Clerk of the Circuit Court **Brevard County, Florida**
400 SOUTH ST., P.O. Box 999, Titusville, Florida 32781
http://www.brevardclerk.us
Scott Ellis, Clerk

To: Scott Ellis, Honorable Clerk of Courts

From: Dana R. Blickley, Internal Auditor

Date: February 22, 2010

Subject: Community Redevelopment Districts

At your request, I have updated the limited review report of all Community Redevelopment Areas (CRA) or (Districts) in Brevard County. This document contains background information and CRA financial data for each district (Exhibit A). In addition, a copy of the review and analysis paper written on the City of Cocoa/Cocoa CRA Property Acquisition (Exhibit B) along with their response and a memorandum from Scott Knox concerning the Board's ability to reduce or eliminate budgets of CRA's (Exhibit C) is attached. On May 1, 2009, Scott Knox revised his original opinion of March 31, 2008 and the revised report is attached (Exhibit D). In addition, I have included Scott Knox's response to three questions from Commissioner Infantini regarding the recapture of CRA tax increments issued on January 25, 2010 (Exhibit E).

Summary:

All CRA's are required to adopt a Community Redevelopment Plan (CRP) that outline projects and programs to eliminate the slum and/or blighting conditions *over a defined period of time*. However, seven of the CRP's have not issued a plan or are older than 10 years. A CRP is required to ensure that the work of the redevelopment is carried out pursuant to the plan. For example, the CRP should include detailed statements of the projected costs of the redevelopment, a time certain for completing all redevelopment financed by increment revenues, and the identification of publicly funded capital projects to be undertaken within the CRA. Since Trust Funds can *only* be used to pay for allowable projects and programs in an "adopted" CRP, outdated plans could lead to the inappropriate use of trust funds. *(An example would be the construction, repair or renovation of any publically owned capital improvements if the project is NOT contained in the CRP and is normally funded by the governing body or user fees or a project that would be normally funded within three (3) years under any existing CIP or funding plan).*

In addition, at the end of FY 08 some of the CRA's had cash balances in excess of the revenues received that year. The only appropriate use of CRA funds at the end of the year are: (1) return excess to the taxing authorities; (2) use to reduce debt; (3) deposit in an escrow account for reducing debt at a later date; or (4) appropriate to a specific project contained in the CRP that will be completed within three (3) years.

Background Information:

Authorization for CRA's was passed in the Redevelopment Act of 1969 which became Chapter 163 Part III of the Florida Statutes. To date, Brevard County has twelve CRA's, almost all of which have been expanded from the initial established boundary. Four of the districts were established prior to July 1, 1994 and the remaining districts were all created after July 1, 1994. Per section 163.387(1)(a), Florida Statutes, the districts established after July 1, 1994 are subject to the Board's authority to reduce the tax increment from 95% to 50% (see Scott Knox's memorandum to the BoCC March 31, 2008). In his most recent communication, Mr. Knox's January 25, 2010 response to the questions asked by Commissioner Infantini, as to whether the County Commission has any ability to stop community redevelopment agencies from collecting the ad valorem "tax increment" granted to such agencies in accordance with the provisions of Chapter 163, Part III, Florida Statutes, discussion is offered that memorializes strategies such as recapture (MIRA), contribution elimination (MIRA), and other relevant alternatives to lowering tax increments. However, due to a "gray area" involving the interrelationship of the governing provisions pertaining to the mandatory or discretionary contribution of the tax increment, Mr. Knox suggests that the Board may desire to seek clarification through an Attorney General's Opinion in order to clarify how the provisions should be construed.

Florida law states that all CRA activities must be completed within thirty years after the redevelopment plan is approved; within thirty years after the redevelopment plan is amended in the case of agencies created before July 1, 2002, and forty years after plan approval or amendment in the case of agencies created after that date, (section 163.362(10), Florida Statutes).

Below is a list of all CRA's (and expanded districts) in Brevard County, their base year, age, and the date of the CRP or amendment:

Brevard County Redevelopment Area	Base Year	Age of CRA	Date of CRP/Amendment
Cocoa Downtown Unit I - D1	1981	29	1997
Cocoa Downtown Unit II - D2	1997	13	1998
Cocoa Downtown Unit III - D3	1997	13	1998
Melbourne Downtown - Unit 1 K1	1982	28	1982
Melbourne Babcock St - Unit II K2	1997	13	1998
Melbourne Eau Gallie Area Unit III K3	2000	10	2001
Melbourne Babcock St - Unit II K4	2001	9	2002
Melbourne Babcock St - Unit II K5	2003	7	2003
Melbourne Olde Eau Gallie Riverfront Area Unit III K6	2005	5	2005
Melbourne Downtown - K7	2005	5	2006
Palm Bay Downtown Area (U1)	1998	12	2010
Palm Shores Area -J1	2002	8	2002
Rockledge Downtown Area - E1	2001	9	2002
Satellite Beach Downtown Area M1	2001	9	2002
Titusville Downtown Area - A1	1982	28	2005
Titusville U.S. 1 Corridor - A2	2007	3	2007
Merritt Island Redevelopment Area B1	1988	22	1991
Merritt Island Redevelopment Area B2	1990	20	1991
Merritt Island Redevelopment Area B3	2005	5	2006

In addition to the current status of the various community redevelopment plans, we have also included a consolidated chart of Brevard County's tax payments for FY 2007 through FY 2010, CRA financial summaries as of September 30, 2008, and financial information including the incremental tax payments for years 2002 through 2009 (Exhibit A).

Cities Redevelopment
Fiscal Year 2007 - 2010

Brevard County Incremental Tax Payments

Redevelopment Area	FY07	FY08	FY09	FY10
Cocoa	998,904	971,417	926,950	741,723
Melbourne	673,469	760,936	927,261	791,584
Palm Bay	514,974	507,789	509,050	397,421
Palm Shores	72,610	69,288	88,563	81,635
Rockledge	595,869	684,646	812,936	692,445
Satellite Beach	622,953	623,947	591,716	479,531
Titusville	261,816	401,493	377,758	305,920
Merritt Island	1,439,035	1,472,415	1,541,007	1,229,187
	$5,179,630	$5,491,931	$5,775,241	$4,719,446

CRA's Financial Summary Information as of Sept 30, 2008

Redevelopment Area	Revenues	Expenditures	Transfers In (Out)	Fund Balance	End of Year Cash Balance
Cocoa	$1,355,584	($1,482,618)	($72,991)	($472,023)	$953,824
Melbourne	$1,751,904	($679,751)	($905,439)	$104,612	$314,923
Palm Bay	$1,239,028	($932,407)	($1,058)	$1,903,926	$1,909,946
Palm Shores	$136,042	($108,300)	$0	$80,316	$0
Rockledge	$837,002	($5,525,587)	$815,466	($1,099,988)	$784,172
Satellite Beach	$952,352	$1,107,457	$95,847	$431,466	$449,955
Titusville	$955,026	($357,683)	($171,169)	$18,048	$472,901
Merritt Island	$1,754,657	($859,287)	$0	$4,625,952	$4,697,695
	$8,981,595	($8,838,176)	($239,344)	$5,592,309	$9,583,416

Conclusion:

Traditionally, during the first 5 to 10 years of a CRA's 30 year lifespan, funding for improvement projects is limited but increases as the positive effects of redevelopment are realized. Brevard County has three CRA's that will reach their 30 year lifespan in the next three years and six that are over ten years in age. The remaining districts are fairly young and most are ***expansions*** of existing CRA's.

Overall, TIF revenues have shown a dramatic increase in recent years. Brevard County's annual disbursement to the agencies in fiscal year 2009 was $5.8 million, compared to $1.7 million in fiscal year 2002. For FY 2010, annual disbursements to agencies declined to $4.7 million as a result of a decline in property valuations. For FY 2002 through FY 2010, the County has transferred a total of $31 million to the CRA's.

It should be reiterated, that at the end of FY 08 some of the CRA's had cash balances in excess of the revenues received that year, which are limited to the following appropriate uses: (1) return excess to the taxing authorities; (2) use to reduce debt; (3) deposit in an escrow account for reducing debt at a later date; or (4) appropriate to a specific project contained in the CRP that will be completed within three (3) years.

Attachments: a/s

C: Howard Tipton, County Manager
Honorable Commissioner Robin Fisher
Honorable Commissioner Chuck Nelson
Honorable Commissioner Trudie Infantini
Honorable Commissioner Mary Bolin
Honorable Commissioner Andy Anderson
Scott L. Knox, County Attorney

Exhibit A

Exhibit A

Cities Redevelopment
Incremental Tax Payments
Calendar years 2002 - 2009

Redevelopment Area	2002	2003	2004	2005	2006	2007	2008	2009	Total
Cocoa Downtown Unit I - D1 Brevard County General Fund	231,810	254,657	296,985	466,978	605,091	576,227	540,521	462,722	2,972,269
Cocoa Downtown Unit I - D1 Brevard County Recreation Special District Four	32,337	35,645	42,579	65,598	67,558	62,414	54,135	46,383	360,266
Cocoa Downtown Unit II - D2 Brevard County General Fund	24,287	30,655	39,116	55,390	97,847	113,409	101,998	72,011	462,702
Cocoa Downtown Unit II - D2 Brevard County Recreation Special District Four	3,388	4,291	5,608	7,781	10,925	12,284	10,215	7,218	54,492
Cocoa Downtown Unit III - D3 Brevard County General Fund	26,284	36,723	57,839	80,504	195,640	186,845	200,046	139,414	783,881
Cocoa Downtown Unit III - D3 Brevard County Recreation Special District Four	3,667	5,140	8,292	11,309	21,843	20,238	20,035	13,975	90,524
Melbourne Downtown - Unit 1 K1 Brevard County General Fund	178,465	187,647	211,993	231,132	312,916	330,854	361,444	335,813	1,814,451
Melbourne Babcock St - Unit II K2 Brevard County General Fund	105,447	117,786	131,359	144,649	224,622	288,229	336,278	308,511	1,348,370
Melbourne Eau Gallie Area Unit III K3 Brevard County General Fund	17,897	24,183	31,294	35,879	64,770	64,908	134,084	147,260	373,015
Melbourne Babcock St - Unit II K4 Brevard County General Fund	431	1,543	5,753	1,669	-626	1,953	13,287		24,010
Melbourne Babcock St - Unit II K5 Brevard County General Fund	0	0	0	265	467	506	420		1,658
Melbourne Olde Eau Gallie Riverfront Area Unit III K6 Brevard County General Fund	0	0	0	0	59,433	62,746	62,411		184,590

