IN THE SUPREME COURT OF FLORIDA

BAY COUNTY,

Appellant,

Vs.

Case No. SC07- 1574
L.T. CASE NO: 07-1770CA
(Brannonville)

TOWN OF CEDAR GROVE,
CEDAR GROVE COMMUNITY
REDEVELOPMENT AGENCY, and
STATE OF FLORIDA, ET AL.,

Appellees.
_____/

ON APPEAL FROM A FINAL JUDGMENT VALIDATING BONDS ISSUED BY THE CIRCUIT COURT OF BAY COUNTY, FLORIDA, FOURTEENTH JUDICIAL CIRCUIT. LOWER TRIBUNAL CASE NO. 07-1170CA

AMENDED REPLY BRIEF OF BAY COUNTY, FLORIDA TO SECOND AMENDED ANSWER BRIEF OF TOWN OF CEDAR GROVE AND CEDAR GROVE COMMUNITY REDEVELOPMENT AGENCY.

Terrell K. Arline
Bay County Attorney
810 W. 11th Street
Panama City, FL 32401
(850) 784-6112
(850) 784-4026 fax
Fla. Bar. No. 306584
tarline@co.bay.fl.us
For Bay CountyAppellant

TABLE OF CONTENTS

TABLE OF CITATIONS

Cases.

SUMMARY OF ARGUMENT

Cedar Grove failed to hold two readings of the various resolutions approving the CRA, the CRA Plan, and the Bonds as required by Section 166.041(3), Fla. Stat. (2007). Therefore the bonds should not be validated.

This Court got it right in Strand v. Escambia County, No. SC06-1894 (Fla. 2007). There is no "bright-line principle" that a referendum is only required if "debt" is secured by the full faith and credit of the "issuer", or if the bondholders can compel the levy of taxes. The City incorrectly claims that only "debt" is subject to the referendum mandate. The term "debt" is not even mentioned in Art. VII, Section 12, Fla. Const.

The City claims that the "premise" in State v. Miami Beach Redevelopment Agency, 392 So.2d 875 (Fla. 1980), was correct and the Constitution only applies to the "act" of taxation. No other "revenue bond" utilizes ad valorem taxes as the basis to calculate the amount of the bonds or as a source of repayment. The City ignores the plain meaning of Art. VII, Section 12, Fla. Const. Local governments "*may issue bonds. . . payable from ad valorem taxation . ..only. . . when approved by vote of the electors. . .*" Therefore, this Court should invalidate the bonds and hold Section 163.387, Fla. Stat. (2006) unconstitutional.

FIRST REPLY: WHETHER THERE IS A STATUTORY REQUIREMENT THAT THE RESOLUTIONS REQUIRED BY THE REDEVELOPMENT ACT BE READ TWICE

The City cites Section 163.346, Fla. Stat. (2006), which defers to either Sections 166.041(3)(a) or 125.66(2), Fla. Stat. (2006), noting that Chapter 125, Fla. Stat. (2006), does not require two readings for resolutions. Chapter 125, Fla. Stat. (2006) governs counties. Chapter 166, Fla. Stat. (2006) governs municipalities. Cedar Grove may not use the provisions of Section 125.66, Fla. Stat. (2006) to adopt its resolutions for the CRA.

Bay County stands by its Initial Brief and asks this Court to invalidate the various resolutions adopted by the City after only one public hearing.

SECOND REPLY: WHETHER ONCE THE CEDAR GROVE COMMUNITY REDEVELOPMENT AGENCY WAS CREATED, THE CITY WAS NOT REQUIRED TO READOPT FINDINGS TO COMPLY WITH CHAPTER 163, PART III, FLORIDA STATUTES, AS AMENDED, IN ORDER FOR THE AGENCY TO EITHER ACT TO ADDRESS BLIGHT OR TO REMAIN AS A VIABLE SEPARATE ENTITY.

In their First Amended Answer Brief, Appellees correctly point out provisions in Chapter 2002-294 Laws of Fla., which the County overlooked. The 2002 amendments to Sections 163.340 and 163.355, Florida Statutes, were to be applied prospectively where a community redevelopment agency and CRA was established prior to July 1, 2002. Thus, Bay County abandons this issue on appeal.

