IN THE FLORIDA SUPREME COURT
CASE NO. SC07-1572

BAY COUNTY,
Appellants,
vs.

TOWN OF CEDAR GROVE, and CEDAR GROVE COMMUNITY REDEVELOPMENT AGENCY,
Appellees.

L. T. Case No.: 07-1771-CA
(Core)

BOND VALIDATION PROCEEDING

This case is an appeal under Florida Rule 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 ii

PRELIMINARY STATEMENT 1

STATEMENT OF JURISDICTION 2

SUPPLEMENTAL STATEMENT OF CASE AND FACTS 3

SUMMARY OF THE ARGUMENT 10

STANDARD OF REVIEW 13

ARGUMENT 13

I. There is No Statutory Requirement that the Resolutions Required by the Redevelopment Act be Read Twice 13

II. Tax Increment Financing Under the Redevelopment Act is Constitutional and Does Not Require a Referendum 15

- A. The Referendum Requirement Is Only Applicable to Debt Secured by the Full Faith and Credit of the Issuer 17
- B. The Court's Decision in Miami Beach Represents the Majority Rule and Was Not an Error in Legal Thinking 22
- C. The Plain Meaning of "Payable from Ad Valorem Taxation" Must Be Consistent with the Court's Bright-Line Principle 28
- D. Tax Increment Financing Under the Redevelopment Act Will Not Impair the Budget Flexibility of Any Affected Taxing Authority 33
- E. The Court Should Limit Its Ruling in Strand to the Facts in *Strand.* 42

CONCLUSION 47

CERTIFICATE OF SERVICE 49

CERTIFICATE OF FONT COMPLIANCE 49

TABLE OF AUTHORITIES

Cases

Anderson v. Dep't of Prof. Regulation,
462 So. 2d 118 (Fla. 2d DCA 1985) 30
Bragdon v. Abbot,
524 U.S. 624 (1998) 30
City of Boca Raton v. State,
595 So. 2d 25 (Fla. 1992) 13
City of Gainesville v. State,
863 So. 2d 138 (Fla. 2003) 13
Denver Urban Renewal Auth. v. Bryne,
618 P.2d 1374 (Colo. 1980) 25
Fort Stewart Schools v. Federal Labor Relations Auth.,
495 U.S. 641 (1990) 30
General Dynamics Land Sys., Inc. v. Cline,
540 U.S. 581 (2004) 30
Getty Oil Co. v. Dep't of Nat. Resources,
419 So. 2d 700 (Fla. 1st DCA 1982) 30
Hankey v. Yarian,
755 So. 2d 93 (Fla. 2000) 29
Kelson v. City of Pensacola,
483 So. 2d 77 (Fla. 1st DCA 1986) 41, 45
Klein v. City of New Smyrna Beach,
152 So. 2d 466 (Fla. 1963) 30
Leon County v. State,
165 So. 666 (Fla. 1936) 31
Miele v. Prudential-Bache Sec., Inc.,
656 So. 2d 470 (Fla. 1995) 28
Murphy v. City of Port St. Lucie,
666 So. 2d 879 (Fla. 1995) 35
N. Fla. Women's Health & Counseling Servs., Inc. v. State,
866 So. 2d 612 (Fla. 2003) 11
Panama City Beach Cmty. Redev. Agency v. State,
831 So. 2d 662 (Fla. 2002) 5, 13, 19
Penn v. Florida Defense Finance & Accounting Service Center Authority,
623 So. 2d 459 (Fla. 1993) 46
Poe v. Hillsborough County,
695 So. 2d 672 (Fla. 1997) 13
Seese v. State,
955 So. 2d 1145 (Fla. 4th DCA 2007) 29
South Bend Public Transp. Corp. v. City of South Bend,
428 N.E.2d 217 (Ind. 1981) 26
State v. Brevard County,

539 So. 2d 461 (Fla. 1989) 35
State v. City of Daytona Beach,
431 So. 2d 981 (Fla. 1983) 2, 35
State v. City of Miami,
152 So. 6 (Fla. 1933) 19
State v. City of Orlando,
576 So. 2d 1315 (Fla. 1991) 18
State v. City of Panama City Beach,
529 So. 2d 250 (Fla. 1988) 18, 19
State v. Fla. Dev. Comm'n,
143 So. 2d 676 (Fla. 1962) 9
State v. Halifax Hospital District,
159 So. 2d 231 (Fla. 1963) 33, 40, 42
State v. Huggins,
802 So. 2d 276 (Fla. 2001) 30
State v. J.P.,
907 So. 2d 1101 (Fla. 2004) 47
State v. Miami Beach Redevelopment Agency,
392 So. 2d 875 (Fla. 1980) .... passim
State v. Osceola County,
752 So. 2d 530 (Fla. 1999) 13
Stewart v. Green,
300 So. 2d 889 (Fla. 1974) 27, 28
Strand v. Escambia County,
32 Fla. L. Weekly S550 (Fla. Sept. 6, 2007, revised Sept. 28, 2007)......... passim
Tax Increment Fin. Comm'n of Kansas City v. J.E. Dunn Constr. Co.,
781 S.W.2d 70 (Mo. 1989) 26
Taylor v. Lee County,
498 So. 2d 424 (Fla. 1986) 13
Tribe v. Salt Lake City Corp.,
540 P.2d 499 (Utah 1975) 23, 24
Turner v. City of Clearwater,
789 So. 2d 273 (Fla. 2001) 13
Volusia County v. State,
417 So. 2d 968 (Fla. 1982) .... passim
Wilson v. Palm Beach County Housing Auth.,
503 So. 2d 893 (Fla. 1987) 34
Wolper v. City Council of the City of Charleston,
336 S.E.2d 871 (S.C. 1985) 26

Statutes

Ch. 163, part III, Fla. Stat. (2000) 4
§ 163.357, Fla. Stat. (2001) 4
§ 75.01, Fla. Stat. (2006) 3
§ 75.07, Fla. Stat (2006) 9

§ 75.08, Fla. Stat. (2006) 3
§ 125.66(2), Fla. Stat (2006). 14
§ 163.335(1), Fla. Stat. (2006) 44
§ 163.340(8), Fla. Stat. (2006) 6
§ 163.346, Fla. Stat. (2006) .... passim
§ 163.355, Fla. Stat. (2006) 14
§ 163.356, Fla. Stat. (2006) 14, 44
§ 163.357, Fla. Stat. (2006) 14, 44
§ 163.360, Fla. Stat. (2006) 7, 44
§ 163.360(4), Fla. Stat. (2006) 6
§ 163.360(6)(b), Fla. Stat. (2006) 7
§ 163.362, Fla. Stat. (2006) 44
§ 163.385, Fla. Stat. (2006) 15, 17
§ 163.387, Fla. Stat. (2006) 4, 14, 16
§ 163.387(1), Fla. Stat. (2006) 45
§ 163.387(1)(b)1., Fla. Stat. (2006) 7
§ 163.387(2), Fla. Stat. (2006) 37, 44
§ 163.387(4), Fla. Stat. (2006) 36, 44, 45
§ 163.387(5), Fla. Stat. (2006) 45
§ 163.387(6), Fla. Stat. (2006) 45
§ 166.041, Fla. Stat., (2006) .... passim
§ 166.041(3)(a), Fla. Stat. (2006) 10, 14
Ch. 75, Fla. Stat. (2006) 10, 13
Ch. 77-391, Laws of Fla. 23
Ch. 163, part III, Fla. Stat. (2006) .... passim

Rules

Fla. R. App. P. 9.030(a)(1)(B)(i) 2

Other Authorities

1 M. David Gelfand, *State & Local Government Debt Financing*, § 2:06, at 9 (2000) 26
15 McQuillin, *The Law of Municipal Corporations*, § 40:5 (July 2007) 27
2006 Local Government Financial Handbook, September 2006 edition, Florida Legislative Committee on Intergovernmental Relations 34
Art. VII, § 12, Fla. Const., Commentary by Talbot "Sandy" D'Alemberte, 26A Fla. Stat. Ann. § 101 (1995) 32
Bond Financing and the Referendum Requirement: Harmless Creative Financing or Assault on the Constitution?, 20 Stetson L. Rev. 989 (1991) 19
Clayton P. Gillette, *Direct Democracy and Debt*, 13 J. Contemp. Legal Issues 365 (2004) 20
Comprehensive Annual Financial Report for the Fiscal Year Ended September 30, 2005 at B-7 *available at* http://www.baycoclerk.com/~pdfs/finance/cafr/2005/FY05CAFR.pdf. 38

