

City Beautiful: Establishing Community Redevelopment Areas in Florida

Prepared by
Conservation Clinic
Center for Governmental Responsibility
University of Florida Levin College of Law

Brenda Appledorn (Fall 2006 update)
Allen Albert (Spring 2005 update)
Melva Macfie (Fall 1999)
Karen Zagrodny (Fall 1999)

Thomas T. Ankersen, Director
Thomas Ruppert, CGR Conservation Law Fellow

TABLE OF CONTENTS

INTRODUCTION	Page 3
I. INITIAL CONSIDERATION: THE VALUE OF ESTABLISHING A COMMUNITY REDEVELOPMENT PLAN	Page 5
II. EXPLORE FINDINGS OF NECESSITY	Page 6
III. NOTIFY TAXING AUTHORITIES AND THE PUBLIC	Page 10
IV. PRESENT FINDINGS TO THE GOVERNING BODY	Page 12
V. RESOLUTION TO CREATE A COMMUNITY REDEVELOPMENT AGENCY	Page 14
VI. PASS ORDINANCE OF AGENCY SPECIFICATIONS	Page 16
VII. CREATE A REDEVELOPMENT PLAN	Page 18
VIII. CREATE A TRUST FUND	Page 22
IX. AMENDMENTS	Page 27
X. ADDITIONAL CONSIDERATIONS	Page 28
I. COMMUNITY-BASED DEVELOPMENT ORGANIZATION ASSISTANCE ACT	Page 30
CONCLUSION	Page 31

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 one hundred-forty Florida Communities have established a Community Redevelopment Agency (Agency) to revitalize downtowns, preserve historic structures, and otherwise enhance communities.² Some cities, such as Apalachicola, have created a community redevelopment area in order to participate in another development project, the Florida Small Cities Community Development Block Act (Block Act).³

The Act provides a funding mechanism by which counties and municipalities may undertake community redevelopment.⁴ It 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 property 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 (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 CRA directs the tax increment revenues from within the CRA to accrue to the local government and to be used for the conservation, rehabilitation or

¹ Fla. Stat. Ann. Ch. 163, Part III (West 2006).

²Florida Redevelopment Association, <http://www.redevelopment.net/Default.aspx?tabid=56> (last visited April 25, 2006)

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

⁴ Fla. Stat. Ann. § 163.353 (West 2006).

⁵ Fla. Stat. Ann. § 163.387 (West 2006).

⁶ *Id.*

⁷ Fla. Stat. Ann. Ch. 163 (West 2006).

redevelopment of the CRA.⁸

Establishing an Agency is similar to chartering a municipality. The Agency must be established by ordinance or resolution under appropriate statutory guidelines and 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, developments 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 to implement the redevelopment plan, the underlying CRA record will be revisited in any challenge to the bond issue.¹¹

This report is a general overview of the procedure to undertake community redevelopment under the Act, identifying nine steps from the initial decision to consider establishing a CRA 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.

⁸ Fla. Stat. Ann. § 163.387 (West 2005).

⁹ Fla. Stat. § 163.356. See Murray H. Dubbin, *Urban Land Use Regulations*, in *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. Public discussion and comments can inform the official of the local government's and the community's consensus of the value of a CRA for their circumstances as well as identify any issues that may be significant early in the process. Community and government comments are critical to be able to assess prevalent views on the major benefits of and the possible negative results from creating a CRA.

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. Previous to the enactment of Chapter 2006-11, Laws of Florida, community redevelopment agencies could exercise the power of eminent domain if the power was delegated to the agency under the CRA ordinance. Chapter 2006-11 amended Chapter 73, Florida Statutes and prohibits the Agency from exercising eminent domain authority.

Additionally, 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." Reconciling these concerns early in the process will facilitate a smoother process. Being responsive during the drafting and public presentations of the resolution and ordinance establishing the Agency and CRA will aid drafting the community redevelopment plan. Responsiveness will also create greater support for the CRA in the community, making the authorization and commitment of necessary resources for the CRA more likely.