THIRD REPLY: WHETHER TAX INCREMENT FINANCING UNDER THE REDEVELOPMENT ACT REQUIRES A REFERENDUM.

As of the filing of this Amended Reply Brief, the Court has not strayed from its opinion in Strand v. Escambia County, No. SC06-1894 (Fla. 2007), which controls the constitutional issue in this case. The bonds should not be validated because they violate Article VII, Section 12 of the Florida Constitution.

The City claims that the County relied in its Initial Brief on "no other authority other than Justice Boyd's dissent". This is incorrect. While Bay County did not have the benefit of this Court's ruling in Strand when it prepared its Initial Brief, it did cite Volusia County v. State of Florida, et al., 417 So.2d 968 (Fla. 1982), and State v. Halifax Hospital District, 159 So.2d 231 (Fla. 1963), for the proposition that the bonds in this case violate Art. VII, Section 12, Fla. Const. The County also focused on the constitutional provision itself, which states in essence that local governments "*may issue bonds. . . payable from ad valorem taxation ... only. . . when approved by vote of the electors. . .*"

The City argues that it "relied in good faith on long-standing Florida precedent" and for this reason the Court should not receded from State v. Miami Beach Redevelopment Agency, 392 So.2d 875 (Fla. 1980). It prays that if this Court "leaves Strand intact", it should "as a matter of equity" validate the bonds in this case.

There is no equity at play here. Before the trial below the County, citing the oral arguments in Strand, directly questioned the constitutionality of the bonds. Thus, while the City may have relied on Miami Beach initially to develop the TIF scheme for the Brannonville CRA, it then proceeded to press for validation in the face of the County's warning that Miami Beach was about to be reversed.

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

In face of this Court's opinion in Strand, the City argues that Miami Beach should remain good law and that in the "context" of a CRA "no referendum is required for TIF bonds". The City redrafts the Constitution, claiming a referendum is only required if "debt" is secured by the "full faith and credit" of the "issuer". [1] It claims that despite the plain reading of Art. VII, Section 12, Fla. Const. the bonds are valid, because the bondholders lack the power to compel levy of taxes.

The City sets out to review the "history and fundamentals of public finance law" in Florida. It concludes this journey claiming that the issue is one involving "debt", stating "[i]n Florida, local government debt is constrained by the referendum requirement". The County would note that the term "debt" is not the limiting factor in Article VII, Section 12. The term is not even mentioned. The language is actually much broader and specifically includes "*bonds, certificates of*

[1] Note the "issuer" of the bonds in this case is the City of Cedar Grove. See, Resolution No. 2001-3. Also the Cedar Grove Community Redevelopment Agency is comprised of the City Commission.

indebtednesses or any form of tax anticipation certificates, payable from ad valorem taxation. . ." As far as history is concerned, revisit Art. 9, Section 6 of the 1878 Constitution, as amended in 1930, the precursor to Art. VII, Section 12. The older version also does not address "debt", but instead focuses on "*bonds*".

The City cites for authority that "debt" is the culprit, a law review article by Tracy Nichols Eddy, *The Referendum Requirement: A Constitutional Limitation on Local Government Debt in Florida,* 38 U. Miami L. Rev. 677 (1984). We would direct the Court to the conclusion of that article, which establishes the context of the article. It states:

> To promote fiscal home rule principles, the Florida Legislature and voters should amend section 12 to allow permissive referenda for general obligation bonds. Local governments' fiscal integrity would be maintained through the political process and the municipal bond market.

With deference to the claim that the Constitution should be amended to weaken the restriction on bonding ad valorem revenues, the County contends that the voters spoke in 1930 and again in 1968, when they made the prohibition even more explicit. It is "*bonds*" and other types of indebtedness issued by local governments "*payable from ad valorem taxation*" that require voter approval not just "debt."