Constitution Revision Comm'n 62, Last Select Committee Report on Amend. 74 & 142 (1966) 31, 32
Craig L. Johnson & Kenneth A. Kriz, *A Review of State Tax Increment Financing Laws*, in *Tax Increment Financing and Economic Development* 31, (Johnson & Man eds. 2001) 22
Fla. Dep't of Cty. Affairs, *Using Tax Increment Financing for Community Revitalization* (1978) 23
Grover C. Herring & George J. Miller, *Florida Public Bond Financing – Comments on the Constitutional Aspects*, 21 U. Miami L. Rev. 1, 34 (1966) 32
Joseph W. Little, *The Historical Development of Constitutional Restraints on the Power of Florida Governmental Bodies to Borrow Money*, 20 Stetson L. Rev. 647, (1991) 18
Kenneth M. Myers, Constitutional Revision Subcommittee on Finance and Taxation, *Report to Government Research Council Re: Needed Constitutional Revisions 2* (1966). 38
Manning J. Dauer, et al., *Should Florida Adopt the Proposed 1968 Constitution? An Analysis* 32 (Public Admin. Clearing House, Univ. of Fla., 1968) 32
Tracy Nichols Eddy, *The Referendum Requirement: A Constitutional Limitation on Local Government Debt in Florida*, 38 U. Miami L. Rev. 677 (1984) 19
P. Michael Juby, *Tax Increment Financing in North Carolina: The Myth of the Countermajoritarian Difficulty*, 83 N.C. L. Rev. 1526, (2005) 22
Robert S. Amdursky & Clayton P. Gillette, *Municipal Debt Financing Law* 26 (1992) .... passim
Webster's New Twentieth Century Dictionary 1870 (2d ed. 1975) 28

Constitutional Provisions

Art. V, § 3(b)(2), Fla. Const. (1968) 2
Art. VII, § 10, Fla. Const. (1968) 18
Art. VII, § 12, Fla. Const. (1968) .... passim

PRELIMINARY STATEMENT

The Town of Cedar Grove, Florida ("City"), established one community redevelopment agency and two community redevelopment areas within the City: the Core Community Redevelopment Area and the Brannonville Community Redevelopment Area. Both were brought before the trial court and the trial court validated the issuance of the proposed bonds in both cases. Bay County, Florida, the Appellant ("County"), appealed both validations. This matter involves one appeal. The other appeal is *Bay County v. Town of Cedar Grove*, SC07-1574 ("Brannonville").

The Appellee/Plaintiff, the Town of Cedar Grove, Florida, will be referred to as the "City," and the Appellee/Plaintiff, Cedar Grove Community Redevelopment Agency, will be referred to as the "Agency." Collectively, the City and Agency may be referred to as Appellees.

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

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

References to the County's Initial Brief in this case will be cited by the symbol "CIB" followed by the page number (CIB; page #). References to the Appendix submitted with the County's Initial Brief in this case will be cited as "CAI," followed by the tab number, followed by the page or paragraph number

(CAI-tab#; page#). References to the Appendix submitted with the Appellees' Answer Brief in this case will be cited as "CAII," followed by the tab number, followed by the page or paragraph number (CAII-tab#; page#).

STATEMENT OF JURISDICTION

Pursuant to Florida Rule 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 July 19, 2007, the Circuit Court for the Fourteenth Judicial Circuit, in and for Bay County, Florida, entered such a final order validating the City's proposed bond issuance. (CAI-tab 2).

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 had authority to incur the payment obligation, whether the purpose of the obligation is legal, and whether the proceedings authorizing the obligation 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.

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 County filed its Notice of Appeal on August 20, 2007. (CAII-tab 11).

SUPPLEMENTAL STATEMENT OF CASE AND FACTS

The County's Statement of the Case and Facts inappropriately contains mostly argument. (CIB; 2-3). The Appellees therefore submit the following supplemental statement for the Court's consideration.

On July 19, 2007, the trial court rendered a final judgment validating the issuance of not to exceed $41,835,609 Town of Cedar Grove, Florida Capital Improvement Revenue Bonds in one or more series (the "Bonds"), the interlocal agreement between the City and Agency providing for repayment of the Bonds[1] and certain other matters in connection therewith. (CAI-tab 2). The Agency seeks to use the provisions of chapter 163, part III, Florida Statutes (2006) (the "Redevelopment Act" or "Act"), in order to redevelop that area of the City, commonly referred to as Core, that the Board of Commissioners of the Town of Cedar Grove (the "City Commission") determined to contain blighted area conditions (the "Redevelopment Area" or "Area"). The trial court validated the Bonds and found in favor of the City and Agency on all factual and legal issues. (CAI-tab 2; 4-26).

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[1]Resolution No. 07-008 (City)/ Resolution No. 07-001 (Agency). (CAI-tab 7).

The proceeds of the Bonds are intended to finance, in part, the cost of infrastructure improvements within the Redevelopment Area. (CAII-tab 13; 26-44, app. F).[2] The Bonds will be repaid from revenues of the redevelopment trust fund properly established pursuant to section 163.387, Florida Statutes (2006), and supplementally from special assessments or other legally available City revenues. (CAII-tab 14).[3]

On February 27, 2001, the City Commission adopted Resolution No. 2001-3 pursuant to chapter 163, part III, Florida Statutes (2000). Such resolution created the Agency, giving it the powers conferred by chapter 163, part III, Florida Statutes (2000), which are necessary and convenient to carry out and effectuate the purposes of community redevelopment and related activities within the City.[4]

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[2]The County provided an incomplete copy of Resolution 07-006 under tab 5; the Appellees have therefore reproduced this resolution in its Appendix as Tab 13. For consistency, the Appellees will refer to Resolution No. 07-006 as (CAII-tab 13).

[3]The County provided an incorrectly paginated copy of Resolution 07-007 under tab 9; the Appellees have therefore reproduced this resolution in its Appendix as Tab 14. For consistency, the Appellees will refer to Resolution No. 07-007 as (CAII-tab 14).

[4]The Agency is a separate legal entity, apart from the City Commission, with a set of separate fiduciary and administrative responsibilities under the Redevelopment Act. The Agency was created pursuant to the Redevelopment Act in 2001 and has now undertaken community redevelopment responsibility in two separate areas: the Core Redevelopment Area and the Brannonville Redevelopment Area. (*Bay County v. Town of Cedar Grove*, SC07-1574.) Although the City chose to have the City Commission act ex-officio as the Agency (pursuant to section 163.357, Florida Statutes (2001)), the Agency by law and function is

(CAII-tab 2). Resolution No. 2001-3 was adopted after a duly noticed public hearing and timely advance notice to the Bay County Commission. (CAI-tab 2; 16-17); (CAII-tab 6).[5] Between 2002 and 2005, for various policy and management reasons, the City did not substantially further or complete its Brannonville community redevelopment regime started in 2001.[6]

On May 23, 2006, the City Commission adopted Resolution No. 06-002 authorizing a study to consider whether a finding of necessity resolution pursuant to the Redevelopment Act should be adopted for Redevelopment Area. (CAI-tab 2; 17); (CAII-tab 3).

"separate, distinct and independent" from the City Commission. In this context, this Court has recognized such independence where a community development district, municipality, and community redevelopment agency sought validation of bonds and associated obligations, but only the agency appealed the trial court's adverse ruling against that agency in a bifurcated validation of only the bonds of the community development district and the city's obligations. *See Panama City Beach Cmty. Redev. Agency v. State*, 831 So. 2d 662 (Fla. 2002).

[5]On March 27, 2007, the City Commission adopted Resolution No. 07-002, which found and directed that the existing Agency was still appropriate to carry out the community redevelopment purposes and projects within the City. (CAI-tab 2; 16-17); (CAI-tab 3). Resolution No. 07-002 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. (CAI-tab 4; ex. C).

[6]The lower court took judicial notice at the hearing that the Florida Department of Community Affairs shows the Agency was created on February 27, 2001, is currently active and was established by Resolution No. 2001-3 at section 2 (available at www.floridaspecialdistricts.org). (CAI-tab 2; 8 fn 4); (CAII-tab 1; 80).

On March 27, 2007, the City Commission adopted Resolution No. 07-001, which was supported by the Findings of Necessity Report for the Core Redevelopment Study Area (the "Findings of Necessity Study") and which (a) found that the Redevelopment Area contained a substantial number of deteriorated or deteriorating structures, in which conditions, as indicated by such study or report, are leading to economic distress or endangerment of life and property, (b) found an additional five blighted area conditions or factors as defined under section 163.340(8), Florida Statutes (2006), (c) made a legislative determination that the conditions in the Redevelopment Area met the criteria in section 163.340(8), Florida Statutes (2006), (d) made the required findings of necessity, and (e) found that the Redevelopment Area contains blighted area conditions and was appropriate to be designated as a community redevelopment area. (CAI-tab 2; 17-18); (CAI-tab 4). Resolution No. 07-001 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 (2006). (CAI-tab 2; 18); (CAI-tab 4; ex. C).

Pursuant to section 163.360(4), the Town of Cedar Grove, Core Community Redevelopment Plan ("Redevelopment Plan") was prepared and submitted to the City Planning Council (the "Planning Council") on May 21, 2007. (CAI-tab 2; 18); (CAII-tab 4). As required, a copy of the Redevelopment Plan was provided to

the Agency, the City, and each taxing authority that levies ad valorem taxes on taxable real property contained within the Redevelopment Area. (CAI-tab 2; 19); (CAII-tab 13; ex. B). 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 Commission on May 22, 2007. (CAII-tab 10). At the conclusion of such public hearing, the City Commission adopted Resolution No. 07-006, which approved and adopted the Redevelopment Plan. (CAI-tab 2; 19); (CAII-tab 13). Resolution No. 07-006 was adopted after a duly noticed public hearing and timely mailed notice to all affected taxing authorities consistent with sections 163.346, 163.360, and 166.041, Florida Statutes (2006). (CAI-tab 2; 19); (CAII-tab 13; ex. B). The Redevelopment Plan meets the requirements of the Redevelopment Act. (CAI-tab 2; 19); (CAII-tab 12; 11-23).[7]

On May 29, 2007, the City Commission enacted Ordinance No. 07-421 (the "Trust Fund Ordinance") which created a community redevelopment trust fund for the Redevelopment Area (the "Redevelopment Trust Fund").[8] (CAI-tab 2; 20);

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[7]Adoption of the Redevelopment Plan was not subject to the procedures in section 163.360(6)(b), Florida Statutes (2006), because the City met the dates contained in that section to be exempt from the changes in the law. (CAI-tab 2; 19). The dates contained in section 163.387(1)(b)1., Florida Statutes (2006), relative to the trust fund are the same and are therefore inapplicable as well.