II: EXPLORE FINDINGS OF NECESSITY

The governing body of the community must make an area assessment and generate a “finding of necessity,” as defined by the Act in order to exercise its community redevelopment authority.¹² A local governing body’s power to determine an area to be “slum” or “blighted” is non-delegable.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 In addition, “a finding of necessity” must be based on data and analysis that meet the criteria set forth in Florida Statute §. 163.340(7) or (8).¹⁶

The local government is not required to use original data collection. However, the data must be from the best available “professionally accepted existing source” including but not limited to the United States Census, State Data Center, State University System of Florida, and existing technical studies.¹⁷

It is important to recognize that the statutory definitions of slum and blight are significantly

¹² Fla. Stat. Ann. § 163.355 (West 2005). There is a discrepancy between the finding requirements for exercising community redevelopment authority under §163.355, and the requirements described in §163.340, the definition section of the Act. In §163.340, “community redevelopment area” is defined 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 definition, coastal communities appear to be held to a different standard, i.e., to meet the requirements, there is a reduced need to find "blight" or "slum" to establish a community redevelopment area. While both the definition section and §163.335, the legislative findings and declarations of necessity, include coastal areas with specific requirements, the required findings for creating a CRA under §163.355 are greater. In coastal communities the “finding of necessity” may be relaxed because of the public policy to protect waterfronts from deterioration and over privatization per the Coastal Zone Management Act (16 U.S.C. 1451, et seq).

¹³ Fla. Stat. Ann. § 163.358(1) (West 2005).

¹⁴ Fla. Stat. Ann. § 163.355(1) (West 2005).

¹⁵ Fla. Stat. Ann. § 163.355(2) West 2005).

¹⁶ Fla. Stat. Ann. § 163.355 (West 2005),

¹⁷ Fla. Admin. Code § 9J-5.025 F.A.C. (West 2005).

different from the common usage of these terms. A “**slum area**” is defined by the Act, as:

an area having physical or economic conditions conducive to disease, infant mortality, juvenile delinquency, poverty, or crime because there is a predominance of buildings or improvements, whether residential or nonresidential, which are impaired by reason of dilapidation, deterioration, age, or obsolescence, and exhibiting one or more of the following factors:

- (a) Inadequate provision for ventilation, light, air, sanitation, or open spaces;
- (b) High density of population, compared to the population density of adjacent areas within the county or municipality; and overcrowding, as indicated by government-maintained statistics or other studies and the requirements of the Florida Building Code; or
- (c) The existence of conditions that endanger life or property by fire or other causes.¹⁸

A “**blighted area**” is defined in two ways:

1) an area in which there are a substantial number of deteriorated, or deteriorating structures, in which conditions, as indicated by government-maintained statistics or other studies, are leading to economic distress or endanger life or property, and in which two or more of the following factors are present: (a) Predominance of defective or inadequate street layout, parking facilities, roadways, bridges, or public transportation facilities; (b) Aggregate assessed values of real property in the area for ad valorem tax purposes have failed to show any appreciable increase over the 5 years prior to the finding of such conditions; (c) Faulty lot layout in relation to size, adequacy, accessibility, or usefulness; (d) Unsanitary or unsafe conditions; (e) Deterioration of site or other improvements; (f) Inadequate and outdated building density patterns; (g) Falling lease rates per square foot of office, commercial, or industrial space compared to the remainder of the county or municipality; (h) Tax or special assessment delinquency exceeding the fair value of the land; (i) Residential and commercial vacancy rates higher in the area than in the remainder of the county or municipality; (j) Incidence of crime in the area higher than in the remainder of the county or municipality; (k) Fire and emergency medical service calls to the area proportionately higher than in the remainder of the county or municipality; (l) A greater number of violations of the Florida Building Code in the area than the number of violations recorded in the remainder of the county or municipality; (m) Diversity of ownership or defective or unusual conditions of title which prevent the free alienability of land within the deteriorated or hazardous area; or (n) Governmentally owned property with adverse environmental conditions caused by a public or private entity; or

2) any area in which at least one of the factors identified in paragraphs (a) through (n) are present and all taxing authorities subject to §163.387(2)(a) agree, either by interlocal agreement or agreements with the agency or by resolution, that the area is blighted. Such agreement or resolution shall only determine that the area is blighted. For purposes of qualifying for the tax credits authorized in chapter 220, "blighted area" means an area as defined in this subsection....¹⁹

¹⁸ Fla. Stat. Ann. § 163.340(7) (West 2005).