Admittedly, it would be easier for bond counsel and local governments if an election were not required to issue TIF bonds, but a democratic imperative that has been in our Constitution for over 75 years should not be ignored merely for the sake of market expediency.

Appellees cite State v. City of Panama City Beach, 529 So. 2d 250 (Fla. 1988), quoting that part of the opinion where the Court observed that the referendum requirement "limited the risk associated with bond issues to only that which real property owners chose to accept". The part of the opinion not quoted is perhaps more telling where the Court wrote:

> The "outstanding purpose" of the amendment was to restrain "the spendthrift tendencies of political subdivisions to load the future with obligations to pay for things the present desires, but cannot justly pay for as they go. *Leon County v. State*, 122 Fla. 505, 514, 165 So. 666, 669 (1936).[2] (Emphasis added)

Thus, the desire to avoid placing long-term debt on the backs of future taxpayers is behind the constitutional imperative. The bonds Cedar Grove wants to issue are for a period of 30 years. The bonds for the Brannonville CRA total $23,688,708.00.

[2] The Panama City case was later questioned and partially receded from for unrelated reasons in State v. City of Orlando, 576 So. 2d 1315 (Fla. 1991), which opinion may be helpful when considering how to "grandfather in" bonds issued prior to Strand.

The City admits that "circumventing constitutional limitations can strike the ear of some as pejorative, if not sinister, particularly those with limited expertise or practical experience". We of little experience would agree. At first blush revenue bonds do seem to fly in the face of the constitutional mandate, except when one realizes that a true revenue bond is not supported with ad valorem tax dollars. The income stream to pay those types of bonds comes from a variety of revenue-generating enterprises, such as utility system revenues, bed taxes, race track and jai alai fronton funds, dormitory-cafeteria revenues, port facilities, cigarette taxes, franchise taxes on electric power, utility taxes, occupational taxes, concession rentals at the airport, occupational and beverage licenses, revenues of electric systems, waterworks revenues, tolls from bridge and road projects, and the like.

We know of no other type of "revenue" bond that uses ad valorem taxes as the basis to calculate both the amount of the bond and the amount of the payments funneled to pay off the bonds. Actually, calling TIF bonds "revenue bonds" lies at the heart of the problem with Miami Beach. As this Court realized in Strand, it is a pure legal fiction to assume that the tax increment revenues returned to the CRA will not come from the ad valorem taxes paid by the taxpayers in the CRA. Because ad valorem taxes are the measure of the bond and the source of revenue from which the TIF payment is made, an election is required.

The City quotes a Professor Gillette, who calls electoral requirements "anachronistic debt limits". He claims debt election "arose in an era of less enfranchised citizenry". The County agrees that this may have been true in 1930, but it was certainly less true in 1968 when Art. VII, Section 12 was drafted. At any rate, whether a law professor would have our Constitution "modernized" does not obviate the requirement that the City abide by its dictates now, at least until such time as the Constitution is amended. Gillette also claims that the debt election requirement "preceded the development of bond counsel". So the point is "trust us"? Let bond counsel decide how to spend the taxpayers' money! With all due respect, the stewardship of lawyers is not a sufficient reason to jettison oversight by the voters who pay the taxes in the first place.

B. Whether the Florida Constitution Requires a Referendum to Issue Bonds When the Bondholders Lack the Power to Compel the Levy of a Tax

The City claims that case precedent holds that the referendum requirement only applies if a bond "directly or indirectly obligates the government to exercise its taxing powers". However, the cases the City cites for this proposition all involve revenue bonds.[3]

[3] State v. City of Sunrise, 354 So. 2d 1206, 1208 (Fla. 1978) (involving double advance refunding bonds "payable only from revenue derived from the utility systems"); Nohrr v. Brevard County Educ. Facilities Auth., 247 So. 2d 304, 306 (Fla. 1971) (involving revenue bonds to be paid from the rents and other revenues received from the dormitory-cafeteria, not ad valorem taxes); State v. Tampa Sports Auth., 188 So. 2d 795, 797 (Fla. 1966) (involving revenue bonds payable

