Select Committee to Protect Private Property Rights

Monday December 5, 2005
10:00 a.m.—12:00 p.m.
Morris Hall

Meeting Packet

Revised

Allan G. Bense
Speaker

Marco Rubio
Chair

The Florida House of Representatives

Select Committee to Protect Private Property Rights
Representative Marco Rubio, Chair

MEMORANDUM

To: Members of the Select Committee to Protect Private Property Rights
From: Tom Hamby, Staff Director
Date: November 28, 2005
Re: December 5th Meeting Packet

At the December 5th meeting, the Select Committee will continue its discussion of the policy issues listed on the Draft List of Policy Issues contained in the Meeting Packet for the November 8th Select Committee meeting.

Chair Rubio asked that I send you the attached policy matrices with interested parties' comments to assist you in your preparation for the December 5th meeting. The attached Word document includes responses to policy matrix 1 -- the first eight policy questions with interested parties' comments -- that were provided to you prior to the November 8th meeting. In addition, beginning on page 21, the document includes policy matrix 2 -- the remaining twenty-two policy questions with interested parties' comments.

Please call me at (850) 487-1342 if you have any questions regarding the attached materials.

1101 The Capitol, 402 South Monroe Street, Tallahassee, Florida 32399-1300

RESPONSES TO MATRIX 1

ISSUE 1

As a matter of general policy, is it appropriate for government to take private property for the purpose of eliminating, and then preventing the recurrence of, slum or blight conditions?

Respondent	Response to Issue 1
Walt Augustinowicz	No. A free market system will remedy these problems over time in much more just manner. All this would really do is remove "affordable housing". It would be nice to have a country with no slum and blight but we are not a socialist state. What we consider a slum is a palace to some.
Nancy E. Stroud, Weiss Serota Helfman Pastoriza	Yes, it is a time honored and legitimate function of local government and very important in assisting communities in redevelopment
Steve Lindorff, Director of Planning & Development, City of Jacksonville Beach	Yes.
Louis Roney	Only for infrastructure for public use
Douglas Sale, Panama City Beach CRA	Yes, where an adequate public purpose is served. Determination of public purpose is a legislative function.
Wade Hopping—Property Rights Coalition	Yes, provided "slum" and "blight" are appropriately defined by law.
S.W. Moore and John W. Little—Brigham Moore	Yes, if public health, safety and welfare require the elimination of slum / blight, then a taking may be warranted. No, if the rationale for the taking is "prevention" or to achieve an un-necessary, but, simply desirable goal.
Florida League of Cities	Yes. Eliminating, and then preventing the recurrence of, slum or blight conditions serves a proper public purpose, as determined through the legislative process.
Bradley S. Gould, Esq.	Yes, it is appropriate for the government to take private property for the purpose of eliminating slum or blighted conditions in order to protect the public health, safety, and welfare. The underlying rationale of such takings should be to eliminate horrible living conditions that cause the spread of disease and crime. The government should not take private property if the taking is to prevent slum or blight conditions or to achieve redevelopment.

Responses received have been input verbatim

Respondent	Response to Issue 1
Florida Association of Counties	Depending on the circumstances, yes. As a matter of last resort, eminent domain can be appropriate to eradicate slum or blight and to prevent its recurrence. When condemned property is shown to have created a menace to public health, safety and welfare of other citizens or when permanent, inherent and fundamental defects in land render the land dysfunctional and disportionately burdensome to other citizens, eminent domain may be appropriate. In addition, the condemning authority may have some obligation to prevent the recurrence of the conditions that led to the slum or blight conditions and the need for its eradication.
Bill Van Allen, Jr.	No. One man's affordable housing is another man's blight or eyesore. As long as individuality exists, utopia is not an option.

Respondent	Response to Issue 1
Andrew P. Brigham and Amy Boulris—Brigham Moore	Yes, if public health, safety, morals, and welfare require the elimination of slum or blight, then a taking may be held constitutional. No, if the slum or blight is dubious and used only as a pretext for economic development. Such a response returns to the understanding that in order for a taking to be justified there needs to be a showing that the taking of private property advances a traditional government function or eliminates a social harm. The general policy hereby advocated is that which (1) fosters a limited view of what is or isn't a traditional goverment function and (2) relates the purported taking in this instance as eliminating a social harm. The social harm is that an area in question suffers from genuine slum or blighted conditions and an involuntary taking of private property is reasonably necessary to eliminate such conditions. It follows that if slum and blight are genuine, then the predominance of public purpose over private gain is manifest as the emphasis is on remedying the existing condition. The "devil" in this policy area is "in the details." Unless "slum" and "blight" are carefully defined and capable of objective measurement, the terms can become mere justifying labels for taking of property when it is merely desired by some to upgrade its utility for economic stimulus or when a private interest has exerted political influence on a condemning authority to assemble the land for predominantly private entrepreneurial gain. All re-development will increase tax base and create jobs, etc. - so even when a private entity is the main beneficiary of a redevelopment, some "public benefit" can be claimed. If the triggering definitions of slum or blight are too loose or overbroad, the risk increases that takings for private re-conveyance will occur when there really is no social evil to redress. Please refer to the FLORIDA REDEVELOPMENT REFORM (Second Draft Revisions) submitted by Brigham Moore, LLP, **§163.335**; **§163.340**; §163.355; §163.360; §163.370; **§163.375**; **§127.01**; **§166.411**.

ISSUE 2

If it is appropriate to take private property for the purpose of eliminating and then preventing the recurrence of slum or blight conditions, is it appropriate for government to transfer ownership or control of the taken property to another private entity for the purpose of redeveloping the property? If so, under what circumstances?

Respondent	Response to Issue 2
Walt Augustinowicz	No. Never.
Nancy E. Stroud, Weiss Serota Helfman Pastoriza	In certain circumstances, the use of public private partnerships are very effective and serve important public purposes. This should happen only as a result of a very transparent process with full opportunity for public participation and substantiated by adequate studies to show the effectiveness to serve the public purpose.
Steve Lindorff, Director of Planning & Development, City of Jacksonville Beach	Yes, it is, provided that the express intent is the removal or prevention of slums or blighting conditions. As a practical matter, when a unit of local government is engaged in a redevelopment activity, it would seem be inappropriate for the government to engage in a development activity in direct competition with private enterprise. Development by the government should be limited to constructing the public facilities necessary to support the balance of the redevelopment by private enterprise.
Louis Roney	NO -- ABSOLUTELY NOT – this is plainly dishonest subterfuge
Douglas Sale, Panama City Beach CRA	See No. 1. At time of a private-to-private taking, local legislative body should find property "material" (or other similar word) to re-development effort based on competent substantial evidence in quasi judicial hearing, and additional compensation should be paid.
Wade Hopping—Property Rights Coalition	This is a harder question to answer. If you answer yes, you start down a slippery slope of what the limits are that you must impose to keep this practice from becoming a ruse for taking property from one private party to give to another private party. If you answer no, you limit the ultimate use of the property taken to governmental uses. As of today, we are inclined to a very cautious and qualified yes answer.
S.W. Moore and John W. Little—Brigham Moore	Private ownership to achieve the elimination of blight or slum is not, in itself, unconstitutional; if and only if the true purpose of the taking is to eliminate slum / blight. A taking and subsequent transfer to a private entity under the rationale of "prevention" or "economic development" should not be permitted.

Respondent	Response to Issue 2
Florida League of Cities	Florida's Community Redevelopment Act expressly acknowledges and encourages the use of private enterprise as a tool, not the objective, of redevelopment. In the context of a taking for an eventual private-to-private transfer of property, the Florida League of Cities has proposed heightened procedural and substantive protections for property owners. In summary, require extraordinary notice and opportunities for property owners' participation at the beginning of redevelopment activities, for takings require a local legislative body to determine property is "essential" (or other appropriate standard) to redevelopment plan goals at a quasi-judicial hearing, and require extraordinary compensation.
Bradley S. Gould, Esq.	The transfer of ownership to a private party is not unconstitutional as long its true purpose is to eliminate slum or blighted conditions. However, a taking and subsequent transfer of ownership to a private party for the purposes of prevention or "economic redevelopment" should be illegal and prohibited.
Florida Association of Counties	Depending on the circumstances, yes. When the bona fide primary purpose of the taking is to eradicate the slum or blight and to then prevent its recurrence, the fact that the redevelopment activities in furtherance of that purpose are carried out by private entities is incidental to the primary public purpose. Such a circumstance would not negate the primary and valid public purpose of slum or blight eradication and subsequent prevention. For example, if a CRA sought to eradicate bona fide residential slum conditions and uses the power of eminent domain to fully achieve that purpose, whether the land is ultimately rebuilt with a publicly-owned and controlled facility, like a public housing agency or whether the same facility is provided by a private housing provider could be incidental to the purpose of slum eradication.
Bill Van Allen, Jr.	It is never appropriate for the right to property guaranteed by the Florida Constitution to be abridged by government, no matter what the reason.

Respondent	Response to Issue 2
Andrew P. Brigham and Amy Boulris—Brigham Moore	The predicate in the first part of the preceding question is the condition precedent which justifies the taking. Only when the taking is for the purpose of eliminating slum or blight is a transfer from one private entity to another warranted. The legal test is whether there is a predominance of public, over private, purpose. The benefits to the public should not be merely incidental when compared to the private gain. The cart must always precede the horse. If there is no genuine slum or blight, then there should not be a taking because the tail would be wagging the dog. If there is genuine slum or blight, then not only may the property be taken, but title may be transferred but only as a means to achieve the legitimate end of eliminating slum or blight. In this sense, there should never be a taking and subsequent transfer of private ownership wherein the predominate purpose is to advance econonmic development rather than to eliminate slum or blight. Please refer to the FLORIDA REDEVELOPMENT REFORM (Second Draft Revisions) submitted by Brigham Moore, LLP, **§163.335**; **§163.340**; §163.355; §163.360; **§163.370**; **§163.375**; **§127.01**; **§166.411**.

ISSUE 3

If it is appropriate to take private property for the purpose of eliminating and then preventing the recurrence of slum or blight conditions, is it sufficient for the overall area of the community redevelopment district to meet the definitions of "slum area" or "blight area" or should the parcel being taken or the surrounding area meet these definitions?

Respondent	Response to Issue 3
Walt Augustinowicz	It is not appropriate but if you deemed it so the parcel being taken should have to meet the definition.
Nancy E. Stroud, Weiss Serota Helfman Pastoriza	The redevelopment of slum and blighted areas can only occur effectively in a comprehensive fashion; parcels that are related to one another and which are part of the redevelopment plan must be planned and redeveloped together. Piecemeal redevelopment is self defeating
Steve Lindorff, Director of Planning & Development, City of Jacksonville Beach	For some 50 years, based on Berman v. Parker, it has been understood that there might be some properties that are not slums or blighted, but that the need for redeveloping the overall area could involve the assembly of some of those properties. The effective implementation of an adopted plan could significantly hampered if it was necessary to "work around" a property that was not blighted *per se.*
Louis Roney	Taking of property must be exclusive to actual parcel proved by law to be blighted
Douglas Sale, Panama City Beach CRA	Issue should not be whether parcel condemned is itself blighted; issue is weather at time of take the parcel is necessary to implement the redevelopment plan and achieve the underlying legislative purpose. See 8 below. Property owners should have the opiton of redeveloping their own parcels unless redevelopment plan requires assembling parcels into unified tract. Sometimes assembly is critical or unavoidable and without eminent domain a single holdout is given veto power over a legitimate public purpose.
Wade Hopping—Property Rights Coalition	The parcel being taken should meet the definitions.
S.W. Moore and John W. Little—Brigham Moore	The surrounding area, if truly a slum or blighted area, should support a taking of a particular parcel within that area, even if that individual parcel is not within the definition of slum or blight. However the broad "overall area" designation is too expansive to support a condemnation of an un-blighted parcel. There must be some definitive or objective parameters to the "slum / blighted" area.