Additional support for a finding of slum or blight may stem from lack of bike paths, 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 and benefits of the Act.

The law is well established that an administrative body’s findings of fact are presumptively valid.²⁰ 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 arbitrary, unfounded or so clearly erroneous as to be beyond legislative authority.²¹ 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.²² 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.

As a result of the 2002 legislative changes to the definition of “slum” and “blighted” area, findings of fact by administrative bodies will have to operate within a narrower range as a result of increased elemental requirements for “slum” and “blight” and the deletion of “slum” as a possible factor defining “blighted area.”²³ Thus far, there have been no appellate cases addressing the new definition. A trial court has *de novo* review of local government action in establishing a redevelopment area.²⁴ Local governments should ensure there is sufficient evidence on the record to support a finding of necessity if the CRA is later challenged in court.

¹⁹ Fla. Stat. Ann. § 163.340(8) (West 2005).

²⁰ See *Nelson v. State ex rel. Quigg*, 156 Fla. 189, 191, 23 So.2d 136, 136 (1945).

²¹ 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.

²² Fla. Stat. Ann. § 163.355(2) (West 2005)

²³ Fla. Stat. Ann. § 163.340(7),(8) (West 2005)

²⁴ *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. See 652 So. 2d 1261 at 1262.

Some examples of relevant and important evidence and testimony to establish slum and blight:²⁵

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, tax records, building and land vacancies,

²⁵ See Dubbin, 25-6.

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.

III: NOTIFY TAXING AUTHORITIES AND THE PUBLIC

The governing body must provide adequate notice to the public and each taxing authority which levies ad valorem taxes within the CRA 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.²⁶ 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 fifteen (15) days before the proposed action is taken.²⁷ 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.²⁸

These notice statutes require that any ordinance be read by title or by full text at two separate meetings and at least ten (10) days prior to the meeting for adoption of the ordinance. They also require 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, information as to the place where the proposed ordinance may be inspected by the public, and advising interested parties that they may attend and be heard at the meeting.²⁹ Some communities, such as Orlando and Ybor City, have mailed notices

²⁶ Fla. Stat. Ann. § 163.346 (West 2005).

²⁷ *Id.*

²⁸ 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).

²⁹ Fla. Stat. § 125.66(2) (West 2005); Fla. Stat. § 166.041(3)(a) (West 2005). 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

to all affected property owners, seeking their participation or opinion.³⁰ A copy of the notice must be kept at the clerk's office for public inspection.³¹ A county governing body is also required to file copies of the ordinance with the Department of State within ten (10) days of its enactment.³²

resolutions.

³⁰ 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).

³¹ Fla. Stat. §125.66(2) (West 2005); Fla. Stat. § 166.041(3)(a) (West 2005).

³² *Id.*

IV: PRESENT FINDINGS TO THE GOVERNING BODY

In the interest of better government, to adequately define public policy, and to create a clear and complete record, the Findings of Necessity document 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, photographs and statistical maps were used as visual evidence of the areas of slum and blight.³³ Gainesville also provided economic estimates of the cost to remedy some of the conditions of slum and blight.³⁴ In fact, the current definition of “slum area” requires “government-maintained statistics or other studies” in order to prove a high density population and an overcrowded area.³⁵ Additionally, the current definition of “blighted area” requires “government-maintained statistics or other studies” in order to prove conditions that result in economic distress or endanger life or property.³⁶ 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

³³ Gainesville, Fla., Resolution (September 26, 1994).

³⁴ *Id.*

³⁵ Fla. Stat. § 163.340 (7)(b) (West 2005).

³⁶ Fla. Stat. § 163.340 (8) (West 2005).

neighborhood land use patterns [and] neighborhood character.”³⁷

Alternately, some communities might fear that the CRA would stifle new economic development. In such cases, 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 to avoid diluting CRA resources and strengthen 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.

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.³⁸ Several cities, including Apalachicola, used

³⁷ Pinellas Park, Fla., Resolution 88-29 (April 14, 1988).

³⁸ Fla. Stat. Ann. § 163.362(1) (West 2005).

monuments, buildings, and other common markers to determine the boundaries of the CRA.³⁹ Other cities, such as the City of Vero Beach have simply referred to preexisting areas to be the boundaries of the CRA.⁴⁰

³⁹ Apalachicola, Fla., Community Redevelopment Plan (March 28, 1989).