Melbourne Downtown - K7 Brevard County General Fund	0	0	0	0	11,887	11,740	19,337		42,964
Palm Bay Downtown Area (U1) Brevard County General Fund	63,483	92,381	134,742	273,127	514,974	507,789	509,050	397,421	2,095,546
Palm Shores Area -J1 Brevard County General Fund	0	0	33,828	41,215	72,610	69,288	88,563	81,635	305,504
Rockledge Downtown Area - E1 Brevard County General Fund	68,842	115,547	165,002	279,440	536,022	617,736	738,930	629,358	2,521,519
Rockledge Downtown Area - E1 Brevard County Recreation Special District Four	9,603	16,174	23,656	38,798	59,847	66,910	74,006	63,087	288,994
Satellite Beach Downtow Area M1 Brevard County General Fund	66,906	149,293	258,871	349,017	622,953	623,947	591,716	479,531	2,662,703
Titusville Downtown Area A1 Brevard County General Fund	93,750	106,353	107,922	111,600	261,816	401,493	377,758	305,920	1,460,692
Titusville US1 Corridor Community Redevelopment Brevard County General Fund	0	0	0	0	0	0	(3,092)	(7820)	0
Merritt Island Redevelopment Area B1 Brevard County General Fund	453,789	506,976	555,014	693,027	1,053,256	1,075,048	1,078,139	894,007	5,415,249
Merritt Island Redevelopment Area B2 Brevard County General Fund	83,682	97,791	121,127	118,413	150,796	158,324	226,593	159,740	956,726
Merritt Island Redevelopment Area B3 Brevard County General Fund	0	0	0	0	31,102	25,267	19,235	(3016)	75,604
Merritt Island Redevelopment Area B1 Countywide Fire Control Mstu	224,727	251,922	296,277	421,276	178,347	186,334	179,347	148,845	1,738,230
Merritt Island Redevelopment Area B2 Countywide Fire Control Mstu	41,441	48,593	64,660	71,981	25,534	27,442	37,693	26,595	317,344
	1,730,236	2,083,300	2,591,917	3,499,048	5,179,630	5,491,931	5,775,241	4,719,446	31,070,749

Exhibit B

Clerk of the Circuit Court **Brevard County, Florida**
400 SOUTH ST., P.O. Box 999, Titusville, Florida 32781
http://www.brevardclerk.us
Scott Ellis, Clerk

September 16, 2008

Ms. Susan McGrady
CRA Program Manager
City of Cocoa
603 Brevard Avenue
Cocoa, FL 32922

RE: Review and Analysis
City of Cocoa/Cocoa CRA Property Acquisition

Dear Ms. McGrady:

I have completed a review of the purchase of two properties (three parcels) by the City of Cocoa Redevelopment Agency from the City of Cocoa. I am submitting several issues and recommendations for your review. Should you have additional information or wish to provide a response regarding the report, please respond by Tuesday, September 30, 2008.

Sincerely,

Internal Audit,
Clerk of Courts
Brevard County

C: Scott Ellis, Clerk of Court (via email)
City Manager (via email)
City Council/CRA Board (via email)

EXECUTIVE SUMMARY

PURPOSE

This review and analysis is limited to the sale and purchase of properties between the City of Cocoa (City) and the Cocoa Redevelopment Area (CRA) in conjunction with the Interlocal Agreement recorded in the public records of Brevard County on July 5, 2007 in Official Record Book 5793 Page 4500, and amended by Resolution 2008-28 and 2008-29.

ISSUES

1: The acquisition of the property by the CRA may not have been in accordance with the Community Redevelopment Plan for the Cocoa CRA.

2: The price paid for the properties appears to be above the market value, thus more funds were transferred from the CRA to the City of Cocoa than appropriate.

3: The sale and purchase of two properties between the City of Cocoa and the CRA was completed without appraisals or a determination of fair market value.

4: Subsequent to the Interlocal agreement between the City and the CRA, the City chose to keep the Old Post Office and swap it for the Brunson properties despite the disparaging difference in value.

5: The City failed to reimburse the CRA for the Trust Fund Revenues for the demolition costs of the Old Post Office as required by the Interlocal Agreement dated February 1, 2007, recorded in Official Record Book 5750 Page 9054 of Brevard County.

6: The Continuing Services Agreement for Demolition of Buildings between the City and Don Bell, Inc. dba DBI Demolition had expired prior to the demolition of the Old Post Office.

7: Five of the seven Board members currently serving on the Cocoa Redevelopment Agency are also City Council Members which may pose a conflict of interest with this transaction.

8: The City of Cocoa and the CRA are represented by the same legal counsel.

BACKGROUND

On June 12, 2007, the City of Cocoa (City) entered into an Interlocal agreement, with the Cocoa Redevelopment Agency (CRA) for the US 1 Streetscape Loan project. The properties involved are listed in the table below:

Subject Properties:

Tax Account #	Property Description	Property Address	2007 Market Value
2426228	**Old City Hall**	603 Brevard Avenue	$1,030,000
2426043	**Old Post Office**	32 Orange Street	$1,100,000
2425621	New Site	300 **Brunson** Avenue	$ 756,000
2421089	New Site Adjacent	Adj. to Brunson Ave	$ 127,000

Original Properties Selected:
The original agreement was for the City of Cocoa to sell the Old City Hall and the Old Post Office to the CRA, at a purchase price of $1.5 million for each property; total purchase price **$3 million**. The funds for the purchase would come from two (2) CRA Agency Notes. Each note is for $1.5 million, twenty (20) years term, bearing an interest rate equal to the prevailing commercial interest rate at the time of closing, plus one-half (.5) percent, per annum.

The Real Estate Swap:
Subsequent to the agreement, the City determined that the **Brunson** site did not allow for adequate parking and storm water retention area for the location of a new City Hall facility. Therefore, the City decided to use the **Old Post Office** property to build a new City Hall instead of the **Brunson** site; so they swapped the properties and sold the **Brunson** site to the CRA instead.

On April 8, 2008, the City adopted two (2) new Resolutions. Resolution 2008-28 modified the Interlocal agreement to remove the sale of the **Old Post Office** and substitute it with the **Brunson** properties. Resolution 2008-29 modified the Interlocal agreement related to the terms of financing the demolition of the buildings located on the **Old Post Office** and the **Brunson** properties. The purchase price of the **Brunson** properties was established at the same $1.5 million.

Market Values of the Properties:
The CRA Program Manager stated at the April 1, 2008 CRA meeting that the purchase price of **$3 million** for the Old City Hall and the Old Post Office was based on the 2005 tax appraisals established by the Brevard County Property Appraiser (BCPA). Per the chart above, the 2007 market value of the two properties *originally chosen* was $2.13 million; therefore the purchase price of $3 million was $870,000 over the BCPA's market value (**41%** more).

However, the purchase price for the "swapped" **Brunson** property remained at $1.5 million. Per the chart above, the 2007 market value of the two properties *actually chosen* was $1.913 million; therefore the purchase price of $3 million was $1,087,000 over the BCPA's market value (**64%** more).

The improvements on the Brunson property were removed, at the expense of the CRA, prior to the purchase in May 2008. Therefore, the transaction between the City and the CRA was for vacant land only. Based on value information from the BCPA, the land value for the **Brunson** property (both parcels) was $377,000; hence the CRA purchased the land only for $1,500,000, which was $1,123,000 or **297%** higher than the 2007 market value of the land.

The Program Manager stated that redevelopment investments are viewed in the long-term and that even though the **Brunson** properties were not worth $1.5 million today, it would be in the future.

Recording of the Properties:
On May 27, 2008, a warranty deed was recorded in, ORB 5866, Page 3664, which conveyed the **Brunson** properties from the City of Cocoa to the CRA.

Trust Fund Revenues for the Demolition Costs
In the original agreement, the CRA was held responsible for the demolition costs for removing the improvements on the **Old Post Office** because the property was located in the CRA and they were responsible for the upkeep of the building due to the lease with the USPS, even though the City owned the property. However, since the property was to be purchased by the CRA from the City, the Interlocal agreement included Section 4, REPAYMENT OF TRUST FUND REVENUES. This section states that if the CRA does not purchase **Old Post Office** then the City "shall include in the City's redevelopment financing a sufficient amount of funds to repay the CRA for all Trust Fund Revenues spent to finance the Project."

After the property "swap" the City amended the Interlocal agreement through Resolution 2008-29 and the Second Amendment and deleted Section 4, REPAYMENT OF TRUST FUND REVENUES. The amendment required the CRA to pay for the demolition costs for the **Old Post Office** (under the terms of the lease with the USPS) and the City "as property owner" became responsible for the demolition costs of the building on the **Brunson** property.

Invoices from DBI Demolition reveal that the demolition costs, paid by the CRA, for the removal of the **Old Post Office** was $128,463 and the demolition costs, paid by the City, for the removal of the building at 300 **Brunson** was $46,198.18.

Continuing Services Agreement for Demolition of Buildings with Don Bell, Inc.
A continuing services agreement for the demolition of buildings was executed on February 20, 2003, between the City of Cocoa (City) and Don Bell Inc. dba DBI Demolition. The agreement was for services on a continuing basis for a year with two (2)

twelve (12) month extensions for the same unit pricing. Had the contract been renewed during the renewal period, then the contract would have expired by February 20, 2006.

On October 13, 2006, the City of Cocoa executed an "AMENDMENT TO PURCHASE AGREEMENT" with DBI Demolition to amend the continuing services agreement to renew the contract for an extension option of the agreement for seven additional months, at the same rates, commencing on October 1, 2006 and terminating on May 1, 2007. However, the original contract had already expired.

The Charter of the City of Cocoa, Article XIII, City Purchases and Contracts, Section 2. City Purchases; Competitive Bidding requires that "all purchases and public improvements shall be obtained and the purchase made from, or the contract awarded to, the lowest and best bidder, as determined by the council." Therefore, it appears that the contract for the demolition of buildings, given the fact that the contract was no longer valid, should have been put out for competitive bidding to ensure the lowest and best bidder was awarded the contract for services.