Respondent	Response to Issue 3
Florida League of Cities	Under the various circumstances that exist in Florida's extremely diverse communities, local governments require a reasonable community redevelopment statutory framework in which to make legislative determinations that factors have been met to declare an overall area as either slum or blighted. Community redevelopment powers must then be exercised based upon achieving overall area redevelopment goals. Because of the interdependence of tax increment financing, land assembly, possible exercises of the power of eminent domain, and private enterprise participation in redevelopment activities, redevelopment powers must be based upon overall area considerations. Land assembly may be fundamental to achieving tax increment financing, private enterprise participation, etc., and hold out property owners should not be positioned to defeat overall area redevelopment goals.
Bradley S. Gould, Esq.	To warrant the use of the powers of eminent domain, the surrounding area must meet the criteria for slum or blight. However, a particular property does not necessarily have to meet the criteria for slum or blight to be taken so long as the property is necessary to eliminate the slum or blight conditions of the surrounding area and is an integral part of the redevelopment plan. "Overall area" is to expansive to support the condemnation of an un-blighted parcel. There must be some objective and definitive parameters for the slum or blighted area.
Florida Association of Counties	A parcel-specific slum or blight examination for purposes of eminent domain could completely undermine the public investment in the CRA by rendering the adopted redevelopment plan unattainable, particularly if the parcel is critical to the implementation of the plan. However, a "surrounding area" examination for slum or blight for purposes of eminent domain may strike an appropriate balance between protecting private property rights and allowing the public investment in the redevelopment plan to continue.
Bill Van Allen, Jr.	It is not appropriate to take private property under these conditions. In any exercise of eminent domain, the property taken should be of the smallest area definable.

Respondent	Response to Issue 3
Andrew P. Brigham and Amy Boulris—Brigham Moore	Under Florida law, at present, it is conceivable that an "unblighted" property may be taken to eliminate slum or blighted conditions of the surrounding area. Specifically, existing law does not permit an owner to challenge a taking based on "pinpointing" or asserting that his or her individual property is not blighted. Notwithstanding, while an owner may not assert a defense requiring the government to "pinpoint" blight, there is no present requirement on government to show to what extent slum or blight conditions exist so as to establish the boundaries of an "area." This allows "unblighted" neighborhoods to be combined with "blighted" neighborhoods into one "area" so long as statistically some factors of blight exist. It is strongly advocated that less stringent requirements are needed with regard to establishing an area for tax increment financing, but that more stringent requirements are needed if contemplating the use of the eminent domain power. Please refer to the FLORIDA REDEVELOPMENT REFORM (Second Draft Revisions) submitted by Brigham Moore, LLP, **§163.340**.

ISSUE 4

For the purpose of exercising the power of eminent domain, are changes to the statutory definitions of "slum area" in Florida's Community Redevelopment Act necessary to more clearly define conditions sufficient to justify taking of private property for the public purpose of eliminating and then preventing the recurrence of slum conditions? If changes are necessary, in general terms, what conditions should be present in order to justify a taking?

Respondent	Response to Issue 4
Walt Augustinowicz	Yes. The slum definitions should only include a health hazard or safety hazard to the people. And a health hazard should not just be a house with a septic system instead of city sewer. In Sarasota County, the county spilled more sewage last year than all the tanks combined.
Nancy E. Stroud, Weiss Serota Helfman Pastoriza	No changes are necessary, as the criteria have been recently strengthened
Steve Lindorff, Director of Planning & Development, City of Jacksonville Beach	I believe that the current definitions adequately define the circumstances that must be present in order for an area to be declared blighted and in need of redevelopment. As I've stated previously, if the Legislature believes it is necessary, I would not have a problem with adding a prohibition of using "economic development" as an original reason for using eminent domain to assemble property for redevelopment.
Louis Roney	EXACT conditions must be specified by statute. No stretching of ambiguous terms should be allowed.
Douglas Sale, Panama City Beach CRA	No. In general terms, the following conditions should be present to justify a taking: "physical or economic conditions conductive to disease, infant mortality, poverty and crime." Of course, this is the introduction to the current definition. Current specific criteria are narrow and acceptable.
Wade Hopping—Property Rights Coalition	The "slum area" definition is adequate.
S.W. Moore and John W. Little—Brigham Moore	Yes, changes are necessary. "Slum" should be a more objective, quantifiable term for purpose of eminent domain; but not necessarly for voluntary "tax increment financing" acquisitions. Please refer to the FLORIDA REDEVELOPMENT REFORM (Second Draft Revisions) submitted by Brigham Moore, LLP, at pages 9 - 13 for specific suggested changes to the statutory definitions.

Respondent	Response to Issue 4
Florida League of Cities	A dual or "bifurcated" process whereby a determination of slum or blight is made for the purpose of eminent domain, and a separate determination (possibly using different standards) is used to determine slum or blight for other community redevelopment purposes (for instance tax increment financing) will be impracticable. Because of the interdependence of successful tax increment financing, land assembly, possible exercises of eminent domain, and private enterprise participation, a single statutory definition of "slum area" should apply in context to all community redevelopment powers and activities. The current statutory definition and factors to determine "slum area" are sufficiently narrow in scope.
Bradley S. Gould, Esq	Yes, changes are needed. "Slum" should be more objective, measurable, and quantifiable through standards involving the comprehensive plan, local building codes, and local, state, and federal safety laws for purposes of utilizing the power of eminent domain.
Florida Association of Counties	For purposes of eminent domain, unless the data on Florida's CRAs shows that CRAs, created for slum eradication, are creating concerns for private property owners, the definition of "slum" may not need to change. However, if the need exists to alter the CRA definition of "slum," potential changes could include requiring an affirmative showing of the definitional elements of "slum." In addition, the language that the slum area is a menace to the health, safety and welfare of the locality could be added to the definitional elements and requirements.
Bill Van Allen, Jr.	Yes. The definition of slum should only include an imminent danger to others, such as a house that's structurally unfit for habitation. "Public interest" is insufficient warrant, and "public use" should be limited to rights-of-way, and ED used ONLY as a last resort.

Respondent	Response to Issue 4
Andrew P. Brigham and Amy Boulris—Brigham Moore	There are two signficant reasons why the statutory definitions of "slum area" in Florida's Community Redevelopment Act require change. First, the desire of local governments to establish redevelopment areas (areas that are designated either slum or blight) has grown because of the success of tax increment financing as a tool to advance redevelopment. Unfortunately, lowering the definitional threshold of slum or blight to allow tax increment financing has also lowered the threshold for eminent domain. Moreover, a unitary threshold requires that an owner challenge the slum or blight designation that undergirds the entirety of public financing within a CRA, not just the particular exercise of the eminent domain power. Thus, a condemning authority only need argue that if the court finds public purpose lacking, such a ruling not only denies the taking, but voids the entire financing mechanism. Under this rubric, slum or blight is not reviewed at the time of taking, but is tied to the point in time referenced by the blight designation itself. The remedy for this first ill is to uncouple the definitional threshold of slum and blight for tax increment financing from that required when contemplating the use of the eminent domain power. Second, because the present factors for slum and blight are vague and ambigous, courts apply a policy of judicial restraint ("legislative deference" or "presumption of correctness") to prior decisions of local government. Thus, any vague or ambigous term is left for the local government's discretion. (This, of course, echoes Kelo). Such policy of judicial restraint comes from the confusion over the standard of judicial review. At present, it is only in the context of redevelopment takings that the courts depart from original jurisdictional review and revert to a deferential appellate review of a lower tribunal (local goverment). This is similar to the review given to a quasi-legislative or quasi-judicial land use decision where eminent domain taking of private property, a constitutional fundamental right, is not involved. The cure to this second ill is to not leave the factors of slum and blight vague and ambiguous when used for eminent domain; there needs to be specific, measurable criteria that expressly limit the use of eminent domain except upon clear and convincing evidence presented before a court with original jurisdiction. It is helpful to distinguish a general finding of necessity from a specific finding of necessity. Please refer to the FLORIDA REDEVELOPMENT REFORM (Second Draft Revisions) submitted by Brigham Moore, LLP, **§163.340**; **§163.355**; **§163.375**.

ISSUE 5

For the purpose of exercising the power of eminent domain, are changes to the statutory definitions of "blight areas" in Florida's Community Redevelopment Act necessary to more clearly define conditions sufficient to justify taking of private property for the public purpose of eliminating and then preventing the recurrence of blight conditions? If changes are necessary, in general terms, what conditions should be present in order to justify a taking?

Respondent	Response to Issue 5
Walt Augustinowicz	Yes. The blight definition should be discarded all together. Roads with grass growing through them because the government authority has not maintained them should not qualify. Also, what a government authority now deems as bad planning but once approved should also not be a reason for declaring blight.
Nancy E. Stroud, Weiss Serota Helfman Pastoriza	Changes are not necessary. The current constitutional law and statutes protect against illegal takings.
Steve Lindorff, Director of Planning & Development, City of Jacksonville Beach	No changes are needed.
Louis Roney	Wherever statutes are not precise, they should be changed to insure precision.
Douglas Sale, Panama City Beach CRA	Yes, specific criteria could be tightened. In general terms, the following conditions should be present to justify a taking: "deteriorate, or deteriorating structures leading to econimic distress or danger to life and property." Of course, this is the introduction to the current definition. However, current specific criteria could be tightened, but are not being abused, or used other than to serve the public purposes they were intended to advance.
Wade Hopping—Property Rights Coalition	The "blighted area" 14 specific factors and the catchall tax authority criteria is too broad to support the taking of private property. For specific proposals, see the 11/8/05 Property Rights Coalition's (PRC) attached proposals.
S.W. Moore and John W. Little—Brigham Moore	See answer #4. What is needed are specific, measurable criteria for condemnation; while maintaining the lesser, subjective criteria for all other purposes.
Florida League of Cities	See response to Question 4. While maintaining the community redevelopment process as a viable, affordable, and workable tool to address local public policy concerns of slum or blight, the Florida League of Cities would consider redefining the statutory definition of "blight area" to address specific concerns with current blight determination factors. Revisions could include grouping factors and requiring specified determinations, requiring a specified number of factors to be met, requiring threshold percentages of specified factors, etc.

Respondent	Response to Issue 5
Bradley S. Gould, Esq	Yes, changes are needed. "Blight" should be more objective, measurable, and quantifiable through standards involving the comprehensive plan, local building codes, and local, state, and federal safety laws for purposes of utilizing the power of eminent domain.
Florida Association of Counties	For purposes of eminent domain, a taking to eradicate blight could be required to include a showing that the property or its surrounding area is a menace to the health, safety and welfare to the locality; the taking could be required to show not just a "substantial number" of deteriorated structures but that a "predominance of" structures meet the statutory criteria; and the taking could be required to show more factors than the law currently requires. In addition, the current statutory factors for blight could be reexamined for their policy significance and their appropriateness of use for designating an area as blighted. Finally, as for suggestions on the creation of CRAs generally, see the response to question 7 below.
Bill Van Allen, Jr.	Yes. One man's eyesore is another man's affordable housing, so blight should be eliminated as an excuse to exercise ED. Lack of modernity (e.g. aging properties) is one way that the free market allows for affordable housing, and their elimination causes more problems than it fixes.
Andrew P. Brigham and Amy Boulris—Brigham Moore	See answer #4. What is needed are specific, measurable criteria for condemnation; while maintaining the lesser, subjective criteria for all other purposes. Addtionally, there is need within the existing statute to distinguish between a general finding of necessity for redevelopment powers apart from eminent domain from a specific finding of necessity which is a condition precedent for a proposed taking. Please refer to the FLORIDA REDEVELOPMENT REFORM (Second Draft Revisions) submitted by Brigham Moore, LLP, **§163.340**; **§163.355**; **§163.375**.

ISSUE 6

If the definitions of "slum area" and "blighted area" are revised for purposes of taking property by eminent domain, should the revised definition apply to existing CRA's in future attempts to take property?

Respondent	Response to Issue 6
Walt Augustinowicz	Yes.
Nancy E. Stroud, Weiss Serota Helfman Pastoriza	If this question is asking whether the definitions should be applied retroactively to existing CRAs, they should not be
Steve Lindorff, Director of Planning & Development, City of Jacksonville Beach	Some consideration should be given to CRA's who are invested in carrying out a redevelopment project to an extent where limiting their use of eminent domain could be costly, e.g., entered into a binding acquisition and development agreement, incurred debt, etc.
Louis Roney	Properly worded, up-to-date statute definitions should be applied to all previously existion CRA's
Douglas Sale, Panama City Beach CRA	Depends upon extent of change and effect on adopted plan. Current plans made in good faith under current law should not be frustrated, but if at time of take property not needed for existing plan, then should not be condemned. See Nos. 2 & 8. Additional procedural protections and compensation should apply wherever possible.
Wade Hopping—Property Rights Coalition	Yes.
S.W. Moore and John W. Little—Brigham Moore	Yes. It is the "future" takings of a citizen's private property that must be safeguarded. Failure to protect the owner within existing CRA's would negate the importance of the revised legislation.
Florida League of Cities	See response to Question 4. Any revised definitions of "slum area" or "blighted area" should apply for all community redevelopment powers and activities. Therefore, any revisions to the definitions of "slum area" or "blighted area" may require only prospective application due to impacts upon existing redevelopment plans and activities. However, proposed heightened procedural and substantive protections should apply as appropriate (See Question 2).
Bradley S. Gould, Esq	Yes. Revisions to the definitions of slum or blight should apply to existing CRAs for all future takings. Otherwise only a few property owners would benefit from the revised legislation.
Florida Association of Counties	Yes, but a balance should be struck so as to not undermine the public investment in existing CRAs completely.
Bill Van Allen, Jr.	Absolutely.

