conditions in their city, a knowledge which can be appropriately relied upon in considering whether an area is blighted. The City in its entire history has had only three police chiefs, Charles Sweatt, Will Oost and Joe Walker. It is worthy of note that Will Oost and Joe Walker are sitting members of the City Council, who obviously possess extraordinary knowledge of conditions endangering life and property highlighted by the Findings of Necessity Study. (A-

Plan be adopted.[3] (A-tab 11).

Pursuant to section 163.360(5) of Redevelopment Act, the Agency submitted the Redevelopment Plan to the City and a copy of the Redevelopment Plan was additionally provided to each taxing authority that levies ad valorem taxes on taxable real property contained within the Redevelopment Area. (A-tab 12A). All such governmental entities and all persons affected were afforded an opportunity to present oral and written comments at a duly noticed public hearing conducted by the City Council on December 19, 2006. (A-tab 10). At the conclusion of such public hearing, the City Council adopted Resolution No. 06-255, which approved and adopted the Redevelopment Plan. (A-tab 12).

As required by the Redevelopment Act, specifically Section 163.387, Florida Statutes (2006), on December 19, 2006, the City Council enacted Ordinance No. 06-312 (the "Trust Fund Ordinance") which created a community redevelopment trust fund for the Area (the "Redevelopment Trust Fund"). (A-tab 13). The Trust Fund Ordinance was adopted after a duly noticed public hearing and timely mailed notice to all affected taxing authorities consistent with Sections 163.346 and

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tab 19; 16); (A- tab 2; 234).

[3] Pursuant to section 163.360(4), Florida Statutes, the Redevelopment Plan was prepared and submitted to the Planning Commission of the City of Parker (the "Planning Commission") on December 6, 2006. (A-tab 8). The Planning Commission timely reviewed the Redevelopment Plan, waived the opportunity to provide written recommendations, and found conformity with the City's comprehensive plan. (A-tab 3). On February 22, 2007, the Planning Commission ratified, confirmed and reiterated this action in Resolution No. 07-01. (A-tab 8).

166.041, Florida Statutes. (A-tab 12A). The tax increment and funds contained in the Redevelopment Trust Fund are to be used for community redevelopment purposes as provided in the Redevelopment Act and the Trust Fund Ordinance. (A-tab 13).

Joint Resolution No. 07-256 (City)/ Resolution No. 07-02 (Agency), adopted on March 8, 2007, authorized the City and Agency to enter into an Interlocal Agreement providing for the pledge by the Agency of tax increment revenues derived from the Redevelopment Trust Fund as payment for debt service on the Bonds (the "Interlocal Agreement"). (A-tab 14); (A-tab 15). The Interlocal Agreement was duly executed and filed with the Clerk of the Circuit Court for Bay County, Florida. (A-tab 15).

Pursuant to the Redevelopment Act and by virtue of the authority thereof, the City Council on February 8, 2007 enacted Ordinance No. 07-313 (the "Bond Ordinance"). (A-tab 16). The Bond Ordinance was adopted after a duly noticed public hearing and timely mailed notice to all affected taxing authorities consistent with Sections 163.346 and 166.041, Florida Statutes. (A-tab 17). The Bond Ordinance provides for the issuance of not to exceed $40,995,891 City of Parker, Florida Capital Improvement Revenue Bonds, which may be issued in one or more series as provided therein, for the purpose of financing projects identified in the Redevelopment Plan. (A-tab 16; title page, 10, 14).

The City gave notice of its intention to issue the Bonds to all taxing

authorities pursuant to section 163.346, Florida Statutes. The County Commission of Bay County (the "County Commission") then filed a declaratory action under chapter 86, Florida Statutes (2006), challenging the City's community redevelopment regime (Case No. 07-000667-CA). (A-tab 1; 2). The City adopted the Bond Ordinance and filed its validation pursuant to chapter 75, Florida Statutes (2006). (A-tab 16); (A-tab 3). Thereafter, the County intervened and objected to the validation of the Bonds in this validation proceeding. (A-tab 1; 2).

Upon various motions by the parties, the Court granted consolidation of the declaratory action into the validation proceeding. (A-tab 1; 2). The Court additionally abated the County's declaratory action as required by statute due to the County's noncompliance with the provisions of chapter 164, Florida Statutes (2006). (A-tab 1; 2). Chapter 164 is not applicable to the chapter 75, Florida Statutes, proceeding filed by the City and Agency because the State of Florida is the proper defendant. (A-tab 1; 2).

Even though the declaratory action was abated, all of the issues raised by the County therein came on for consideration by the trial court in conjunction with the Order to Show Cause hearing in the validation proceeding. (A-tab 1; 5).

The trial court, allowed for a continuance of the hearing concerning the Order to Show Cause and for extraordinary discovery, all at the County's request. (A-tab 1; 3).

