

THE ABCs OF CRAs

THE PLAN

CHAPTER 163 REQUIREMENTS

What is Community Redevelopment?

Activities or projects of a county, municipality or CRA in a community redevelopment area for:

- the elimination and prevention of the development or spread of slum and blight;
- reduction or prevention of crime;
- provision of affordable housing; and
- revitalization of coastal resort and tourist areas.

What is a Community Redevelopment Project?

- Broadly interpreted by the courts to give deference to legislative determinations that the project serves a public purpose
- Installation, construction, reconstruction of streets, utilities, parks, and playgrounds
- Public areas of major hotels in support of convention centers including meeting and banquet facilities, parking garages, lobbies and other improvements
- “Area wide improvements” such as sidewalks and swale improvement projects

The Redevelopment Plan

- All Community Redevelopment Projects must comply with the Redevelopment Plan
- Redevelopment Plans come in many different shapes and sizes
- All Redevelopment Plans must comply with Chapter 163 requirements

The Redevelopment Plan

- Chapter 163 regulates three basic areas relative to the Plan
 - General Requirements
 - Contents
 - Approval Process

General Requirements – F.S. 163.360

- Conform to the Comprehensive Plan
- Indicate land acquisition, demolition and removal of structures, redevelopment, improvements and rehabilitation
- Provide for redevelopment of affordable housing or state reasons for not addressing affordable housing
- May provide for the development and implementation of community policing innovations

Contents – F.S. 163.362

- Legal description
- Diagrams and general terms
 - open space and street layout
 - limitations on building type, size, height and use
 - approximate number of dwelling units
 - public parks, recreation areas, streets , public utilities and public improvements
- Neighborhood impact element if area contains low or moderate income housing

Contents – F.S. 163.362

- Specifically indentify any publicly funded capital projects
- Contain adequate safeguards that redevelopment will be carried out pursuant to the plan
- Provide for controls and restrictions for land sold or leased for private use
- Provide assurances that there will be replacement housing for the relocation of displaced persons

Contents – F.S. 163.362

- Contained a detailed statement of the projected cost of the redevelopment including the amount to be expended on any publicly funded capital projects and any indebtedness of the CRA, the county or the municipality proposed to be incurred for redevelopment if such is to be repaid with TIF
- Provide a time certain for completing all redevelopment
 - 30 years after the FY in which the plan is adopted
 - If CRA created after July 1, 2002, 40 years after the FY in which the plan is adopted

Approval Process

- Florida Statutes, Section 163.360(4) through (7) provides the process by which the governing body may approve a community redevelopment plan
- The governing body may amend the plan pursuant to Florida Statutes Section 163.361

Approval Process - Amendment

- If it becomes necessary or desirable to amend or modify a redevelopment plan, the governing body may amend such plan upon the recommendation of the CRA.
 - may include a change in the boundaries of the redevelopment area to add land to or exclude land from the redevelopment area
 - may include the development and implementation of community policing innovations.

Approval Process - Amendment

- In addition to the requirements of Florida Statutes Section 163.346 (notice to each taxing authority by registered mail), and prior to the adoption of any modification to a community redevelopment plan that expands the boundaries of the community redevelopment area or extends the time certain set forth in the redevelopment plan as required by Florida Statutes Section 163.362(10), the CRA shall report such proposed modification to each taxing authority in writing or by an oral presentation, or both, regarding such proposed modification.

Approval Process - Amendment

- A modification to a community redevelopment plan that includes a change in the boundaries of the redevelopment area to add land must be supported by a resolution as provided in Florida Statutes Section 163.355.
- The governing body shall hold a public hearing on a proposed modification of any community redevelopment plan after public notice thereof by publication in a newspaper having a general circulation in the area of operation of the agency.

Approval Process - Amendment

- For any CRA that was not created pursuant to a delegation of authority under Florida Statutes Section 163.410 by a county that has adopted a home rule charter and that modifies its adopted community redevelopment plan in a manner that expands the boundaries of the redevelopment area after October 1, 2006, the following additional procedures are required prior to adoption by the governing body of a modified community redevelopment plan:
 - The county may provide notice to the governing body of the municipality and the CRA that the county has competing policy goals and plans for the public funds the county would be required to deposit to the community redevelopment trust fund under the proposed modification to the community redevelopment plan.

Approval Process - Amendment

- the governing body of the county and the governing body of the municipality that created the CRA shall schedule and hold a joint hearing co-chaired by the chair of the governing body of the county and the mayor of the municipality, at which the competing policy goals for the public funds shall be discussed. Prior to the joint public hearing, the county may propose an alternative modified community redevelopment plan that meets the requirements of Florida Statutes Section 163.360 to address the conditions identified in the resolution making a finding of necessity required under Florida Statutes Section 163.355.