Respondent	Response to Issue 6
Andrew P. Brigham and Amy Boulris—Brigham Moore	Yes. It is the "future" takings of a citizen's private property that must be safeguarded. Failure to protect the owner within existing CRA's would negate the importance of the revised legislation. Thus, any revision to the statutory provisions should uphold previously adopted blight designations for the purpose of a local government exercising redevelopment powers other than eminent domain within an existing CRA, but require that "future" takings comply with the revised legislation and require that factors of slum or blight exist at the time of taking. "Future" takings should include both cases in which the courts have not yet rendered an order of taking and also those cases yet pending appellate review.

ISSUE 7

If the definitions of "slum area" and "blighted area" are revised with respect to takings, should the new definitions also apply to designations of slum or blighted areas in the creation of future CRAs or the expansion of existing CRA boundaries?

Respondent	Response to Issue 7
Walt Augustinowicz	Yes.
Nancy E. Stroud, Weiss Serota Helfman Pastoriza	No response
Steve Lindorff, Director of Planning & Development, City of Jacksonville Beach	Yes.
Louis Roney	If revised definitions are precise and protect propertry owners as intended, they should, of course, be applied to all new CRA's and expansions of existing CRA's
Douglas Sale, Panama City Beach CRA	No. Increment financing has broader applicaton than eminent domain. Witness number of existing CRA's not involved in condemnations. But bifurcation of definitions unworkable and not necessary if extra procedural protection and compensation provided for private to private takes.
Wade Hopping—Property Rights Coaltion	Yes, but see the PRC's 11/8/05 proposals attached.
S.W. Moore and John W. Little—Brigham Moore	There should be a demarcation between the strict, precise slum / blight definitions for eminent domain, and the more lenient definition for all other purposes - whether in existing or future CRA's.
Florida League of Cities	See response to Question 4. Any revised definitions of "slum area" or "blighted area" should apply for all community redevelopment powers and activities. Application of any new definitions should not impact planned redevelopment activities or tax increment financing. A dual or "bifurcated" system is not necessary with the provision of heightened procedural and substantive protections (See Question 2).
Bradley S. Gould, Esq.	The revised definitions of slum or blight should apply to the use of the power of eminent domain, but not for other purposes under Chapter 163.

Respondent	Response to Issue 7
Florida Association of Counties	If certain other inherent issues with CRAs are not addressed, as further explained in this answer, then any new definitions of slum or blight must also apply to the creation and expansion of CRAs. Current law allows CRAs to be created by municipalities in non-charter counties with no input from or oversight by the county although the county is required to contribute countywide taxpayer dollars to the CRA for periods as long as 40 years. The Florida Association of Counties believes that the Community Redevelopment Act does not provide an adequate check to this municipal power to appropriate county taxpayer dollars. In fact, very few requirements exist for the creation of a CRA that would work to limit the geographic size of the slum or blight area of a CRA. The bifurcation of the blight definition for purposes of tax increment financing and eminent domain will eliminate one of the few existing checks on the size of the CRA; that check is the private property owners' desire to not be subject to eminent domain under the CRA's powers. Without otherwise solving the issue of intergovernmental coordination and forced taxpayer contribution, any modification of slum and blight criteria must also apply to the creation and expansion of CRAs.
Bill Van Allen, Jr.	Absolutely.
Andrew P. Brigham and Amy Boulris—Brigham Moore	Again, if uncoupling tax increment financing from eminent domain, it is proposed that the definitional threshold needed to create a future CRA or expand the boundaries of an existing CRA changes very little and remains quite lenient. The only "tightening up" that occurs is that which makes more stringent the definitional threshold for the use of eminent domain as distinguished from other redevelopment powers.

ISSUE 8

If existing and future CRAs are required to comply with a more strict definition of slum or blighted area at the time of a taking, are other statutory changes necessary to limit the length of time that a slum or blight designation remains valid?

Respondent	Response to Issue 8
Walt Augustinowicz	Yes. Absolutely. We have CRAs using decades old declarations to take property today.
Nancy E. Stroud, Weiss Serota Helfman Pastoriza	An arbitrary time frame would defeat the purposes of redevelopment. Redeveloment plans should be required to be updated and revisited periodically, but no artificial time frame should be imposed. One size does not fit all.
Steve Lindorff, Director of Planning & Development, City of Jacksonville Beach	Community redevelopment is a vital and necessary endeavor. However, it cannot be carried out "on the clock." The present limit of thirty years fro tax increment districts is the minimum amount of time that should be reserved for carrying out an adopted redevelopment plan. There are too many market forces that can work to delay the best laid timeframe to carry the plan.
Louis Roney	New stricter statutes enacted at this time should remain in place until and if new statutes are enacted
Douglas Sale, Panama City Beach CRA	No. However, regardless of whether definitions are changed, the legislative determination to take should be made by the local government in a quasi-judicial hearing based upon competent substantial evidence after notice to the owner, and only upon a finding that at the time the determination to take is made the specific parcel is "material" (or similar word) to the redevelopment plan in its then current state of implementation. Just because the the determination of slum and blight must continue for the life of the redevelopment plan if financing is to be available, does not mean that the need to take any particular parcel (regardless of whther it is itself blighted) is necessary to implement the plan at a give point in time
Wade Hopping—Property Rights Coalition	Yes. See also the PRC's attached proposals.
S.W. Moore and John W. Little—Brigham Moore	Yes, a 7 year period is appropriate, and is consistent with that period applicable to a local comprehensive plan. No slum / blight designation should extend further than 7 years, if used to support a condemnation of private property.
Florida League of Cities	See response to Question 2. Based upon the Florida League of Cities' proposed heightened procedural and substantive protections to private property owners facing an exercise of eminent domain which will result in a private-to-private transfer of property, slum or blight determinations should exist for the entire duration of the community redevelopment process. Maintaining slum or blight determinations provides for the long-term financing mechanism for redevelopment activities, and such determinations in themselves do not mean a particular parcel is necessary to implement a redevelopment plan.

Respondent	Response to Issue 8
Bradley S. Gould, Esq.	Yes. A slum or blight designation should only apply for purposes of eminent domain for a 7 year period,. This period is consistent with the 7 year period for local comprehensive plans.
Florida Association of Counties	Current law provides no required sunset on the life of the CRA and therefore, no expiration on the initial finding of slum or blight. The only restrictions that exist are on the length of time for the tax increment financing bonds and consequently for the length of time that the taxing authorities that did not create the CRA must contribute its tax increment. In light of the potential perpetual existence of the slum or blight findings, it may be appropriate to consider sunsetting other powers of a CRA.
Bill Van Allen, Jr.	Yes, without question.
Andrew P. Brigham and Amy Boulris—Brigham Moore	Yes, a 7 year period is appropriate, and is consistent with that period applicable to a local comprehensive plan (evaluation and appraisal reporting). However, if uncoupling tax increment financing from eminent domain, then the question of whether factors of slum and blight exist is to be referenced to specific necessity at the time of taking and not to the blight designation that established a general necessity for other redevleopment powers. Please refer to the FLORIDA REDEVELOPMENT REFORM (Second Draft Revisions) submitted by Brigham Moore, LLP, **§163.340**; **§163.355**; **§163.375**.

RESPONSES TO MATRIX 2

ISSUE 9

Does the current method of calculating compensation fairly compensate private landowners for taken property?

Respondent	Response to Issue 9
Dino Paspalakis	No. First of all, homeowners and businesses are originally offered just a little more than assessed value, and "business income" is not considered in an eminent domain preceding.
Louis Roney	Compensation is fair ONLY if it matches or betters present market price
Wade Hopping-Property Rights Coalition	We do not believe that the current system accomplishes this and suggest that in the CRA context, compensation should include all relocation costs in a manner similar to how those relocation costs are treated under the Federal Relocation Act. It should further define full compensation to include the replacement cost of any housing or buildings in order to offset the economic losses to private property owners for the facilities being taken. We should keep in mind that if a property's fair market value is $200,000 but it will cost the owner, in the CRA context, $400,000 to replace that property or building, they should not only be compensated for the $200,000 but also for the replacement cost of the relocated facility.
Douglas Sale, Panama City Beach CRA	Yes, for public-use takes. However, when it is necessary to take property and reconvey to another in order to energize private investment to eliminate slum or blight (a public purpose), the consensus appears to be that extraordinary compensation should be paid because, at the end of the day, the property is not actually being used by the public.
Florida League of Cities	For a taking which will result in an eventual private-to-private transfer of the property, the Florida League of Cities has proposed requiring the payment of extraordinary compensation such as relocation costs and the payment of heightened extraordinary compensation if the property is homestead property. For public use takes, compensation is currently fair.
Florida Association of Counties	Yes, but see the answer to # 14 below. The Florida Constitution guarantees property owners the right to "full compensation" for their property that is taken by eminent domain. The "full compensation" guarantee includes payment for the fair market value of the property, severance damages where appropriate, moving costs, attorneys' fees, expert witness fees, and prejudgment interest. The amount of the full compensation is one of only two proceedings in Florida that is determined by a 12-member jury.

Respondent	Response to Issue 9
Bradley S. Gould, Esq.	No. Private landowners must be paid full compensation for a taking. Full compensation is the value of the property based upon its highest and best use. It should include the value of the property based upon assemblage and/or the use deemed appropriate by the CRA, local government and/or the private developer. Additionally, the value of the property should not be decreased due to the slum or blight conditions of the property or surrounding area unless the property owner is solely responsible for the slum / blight conditions.

ISSUE 10

Should business damages be paid for total takings of private commercial property?

Respondent	Response to Issue 10
Dino Paspalakis	Yes. Many people who face eminent domain have an establish clientele, and when their property is "taken", they cannot be relocated to a comparable location in the same market trade area
Louis Roney	" Business damages" reflecting an honest projection of expected sales and income should be included, to cover owners losses while finding a new location.
Wade Hopping-Property Rights Coalition	Yes
Douglas Sale, Panama City Beach CRA	Yes, as a part of relocation expense.
Florida League of Cities	See response to Question 9. Relocation costs could be extended to both residential and commercial properties.
Florida Association of Counties	Not as a specific discrete element of full compensation that is not already recognized under the law in Florida for establishing full compensation. The compensation that is paid is for the property that is taken. The activity that is conducted on the property may be relocated to other property and resumed.
Bradley S. Gould, Esq.	Yes. All business owners should be compensated business damages without consideration of whether it is a partial taking or a whole taking. Since many businesses operate on property that is not deemed "commercial property" such an award should not be limited to businesses on commercial property.

ISSUE 11

Should owners of taken property that may be transferred to another private property receive additional compensation if an increase in property value is anticipated due to the redevelopment project?

Respondent	Response to Issue 11
Dino Paspalakis	Yes. However, answering this question in the affirmative does not mean that I believe that property should ever be "taken" for private development purposes using the state's current "bogus blight" criteria.
Louis Roney	FIRST — such a sale & transfer to another private party should be disallowed. Such is the purpose of the ancient legal tradition of eminent domain. There CANNOT be compromise on this principle.
Wade Hopping-Property Rights Coalition	Intuitvely, the answer is yes, Unfortunately, that value is going to be difficult to calculate and provide. There is always the possibility that the new developer will have a loss. How does one determine what is an appropriate share of the additional compensation the property owner is entitled to? It may be enough to simply pay for relocation costs, replacement costs and other such cost factors rather than making the property owner a partner with the private developer assuming title to the property. Our answer to this question is in the context that it must be clear that the property was initially taken because it was slum or blighted and not for the purpose of transferring title from one private party to another private party for economic development purposes.
Douglas Sale, Panama City Beach CRA	No. Impossible to fairly and efficiently determine. Does question refer to theoretical "assembly value" or appreciation due to elimination of slum and blight?
Florida League of Cities	A proposal like this will encourage "holdout" property owners from participating in a voluntary land assembly process. A potential result would be that each property owner will holdout for an exercise of eminent domain. This would result in significant increases in costs and attorney's fees to the public. Also, this proposal would be impossible to fairly and efficiently determine.