The City claims that the case of Town of Medley v. State, 162 So.2d 257 (Fla. 1964) "confirmed the constitutionality of using ad valorem taxes as long as the power to tax was itself not pledged". (Emphasis added) The City overstates Medley, which involved a bond that "pledged revenues from a proposed water system, proceeds of the cigarette tax, franchise tax on electric power, utility taxes and occupational license taxes." Id. This Court noted that bonds were supported with "special non-ad valorem sources" and said that "pledging of non-ad valorem revenues previously used for the general operating expenses" did not require a referendum. (Emphasis added) Medley clearly did not involve "using ad valorem taxes". This Court was clear at two places in the opinion to specifically note otherwise.

"from sources other than ad valorem taxes"); State v. Monroe County, 81 So. 2d 522, 523 (Fla. 1955) (involving revenue bonds payable from "sources other than the proceeds of ad valorem taxes," namely the proceeds of concession rentals at the airport, occupational and beverage licenses, and race track receipts); State v. City of Miami, 72 So. 2d 655, 655 (Fla. 1954) (involving revenue certificates "payable solely from the revenues to be derived from leasing the warehouse"); State v. City of Key West, 14 So. 2d 707, 708 (Fla. 1943) (involving bonds "payable solely from the net revenues derived from the electric system and from no other source"); State v. Dade County, 200 So. 848, 849 (Fla. 1941) (involving revenue bonds "payable from net revenues of the causeway"); State v. City of Hollywood, 179 So. 721, 721 (Fla. 1938) (involving water-revenue certificates pledging revenues from the proposed waterworks system); Flint v. Duval County, 170 So. 587, 597-98 (Fla. 1936) (involving debentures to be paid from the "net receipts from tolls" on the bridge, rather than tax resources).

The City quotes part of the Commentary by Talbot "Sandy" D'Alemberte to Art. VII, Section 12 to support its claim that Medley stands for the proposition that ad valorem taxes may be used to fund bonds as long as these taxes are not directly pledged. Not only does the Commentary not say this, it can actually be relied upon to support this Court's decision in Strand. The Comment reads in part as follows:

> This section [section 12] was taken, with editorial amendments, from the Constitutional Revision Commission recommendation. It provides that local governmental units may issue bonds or other obligations funded by ad valorem tax resources maturing later than 12 twelve months after issuance if they are to finance or refinance the cost of state capital projects authorized by law and if they are approved by a freeholder election. (Emphasis added)

Other cases are also misinterpreted by the City to support its contention that a local government may "use" ad valorem revenues to pay bonds as long as these taxes are not directly pledged. State v. Orange County, 281 So.2d 310 (Fla. 1973), did not involve the pledge of ad valorem revenues, either directly or indirectly. Neither did Tucker v. Underdown, 356 So.2d 251 (Fla. 1978). Rianhard v. Port of Palm Beach District, 186 So.2d 503 (Fla. 1966), specifically found otherwise. The revenue certificates there were payable "solely from gross revenues of the port facilities". Admittedly, in Rianhard this Court did cite Medley stating "the incidental effect on use of ad valorem taxing power occasioned by pledging of other sources of revenue does not subject the bonds or revenue certificates to the

constitutional requirement." (Emphasis added). Id at 506. However, to argue that the Court has authorized "using ad valorem revenues" to support bonds or certificates of indebtedness is simply wrong.

Finally, none of these cases involve tax increment financing. On the contrary, they are revenue bonds supported with non ad valorem sources of revenue. Perhaps they prop up the argument than an incidental impact on ad valorem revenues is permissible, notwithstanding this Court's holdings in Volusia and Halifax. But nowhere in the bonding schemes discussed in these opinions will we find that ad valorem taxes are the measure of the bonds, or the only rational source of their repayment. In other words, beside Miami Beach and its few offspring, there is no case that supports tax increment financing.

C. Whether *Miami Beach* Appropriately Articulated and Applied the Referendum Requirement in the Context of the Redevelopment Act and Should Not be Overruled

This Court has twice since September issued opinions that reject the legal fiction sanctioned by Miami Beach. Even though the revised opinion is technically not final, Bay County contends the Court was eminently correct in Strand. The premise upon which Miami Beach was based clearly "vitiates the primary interest" that Art. VII, Section 12 was meant to protect and it is time to realize this fact.