Board Members on the CRA and the City Council Members:
The five elected City Council members are represented in the sale and purchase of the properties as the City or "seller." However, the same five elected Council members are also five of the seven members of the CRA and are represented as the "buyer."

Legal Counsel for the City of Cocoa and the CRA:
The City of Cocoa and the CRA are represented by the same legal counsel, Anthony A. Garganese. CRA staff did indicate that inquires concerning the CRA are sometimes answered by Katherine Latorreall, another attorney with the Garganese firm; however, all public records accessed or provided of legal communications, emails, etc. have been authored by Mr. Garganese.

ISSUES

Issue 1: The acquisition of the property by the CRA may not have been in accordance with the Community Redevelopment Plan for the Cocoa CRA.

The introduction to the CRA plan states that in order to utilize the Tax Increment Financing type of funding, Florida Statutes require the preparation of a redevelopment plan to guide *the sound use* of these funds. In Part I – Background/History/Importance of Plan, Section 3 D. Powers of the Redevelopment Agency states that "To undertake and carry out community development projects and related activities within its area of operation, such project to include: Disposition of any property acquired in Community Redevelopment Area at its *fair value* for uses in accordance with the Community Redevelopment Plan." This provision of the plan indicates that property acquired by the CRA should be at fair value, not at a value that exceeds fair market value with the hopes that the value will increase with time.

Issue 2:

The price paid for the properties appears to be above the market value, thus more funds were transferred from the CRA to the City of Cocoa than appropriate.

The CRA purchased two properties (**Old City Hall** and the **Brunson** properties) from the City of Cocoa for a total purchase of $3 million. Independent appraisals were not performed on any of the properties. The CRA Program Manager stated that the value was based on the 2005 tax appraisals established by the Brevard County Property Appraiser (BCPA). Per the BCPA, the 2007 market value of the properties was $1,913,000.

Since it appears that the $3 million transferred is more than market value, it is not a sound use of CRA funds as required by the CRA Plan. As a result, the City of Cocoa received more funds than the value of its properties which now can be used by the City for operations.

Issue 3:

The sale and purchase of two properties between the City of Cocoa and the CRA was completed without appraisals or a determination of fair market value.

Based on the Cocoa CRA meeting of April 1, 2008, the issues revealed the sale and purchase of the properties were conducted without appraisals or a determination of fair market value, despite apprehension by agency members and members of the public. One of the citizens in attendance at the April 1, 2008 meeting stated that the CRA should only pay fair market value for the **Brunson** property. He expressed concerns that the amendment (for the swap) would make the agency liable for paying more for a piece of property than it should. He indicated that his reasoning was due to a variance in the difference in prices of the properties and the fact that the agency should only pay fair market value for the property. In addition, an agency member felt that the **Brunson** property should have been appraised to determine the fair market value and subsequent purchase price; however, staff response was that both properties would have to be appraised in order to compare the values. This reasoning is not understood as the **Brunson** property was the subject property of the sale, not the **Old Post Office** property. Further discussion about the property values took place at the meeting. City staff commented that redevelopment investments are viewed in the long-term and that even though the **Brunson** property was not worth $1,500,000 today, it would be in the future.

For the 2007 tax year, based on value information obtained from the Brevard County Property Appraiser, the market values for the properties were as follows:

Tax Account #	Property Description	Property Address	2007 Market Value
2426228	**Old City Hall**	603 Brevard Avenue	$1,030,000
2426043	**Old Post Office**	32 Orange Street	$1,100,000
2425621	New Site	300 **Brunson** Avenue	$ 756,000
2421089	New Site Adjacent	Adj. to Brunson Ave	$ 127,000

The purchase price of $1,500,000 for the Old City Hall property was **$470,000 or 46%** higher than the 2007 market value established by the Brevard County Property Appraiser. The purchase price of $1,500,000 for the two parcels of property at 300 Brunson property was **$617,000** or 70% higher than the 2007 market value established by the BCPA. ***However, the improvements on the Brunson property were removed, at the expense of the CRA, prior to the purchase in May 2008. Therefore, the transaction between the City and the CRA was for vacant land only.*** Based on value information from the BCPA, the land value for the property located at 300 Brunson Avenue (both parcels) was $377,000; hence the CRA purchased the land only for $1,500,000, which was **$1,123,000 or 297%** higher than the 2007 market value of the land.

The purchase price of $1,500,000 for each of the two properties was established in May 2006, at the tail end of the peak of the market, based on the 2005 tax appraisals (value established by the property appraiser) as stated by comments from the CRA Program Manager, at the April 1, 2008 meeting of the CRA. For the past year to eighteen months, Florida has been experiencing a decline in the real estate market. The Florida real estate market and home values are being driven by large numbers of foreclosures, short sales, and REO's (Real Estate Owned). In addition, an over-supply of properties and marketing times in excess of six (6) months has driven down prices considerably since the peak of the market. Other than the comments of the CRA Program Manager, there was no information provided from the City of Cocoa or the CRA on how the purchase price of either property was arrived at.

On May 27, 2008, a warranty deed was recorded in ORB 5866 Page 3664 which conveyed the two **Brunson** properties (tax account #2425621 and #2421089) from the City of Cocoa to the Cocoa Redevelopment Agency.

Issue 4:

Subsequent to the Interlocal agreement between the City and the CRA, the City chose to keep the Old Post Office and swap it for the Brunson properties despite the disparaging difference in value.

Section 5, SALE AND PURCHASE of the Interlocal agreement between the City and the CRA established a purchase price of $1,500,000 for the old City Hall property, (603 Brevard Avenue, tax account #2426228) and a purchase price of $1,500,000 for the old Post Office property (32 Orange Street, tax account #2426043). However, the Resolution 2008-28 "swapped" the old Post Office property for the two parcels of property at 300 Brunson Avenue, again, with no appraisal and established the same $1,500,000 purchase price for the property. The primary reason for the swap was due to inadequate parking and on-site storm water retention on the Brunson Avenue site.

Issue 5: The City failed to reimburse the CRA for the Trust Fund Revenues for the demolition costs of the Old Post Office as required by the Interlocal Agreement dated February 1, 2007, recorded in Official Record Book 5750 Page 9054 of Brevard County.

In the original agreement, the CRA was held responsible for the demolition costs for removing the improvements (Old Post Office) because the property was located in the CRA and they were responsible for the upkeep of the building due to the lease with the USPS, even though the City owned the property. However, since the property was to be purchased by the CRA from the City, the Interlocal agreement included Section 4, REPAYMENT OF TRUST FUND REVENUES. This section states that if the CRA does not purchase the property at 32 Orange Street, then the City "shall include in the City's redevelopment financing a sufficient amount of funds to repay the CRA for all Trust Fund Revenues spent to finance the Project." However, after the property "swap" the City amended the Interlocal agreement through Resolution 2008-29 and the Second Amendment and deleted the repayment section that required the City to reimburse the CRA for the demolition costs for the old post office. Instead, the amendment required the CRA to pay for the demolition costs for the post office building (under the terms of the lease with the USPS) and the City "as property owner" became responsible for the demolition costs of the building on the Brunson property. Invoices from DBI Demolition reveal that the demolition costs, paid by the CRA, for the removal of the old post office building was $128,463.00 and the demolition costs, paid by the City, for the removal of the building at 300 Brunson Avenue was $46,198.18.

Issue 6: The Continuing Services Agreement for Demolition of Buildings between the City and Don Bell, Inc. dba DBI Demolition had expired prior to the demolition of the Old Post Office.

A continuing services agreement for the demolition of buildings was executed on February 20, 2003, between the City of Cocoa (City) and Don Bell Inc. dba DBI Demolition. The agreement was for services on a continuing basis and was valid for a period of 1 year and terminated "on the (1st) anniversary of the Effective Date. The contract stated that it "shall be eligible for two (2) twelve (12) month extension for the same unit pricing if agreed to by both parties (1.0 TERM AND DEFINITIONS 1.1). Also, the Scope of Services (Exhibit A) stated that the contract is for a period of one year from October 1, 2002 through September 30, 2003. "Contract is renewable for two (2) consecutive twelve (12) month periods, at the same rates, not to exceed three (3) consecutive years, at the approval of both parties and contingent on funds and approval by the Cocoa City Council. Subsequently, on October 13, 2006, the City of Cocoa executed an "AMENDMENT TO PURCHASE AGREEMENT" with DBI Demolition to amend the continuing services agreement to renew the contract for an extension option of the agreement for seven additional months, at the same rates, commencing on October 1, 2006 and terminating on May 1, 2007. However, the original contract had already expired.

The Charter of the City of Cocoa, Article XIII, City Purchases and Contracts, Section 2. City Purchases; Competitive Bidding requires that "all purchases and public improvements shall be obtained and the purchase made from, or the contract awarded to, the lowest and best bidder, as determined by the council." Therefore, it appears that the contract for the demolition of buildings, given the fact that the contract was no longer

valid, should have been advertised for competitive bidding to ensure the lowest and best bidder was awarded the contract for services.

Issue 7: Five of the seven Board members currently serving on the Cocoa Redevelopment Agency are also City Council Members which may pose a conflict of interest with this transaction.

The five elected City Council members are represented in the sale and purchase of the properties as the City or "seller." However, the same five elected Council members are also five of the seven members of the CRA and are represented as the "buyer." Therefore, virtually the same party is both buyer and seller. This may present a breech of fiduciary duty as it is impossible for the same party to duly represent the interests of both buyer and seller. In this case, the entrustors' interest may be undermined as the risks and costs of preventing abuse are diminished since there is no distinction between the parties of the sale.

Issue 8: The City of Cocoa and the CRA are represented by the same legal counsel.

The City of Cocoa and the CRA are represented by the same legal counsel, Anthony A. Garganese. The Program Manager did indicate that inquires concerning the CRA are sometimes answered by Katherine Latorreall, another attorney with the Garganese firm; however, all public records accessed or provided of legal communications, emails, etc. have been authored by Mr. Garganese.

RECOMMENDATIONS

To ensure that fair market value is used for all real estate transactions, the City of Cocoa and the Cocoa Redevelopment Agency should obtain independent appraisals before acquiring or disposing of property to ensure that fair market prices are negotiated and paid. Also, the CRA should develop written policies and procedures for the acquisition and disposition of real estate.