On June 11, 2007, the Court conducted an evidentiary hearing followed by

argument, in all lasting approximately seven hours. (A-tab 1; 3). The parties entered voluminous documentary exhibits into evidence, presented testimony of experts, and briefed the Court on their positions. (A-tab 1; 3).

The State required strict proof of the matters alleged and did not otherwise object to the Validation Complaint. (A-tab 1; 3). The County's complaint in the declaratory action served as its answer to the validation action and the trial court allowed the County to further amend its answer upon motion. (A-tab 25); (A-tab 26); (A-tab 27).

The County moved against and objected to the Validation Complaint. (A-tab 1; 3).

Additionally, on June 12, 2007, the Court, together with counsel for the parties, conducted a view, driving along the alleys, side streets, and main roads within the entire community redevelopment area of the City. (A-tab 1; 3).

On June 25, 2007, the trial court entered the final judgment that is the subject of this Appeal. (A-tab 1). The trial court refused to validate the Bonds on the sole ground that the City does not itself levy ad valorem taxes and therefore may not utilize tax increment financing regime authorized in the Act to fund community redevelopment. (A-tab 1; 16). This Appeal followed. (A-tab 24).

STANDARD OF REVIEW

The scope of review in a validation proceeding under chapter 75, Florida

Statutes (2006), 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, 533 (Fla. 1999); *Poe v. Hillsborough County*, 695 So. 2d 672, 675 (Fla. 1997); *Taylor v. Lee County*, 498 So. 2d 424, 425 (Fla. 1986).

The appellate court's review of the trial court's findings of fact is not *de novo*. The standard of review applicable to the trial court's findings of fact is a limited review for substantial competent evidence. *City of Gainesville v. State*, 863 So. 2d 138, 143 (Fla. 2003); *City of Boca Raton v. State*, 595 So. 2d 25, 31 (Fla. 1992). As recognized by this Court in *Shaw v. Shaw*, 334 So. 2d 13, 16 (Fla. 1976), only the trial court[4] is empowered to weigh the evidence and draw inference therefrom,

> It is clear that the function of the trial court is to evaluate and weigh the testimony and evidence based upon its observation of the bearing, demeanor and credibility of the witnesses appearing in the cause. It is not the function of the appellate court to substitute its judgment for that of the trial court through re-evaluation of the testimony and evidence from the record on appeal before it. The test is whether the judgment of the trial court is supported by competent evidence. Subject to the appellate court's right to reject 'inherently incredible and improbable testimony or evidence,' it is not the prerogative of an appellate court, upon a de novo consideration of the record, to substitute its judgment for that of the trial court.

Alternatively, the standard of review applicable to the trial court's conclusions

[4] The findings of fact in *Shaw*, as is the case here, were made by a trial judge in a non-jury trial. *Id*.

of law is a *de novo* review, requiring a thorough examination of the legal conclusions rendered by the trial court. *City of Gainesville*, 863 So. 2d at 143; *Panama City Beach Cmty. Redev. Agency v. State*, 831 So. 2d 662, 665 (Fla. 2002); *see also Foundation Health v. Westside EKG Associates*, 944 So. 2d 188, 193-94 (Fla. 2006) (applying the *de novo* standard of review to issues of statutory interpretation). This Court is therefore not required to give deference to the legal conclusions of the trial court. *See RKR Motors, Inc. v. Associated Uniform Rental*

Linen Supply, Inc., 31 Fla. L. Weekly D2646 (Fla. 3d DCA Oct. 25, 2006) (stating that a *de novo* review of the law "simply means that [the appellate court is] free to decide the question of law without deference to the trial judge").

This appeal focuses only on the authority of the City to issue the Bonds, and pledge the proceeds from the Redevelopment Trust Fund for repayment thereof despite the fact that the City does not currently impose ad valorem taxes and may not contribute to the Redevelopment Trust Fund in the same manner as the County.[5]

SUMMARY OF THE ARGUMENT

This is a simple case where the trial court was required to follow the statute. The Redevelopment Act nowhere requires that a municipality such as the City of Parker, which has met the statutory deadlines to be grandfathered under section 163.387(1)(b)1., Florida Statutes, (2006), levy an ad valorem tax in order to make

[5] Counties and municipalities that did not meet the recently imposed deadlines contained in section 163.387(1)(b)1., Florida Statutes (2006), the last of which was June 7, 2007, must now levy ad valorem taxes to receive tax increment from taxing authorities. The City does not have to comply with this millage parity requirement because the City Council timely met all requisite deadlines. *See* discussion on §II herein. This is a crucial point in understanding the genesis of the County's objections and both the City's and County's actions in this matter. In making a policy decision to gravitate toward millage party, the Legislature set deadlines specifically in order to allow counties and municipalities (such as the City) to establish community redevelopment regimes before the millage parity requirements of section 163.387(1)(b)1., Florida Statutes, became effective.

available to its citizens the benefits of community redevelopment under the Redevelopment Act. The Redevelopment Act must be construed to mean precisely what it says and no more and no less. The trial court erred in its reading of the Act by commingling the community redevelopment implementation requirements placed upon "counties and municipalities" and the powers given to "counties and municipalities", with the funding obligations placed upon "taxing authorities". The powers and obligations placed on these defined groups of governmental entities are overlapping, but also separate and distinct.