For the City to argue that there is a "bright-line" principal in our jurisprudence to support tax increment financing is simply incorrect. To claim that tax increment financing is merely a "measure" of the bond payment ignores reality. Only with tax increment financing is there no other source of revenue. Real property taxes are the measure and the source of the bond payment. Finally, it is simply disingenuous for the City to argue that under TIF, the tax increment received is not returned to the CRA by the County. It does not matter if the taxes are commingled with other non-ad valorem funds, or whether they pass through a conduit like a CRA agency. TIF constitutes a scheme to support "*bonds. . . payable from ad valorem taxes.*", which is unconstitutional unless there has been a referendum approving the bonds.

D. Whether this Court's Decision in *Miami Beach* Represents the Majority Rule and Was Not an Error in Legal Thinking

The City claims that the difference between a constitutional bond and an unconstitutional bond is simply whether the bondholders bear the risk that the project will fail. It submits there is a "bright-line principle" purportedly "developed by this Court over the past decades" that focuses on whether the "transaction directly or indirectly obligate(s) the government to impose taxes in order to support the debt obligations".

The City cites no case that even mentions this so called "bright-line principle". Moreover, the principle is also at odds with this Court's recent construction of Art. VII, Section 12, Fla. Const. in Strand that it is not just the power to levy ad valorem taxation, but also the ad valorem tax revenues themselves that are the subject of the referendum requirement. The City's argument also ignores reality. Here the City is the "issuer" of these bonds. Cedar Grove will presumably enter into contracts with third persons to perform capital projects in the CRA and satisfy these contracts with bond proceeds. If the TIF revenues are not in the CRA Trust Fund, it would seem reasonable to assume that the City would want to meet its obligations to its contractors and also pay off the bonds. As this Court noted in Nohrr v. Brevard County Educational Facilities Authority, 247 So. 2d 304 (Fla. 1971), in some instances "the county or the legislature would feel morally compelled to levy taxes or to appropriate funds" to satisfy its bond obligations.[4] Id at 311. (Emphasis added)

Finally, this Court should be reminded that the County, as well as the City, is a "taxing authority" that must pay tax increment revenues to the City's CRA Trust. The County is legally compelled by Section 163.387(2)(a), Fla. Stat. (2006), to "*appropriate to the trust fund. . . a sum no less than the increment. . . accruing to such taxing authority*" every year as long as the bonds are outstanding.

[4] Nohrr was receded from on other grounds by this Court in Wilson v. Palm Beach Housing Authority, 503 So. 2d 893 (Fla. 1987).

The legal fiction that tax increment revenues are not ad valorem taxes was exposed before this Court penned Strand. Having addressed the dissent of Justice Boyd in the Miami Beach case, Bay County would note Justice Shaw's dissent in State v. Daytona Beach, 484 So. 2d 1214 (Fla. 1986), where he wrote:

> Pledging ad valorem taxes as payment for local bonds requires a referendum vote by the electors. Art. VII, § 12(a), Fla. Const. Coining a new label "ad valorem tax increment" does not change the substance of the ad valorem taxes. They are still ad valorem taxes and a referendum is required before they are pledged to finance or refinance capital projects. Id at 1216.

In State ex rel City of Gainesville v. St. Johns River Water Management District, 408 So. 2d 1067 (1st DCA 1982), the court determined that the District could not be compelled to pay "tax increment appropriation" to a CRA. In doing so and admittedly in dicta, the court wrote:

> Petitioner has suggested that the § 163.387, Florida Statutes, ad valorem tax increment appropriation is merely a measurement formula which does not require the levy or allocation of ad valorem taxes, and which may be financed by funds from other sources. We are not persuaded by this argument, which ignores the financial realities of the tax increment appropriation imposed by § 163.387, and which attempts to accomplish indirectly that which may not constitutionally be done directly. . . . Id at 1069.