Independent appraisals should be obtained and the purchase price should be based on the market value established by the appraisal, which should be no older than 6 months prior to the final execution of the contract. If it is determined that the total market value was less than $3 million, then the difference should be refunded by the City of Cocoa to the CRA.

Since the City Charter requires that the competitive process be utilized for purchases exceeding $25,000, it is recommended that contracts be reviewed annually and remain current.

The City should consider appointing citizenry as CRA board members, such as with the City of Palm Bay, to avoid potential conflicts of interest, especially when the City is "doing business" with itself.

The City should consider having separate legal counsel for the CRA than for the City, as in the City of Rockledge, so the interests of both parties may be independently represented which would eliminate the appearance of a conflict of interest.

Dana R. Blickley
Internal Auditor
Clerk of Courts

Serving the Community

City of
Cocoa, Florida

Community Development Department
Office of the Director
603 Brevard Avenue, Cocoa, Florida 32922
PHONE (321) 637-7217 FAX (321) 639-7619
E-Mail: jtitkanich@cocoafl.org

October 14, 2008

Ms. Dana Blickley
Internal Audit
Clerk of the Circuit Court, Brevard County, Florida
400 South Street
Titusville, Florida 32780

RE: Response to September 16, 2008 Letter, re: Review and Analysis City of Cocoa/Cocoa CRA Property Acquisition

Dear Ms. Blickley:

Please find herein the CRA/City's response to the issues and recommendations raised in your September 16, 2008 letter. First, from the outset, I want to emphasize that it is important for your office to evaluate the whole record, not just the activities that occurred at the April 2008 meeting whereat the original transaction was amended. In addition, it is also important for your office to more fully recognize the statutory framework under which the CRA was formed and operates.

Issue 1:

The acquisition of the property by the CRA may not have been in accordance with the Community Redevelopment Plan for the Cocoa CRA.

Redevelopment Policy Goal III of the Cocoa Community Redevelopment Plan (adopted January 22, 1997) provides for the "acquisition, demolition, and reuse of those properties which, by virtue of their location, condition, or value no longer function at their highest potential economic use and are currently depressing the value and viability of the uses in the near vicinity to them." In addition, Section 163.335, *Florida Statutes*, declares certain areas, "may require acquisition, clearance, and disposition," and the powers to accomplish these activities are expressly provided in Section 163.370(2), *Florida Statutes*. Furthermore, sub-sections (c)(1) and (2) specifically authorize "acquisition of property within a slum area or a blighted area by purchase, lease, gift, grant, bequest, devise or other voluntary method of acquisition," and "demolition and removal of buildings and improvements." City Council vested the Cocoa Redevelopment Agency with these powers when it adopted Ordinance 10-81 on April 14, 1981. Pursuant to the Plan and Florida law, the CRA lawfully exercised a variety of these enumerated powers in this case.

Issue 2:

The price paid for properties appears to be above the market value, thus more funds were transferred from the CRA to the City of Cocoa than appropriate.

First, market values established by the Brevard County Property Appraiser, as indicated on their website and consistent with s.193.011(1) and (8), *Florida Statutes*, is the value established for ad valorem purposes and it does not represent the anticipated selling price for the property. However, it should be noted that the City did have an appraisal prepared when it initially evaluated disposal options for the current City Hall location (603 Brevard Avenue) in March 2005. At that time, the 603 Brevard Avenue site was valued at $1.5 million. In January 2006, the City received and rejected a written contract offer of $2 million for the 603 Brevard Avenue site and the Old Post Office site (32 Orange Street).

Upon acquisition of these properties, the meeting minutes reflect that the RDA's intent is to resell the properties and control the development parameters as part of the resale by using the redevelopment tools granted under the Community Redevelopment Act of 1969. The real estate transaction is simply the first step of a far sighted and more complicated strategic goal of redeveloping properties within the CRA area. These transactions, and the purposes behind them, strike at the very core of why a redevelopment agency exists. A CRA exists to reverse conditions of blight to foster an environment conducive for private investment and to enhance the tax base of the CRA district. Toward that end, CRA's routinely acquire property and plan its future uses by seeking private developers to enter into public-private partnership to facilitate the redevelopment of the property. The properties acquired by the CRA are intended to serve as a catalyst to spur additional investment within the CRA district.

Furthermore, and perhaps more importantly, redevelopment agencies are required to evaluate and implement long-term redevelopment strategies and activities, such as the acquisition of property, based on the long-term prospects not just for the property but for the redevelopment area, or sub-area, as a whole. In this particular situation, the CRA did that. The CRA determined that the proper use of the Brunson Property could serve as the impetus to redefine and re-plan the area north of State Road 520 between US1 and Forrest Avenue. Originally, it appeared that the City Hall would serve as the anchor use to redefine the area creating an uptown professional office district. However, once the City Hall project encountered technical difficulties at the Brunson site, the site was evaluated for other potential uses that will serve the same purpose. These issues and options were presented to the CRA and City Council. The CRA and City Council ultimately restructured the transaction and initiated the swap of the properties. In fact, the consultants hired to aid the CRA to update its redevelopment plan reaffirmed the redevelopment opportunities for the Brunson Site, and in the consultant's final report recommendations to the same will be included. At the final public presentation two options were discussed regarding the Brunson Property, both of which included a residential mixed-used development scenario. This type of development pattern will yield greater return to the CRA tax base in the long run while serving as that critical catalytic project enabling future growth and expansion of the Cocoa downtown area north of State Road 520. Because your report focuses solely on market value used for ad valorem purposes, your report does not recognize the true value of the Brunson property to the CRA in implementing the CRA's long term strategic goals for the CRA area.

Issue 3:

The sale and purchase of the two properties between the City of Cocoa and the CRA was completed without appraisals or a determination of fair market value.

Section 163.400(2), *Florida Statutes*, provides, "Any sale, conveyance, lease, or agreement provided for in this section may be made by a public body without appraisal, public notice, advertisement, or public bidding." Notwithstanding that the CRA was not required to have an appraisal, the City had an appraisal prepared when it initially evaluated its options for the current City Hall location (603 Brevard Avenue) in March 2005. At that time, the 603 Brevard Avenue site was valued at $1.5 million. In January 2006, the City received and rejected an offer of $2 million for the 603 Brevard Avenue site and the Old Post Office site (32 Orange Street). On March 7, 2006, at a Regular Meeting of the Cocoa Redevelopment Agency, the board voted to acquire the current City hall location and the Old Post Office Site for $3 million. The City and CRA were not required by law to have an appraisal. Notwithstanding, the CRA and City acquired competent and substantial data (including an appraisal of the City Hall property) to support the business terms of this transaction.

Issue 4:

Subsequent to the Interlocal Agreement between the City and the CRA, the City chose to keep the Old Post Office and swap it for the Brunson properties despite disparaging difference in value.

As previously discussed in response to Issue #2, once the Brunson Property encountered technical difficulties, the site was evaluated for other potential uses that would serve the same catalytic function that would have been achieved by the new City Hall. These were presented to the CRA and City Council and it was approved at a Special Joint Meeting in January 2008 to initiate the swap of the properties. Again, the CRA's consultants recommend a residential mixed-use development on the Brunson site and thus, the long-term desire to create a future uptown district still remains in tact. Additionally, merchants and citizens were in support of swapping the sites in large part because of the potential negative consequences related to relocating the City Hall out of the core commercial district, Cocoa Village. As discussed in the May 2008 CRA meeting, prior to the final vote to swap the properties, nearly seven thousand utility customers visit Cocoa Village monthly to pay their utility bills. This vehicular traffic would be diverted and could potentially negatively affect Cocoa Village merchants. In addition, the desire to expand the Cocoa Village area to include Florida Avenue was further advanced by the new City Hall being located along Florida Avenue. Thus, the swap was not based solely on the perceived value of the respective properties, but of the potential impact to the redevelopment area as a whole. Several redevelopment goals and objectives were achieved and therefore, the CRA voted to unanimously approve the swap. However, the asking prices (as obtained through the Brevard MLS service) for properties abutting the Brunson site included 300 and 400 North Cocoa Boulevard for $2.5 million and $369,000 respectively. The 400 North Cocoa Boulevard is a severely constrained .27 acre parcel compared to the 1.33 acre Brunson site with off-site parking available. In addition to the information stated above, the sale price of the Brunson site was also supported by bona fide asking prices of abutting properties.

Issue 5:

The City failed to reimburse the CRA for the Trust Fund Revenues for the demolition costs of the Old Post Office as required by the Interlocal Agreement dated February 1, 2007, recorded in Official Record Book 5750 Page 9054 of Brevard County.

With respect to the City failing to reimburse the CRA for the demolition costs of the Old Post Office I direct your attention to the Second Amendment to the Interlocal Agreement, approved April 8, 2008, which was not referenced in your report. In the Second Amendment, Section 4 Repayment of Trust Fund Revenues was modified to read as follows:

> "The City and CRA agree that the City shall be under no obligation to reimburse the CRA for Trust Fund Revenues expended to finance the Project. The building located on the Post Office Property and Brunson Property are both unsuitable for redevelopment and demolition of both buildings is necessary in order to make the properties more attractive and suitable for redevelopment activity. Thus, as the party responsible for the maintenance and upkeep of the Post Office building under the terms of the Lease, the CRA shall be solely responsible for financing the demolition of the Post Office. Further, as the current property owner, the City shall be solely responsible for financing the demolition of the building located on the Brunson Property."

The CRA expended $112,463 to demolish the Post Office Property and the City expended $46,198 to demolish the Brunson Property. In addition, the City expended an additional $71,185 in pre-development costs to prepare the property for redevelopment. Therefore, in total, the City expended $117,383 toward the demolishment and preparation of the Brunson Property and the CRA expended $112,463 to demolish the Post Office Property. Under these equitable circumstances, the CRA and City called it a "wash" and entered into the Second Amendment.

Issue 6:

The Continuing Services Agreement for Demolition of Buildings between the City and Don Bell, Inc. dba DBI Demolition had expired prior to the demolition of the Old Post Office.