The court below reached the conclusion that the City must levy ad valorem taxes to accomplish community redevelopment under the requirements contained in section 163.387(1)(b)1., Florida Statutes. This section and section 163.360(6)(b), Florida Statutes (2006), contain deadlines recently adopted by the Legislature that, if not met, place additional restrictions upon counties and municipalities. If a county or municipality does not levy ad valorem taxes and did not meet the deadlines in that section to be grandfathered in, it can not use the tax increment regime in the same fashion as counties and municipalities that have met such deadlines.

The City made a legislative determination to take advantage of the timeline in this new legislation and chose to create a community redevelopment regime without having to comply with the restrictions in section 163.360(6)(b), Florida Statutes, and without being required to levy ad valorem taxes as otherwise required by

section 163.387(1)(b)1., Florida Statutes. Because Bay County has not adopted a home rule charter, under the 2006 revisions to the Redevelopment Act, the City simply had to meet the three specified deadlines for the limitations and restrictions of section 163.387(1)(b)1., Florida Statutes, to not be applicable.

The trial court correctly found in favor of the City and Agency on all other legal and factual matters before it at the Order to Show Cause hearing on June 11, 2007.[6]

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[6] Specifically, the trial court correctly found and determined (1) that the pledge of the tax increment is not payable from ad valorem taxes and no referendum to approve the Bonds is required (A–tab 1; 3); (2) that the Court was able to consider all of the evidence presented within the scope of judicial review advanced by the parties for both chapter 75 and chapter 86 proceedings and determine that competent substantial evidence under either scope of review supported the City's determinations (A–tab 1; 4); (3) that the subject community redevelopment plan is not a development order; that the arguments of the County that the City and its local planning agency must undertake a consistency analysis under the Growth Management Act are misplaced and without merit; and, that the City and its local planning agency did in fact review and determine that the community redevelopment plan was in conformity with the comprehensive plan for the City as a whole as required by section 163.360(2)(a), Florida Statutes (A–tab 1; 5); (4) that the evidence presented supports the Court's findings that competent substantial evidence was before the City Council at the time it made its legislative determination that blighted area conditions existed in the community redevelopment area; and, that after the view by the Court, it is obvious that the City Council's decision concerning blighted area conditions could not be construed as patently erroneous, arbitrary or capricious (A–tab 1; 6); (5) that the court reviewed the entire record with great care, recognized that reasonable persons do in fact differ over the legislative findings of the City, but properly avoided substituting the Court's judgment for that of the City officials once it determined that the City's decisions were based on competent substantial evidence, and were not patently erroneous, arbitrary, or contrary to fact (A–tab 1; 9); and (6) that the description of the projects in the financing documents authorizing the bonds adequately described a litany of projects to be funded by capital improvement bonds anticipated by and in

ARGUMENT

I. The Community Redevelopment Act Authorizes the City to Issue Bonds Secured by Tax Increment Revenues Despite the fact that the City Itself Does not Levy Ad Valorem Taxes and will Therefore not Contribute Tax Increment to the Community Redevelopment Trust Fund.

This appeal raises one central question: specifically whether the Redevelopment Act requires a municipality, which has timely met all of the requisite conditions in section 163.387(1)(b)1., Florida Statutes, to levy ad valorem taxes in order to avail itself of the community redevelopment regime? Simply put, the answer is no. The Redevelopment Act, through plain language, establishes a framework of powers that can be utilized exclusively by counties[7] and municipalities[8] (along with their respective governing bodies) to address, prevent and eliminate slum or blighted area conditions. To that end, there are

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accordance with the community redevelopment plan (A–tab 1; 10).

[7] See article VIII, section 1 of the Florida Constitution for the definition and framework established by the Florida Constitution for counties, which is not defined further in the Act.

[8] See article VIII, section 2 of the Florida Constitution for the definition and framework established by the Florida Constitution for municipalities, which is not defined further in the Act. Additionally, article VII, section 9 of the Florida Constitution authorizes municipalities to levy ad valorem taxes, but does not require such levy. *See also* § 166.211, Fla. Stat. (2006).

numerous predicate requirements contained in the Act that only counties and municipalities (as distinguished from the term "taxing authorities") must meet in order to create and implement the community development regime defined therein, none of which is the levy of ad valorem taxes.

The trial court erred in its reading of the Redevelopment Act by commingling the community redevelopment implementation requirements placed upon "counties and municipalities" and the powers given to "counties and municipalities," with the funding obligations placed upon "taxing authorities." Taxing authority is defined 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." § 163.340(24), Fla. Stat. (2006). A public body is defined to mean "the state or any county, municipality, authority, special district as defined in s. 165.031(5), or other public body of the state, except a school district." § 163.340(2), Fla. Stat. (2006). As these definitions state, neither the term "taxing authority" nor "public body" is limited to counties and municipalities.