⁴⁰ Vero Beach, Fla., Ordinance 88-07 (February 16, 1988) (designated the Vero Beach Downtown Business District as a 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, exists in the area and this finding must be supported by data and analysis and be based on the criteria used to describe “slum area” and “blighted 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.⁴¹ Language to this effect must be included in the resolution.⁴² 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” (Agency).⁴³ In addition, a charter county with a population of less than or equal to 1.6 million may create more than one “community redevelopment agency.”⁴⁴ Upon the adoption of this resolution, the governing body may begin to take action under the Act.⁴⁵

The governing body has three options for establishing an Agency. The governing body may: (1) appoint a board of commissioners from the community to serve as the Agency; or (2) appoint a pre-existing body to serve as the Agency; or (3) appoint itself to serve as the Agency.⁴⁶ If the governing body chooses to appoint itself, it may also appoint two additional commissioners who reside or are

⁴¹ Fla. Stat. Ann. § 163.355 (West 2005).

⁴² *Id.*

⁴³ Fla. Stat. Ann. § 163.356 (West 2005).

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*; § 163.357 (West 2005).

engaged in business in the community.⁴⁷ In this instance, it is vital that the governing body distinguishes clearly when it is acting as the Agency, so that the Agency and the governing body remain separate political entities. To name itself as the Agency, the governing body should do so by passing a resolution.⁴⁸ 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.⁴⁹

VI: PASS ORDINANCE OF AGENCY SPECIFICATIONS

The ordinance should be used as a tool to establish the composition, duties, and procedures for

⁴⁷ Fla. Stat. Ann. § 163.357 (West 2005).

⁴⁸ *Id.* In other cases it is done by ordinance, see *infra* Section VI, City Beautiful.

⁴⁹ Interview with Joyce Sellen, Assistant Director of the Community Redevelopment Agency of the City of Orlando (Oct. 12, 2005).

the Agency. For example, should the governing body choose to appoint the board of commissioners of the Agency from the community, this should be by ordinance.⁵⁰ A commissioner may be any person who resides in or is engaged in business in the CRA.⁵¹ This board must consist of five to seven commissioners serving staggered terms.⁵² The ordinance can also name the initial chair and vice chair of the Agency, which must be appointed by the governing body.⁵³

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.⁵⁴ While the Act provides that the Agency shall have the powers of the legislative body, there are clear cut exceptions included in the statutes.⁵⁵ 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.⁵⁶ Advisory boards are useful because they provide an opportunity for additional citizen input to the

⁵⁰ Fla. Stat. § 163.356 (West 2005).

⁵¹ *Id.*

⁵² *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 2005).

⁵³ *Id.*

⁵⁴ Fla. Stat. § 163.358 (West 2005).

⁵⁵ Fla. Stat. §163.370. In 2006, the Act was amended so that an Agency may no longer exercise the power of eminent domain to rehabilitate blighted or slum areas. Chapter 73, Florida Statutes was amended in 2006. It now states that the taking of private property for the elimination of a nuisance or a slum and blight condition do not satisfy the "public purpose" requirement contained in Article X of the Florida Constitution. This new prohibition is applicable to Agency's via the statutory language in the Act that Agencies have the powers of the local government. Additionally, the Act's "blighted area" test can no longer be used in connection with the Florida Constitution's "public purpose" requirement. Notably, property that is acquired in a CRA is also subject to the same "cooling off" period contained in Chapter 73, Florida Statutes, which prohibits the transfer of property acquired by eminent domain to a natural person or private entity for a period of ten years.

Agency.

The ordinance may also be used to determine the Agency's budget, which can be used for administrative expenses and overhead.⁵⁷ Several communities, such as the City of Palmetto, choose to provide \$25,000 to the administrative budget of the Agency.⁵⁸ 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.⁵⁹

⁵⁶ 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).

⁵⁷ Fla. Stat. Ann. § 163.356 (West 2005).

⁵⁸ Palmetto, Fla., Resolution 85-7 (May 7, 1985).