Approval Process - Amendment

- the municipality may not proceed with the adoption of a modified plan until 30 days after the joint hearing unless the governing body of the county has failed to schedule or a majority of the members of the governing body of the county have failed to attend the joint hearing within the required time period.
- the county and the municipality may at any time voluntarily use the dispute resolution process established in chapter 164 to attempt to resolve any competing policy goals between the county and municipality related to the CRA provided that neither has the authority to require the other local government to participate in the dispute resolution process

Importance of Redevelopment Plan

Can my CRA spend TIF on _____?

AGO 2010-40

- Question to AG: May a CRA expend funds for festivals or street parties designed to promote tourism and economic development, advertisements for such events, grants to entities which promote tourism and economic development, and grants to non-profit entities providing socially beneficial programs?
- AG Answer: I cannot say that the use of community redevelopment funds would be so limited that the expenditure of funds for the promotion of a redeveloped area would be prohibited. However, grants to entities which promote tourism and economic development, as well as to nonprofits providing socially beneficial programs would appear outside the scope of the community redevelopment act

FRA Legal Position

- If a CRA's plan specifically provides for such expenditures and activities then a CRA may, upon making express findings that the contract for the appropriation and expenditure for the activity furthers the purposes of the Act and is necessary to carry out the redevelopment program, spend funds on activities, events, and promotion. Special events, marketing materials, advertising and other such non-capital expenditure have frequently been used as a means to carry out redevelopment.

FRA Legal Position

- Many community redevelopment agencies throughout the state make such expenditures with community redevelopment funds. Such expenditures must be linked to and further the objective of eradicating blight and implementing the Redevelopment Plan. However, care must be taken to use funds for these types of activities sparingly and only when found to be necessary and appropriate for meeting the needs of the area and the goals of the Redevelopment Plan. The primary mission of a CRA must be, as contemplated by the Act, to acquire and dispose of property and to undertake or assist capital projects.

Who's Right?

- Opinions of the Attorney General are not law. They are advisory only and are not binding in a court of law. Attorney General Opinions are intended to address only questions of law, not questions of fact, mixed questions of fact and law, or questions of executive, legislative or administrative policy.
- Attorney General Opinions are not a substitute for the advice and counsel of the attorneys who represent governmental agencies and officials on a day to day basis. They should not be sought to arbitrate a political dispute between agencies or between factions within an agency or merely to buttress the opinions of an agency's own legal counsel. Nor should an opinion be sought as a weapon by only one side in a dispute between agencies. (reprinted from www.myfloridalegal.com)

Who's Right?

- The body of binding legal precedent regarding expenditures by community redevelopment agencies indicates that, unless expressly prohibited by law, community redevelopment agencies may act when the powers are necessary and convenient to carry out the purposes of the statute as well as authorize a public body to act. *City of Boca Raton, Florida v. Florida*, 595 So. 2d 25 (Fla. 1992) (a municipality may exercise governmental power for a municipal purpose except when expressly prohibited by law).

Who's Right?

- The definition of a “community redevelopment project” is a broad one, encompassing a wide variety of undertakings and activities in a community redevelopment area directed toward the elimination and prevention of the development or spread of slums and blight. In Panama City Beach CRA v. Fla., the court interpreted the statute in flexible terms without strict limitations and supported the contention that legislative determinations (i.e., these projects serve a public purpose) should be given deference in Florida law. 831 So. 2d 662 (Fla. 2002).

Who's Right?

- The community redevelopment powers in §163.370(2), Fla. Stat. are not all inclusive.
- The statutory requirements for the expenditure of money in the redevelopment trust fund are not all inclusive – “Moneys in the redevelopment trust fund may be expended from time to time for undertakings of a community redevelopment agency as described in the community redevelopment plan for the following purposes, including, but not limited to. . .” §163.387(6), Fla. Stat.

Who's Right?

- With regard, to prohibited use of tax increment funds, §163.370(3), Fla. Stat. only expressly prohibits three types of projects that may not be paid for or financed by tax increment revenues: (1) Construction or expansion of administrative buildings for public bodies, unless each taxing authority agrees to the financing or unless the construction or expansion is contemplated as part of a community policing innovation; (2) Publicly owned capital improvements or projects if they were scheduled within three years of the approval of the redevelopment plan by the governing body...; and (3) General government operating expenses unrelated to the planning and carrying out of a community redevelopment plan.

Conclusion

- This issue has not been before a court for judicial determination.
- Accordingly, an evaluation must be done on a case-by-case basis and cannot be covered by a blanket statement in an advisory AGO.
- Before a definitive answer can be given as to whether or not an expenditure is outside of the powers given to a CRA under Chapter 163, one must examine the activities to see if:
 - (a) the activities the serve a public purpose in furtherance of the statutory mission of eliminating slum and blight, and
 - (b) the activities and expenditures are authorized by the Redevelopment Plan.

QUESTIONS?

THANK YOU!