

**CITY BEAUTIFUL:
CREATING A REDEVELOPMENT AREA
IN YOUR COMMUNITY**

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INTRODUCTION

Acknowledging the need of Florida communities to revitalize their economically distressed areas in order to improve public welfare and increase the local tax base, the Florida Legislature adopted the Community Redevelopment Act (Act) in 1969.¹ Since its enactment, over forty Florida Communities have established a Community Redevelopment Agency (Agency) to revitalize their downtowns, preserve their historic structures, and otherwise enhance their communities.² Some cities, such as Appalachicola, have created a community redevelopment area in order to participate in another development project, the Florida Small Cities Community Development Block Act.³

The Act provides a funding mechanism by which counties and municipalities may undertake community redevelopment.⁴ The Act allows a county or municipality to retain tax increment revenues from certain community taxing districts.⁵ Tax increment revenues equal 95 percent of the difference between the amount of ad valorem taxes levied each year on land within the CRA and the amount of ad valorem taxes which would have been produced by the rate upon which the tax is levied each year on the total assessed value of the property within the CRA.⁶ To obtain this revenue, a local government must create a community redevelopment agency, designate an area or areas to be a Community Redevelopment Area (CRA), create a community redevelopment plan (Plan), and establish a trust fund (Fund).⁷ Once this is accomplished, the tax increment revenues from within the CRA will accrue to the local government to be used for the conservation, rehabilitation or redevelopment of the CRA.⁸

¹ Fla. Stat. Ann. Ch. 163, Part III (West 1999).

² Florida Redevelopment Association, 1997-1998 Membership Directory (1999).

³ Appalachicola, Fla., Ordinance 88-11 (Jan. 3, 1989).

⁴ Fla. Stat. Ann. § 163.353 (West 1999).

⁵ Fla. Stat. Ann. § 163.387 (West 1999).

⁶ *Id.*

⁷ Fla. Stat. Ann. Ch. 163 (West 1999).

⁸ Fla. Stat. Ann. § 163.387 (West 1999).

Establishing a community redevelopment agency is similar to chartering a municipality. The agency must be established by ordinance or resolution under appropriate statutory guidelines. It must have clearly delineated powers and responsibilities. The Agency is subject to the restrictions and privileges of the local government that creates it.⁹ As a land developer, the Agency is subject to those rules and regulations that govern private development, including zoning, development of regional impact, and federal, state and local environmental laws.¹⁰ While a governing body only needs approval from within its own community to create a CRA, the CRA may be subject to legal challenges from the affected taxing authorities. Thus, it is imperative to implement the CRA exactly as the Act dictates and to maintain a detailed record of the entire process undertaken in creating the CRA. Additionally, if the governing body intends to issue revenue bonds in order to implement the redevelopment plan, the underlying CRA record will be revisited in any challenge to the bond issue.¹¹

This report provides a general overview of the procedure to undertake community redevelopment under the Act, identifying nine steps from the initial decision to consider CRA establishment through the amendment process. However, it is not a substitute for a thorough review of the Act and the case law construing it. Moreover, individual approaches should be tailored to the community seeking to establish a CRA, under the careful guidance of local counsel and professional planners.

⁹ See Dubbin, Murray H., *Urban Land Use Regulations*, Florida Environmental and Land Use Law, January 1994. Hereinafter Dubbin.

¹⁰ *Id.*

¹¹ Interview with Joyce Sellen, Assistant Director of the Community Redevelopment Agency of the City of Orlando (Oct. 12, 1999). (407) 246-2555.

I. INITIAL CONSIDERATION: THE VALUE OF ESTABLISHING A COMMUNITY REDEVELOPMENT AREA

To begin the process of establishing an Agency and a CRA, local government officials (i.e. a planner, attorney, or clerk) should make a presentation to the local governing board at a public meeting regarding the value of establishing a CRA in the community. In this way the official can obtain authorization and the commitment of resources necessary to pursue creation of a CRA. Additionally, the official will be able to gauge the local government's and the community's consensus of the value of a CRA in these circumstances as well as to identify any issues that may be significant in the early stages of discussion.

A local official will also be able to assess prevalent views on the major benefits of creating a CRA and the community concerns regarding possible negative results from such action. Because of the necessity of finding an area to be "slum" or "blighted" under the Act, the ability of the local government to exercise eminent domain and the emphasis on redevelopment, some communities are uncomfortable with undertaking the CRA process. Local businesses may resist a perceived increase in competition, landowners may mistake this effort as an attempt to gain control over private property and citizens may simply dislike the idea of labeling a portion of the community as a "slum" or "blighted." Acknowledging these viewpoints early in the process will serve as a guide in the process, in during the drafting and public presentation of the resolution and ordinance to establish the Agency and the CRA, and in drafting the community redevelopment plan.