[8]The City imposed ad valorem taxes at the time it adopted its trust fund ordinance. (CAI-tab 2; 20 fn 13); (CAII-tab 7).

(CAI-tab 6). The Trust Fund Ordinance was adopted after a duly noticed public hearing and timely mailed notice to all affected taxing authorities as required by sections 163.346 and 166.041, Florida Statutes (2006) (CAI-tab 2; 20); (CAII-tab 13; ex. B). 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. (CAI-tab 2; 21).

On or about May 29, 2007, the City and Agency entered into an interlocal agreement, authorized by joint Resolution No. 07-008 (City)/Resolution No. 07-001 (Agency), providing for the pledge by the Agency of tax increment and funds contained in the Redevelopment Trust Fund as payment for debt service on the Bonds (the "Interlocal Agreement"). (CAI-tab 2; 21); (CAI-tab 7); (CAI-tab 8). The Interlocal Agreement was duly filed with the Clerk of the Circuit Court for Bay County, Florida. (CAI-tab 2; 21); (CAI-tab 8).

Pursuant to the Redevelopment Act, the City adopted Resolution No. 07-007 on May 29, 2007 (the "Bond Resolution"). (CAII-tab 14). The Bond Resolution 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. (CAI-tab 2; 21-22); (CAII-tab 13; ex. B). The Bond Resolution provides for the issuance of not to exceed $41,835,609 Town of Cedar Grove, Florida, Capital Improvement Revenue Bonds, which may be issued in one or more series as provided therein, for

the purpose of financing projects[9] identified in the Redevelopment Plan. (CAI-tab 2; 22); (CAII-tab 14; title page, 10, 14).

After statutory notice of the City's intention to issue the Bonds, the County intervened and objected to the validation of the Bonds in this proceeding. (CAI-tab 2; 2). The County filed an Answer and Counterclaim to challenge the validation. (CAI-tab 2; 2); (CAI-tab 1).

The City and Agency objected to the County's attempt to file any counterclaims in this validation proceeding under chapter 75, Florida Statutes. (CAI-tab 2; 2). The Court appropriately ordered that all counterclaims be considered answers and defenses, thereby relieving the City and Agency from having to formally respond thereto so as not to admit the allegations and removing the ability for the County to receive affirmative relief. *See* § 75.07, Fla. Stat (2006); *State v. Fla. Dev. Comm'n*, 143 So. 2d 676, 681 n.14 (Fla. 1962) (counterclaims are not permissible in a bond validation proceedings). (CAI-tab 2; 2-3). All of the issues the County raised therein came on for the Court's consideration in the Order to Show Cause hearing. (CAI-tab 2; 3).

The Court substantially extended the time originally allocated for the hearing in order to afford all parties adequate time to present their respective

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[9]On June 26, 2007, the City adopted Resolution No. 07-013 ratifying, confirming, and clarifying the definition of "Project" under the Bond Resolution. (CAII-tab 8).

positions. (CAI-tab 2; 3). On July 11, 2007, the Court conducted an evidentiary Order to Show Cause hearing followed by argument (the "Hearing"). (CAI-tab 2; 3). The State required strict proof of the matters alleged and did not otherwise object to the Validation Complaint. (CAI-tab 2; 3). The County moved against and objected to the Validation Complaint. (CAI-tab 2; 3).

On July 19, 2007, the trial court entered the final judgment validating the Bonds. (CAI-tab 2; 26). The County's appeal followed. (CAII-tab 11).

SUMMARY OF THE ARGUMENT

The County has appealed the validation based upon two issues: the legal sufficiency of adopting resolutions with one reading and the constitutionality of tax increment financing without a referendum. The trial court properly validated the City's issuance of tax increment revenue bonds to fund community redevelopment.

First, unless required by unique municipal charter provision, which is not present here, municipalities in Florida are not required to, nor do they, read resolutions twice. The County's strained argument that the cross-reference to section 166.041(3)(a), brings into play ordinance ***adoption*** procedures and ignores the plain reading of section 163.346, which simply cross-references those dealing with ***public notice***.

Second, the Court should reject the County's constitutional challenge based on the bright-line principle that a referendum is not required unless bondholders

have the power to compel, directly or indirectly, the levy of an ad valorem tax. *See State v. Miami Beach Redevelopment Agency,* 392 So. 2d 875 (Fla. 1980), *called into question by Strand v. Escambia County*, 32 Fla. L. Weekly S550 (Fla. Sept. 6, 2007, revised Sept. 28, 2007). This bright-line rule is better understood through a review of the history and fundamentals of public finance law, an understanding of general obligation versus revenue bonds, and a careful analysis of the meaning of "payable from ad valorem taxation." This history supports *Miami Beach*, which represents this country's majority rule and is not an error in legal thinking. The Court should not abandon this bright-line principle without first undertaking its traditional *stare decisis* analysis. *See N. Fla. Women's Health & Counseling Servs., Inc. v. State*, 866 So. 2d 612 (Fla. 2003). This Court should not rewrite the referendum requirement clause "payable from ad valorem taxation" to mean "derived from ad valorem tax revenue." *Miami Beach* remains good law, requiring a referendum only where bondholders have the power to compel, directly or indirectly, the entity with taxing powers to levy an ad valorem tax.

In the end, if the bondholders cannot compel the imposition of ad valorem taxes or if the issuance of the bonds will not necessarily lead to the levy of additional ad valorem taxes, the obligations are not general obligation bonds for constitutional purposes. This not only ensures continued budget flexibility for affected taxing authorities, but accomplishes community redevelopment of slum

and blighted areas (beneficial to ***all*** taxing authorities) only with revenues generated as a result of the redevelopment. The Court should reverse the ruling in *Strand*.

In the event the Court does not overturn *Strand*, it must ensure that its limiting principle does not inadvertently impact other long-standing areas of the law (like the distinction between revenue bonds and general obligation bonds). The limiting principle might be that, when a government pledges the tax increment for bonds, a referendum is required if the government body is at once the issuer, the entity that levies the tax, and the entity that holds the trust fund. This Court has provided guidance through long-standing Florida precedent, upon which the City and the Agency relied in good faith. Tax increment financing under the Redevelopment Act, which includes many procedural and substantive safeguards, is constitutional without a referendum. Outside the context of the Redevelopment Act, courts should carefully scrutinize the use of tax increment financing for compliance with safeguards inherent in statutory community redevelopment financings, to ensure that they do not violate the referendum requirement.

This Court should uphold the trial court's validation of the subject Bonds, and all matters associated therewith, under the long-standing authority of *Miami Beach* and the Redevelopment Act.

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 standard of review for the trial court's findings of fact is substantial competent evidence and for its conclusions of law is de novo. *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) *Panama City Beach Cmty. Redev. Agency v. State*, 831 So. 2d 662, 665 (Fla. 2002).

Furthermore, a "final judgment validating bonds comes to this Court with a presumption of correctness." *Turner v. City of Clearwater*, 789 So. 2d 273, 276 (Fla. 2001). The County has the "burden of demonstrating that the record and evidence ***fail*** to support the lower court's conclusions." *Id.* (emphasis added).

ARGUMENT

I. THERE IS NO STATUTORY REQUIREMENT THAT THE RESOLUTIONS REQUIRED BY THE REDEVELOPMENT ACT BE READ TWICE

Section 163.346, Florida Statutes (2006), provides:

> Before the governing body adopts any resolution or enacts any ordinance required under s. 163.355, s. 163.356, s. 163.357, or s. 163.387; creates a community redevelopment agency; approves, adopts, or amends a community redevelopment plan; or issues redevelopment revenue bonds under s. 163.385, the governing body must provide ***public notice*** of such proposed action pursuant to s. 125.66(2) ***or*** s. 166.041(3)(a) and, at least 15 days before such proposed action, mail by registered mail a notice to each taxing authority which levies ad valorem taxes on taxable real property contained within the geographic boundaries of the redevelopment area.

(emphasis added).[10] The County argues that this cross-reference to section 166.041(3)(a), Florida Statutes (2006), requires that resolutions comply with all the provisions of that section, not just those dealing with public notice. (CIB; 6-10). To the contrary, section 166.041(3)(a) provides:

> [A] proposed ordinance may be read by title, or in full, on at least 2 separate days and shall, at least 10 days prior to adoption, be ***noticed*** once in a newspaper of general circulation in the municipality. The ***notice*** of proposed enactment shall state the date, time, and place of the meeting; the title or titles of proposed ordinances; and the place or places within the municipality where such proposed ordinances may be inspected by the public. The ***notice*** shall also advise that interested parties may appear at the meeting and be heard with respect to the proposed ordinance.