The powers and obligations placed on these defined groups of governmental entities are overlapping, but also separate and distinct. Under the Act, counties and municipalities which have met the deadlines in section 163.387(1)(b)1., Florida Statutes, are not required to levy ad valorem taxes to create and implement the community redevelopment regime. The trial court erred, not by recognizing that the City had met the deadlines of section 163.387(1)(b)1., Florida Statutes, but rather,

in ignoring the fact that by meeting the deadlines in section 163.387(1)(b)1., Florida Statutes, the City was under no statutory obligation to levy any ad valorem taxes in order to create, implement and finance community redevelopment[9] under the Act.

The contorted statutory construction advanced by the County at trial and adopted by the Court in the Final Judgment confuses the exclusive distinction between counties and municipalities (as the only governmental entities that can undertake the cumulative milestones or predicates required to implement the community redevelopment under the Act), with the more inclusive definition of taxing authorities (which describes a broader group of governmental entities

[9] Under the Act, "community redevelopment" or "redevelopment" is broad a term, expressly defined as:

> [U]ndertakings, activities, or projects of a county, municipality, or community redevelopment agency in a community redevelopment area for the elimination and prevention of the development or spread of slums and blight, or for the reduction or prevention of crime, or for the provision of affordable housing, whether for rent or for sale, to residents of low or moderate income, including the elderly, and may include slum clearance and redevelopment in a community redevelopment area or rehabilitation and revitalization of coastal resort and tourist areas that are deteriorating and economically distressed, or rehabilitation or conservation in a community redevelopment area, or any combination or part thereof, in accordance with a community redevelopment plan and may include the preparation of such a plan.

§ 163.340(9), Fla. Stat. (2006).

entitled to notice and potentially subjected to contributing tax increment under the Act to the Redevelopment Trust Fund).

A. The Redevelopment Act Grants Counties and Municipalities Supplemental and Additional Powers to Implement Community Redevelopment, and Contains Statutory Predicates to the Receipt of Tax Increment, None of Which are Conditioned upon the Imposition of Ad Valorem Taxes.

The statutory predicates to receipt of the tax increment and how the City complied with them will discussed in order. None of those predicates support the County's argument or the conclusion reached by the trial court. As will be demonstrated in the discussion which follows, none mandate levy of an ad valorem tax.

The Act grants counties and municipalities the power to both establish a community redevelopment regime and carry out the purposes of the Act once created. Specifically, the Act provides that "[e]ach county and municipality has all powers necessary or convenient to carry out and effectuate the purposes and provisions of this part, including those powers granted under s. 163.370." § 163.358, Fla. Stat. (2006). Further, section 163.370(2), Florida Statutes (2006), provides that such broad, supplemental and additional powers include the power to "undertake and carry out community redevelopment and related activities within the community redevelopment area." That section lists over thirty (30) supplemental powers given specifically and exclusively to counties and municipalities, rather than

to "taxing authorities". One of those explicit supplemental powers is to create the Redevelopment Trust Fund and Agency to receive and expend the tax increment for community redevelopment. § 163.370(2), Fla. Stat. None of those supplemental powers are conditioned on the levy of ad valorem taxes and none of those powers given by the Act are given to the more inclusive group of governmental entities defined as taxing authorities.

It is through the use of these broad community redevelopment powers that only a municipality or county (not any taxing authority) may create a community redevelopment regime under the Act by (1) making the requisite findings of necessity under section 163.355, Florida Statutes (2006); (2) creating a community redevelopment agency[10] under section 163.356, Florida Statutes (2006); (3) adopting a community redevelopment plan; and (4) establishing a redevelopment trust fund under section 163.387, Florida Statutes (2006). These four requirements are cumulative predicates or milestones within the Act for exercising the power to implement community redevelopment, which power is exclusively given to counties and municipalities. The contorted statutory construction advanced by the County at trial and adopted by the Court in the Final Judgment confuses the exclusive distinction between counties and municipalities (as the only

[10] Community redevelopment agency means "means a public agency created by, or designated pursuant to, s. 163.356 or s. 163.357." § 163.340(1), Fla. Stat (2006).

governmental entities that can undertake the cumulative predicates or milestones required to implement the community redevelopment under the Act and to receive and expend tax increment), with the more inclusive definition of taxing authorities (which describes a broader group of those governmental entities with taxing powers subjected to contributing tax increment under the Act to the Redevelopment Trust Fund). The City timely met all of these legislative predicates and is now authorized to employ the entire community redevelopment regime without having to levy an ad valorem tax.