II: EXPLORE FINDINGS OF NECESSITY

To create a CRA, the governing body must make a “finding of necessity,” as defined by the Act, and the necessity of community redevelopment area.¹² A local governing body’s power to determine an area to be “slum” or “blighted” is nondelegable.¹³ A “finding of necessity” means a determination that there exists within the community areas of “slum” or “blight” as defined by the Act, or areas which have a shortage of affordable housing.¹⁴ Further, a “finding of necessity” requires a finding that the rehabilitation, conservation, or redevelopment of the slum or blighted area is necessary in the interest of the health, safety, morals, or welfare of the residents of the community.¹⁵

It is important to recognize that the statutory definition of slum and blight is significantly different from the common usage of these terms. A “slum area” is defined by the Act, as:

“an area with a predominance of structures which due to dilapidation; deterioration; age; obsolescence; inadequate ventilation, light, air, sanitation, open spaces; high population or overcrowding; or conditions which endanger life or property; may cause ill health, transmission of disease, infant mortality, juvenile delinquency, or crime; and thus are detrimental to public health, safety, morals, or welfare.”¹⁶

¹² Fla. Stat. Ann. § 163.335 (West 1999). There is a discrepancy between the requirements for a community redevelopment area in §163.335, and the requirements described in §163.340, the definition section of the Act, which defines a “community redevelopment area” as:

a slum area, a blighted area, or an area in which there is a shortage of affordable housing that is affordable to residents of low or moderate income, including the elderly, *or a coastal and tourist area that is deteriorating and economically distressed due to outdated building density patterns, inadequate transportation and parking facilities, faulty lot layout or inadequate street layout, or a combination thereof with the governing body designates as appropriate for community redevelopment.*

By this latter definition, coastal communities appear to be held to a different standard establishing the need for a community redevelopment area. Coastal communities would not need to make a “finding of necessity” to become a community redevelopment area. However, this separate standard for coastal communities is not mentioned elsewhere in the body of the Act.

¹³ Fla. Stat. Ann. § 163.358(1) (West 1999).

¹⁴ Fla. Stat. Ann. § 163.355(1) (West 1999).

¹⁵ Fla. Stat. Ann. § 163.355(2) (West 1999).

¹⁶ Fla. Stat. Ann. § 163.340(7) (West 1999).

A “blighted area” is defined in two ways:

- “1) an area with faulty or inadequate street layout, inadequate parking facilities, or public transportation facilities incapable of handling the volume of traffic flow; or
- 2) an area with a substantial number of slum, deteriorated, or deteriorating structures and conditions which lead to economic distress or endanger life or property; or with a predominance of defective or inadequate street layout; or with faulty lot layout in relation to size, adequacy, accessibility, or usefulness; or unsanitary or unsafe conditions; or with a deterioration of site or other improvements; or with inadequate and outdated building density patterns; or with tax or special assessment delinquency exceeding the fair value of the land; or inadequate transportation and parking facilities.”¹⁷

Additional support for a finding of slum or blight may stem from crime statistics, lack of bikepaths, pedestrian and bicycle accidents, sewage problems and any other deficiency in the infrastructure of the community.

The finding of “slum” or “blighted” conditions invoke the powers of the Act. The law is well established that an administrative body’s findings of fact are presumptively valid.¹⁸ Thus, a legislative body’s finding of fact would create a stronger presumption. Further, a local government’s legislative declarations of public purpose are presumed to be valid and should be upheld unless it is arbitrary or unfounded or unless so clearly erroneous as to be beyond legislative authority.¹⁹ The Act declares that the rehabilitation, conservation or redevelopment of “slum” or “blighted” areas is necessary in the interest of public health, safety, morals and welfare.²⁰ Nevertheless, CRA designations can be controversial and careful presentation of the evidence of “slum” and “blight,” or a housing shortage and the need for a CRA is crucial. A trial court has *de novo* review of local government action in establishing a redevelopment area.²¹ Local government should ensure that it has put sufficient evidence on the record to support a finding of necessity if the CRA is later challenged in court.

¹⁷ Fla. Stat. Ann. § 163.340(8) (West 1999).

¹⁸ See *Nelson v. State ex rel. Quigg*, 156 Fla. 189, 191, 23 So.2d 136, 136 (1945).

¹⁹ See *State v. Housing Finance Authority of Polk County*, 376 So.2d 1158, 1160 (Fla. 1979); *JFR Investment v. Delray Beach Community Redevelopment Agency*, 652 So.2d 1261, 1262.

²⁰ Fla. Stat. Ann. § 163.355(2) (West 1999). *De novo* review means that a court may review all of the evidence on the record that a governing body considered when reaching its decision. Depending on the standard of review at trial, the court may decide that the governing body’s decision was arbitrary and capricious or that it lacks substantial evidence on the record.

²¹ See 652 So. 2d 1261 at 1262.