The City cites extra-jurisdictional cases for support, including Tribe v. Salt Lake City Corp., 540 P.2d 499 (Utah 1975). In Tribe, a two block area was the subject of a project that involved the construction of a parking facility, not hundreds of acres of residential and commercial development as in this instant

case. The tax increment from that new facility and the parking revenues it generated were used to support the bond. While the main issue in Tribe involved whether there was a political subdivision involved under the Utah Constitution, the Court did note that if it were not for the construction of the new parking lot, there would no increase in tax revenues. The case is not on point, because the CRAs here are not developing buildings or projects that will generate new ad valorem taxes. The bulk of the improvements supported by the bonds involve roads, drainage, sidewalks, etc. Also, what Utah allows is not controlling in Florida.

In State v. Dade, 234 So. 2d 651 (Fla. 1970), this Court held that under the 1968 Constitution, certificates of indebtedness could not be issued without approval of the voters. In doing so, it compared the 1968 Constitution to the 1930 version, stating as follows:

> The present Constitution is clearly more restrictive and expresses the will of the people that financial arrangements of the type formerly upheld in the Tapers v. Pichard line of cases be no longer permitted.[5]

In Boshen v. City of Clearwater, 777 So. 2d 958 (Fla. 2001), this Court found the referendum provision not applicable to a revenue bond supported with infrastructure taxes, stating as follows:

[5] This case was questioned on unrelated grounds in State v. Orange County, 281 So. 2d 310 (Fla. 1973), but it is still important for jettisoning Tapers v Pilchard, 169 So. 39 (Fla. 1936) and its progeny.

> Article VII, Section 12, authorizes municipalities to issue bonds to finance capital projects, but requires a referendum when the bonds are payable from ad valorem taxation. *See:* art. VII, § 12, Fla. Const. In the instant case, the funds for repayment of the bonds are derived solely from the pledged infrastructure tax revenues and do not include ad valorem taxes. (Emphasis added) Id at 963

Interestingly, the City did not cite this case, which is consistent with Strand's construction of Article VII, Section 12. Instead, the City focused on a case from Colorado, which did not even involve a referendum requirement.

The City claims Strand incorrectly construed Art. VII, Section 12 to apply to both the act of taxation and the tax itself. The City would have the Constitution limited only to instruments pledging the taxing power. This argument ignores the plain meaning of the Constitution and promotes an analysis that is not even grammatical. How can one make anything "*payable*" from the act of taxation or the power to tax? This Court was correct in Strand. The Constitution clearly prevents ad valorem tax revenues from being used to support bonds without a referendum.

The City correctly states that the Court must presume the Redevelopment Act to be valid and the "county must demonstrate it is unconstitutional beyond a reasonable doubt". First of all, the County is not asking this Court to hold the entire CRA statute unconstitutional. Only Section 163.387, Fla. Stat. (2006). Secondly, this Court has previously found "reasonable doubt" and rejected a statute authorizing bonds, stating, "if a legislature enactment conflicts with an

existing provision of the constitution, such enactment does not become a law. The intent of a constitution may be shown by the implications as well as by the words of express provisions." Nuveen v. Greer, 88 Fla. 249, 258; 102 So. 739 (Fla. 1924). The same analysis holds true in this case.

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

The City addressed the discussion in Strand about the 1968 Constitutional Revision Commission and mentioned that "committee members 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". If we are going to review law review articles to decide this case, the County advises reading Arnold L. Greenfield, *Flexibility and Fiscal Conservatism: Provisions of the 1978 Constitutional Revision Relating to Bond Financing*, 6 Fla. S. L. Rev. 821 (1978), wherein the author addressed the proposal to add a new Section 17 to Article VII, which would specifically authorize tax increment financing.

Noting the recent adoption of the Community Redevelopment Act, Chapter 77-391, Laws of Fla., the author wrote:

> However, there is some doubt as to whether such revenue bonds, none of which have been issued to date, can withstand the test of court validation absent a constitutional revision relating to this subject.