⁵⁹ 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 (Plan).⁶⁰ This Plan may be written by the Agency or submitted to the Agency by other public or private persons or organizations.⁶¹ Plan development and approval is subject to stringent regulations and procedures. The Act provides an outline of elements and issues to be considered.⁶² The plan must conform to the governing comprehensive plan and must address the need for development of affordable housing (if applicable) in the CRA.⁶³ Also, it must 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 intended for use as public parks, recreation area, streets, utilities, and other improvements.⁶⁴ Additionally, redevelopment is not limited to areas that have already been developed.⁶⁵

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

⁶⁰ Fla. Stat. Ann. § 163.360 (West 2005)(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).

⁶¹ *Id.*

⁶² Fla. Stat. Ann. § 163.360(6), (7) (West 2005).

⁶³ Fla. Stat. Ann. § 163.360 (West 2005)(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).

⁶⁴ *Id.*

⁶⁵ Fla. Stat. Ann. § 163.360(8), (9), (6) (West 2005); *See Pan. City Beach Cmty. Redevelopment Agency v. State*, 831 So. 2d 662 (2002).

used in creating the Plan.⁶⁶

⁶⁶ Apopka, Fla., Community Redevelopment Plan (June 1993).

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.⁶⁷ The Plan used by Ybor City 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.⁶⁸

Prior to consideration of the 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.⁶⁹ The Agency may then submit the Plan and supporting documents to the CRA’s governing body and taxing authorities.⁷⁰ Upon receipt of the proposed Plan, the local governing body must hold a public hearing, after providing published notice under the Act.⁷¹ The governing body may then approve the Plan if it meets the following threshold elements:⁷²

- 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.⁷³

⁶⁷ 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).

⁶⁸ *Id.*

⁶⁹ Fla. Stat. Ann. § 163.360 (West 2005). 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.

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² Fla. Stat. Ann. § 163.360(6), (7) (West 2005).

⁷³ Fla. Stat. Ann. § 163.360 (West 2005).

Final approval of the plan rests with the governing body.⁷⁴ 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.⁷⁵ The Act does provide for emergency action that negates many of the procedures and abbreviates the time span for the CRA.⁷⁶ Upon approval by the governing body, the plan will be in full force and effect for the CRA.⁷⁷

The public hearing and plan approval is as important a procedural step for a legally valid program as the step proving the requirement of an 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, and when appropriate, using experts, public officials, citizens, and consultants.⁷⁸ Public hearings and Plan approval are 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.⁷⁹ After the hearing, if the governing body approves the Plan, the resolution or ordinance should contain the specific required statutory findings.⁸⁰

⁷⁴ *Id.*

⁷⁵ *See* Dubbin. 25-10.

⁷⁶ Fla. Stat. Ann. § 163.360(10) (West 2005). 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.

⁷⁷ Fla. Stat. Ann. § 163.360 (West 2005).

⁷⁸ *See* Dubbin. 25-10.

⁷⁹ *See State v. Housing Finance Authority of Pinellas County*, 506 So. 2d 397, 399 (Fla. 1987); *City of Opa Locka v. State ex rel. Tepper*, 257 So. 2d 100, 103 (Fla. 3d DCA 1972); *State ex rel. McIver v. Swank*, 152 Fla. 565, 569, 12 So 2d 605, 607-08 (1943).

⁸⁰ *See* Dubbin. 25-11.

The Act preempts redevelopment powers to the county if a home rule charter has been adopted.⁸¹ 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 of power to administer the CRA 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.⁸²

⁸¹ Fla. Stat. Ann. § 163.410 (West 2005).

⁸² See Dubbin. 25-11.

VIII: CREATE A TRUST FUND

After the 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.⁸³ No tax increment revenues may be collected or spent until the Fund is established.⁸⁴ 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.⁸⁵ However, it is possible that there could be no tax increment revenues to pay into the Fund.⁸⁶

Once established, the Fund may be used to finance:⁸⁷

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

⁸³ Fla. Stat. Ann. § 163.387 (West 2005).

⁸⁴ Fla. Stat. Ann. § 163.387 (West 2005).

⁸⁵ *Id.*

⁸⁶ 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).