(emphasis added). The County's argument has no basis under statutory interpretation or settled law as there is a clear delineation between the ***notice*** and ***adoption procedures*** in section 166.041(3)(a). Furthermore, section 125.66(2),

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[10]Section 163.346 also requires mailed notice to taxing authorities. The County does not contest the Appellees' compliance with these requirements. (CIB; 6-10).

Florida Statutes (2006), contains no adoption requirements, only those related to public notice thereby rendering absurd the argument that the resolutions in this matter must be read twice in addition to the required public notice.

II. TAX INCREMENT FINANCING UNDER THE REDEVELOPMENT ACT IS CONSTITUTIONAL AND DOES NOT REQUIRE A REFERENDUM

On May 10, 2007, this Court heard oral argument in *Strand v. Escambia County,* Case No. SC06-1894. In *Strand*, the appellant challenged Escambia County's proposed tax increment financed bonds or tax increment financing ("TIF"), arguing that the Redevelopment Act was the only valid context for such bonds. Escambia County argued that its home-rule power provided authority for the bonds. Both parties recognized and respected this Court's precedent validating TIF bonds under the Redevelopment Act. *See State v. Miami Beach Redev. Agency*, 392 So. 2d 875 (Fla. 1980). During oral argument, however, the Court signaled willingness to revisit *Miami Beach*, and particularly its six-page analysis and holding that TIF bonds did not trigger the referendum requirement of article VII, section 12 of the Florida Constitution. *See id.* at 893-99.

Subsequently, in this case the County raised the same argument. It asserted that the proposed bonds were invalid for failure to comply with the referendum requirement, notwithstanding *Miami Beach*. In its initial brief, relying on no authority other than Justice Boyd's dissent in *Miami Beach*, the County asks the Court to recede from the decision and to declare unconstitutional sections 163.385

and 163.387 of the Redevelopment Act, which authorizes TIF bonds without a referendum.

On September 6, 2007, the Court issued an opinion in *Strand* receding from *Miami Beach*. *See* 32 Fla. L. Weekly S550 (Fla. Sep. 6, 2007) (the "initial opinion"). Before the initial opinion became final, the Court granted several amici leave to appear and scheduled oral argument on rehearing for October 9, 2007. On September 28, 2007, the Court issued a revised opinion that addressed some of the concerns that parties and amici had with the initial opinion, but that also receded from *Miami Beach* (the "revised opinion"). The revised opinion is not yet final, and oral argument on rehearing was conducted on October 9, 2007.

In this case, the City and the Agency relied in good faith on long-standing Florida precedent. This Court has ***never*** held that the referendum requirement applies where prospective bondholders lack the power to compel the levy of an ad valorem tax. Because *Strand* is not final and does not involve the Redevelopment Act, Appellees demonstrate below why *Miami Beach* should remain good law in this context and why no referendum is required for TIF bonds.

Alternatively, if the Court leaves *Strand* intact and recedes from *Miami Beach*, Appellees ask the Court, based upon principles of equity and judicial economy, to validate the Bonds in this case in all other respects, conditioned upon their approval in a later referendum.

A. The Referendum Requirement Is Only Applicable to Debt Secured by the Full Faith and Credit of the Issuer

Before approaching the *Miami Beach* issue, it is useful to review briefly the history and fundamentals of public finance law. A first principle is the critical distinction between "general obligation" bonds and other types of financing instruments.

> "General obligation" securities are typically considered the most secure form of municipal debt. They are secured by the "faith and credit" of the issuer, a term that implies that the issuer will, in good faith, use any and all available revenue-producing powers to pay the obligation as it becomes due. In most instances, ***the primary source of revenue for repayment of general obligation bonds will be ad valorem property taxes*** levied on the issuer's constituents, but the general obligation is generally not restricted to any particular fund.

Robert S. Amdursky & Clayton P. Gillette, *Municipal Debt Financing Law* 26 (1992) (emphasis added) (hereafter cited as "Amdursky & Gillette"). General obligation bonds, primarily payable from ad valorem taxes, are distinguished from "revenue" bonds, the other major form of municipal security. Traditionally, "these securities, often termed self-liquidating debts, are payable solely from proceeds generated through operations of the facility financed with bond proceeds" (for example, toll bridges, power plants, and utility systems). *Id.* at 29.

Historically, state constitutions and statutes did not employ the terms "general obligation" or "revenue" bonds. Instead, the law generally speaks in terms of "debt." In fact,

> No concept in municipal debt finance is as pervasive and important as "debt." The validity of an obligation may depend on whether the

> attendant financial commitment falls within the category of "debt" as that term is used in state constitutions and statutes. If it does, the obligation may run afoul of limitations on the amount of debt that the issuer may have outstanding or may contingent on electoral approval.

Id. at 160. The legal characterization is rooted in history:

> These restrictions were adopted after the failure of railroads and other projected internal improvements that were financed with bonds secured by the issuer's faith and credit. The demise of these enterprises ***led to increased property taxes to pay bonds***, or to default and subsequent loss of access to credit markets, while constituents of the issuer received nothing of commensurate value in return.

Id. at 162 (emphasis added); *see, e.g., State v. City of Panama City Beach*, 529 So. 2d 250, 252 (Fla. 1988) (reviewing Florida's "checkered history regarding bonds"), *receded from by State v. City of Orlando*, 576 So. 2d 1315 (Fla. 1991).

Like all other states, Florida today has constitutional restrictions on governmental "debt," that is, borrowing pledging the state's "faith and credit" and backed by the power of ad valorem taxation. In Florida, local governmental debt is constrained by the referendum requirement, by a general restriction against financing private ventures, and by limiting certain bonding to finance or refinance capital projects. Art. VII, §§ 10, 12 Fla. Const. (1968). *See* Joseph W. Little, *The Historical Development of Constitutional Restraints on the Power of Florida Governmental Bodies to Borrow Money*, 20 Stetson L. Rev. 647, 653-54 (1991); *see also* Tracy Nichols Eddy, *The Referendum Requirement: A Constitutional*

Limitation on Local Government Debt in Florida, 38 U. Miami L. Rev. 677 (1984).

The Court has observed that the referendum requirement "***limited the risk*** associated with bond issues to only that which real property owners chose to accept." *City of Panama City Beach*, 529 So. 2d at 253 (emphasis added). This observation plainly applies to general obligation bonds. Concerning revenue bonds, the Court observed that they "are not considered to be, strictly speaking, debts of the issuer" and that the referendum requirement does not apply to them because "they are not supported by the full faith and credit of the issuer." *Id.* at 251-52 (citing, *inter alia*, *State v. City of Miami*, 152 So. 6 (Fla. 1933)).[11]

As a result, revenue bonds "can also be used to circumvent constitutional debt limitations." *Id.* at 252. "Circumventing" constitutional limitations can strike the ear of some as pejorative, if not sinister, particularly those with limited expertise or practical experience. *See, e.g.,* Note, *Bond Financing and the Referendum Requirement: Harmless Creative Financing or Assault on the Constitution?*, 20 Stetson L. Rev. 989 (1991). The truth is, however,

> Courts have accommodated such efforts by excluding a variety of transactional forms from the category of "debt" that is subject to constitutionally mandated referendums. Thus, even where bond

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[11]The Court's explanation of this difference is one of its many applications of the bright-line principle that a referendum is not required unless bondholders have the power to compel, directly or indirectly, the levy of an ad valorem tax.

> election requirements exist, officials may incur obligations for capital improvements without voter approval by limiting repayment to distinct revenue sources (even revenue sources whose diversion to pay debt service requires increases in other taxes), or by using lease-purchase arrangements, "take-or-pay" obligations, non-apportionment debt, tax increment financing, or any of the other myriad measures of "creative financing." . . . [A] significant majority of judicial opinions place each of these arrangements outside of the scope of "indebtedness to which bond election prerequisites apply."

Clayton P. Gillette, *Direct Democracy and Debt*, 13 J. Contemp. Legal Issues 365, 373 (2004). Professor Gillette continues:

> Before condemning all evasions of electoral requirements, however, consider whether anachronistic debt limits themselves pose the greatest threat to a municipality's fiscal well-being. Debt election requirements, after all, arose in an era of a less enfranchised citizenry (property-holding requirements limited the right to vote in such elections), and, more importantly, before the advent of sophisticated constraints on municipal debt. The inclusion of debt election requirements in state constitutions preceded the development of bond counsel as a legal specialty to pass on the legality and sufficiency of bonds, the birth of rating agencies to track the financial stability of issuers, and the creation of robust secondary markets for government debt. Each of these developments creates a market-based, and arguably more precise, restraint on the quality and quantity of local debt than broad-based legal limitations.

Id. at 373-74.