Some examples of relevant and important evidence and testimony to establish slum and blight:²²

1. A census report of existing buildings, including commercial and residential structures, demonstrating: (a) the number and percentage of substandard dwelling units, and (b) the number and percentage of nonconforming uses such as setbacks, parking and density.
2. Traffic volume that exceeds roadway capacity.
3. Inadequate public utilities – water, sewer, power – to support allowable zoning or existing use.
4. Infrastructure that requires modification to meet flood criteria.
5. Advanced ages of buildings.
6. Number and percentage of minimum housing code violations, including pending litigation of such violations.
7. Number and percentage of fire code violations.
8. Existence of social service problems: indigence ratio; medical indigence.
9. Crime statistics.
10. General infrastructure inadequacies: deterioration of sanitary and storm sewers; unpaved alleys; deterioration of streets; inadequate street lighting, drainage, water main sizes, fire flow requirements; and obsolete materials.
11. Economic deficiencies such as percentage of area population to that of the local government land mass with (a) the per capita cost of delivery of government services, and (b) the contribution of the area to the budget of the governing body.
12. Wide diversity of land ownership in the area, making it relatively impossible to acquire adequate-sized parcels for development without use of eminent domain authority.

Typically, such evidence is compiled from census data, the tax records, building and land vacancies, findings of the housing commission or building inspector, statistics on fire code violations, local crime statistics, Department of Transportation reports, and violations of the local land use code. Many of these statistics have already been recorded and simply need to be compiled. It is useful to document inadequate or deteriorating conditions through photography for visual proof of slum and blight conditions.

²² See Dubbin, 25-6.

III: NOTIFY TAXING AUTHORITIES AND THE PUBLIC

Prior to adoption of a resolution or ordinance establishing an Agency or a CRA, prior to the actual creation of the Agency, adoption or amendment of the CRA, and prior to issuance of revenue bonds under the Act, the governing body must provide adequate notice to the public and each taxing authority which levies ad valorem taxes within the CRA.²³ The taxing authorities that levy ad valorem taxes within the boundaries of the redevelopment area must be notified pursuant to F.S. 125.66(2) and (4) or 166.041(3), by registered mail, at least 15 days before the proposed action is taken.²⁴ However, some governing bodies have alerted taxing authorities months prior to taking action under the Act, so that the authorities will have ample opportunity to account for payment of the incremental taxes in their budget.²⁵

²³ Fla. Stat. Ann. § 163.346 (West 1999).

²⁴ *Id.*

²⁵ CRA manager recommends providing advance notice to taxing authorities, particularly in smaller communities which often function within a smaller budget. Interview with Corey O’Gorman, Community Redevelopment Manager of the Community Redevelopment Agency of the City of Gainesville (Sept. 2, 1999).

These notice statutes require that any ordinance be read by title or by full text at two separate meetings; and that at least ten days prior to the meeting for adoption of the ordinance; and that notice be provided in a newspaper of general circulation in the community, stating the date, time and place of the meeting, the title of the proposed ordinance, advisement to interested parties so that they may appear and be heard at the meeting, and information as to the place where the proposed ordinance may be inspected by the public.²⁶ Some communities, such as Orlando and Ybor City, have mailed notices to all affected property owners, seeking their participation or opinion.²⁷ A copy of the notice must be kept at the clerk's office for public inspection.²⁸ A county governing body is also required to file copies of the ordinance with the Department of State within ten days of its enactment.²⁹

²⁶ Fla. Stat. §125.66(2) (West 1999); Fla. Stat. § 166.041(3)(a) (West 1999). The Act cites §125.66(2) and §166.041 for the procedure to give public notice of ordinances and resolutions, however, these statutes refer only to ordinances, not to resolutions.

²⁷ Interview with Joyce Sellen, Assistant Director of the Community Redevelopment Agency of the City of Orlando (Oct. 12, 1999); Interview with Maricela Medrano, Urban Planner of Ybor City (Oct. 14, 1999)(813) 274-7933 (explaining that in Ybor City, property owners who objected to the CRA were not forced to be part of it).

²⁸ Fla. Stat. §125.66(2) (West 1999); Fla. Stat. § 166.041(3)(a) (West 1999).

²⁹ *Id.*

IV: PRESENT FINDINGS TO THE GOVERNING BODY

In the interest of good government, to adequately define public policy and for the purpose of creating a clear and complete record, the findings of necessity should be presented to the governing body at a public meeting. This includes all documentation indicating conditions of slum or blight; possible cost estimates for certain redevelopment projects, and a recommendation for the geographic boundaries of the CRA. In some communities, such as the City of Gainesville, photos and statistical maps were used as visual evidence of the areas of slum and blight.³⁰ Gainesville also provided economic estimates of the cost to remedy some of the conditions of slum and blight.³¹ Detailed evidence of inadequate and deteriorating facilities enables the governing body to make informed decisions regarding which areas of the community are in need of redevelopment.