1. First Predicate-Findings of Necessity

The Act states that as an initial step a county and municipality must take in establishing a community redevelopment regime is to comply with section 163.355, Florida Statutes (2006). That section requires the following:

> Section 163.355. Finding of necessity by county or municipality.--No county or municipality shall exercise the community redevelopment authority conferred by this part until after the governing body has adopted a resolution, supported by data and analysis, which makes a legislative finding that the conditions in the area meet the criteria described in s. 163.340(7) or (8). The resolution must state that:
>
> (1) One or more slum or blighted areas, or one or more areas in which there is a shortage of housing affordable to residents of low or moderate income, including the elderly, exist in such county or municipality; and
>
> (2) The rehabilitation, conservation, or redevelopment, or a combination thereof, of such area or areas, including, if appropriate, the development of housing which residents of low or moderate

> income, including the elderly, can afford, is necessary in the interest of the public health, safety, morals, or welfare of the residents of such county or municipality.

By the plain language of section 163.355, Florida Statutes, no county or municipality has authority under the Act until its governing body[11] makes this requisite finding. This obligation is placed solely on counties and municipalities, an obligation the City Council fulfilled in Resolution No. 06-254.[12] (A-tab 6). Nowhere in section 163.355, Florida Statutes, does the Act require that a county or municipality also be characterized as a taxing authority or levy ad valorem taxes. The only connection between this requirement and taxing authorities is that notice of compliance with section 163.355, Florida Statutes, which must be sent to all taxing authorities under section 163.346, Florida Statutes (A-tab 12A).

2. Second Predicate-Creation of Community Redevelopment Agency

The Act allows a county or municipality to create a community redevelopment agency if it first complies with section 163.355, Florida Statutes, and further finds "that there is a need for a community redevelopment agency to

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[11] Governing body is defined by the Act to mean "the council, commission, or other legislative body charged with governing the county or municipality." § 163.340(3), Fla. Stat. (2006).

[12] By Resolution No. 06-251 adopted by the City Council on May 22, 2006, the City Council authorized a study to consider whether a finding of necessity resolution should be adopted. (A-tab 4).

function in the county or municipality to carry out the community redevelopment purposes of this part." § 163.356(1), Fla. Stat. (2006). As an alternative to creation of a separate board of commissioners under section 163.356(2), Florida Statutes, a governing body may declare itself to be an agency under section 163.357, Florida Statutes (2006). The City complied with these provisions and declared the City Council to be the agency through the adoption of Ordinance No. 06-311. (A-tab 9).

Nowhere in sections 163.356 or 163.357, Florida Statutes, does the Act require the creating county or municipality to levy ad valorem taxes. Again, there is a requirement that notice of consideration of this predicate or milestone be sent to all taxing authorities under section 163.346, Florida Statutes. (A-tab 12A). The only additional mention of taxing authority in either section deals with a voluntary Interlocal Agreement between a governing body that created the agency and a taxing authority to alternatively include representatives of a taxing authority on the agency board. §§ 163.356(2), .357(1)(d), Fla. Stat. (2006).

3. Third Predicate-Creation of Community Redevelopment Plan

The Act requires that community redevelopment be planned through the development and approval a community redevelopment plan,[13] which must meet the requirements in sections 163.360 and 163.362, Florida Statutes (2006). The City met the prerequisites for adoption of its Plan through Resolution No. 06-255. (A-tab 6); (A-tab 9); (A-tab 12). Furthermore, the Plan met all the Act's requirements.[14] (A-tab 12B); (A-tab 23; 12-25).

Compliance with the requirements surrounding approval of the community redevelopment plan must be noticed under sections 163.346 and 163.360(5), Florida Statutes. It is only within the notice provision of section 163.360(5), Florida Statues, that taxing authorities are discussed, specifically that the community redevelopment agency must forward to them the community redevelopment plan and any recommendations. Taxing authorities are given no power under this provision in the Act. Nothing in this section suggests that levy of a tax by the City is mandated.

[13] Community Redevelopment Plan means "a plan, as it exists from time to time, for a community redevelopment area." § 163.340 (11), Fla. Stat. (2006).

[14] Prior to the hearing, the City and Agency supplied the trial court and all parties with a memorandum of law detailing all the requirements in the Act, cross-referencing where the Plan met the requirements. (A-tab 23; 12-25).

4. Fourth Predicate-Creation of Redevelopment Trust Fund

The Act then allows the governing body for either a county or municipality to establish a redevelopment trust fund by ordinance only after the governing body's approval of the community redevelopment plan and provision "for the funding of the redevelopment trust fund until the time certain set forth in the community redevelopment plan as required by s. 163.362(10)." § 163.387(1)(a), Fla. Stat. (2006). This requirement was met by the City Council with the adoption of the Redevelopment Plan and Ordinance No. 06-312. (A-tab 12B); (A-tab 13). By the plain language of this section, it is only the governing body of a county or municipality (not any taxing authority) that creates this trust fund. Furthermore, this section does not require a county or municipality to levy ad valorem taxes.

Compliance with these requirements must be noticed under section 163.346, Florida Statutes. (A-tab 12B). This section does additionally contain numerous funding obligations that taxing authorities must meet, specifically related to trust fund payments, none of which, however, require the creating county or municipality to exercise the power to levy ad valorem taxes which is available to any taxing authority.