On November 14, 2006, the City Council approved the extension of the Continuing Services Agreement ("Agreement") with Don Bell, Inc. d/b/a DBI Demolition, for an additional six (6) months and approved the issuance of a purchase order for demolition of buildings effective retroactive to October 1, 2006. (*See* November 14, 2006 City Council Meeting Agenda Item V.1). Don Bell had been successfully demolishing structures to the City's satisfaction under the Agreement. The agenda item expressly provided that the Agreement expired on September 30, 2006 and that the six (6) month extension would extend the term of the Agreement to May 1, 2007. The City Council's approval of the extension expressly ratified the retroactive continuance of the Agreement with DBI. Any act which public officials may do or authorize to be done in the first instance may subsequently be adopted or ratified by them with the same effect as though properly done under previous authority. *See Frankenmuth Mut. Ins. Co. v. Magaha.* 769 So. 2d 1012 (Fla. 2000). Also, notably, DBI Demolition agreed to honor its 2003 demolition price schedule attached to the initial Agreement which were four years old and competitively bid.

Issue 7:

Five of the seven Board Members currently serving on the Cocoa Redevelopment Agency are also City Council Members which may pose a conflict of interest with this transaction.

Section 163.357(1)(a), *Florida Statutes*, expressly permits a governing body to declare itself to be an agency and s. 163.357(1)(c), *Florida Statutes*, provides, "A governing body which consists of five members may appoint two additional persons to act as members of the community redevelopment agency." It appears the wisdom of the legislature is that it recognizes that local governing bodies are in a better position to more fully understand the broad implications of redevelopment policy, and thus enabled them to retain these powers and responsibilities rather than simply delegate the powers to an independent agency. The later organizational arrangement is the one in which the City elected when the Cocoa Community Redevelopment Agency was first established in 1981 by Ordinance 10-81. The perceived conflict of interest you indicate does not exist under the law. It is expressly authorized by law for the City Council to be vested with all the rights, powers, duties, privileges, and immunities of a redevelopment agency. This arrangement promotes accountability to the electorate as the decisions of the agency, of which five members are elected, will arguably face greater scrutiny on Election Day. Given the law, it would be completely illogical for anyone to conclude that a conflict of interest would be posed when a City transacts business with the CRA in furtherance of mutually shared public interests in promoting redevelopment within the CRA.

Furthermore, you should take note of the fact that other redevelopment agencies in Brevard County and elsewhere in Florida similarly require their elected city council members to serve on the redevelopment agency board. The City of Titusville's CRA Board is composed in a similar fashion to the City of Cocoa's. The Cities of Melbourne, Rockledge and Satellite Beach redevelopment agency boards are solely composed of city council members. The City of Palm Bay appears to be the only city in Brevard County where the city council appoints all the members of the redevelopment agency board, with the exception of Cocoa's Diamond Square and US1 Corridor Redevelopment Agencies. Finally, the Florida Redevelopment Association reports that most redevelopment agencies are organized in a similar fashion to that of Cocoa Community Development Agency, Melbourne, Rockledge, and Satellite Beach.

Issue 8:

The City of Cocoa and the CRA are represented by the same legal counsel.

Anthony A. Garganese serves as the City Attorney for the City of Cocoa and as Agency Counsel for the CRA. Additionally, other attorneys from Mr. Garganese's law firm, Brown, Garganese, Weiss & D'Agresta, P.A., assist Mr. Garganese with the legal representation of the City and CRA. At no time during the Mr. Garganese's dual representation of the City and CRA were there ever any circumstances or issues before the boards which would place the City and CRA in a directly adversarial or conflicting posture with one another, nor has legal counsel's representation of one party been limited by obligations to the other party. Furthermore, no issues before the City or CRA have ever presented a conflict of interest prohibited by the Florida Rules of Professional Conduct, which govern the professional practice of attorneys in Florida. When working toward redevelopment

goals in furtherance of improving certain areas of a local government's community, it is only natural that what's good for the City is also good for the CRA. Very rarely (if at all) would the goals and intentions of one clash with the other.

Moreover, Mr. Garganese's representation of both the City and the CRA is not unique to the City of Cocoa. Based on our review of board minutes, Melbourne, Titusville, and Satellite Beach share the same legal counsel for their own City Council and redevelopment agencies. Given that city council members are authorized by statute to also serve as members of the redevelopment agencies, it is not surprising that the different entities are also served by the same legal counsel. Furthermore, nothing in the Community Redevelopment Act of 1969, or the Florida Rules of Professional Conduct, prohibit a city attorney from also serving as agency counsel for a redevelopment agency whose board consists of the city council members.

I trust this information should serve as an adequate response to the concerns raised in your letter. Should you require any further information or wish to discuss the matter further, please do not hesitate to contact me.

Sincerely,

John A. Titkanich, Jr., AICP
Community Development Director

cc: Mayor and City Council
CRA Board
City/RDA Attorney
Ric Holt, City Manager
Dr. Brenda Fettrow, Deputy City Manager

Exhibit C

SB

Kim - File with Redevelopment CRA's

Post-it® Fax Note 7671 | Date 4/17/08 | # of pages ▶ 6

To Steve Burdett	From Peggy Busacca
Co./Dept.	Co.
Phone #	Phone #
Fax #	Fax #

BREVARD COUNTY
BOARD OF COUNTY COMMISSIONERS

TO: Honorable Chairman and Members of the Board of County Commissioners

FROM: Scott L. Knox, County Attorney

RE: Board's Ability to Reduce or Eliminate Budgets of Redevelopment Agencies

DATE: March 31, 2008

QUESTION 1: Does the Board of County Commissioners have the authority to reduce the redevelopment agency budgets?

SHORT ANSWER: Yes, under two circumstances and perhaps a third:

1. For some redevelopment agencies the Board may substitute itself as the agency board and thereafter recapture the tax increment by controlling the agency budget;

2. For agencies created after July 1, 1994, the Board may require a reduction in the tax increment from 95% to 50%;

3. The statutes are unclear as to whether the Board is required to continue contributing the tax increment to agencies which have no outstanding indebtedness.

QUESTION 2: Can redevelopment agencies be dissolved?

SHORT ANSWER: No. In general, the agencies either expire in accordance with the termination dates specified in their redevelopment plan or either thirty or forty years after the plan is approved or amended

---

At a recent Board workshop meeting the BCC asked whether the budgets of Community redevelopment agencies could be cut or whether agencies, including MIRA, could be dissolved. The following discussion attempts to answer those questions.

MIRA

MIRA cannot be dissolved until the expiration of the thirty-year existence provided for in the ordinance creating the agency. However the BCC does have the ability to substitute itself as the MIRA board, which means the BCC would control the MIRA budget. The statutory provision authorizing the BCC to substitute itself for the MIRA board reads as follows:

> 163.357 Governing body as the community redevelopment agency.—
> (1)(a) As an alternative to the appointment [of members of the redevelopment agency board], the governing body may, at the time of the adoption of a resolution under s. 163.355, or *at any time thereafter by adoption of a resolution, declare itself to be an agency*, in which case all the rights, powers, duties, privileges, and immunities vested by this part in an agency will be vested in the governing body of the county or municipality, subject to all responsibilities and liabilities imposed or incurred. [emphasis added]

As the MIRA Board, the County Commission Can Recapture Its MIRA Tax Increment

If the BCC substitutes itself for the MIRA board, it would be subject to all of the responsibilities and liabilities imposed or incurred by the existing agency.[1] The Board would also have the same authority as the MIRA board with respect to the MIRA budget, including the authority "...(l) [t]o appropriate such funds and make such expenditures as are necessary to carry out the purposes of this part..."[2]

The Board's power to appropriate and expend funds for redevelopment purposes also constitutes tacit power not to expend funds, which may have significant ramifications on the budget of the County which contributes a tax increment into the redevelopment trust fund that funds MIRA. If, acting as the MIRA board, the County Commission controls MIRA expenditures, the Board can elect not to expend funds for redevelopment purposes in any given year, at their discretion, to the extent MIRA has no outstanding indebtedness or contractual obligations. In those circumstances, the Board could recapture of all or a part of its share of the tax increment in accordance with section 163.387(7), Florida Statutes, which reads in relevant part as follows:

> On the last day of the fiscal year of the community redevelopment agency, any money which remains in the trust fund after the payment of expenses pursuant to subsection (6) for such year shall be:

---

[1] Section 163.357(1)(b), Florida Statutes, which reads as follows:

> (b) The members of the governing body shall be the members of the agency, but such members constitute the head of a legal entity, separate, distinct, and independent from the governing body of the county or municipality. If the governing body declares itself to be an agency which already exists, the new agency is subject to all of the responsibilities and liabilities imposed or incurred by the existing agency.

[2] Section 163.270(2)(l), Florida Statutes. This is a power which may be delegated to a community redevelopment agency by the County Commission in accordance with section 163.358, Florida Statutes.

> (a) Returned to each taxing authority which paid the increment in the proportion that the amount of the payment of such taxing authority bears to the total amount paid into the trust fund by all taxing authorities for that year...

Under this provision, any remaining funds on deposit in the redevelopment trust fund which have not been used for the payment of administrative costs, contractual obligations or indebtedness can be recaptured on the last day of the redevelopment agency fiscal year. The County would recoup its proportionate share of the tax increment funds, as would contributing special districts or MSTU's.

Can the County Stop Contributing a Tax Increment to MIRA Altogether

The County's enabling ordinance and section 163.387(1)(a), Florida Statutes both use mandatory language regarding funding the MIRA trust fund. The statute reads as follows:

> **The annual funding of the redevelopment trust fund shall be in an amount not less than that increment in the** income, proceeds, revenues, and funds of each taxing authority derived from or held in connection with the undertaking and carrying out of community redevelopment under this part. [emphasis added]

However, section 163.387(3)(a) can be construed to limit the application of the above-quoted mandatory language to those circumstances where the agency has outstanding indebtedness:

> 163.387 (3)(a) Notwithstanding the provisions of subsection (2), the obligation of the governing body which established the community redevelopment agency to fund the redevelopment trust fund annually ***shall continue until all loans, advances, and indebtedness,*** if any, and interest thereon, of a community redevelopment agency incurred as a result of redevelopment in a community redevelopment area ***have been paid.*** [emphasis added]

Therefore, the apparent conflict in the statutes makes it is unclear as to whether the Board has the discretion to cut off MIRA tax increment funding in circumstances where MIRA has no outstanding indebtedness.