During this meeting, it is also important to respond to the concerns of the community. In some communities, there may be concerns that redevelopment could change the character of the community. In such a community, it may be wise to focus on the need for rehabilitation or conservation of existing structures and improvement of infrastructure. In creating its Agency, the City of Pinellas Park stated the Agency's purpose was to "encourage land uses which are clearly compatible with nearby existing neighborhood land use patterns [and] neighborhood character."³² Alternately, some communities might fear that the CRA would stifle new economic development. In such situation, it may be more appropriate to focus on redevelopment and rehabilitation as a mechanism to enhance the area subject to the CRA, thereby increasing its potential for economic development.

In any community, it is important to present the positives and negatives of suggested geographical boundaries for the CRA so that the community and the governing body can make informed decisions. Among the considerations that should be explored are:

- (1) limiting the CRA to only those areas that have strong evidence of "slum" or "blight" conditions. This avoids dilution of CRA resources and strengthens the likelihood that the community will be successful in a legal challenge.
- (2) the inefficiency of including portions of the community in which there is no interest in redevelopment or areas in which a majority of property owners or citizens oppose designation as a CRA.
- (3) smaller CRA boundaries can be adopted initially and then expanded by future amendment.
- (4) larger CRA boundaries avoid the administrative expenses of an amendment.
- (5) a larger CRA has a greater potential tax increment revenue.

³⁰ Gainesville, Fla., Resolution (September 26, 1994).

³¹ *Id.*

³² Pinellas Park, Fla., Resolution 88-29 (April 14, 1988).

A geographical description of the boundaries of the CRA must be included in the resolution. A map of those boundaries should be included in the record.³³ Several cities, including Apalachicola, used monuments, buildings, and other common markers to determine the boundaries of the CRA.³⁴ Other cities, such as the City of Vero Beach have simply referred to preexisting areas to be the boundaries of the CRA.³⁵

³³ Fla. Stat. Ann. § 163.362 (West 1999).

³⁴ Apalachicola, Fla., Community Redevelopment Plan (March 28, 1989). See Appendix ____.

³⁵ Vero Beach, Fla., Ordinance 88-07 (February 16, 1988)(designating the Downtown Business District of Vero Beach as the CRA).

V: RESOLUTION TO CREATE A COMMUNITY REDEVELOPMENT AGENCY

The governing body must adopt a resolution finding that one or more slum or blighted areas, or one or more areas in which there is a shortage of affordable housing exist in the area. Further, it must find that rehabilitation, conservation or redevelopment, or a combination thereof of such area or areas is necessary in the interest of the public health, safety, morals, or welfare of the residents of the county of municipality.³⁶ Language to this effect must be included in the resolution.³⁷ When describing the findings of necessity it is prudent to describe them as broadly as possible to allow for unforeseen redevelopment opportunities to be undertaken in the future. Based upon these findings of necessity, the governing body must resolve to create a “community redevelopment agency.”³⁸ Upon the adoption of this resolution, the governing body may begin to take action under the Act.³⁹ Appendix ___ includes several resolutions by local governments that suggest the nature of findings of necessity.

The governing body has three options in establishing the Agency. The governing body may appoint a board of commissioners from the community to serve as the Agency; or the governing body may appoint a pre-existing body to serve as the Agency; or the governing body may appoint itself to serve as the Agency.⁴⁰ If the governing body chooses to appoint itself, it may also appoint two additional commissioners who reside or are engaged in business in the community.⁴¹ If the governing body appoints itself, it is vital that it clearly distinguishes when it is acting as the Agency, so that the Agency and the governing body remain separate political entities. If the governing body names itself as the Agency, this should be done by resolution.⁴² The governing body may change the governance of the Agency at a future date. The City of Orlando did this when it merged the Community Redevelopment Agency with the pre-existing Downtown Development Board several years after its creation.⁴³

VI: PASS ORDINANCE OF AGENCY SPECIFICATIONS

³⁶ Fla. Stat. Ann. § 163.355 (West 1999).

³⁷ Fla. Stat. Ann. § 163.356 (West 1999).

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ Fla. Stat. Ann. §§ 163.356; 163.357 (West 1999).

⁴¹ Fla. Stat. Ann. § 163.357 (West 1999).

⁴² *Id.* In other cases it is done by ordinance, see *infra* Section ___, below.

⁴³ Interview with Joyce Sellen, Assistant Director of the Community Redevelopment Agency of the City of Orlando (Oct. 12, 1999).

The ordinance should be used as a tool to establish the composition, duties and procedures for the Agency. For example, should the governing body choose to appoint the board of commissioners of the Agency from the community, this should be done in ordinance.⁴⁴ A commissioner may be any person who resides in or is engaged in business in the CRA.⁴⁵ This board must consist of five to seven commissions serving staggered terms.⁴⁶ The ordinance can also name the initial chair and vice chair of the Agency, which must be appointed by the governing body.⁴⁷

Within the ordinance, the governing body may also list or limit the powers of the Agency, adopt the rules of procedure for the Agency, and even create an advisory board for the Agency.⁴⁸ Although done by resolution, rather than ordinance, the City of Pinellas Park created an advisory board to the Agency, and listed the rules of procedure for the Agency to follow.⁴⁹ Advisory boards are useful because they provide an opportunity for additional citizen input for the Agency.