Respondent	Response to Issue 11
Florida Association of Counties	Not as a specific, discrete element of full compensation that is not already recognized under the law in Florida for establishing full compensation. In the CRA context condemned property is often rezoned before it is put to the purpose of furthering the redevelopment plan. When property is likely to be rezoned after a taking, evidence of the highest and best use is admitted by the court and can include testimony on anticipated increases in property values because of the taking. In addition, Florida law has long held that when increases in the market value of the taken property are anticipated because of the proposed improvements to be made after the taking, evidence to that effect on the issue of market value is admissible. See Sunday v. Louisville & N.R. Co, 57 So. 351 (Fla. 1912); Dept. of Transportation v. Nalven, 455 So. 2d 310 (Fla. 1984).
Bradley S. Gould, Esq.	Yes. Property owners are to receive compensation based upon the value of their land at the highest and best use. This should include value based upon assemblage and use deemed appropriate by the CRA, local government, and/or the private developer.

ISSUE 12

In addition to the currently provided moving expenses, are there other relocation expenses that should be paid to property owners for takings of commercial or residential property?

Respondent	Response to Issue 12
Dino Paspalakis	Yes. The property owner should not be penalized for attempting to fight the "take. Therefore, if there is an increase in the value of the property from the time the Trial Court rules on the "take" to the time the property owner has a final ruling from the "Appellant Court", the property owner's compensation should be adjusted upward.
Louis Roney	YES. Remuneration should made to cover loss of income by the owners until they are properly resettled.
Wade Hopping-Property Rights Coalition	As previously stated, we believe that all relocation and replacement costs and expenses should be paid to the owners for both commercial and residential property that is being taken.
Douglas Sale, Panama City Beach CRA	Yes, but varied and complex issue. For example, what of a higher interest rate to purchase replacement property?
Florida League of Cities	See response to Question 9. Various forms of relocation expenses could be considered; however, relocation expenses would have to be justifiable and reasonable.
Florida Association of Counties	Not if the relocation expenses are an element of compensation that would not already be recognized under current law in establishing full compensation. For example, the federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 already requires relocation expense assistance for commercial and residential properties that are taken by the federal government or state and local governments when takings occurs as a result of a federally funded program or project.
Bradley S. Gould, Esq.	Property owners should be entitled to all relocation benefits that are provided by the state and the federal government.

ISSUE 13

Should a private homeowner receive "replacement" cost for taken homestead property, i.e., the amount required to purchase a comparable home?

Respondent	Response to Issue 13
Dino Paspalakis	Yes. However, answering this question in the affirmative, once again, does not mean that I believe that property should ever be "taken" for private development purposes using the state's current "bogus blight" criteria.
Louis Roney	YES
Wade Hopping-Property Rights Coalition	Yes. We also believe that commercial owners and other property owners should receive replacement costs when their property is being taken by eminent domain in the CRA context.
Douglas Sale, Panama City Beach CRA	Yes. Paying market value plus full relocation expenses (No. 12) plus Save Our Homes credit (No. 14) should cover.
Florida League of Cities	See response to Question 9. The Florida League of Cities has proposed in the context of a takings which will result in an eventual private-to-private transfer of property, heightened extraordinary compensation be paid if the property is homestead property. A possible example of heightened extraordinary compensation could be the payment of market value plus relocation expenses plus a Save Our Homes credit.
Florida Association of Counties	Not as a specific guarantee. Replacement cost may be examined in the appraisal process of determining fair market value, through comparable sales, and when such an examination is made, the evidence should come forward. But the measurement of fair market value should not be specifically and directly tied to replacement cost.
Bradley S. Gould, Esq.	Yes. This can be accomplished by changing the standard of full compensation or providing relocation benefits.

ISSUE 14

Should owners of taken homestead property be reimbursed for the cost of losing the Save Our Homes protection?

Respondent	Response to Issue 14
Dino Paspalakis	. Yes. However, answering this question in the affirmative, once again, does not mean that I believe that property should ever be "taken" for private development purposes using the state's current "bogus blight" criteria.
Louis Roney	YES
Wade Hopping-Property Rights Coalition	This would appear to be an excellent idea in order to make them whole and to carry out the constitutional mandate of full compensation.
Douglas Sale, Panama City Beach CRA	Yes, in the form of a one-time "credit" against new home taxable value in the amount of the difference between taxable value and fair market value of current home.
Florida League of Cities	See responses to Questions 9 and 13. A Save Our Homes credit should be in the form of a one-time "credit" against the new home taxable value, in the amount of the difference between the taxable value and fair market value of the current home.
Florida Association of Counties	The Florida Association of Counties believes that this is an area where equitable considerations for the property owner may be appropriate. Compensation for the lost constitutionally-generated benefit to the Save Our Homes protection may be an equitable consideration that could be discussed in the context of determining full compensation. The manner in which the lost benefit from the Save Our Homes would be calculated and the circumstances under which it would be applied are issues that remain to be discussed.
Bradley S. Gould, Esq.	Yes. This can be accomplished by changing the standard of full compensation or providing relocation benefits.

ISSUE 15

If a local government wishes to take private property for the purpose of eliminating and then preventing the recurrence of slum or blight conditions, and the property may be transferred to another private property, what should the government be required to demonstrate?

a. That the specific property is slum or blighted, that slum or blight conditions exist in the "immediate neighborhood" of the property sought to be acquired, or that slum or blight conditions existed at the time the community redevelopment area was initially created?
b. That the taking of the specific property achieves the public purpose of eliminating and then preventing the recurrence of slum or blight? That the public benefits predominate over incidental private gain at the time of the taking or some other standard?
c. That the parcel is "reasonably" necessary to achieve the public purpose of eliminating and then preventing the recurrence of slum or blight conditions or some higher standard?

Respondent	Response to Issue 15
Dino Paspalakis	Since I am not an attorney, I will agree with Dana Berliner, in which she stated "The conditions justifying taking property should be conditions that ordinary people think of as slum and blight-abandoned buildings, unrepaired code violations, nuisances, serious tax delinquencies, vermin infestation, and other, similar conditions
	[a.] Since I am not an attorney, I will, once again, agree with Dana Berliner, in which she stated "it is better to take only parcels that pose a threat to public health or safety. People who pioneer and develop in an area should not be punished for doing so. If Florida chooses to use whole areas, including nonharmful properties, then it should restrict takings to areas with a high percentage of conditions like abandonment".
	[b.] Since I am not an attorney, I will agree with Dana Berliner, in which she stated "The conditions justifying taking property should be conditions that ordinary people think of as slum and blight-abandoned buildings, unrepaired code violations, nuisances, serious tax delinquencies, vermin infestation, and other, similar conditions
	[c.] Since I am not an attorney, I will not comment on the "reasonable standard", but the definition of "blight" and "slum" does need to be redefined in a much more restrictive manner. See answer above..
Louis Roney	Such a transaction should be considered forever illegal.
	15a. 15b 15c. all such taking of property should be illegal

Respondent	Response to Issue 15
Wade Hopping-Property Rights Coalition	The key factor is that the government should be required to demonstrate by clear and convincing evidence that the necessity for the taking is based on the fact that the property is truly slum and blighted. They should have the burden of proof to satisfy the court that the property is not being taken for economic development purposes and that the property is essential to effectuate the redevelopment plan.
	[a.] The local government should be required to prove by clear and convincing evidence that the specific property is slum or blighted and that those are the current conditions of that property. It is important that that proof be tied to the time the property is proposed to be taken, not when the community redevelopment area was initially created (which may be several years in the past).
	[b.] The local government should have the burden of demonstrating that the public benefits predominate over incidental private gain. We suggest a two step process. Step one is a clear, clean and bright lined determination that there is slum and blight that needs to be remedied. Step two is a determination as to whether or not the public benefits predominate over incidental private gain.
	[c.] We believe that such a standard of reasonable necessity is subject to misinterpretation and too easy a standard to be met when a private property is being taken. With regard to all of #15, it is important to keep in mind that once the property is taken to eliminate or prevent the recurrence of slum and blight, then the local government will need to have a plan for its use. We suggest a high burden of proof for the actual taking so that there is a clear proof that the property is slum or blighted.
Douglas Sale, Panama City Beach CRA	The government should be required to prove that the property is material to the removal of slum or blighted conditions or to the accomplishment of the redevelopment plan. This means that the CRA finding of necessity OR the redevelopment plan AND any resolution authorizing the taking of a specific parcel under Chapter 163 Part III, must be specific enough for a court to decide, based upon a preponderance of the evidence, that the property to be taken is material to the redevelopment effort.
	[a.] No to all three. Community redevelopment under Chapter 163, Part III, is merely social engineering by a legislative body. The fact that an individual parcel is not blighted does not mean that the neighborhood is healthy or, more importantly, that in some very limited circumstances a healthy parcel is not truly needed to help a neighborhood turn around. Whether a neighborhood redevelopment area is blighted, and how to eliminate that blight, are legislative determinations to which the judiciary should defer unless arbitrary or capricious. Whether a particular parcel is needed to achieve community redevelopment at the time of the condemnation is another matter.

Respondent	Response to Issue 15
	[b.] Yes. By finding that the property is needed to accomplish community redevelopment, the court will be finding that the property is necessary to achieve the public purpose which is embodied in the resolution making the finding of necessity or in the redevelopment plan itself. That embodiment is a legislative function.
	[c.] Yes. This is part of the court finding that the property is needed to accomplish community redevelopment. See 15b.
Florida League of Cities	The Florida League of Cities has proposed that at an exercise of eminent domain proceeding where an eventual private-to-private transfer of the property will occur, the governing body be required to determine that each specific property subject to a private-to-private transfer is "essential" (or another appropriate standard) to the elimination of slum or blighted conditions or to achieve the goals and objectives of the community redevelopment plan. This determination can be made in a quasi-judicial hearing after notice to the owner and based upon competent substantial evidence presented in the record to the local governing body at the time of adopting the takings resolution for the particular parcel. This would become the record of which a judge would review to determine if the local government sufficiently demonstrated the need for the property.
	[a.] If an area is appropriately determined to be either slum or blighted by a local legislative body using set statutory factors for determination, the judiciary should defer to the legislative determination unless it is arbitrary or capricious. Once an area is appropriately determined to be slum or blighted, the Florida League of Cities has proposed a process (see response to Question 15) for a local governing body to determine that each specific property subject to a taking is "essential" to eliminate slum or blighted conditions or to achieve the goals and objectives of a community redevelopment plan. The test should not be that a particular parcel of property individually meets a determination of slum or blighted. Redevelopment activities are typically taken on a comprehensive neighborhood or area basis, and eliminating slum or blighted conditions prevalent in an entire area or achieving the goal of the redevelopment plan should not depend on characteristics of an individual parcel within the area.
	[b.] Yes. See responses to Questions 15 and 15a. The appropriate demonstration by a local government body should be that a taking of a specific property is "essential" to eliminate slum or blighted conditions or to achieve the goal of the redevelopment plan, which is the public purpose of eliminating and then preventing the recurrence of slum or blight.
	[c.] Yes. See responses to Questions 15a and 15b.
Florida Association of Counties	The current standard of Florida law: public purpose for the taking and reasonable necessity for the property. Full compensation would have to be paid as well.

Respondent	Response to Issue 15
	[a.] The condemning authority should not have to prove that the specific parcel individually meets the definition of slum or blight. Such a requirement could thwart the purpose for which the CRA was created and undermine its ability to execute the plan for eliminating and preventing slum or blight. A "surrounding area" test, however, may achieve the appropriate balance between protecting private property rights within the CRA and protecting the public taxpayers' investment in the plan.
	[b.] That the taking of the specific parcel is for a valid public purpose and that the property is reasonably necessary to achieve that purpose. In order for a purpose to meet the constitutional standard of "public purpose," the purpose must predominately be public and any private gain must only be incidental.
	[c.] In order to validly take a specific parcel, the property must be shown to be reasonably necessary for the public purpose for which it is being taken.
Bradley S. Gould, Esq.	The government should be required to demonstrate to the Court at a de novo hearing by clear and convincing evidence the slum/blight condition of the parcel and the reasonable necessity to condemn the owner's parcel. The Court should examine the CRA's or local government's allegations of public purpose and necessity with strict scrutiny. The Resolution of Necessity or Determination of Slum/Blight should not have any weight at the judicial hearing/trial on the issues of public purpose or necessity. Rather, the Resolution of Necessity or Determination of Slum/Blight is a condition precedent to initiate eminent domain.
	[a.] The government should be required to demonstrate that the specific property is slum or blighted. Property owners who have invested money and time in their property should not be penalized because their neighbors did not maintain their property or the local government contributed to the slum or blight conditions of the area.
	[b.] The taking of the specific property must achieve the public purpose of eliminating slum or blight. The public purpose must predominant and only have an incidental private use at the time of the taking.
	[c.] Yes. As part of reasonable necessity, CRAs or local governments should be required to prove that the redevelopment plan has reasonable certainty to achieve the public purpose and that it is not speculative and that the proposed uses are reasonably foreseeable. In traditional condemnations the public purpose is reasonably assured because the government — not the private developer — is responsible for achieving that purpose by building roads, schools, and other public infrastructure.