It is no accident that for more than a century courts across the country have concluded judiciously that certain financing methods should "circumvent" or "evade" or "avoid" what on first glance appear as plain legal limits. It cannot be the case that this reality – the law of the land, not just Florida – stems from mistaken judgment, antidemocratic sentiment, malicious intent, or indifference to

property holders' rights. The American judiciary deserves more credit than these explanations provide. Through the state courts' careful application of nineteenth-century constitutional principles, local governments in modern America have unleashed tremendous energy and wealth, and have adeptly responded to changing social pressures, while managing to avoid the debt-ridden disasters of yesteryear. It can be a daunting task to master the history of this area of the law, but the effort to do so yields clearer understanding of when and why it is appropriate to conclude that a financing approach is, or is not, a debt subject to constitutional constraints like the referendum requirement. Experts have "attempt[ed] to find some theme that unifies the decisions in this area" and concluded:

> Courts have demonstrated a remarkable resistance to development of any general standard that consolidates the existing case law. They have tended instead to analyze each transaction on an ad hoc basis. [Nonetheless,] these opinions reveal a recurrent, if not immutable, theme in which ***the existence of a "debt" depends on whether the issuer or the bondholders bear the risk that the project financed with bond proceeds will fail***. If the issuer bears that risk, if the obligation to pay the bonds exists independent of the consideration received by the issuer's constituents, then the transaction properly falls within the scope of debt as the term is used for setting debt limitations or requiring a bond election. If, on the other hand, the risk of failure is borne by the bondholders who have no recourse against the general assets of the issuer, the transaction falls outside the scope of debt restrictions.

Amdursky & Gillette 161-62 (emphasis added). This theme is perfectly consistent with the bright-line principle developed by this Court over the past decades: does the transaction directly or indirectly obligate the government to impose taxes in

order to support its debt obligations? If the project fails, can a bondholder compel the government to exercise its taking powers?

B. The Court's Decision in Miami Beach Represents the Majority Rule and Was Not an Error in Legal Thinking

TIF bonds emerged from the general milieu described in the previous section. California pioneered the concept in 1952, but it did not spread rapidly; by 1970, only six other states had followed suit. In the mid-1970s, the use of TIF expanded nationwide "due to a number of factors, most important, a steady decline in federal aid, a steady economic and concomitant social decline in some urban areas, and substantial public pressure against general tax increases." Craig L. Johnson & Kenneth A. Kriz, *A Review of State Tax Increment Financing Laws*, in *Tax Increment Financing and Economic Development* 31, 31 (Johnson & Man eds. 2001). Today, TIF is an integral tool in local redevelopment efforts and is authorized in 49 states, with North Carolina most recently adopting the method in 2004.[12]

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[12]Notably, North Carolina's action is completely consistent with the principles discussed in the previous section: "As long as the local government unit ***does not pledge its taxing power as security for the bonds***, the amendment circumvents the traditional requirements found in the constitution's other sections dealing with local government debt – namely, the constitutional mandate that local governments seek voter approval before increasing their general obligation debt levels." P. Michael Juby, *Tax Increment Financing in North Carolina: The Myth of the Countermajoritarian Difficulty*, 83 N.C. L. Rev. 1526, 1532 (2005) (emphasis added).

Florida was part of this general trend, and in 1977 the Legislature amended the Redevelopment Act to provide for tax increment financing. *See* Ch. 77-391, Laws of Fla., *see generally* Fla. Dep't of Cty. Affairs, *Using Tax Increment Financing for Community Revitalization* (1978). By then, opponents of TIF had already begun constitutional challenges in other states. The Supreme Court of Utah was one of the first courts of highest jurisdiction to dispose of such a challenge, and in doing so it rejected a variety of state and federal constitutional attacks, including the claim that the TIF bonds constituted a debt under the state constitution and thus required voter approval. *See Tribe v. Salt Lake City Corp.*, 540 P.2d 499 (Utah 1975). The court noted that both the authorizing statute and the redevelopment agency's bonds provided that the bonds were not a debt or obligation of the city or county, the pertinent documents prohibited use of the city's credit for repayment of the bonds, and the "bondholders can look only to revenues from operation of the facility ***and the allocated taxes***, for retirement of the bond obligation." *Id.* at 503 (emphasis added).

A thoughtful concurring opinion reasoned that the "proposition which must be forth-rightly faced is this: the proposed bonds should be regarded as either one classification or the other . . . ." *Id.* at 505 (Crockett, J., concurring). If they were revenue bonds, they should be paid by the revenues derived from the redevelopment project. In that event, "there would be no problem and no need of

this lawsuit." *Id.* Under the competing classification, they would be "financed by the revenues, and also by taxes to be imposed and collected by the city," which would trigger various constitutional questions, including whether a referendum was required. Justice Crockett noted "somewhat of a paradox in this situation," because the bonds were devised as revenue bonds but at the same time their payment was "assured, at least in part, by taxes levied and collected by the city." *Id.* He noted, however, that "it is only the extra taxes generated from the amount of increased valuation over the base year . . . that is diverted into a special fund and used to pay on the bonds. . . . and this tax allocation together with the anticipated revenues from the operation of the parking facility will constitute the sole revenues obligated to retire the bonds." *Id.* at 506. In resolving the paradox and determining that the bonds were revenue bonds not subject to constitutional debt constraints, Justice Crockett concluded:

> The significant points to note here are that this plan does not provide for nor contemplate that the City can or will impose any tax, or increase any mill levy, to support this Agency or its purposes, or to finance these bonds. Further, the Agency itself has no power to impose or collect any taxes, but its only benefit therefrom will be from the special fund set aside from the increased taxes generated by the enhancement of assessed valuation of property in the project area.

Id. at 507. There was a sole but passionate dissent, which illustrates the complexity of fitting redevelopment TIF bonds into the traditional constitutional debt categories.

Although complex, courts continued to face the question of how to categorize TIF bonds and continued to reject arguments that they triggered constitutional debt requirements. In October 1980, the Supreme Court of Colorado rejected the City of Denver's challenge to the Denver Urban Renewal Authority's ("DURA") proposed redevelopment TIF bonds:

> Denver argues that the bonds are retired by ad valorem tax revenues which would otherwise be available for the payment of Denver's general obligations, and therefore an indebtedness is created within the constitutional or charter sense. We disagree.
>
> While the bonds are partially retired with ad valorem tax revenues, the tax-allocation bond financing scheme is carefully devised so that the monies which will be utilized to retire the bonds would not otherwise have been available to Denver for its general revenue purposes. Taxes are allocated to DURA only in an amount equal to the levy against the increased assessed valuation of property within the project area subsequent to the valuation. . . . The tax allocation structure has been carefully drafted so that there is a direct relationship between the increased valuation of property within the project area, and thus, increased ad valorem tax revenues, and the project financed by the bond issue. Denver has not lost the benefit of any ad valorem tax revenues which would otherwise have been available for its general revenue purposes had the plan never been adopted. . . . Consequently, Denver will not be indebted as a result of the tax allocation financing scheme.
>
> The obligation created as a result of the bond issuance is solely that of DURA. A special DURA fund, supported by the allocation of tax revenues as above discussed, is irrevocably pledged by DURA to repay the principal and interest on the bonds. Since the obligation is DURA's, and not Denver's, we find no violation of the constitutional and charter debt limitation provisions imposed upon Denver.

Denver Urban Renewal Auth. v. Bryne, 618 P.2d 1374, 1382 (Colo. 1980) (citations omitted).

Two months later, in December 1980, this Court decided *Miami Beach* and likewise upheld redevelopment TIF bonds against sustained constitutional attack, including the claim that they violated the referendum requirement. *See* 392 So. 2d at 893-98. Page 9 of the revised opinion in *Strand* unfairly characterizes *Miami Beach* as providing "no explanation" and "no historical support" for its conclusions, when in fact the Court's six-page analysis covers a century of Florida precedents, is consistent with the nationwide principles outlined above in section II.A., and reaches the same conclusion as the vast majority of other state supreme courts ruling on similar attacks at the same time and subsequently.[13] That conclusion is that redevelopment TIF "bonds are not general obligation bonds of the municipality because they are not secured by the full faith and credit of the municipality." 1 M. David Gelfand, *State & Local Government Debt Financing*, § 2:06, at 9 (2000); *see also* 15 McQuillin, *The Law of Municipal Corporations*, §

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[13]In likewise rejecting constitutional challenges to redevelopment TIF bonds a year after *Miami Beach*, the Supreme Court of Indiana noted that 23 states had authorized such bonds. In more than half (12 states) constitutional attacks had risen to the appellate courts. Including Indiana, 10 other states had, like this Court in *Miami Beach*, rejected such challenges, and only Arizona and Kentucky had held that such legislation violated certain restrictions in their respective constitutions. *See South Bend Public Transp. Corp. v. City of South Bend*, 428 N.E.2d 217, 225 n.2 (Ind. 1981). While some states have since joined the minority view, others have joined Florida in the majority. *See, e.g., Tax Increment Fin. Comm'n of Kansas City v. J.E. Dunn Constr. Co.*, 781 S.W.2d 70, 78 (Mo. 1989); *Wolper v. City Council of the City of Charleston*, 336 S.E.2d 871, 874-75 (S.C. 1985).

40:5 (July 2007). This is but another way of articulating that the bondholders, not the issuer, bear the risk in the event of project failure, and that bondholders cannot compel the levy of an ad valorem tax.