The ordinance may also be used to determine the budget of the Agency, which can be used for administrative expenses and overhead.⁵⁰ Several communities, such as the City of Palmetto, choose to provide \$25,000 to the administrative budget of the Agency.⁵¹ Other cities, in addition to a budget, or in lieu of a budget, provide the Agency with use of local government facilities and the services of local government staff, such as the clerk, attorney, or planner.⁵²

⁴⁴ Fla. Stat. Ann. § 163.356 (West 1999).

⁴⁵ *Id.*

⁴⁶ *Id.* The requirement for staggered terms does not apply to the governing body if it appoints itself as the Agency. However if the governing body appoints itself as the Agency and appoints two additional community members to serve in the Agency, these community members must serve staggered terms. Fla. Stat. Ann. § 163.357 (West 1999).

⁴⁷ *Id.*

⁴⁸ Fla. Stat. Ann. § 163.358 (West 1999).

⁴⁹ Pinellas Park, Fla., Resolution 88-77 (Jan. 12, 1989); Pinellas Park, Fla., Resolution RA 89-1 (March 21, 1989); Pinellas Park, Fla., Ordinance 1858 (Sept. 14, 1989).

⁵⁰ Fla. Stat. Ann. § 163.356 (West 1999).

⁵¹ Palmetto, Fla., Resolution 85-7 (May 7, 1985).

⁵² Vero Beach, Fla., Resolution 88-10 (March, 15, 1988).

VII: CREATE A REDEVELOPMENT PLAN

Once the Agency and the CRA are established, the Agency must prepare a community redevelopment plan.⁵³ This plan may be written by the Agency or submitted to the Agency by other public or private persons or organizations.⁵⁴ Plan development and approval is subject to stringent regulations and procedures. The Act provides an outline of elements and issues to be considered.⁵⁵ The plan must conform to the governing comprehensive plan and must address the need for development of affordable housing in the CRA.⁵⁶ It must also contain a legal description of the boundaries of the CRA, a map of the CRA, the approximate amount of open space to be provided, limitations on the type, size, height, number and proposed use of buildings, the approximate number of dwelling units, and a list of property which is intended for use as public parks, recreation area, streets, utilities, and other improvements.⁵⁷

Some plans restate the findings of necessity used to create the Agency and the CRA; other plans simply state the need for planned development in the community. A detailed plan, such as that used by the City of Apopka, includes the history, vision, and objectives of the community, as well as the policy used in creating the plan.⁵⁸ Other communities have also chosen to include a “vision” for their community or their mission statement as guidance in creating a plan and making amendments.⁵⁹ The plan used by the City of Apopka also included plans for the Rails to Trails program, business recruitment programs, special events planning, Adopt-A-Highway program, business awards programs, and other community initiatives.⁶⁰

⁵³ Fla. Stat. Ann. § 163.360 (West 1999)(the Act does not require that an Agency be created prior to initiation of a plan, in fact the language of §163.356(1) suggests that the creation of an Agency may be discretionary under the Act, however the Act does require that a CRA be established before a plan may be implemented).

⁵⁴ *Id.*

⁵⁵ Fla. Stat. Ann. § 163.360(6), (7) (West 1999).

⁵⁶ Fla. Stat. Ann. § 163.360 (West 1999)(The CRA plan is not appended to the local comprehensive plan, but it must be reviewed by local, regional and state planning authorities to insure that it is in compliance before development orders can be issued to implement the CRA plan).

⁵⁷ *Id.*

⁵⁸ Apopka, Fla., Community Redevelopment Plan (June 1993).

⁵⁹ Interview with Maricela Medrano, Urban Planner of Ybor City (Oct. 12, 1999) (explaining that Ybor City stated its mission to create “An Urban Village” which has guided its planning process).

⁶⁰ *Id.*

Prior to consideration of the community redevelopment plan, the CRA Agency must submit the plan to the local government planning agency for review and recommendations regarding its compliance with the local comprehensive plan.⁶¹ The Agency may then submit the community redevelopment plan and supporting documents to the CRA's governing body and taxing authorities.⁶² Upon receipt of the proposed community redevelopment plan, the local governing body must hold a public hearing, after providing published notice under the Act.⁶³ The governing body may then approve the community redevelopment plan if it meets the following threshold elements:⁶⁴

- 1) provides a feasible method to relocate families who will be displaced;
- 2) conforms to the general plan of the community as a whole;
- 3) makes provision for adequate community policing innovations, parks, and recreational areas with specific consideration for the health, safety and welfare of children;
- 4) offers maximum opportunity for community rehabilitation and redevelopment by private enterprise; and
- 5) will reduce or maintain evacuation time after natural disasters in coastal communities.⁶⁵

Final approval of the plan rests with the governing body.⁶⁶ Approval may be by ordinance or resolution, but it should be detailed and emphasize issues of concern to the community, such as relocation benefits and the on-going relationship between the governing body and the Agency.⁶⁷ The Act does provide for emergency action that negates many of the procedures and abbreviates the time span for the CRA.⁶⁸ Upon approval by the governing body, the plan will be in full force and effect for the CRA.⁶⁹

⁶¹ Fla. Stat. Ann. § 163.360 (West 1999). The planning agency has 60 days to review the plan and make its recommendation on whether development conforms to the comprehensive plan. Failure to respond within 60 days is tantamount to a finding of conformity.