ISSUE 16

What burden of proof should apply when a CRA attempts to take private property if the property may be transferred to another private party? Competent and substantial evidence? Preponderance of evidence? Clear and convincing evidence?

Respondent	Response to Issue 16
Dino Paspalakis	Once again, I am not an attorney, but the strictest standard. However, answering this question in the affirmative does not mean that I believe that property should ever be "taken" for private development purposes using the state's current "bogus blight" criteria.
Louis Roney	The transaction itself is ILLEGAL
Wade Hopping-Property Rights Coalition	At a minimum, the burden of proof should be clear and convincing evidence. We have reservations about the idea that the property should be taken for transfer to another private party.
Douglas Sale, Panama City Beach CRA	Preponderance of the evidence that the specific parcel is material to achieving community redevelopment. See 15 and 17.
Florida League of Cities	The burden of proof should be a preponderance of the evidence that the specific property is "essential" to eliminate slum or blighted conditions or to achieve the goal of the redevelopment plan. See response to Question 15.
Florida Association of Counties	The same burden of proof for the exercise of the power of eminent domain. The inquiry is whether the taking is for a property public purpose and whether the property is reasonably necessary for that purpose. The condemning authority has the burden to show both elements. Upon such a showing, the property owner then has the opportunity to prove that the findings upon which the public purpose and reasonable necessity declarations were made are arbitrary. Whether the taken property will ultimately be held by private interests is a factor that is considered by the court in the totality of the circumstances but should not be the focus of the judicial inquiry.
Bradley S. Gould, Esq.	CRAs or local governments must establish by clear and convincing evidence the public purpose and necessity for the taking. Otherwise property owners do not have the ability to challenge or defend against the taking.

ISSUE 17

Should the decision by local government to take private property be subject to heightened judicial review if the property may be transferred to another private owner? In other words, should the "fairly debatable" standard currently applicable to local government legislative decisions to take private property be replaced with more stringent judicial review?

Respondent	Response to Issue 17
Dino Paspalakis	Yes. However, answering this question in the affirmative does not mean that I believe that property should ever be "taken" for private development purposes using the state's current "bogus blight" criteria.
Louis Roney	YES
Wade Hopping-Property Rights Coalition	The "fairly debatable" standard should not be applicable to local government's decisions to take private property. A standard more favorable to private property owners should be in place and at all levels. The local government should have the burden of proving the necessity of taking the property and the burden of proving the fact that the property is, in fact, slum or blighted.
Douglas Sale, Panama City Beach CRA	Yes. The government should be required to prove at the time of the take that the specific parcel is material to community redevelopment. The underlying determination that the neighborhood redevelopment area is blighted, and the plan to eliminate and then prevent the recurrence of blight, are legislative matters which the court should not disturb unless arbitrary or capricious.
Florida League of Cities	See responses to Questions 15 and 16. The local government should be required to show at the time of the take that the specific parcel is "essential" to eliminate slum or blighted conditions or to achieve the goal of the redevelopment plan. The underlying determination that the redevelopment area is either slum or blighted, and the plan to eliminate and then prevent the recurrence of slum or blight, are legislative matters which the court should not disturb unless arbitrary or capricious.
Florida Association of Counties	No. The judicial deference that is afforded legislative declarations, including declarations of public purpose and reasonable necessity are grounded in the separation of powers doctrine. The legislative body has the duty to make choices. Those choices are entitled to deference. The deference afforded, however, cannot make something a public purpose that is only a private purpose. Again, the judicial inquiry will include an examination of the anticipated ownership interest of the taken property but the focus of the inquiry is, and should be, on the public purpose to be achieved and on whether the property is reasonably necessary for that purpose.

Respondent	Response to Issue 17
Bradley S. Gould, Esq.	Yes. The Court should apply the strict scrutiny standard as set forth in the Florida Supreme Court's decision in *Baycol, Inc. v. Downtown Dev. Authority,* 315 So. 2d 451, 455 (Fla. 1974). The Supreme Court held that when the sovereign delegates the power of eminent domain to a political unity or agency, a strict construction must be given against the agency asserting the power.

ISSUE 18

Should property owners be provided an opportunity to defend against a taking by showing that the property owner has a practical and economically feasible plan to cure or rehabilitate slum or blight conditions as an alternative to the use of eminent domain?

Respondent	Response to Issue 18
Dino Paspalakis	Yes. However, answering this question in the affirmative does not mean that I believe that property should ever be "taken" for private development purposes using the state's current "bogus blight" criteria. In addition, today it is difficult for a property owner to appeal an adverse ruling from a Trial Court. The City would have ownership of the property, after depositing in escrow the appraised value, and if the property owner withdraws any of the funds, he loses his right to appeal the verdict. Thus, he loses his livelihood and the statute makes it impossible for him to appeal an adverse verdict.
Louis Roney	Yes, the owner should be allowed all possible means to defend himself from what is fundamentally an illegal seizure.
Wade Hopping-Property Rights Coalition	Eminent domain is admittedly an extraordinary remedy. It is difficult to answer this specific question. An easier question would be, "What if the property is not slum or blighted?" or "What if the property is vacant?" Should the property owner be allowed to develop his own property or continue the usage of unblighted property located in the midst of a blighted area? We believe this issue deserves more debate before a definitive answer is given. While we are sympathetic for the need for economic redevelopment of truly slum or blighted areas, the underlying questions is who should have the opportunity to profit from that redevelopment? Should the existing property owner who has kept his property up? Should some stranger to the process who has a grand economic development plan that is consistent with the local government's need for addtional tax revenues? This is a very difficult question and deserves considerable debate. Nevertheless, we believe the existing owner should have the first choice to rehabilitate his/her property.
Douglas Sale, Panama City Beach CRA	Yes, if the owner's plan will advance the elimination of slum or blight in the neighborhood. No, if that particular property is necessary to achieve community redevelopment. The dichotomy summarizes the issue. In some limited situations, in order to attract investment in the community redevelopment area to address slum and blight, a hold out must be asked to sacrifice and receive extraordinary compensation.

Respondent	Response to Issue 18
Florida League of Cities	If a property owner's plan to rehabilitate property is consistent with the legislatively adopted redevelopment plan, the property owner should be afforded a reasonable opportunity to rehabilitate the property. If a property owner's plan is either inconsistent with a redevelopment plan or if it is necessary to take the property to eliminate slum or blighted conditions, a property owner should not have an opportunity to rehabilitate the property. Local government should be permitted to take the property to eliminate slum or blighted conditions or to accomplish the goals of the redevelopment plan, and the property owner should be fully compensated as proposed by the Florida League of Cities. See response to Question 9.
Florida Association of Counties	Not as an absolute defense to the taking. See the answer to #15 above.
Bradley S. Gould, Esq.	Yes. Since the public purpose is to eliminate a slum or blighted condition, property owners should be afforded the opportunity to accomplish the public purpose before the government uses its harshest power.

ISSUE 19

Do county or city resolutions finding slum or blight adopted pursuant to s. 163.355, F.S., adequately inform property owners that the power of eminent domain may be utilized to obtain property within the CRA?

Respondent	Response to Issue 19
Dino Paspalakis	Since I am not an attorney, I will not comment on this
Louis Roney	What is S 163.355 F.S? Such a resolution must be made crystal clear in simple-text for the full .understanding for the owner.
Wade Hopping-Property Rights Coalition	No
Douglas Sale, Panama City Beach CRA	No.
Florida League of Cities	The Florida League of Cities has proposed that prior to the finding of necessity stage in the CRA process (or possibly at the CRA plan adoption or plan amendment stage), that extraordinary notice be given to property owners within the CRA area that property may be subject to eminent domain and that private-to-private transfers of property may occur. The League's proposal would also require the finding of necessity resolution (or plan or plan amendment) to disclose that property may be subject to eminent domain if negotiations fail, and that assembly of land and private-to-private transfers of property may occur as a tool to address slum or blight conditions.
Florida Association of Counties	There is room within the current notice requirements for CRA creation and redevelopment plan adoption to create more clarity in informing affected property owners that the CRA, if created, would be empowered to take private property within the area of the CRA.
Bradley S. Gould, Esq.	No. Prior to the adoption of the resolution, CRAs or local governments should be required to provide notice to the affected owners, which sets forth that the power of eminent domain may be utilized, opportunity to be heard, cross examine and to present witnesses

ISSUE 20

Should the redevelopment plan indicate that eminent domain may be used to acquire property?

Respondent	Response to Issue 20
Dino Paspalakis	Even if it does, I do not condone the process
Louis Roney	Yes — and it should be defined as illegal.
Wade Hopping-Property Rights Coalition	Yes
Douglas Sale, Panama City Beach CRA	Yes.
Florida League of Cities	Yes.
Florida Association of Counties	Yes.
Bradley S. Gould, Esq.	Yes.

ISSUE 21

At what point in the process should the redevelopment plan be adopted, i.e., at the same time as the resolution of necessity or at some later point in the process?

Respondent	Response to Issue 21
Dino Paspalakis	Since I am not an attorney, I will not comment on this
Louis Roney	At a LATER point, after owner has had every legal opportunity to fight unfair siezure.
Wade Hopping-Property Rights Coalition	The redevelopment plan may be adopted when convenient to the local government and their plans have come to fruition. It is an entirely different question as it relates to the private property to be taken, Additional notice to the property owner, as suggested by several cities and CRA's, that there is a possibility of eminent domain would be useful but not definitive.
Douglas Sale, Panama City Beach CRA	Typically, later.
Florida League of Cities	Redevelopment plans and plan amendments typically occur after a resolution of necessity has passed and a community redevelopment agency is established. These steps appear to follow a logical sequence to adopt a redevelopment plan. However, the League has proposed extraordinary notice requirements under the response to Question 19.
Florida Association of Counties	The redevelopment plan should be adopted before the resolution of necessity.
Bradley S. Gould, Esq.	The Redevelopment Plan should be adopted prior to the initiation of eminent domain.

ISSUE 22

Should the redevelopment plan specifically identify property to be acquired and the anticipated use of each parcel?

Respondent	Response to Issue 22
Dino Paspalakis	Since I am not an attorney, I will not comment on this.
Louis Roney	Yes.
Wade Hopping-Property Rights Coalition	We do not believe that this is necessary. It is a matter of timing. Since most property will be acquired by negotiations, it would not seem to be useful to try to create a perfect plan on the front end. The decision of what property is taken would seem to be dependent on which property owners do not want to relinquish their property without eminent domain or the threat of eminent domain.
Douglas Sale, Panama City Beach CRA	Impossible in a large area over a long period of time.
Florida League of Cities	Currently, redevelopment plans must be sufficiently complete to indicate land acquisition, demolition and removal of structures, redevelopment, improvements and rehabilitation as may be proposed to be carried out in the community redevelopment area. However, specifically identifying each property to be acquired and the anticipated use of each parcel in a redevelopment plan would be practically impossible due to the variable sizes of redevelopment areas and because redevelopment activities frequently occur over an extended period of time.
Florida Association of Counties	This specific level of planning detail may not be flexible enough to accommodate changing conditions throughout the life of the CRA and may be too burdensome to require at the beginning of the CRA as well.
Bradley S. Gould, Esq.	Yes. The Redevelopment Plan is an important element of reasonable necessity . It also establishes whether or not the public purpose is reasonably certain to be achieved, that the uses are reasonably foreseeable, and the public benefit is predominant.

ISSUE 23

Is it appropriate to condemn private property prior to adoption of a redevelopment plan?