B. The Plain and Ordinary Language of the Act must Control, not that which May be Interpreted Through Use of Statutory Construction.

In its application of the law contained in the Redevelopment Act, the trial court incorrectly applied rules of statutory construction. (A-tab 1; 12, 14). As this Court stated in *Daniels v. Florida Department of Health*, 898 So. 2d 61, 64-65 (Fla. 2005):

> In attempting to discern legislative intent, we first look to the actual language used in the statute. When the statute is clear and unambiguous, courts will not look behind the statute's plain language for legislative intent or resort to rules of statutory construction to ascertain intent. In such 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.

(internal citations omitted). The Final Judgment adopted by the trial court, however, ignored this well established principle and instead adopted the County's argument which both utilized statutory construction rules and misapplied those same rules. (A-tab 1; 11-16). Specifically, the court looked behind the plain meaning of only three statutory provisions to conclude that a municipality must itself levy ad valorem taxes to utilize the community redevelopment regime. (A-tab 1; 12). As discussed in detail above, the operative statutes give the community redevelopment implementation powers defined in the Act exclusively to compliant counties and municipalities (not all taxing authorities) and do not condition the exercise of such power upon the levy of as valorem taxes. A review of the plain language of the Act can lead only to this conclusion. *See Weber v. Dobbins*, 616

So. 2d 956, 958 (Fla. 1993) (finding that "[t]he cardinal rule of statutory construction is that the courts will give a statute its plain and ordinary meaning").

In the Final Judgment, the Court first analyzed section 163.335, Florida Statutes, specifically subsections (1) and (5) thereof, which set forth specific "findings and declarations of necessity." (A-tab 1; 12-13). This section lists seven findings of the legislature which do not create or eliminate any powers. Section 163.335(1), Florida Statutes, contains a list of the problems caused by slum and blighted areas across the state. It is illogical to equate the declarations of the legislature that the increment financing preserves and enhances the tax base and resulting revenues as a basis for the assumption that the legislature would not have included these words but for its assumption that a participating municipality or county must in every instance collect tax revenues. This conclusion would require any county or municipality which may use the Act for community redevelopment to view section 163.335(1), Florida Statutes, not as a set of findings, but rather as a substantive preliminary checklist that could defeat its qualification if not met. *See Contractpoint Fla. Parks, LLC v. State*, 32 Fla. L. Weekly D1416 (Fla. 1st DCA June 5, 2007) (finding that "[i]t is axiomatic that we will not interpret a statute in a manner which would lead to an absurd or unreasonable result"). The plain meaning of this statute is just as it reads, a declaration of a non-exclusive array of reasons for promulgation of the Act. *See Striton Properties, Inc. v. City of Jacksonville Beach*, 533 So. 2d 1174 (Fla. 1st DCA 1988) (discussing the legislative intent

behind enactment of the Act as contained in section 163.335); *Fulmore v. Charlotte County*, 928 So. 2d 1281, 1288 (Fla. 2d DCA 2006) (utilizing the language from section 163.335 as an interpretative tool to broadly define language within the Act).

Furthermore, section 163.335(5), Florida Statutes, discusses taxing authorities and their obligation to contribute to a redevelopment trust fund, not the exclusive powers of counties and municipalities to create or implement a community redevelopment regime. Just as with section 163.335(1), section 163.335(5), Florida Statutes, should be read by the Court to give effect to the plain meaning and not to impose additional restrictions on counties or municipalities. *See Koile v. State*, 934 So. 2d 1226, 1230-31 (Fla. 2006) (recognizing that "[w]hen the statute is clear and unambiguous, courts will not look behind the statute's plain language for legislative intent or resort to rules of statutory construction to ascertain intent").

The Court next adopted the County's conclusion that section 163.353, Florida Statutes (2006), is meaningless if the City does not levy ad valorem taxes. (A-tab 1; 13-14). To the contrary, this section was promulgated after the decision in *State ex. rel City of Gainesville v. St. Johns River Water Management District*, 408 So. 2d 1067, 1068 (Fla. 1st DCA 1982), which concluded that the water management district in that case, "as a special taxing district created for water management purposes, [was] prohibited by article VII, section 9(a), Florida Constitution, from levying taxes for, or making tax appropriations to, the

redevelopment trust fund involved in [that] case." This Court recognized, in *State v. City of Daytona Beach*, 484 So. 2d 1214 (Fla. 1986), that following the *St. Johns* decision, the legislature enacted three laws that pertained to the constitutionality of requiring other special districts to contribute to community redevelopment. Of particular importance here was the enactment of section 163.353, Florida Statutes, which "provides general authority to taxing districts to appropriate to redevelopment trust funds." *City of Daytona Beach*, 484 So. 2d at 1215-16 (finding that "it is within the legislature's power to make community redevelopment one of the 'respective purposes' of special taxing districts and to broaden the purpose of a special taxing district if it determines there is a need to do so"). Given the history of this particular section of the Act, the trial court's interpretation is faulted and should not be followed by this Court.