The rule in Florida, embodied by *Miami Beach*, recognizes that redevelopment TIF bonds are a form of revenue bond, not a general obligation bond that requires referendum approval. This was the majority rule in 1980 and remains so today, and the Court cannot fairly conclude that *Miami Beach* is an anomaly or "error in legal thinking" that compels the Court to violate the important principle of *stare decisis*. To be sure, Justice Boyd presented an alternative, minority, view of redevelopment TIF bonds and the referendum requirement in *Miami Beach* and in other cases (as did dissenting justices in other jurisdictions), but his analysis was out of line with the principles of public finance law in Florida and throughout the nation. The Court must strive to remain faithful to the clear principles of public finance law, and resist the temptation in both *Strand* and this case to decide on an ad hoc basis. *See* Amdursky & Gillette 162. Before following the County's invitation to declare the Redevelopment Act unconstitutional, this Court must presume the Act valid and the County must demonstrate it is unconstitutional beyond a reasonable doubt. *See Stewart v. Green*, 300 So. 2d 889, 893 (Fla. 1974). If the Redevelopment Act can be

rationally interpreted to harmonize with the constitution, it is the duty of the Court to adopt that construction. *Id*.

C. The Plain Meaning of "Payable from Ad Valorem Taxation" Must Be Consistent with the Court's Bright-Line Principle

The revised opinion in *Strand* considers the "plain meaning" of the phrase "payable from ad valorem taxation." Revised Op. 19-20 & n.7. Appellees agree that the Court should consider and enforce the spirit as well as the letter of the phrase. While dictionaries are certainly useful in this endeavor, the Court properly has rejected overly simplistic or slavish adherence to them and recognized that words take meaning from their context. *Miele v. Prudential-Bache Sec., Inc.*, 656 So. 2d 470, 472 (Fla. 1995) ("the meaning of a sentence may be more than that of the separate words, as a melody is more than the notes") (citation omitted). Out of context, many words have more than one meaning or sense, with varying degrees of consistency. The *Strand* revised opinion recognizes this and refers to one dictionary for two senses of the word "taxation": the action of taxing, and an amount obtained by taxation. Other dictionaries recognize even more nuance among senses of the word "taxation": "(1) a taxing or being taxed; (2) a tax or tax levy; (3) the principle of levying taxes; (4) revenue from taxes; (5) in law, the act of taxing or assessing a bill of costs." *Webster's New Twentieth Century Dictionary* 1870 (2d ed. 1975).

Finding more than one meaning of the word "taxation," the revised opinion in *Strand* simply concludes that all must apply, that is, that "ad valorem taxation" means **both** the action of imposing ad valorem taxes (the taxing power) **and** the amount of ad valorem revenues obtained (tax revenue). In so doing, the revised opinion departs from decades of the Court's own precedents that distinguish between (1) pledges of revenue only and (2) pledges of the taxing power, pursuant to which bondholders have the power to compel the government to exercise its taxing power. Not only does this conclusion drastically disrupt the law of municipal finance, it also departs from the history of judiciously examining and selecting the ***right*** meaning of term when faced with various senses, rather than simply concluding all apply.

For example, when the Court found two varying senses of the plain meaning of the word "toll," the Court carefully examined its context and the history of its interpretation. *Hankey v. Yarian*, 755 So. 2d 93, 95-97 (Fla. 2000). When faced with competing senses of the plain meaning of the word "maliciously," a court picked one, not both, and did so by considering its context and the discernable purposes of its use. *Seese v. State*, 955 So. 2d 1145, 1149 (Fla. 4th DCA 2007). Where a regulated professional was denied a state license because she had not earned a master's degree from a college "approved" by a federal agency, the court examined the plain meaning of "approved" and found two different senses;

however, the court did not automatically conclude that the law consisted of both meanings of the term, but rather interpreted the term logically and reasonably within its context. *See Anderson v. Dep't of Prof. Regulation*, 462 So. 2d 118, 119-20 (Fla. 2d DCA 1985); *see also, e.g., State v. Huggins*, 802 So. 2d 276 (Fla. 2001) ("occupied structure or dwelling" susceptible of two reasonable interpretations, but Court picked one rather than apply both); *Getty Oil Co. v. Dep't of Nat. Resources*, 419 So. 2d 700, 704-05 (Fla. 1st DCA 1982) (examining varying common meanings of "within" and selecting one, rather than concluding all apply).[14]

In line with courts nationwide, this Court has long distinguished between the taxing power and tax revenues. This distinction is the foundation of the difference between general obligation bonds and revenue bonds. *See, e.g., Klein v. City of New Smyrna Beach*, 152 So. 2d 466, 470 (Fla. 1963) (not bonds within meaning of constitution because "no pledge of the ad valorem ***taxing power*** is imposed to

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[14]Superficially, "plain meaning" has a nice ring to it, but words often have more than one meaning, and it goes to the heart of the judicial function to consider carefully the differences among them and the consequences of interpretation, as demonstrated by countless examples. *See, e.g., General Dynamics Land Sys., Inc. v. Cline*, 540 U.S. 581, 595-98 (2004) (examining and selecting among competing senses of the word "age"); *Bragdon v. Abbot*, 524 U.S. 624, 638 (1998) (court divided over competing senses of the work "major"); *Fort Stewart Schools v. Federal Labor Relations Auth.*, 495 U.S. 641, 645-46 (1990) (examining and selecting between two common meanings of "working conditions").

support them") (emphasis added); *Leon County v. State*, 165 So. 666, 667 (Fla. 1936) (constitutional limitations on issuance of "bonds" relate to "contemplated obligation of the ***powers*** of future taxation") (emphasis added). This distinction is also the foundation of the bright-line principle the Court has honored as long as there have been constitutional limits on local bonds.

The "payable from ad valorem taxation" language added in the 1968 revision does not support abandoning this bright-line principle. There is no evidence in *Strand* or in the documents of the Constitutional Revision Commission that anyone ever intended to break from history on this point. Diligent inquiry has uncovered a single obscure comment by Mr. Askew explaining why this phrase was added: it was an "attempt to clarify that you cannot only issue bonds pledging full faith and credit, but you can issue bonds which would be pledging the ad valorem taxation only."[15] Transcript of Constitution Revision Comm'n 62, Last Select Committee Report on Amend. 74 & 142 (1966). He went on to explain that "those basically are language changes that we are recommending" before reaching the real substantive issue posed by the amendment, which was whether the

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[15]"Bonds which would be pledging the ad valorem taxation only" are called "limited ad valorem bonds." They are a form of limited general obligation bond, under which bondholders' only remedy is to compel the government to exercise its power to impose ad valorem taxes (as opposed to recovering from other sources). These are sometimes called "limited" tax bonds, as distinguished from "unlimited" tax bonds which are backed by full faith and credit.

required vote should be a majority of the electorate or simply a majority of those voting in the election. *Id.* 63.

While property owners, as always, were concerned with protecting their property from excessive taxes, sentiment at the time reflected that the growth in public debt over the preceding two decades was "not out of line with nationwide trends." Manning J. Dauer, et al., *Should Florida Adopt the Proposed 1968 Constitution? An Analysis* 32 (Public Admin. Clearing House, Univ. of Fla., 1968). Committee records reflect that members were familiar with and were sharing among themselves a law review article which concluded, "the existing debt-financing provisions have worked quite well in practice. We do not believe that sweeping changes are necessary." Grover C. Herring & George J. Miller, *Florida Public Bond Financing – Comments on the Constitutional Aspects*, 21 U. Miami L. Rev. 1, 34 (1966). The drafters followed this advice with respect to article VII, section 12: "Except for the fact that the new constitution limits local bonding to capital projects, ***the new Constitution offers the same basic provision as did the 1885 Constitution after 1930***." Art. VII, § 12, Fla. Const., Commentary by Talbot "Sandy" D'Alemberte, 26A Fla. Stat. Ann. § 101 (1995) (emphasis added). Mr. D'Alemberte was actively involved with the 1968 revision and his perspective should not be cast aside lightly. Another first-hand participant was Judge Hugh M. Taylor, who worked on a Senate special study subcommittee on

bonding – and who later argued *Miami Beach*. It is inconceivable that these direct actors, one of them an experienced bond lawyer, somehow missed a major rewrite of constitutional law, effected by the addition of the phrase "payable from ad valorem taxation." If this Court is determined to change the law now, it cannot fairly do so by reference to the "plain meaning" of the people's will 39 years ago.

D. Tax Increment Financing Under the Redevelopment Act Will Not Impair the Budget Flexibility of Any Affected Taxing Authority

The trial court validated the Bonds and all matters associated thereunder, properly holding that no referendum was required for their approval. (CAI-tab 2; 4-5).

Appellant urges this Court to invalidate the Bonds upon *Volusia County v. State*, 417 So. 2d 968 (Fla. 1982) and *State v.* Halifax *Hospital District*, 159 So. 2d 231 (Fla. 1963). This Court in *Strand* also expressed concern with *Volusia County*:

> Unlike Volusia County's pledge of all of its non-ad valorem revenues, Escambia County is attempting to pledge the increase in ad valorem tax revenues generated from a designated area. However, Escambia County's plan gives rise to the same concerns we had over budgetary flexibility in County of Volusia. Moreover, the tax increment financing plan in this case seems to violate the fundamental principle applied in County of Volusia. In other words, we are concerned that Escambia County is attempting to do indirectly "that which cannot be done directly." Id. at 971. Without the consent of the electorate, the County is attempting to indirectly pledge ad valorem taxation for the repayment of long-term bonds used to finance a capital project. It is doing so by taking advantage of the tax increment financing scheme

> we initially approved in Miami Beach, a financing scheme uniquely developed to assist the redevelopment of blighted urban areas.