To summarize, there are two ways these statutes can be viewed. First, since MIRA currently has no indebtedness, if (3)(a) is read to require mandatory contributions only where outstanding indebtedness or contractual obligation exists, no tax authority—including the County or applicable special districts or MSTU's—would be required to contribute the tax increment to the agency's trust fund, although such funding would appear to optional under section 163.353, Florida Statutes.[3] In short, under those circumstances, the Board would appear to have the

[3] 163.353 **Power of taxing authority to tax or appropriate funds to a redevelopment trust fund in order to preserve and enhance the tax base of the**

authority to cut or eliminate the MIRA budget. In contrast, if the County contribution to the increment is statutorily mandated, the Board cannot cut MIRA's tax increment.[4]

If the Board seeks clarification of the "gray area" involving the interrelationship of these provisions pertaining to the mandatory or discretionary contribution of the tax increment, an Attorney General's Opinion might be requested to clarify how the provisions should be construed.

OTHER REDEVELOPMENT AGENCIES

Statutory Time Limits on CRA Activities Financed with Tax Increment

Although there are limitations on the number of years a local government is required to contribute its tax increment once a redevelopment agency is created, the only statutory provision governing cessation of community redevelopment agency activities appears in the law establishing the contents of a community redevelopment plan. That law states that all CRA activities must be completed within thirty years after the plan is approved;[5] within thirty years after the redevelopment plan is amended in the case of agencies created before July 1, 2002, and forty years after plan approval or amendment in the case of agencies created after that date.[6]

---

authority.—Notwithstanding any other provision of general or special law, the purposes for which a taxing authority may levy taxes or appropriate funds to a redevelopment trust fund include the preservation and enhancement of the tax base of such taxing authority and the furthering of the purposes of such taxing authority as provided by law.

[4] Although section 163.387(1)(a) authorizes the taxing authority to reduce the tax increment contribution below 95% to as little as 50%, this provision only applies to agencies created after July 1, 1994. Since MIRA was created before that date, this statute does not apply to that agency.

[5] 163.362 Contents of community redevelopment plan.—Every community redevelopment plan shall:
(10) Provide a time certain for completing all redevelopment financed by increment revenues. Such time certain shall occur no later than 30 years after the fiscal year in which the plan is approved, adopted, or amended pursuant to s. 163.361(1). However, for any agency created after July 1, 2002, the time certain for completing all redevelopment financed by increment revenues must occur within 40 years after the fiscal year in which the plan is approved or adopted.

[6] 163.387(2)(a): "Except for the purpose of funding the trust fund pursuant to subsection (3), upon the adoption of an ordinance providing for funding of the redevelopment trust fund as provided in this section, each taxing authority shall, by January 1 of each year, appropriate to the trust fund for so long as any indebtedness pledging

County Commission's Authority to Revoke Delegation and Become CRA Governing Body

As governing body of a charter county, the Brevard County Commission has delegated to various city governments the authority to create community redevelopment agencies located within those cities. [7] Charter counties may impose more restrictive CRA "termination" provisions on those cities to which the Commission has delegated authority to create a community development agency. In furtherance of that power, the County resolutions authorizing the creation of community redevelopment after November 8, 1994[8] reserve the County Commission's right to revoke delegation of authority if the BCC deems it necessary for the protection of the health, safety, welfare or fiscal interests of the public or the redevelopment area, although in three resolutions (Rockledge, Satellite Beach and Palm Shores) this revocation right can be construed as limiting revocation of delegated redevelopment powers to circumstances in which there has been "non-performance" by the cities to whom the county's authority is delegated. In all cases, however, any revocation by the County cannot impair the redevelopment agency's outstanding contractual or financial obligations.[9]

---

increment revenues to the payment thereof is outstanding (but not to exceed 30 years) a sum that is no less than the increment as defined and determined in subsection (1) or paragraph (3)(b) accruing to such taxing authority. If the community redevelopment plan is amended or modified pursuant to s. 163.361(1), each such taxing authority shall make the annual appropriation for a period not to exceed 30 years after the date the governing body amends the plan but no later than 60 years after the fiscal year in which the plan was initially approved or adopted. However, for any agency created on or after July 1, 2002, each taxing authority shall make the annual appropriation for a period not to exceed 40 years after the fiscal year in which the initial community redevelopment plan is approved or adopted."

[7] Section 163.410, Florida Statutes states, in pertinent part: "In any county which has adopted a home rule charter, the powers conferred by this part shall be exercised exclusively by the governing body of such county. However, the governing body of any such county which has adopted a home rule charter may, in its discretion, by resolution delegate the exercise of the powers conferred upon the county by this part within the boundaries of a municipality to the governing body of such a municipality. Such a delegation to a municipality shall confer only such powers upon a municipality as shall be specifically enumerated in the delegating resolution. Any power not specifically delegated shall be reserved exclusively to the governing body of the county. This section does not affect any community redevelopment agency created by a municipality prior to the adoption of a county home rule charter."

[8] This is the date the first charter was passed in Brevard.

[9] Section 163.387(3)(a), Florida Statutes, which reads in relevant part:
"Notwithstanding the provisions of subsection (2), the obligation of the governing body which established the community redevelopment agency to fund the

Should the BCC revoke the delegation of governing authority to one or more city CRA's and substitute itself as the governing body, the BCC would be in the same scenario described for MIRA relative to recapturing tax increment revenues, to the extent a CRA had no outstanding indebtedness or contractual obligations.

The Board's Authority to Reduce the Budget of a CRA

The question has also been asked as to whether the County can cut CRA budgets. In response to that question, section 163.387(1)(a), Florida Statutes, allows the BCC to reduce funding to CRA's created after July 1, 1994. In pertinent part that statute reads as follows:

> [T]he governing body of any county as defined in s. 125.011(1) may, in the ordinance providing for the funding of a trust fund established with respect to any community redevelopment area created on or after July 1, 1994, determine that the amount to be funded by each taxing authority annually shall be less than 95 percent of the difference between subparagraphs 1. and 2., but in no event shall such amount be less than 50 percent of such difference.

There are currently twelve CRA's in Brevard County. Of the twelve, four (Cocoa Village, Titusville, Melbourne Historic Downtown and MIRA) predate July 1, 1994. The other eight (Cocoa US 1 Corridor, Cocoa Diamond Square, Babcock Street, Palm Bay, Olde Eau Gallie, Rockledge, Satellite Beach and Palm Shores) were all created after July 1, 1994 and are, therefore, subject to the Board's authority to reduce the tax increment from 95% to 50%.

The four other CRA's that predate the July 1, 1994 date would fall into the same uncertainty category as MIRA relative to the mandatory annual deposit of the tax increment into the redevelopment trust fund in the absence of outstanding indebtedness. Pending clarification by the Attorney General, the relevant statutes are unclear as to whether the Board can or cannot cut the CRA budgets where the CRA had no outstanding indebtedness.

---

redevelopment trust fund annually shall continue until all loans, advances, and indebtedness, if any, and interest thereon, of a community redevelopment agency incurred as a result of redevelopment in a community redevelopment area have been paid."

Exhibit D

BREVARD COUNTY
BOARD OF COUNTY COMMISSIONERS

INTER-OFFICE MEMORANDUM

TO: Honorable Chairman and Members of the Board of County Commissioners

FROM: Scott L. Knox, County Attorney

RE: Board's Ability to Reduce or Eliminate Budgets of Redevelopment Agencies **(REVISED)**

DATE: May 1, 2009

QUESTION 1: Does the Board of County Commissioners have the authority to reduce the redevelopment agency budgets?

SHORT ANSWER: Yes, under certain circumstances. For some redevelopment agencies the Board may substitute itself as the agency board and thereafter recapture the tax increment by controlling the agency budget. However, the statutes are unclear as to whether the Board is required to continue contributing the tax increment to agencies which have no outstanding indebtedness.

QUESTION 2: Can redevelopment agencies be dissolved?

SHORT ANSWER: No. In general, the agencies either expire in accordance with the termination dates specified in their redevelopment plan or either thirty or forty years after the plan is approved or amended.

At a recent Board workshop meeting the BCC asked whether the budgets of Community redevelopment agencies could be cut or whether agencies, including MIRA, could be dissolved. The following discussion attempts to answer those questions.

MIRA

MIRA cannot be dissolved until the expiration of the thirty-year existence provided for in the ordinance creating the agency. However the BCC does have the ability to substitute itself as the MIRA board, which means the BCC would control the MIRA budget. The statutory provision authorizing the BCC to substitute itself for the MIRA board reads as follows:

> 163.357 Governing body as the community redevelopment agency.—
> (1)(a) As an alternative to the appointment [of members of the redevelopment agency board], the governing body may, at the time of the adoption of a resolution under s. 163.355, or *at any time thereafter by adoption of a resolution, declare itself to be an agency*, in which case all the rights, powers, duties, privileges, and immunities vested by this part in an agency will be vested in the governing body of the county or municipality, subject to all responsibilities and liabilities imposed or incurred. [emphasis added]

As the MIRA Board, the County Commission Can Recapture Its MIRA Tax Increment

If the BCC substitutes itself for the MIRA board, it would be subject to all of the responsibilities and liabilities imposed or incurred by the existing agency.[1] The Board would also have the same authority as the MIRA board with respect to the MIRA budget, including the authority "...(l) [t]o appropriate such funds and make such expenditures as are necessary to carry out the purposes of this part..."[2]

The Board's power to appropriate and expend funds for redevelopment purposes also constitutes tacit power not to expend funds, which may have significant ramifications on the budget of the County which contributes a tax increment into the redevelopment trust fund that funds MIRA. If, acting as the MIRA board, the County Commission controls MIRA expenditures, the Board can elect not to expend funds for redevelopment purposes in any given year, at their discretion, to the extent MIRA has no outstanding indebtedness or contractual obligations. In those circumstances, the Board could recapture of all or a part of its share of the tax increment in accordance with section 163.387(7), Florida Statutes, which reads in relevant part as follows:

---

[1] Section 163.357(1)(b), Florida Statutes, which reads as follows:

> (b) The members of the governing body shall be the members of the agency, but such members constitute the head of a legal entity, separate, distinct, and independent from the governing body of the county or municipality. If the governing body declares itself to be an agency which already exists, the new agency is subject to all of the responsibilities and liabilities imposed or incurred by the existing agency.