⁸⁷ Fla. Stat. Ann. § 163.387 (West 2005).

improvements, renovate existing structures, improve parking and sewage facilities, construct sidewalks and bikepaths, purchase street lighting, and hire police officers.⁸⁸

By January 1 of each year of the Fund's existence, each taxing authority shall appropriate to the Fund the incremental revenues of the ad valorem taxes of the CRA, exclusive of any debt service millage.⁸⁹ Any taxing authority which fails to pay the increment to the Fund by January 1, shall pay to the Fund five percent (5%) of the amount of the increment plus an additional one percent (1%) of the increment for each month the increment is outstanding as a penalty for late payment.⁹⁰ 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.⁹¹ An audit of the Fund must be completed and reported by the Agency each fiscal year.⁹²

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.⁹³ 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.⁹⁴ Some cities have

⁸⁸ 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).

⁸⁹ Fla. Stat. Ann. § 163.387 (West 2005).

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *Id.*

specifically exempted Special Assessment Districts in the Plan.⁹⁵

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.

Under the Act, the bonds are not construed as a debt within any constitutional or statutory debt limitation or restriction.⁹⁶ This means that the bonds are exempt from local ordinances or charter provisions requiring referenda on local debts.⁹⁷ 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 220.⁹⁸

Further, CRA bonds are not a charge against the general credit of the local government.⁹⁹ CRA bond debts payable from tax increment revenues must mature no later than forty (40) 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.¹⁰⁰

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.¹⁰¹ 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

⁹⁵ Apopka, Fla., Community Redevelopment Plan (June 1993).

⁹⁶ Fla. Stat. Ann. § 163.385(2) (West 2005).

⁹⁷ Art.VII, Sec. 12(a) 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.

⁹⁸ See Dubbin. 25-11.

⁹⁹ Fla. Stat. Ann. § 163.387(5) (West 2005).

¹⁰⁰ Fla. Stat. Ann. § 163.387(1)(a),(2) (West 2005).

emphasized repeatedly in this report. This need becomes especially critical if a local government plans to issue bonds to pay for CRA capital improvements.

If required, bond validation presents 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.¹⁰² 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.¹⁰³

In *State v. Miami Beach Redevelopment Agency*, the Florida Supreme Court created a guide to community redevelopment for both proponents and challengers.¹⁰⁴ 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.¹⁰⁵ 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.¹⁰⁶ A more stringent evidentiary standard for local governments than the fairly debatable standard would apply in the absence of a bond proceeding.¹⁰⁷

¹⁰¹ 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).

¹⁰² See Dubbin. 25-13.

¹⁰³ *Id.*

¹⁰⁴ 392 So. 2d 875.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.* at 893.

¹⁰⁷ 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,

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.¹⁰⁸ 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.¹⁰⁹ 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.¹¹⁰ 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.¹¹¹

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.

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.

¹⁰⁸ See *Dubbin*, 25-15.

¹⁰⁹ See *Kelson v. City of Pensacola*, 483 So. 2d 77 (Fla. 1st DCA 1986).

¹¹⁰ *Id.* at 79.

¹¹¹ 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 Plan, this may be done by amendment.¹¹² Upon notifying each taxing authority affected, a recommendation of the Agency and after a public hearing, the governing body may amend the Plan to address changing needs.¹¹³ A community may use the amendment process to implement a phasing approach to community planning.¹¹⁴ 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.¹¹⁵ It is often possible to avoid the need to amend or redo the Plan by keeping the findings of necessity and the goals of the redevelopment plan broad and flexible to meet the needs of the future. However, this might currently be more difficult as a result of the 2002 changes to the definition of “slum area” and “blighted area.”¹¹⁶ So, to err on the side of caution, it might be best to limit the redevelopment plan to areas that can withstand judicial scrutiny and are supported by data and analysis in order to avoid litigation. Additionally, any modification must be adopted by a resolution that finds necessity under the current standard and not the standard used in creating the Community Redevelopment Plan.¹¹⁷

¹¹² Fla. Stat. Ann. § 163.361 (West 2005).

¹¹³ *Id.*

¹¹⁴ Interview with Maricela Medrano, Urban Planner of Ybor City (Oct. 12, 1999).

¹¹⁵ *Id.*

¹¹⁶ Fla. Stat. Ann. § 163.340 (West 2005).

¹¹⁷ Fla. Stat. Ann. § 163.361(4) (West 2005).