> Objections might otherwise be lodged under article VII, section 10, relating to lending public credit to private persons and corporations, and article VII, section 12 relating to the use of ad valorem tax funds to pay bond issues without a vote of the electors. This revision is designed to cure any such possible legal problems. Id at 836.

The City takes issue with this Court's statement in Strand that the "premise" underlying Miami Beach was wrong. That *"payable from ad valorem taxation"* means "only the pledge of ad valorem taxation power".

The County submits that this Court was correct in its interpretation of the Constitution in Strand. It would note that the terms "*taxes*" and "*taxation*", in relation to a referendum requirement, occur twice in Article VII and seem to be used interchangeably. See, Section 9(b), "*exclusive of taxes levied for the payment of bonds and taxes levied for periods not longer than two years when authorized by vote of the electors who are the owners of freeholds therein not wholly exempt*"; Section 12, "*payable from ad valorem taxation and maturing more than twelve months after issuance. . .*" (Emphasis added)

The terms "*tax*" and "*taxation*" also appear similarly treated in other sections of Art. VII. See, Section 1(a) ". . .*No state ad valorem taxes shall be levied upon real estate or tangible personal property. All other forms of taxation shall be preempted to the state except as provided by general law*", Section 1(b) "*Motor vehicles . . shall be subject to a license tax . . .but shall not be subject to ad valorem taxes*"; Section 2, "*All ad valorem taxation shall be at a uniform rate*

within each taxing unit, except the taxes on intangible personal property may be at different rates . . ."; Section 16(b) "*The bonds shall be secured by a pledge of and shall be payable primarily from all or any part of revenues to be derived from the financing, operation or sale of such facilities, mortgage or loan payments, and any other revenues or assets that may be legally available for such purposes derived from sources other than ad valorem taxation, including revenues from other facilities, or any combination thereof. . .*" (Emphasis added)

Thus, the "ad valorem tax" is as protected by the referendum requirement as "ad valorem taxation". This implies that the "bright-line" the City claims to see is simply not contained in the Constitution.

CONCLUSION.

Cedar Grove failed to hold two readings of the various resolutions approving the CRA, the CRA Plan, and the Bonds as required by Section 166.041(3), Fla. Stat. (2007). Therefore, the bonds should not be validated.

The resolutions creating the CRA Plan, the Interlocal Agreement, and which authorized the bonds, as well as Section 163.387, Fla. Stat. (2006), each provide that the increment of increase in County ad valorem taxes collected from the CRA shall be the amount the County must remit to the City, which will be placed in the Trust Fund to support the bonds. Tax increment financing and the bonds in this case authorize a scheme to support "*bonds. . . payable from ad valorem taxes. . ..*" This violates Art. VII, Section 12 of the Fla. Const. unless there has been a referendum approving the bonds.

For these reasons, this Court should invalidate the bonds, hold Section 163.387, Fla. Statute (2006) unconstitutional, and remand with instructions for the court to invalidate the resolutions and ordinances that authorize tax increment financing.

Respectfully submitted this ___ day of November 2007.

_____

Terrell K. Arline, Esq.
810 W. 11th Street
Panama City, FL 32401
(850) 784-6112
(850) 784-4026 fax
Fla. Bar. No. 306584
tarline@co.bay.fl.us
For Bay County, Appellant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to the persons below by U.S. Mail this ____day of November 2007.

_____
Terrell K. Arline

Christopher B. Roe, Esq.
Mark G. Lawson, Esq.
Theresa B. Proctor, Esq.
Frederick J. Springer, Esq.
101 North Monroe St., Ste. 900
Tallahassee, FL 32301

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

Michael S. Davis, Esq.
Bryant Miller Olive P.A.
201 North Franklin St., Ste. 2700
Tampa, FL 33602

William A. Lewis, Esq.
Office of the State Attorney
P.O. Box 1040
Panama City, Florida 32401

CERTIFICATE OF COMPLIANCE.

I Hereby Certify that this brief complies with the font requirements of Rule 9.210(a)(2), Fla. R. App. Pro.

_____
Terrell K. Arline