[2] Section 163.270(2)(l), Florida Statutes. This is a power which may be delegated to a community redevelopment agency by the County Commission in accordance with section 163.358, Florida Statutes.

> On the last day of the fiscal year of the community redevelopment agency, any money which remains in the trust fund after the payment of expenses pursuant to subsection (6) for such year shall be:
> (a) Returned to each taxing authority which paid the increment in the proportion that the amount of the payment of such taxing authority bears to the total amount paid into the trust fund by all taxing authorities for that year...

Under this provision, any remaining funds on deposit in the redevelopment trust fund which have not been used for the payment of administrative costs, contractual obligations or indebtedness can be recaptured on the last day of the redevelopment agency fiscal year. The County would recoup its proportionate share of the tax increment funds, as would contributing special districts or MSTU's.

Can the County Stop Contributing a Tax Increment to MIRA Altogether

The County's enabling ordinance and section 163.387(1)(a), Florida Statutes both use mandatory language regarding funding the MIRA trust fund. The statute reads as follows:

> **The annual funding of the redevelopment trust fund shall be in an amount not less than that increment in** the income, proceeds, revenues, and funds of each taxing authority derived from or held in connection with the undertaking and carrying out of community redevelopment under this part. [emphasis added]

However, section 163.387(3)(a) can be construed to limit the application of the above-quoted mandatory language to those circumstances where the agency has outstanding indebtedness:

> **163.387 (3)(a)** Notwithstanding the provisions of subsection (2), the obligation of the governing body which established the community redevelopment agency to fund the redevelopment trust fund annually ***shall continue until all loans, advances, and indebtedness***, if any, and interest thereon, of a community redevelopment agency incurred as a result of redevelopment in a community redevelopment area ***have been paid.*** [emphasis added]

Therefore, the apparent conflict in the statutes makes it is unclear as to whether the Board has the discretion to cut off MIRA tax increment funding in circumstances where MIRA has no outstanding indebtedness.

To summarize, there are two ways these statutes can be viewed. First, since MIRA currently has no indebtedness, if (3)(a) is read to require mandatory contributions only where outstanding indebtedness or contractual obligation exists, no tax authority—including the County or applicable special districts or MSTU's—would be required to contribute the tax increment to the agency's trust fund, although such funding would appear to optional under section 163.353,

Florida Statutes.[3] In short, under those circumstances, the Board would appear to have the authority to cut or eliminate the MIRA budget. In contrast, if the County contribution to the increment is statutorily mandated, the Board cannot cut MIRA's tax increment.[4]

If the Board seeks clarification of the "gray area" involving the interrelationship of these provisions pertaining to the mandatory or discretionary contribution of the tax increment, an Attorney General's Opinion might be requested to clarify how the provisions should be construed.

OTHER REDEVELOPMENT AGENCIES

Statutory Time Limits on CRA Activities Financed with Tax Increment

Although there are limitations on the number of years a local government is required to contribute its tax increment once a redevelopment agency is created, the only statutory provision governing cessation of community redevelopment agency activities appears in the law establishing the contents of a community redevelopment plan. That law states that all CRA activities must be completed within thirty years after the plan is approved;[5] within thirty years

---

[3] 163.353 **Power of taxing authority to tax or appropriate funds to a redevelopment trust fund in order to preserve and enhance the tax base of the authority.**—Notwithstanding any other provision of general or special law, the purposes for which a taxing authority may levy taxes or appropriate funds to a redevelopment trust fund include the preservation and enhancement of the tax base of such taxing authority and the furthering of the purposes of such taxing authority as provided by law.

[4] Although section 163.387(1)(a) authorizes the taxing authority to reduce the tax increment contribution below 95% to as little as 50%, this provision only applies to agencies created after July 1, 1994. Since MIRA was created before that date, this statute does not apply to that agency.

[5] 163.362 Contents of community redevelopment plan.—Every community redevelopment plan shall:
(10) Provide a time certain for completing all redevelopment financed by increment revenues. Such time certain shall occur no later than 30 years after the fiscal year in which the plan is approved, adopted, or amended pursuant to s. 163.361(1). However, for any agency created after July 1, 2002, the time certain for completing all redevelopment financed by increment revenues must occur within 40 years after the fiscal year in which the plan is approved or adopted.

after the redevelopment plan is amended in the case of agencies created before July 1, 2002, and forty years after plan approval or amendment in the case of agencies created after that date.[6]

County Commission's Authority to Revoke Delegation and Become CRA Governing Body

As governing body of a charter county, the Brevard County Commission has delegated to various city governments the authority to create community redevelopment agencies located within those cities.[7] Charter counties may impose more restrictive CRA "termination" provisions on those cities to which the Commission has delegated authority to create a community development agency. In furtherance of that power, the County resolutions authorizing the creation of community redevelopment after November 8, 1994[8] reserve the County Commission's right to revoke delegation of authority if the BCC deems it necessary for the protection of the health, safety, welfare or fiscal interests of the public or the redevelopment area, although in three resolutions (Rockledge, Satellite Beach and Palm Shores) this revocation

---

6 163.387(2)(a): "Except for the purpose of funding the trust fund pursuant to subsection (3), upon the adoption of an ordinance providing for funding of the redevelopment trust fund as provided in this section, each taxing authority shall, by January 1 of each year, appropriate to the trust fund for so long as any indebtedness pledging increment revenues to the payment thereof is outstanding (but not to exceed 30 years) a sum that is no less than the increment as defined and determined in subsection (1) or paragraph (3)(b) accruing to such taxing authority. If the community redevelopment plan is amended or modified pursuant to s. 163.361(1), each such taxing authority shall make the annual appropriation for a period not to exceed 30 years after the date the governing body amends the plan but no later than 60 years after the fiscal year in which the plan was initially approved or adopted. However, for any agency created on or after July 1, 2002, each taxing authority shall make the annual appropriation for a period not to exceed 40 years after the fiscal year in which the initial community redevelopment plan is approved or adopted."

7 Section 163.410, Florida Statutes states, in pertinent part: "In any county which has adopted a home rule charter, the powers conferred by this part shall be exercised exclusively by the governing body of such county. However, the governing body of any such county which has adopted a home rule charter may, in its discretion, by resolution delegate the exercise of the powers conferred upon the county by this part within the boundaries of a municipality to the governing body of such a municipality. Such a delegation to a municipality shall confer only such powers upon a municipality as shall be specifically enumerated in the delegating resolution. Any power not specifically delegated shall be reserved exclusively to the governing body of the county. This section does not affect any community redevelopment agency created by a municipality prior to the adoption of a county home rule charter."

8 This is the date the first charter was passed in Brevard.

right can be construed as limiting revocation of delegated redevelopment powers to circumstances in which there has been "non-performance" by the cities to whom the county's authority is delegated. In all cases, however, any revocation by the County cannot impair the redevelopment agency's outstanding contractual or financial obligations.[9]

Should the BCC revoke the delegation of governing authority to one or more city CRA's and substitute itself as the governing body, the BCC would be in the same scenario described for MIRA relative to recapturing tax increment revenues, to the extent a CRA had no outstanding indebtedness or contractual obligations.

---

[9] Section 163.387(3)(a), Florida Statutes, which reads in relevant part:
"Notwithstanding the provisions of subsection (2), the obligation of the governing body which established the community redevelopment agency to fund the redevelopment trust fund annually shall continue until all loans, advances, and indebtedness, if any, and interest thereon, of a community redevelopment agency incurred as a result of redevelopment in a community redevelopment area have been paid."

Exhibit E

BREVARD COUNTY
BOARD OF COUNTY COMMISSIONERS

INTER-OFFICE MEMORANDUM

TO: The Honorable Trudie Infantini, Brevard County Commissioner, District 3

FROM: Scott L. Knox, County Attorney

CC: The Honorable Chairman and Members of the Board of County Commissioners
Howard Tipton, County Manager

RE: Recapture of Community Redevelopment District Tax Increment

DATE: January 25, 2010

QUESTION 1: Does the Board of County Commissioners have the authority to end the property tax increment paid to community redevelopment agencies?

SHORT ANSWER: No.

QUESTION 2: Can the Board of County Commissioners recapture the property taxes disbursed to a redevelopment agency?

SHORT ANSWER: Under certain limited circumstances the Board may be able to recoup ad valorem tax revenue disbursed to a community redevelopment agency. In the case of a city CRA, the Commission can only recapture property taxes disbursed to the agency where [1] a county ordinance or resolution delegated the Commission's powers under chapter 163, Part III to a city and [2] the County ordinance or resolution provides for the revocation of that delegated authority, in which event the Commission may revoke the delegation of authority and substitute itself as the CRA board, allowing the Commission to thereafter recapture the tax increment by controlling the agency budget. Another way in which the Commission can recapture tax increment revenues is through interlocal agreement with the applicable taxing authority and CRA.

QUESTION 3: Can redevelopment agencies be dissolved?

SHORT ANSWER: No. In general, the agencies either expire in accordance with the termination dates specified in their redevelopment plan or either thirty or forty years after the plan is approved or amended.

You have asked whether the County Commission had any ability to stop community redevelopment agencies from collecting the ad valorem "tax increment" granted to such agencies in accordance with

the provisions of chapter 163, Part III, Florida Statutes. The corollary questions raised by your question are whether [1] the County Commission can recapture that tax increment or [2] dissolve a CRA.

The following discussion attempts to answer those questions as they relate to the Merritt Island Community Redevelopment Agency, as well as CRAs created by cities under a delegation of authority from the County Commission after the County became a charter county on November 8, 1994.