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.¹¹⁸ All Agency commissioners are subject to F.S. CH. 112, Part III¹¹⁹. 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.¹²⁰ After disclosing such interest, the commissioner may vote on matters affecting the property in accordance with F.S. CH. 112, Part III.¹²¹

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.¹²² This prohibition excludes governing body members who are also commissioners of the CRA Agency.¹²³ 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)¹²⁴: “Qualified Redevelopment Bond.”¹²⁵ This provides to bond issuers tax-exempt status for bonds “issued

¹¹⁸ See Dubbin. 25-19.

¹¹⁹ Fla. Stat. Ann. § 112.300. (West 2005).

¹²⁰ See Dubbin. 25-19..

¹²¹ Fla. Stat. Ann. § 112. (West 2005).

¹²² Fla. Stat. Ann. § 163.356. (West 2005).

¹²³ Fla. Stat. Ann. § 163.357. (West 2005).

¹²⁴ 26 U.S.C. § 144 (c)

¹²⁵ *Id.*

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.¹²⁶ The crucial relationship between marketability of bonds and their tax impact necessitates a clear understanding of the requirements of this Act.¹²⁷

¹²⁶ *Id.*

¹²⁷ *Id.*

XI. COMMUNITY-BASED DEVELOPMENT ORGANIZATION ASSISTANCE ACT

Similar to findings by the legislature in enacting the Community Redevelopment Act, the Community-based Development Organization Assistance Act (CBDOAA) was enacted to assist organizations in low income and distressed communities and to increase community involvement.¹²⁸ To be eligible for assistance, the Community-Based Organization (Organization) must meet three requirements: (1) organizational entity, (2) board member composition, and (3) designated service area. First, the Organization must be a non-profit corporation as designated under 501(c) (3) of the United States Internal Revenue Code. Next, majority of the board of the organization must come from the community in the form of resident property owners, area employees, and low-income residents. Low-income residents are required to be on the board. Finally, the service area of the organization must be in areas where economic and housing development projects are located and meet one of the following criteria:

a) The area resides in or is designated as a “slum area” or “blighted area” as defined in section.

163.340.

b) The area is a block grant program recipient where funds are being used or have been used in the last 3 years.

c) “The area is a neighborhood housing service district.”

d) The area is in a state enterprise zone designated on or after July 1, 1995.

e) “The area is contained in federal empowerment zones and enterprise communities.”¹²⁹

If the Organization is eligible based on the above criteria, then it will be eligible for administrative and

¹²⁸ Fla. Stat. Ann. § 163.456. (West 2005).

¹²⁹ Fla. Stat. Ann. § 163.457. (West 2005).

operating grants from the Department of Community Affairs (DCA) for up to \$50,000 for 5 years.¹³⁰ These funds can be used for designated activities but are not limited to them. These include activities such as administrative activities related to acquiring funds to further projects under the CBDOAA, site selection, obtaining technical assistance, developing, managing, and owning subsidized housing for low-income people.¹³¹ To apply for these administrative and operating grants, the Organization must submit a proposal including the following information:

- a) A map and description of the service area.
- b) Copy of documents that created the organization.
- c) A detailed list of board members that include terms of office and the number of members who are low-income residents.
- d) The organization's annual plan.
- e) Any information required by the DCA.
- f) Detailed impact statement.¹³²

As a condition of receiving funds, the organization has to submit an annual report that details the organization's activities for that year. In particular it must identify where grant funds have gone and how those expenditures furthered individual projects.¹³³ The object of this review is to hold the organization accountable for the way it uses the money. In addition, it gives the DCA an opportunity to see the effects of the grant funds on the community redevelopment in terms of added jobs, housing revitalization, low-income housing development, and increased property value.¹³⁴

¹³⁰ Fla. Stat. Ann. § 163.458. (West 2005).

¹³¹ Fla. Stat. Ann. § 163.459. (West 2005).

¹³² Fla. Stat. Ann. § 163.460. (West 2005).

¹³³ Fla. Stat. Ann. § 163.461. (West 2005).

¹³⁴ *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 140 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 CRA and a 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. However, as a result of the 2002 changes to the Community Redevelopment Act, communities should remember to present adequate information to support their findings of necessity with data and analysis to avoid litigation or even worse, termination of the Community Redevelopment Plan.