⁶² *Id.*

⁶³ *Id.*

⁶⁴ Fla. Stat. Ann. § 163.360(6), (7) (West 1999).

⁶⁵ Fla. Stat. Ann. § 163.360 (West 1999).

⁶⁶ *Id.*

⁶⁷ *See* Dubbin. 25-10.

⁶⁸ Fla. Stat. Ann. § 163.360(9) (West 1999). For example, when a natural or manmade emergency occurs which results in substantial damage to people or loss of property, the governor may certify a need for emergency assistance under federal law and that an area is blighted. The governing body may then approve a community redevelopment plan without regard to the provisions requiring a general plan and a public meeting.

⁶⁹ Fla. Stat. Ann. § 163.360 (West 1999).

The public hearing and plan approval is as important a procedural step for a legally valid program as the one proving the existence of areas of “slum” and “blight.” It is critical that communities comply with the Act and provide proof of the required facts. Evidence should be clearly presented, using experts when necessary, public officials, citizens and consultants.⁷⁰ This step is vital despite the presumption of validity of legislation and the presumption that local governing bodies are knowledgeable about their communities and may reach conclusions without public hearings and extrinsic evidence.⁷¹ After the hearing, if the governing body approves the plan, the resolution or ordinance should contain the specific required statutory findings.⁷²

The Act preempts redevelopment powers to the county if a home rule charter has been adopted.⁷³ In a home rule county, any powers under the Act are exercised exclusively by the county governing body. But a chartered county may delegate such power to a municipality for use within its boundaries. When a municipality within a home rule county seeks to create a CRA, it should seek county delegation at the beginning of the process. The county should adopt and enact the resolutions determining need and delegating CRA powers to the municipality. The municipality should adopt a resolution that duplicates the county’s determinations of need.⁷⁴

⁷⁰ See Dubbin. 25-10.

⁷¹ See *State ex rel. McIver v. Swank*, 152 Fla. 565, 569, 12 So 2d 605, 607-08 (1943); *City of Opa Locka v. State ex rel. Tepper*, 257 So. 2d 100,103 (Fla. 3d DCA 1972); *State v. Housing Finance Authority of Pinellas County*, 506 So. 2d 397, 399 (Fla. 1987).

⁷² See Dubbin. 25-11.

⁷³ Fla. Stat. Ann. § 163.410 (West 1999).

⁷⁴ See Dubbin. 25-11.

VII: CREATE A TRUST FUND

After the community redevelopment plan is approved and adopted, the governing body must then adopt an ordinance to establish a redevelopment trust fund ("Fund") to finance community redevelopment for the duration of the Plan.⁷⁵ No tax increment revenues may be collected or spent until the Fund is established.⁷⁶ This Fund is to be funded by no less than 50% and no more than 95% of the ad valorem incremental taxes in the CRA accruing from the date when the ordinance establishing the Fund is adopted.⁷⁷ However, it is possible that there could be no tax increment revenues to pay into the Fund.⁷⁸

Once established, the Fund may be used to finance:⁷⁹

1. Administrative and overhead expenses of the Agency;
2. Redevelopment planning, surveys, and financial analysis;
3. Acquisition of real property in the CRA;
4. Clearance and preparation of any area for redevelopment and relocation of site occupants;
5. Repayment of principal and interest of loans, advances, bonds, and any other indebtedness;
6. All expenses related to bonds; the development of affordable housing in the CRA;
7. Development of community policing innovations.

Florida communities have used the Fund to finance housing, transportation, crime deterrence, and streetscape projects, as well as to purchase public lands, create open space plazas, make facade improvements, renovate existing structures, improve parking and sewage facilities, construct sidewalks and bikepaths, purchase street lighting, and hire police officers.⁸⁰

⁷⁵ Fla. Stat. Ann. § 163.387 (West 1999).

⁷⁶ Fla. Stat. Ann. § 163.387 (West 1999).

⁷⁷ *Id.*

⁷⁸ Interview with James Fowler, City of Altamonte Springs (Nov. 8, 1999) (explaining that the tax base in a CRA may decrease, or the taxes levied in the CRA may be reduced, in which case there would not be any revenues to pay to the Fund).

⁷⁹ Fla. Stat. Ann. § 163.387 (West 1999).

⁸⁰ Interview with James Fowler, City of Altamonte Springs (Nov. 8, 1999) (explaining that tax increment money can be spent on just about anything, as long as the need is stated in the plan).