Strand, No. SC06-1894 at 13-14.

Of course, at the outset, it is important to note that the Agency cannot directly or indirectly pledge the taxing power, because it has no ad valorem taxing authority. See *Wilson v. Palm Beach County Housing Auth.*, 503 So. 2d 893, 894 (Fla. 1987).

This Court has taken great care to make sure that local governments do not pledge all legally available revenues and at the same time enter into contractual obligations which have the invariable effect of indirectly requiring increased ad valorem taxation, in which case a referendum would be required. *Volusia County,* 417 So.2d at 969. The term "legally available revenue" implicates any revenue held by a taxing authority which are not restricted[16] as to their use by some overriding statute or ordinance restriction and which are derived from a source other than ad valorem tax levies. As well, this Court has provided additional guidance and has provided that the referendum requirement is not implicated

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[16]Examples of restricted non-ad valorem revenues are gas tax receipts being restricted to transportation uses, utility revenues restricted to those direct and indirect costs associated with providing the service or facility, impact fees and special assessments. Unrestricted non-ad valorem revenues include public service tax proceeds, local communications services tax proceeds and funds derived from certain state revenue sharing programs. 2006 Local Government Financial Handbook, September 2006 edition, prepared by the Florida Legislative Committee on Intergovernmental Relations.

where non-ad valorem or legally available revenues are characterized as either (1) only a supplemental source in the event pledged revenues are insufficient, or (2) there was no provision in the bond obligation for the taxing authority to continue services or do all things necessary for the purpose of generating income to pay the bond. *Murphy v. City of Port St. Lucie*, 666 So. 2d 879, 881 (Fla. 1995). Also see *State v. Brevard County*, 539 So. 2d 461 (Fla. 1989), where this Court found that in the absence of a covenant to maintain revenue generating services, a pledge limited solely to non-ad valorem tax revenues does not result in an actual or practical pledge of ad valorem taxes. . . ." In the end, if the bondholders can not compel the imposition of ad valorem taxes or if the issuance of the bonds will not necessarily lead to the increase of ad valorem taxes, the bonds or obligations being validated are not general obligation bonds.

Neither concern is present in this case. Bondholders cannot compel the imposition of ad valorem taxes and the issuance of the Bonds will not lead to an increase in ad valorem taxes. Concerns about *Volusia County* are misplaced.

In the instant case the proposed Bonds in substantial part rely upon an interlocal agreement between the City and the Agency, which is also subject to validation,[17] that commits the funds in the community redevelopment trust fund to be used for community redevelopment purposes and contributes the

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[17] *See State v. City of Daytona Beach*, 431 So. 2d 981 (Fla. 1983).

Redevelopment Trust Fund revenues along with supplemental revenues from special assessments or any other legally available revenues of the City to pay the bondholders. This is a common structure where the creditworthiness of the uncertain revenue from the tax increment is questionable. As far as the stream of revenue from the trust fund is concerned, the bondholder can only rely on so much as actually contributed and to the extent it actually materializes. Nowhere in the Redevelopment Act does the Agency have the power to compel either the City or County to use or impose taxes to fund their responsibility to contribute to the Redevelopment Trust Fund.[18] The same result occurs with regard to any special assessments imposed or any other legally available revenues. Accordingly, the tests above reveal the bonds sought to be validated are revenue bonds.

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[18] *See also* Section 4.01 of the Bond Resolution which provides that "[t]he Bonds shall not be or constitute general obligations or indebtedness of the Issuer as "bonds" within the meaning of any constitutional or statutory provision, but shall be special obligations of the Issuer, payable solely from and secured by a lien upon and pledge of the Pledged Funds in accordance with the terms of this Resolution . . . . No Holder of any Bond or any Credit Bank or any Bond Insurer shall ever have the right to compel the exercise of the ad valorem taxing power of the State, Bay County or any governmental entity to pay such Bond or shall be entitled to payment of such Bond from any monies of the Issuer except the Pledged Funds, in the manner provided herein." (CAII-tab 14). *See also* § 163.387(4), Fla. Stat. (providing that holders of bonds payable from redevelopment trust fund revenues have no right to require the imposition of any tax or the establishment of any rate of taxation in order to obtain the amounts necessary to pay and retire such bonds).

At trial and in the County's Initial Brief, the County attempts to argue that within its budget it does not have sufficient non-ad valorem revenues and must pay its annual appropriation required by section 163.387(2) out of ad valorem taxes. The statements made by the County are misleading and disingenuous. Furthermore, as described above, this is not the test that has been relied upon by local governments for many years under well-established precedent.

However, in order to alleviate any concerns that the Court may have about budget flexibility and the ramifications of *Volusia County*, it is important for this Court to fully appreciate the fundamental processes, both historical and present, for assembling the funds for any local government's annual budget, the complex nature of local government budgeting and the myriad sources of revenue which comprise the budget. Appellant incorrectly implies that the general fund of the County is composed solely of ad valorem taxes. It has been many years since local government finance was so simple.

Beginning in the 1950s, local governments issued bonds to meet the increasing demands for local infrastructure and improvements such as highways, turnpikes and public utilities. Amdursky & Gillette at 23. During this same period, Florida experienced "fiscal growing pains" caused by an enormous growth in population, the spread of urban areas, increased industrialization and the demand for new services. Kenneth M. Myers, Constitutional Revision Subcommittee on

Finance and Taxation, *Report to Government Research Council Re: Needed Constitutional Revisions 2* (1966). These changing circumstances led local governments to shift from general obligation bonds, supported by ad valorem taxes, to revenue bonds, supported by non-ad valorem revenues. Amdursky & Gillette at 24. The tremendous need for local infrastructure and improvements caused local governments to appropriately use and leverage non-ad valorem streams of revenue to provide for its citizens. The bond markets have embraced the use of revenue bonds and accepted the risk that bond holders can never compel the use of the taxing power as a means of repayment.

For purposes of illustration, the total of all general fund revenue sources (not including restricted business-type sources) in 2005 for Bay County, including ad valorem taxes was $115,000,000 of which only $53,000,000 or 46.1 percent (46.1%) was generated by property taxes. The total of all sources of revenue, including restricted business-type revenues in 2005 for Bay County was $154,000,000 of which property taxes accounted for only 34.4 percent (34.4%).[19]

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[19] Clerk of Circuit Court of Bay County. *Comprehensive Annual Financial Report for the Fiscal Year Ended September 30, 2005* at B-7 *available at* http://www.baycoclerk.com/~pdfs/finance/cafr/2005/FY05CAFR.pdf. This resort to the published comprehensive annual financial report of the County addresses the inquiry of Justice Anstead in oral argument in *Strand* on May 10, 2007, that is, "What income does the County have other than ad valorem taxes?" and "What percentage of the County's outlay every year is fulfilled by revenue from ad valorem taxation?"

The highest estimated increment transfer that Bay County, as a taxing authority, would be required to transfer to both of the City's redevelopment trust funds in 2007 is less than $14,000.[20] That amount is equivalent to less than 1/300th of a percent of the approximately $62,000,000 in non-ad valorem revenue (exclusive of all restricted type business-type sources) using the above 2005 financial reporting information.

This illustration is provided only as an order of magnitude and compares the highest initial increment transfer estimated in the City's economic analysis in its Redevelopment Plan to a present budget and the annually available non-ad valorem revenues (exclusive of all restricted business-type sources). With a change in non-ad valorem revenues over the course of the community redevelopment program and an anticipated annual increase in the increment, the proportion of annual increment contribution to the available non-ad valorem revenues may well change, but in real dollar terms the County's budget will always increase by a concomitant real dollar amount of the increment. Either way, the result of this illustration is that the relative budgeting impact of the required increment transfer on non-ad valorem revenues will be mathematically small and, in terms of an order of magnitude, will

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[20] Herbert Halback, Inc. et al., *Town of Cedar Grove Core Community Redevelopment Plan,* App. I (2007). (CAII–tab 13; app. I). Using the largest initial year estimates, the respective increment transfer for the Core Community Redevelopment Area is $12,100.

realistically never consume any of the County's legally available revenues in excess of the increment.

In other words, the contribution required by the Legislature under the Redevelopment Act, although measured by the increase in ad valorem revenues within a specific area of the taxing authority, does not conjure up the consequences of *Halifax* or *Volusia County*. As well, the concern of Justice Anstead expressed in oral argument in *Strand*[21] is addressed by the careful approach in the Redevelopment Act and the logic this Court approved in *Miami Beach* twenty-seven (27) years ago; in fact, the annual contribution to the community redevelopment trust fund can be paid from non-ad valorem revenues.