As the MIRA Board, the County Commission Can Recapture Its MIRA Tax Increment

Although MIRA cannot be dissolved until the expiration of the thirty-year existence provided for in the county ordinance creating the agency,[1] the BCC does have the ability to substitute itself as the MIRA Board, which means the BCC would control the MIRA budget. The statutory provision authorizing the BCC to substitute itself for the MIRA board reads as follows:

> 163.357 Governing body as the community redevelopment agency.-
> (1)(a) As an alternative to the appointment [of members of the redevelopment agency board], the governing body may, at the time of the adoption of a resolution under s. 163.355, or *at any time thereafter by adoption of a resolution, declare itself to be an agency,* in which case all the rights, powers, duties, privileges, and immunities vested by this part in an agency will be vested in the governing body of the county or municipality, subject to all responsibilities and liabilities imposed or incurred. [Emphasis added]

If the BCC substitutes itself for the MIRA Board, it would be subject to all of the responsibilities and liabilities incurred by the existing agency.[2] The Board would also have the same authority as the MIRA Board with respect to the MIRA budget, including the authority "(1) [t]o appropriate such funds and make such expenditures as are necessary to carry out the purposes of this part . . .". Acting as the MIRA board, the County Commission would control MIRA expenditures and the Board, at its discretion, might elect not to expend the "county" tax increment for redevelopment purposes in

---

[1] See discussion titled *"OTHER REDEVELOPMENT AGENCIES"* below.

[2] Section 163.357(1)(b), Florida Statutes, which reads as follows:
(b) The members of the governing body shall be the members of the agency, but such members constitute the head of a legal entity, separate, distinct, and independent from the governing body of the county or municipality. If the governing body declares itself to be an agency which already exists, the new agency is subject to all of the responsibilities and liabilities imposed or incurred by the existing agency.

any given year, to the extent MIRA had no outstanding indebtedness or contractual obligations in that year. In its capacity as the CRA governing body, the Commission's decision not to expend the property tax increment for redevelopment purposes can impact the County budget since the Board has a statutory right to recapture of all or a part of its share of the property tax increment surplus not expended for CRA purposes. The applicable statute is section 163.387(7), Florida Statutes, which reads in relevant part as follows:

> On the last day of the fiscal year of the community redevelopment agency, any money which remains in the trust fund after the payment of expenses pursuant to subsection (6) for such year shall be:
> (a) Returned to each taxing authority which paid the increment in the proportion that the amount of the payment of such taxing authority bears to the total amount paid into the trust fund by all taxing authorities for that year . . . .

Under this provision, any remaining funds on deposit in the redevelopment trust fund which have not been used for the payment of administrative costs, contractual obligations or indebtedness can be recaptured on the last day of the redevelopment agency fiscal year. The County would recoup its proportionate share of the tax increment funds, as would contributing special districts or MSTUs.

Can the County Stop Contributing a Tax Increment to MIRA Altogether

The County's enabling ordinance and section 163.387(1)(a), Florida Statutes, both use mandatory language regarding funding the MIRA trust fund. The statute reads as follows:

> The annual funding of the redevelopment trust fund *shall* be in an amount not less than that increment in the income, proceeds, revenues, and funds of each taxing authority derived from or held in connection with the undertaking and carrying out of community redevelopment under this part. [emphasis added]

However, section 163.387(3)(a) can be construed to limit the application of the above-quoted mandatory language to those circumstances where the agency has outstanding indebtedness:

> 163.387 (3)(a) Notwithstanding the provisions of subsection (2), the obligation of the governing body which established the community redevelopment agency to fund the redevelopment trust fund annually *shall continue until all loans, advances, and indebtedness,* if any, and interest thereon, of a community redevelopment agency incurred as a result of redevelopment in a community redevelopment area *have been paid.* [Emphasis added]

Read together, the two statutes would appear to allow for discontinuing the funding of the redevelopment trust fund with the tax increment if all loans, advances and indebtedness are paid.

Since MIRA currently has no indebtedness, if (3)(a) is read to require mandatory contributions only where outstanding indebtedness or contractual obligation exists, no tax authority-including the County or applicable special districts or MSTUs – would be required to contribute the tax increment to the agency's trust fund, although such funding would appear to be optional under section 163.353, Florida Statutes.[3] In short, under those circumstances, the Board would appear to have the authority to cut or eliminate the MIRA budget. In contrast, if the County contribution to the increment is statutorily mandated, the Board cannot cut MIRA's tax increment.

If the Board seeks clarification of the "gray area" involving the interrelationship of these provisions pertaining to the mandatory or discretionary contribution of the tax increment, an Attorney General's Opinion might be requested to clarify how the provisions should be construed.

OTHER REDEVELOPMENT AGENCIES

Statutory Time Limits on CRA Activities Financed with Tax Increment

Although there are limitations on the number of years a local government is required to contribute its tax increment once a redevelopment agency is created, the only statutory provision governing cessation of community redevelopment agency activities appears in the law establishing the contents of a community redevelopment plan. That law states that all CRA activities must be completed within thirty years after the plan is approved;[4] within thirty years after the redevelopment plan is

---

[3] 163.353 Power of taxing authority to tax or appropriate funds to a redevelopment trust fund in order to preserve and enhance the tax base of the authority.-
Notwithstanding any other provision of general or special law, the purposes for which a taxing authority may levy taxes or appropriate funds to a redevelopment trust fund include the preservation and enhancement of the tax base of such taxing authority and the furthering of the purposes of such taxing authority as provided by law.

[4] 163.362 Contents of community redevelopment plan.-Every community redevelopment plan shall . . .
(10) Provide a time certain for completing all redevelopment financed by increment revenues. Such time certain shall occur no later than 30 years after the fiscal year in which the plan is approved, adopted, or amended pursuant to s. 163.361 (1). However, for any agency created after July 1, 2002, the time certain for completing all redevelopment financed by increment revenues must occur within 40 years after the fiscal year in which the plan is approved or adopted.

amended in the case of agencies created before July 1, 2002, and forty years after plan approval or amendment in the case of agencies created after that date.[5]

County Commission's Authority to Revoke Delegation and Become CRA Governing Body

As governing body of a charter county, the Brevard County Commission has delegated to various city governments the authority to create community redevelopment agencies located within those cities.[6] Charter counties may impose more restrictive CRA "termination" provisions on those cities to which the Commission has delegated such authority. In furtherance of that power, the County resolutions authorizing the creation of community redevelopment districts after November 8, 1994[7]–the date the Brevard County Home Rule Charter was passed–reserve the County Commission's right to revoke the delegation of authority if the BCC deems it necessary for the protection of the health, safety, welfare *or fiscal interests* of the public or the redevelopment area, although in three resolutions (Rockledge, Satellite Beach and Palm Shores) this revocation right can

---

[5] 163.387(2)(a): "Except for the purpose of funding the trust fund pursuant to subsection (3), upon the adoption of an ordinance providing for funding of the redevelopment trust fund as provided in this section, each taxing authority shall, by January 1 of each year, appropriate to the trust fund for so long as any indebtedness pledging increment revenues to the payment thereof is outstanding (but not to exceed 30 years) a sum that is no less than the increment as defined and determined in subsection (1) or paragraph (3)(b) accruing to such taxing authority. If the community redevelopment plan is amended or modified pursuant to s. 163.361(1), each such taxing authority shall make the annual appropriation for a period not to exceed 30 years after the date the governing body amends the plan but no later than 60 years after the fiscal year in which the plan was initially approved or adopted. However, for any agency created on or after July 1, 2002, each taxing authority shall make the annual appropriation for a period not to exceed 40 years after the fiscal year in which the initial community redevelopment plan is approved or adopted."

[6] Section 163.410, Florida Statutes states, in pertinent part: "In any county which has adopted a home rule charter, the powers conferred by this part shall be exercised exclusively by the governing body of such county. However, the governing body of any such county which has adopted a home rule charter may, in its discretion, by resolution delegate the exercise of the powers conferred upon the county by this part within the boundaries of a municipality to the governing body of such a municipality. Such a delegation to a municipality shall confer only such powers upon a municipality as shall be specifically enumerated in the delegating resolution. Any power not specifically delegated shall be reserved exclusively to the governing body of the county. This section does not affect any community redevelopment agency created by a municipality prior to the adoption of a county home rule charter." This is the date the first charter was passed in Brevard.

[7] Copies of those resolutions are available from the County Attorney's Office, if needed.

be construed as limiting revocation to circumstances in which there has been "non-performance" by the cities to whom the county's authority was delegated. In all cases, however, any proposed County revocation of CRA powers to a city cannot have the effect of impairing the redevelopment agency's outstanding contractual or financial obligations.[8]

Should the BCC revoke the delegation of governing authority to one or more city CRAs and substitute itself as the governing body, the BCC would have the same authority over the budget described in the MIRA scenario above with regard to recapturing tax increment revenues, to the extent a CRA had no outstanding indebtedness or contractual obligations. *See AGO 95-39*

The determination as to whether a particular city CRA has issued any outstanding indebtedness would require inquiries to the applicable city government with a CRA established under a county ordinance or resolution delegating the Commission's CRA authority to that city.[9]

---

[8] Section 163.387(3)(a), Florida Statutes, which reads in relevant part:
"Notwithstanding the provisions of subsection (2), the obligation of the governing body which established the community redevelopment agency to fund the redevelopment trust fund annually shall continue until all loans, advances, and indebtedness, if any, and interest thereon, of a community redevelopment agency incurred as a result of redevelopment in a community redevelopment area have been paid."

[9] Currently twelve CRA's exist in Brevard County. The following chart' identifies the year in which they were established and expected year of termination:

Brevard CRAs	Year Established	Projected Termination Year
Cocoa Village Redevelopment Agency	1981	2011
City of Titusville Redevelopment Agency	1982	2012
Melbourne Historic Downtown Redevelopment Agency	1982	2012
Merritt Island Redevelopment Agency (1)	1988	2013
Cocoa US 1 Corridor Redevelopment Agency	1997	2022
Cocoa Diamond Square Redevelopment Agency	1997	2022
Babcock Street Redevelopment Agency (2)'	1997	2022
City of Palm Bay Redevelopment Agency	1999	2024
Olde Eau Gallie Redevelopment Agency	2000	2025
City of Rockledge Redevelopment Agency	2001	2026
City of Satellite Beach Redevelopment Agency	2001	2026
Town of Palm Shores Redevelopment Agency	2004	2029

(1) Expanded area 1990

ANOTHER RELEVANT ALTERNATIVE

Another approach to lowering the tax increment available to community redevelopment agencies is by interlocal agreement. The authority for this approach is found under section 163.3187, Florida Statutes, which reads as follows:

> (3)(b) Alternate provisions contained in an interlocal agreement between a taxing authority and the governing body that created the community redevelopment agency may supersede the provisions of this section with respect to that taxing authority. The community redevelopment agency may be an additional party to any such agreement.

---

(2) Expanded area 2001