Finally, the trial court misinterprets the requirement in section 163.387, Florida Statutes, that each non-exempt taxing authority must appropriate a specified tax increment to the Redevelopment Trust Fund, as requiring the City to be a taxing authority that in fact levies ad valorem taxes. (A-tab 1; 13-16). This conclusion is flawed. The language contained in section 163.387 plainly requires taxing authorities to appropriate funds into a redevelopment trust fund. §§ 163.387(1)(a), (2), Fla. Stat. (2006). This obligation does not, however, somehow blur the distinction between taxing authorities (a group of governmental entities that must appropriate increment if they exercise their power to tax) with counties and

municipalities (the general purpose local governments that are exclusively authorized to create the redevelopment trust fund). These are distinct groups under the Act and must be treated as such.[15] *See Nicoll v. Baker*, 668 So. 2d 989, 990-91 (Fla. 1996) (finding that "[w]hen the words of a statute are plain and unambiguous and convey a definite meaning, courts have no occasion to resort to rules of construction - they must read the statute as written, for to do otherwise would constitute an abrogation of legislative power"). Furthermore, the language quoted in the Final Judgment from *State v. Miami Beach Redevelopment Agency*, 392 So. 2d 875, 881 (Fla. 1980), was quoted out of context and does not further this interpretation as it relates to the obligations, again, of taxing authorities and not counties and municipalities.[16]

Even assuming that the trial court did, however, find that the above discussed statutory sections were ambiguous or would lead to an unreasonable result and therefore open to statutory interpretation, the trial court misapplied the cited rule. *See Weber*, 616 So. 2d at 958 (finding that "[a]n inquiry into the legislative history may begin only if the court finds that the statute is ambiguous"). In the Final

[15] The trial court additionally adopted the County's conclusion that a taxing authority must levy ad valorem taxes, which is not how that term is defined under the Act: "a public body that levies or is authorized to levy an ad valorem tax on real property located in a community redevelopment area." § 163.340(24), Fla. Stat. (emphasis supplied). (A-tab 1; 14-15).

Judgment, the trial court stated that it was required to read the Act to give effect to all provisions of the Act and thereby read it in *pari materia*, but it failed to do so. (A-tab 1; 12, 14). The trial court focused on only three statutory provisions and interpreted those provisions rather than the Act as a whole as required by established law. *See Contractpoint Fla. Parks, LLC v. State*, 32 Fla. L. Weekly D1416 (Fla. 1st DCA June 5, 2007). In doing so, the trial court omitted from its discussion the implementation predicates or milestones required to implement community redevelopment. As discussed at length above, the language contained within the Act does not limit, and can not be reasonably read in *pari materia* to limit, the exercise of the power to implement community redevelopment to only a county or municipality that levies ad valorem taxes. *See*

[16] The quote was a paraphrase of section 163.387(2), Florida Statutes (1977), and not a discussion of the requirement that each non-exempt taxing authority must appropriate the specified amount of tax increment into a redevelopment trust fund. (A-tab 1; 15).

supra discussion in Part I.A. hereof.

In summary, the trial court incorrectly utilized rules of statutory interpretation rather than simply looking to the plain language and meaning of the Act. *See Daniels*, 898 So. 2d at 64-65.

II. The "Grandfathering" Provisions of Section 163.387(1)(b)1., Florida Statutes (2006), Are Applicable Here and the Millage Parity Provided for Under Section 163.387(1)(b)1., Florida Statutes (2006), Does not Apply.

In the Final Judgment, the trial court erroneously relied upon section 163.387(1)(b)1., Florida Statutes, as support for denying the requested validation solely because the City does not levy ad valorem taxes. Section 163.387(1)(b)1., Florida Statutes, provides:

> (b)1. For any governing body that has not authorized by June 5, 2006, a study to consider whether a finding of necessity resolution pursuant to s. 163.355 should be adopted, has not adopted a finding of necessity resolution pursuant to s. 163.355 by March 31, 2007, has not adopted a community redevelopment plan by June 7, 2007, and was not authorized to exercise community redevelopment powers pursuant to a delegation of authority under s. 163.410 by a county that has adopted a home rule charter, the amount of tax increment to be contributed by any taxing authority shall be limited as follows:
>
> a. If a taxing authority imposes a millage rate that exceeds the millage rate imposed by the governing body that created the trust fund, the amount of tax increment to be contributed by the taxing authority imposing the higher millage rate shall be calculated using the millage rate imposed by the governing body that created the trust fund. Nothing shall prohibit any taxing authority from voluntarily contributing a tax increment at a higher rate for a period of time as specified by

interlocal agreement between the taxing authority and the community redevelopment agency.