The mandate of the Legislature implemented by the Redevelopment Act is that certain taxing authorities appropriate a contribution to a community redevelopment trust fund to remedy blight or slum conditions in a specific community redevelopment area within their midst. Under the Redevelopment Act, the mandate will never implicate the budget flexibility of a taxing authority. Every community redevelopment antagonist intentionally or inadvertently ignores that

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[21]Justice Anstead expressed concern that when a county reaches a point where it may have obligated itself under so many bonding schemes, without voter approval, that the bonding capacity is so consumed there is no money left to pay other debts. The safeguards in the Redevelopment Act and the fact that the taxing authority can never be compelled to levy any amount of ad valorem taxes alleviate this concern.

the formula which employs the use of increased ad valorem tax receipts in a community redevelopment area as merely a measure of the payment to be made to the community redevelopment trust fund held by a community redevelopment agency. *Kelson v. City of Pensacola*, 483 So. 2d 77, 78 (Fla. 1st DCA 1986).

The fallacy of logic to the contrary lies in the fact that it ignores the nature of the tax increment formula in Florida. The monies paid into the Redevelopment Trust Fund by the County are determined by multiplying the increase in value of the real estate by the County established millage rate. The community redevelopment creates more revenue by increasing the property value.[22] The Legislature requires that an equivalent amount be contributed to the trust fund for use by the Agency to remedy the slum and blight conditions. Such appropriation does not affect any contract or obligation of the County, since the increase in land value creates its own additional source of revenue for the taxing authority's budget, which frees up non-ad valorem funds in a concomitant amount. *Kelson*, 483 So. 2d at 79.

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[22] Arguments about why the increment increases is fraught with hyperbole, but suffice it to say such rationale is for the Legislature and policy makers to determine and not relevant here.

E. The Court Should Limit Its Ruling in Strand to the Facts in *Strand*.

In its revised opinion in *Strand*, the Court only began to distinguish the facts in *Strand* from the purposes and requirements in the Redevelopment Act. The City and Agency urge the Court to fully explore that contrast. The doctrine of *stare decisis* and the Court's traditional analysis thereunder require that this Court should not recede from the premise in *Miami Beach* and the Redevelopment Act if it can limit its ruling to the facts in *Strand*.

While the Redevelopment Act may not be the only mechanism to effectuate redevelopment, it embodies sufficient protections to allow for tax increment revenue bond financing without implicating the referendum requirement of the Florida Constitution. On the other hand the home rule mechanism such as that in *Strand* did not employ the use of a separate legal entity not vested with taxing powers, having separate fiduciary and administrative responsibilities created by a legislature separate and apart from the taxing authority and separate legal entity.

A tax increment financing plan that conforms to the Redevelopment Act does not trigger the constitutional referendum requirement because the bondholders' lien attaches only after the revenues are deposited into the community redevelopment trust fund. *See Miami Beach*, 392 So. 2d at 894. In oral argument on *Strand*, this Court unnecessarily focused on the circumstances in *Halifax* and *Volusia County* that implicated an indirect pledge of the power to tax. Instead the facts underlying the merger in *Strand* of the legislature, taxing

authority, and separate legislative entity are what implicates the referendum requirement of Article VII, Section 12. Such merger does not occur under the Redevelopment Act.

The most important distinctions between what the Redevelopment Act requires and what Escambia County created in *Strand* is the merger of the legislature, the taxing authority and the absence of a separate legal entity that both (i) controls the tax increment funds (derived from multiple governmental units with ad valorem tax powers) and (ii) lacks ad valorem taxing power. The Redevelopment Act uses this separation of the source of the tax increment payments and the ownership of the redevelopment trust fund to make it explicitly clear that the power to compel the levy of ad valorem taxes is not given to the bondholder: the holder of the tax increment has no taxing power. In *Strand* Escambia County simply did not preserve this separation; rather, it merged into itself as a single entity the separate concepts that were vital to the approval in *Miami Beach.*[23] The Court should here determine that the County in *Strand* failed to emulate the critical procedures and safeguards recognized in *Miami Beach*,

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[23] The County in *Stran*d argued that its structure removes from the bondholders the ability to compel the levy of taxes; however, the structure did not segregate the 'taxing authority' from the 'legislative body' that creates the structure, nor did the County's structure create a 'separate legal entity' with separate fiduciary responsibilities to hold and expend the revenues resulting from any tax increment.

which support the reality under the general law process that: no lien can ever attach to any revenues other than those measured by the tax increment upon deposit into a trust fund owned by a separate legal entity. The City here strictly adhered to those constitutionally crucial safeguards.

Fundamental to a legitimate community redevelopment initiative under the Redevelopment Act are the following statutorily proscribed safeguards: the process is dictated by the legislature[24] to resolve a "serious and growing menace, injurious to the public health, safety, morals, and welfare of the residents of the state;"[25] the taxing authorities are required to contribute tax increment to a trust fund held by a separate legal entity without taxing power and subject to a distinct and separate fiduciary duty;[26] a separate legal entity with separate fiduciary and administrative responsibilities is in fact established to receive and expend the contributions for purposes articulated by the Legislature and set out in the statutorily mandated community redevelopment plan;[27] and once the contributions to the trust fund are made, such funds are under the ownership and control of the separate legal entity. A community redevelopment trust fund created under the

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[24] §163.387(4)(5), Fla. Stat. (2006).

[25] §163.335(1), Fla. Stat. (2006).

[26] §§ 163.387(2), 163.356, and 163.357, Fla. Stat. (2006).

[27] §163.360, 163.362, Fla. Stat. (2006).

Redevelopment Act may only be established after extraordinary public notice and hearings,[28] adoption of a detailed redevelopment plan,[29] and then only used in a manner consistent with the Redevelopment Act and the redevelopment plan.[30] The substance of the foregoing safeguards simply did not occur in *Strand*.

Nowhere under the Redevelopment Act and *Miami Beach* are ad valorem taxes required to be levied and ad valorem tax revenues are never required to be deposited into the community redevelopment trust fund.[31] A taxing authority is never required to levy any rate or millage. The Redevelopment Act was carefully crafted to require certain taxing authorities to appropriate only legally available funds to the community redevelopment trust fund. *See Kelson v. City of Pensacola*, 483 So. 2d 77 (Fla. 1st DCA 1986). Under the statutory regime, the trust fund is never owned by any of the entities that levy ad valorem taxes and that deposit money into it. The trust fund revenues are always owned by the community redevelopment agency, a separate legal entity with no taxing powers. The funds are not ad valorem tax funds because their owner has no taxing power. Finally, under the Redevelopment Act, the taxing authority is separate and distinct

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[28] §163.346, Fla. Stat. (2006).

[29] §163.387(1), Fla. Stat. (2006).

[30] §163.387(6), Fla. Stat. (2006).

[31] In fact this is expressly prohibited in sections 163.387(4) and (5), Florida Statutes (2006).

from the Legislature, and thusly incapable of unilaterally changing the law. That is not the circumstance in *Strand*.

In *Strand*, however, Escambia County chose to act simultaneously as legislature, taxing authority, and holder of the trust fund. The observation in *Strand* that the "County's tax increment financing scheme is certainly consistent with the premise and ultimate holdings of *Miami Beach*" is not accurate. Because of the merger of interests and because of the fact that a separate legal entity without taxing power was not created to hold and expend the trust funds, the Court's dicta in *Strand,* which can be read to invalidate tax increment financing pursuant to the Redevelopment Act should not become the law. Rather this Court should rule on the facts in *Strand* and need not, by its own tradition and analysis, recede from the larger premise in *Miami Beach*.

Here, the City's tax increment regime was completed in reliance on *Miami Beach* and in accordance with the safeguards in the Redevelopment Act. It should be upheld. This Court should not recede from *Miami Beach* nor need it call into question *Penn v. Florida Defense Finance & Accounting Service Center Authority*, 623 So. 2d 459 (Fla. 1993).[32] To do so, is an unnecessary use of the great power of

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[32] In *Penn*, a separate legal entity, created by interlocal agreement between a municipality and a county, without taxing powers was established and tax increment funds were made available through a trust fund that was held by that entity and not the taxing authorities. *Answer Brief of Appellee* at 1, *Penn v. Fla. Def. Fin. & Accounting Serv. Ctr. Auth.,* 623 So.2d 459 (Fla. 1993) (No. 81, 201).

this Court, would create further upheaval in Florida law and also cast doubt upon the continued viability of an untold number of cases in Florida.

CONCLUSION

This Court should uphold the trial court's finding that the City properly created and established the Agency, and that the Agency currently is capable of implementing its power within the Core Community Redevelopment Area.

This Court should uphold the trial court's finding that there was no requirement or need under section 163.346 for the City to have "read" its resolutions twice to meet the public notice requirements under the Redevelopment Act.

This court should not reassess its premise in *Miami Beach* relied upon by the City and should apply the Court's traditional analysis articulated in *State v. J.P.*, 907 So. 2d 1101 (Fla. 2004) in determining whether or not a referendum is required for the City to use TIF. In such analysis the Court should distinguish the facts here with the facts in *Strand* and decide *Strand* narrowly.

Accordingly, this Court should not reassess the premise in *Miami Beach* or the Redevelopment Act, and should uphold the trial court's validation of the proposed Bonds here, where the City has carefully adhered to the Redevelopment Act.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by United Parcel Service to **William A. Lewis**, Chief Assistant State Attorney, 421 Magnolia Avenue, Panama City, Florida 32401 and **Terrell K. Arline**, Bay County Attorney, 810 W. 11th Street, Panama City, Florida 32401, this 21st day of November 2007.

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CERTIFICATE OF FONT COMPLIANCE

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

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