Respondent	Response to Issue 23
Dino Paspalakis	Since I am not an attorney, I will not comment on this.
Louis Roney	Absolutely NOT
Wade Hopping-Property Rights Coalition	No
Douglas Sale, Panama City Beach CRA	Yes, it can be. In some cases the government will be able to demonstrate that acquiring a hold out is necessary to the elimination of slum or blight because assembling a critical mass of land may in limited circumstances be necessary to attract investment.
Florida League of Cities	While in most cases takings will not occur until after adoption of a redevelopment plan, in some cases the slum or blighted conditions may be so severe that a taking should be permitted after the finding of necessity stage, conditioned on the provision of extraordinary notice as proposed by the Florida League of Cities (see response to Question 19). The taking would also be subject to the process as outlined in the response to Question 15.
Florida Association of Counties	When the private property is being taken for the public purpose of eradicating slum or blight and preventing its recurrence, circumstances may exist when the property is condemned before a redevelopment plan is adopted.
Bradley S. Gould, Esq.	No. The adoption of the Redevelopment Plan should be a condition precedent to initiating eminent domain.

ISSUE 24

Should "quick takes" be permitted in the CRA context?

Respondent	Response to Issue 24
Dino Paspalakis	Only if the definition of "blight" was redefined to a much more restrictive definition such as abandoned buildings, unrepaired code violations, nuisances, serious tax delinquencies, vermin infestation, and other, similar conditions
Louis Roney	Absolutely NOT
Wade Hopping-Property Rights Coalition	Yes, as long as the property owner's rights are fully protected.
Douglas Sale, Panama City Beach CRA	Yes. This is merely a timing question. Whatever standard must be met to justify the take will still have to be met at the "quick take." A "quick take" only avoids the delay of determining compensation, and does so at the risk of the condemning authority. In some cases a "quick take" could be useful to either eliminate slum or blight or accomplish a redevelopment plan.
Florida League of Cities	Because "quick takes" essentially impact only when the level of compensation is determined, "quick takes" may be appropriate in limited contexts to either eliminate slum or blighted conditions or to achieve the goals of the redevelopment plan. The standard to justify the take will still have to be met at the "quick take."
Florida Association of Counties	Yes, to allow for the maximization of benefit of market forces (e.g., escalating property values; ability to take advantage of redevelopment opportunities) and thereby use the taxpayers' investment in the CRA prudently and efficiently.
Bradley S. Gould, Esq.	Yes.

ISSUE 25

Should the elected body be required to approve each specific taking of private property within a CRA?

Respondent	Response to Issue 25
Dino Paspalakis	Yes. However, answering this question in the affirmative does not mean that I believe that property should ever be "taken" for private development purposes using the state's current "bogus blight" criteria
Louis Roney	Yes.
Wade Hopping-Property Rights Coalition	Yes
Douglas Sale, Panama City Beach CRA	Yes.
Florida League of Cities	The Florida League of Cities has proposed that at an exercise of eminent domain proceeding, the elected body be required to determine that each specific property subject to an eventual private-to-private transfer is "essential" (or another appropriate standard) to eliminate slum or blighted conditions or to achieve the goals and objectives of the community redevelopment plan.
Florida Association of Counties	Yes.
Bradley S. Gould, Esq.	Yes. Governments are required to weigh and consider the following factors prior to deciding whether to condemn specific property (s): (1) alternative routes/sites, (2) costs, (3) environmental factors, (4) long range area planning and (5) safety considerations.

ISSUE 26

Are current statutory requirements for good faith negotiations and good faith offers prior to a taking sufficient?

Respondent	Response to Issue 26
Dino Paspalakis	Since I am not an attorney, I will not comment on this.
Louis Roney	Probably not
Wade Hopping-Property Rights Coalition	No
Douglas Sale, Panama City Beach CRA	Yes. Local government has no incentive to pick a fight for which it will pay attorney's and appraiser's fees for both sides.
Florida League of Cities	The Florida League of Cities has proposed to require good faith negotiations to acquire the property prior to the exercise of eminent domain, to include the submission of good faith and extraordinary offers for the property and minimum timeframes for property owners to consider such offers.
Florida Association of Counties	Yes.
Bradley S. Gould, Esq.	No. The statutes do not define the term "good faith negotiations" or "good faith offer". Some Courts have stated that the government must only make a first offer to satisfy the good faith negotiation requirement. Good faith offer should be a written offer that is binding upon the government upon its acceptance by the property owner.

ISSUE 27

Should the Legislature limit the home rule powers of cities and counties to prevent takings for economic development purposes?

Respondent	Response to Issue 27
Dino Paspalakis	Yes, however my property was taken for "the elimination of blight", even though it was "bogus blight", and currently, the State of Florida does not allow takings for "economic development" purposes.
Louis Roney	Yes.
Wade Hopping-Property Rights Coalition	Yes. The question still remains as to whether or not the legislature should absolutely prohibit such takings.
Douglas Sale, Panama City Beach CRA	Florida constitutional law currently prohibits, but there is no case directly on point. If the legislature fears the Florida Supreme Court will not "hold the line" on this principle, then, yes. See No. 28.
Florida League of Cities	The Florida League of Cities believes that Florida's constitutional restriction on exercising eminent domain for a "public purpose" and its well-established body of case law, which requires a predominant public benefit while permitting an incidental private benefit, prohibits takings of private property for the sole purpose of "economic development." Any restriction in addition to the current constitutional restrictions should apply equally to all entities authorized to exercise the power of eminent domain, including the state and its agencies, and "economic development" must be narrowly defined. See response to Question 28.
Florida Association of Counties	No. Current law provides sufficient safeguards. See answer to #28 below.
Bradley S. Gould, Esq.	Yes. Takings for economic redevelopment purposes do not satisfy the predominant public purpose test since the private benefits are more than incidental.

ISSUE 28

Should the statutes define "economic development" and prevent takings for the purpose of "economic development" or is there an alternative means of preventing takings for that purpose?

Respondent	Response to Issue 28
Dino Paspalakis	Since I am not an attorney, I will not comment on this.
Louis Roney	Absolutely— no alternative means are adequate at presently.
Wade Hopping-Property Rights Coalition	We believe that there is an alternative means. That would be to clearly require that any property on an individual parcel by parcel basis be taken only after there is a specific finding that the property is slum and blighted and a specific separate finding that it is necessary for the completion of the project and consistent with the plan. The local government should have the burden of proof in quasi judicial proceedings to support these outcomes. The courts should subject all such takings to a heightened standard of review with the local government having the burden of proof.
Douglas Sale, Panama City Beach CRA	If economic development is to be defined, and takings for that purpose to be prohibited as a final barrier to an abuse of eminent domain power, then economic development should be defined in words which have a contest and history in existing case law, namely, "A project dedicated to a private use without serving a predominately public purpose through that use, regardless of any public benefit derived." The **alternative means** is to clarify the circumstances when eminent domain **can** be used, instead of attempting to define when it cannot.
Florida League of Cities	If takings for purely "economic development" purposes are to be restricted, the phrase "economic development" must be defined narrowly and in the context of current constitutional standards. For example, "economic development project" could be defined as: "A project dedicated to a private use without serving a predominantly public purpose through that use, regardless of any public benefit derived." See response to Question 27.
Florida Association of Counties	No. Florida law contains no specific constitutional or statutory section that either authorizes or prohibits the use of eminent domain for "economic development". In addition, there is no reported appellate decision in Florida that has analyzed the issue of using the power of eminent domain for "economic development" purposes. However, the general status of the law in Florida is quite clear. Eminent domain could only be validly exercised for "economic development" if (1) the "economic development" were a public purpose; if (2) the property land is reasonably necessary for the public purpose; and if (3) full compensation is paid to the property owner. The Florida courts have commented on several occasions already that "public benefits" like job-creation and increased tax base, alone are not the same as "public purpose." With a public purpose, any taking of private property infringes on the Florida Constitution.

Respondent	Response to Issue 28
Bradley S. Gould, Esq.	It is important to prevent takings for economic redevelopment that may be presently on going to adopt statutes that define and prohibit it. Ultimately, there should be a constitutional amendment to prevent such takings.

ISSUE 29

S.W. Moore and John W. Little for Brigham Moore, LLP: Under Procedural Issues, consider property owners' opportunity to be heard, cross-examine and present witnesses.

Respondent	Response to Issue 29
Louis Roney	Such a consideration must be an aboulute minimum to protect property owners.
Wade Hopping-Property Rights Coalition	We agree with this since it is our proposal that the actual taking determination be a separate quasi judicial determination and that the property owner have the opportunity to present witnesses and cross examine witnesses presented by local government. Again, keep in mind that the taking of property is an extraordinary event and should be carefully monitored.
Douglas Sale, Panama City Beach CRA	Agreed. The decision to take a specific parcel should be made by local government in a quasi-judicial hearing and only based upon a determination that the parcel is needed, at the time of the take, to achieve community redevelopment.
Florida League of Cities	See response to Question 15. The quasi-judicial hearing should provide for these procedures.

ISSUE 30

<u>Florida Association of Counties</u>: The Association suggests adding a category regarding intergovernmental coordination in non-charter counties.

Respondent	Response to Issue 30
Louis Roney	Such collusion must be strongly prohibited
Wade Hopping-Property Rights Coalition	This is a separate issue which should be considered by the committee. It is suggested that the committee recommend that, at least for the 2007 and 2008 session, that standing committees on private property rights be created so that these kind of issues can be considered. In answer to these specific questions, we adhere to our Powerpoint presentation on the redefinition of blight and slum and with regard to the procedures we believe should be followed in order to protect private property from unecessary or improper takings.
Douglas Sale, Panama City Beach CRA	It is unclear how adding the county's input to the issue of whether it is necessary for a city to condemn a specific parcel of land would be helpful, but it is an interesting idea.
Florida League of Cities	The Florida League of Cities has proposed that the Select Committee consider no other CRA issue except eminent domain.
Florida Association of Counties	Current law allows CRAs to be created by municipalities in non-charter counties with no input from or oversight by the county although the county is required to contribute countywide taxpayer dollars to the CRA for periods as long as 40 years. The Florida Association of Counties believes that the Community Redevelopment Act does not provide an adequate check to this power to appropriate county taxpayer dollars. In fact, very few requirements exist for the creation of a CRA that would work to limit the geographic size of the slum or blight area of a CRA. The only restrictions that exist are on the length of time for the tax increment financing bonds and consequently for the length of time that the taxing authorities that did not create the CRA must contribute its tax increment. A statutory change could require that all taxing authorities that must contribute to the tax increment of the CRA agree to the creation of the CRA and, thereby, to the exercise of its powers, including eminent domain. Such a circumstance adds layers of accountability to the CRA creation process by empowering all of the directly impacted elected public officials to participate in the creation and operation of the CRA in their jurisdictions.

Select Committee to Protect Private Property Rights

Monday December 5, 2005
10:00 a.m.—12:00 p.m.
Morris Hall

ADDENDUM A (12/1/05 2:00 p.m.)

Allan G. Bense
Speaker

Marco Rubio
Chair

Addendum A

RESPONSES TO MATRIX 2

ISSUE 9

Does the current method of calculating compensation fairly compensate private landowners for taken property?

Respondent	Response to Issue 9
Dana Berliner—Institute for Justice	The Institute for Justice does not generally comment on specific compensation issues. However, in general, it is our position that owners who lose their property should be in no worse position than they were before the taking. They should be able to have similar homes, functioning businesses, and they should be able to reap the benefits of their investment in their property.
Brian P. Patchen--Eminent Domain Attorney, representing property owners	No. The property should be valued as being available for it's assembled highest and best use, including the proposed use for redevelopment.
Andrew Brigham, Bill Moore, John Little, Mark Natirboff, Amy Boulris--Brigham Moore LLP	In certain contexts, market value for the property taken is insufficient to make an landowner whole when the additional costs of relocation, replacement/subsitution, or re-establishment for those who desire to remain within a market area or community are not expressly provided by statute or made part of the legislative intent in a redevelopment context. Please refer to the FLORIDA REDEVELOPMENT REFORM (Second Draft Revisions) submitted by Brigham Moore, LLP, §163.375.

ISSUE 10

Should business damages be paid for total takings of private commercial property?

Respondent	Response to Issue 10
Dana Berliner—Institute for Justice	See above.
Brian P. Patchen--Eminent Domain Attorney, representing property owners	Yes.
Andrew Brigham, Bill Moore, John Little, Mark Natirboff, Amy Boulris--Brigham Moore LLP	Yes. At present, business damages are only provided to an owner in the instance of a partial taking pursuant to Chapter 73, Florida Statutes. The premise that upholds not paying business damages on a whole taking is the notion that the business enterprise is portable in the event an entire property is taken. This is inequitable to those owners who find their entire business enterprise wiped out by virtue of private property being taken for public purpose. It is advocated that in any taking context, this is bad policy in that it forces one citizen to bear a disproportional cost for the public good. Such policy also sacrifices long term economic benefits associated with private enterprise of an established business for short term savings on a condemnor's cost of acquisition. The context of redevelopment only heightens inequity as a private developer who is tranferred the title of property taken is rewarded for industry, while the business owner whose property is taken receives nothing for his or her industry in the destruction of a business without compensation. Please refer to the FLORIDA REDEVELOPMENT REFORM (Second Draft Revisions) submitted by Brigham Moore, LLP,§163.375.