By January 1 of each year when the Fund is in existence, each taxing authority shall appropriate to the trust fund the incremental revenues of the ad valorem taxes of the CRA, exclusive of any debt service millage.⁸¹ Any taxing authority which fails to pay the increment to the Fund by January 1, shall pay to the Fund five percent of the amount of the increment plus an additional one percent of the increment for each month the increment is outstanding as a penalty for late payment.⁸² On the last day of the fiscal year of the Agency, any money remaining in the Fund shall be returned to each taxing authority, used to reduce indebtedness, deposited into escrow, or appropriated to a specific redevelopment project to be completed within three years.⁸³ An audit of the Fund must be completed and reported by the Agency each fiscal year.⁸⁴

Certain public bodies and taxing authorities are exempt from the Fund, including any special district which levies ad valorem taxes on real property in more than one county; a special district which has a sole available revenue from ad valorem taxes; most library districts; neighborhood improvement districts created under the Safe Neighborhoods Act; metropolitan transportation authorities; and water management districts.⁸⁵ The governing body has additional discretion to exempt other special districts and must grant a public hearing to any special districts that request an exemption.⁸⁶ Some cities have specifically exempted Special Assessment Districts in the community redevelopment plan.⁸⁷

Many local governments finance capital improvements authorized by the Plan through revenue bonds. The power to authorize the issuance of these bonds is reserved to the governing body. When so authorized by resolution or ordinance, the local government or the Agency has the power to issue bonds or other evidences of debt. These are very broad powers under the Act.

⁸¹ Fla. Stat. Ann. § 163.387 (West 1999).

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ Apopka, Fla., Community Redevelopment Plan (June 1993).

Under the Act, the bonds are not construed as a debt within any constitutional or statutory debt limitation or restriction.⁸⁸ This means that the bonds are exempt from local ordinances or charter provisions requiring referenda on local debts.⁸⁹ Bonds are declared to be issued for an essential public purpose. Therefore, the bonds and any interest are exempt from all state taxes except for the state corporate income tax under F.S. Chapter 220.⁹⁰

Further, CRA bonds are not a charge against the general credit of the local government.⁹¹ CRA bond debts payable from tax increment revenues must mature no later than 30 years after the fiscal year in which the revenues are deposited into the Fund or the date that the local governing body amends the plan.⁹²

Given the broad bonding powers the right to collect and spend tax increment revenues under the Act, it is understandable that CRA designation, plan approval and bond issuance have often been subject to challenge by citizens, local governments and the state.⁹³ The need for careful documentation of evidence in each step of the CRA process and strict adherence to the requirements of the Act has been emphasized repeatedly in this report. This need becomes especially critical if a local government plans to issue bonds to pay for CRA capital improvements.

Bond validation, if required, present a major evidentiary test of the CRA procedure. A local government must be prepared to face litigation in which it must present the evidence presented to the governing body for CRA determination and plan approval.⁹⁴ Further, it may be necessary to prove that a particular redevelopment project furthered a valid public purpose under the Act and therefore, not a violation of Article VII, §10 of the Florida Constitution.⁹⁵

⁸⁸ Fla. Stat. Ann. § 163.385(2) (West 1999).

⁸⁹ Art. __, Sec. __ of the Florida Constitution requires that bonding by local governments be provided for by general law and approved by a majority of the registered citizens.

⁹⁰ See Dubbin. 25-11.

⁹¹ Fla. Stat. Ann. § 163.387(5) (West 1999).

⁹² Fla. Stat. Ann. § 163.387(1),(2)(a) (West 1999).

⁹³ See e.g. *State v City of Pensacola*, 397 So. 2d 922 (Fla. 1981); *State v. Miami Beach Redevelopment Agency*, 392 So. 2d 875 (Fla. 1980).

⁹⁴ See Dubbin. 25-13.

⁹⁵ *Id.*

In *State v. Miami Beach Redevelopment Agency*, the Florida Supreme Court created a guide to community redevelopment for both proponents and challengers.⁹⁶ This case clearly established that when a CRA project's purpose is to address and cure a public problem under the Act, but also incidentally benefits private interests, the project still meets the public purpose test, is constitutional, and may be financed by government bonds.⁹⁷ Thus, the reverse is also true. If a CRA project primarily benefits private interests, it will be judged unconstitutional. *Miami Beach* also established a standard of "substantial and competent evidence" for judicial review of CRA designation and plan approval during bond validation proceedings.⁹⁸ A more stringent evidentiary standard for local governments than the fairly debatable standard would apply in the absence of a bond proceeding.⁹⁹

A local government's appropriation of tax increments for CRA plan implementation is not a violation of Article VI, §9(a), of the Florida Constitution prohibiting the levying of county funds for other than county purposes.¹⁰⁰ The reduction and elimination of "slum" and "blighted" areas is a state concern under the Act and benefits the county in which the CRA is located.¹⁰¹ In addition, the appropriation of tax increment funds into the CRA Fund does not violate Article I, § 10 because it will not violate a county's contracts or obligations.¹⁰² Finally, the Florida Supreme Court found that the use of tax increments under the Act is not a pledge of local government general funds and therefore does not require a referendum under Article VII, §12(a) of the Florida Constitution.¹⁰³

Therefore, under the Act as it has been interpreted by the Florida courts, a local government may collect, spend and authorize the issuance of revenue bonds to further the purposes of a validly designated CRA. But this is an area that generates a great deal of controversy, so proper documentation of strict compliance with the Act is crucial to avoid and survive legal challenges.