In imposing the restrictions of section 163.387(1)(b)1., Florida Statutes, which implemented a policy change, the Legislature carefully included predicates or deadlines and effectively grandfathered certain community redevelopment regimes that meet each deadline as a part of implementing that policy change. This section was effective on July 1, 2006, after the first deadline in the series had passed, thereby arguably further limiting the number of counties and municipalities that could comply. The City, having already met the first predicate, made a legislative determination to take advantage of the timeline in this new legislation and create a community redevelopment regime without having to comply with the restrictions in section 163.387(1)(b)1., Florida Statutes. The County's argument and the Final Judgment adopted by the trial court simply ignore the Legislature's grandfathering provisions.

Bay County has not adopted a home rule charter, so the City simply had to meet the three specified deadlines and did not have to comply with section 163.410, Florida Statutes (2006). This was accomplished by the City in the following manner: (a) the City authorized a study to consider whether a finding of necessity resolution pursuant to section 163.355, Florida Statutes, prior to June 5, 2006, specifically through Resolution No. 06-251, which was adopted on May 22, 2006); (b) the City adopted a finding of necessity resolution prior to March 31, 2007,

specifically through Resolution No. 06-254, adopted on December 18, 2006); and finally (3) the City adopted the Redevelopment Plan prior to June 7, 2007, specifically through Resolution No. 06-255, adopted on December 19, 2006). (A-tab 4); (A-tab 6); (A-tab 12). By meeting the deadlines in this section, the City is "grandfathered" or exempt from the application of section 163.387(1)(b)1., Florida Statutes.

As discussed above, the trial court used as support for the conclusion that the City must levy ad valorem taxes to accomplish community redevelopment under the Act, the requirements contained in section 163.387(1)(b)1., Florida Statutes. This section contains deadlines that, if not met, place upon counties and municipalities additional restrictions. Specifically, the section only requires taxing authorities to contribute a tax increment equal to that contributed by the governing body that created the redevelopment trust fund. In other words, if a county or municipality does not levy ad valorem taxes and did not meet the deadlines in that section, the other affected taxing authorities would not be required to appropriate any funds into the redevelopment trust fund.[17]

Since the City met the deadlines and was thereby grandfathered from having

[17] The essence of this dispute is one of policy, the County prefers that the City not be grandfathered from having to comply with section 163.387(1)(b)1., Florida Statutes, and conversely the City prefers to avail itself of the grandfathering opportunity provided for by the Legislature and employ the community redevelopment regime and financing mechanisms without having to be subject to the new millage parity requirements or raising ad valorem taxes on its citizens. *See*

to be subject to section 163.387(1)(b)1., Florida Statutes. The trial court erred by citing this provision as support to conclude that since the City does not levy ad valorem taxes, it cannot utilize the tax increment financing regime in the Act to fund the contemplated community redevelopment.

The plain language of the Act gives counties and municipalities supplemental powers to accomplish community redevelopment and, if the creating municipality or county met the deadlines in section 163.387(1)(b)1., Florida Statutes, the law does not condition these supplemental powers upon a requirement that a creating county or municipality exercise its power to levy ad valorem taxes. Contrary to this statutory scheme, the trial court based its denial of the requested validation on the fact that the City does not levy ad valorem taxes. (A-tab 1; 16). The fact that the City does not presently levy an ad valorem tax is not in dispute; it is the erroneous legal conclusion drawn therefrom that the City and Agency appeal.

III. This Court should Uphold Other Legal and Factual Findings.

The trial court correctly found in favor of the City and Agency on all other matters before it at the Order to Show Cause hearing on June 11, 2007 and the subsequent view conducted on June 12, 2007. As stated above, the City and Agency are appealing the denial of the requested bond validation and more specifically, the sole basis upon which such denial was premised. This Court must

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supra note 5.

review this conclusion of law (because the City does not levy ad valorem taxes, the City and Agency may not utilize the tax increment financing regime in the Act to fund the contemplated community redevelopment) under a *de novo* standard of review. The remainder of the Final Judgment finds in favor of the City and Agency, including, *inter alia*,[18] that there was competent substantial evidence before the City Council when it made its legislative determinations, which were not patently erroneous. *See Panama City Beach Cmty. Redev. Agency v. State*, 831 So. 2d 662 (Fla. 2002). (A-tab 1; 5, 9-10).

[18] *See supra* note 6.

CONCLUSION

The trial court denied the requested validation solely because the City does not levy ad valorem taxes. (A-tab 1; 16). The fact that the City does not now levy an ad valorem tax is not in dispute; it is the misplaced legal conclusion drawn from this fact that the City and Agency now appeal. For the foregoing reasons, the portion of the Final Judgment refusing to validate the Bonds should be reversed and the Bonds should be validated.

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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 **William A. Lewis**, Chief Assistant State Attorney, 421 Magnolia Avenue**,** Panama City, Florida 32401**, 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 10th day of August 2007.

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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 Appellant's Initial Brief complies with the font requirements of *Fla. R. App. P.* 9.210(a)(2).

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