ISSUE 11

Should owners of taken property that may be transferred to another private property receive additional compensation if an increase in property value is anticipated due to the redevelopment project?

Respondent	Response to Issue 11
Dana Berliner—Institute for Justice	See above.
Brian P. Patchen, Eminent Domain Attorney, representing property owners	Yes as part of the evaluation process – see answer to #9.
Andrew Brigham, Bill Moore, John Little, Mark Natirboff, Amy Boulris--Brigham Moore LLP	The highest and best use of property taken may, in fact, be premised upon its suitability to be assembled to other adjacent properties and not on the property's existing use. Thus, market value may include consideration of assemblage or plottage value. In this context, compensation is not an addition to market value; however, expressed language as to the legislative intent to support such theory is neeed as part of reform to existing Chapter 163. Please refer to the FLORIDA REDEVELOPMENT REFORM (Second Draft Revisions) submitted by Brigham Moore, LLP,§163.375. Notwithstanding, when an existing owner may develope his or her property standing alone or assembled with other properties in a manner consistent with the redevelopment plan, it is advocated that such owner's property not be taken if it can be shown by the owner that a possible, practicable, and economically feasible plan exists to develop the property. In such manner, the public purpose asserted for the taking so as to eradicate slum or blight will be met by the existing private ownership. Please refer to the FLORIDA REDEVELOPMENT REFORM (Second Draft Revisions) submitted by Brigham Moore, LLP,§163.375.

ISSUE 12

In addition to the currently provided moving expenses, are there other relocation expenses that should be paid to property owners for takings of commercial or residential property?

Respondent	Response to Issue 12
Dana Berliner—Institute for Justice	See above.
Brian P. Patchen, Eminent Domain Attorney, representing property owners	First, not all CRA's pay moving and relocation expenses – all should. Second, property owners should be compensated for replacement property and the additional real estate taxes they must pay for replacement property.
Andrew Brigham, Bill Moore, John Little, Mark Natirboff, Amy Boulris--Brigham Moore LLP	At present, there is conflicting case law as to whether moving expenses are compensable as part of full compensation. In the context of redevelopment, relocation expenses (including moving costs) and re-establishment expenses should be provided in such measure as to make the property or business owner whole. Please refer to the FLORIDA REDEVELOPMENT REFORM (Second Draft Revisions) submitted by Brigham Moore, LLP,§163.375.

ISSUE 13

Should a private homeowner receive "replacement" cost for taken homestead property, i.e., the amount required to purchase a comparable home?

Respondent	Response to Issue 13
Dana Berliner—Institute for Justice	See above.
Brian P. Patchen, Eminent Domain Attorney, representing property owners	Yes.
Andrew Brigham, Bill Moore, John Little, Mark Natirboff, Amy Boulris--Brigham Moore LLP	Yes. If the market value of the property is insufficient to purchase a "replacement" or "substitute" property , then the legislative intent should be made clear to include "replacement" or "subsitution" as proper methods of determining compensation. Please refer to the FLORIDA REDEVELOPMENT REFORM (Second Draft Revisions) submitted by Brigham Moore, LLP,§163.375. There should not be a distinction between homestead property or other residential property. Likewise, there should not be a distinction between residential or business property.

ISSUE 14

Should owners of taken homestead property be reimbursed for the cost of losing the Save Our Homes protection?

Respondent	Response to Issue 14
Dana Berliner—Institute for Justice	See above.
Brian P. Patchen, Eminent Domain Attorney, representing property owners	Yes.
Andrew Brigham, Bill Moore, John Little, Mark Natirboff, Amy Boulris--Brigham Moore LLP	Yes.

ISSUE 15

If a local government wishes to take private property for the purpose of eliminating and then preventing the recurrence of slum or blight conditions, and the property may be transferred to another private property, what should the government be required to demonstrate?

a. That the specific property is slum or blighted, that slum or blight conditions exist in the "immediate neighborhood" of the property sought to be acquired, or that slum or blight conditions existed at the time the community redevelopment area was initially created?
b. That the taking of the specific property achieves the public purpose of eliminating and then preventing the recurrence of slum or blight? That the public benefits predominate over incidental private gain at the time of the taking or some other standard?
c. That the parcel is "reasonably" necessary to achieve the public purpose of eliminating and then preventing the recurrence of slum or blight conditions or some higher standard?

Respondent	Response to Issue 15
Dana Berliner—Institute for Justice	As discussed in the next three responses, the government should be required to prove by clear and convincing evidence that the specific property is slum or blighted at the time of the taking. Whatever standard the Legislature adopts, it should define "slum" and "blight" by objective conditions that indicate something is actually wrong with the property and that is causing actual harm to the public, rather than using the vague, subjective, unverifiable definitions it has now. Pennsylvania Senate Bill 881 has a substantive definition of blight that identifies various objective conditions justifying a blight designation.
	[a.] The government should have to establish that the specific property is slum or blighted and should not deprive someone of their home or business because someone else takes poor care of their property. If the slum or blight determination will apply to the area, terms like "immediate neighborhood" must be defined. At a minimum, most of the property in the area to be taken should be required to have serious problems before the property may be condemned. Finally, any future statute should not use conditions at the time of initial creation of a community redevelopment area. Owners should not lose their homes and businesses based on conditions 20 years ago.
	[b.] If condemnation of the specific property will eliminate slum or blight, that might be a sufficient basis for taking property. The standard of public benefits predominating over incidental private gains is not a good standard. Courts have used a similar standard to hold that if there is any possible public benefit, then any private gain, no matter how large, is incidental. This standard is open to abuse and also invites litigation. Instead, the term "public use" or "public purpose" should be defined to mean the possession,

Respondent	Response to Issue 15
	occupation, and enjoyment of the land by the general public, or by public agencies; or the use of land for the creation or functioning of public utilities; the acquisition of property to cure a concrete harmful effect of the current use of the land, including the removal of public nuisances, structures that are beyond repair or that are unfit for human habitation or use, and the acquisition of abandoned property. The public benefits of economic development, including an increase in tax base, tax revenues, employment, general economic health, shall not constitute a public use.
	[c.] The standard for taking property should be that the parcel is "essential" to eliminating slum or blight. Generally, courts interpret "reasonably necessary" to mean that the agency did not engage in bad faith in selecting the properties to be condemned. Under that standard, courts will refuse to engage in any inquiry into whether the property is in fact necessary to the project or purpose.
Brian P. Patchen, Eminent Domain Attorney, representing property owners	The terms "slum" or "blight" should NOT include "increasing the tax base." There should be high evidence of incidence of crime, substandard or dangerous housing, and large vacancy rates.
	a. That the specific property is slum or blighted.
	b. Re. Issue: "That the taking of the specific property achieves the public purpose of eliminating and then preventing the recurrence of slum or blight" –this should be the standard.
	c. Ok.
Andrew Brigham, Bill Moore, John Little, Mark Natirboff, Amy Boulris--Brigham Moore LLP	It is not enough to reform the law by tightening the definition of slum and blight or raising the definitional threshold in the instance of eminent domain uncoupled from tax increment financing more applicable to areas in need of econmic assistance or distress. There must also be legislative intent defining an original jursidiction to the courts under a heightened scrutiny afforded to a fundamental right of private ownerhsip to assure a predominantly public purpose justifying a taking. Kelo illustrates that there is nothing more devastating to the civil right of private ownership then the abdication of the courts in the separate role of check and balance on local government decision-making. If "legislative deference" is that which always results in the court finding against the landowner to avoid "second guessing the local body politic" then, indeed, there is no protection of the civil rights of one citizen whose property is subject of a taking from the will of the majority embodied in the political decisions of legislative or executive branches of government. Consider the present confusion in Florida law. On one hand, there is case precedent which suggests that when the judicial branch reviews a prior designation of blight made by a local body politic that it is like a land use regulatory action, that the court sits in an appellate review capacity, applying a de novo review of a record created not in the courtroom, but in a quasi-legislative or quasi-judicial proceeding before the local government who made the designation. If quasi-legislative (similar to a regulatory comprehensive plan question) the standard of review is "fairly debatable" meaing the reviewing court must find for the government

Respondent	Response to Issue 15
	so long as the question was subject to fair debate and was not clearly erroneous. If quasi-judicial (similar to a regulatory zoning question) the standard of review requires that there be "substantial competent evidence" to support the government's position, not that such evidence was more persuasive. Both quasi-legislative or quasi-judicial proceedings are without protections found in a court of law, have limited presentation time or opportunity to submit evidence contrary to what is already in a legislative packet prepared by a local government's staff. These are highly deferential standards of review in a context where the use of land is regulated, not in the instance where the land itself is taken. Cases which resulted in this jurisprudential perspective again, are in the land use regulation context, or involve public purpose in the context of Chapter 163 when considering bond validations. The recent Florida Supreme Court decision in Panama City Beach CRA v. State of Florida (bond validation) is the best example of what is meant by a deferrential standard of review that requires legislative deference. In the case, one is at first comforted by the Court's citing to a standard of review requiring "substantial competent evidence" but only later does one find that such comfort is dislodged when the Court relies on the mayor's testimony that the blighted area was "a bad place" with "many problems" to met the statutory factors establishing blight. The Court extols the virtue of not "second guessing" the local government and establishes a case precedent which is now cited in the Daytona Beach circuit court cases where public purpose is challenged, not in a bond validation context, but as owners fight to keep their private property from being taken for ocean front condominiums and resort hotel parking lots. These cases were fought before, and continue now, after Kelo. On the other hand, there is also case precedent wherein Florida courts cite to the constitutional protection afforded to private property and apply the original jurisdiction of the court, not in an appellate review capacity of a prior record before a local body politic, but in evidence presented in a judicial forum (not quasi-legislative or quasi-judicial). Such a forum does not prevent the exercise of eminent domain by local government, but only requires that a public purpose if found for the taking and that the property taken is reasonably necessary to accomplish the public purpose without arbitrary decision, illegality, or bad faith. Yes government must "prove" that requisite facts exists to support the definition of blight provided for by statute and that constitutionally there is not a predominance of private gain which outpaces the public purpose asserted which is eradicating slum or blight. The cart must be before the horse. The tail cannot wag the dog. The purpose behind the taking must not be for economic development of the property itself, but be directed towards solving the social ill of clearing genuine slum and blight. It is not the virtue of the private to private transfer that justifies a taking of property from one citizen to another that justifies the taking; rather, such can only be an accepted "means" if having a just "end" and that requires a condition of slum and blight that is of such degree and expanse that

Respondent	Response to Issue 15
	the sovereign power of eminent domain is needed to resolve a true menace. Legislative reform that traces back to this line of case precedent upholds private property as a fundamental constitutional right worthy of protection, but not absolute in regards to the use of emient domain. This would best be accomplished with a heightened standard of review by "clear and convincing evidence" under the original jursidiction of a trial court. Please refer to the FLORIDA REDEVELOPMENT REFORM (Second Draft Revisions) submitted by Brigham Moore, LLP,§163.375.
	[a.] The local government should be required to prove by clear and convincing evidence that the specific property is slum or blighted and that those are the current conditions of that property. It is important that that proof be tied to the time the property is proposed to be taken, not when the community redevelopment area was initially created (which may be several years in the past). Prior to deciding this issue, a discussion should be had on existing Florida cases that reason that unblighted property may be taken to cure an area wide blight and that government not be required to "pinpoint" blight to the specific property taken. Without legislative intent to the contrary in the existing statute, judicial interpretation has allowed unblighted property to be taken to cure a neighbor's blight. Further, a discussion should be had as to when blight must be shown to justify a taking. Because the finding of blight to support to support tax increment financing is the same as that which is used to support the use of eminent domain, Florida courts have required private property owners who challenge a taking to go all the way back and show blight did not exist when the redevelopment area was initial adopted instead of at the time of taking. Thus, if the Court is inclined to void the initial finding of blight so as to deny the taking, the condemning authority argues that the Court would be overturning the tax increment financing that supports the entire redevelopment area and secures the committment on public bonds. This "all or nothing" proposition is what best illustrates the need to uncouple eminent domain from tax increment findings and require two separate findings of necessity.
	[b.] Florida law includes cases wherein the private gain was found to predominate over incidental public benefit so as to require the Court to deny a taking purusant to recognition of a constitutional right to private property. This constitutional test should not be made moot with either "legislative deference" or "presumption of correctness" which results in a court refusing to "second guess" the local body politic even when faced with aggregious facts that show the tail (private gain) wagging the dog (public purpose). A genuine slum or blight must exist; then, the purpose of the taking should not be predominantly the private gain resulting from a private to private transfer, but the public purpose in eliminating a social harm or evil.
	[c.] Beware! This is a wolf dressed in sheep's clothing! At present, the only takings which are alloted "legislative deference" given to the prior decision of local government in a prior quasi-legislative or quasi-judicial forum is a taking under Chapter 163. The instance

Respondent	Response to Issue 15
	wherein you would think a more meaningful, heightened judicial scrutiny is appropriate due to the questions surrounding a private to private transfer of land accomplished by the potential "privatization" of the eminent domain power is actually the instance that provides government with In traditional takings, the Court applies original jurisdiction to the evidence before it so as to determine whether public purpose exists for a taking and that property sought for acquisition is reasonably necessary to accomplish the public purpose. In a traditional taking, the public purpose is typically manifest in a public use of the property taken (there is no "means" and "ends" question or a public purpose once removed by a private to private transfer). . So, in the instance where you would consider the need for a more meaningful, or heightened, review by the judicial branch, where there is not a direct public use of the property taken, but rather a "means" and "ends" question (whether a private to private transfer as a "means" to eliminate slum or blight as a valid "end" or public purpose is predominantly about the p)

ISSUE 16

What burden of proof should apply when a CRA attempts to take private property if the property may be transferred to another private party? Competent and substantial evidence? Preponderance of evidence? Clear and convincing evidence?