⁹⁶ 392 So. 2d 875.

⁹⁷ *Id.*

⁹⁸ *Id.* at 893.

⁹⁹ Most local legislative action is accorded a "fairly debatable" standard by a reviewing court. If a governing body's decision is fairly debatable under the facts, then that decision will not be overturned. In a bond validation proceeding, because the governing body is committing revenue to repay a debt for a substantial amount of time, a reviewing court requires "substantial and competent evidence" on the record to support the decision.

¹⁰⁰ See *Dubbin*, 25-15.

¹⁰¹ See *Kelson v. City of Pensacola*, 483 So. 2d 77 (Fla. 1st DCA 1986).

¹⁰² *Id.* at 79.

¹⁰³ See *Wilson V. Palm Beach County Housing Authority*, 503 So. 2d 893 (Fla. 1987).

IX: AMENDMENTS

Should it become necessary to revise the geographical boundaries of the CRA, or to change the community redevelopment plan, this may be done by amendment.¹⁰⁴ The governing body may amend the community redevelopment plan to address changing needs, upon a recommendation of the Agency and after a public hearing.¹⁰⁵ A community may use the amendment process to implement a phasing approach to community planning.¹⁰⁶ Alternatively, a community may find it more cost effective to adopt an entirely new CRA when its goals have been achieved in the existing CRA.¹⁰⁷ It is often possible to avoid the need to amend or redo the community redevelopment plan by keeping the findings of necessity and the goals of the redevelopment plan broad and flexible to meet the needs of the future. A local government must be mindful, however, of the importance of tying the plan to the findings of necessity.

¹⁰⁴ Fla. Stat. Ann. § 163.361 (West 1999).

¹⁰⁵ *Id.*

¹⁰⁶ Interview with Maricela Medrano, Urban Planner of Ybor City (Oct. 12, 1999).

¹⁰⁷ *Id.*

X. ADDITIONAL CONSIDERATIONS

Issues of ethics should be carefully considered and resolved by local governments when establishing and implementing a CRA. The inclusion of local governing body members on a CRA Agency may raise several ethical questions.¹⁰⁸ All Agency commissioners are subject to F.S. CH. 112, Part III¹⁰⁹. Agency commissioners must disclose any property owned within a CRA at the time of designation and any property owned or controlled in a CRA project area up to two years before that commissioner's appointment to the Agency.¹¹⁰ After disclosing such interest, the commissioner may vote on matters affecting the property in accordance with F.S. CH. 112, Part III.¹¹¹

An Agency commissioner or other CRA officer, or any other agency exercising redevelopment powers may not hold any other public office in the municipality or county regarding the CRA.¹¹² This prohibition excludes governing body members who are also commissioners of the CRA Agency.¹¹³ But strict separation of governing body members' actions for the Agency should be maintained and documented.

When it enacted the Tax Reform Act of 1986, Congress created a new IRC §144(c)¹¹⁴: "Qualified Redevelopment Bond."¹¹⁵ This grants provides to bond issuers tax-exempt status for bonds "issued as part of an issue 95% or more of the net proceeds of which are to be used for one or more redevelopment purposes in any designated blighted area." This section has specific requirements for qualification, definitions of redevelopment purposes, definitions of blighted areas and restrictions on the use of bond proceeds.¹¹⁶ The crucial relationship between marketability of bonds and their tax impact necessitates a clear understanding of the requirements of this Act.¹¹⁷

¹⁰⁸ See Dubbin. 25-19.

¹⁰⁹ Fla. Stat. Ann. § 112.300. (West 1999).

¹¹⁰ See Dubbin. 25-19..

¹¹¹ Fla. Stat. Ann. § 112. (West 1999).

¹¹² Fla. Stat. Ann. § 163.356. (West 1999).

¹¹³ Fla. Stat. Ann. § 163.357. (West 1999).

¹¹⁴

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ *Id.*

CONCLUSION

The Community Redevelopment Act can provide a flexible and important tool for preservation, restoration, enhancement and development of economically distressed areas. More than 40 local governments have taken advantage of this opportunity to revitalize their downtowns, restore their historic structures and otherwise improve their communities. A local government that properly establishes a community redevelopment area and a community redevelopment plan under the Act can gain tax increment revenues and grants from the state to implement capital improvements. In addition and, equally as important, local governments can increase public participation in community redevelopment and use this process to create a vision for the future of the area.