Respondent	Response to Issue 16
Dana Berliner—Institute for Justice	Whenever property is condemned and will be used by a private party, the condemnor should have to establish by clear and convincing evidence that the property is essential to achieve the public purpose. Any other standard will result in virtually unchallengeable deference to local findings.
Brian P. Patchen, Eminent Domain Attorney, representing property owners	Clear and convincing.
Andrew Brigham, Bill Moore, John Little, Mark Natirboff, Amy Boulris--Brigham Moore LLP	The "fairly debatable" standard of review attaches to quasi-legislative determinations by local government in land use comprehensive plan decisions. The "substantial compentent evidence" standard of review attaches to quasi-judicial determinations by local government in land use zoning decisions. These are regulatory decisions of government, not takings. If challenged in court, the circuit court judge sits in an appellate capacity, applies appellate rules of procedure, and gives a de novo review to a prior record that was created before the local government. Moreover, legislative deference is given to the prior decision of government in this regulatory context. In the instance where the public purpose asserted for the taking is not a traditional taking resulting in public use of the property taken, but instead relies on a private to private transfer as a "means" to an "end" asserted as a public purpose to eliminate slum or blight, the question of law is not associated with a regulatory action, but a taking. It is a constitutional inquiry that invokes the original, not appellate, jurisdiction of the court. If challenged in court, the circuit judge sits with original jurisdiction over a constitutional question, applies the rules of civil procedure and evidence, and considers a record not created before the local government, but consists of the testimony and evidence immediately presented to the court in a judicial forum (not quasi-legislative or quasi-judicial). Because the issue involves something other than a directly cognizable public use, but has as its focus a question of whether there is a predominance of private over public purpose, a heightened scrutiny requiring clear and convincing evidence is appropriate when distinguishing a preponderance of evidence standard used in the context of traditional takings. What is in need of protection is not government's power, but the constitutional right of the individual who may have private property taken if, indeed, for public purpose.

ISSUE 17

Should the decision by local government to take private property be subject to heightened judicial review if the property may be transferred to another private owner? In other words, should the "fairly debatable" standard currently applicable to local government legislative decisions to take private property be replaced with more stringent judicial review?

Respondent	Response to Issue 17
Dana Berliner—Institute for Justice	As discussed above, takings of private property should be subject to more stringent judicial review when the property will be transferred or used by another private party.
Brian P. Patchen, Eminent Domain Attorney, representing property owners	Yes.
Andrew Brigham, Bill Moore, John Little, Mark Natirboff, Amy Boulris--Brigham Moore LLP	Yes. The issue at law concerns taking, not regulating, private property.

ISSUE 18

Should property owners be provided an opportunity to defend against a taking by showing that the property owner has a practical and economically feasible plan to cure or rehabilitate slum or blight conditions as an alternative to the use of eminent domain?

Respondent	Response to Issue 18
Dana Berliner—Institute for Justice	Yes, a property owner should have the opportunity to show a plan to remedy slum and blight conditions without the use of eminent domain. This opportunity, if genuine, will reduce the use of eminent domain to benefit influential private parties seeking particular pieces of land.
Brian P. Patchen, Eminent Domain Attorney, representing property owners	Yes.
Andrew Brigham, Bill Moore, John Little, Mark Natirboff, Amy Boulris--Brigham Moore LLP	Yes. If the public purpose is really and truly to eliminate slum or blight, and if the owner can demonstrate that his private enterprise is sufficient to accomplish the public goal's of ridding social harm or evil, then the only purpose for taking private property if ignoring such proof is to further the private enterprise of one citizen over another.

ISSUE 19

Do county or city resolutions finding slum or blight adopted pursuant to s. 163.355, F.S., adequately inform property owners that the power of eminent domain may be utilized to obtain property within the CRA?

Respondent	Response to Issue 19
Dana Berliner—Institute for Justice	No. The notice should state in simple, clear language that if the resolution is approved, it could result in the county or city acquiring the property without their consent and should also inform them of any opportunity they have to object.
Brian P. Patchen, Eminent Domain Attorney, representing property owners	No. There should be specific , direct notice to each property owner.
Andrew Brigham, Bill Moore, John Little, Mark Natirboff, Amy Boulris--Brigham Moore LLP	No, not at present.

ISSUE 20

Should the redevelopment plan indicate that eminent domain may be used to acquire property?

Respondent	Response to Issue 20
Dana Berliner—Institute for Justice	Yes. The redevelopment plan should indicate that eminent domain may be used. Often owners will not even realize the threat to their future ownership and will therefore not be concerned about apparently innocent redevelopment plans.
Brian P. Patchen, Eminent Domain Attorney, representing property owners	Yes.
Andrew Brigham, Bill Moore, John Little, Mark Natirboff, Amy Boulris--Brigham Moore LLP	Yes.

ISSUE 21

At what point in the process should the redevelopment plan be adopted, i.e., at the same time as the resolution of necessity or at some later point in the process?

Respondent	Response to Issue 21
Dana Berliner—Institute for Justice	The order of approval of the plan and the resolution of necessity is far less important than substantive protections.
Brian P. Patchen, Eminent Domain Attorney, representing property owners	At determination of necessity.
Andrew Brigham, Bill Moore, John Little, Mark Natirboff, Amy Boulris--Brigham Moore LLP	Whether the redevelopment plan is developed concurrent with the resolution of necessity or at a subsequent date is not of major consequence so long as the period of time between the two is not inordinate. There should be a commitment to a redevelopment plan not far removed from determination of a problem.

ISSUE 22

Should the redevelopment plan specifically identify property to be acquired and the anticipated use of each parcel?

Respondent	Response to Issue 22
Dana Berliner—Institute for Justice	Yes.
Brian P. Patchen, Eminent Domain Attorney, representing property owners	Yes.
Andrew Brigham, Bill Moore, John Little, Mark Natirboff, Amy Boulris--Brigham Moore LLP	Yes.

ISSUE 23

Is it appropriate to condemn private property prior to adoption of a redevelopment plan?

Respondent	Response to Issue 23
Dana Berliner—Institute for Justice	No. The owner should be able to retain the property unless and until the government has something it intends to put there. However, if the property is abandoned, a nuisance, beyond repair, or otherwise causing an immediate public harm, the government should be able to condemn it prior to adoption of a plan. There should not be acquisitions of large areas prior to having a use for the property. All too often, homes or businesses are taken for vague plans that never materialize.
Brian P. Patchen, Eminent Domain Attorney, representing property owners	No.
Andrew Brigham, Bill Moore, John Little, Mark Natirboff, Amy Boulris--Brigham Moore LLP	No.

ISSUE 24

Should "quick takes" be permitted in the CRA context?

Respondent	Response to Issue 24
Dana Berliner—Institute for Justice	No.
Brian P. Patchen, Eminent Domain Attorney, representing property owners	Yes.
Andrew Brigham, Bill Moore, John Little, Mark Natirboff, Amy Boulris--Brigham Moore LLP	Yes, but only if provision is made so as not to have the private property owner post bond to stay the proceedings if choosing to appeal the trial court's order of taking.

ISSUE 25

Should the elected body be required to approve each specific taking of private property within a CRA?

Respondent	Response to Issue 25
Dana Berliner—Institute for Justice	Having a required vote is certainly a good idea, but procedural protections alone will not adequately protect owners from abuse.
Brian P. Patchen, Eminent Domain Attorney, representing property owners	Yes.
Andrew Brigham, Bill Moore, John Little, Mark Natirboff, Amy Boulris--Brigham Moore LLP	Yes.

ISSUE 26

Are current statutory requirements for good faith negotiations and good faith offers prior to a taking sufficient?

Respondent	Response to Issue 26
Dana Berliner—Institute for Justice	The Institute for Justice has no special expertise on this issue.
Brian P. Patchen, Eminent Domain Attorney, representing property owners	No. They should consider the highest and best use as assembled.
Andrew Brigham, Bill Moore, John Little, Mark Natirboff, Amy Boulris--Brigham Moore LLP	No. The obligations regarding pre-suit negotiations and good faith offers should not be conducted by the developer, but instead should be conducted by the condemning authority which intends to exercise eminent domain. If a developer is in bad faith, the condemning authority should not be able to argue that it was the developer who was in bad faith, not the condemning authority.

ISSUE 27

Should the Legislature limit the home rule powers of cities and counties to prevent takings for economic development purposes?

Respondent	Response to Issue 27
Dana Berliner—Institute for Justice	Yes. The Legislature should prohibit all takings for economic development.
Brian P. Patchen, Eminent Domain Attorney, representing property owners	Yes.
Andrew Brigham, Bill Moore, John Little, Mark Natirboff, Amy Boulris--Brigham Moore LLP	Yes.

ISSUE 28

Should the statutes define "economic development" and prevent takings for the purpose of "economic development" or is there an alternative means of preventing takings for that purpose?

Respondent	Response to Issue 28
Dana Berliner—Institute for Justice	The Legislature could either specify appropriate purposes of takings or inappropriate ones, as long as it defines its terms in any statute. Florida could modify the current statutory authorizations for municipalities and counties to exclude the use of eminent domain for economic development. Alternatively, the state could limit eminent domain authority to only narrowly defined incidents of blight. For a prohibition on economic development takings, please consider the following language: Notwithstanding any other provision of law, neither this State nor any political subdivisions thereof nor any other condemnor shall use eminent domain to take private property without the consent of the owner to be used for economic development. Economic Development--The term "economic development" means any activity to increase tax revenue, tax base, employment, or general economic health, when that activity does not result in (1) the transfer of land to public ownership; (2) the transfer of land to a private entity that is a common carrier, such as a railroad or utility; or (3) the transfer of property to a private entity when eminent domain will remove a public nuisance or structures that are beyond repair or that are unfit for human habitation or use; (4) the acquisition of abandoned property; (5) the lease of property to private entities that occupy an incidental area within a public project.
Brian P. Patchen, Eminent Domain Attorney, representing property owners	It should be defined and excluded as a public purpose for a taking.
Andrew Brigham, Bill Moore, John Little, Mark Natirboff, Amy Boulris--Brigham Moore LLP	Yes. Statutes should define "economic development" and prevent takings for such purposes.

ISSUE 29

<u>S.W. Moore and John W. Little for Brigham Moore, LLP</u>: Under Procedural Issues, consider property owners' opportunity to be heard, cross-examine and present witnesses.

Respondent	Response to Issue 29
Brian P. Patchen, Eminent Domain Attorney, representing property owners	Yes.
Andrew Brigham, Bill Moore, John Little, Mark Natirboff, Amy Boulris--Brigham Moore LLP	Please refer to the FLORIDA REDEVELOPMENT REFORM (Second Draft Revisions) submitted by Brigham Moore, LLP.

ISSUE 30

<u>Florida Association of Counties</u>: The Association suggests adding a category regarding intergovernmental coordination in non-charter counties.

Respondent	Response to Issue 30
Brian P. Patchen, Eminent Domain Attorney, representing property owners	No.