



Memo

To: FRA Members

From: Cliff Shepard, General Counsel

CC: Jeff Blomeley

Re: Use of CRA Trust Fund moneys for Marketing and Special Events

Members-

Based on a 2010 attorney general's opinion, AGO 2010-40, it has long been the position of the FRA that CRA trust funds could be used to promote the use of a redeveloped area. Indeed, although the *"enumerated uses of community redevelopment trust fund moneys are . . . couched in terms of redevelopment activities involving 'bricks and mortar',"* rather than promotional campaigns, AG McCollum opined at the time that *"to read the statute as precluding the promotion of a redeveloped area once the infrastructure has been completed would be narrowly viewing community redevelopment as a static process."*

The FRA agreed with and even lauded that interpretation as a significant step in the right direction when it comes to redevelopment. Unfortunately, the redevelopment statute was amended in October of 2019 to eliminate the legal support for that position, thus making it necessary to issue this memo of guidance to our members, many of whom seem to be unaware of the change and its significance.

Five Little Words

In AGO 2010-40, AG McCollum cited to the then wording of Fla. Stat. § 163.387(6) which provided (as does the current version) a list of expenditures specifically authorized by the redevelopment act. Notably, however, that list was not intended to be exhaustive. We know this because, as Attorney General McCollum pointed out, the list of authorized expenditures was introduced by the precatory language

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“including, but not limited to:” These five words make all the difference. Sadly, they have been deleted from the current version of the statute.

The key language, as it read then, was as follows:

*Moneys in the redevelopment trust fund may be expended from time to time for undertakings of a community redevelopment agency as described in the community redevelopment plan for the following purposes, **including, but not limited to:***

In his conclusion, AG McCollum, relying almost solely on the “including, but not limited to” language, recognized the lack of a specific authorization in the statute for marketing and promotional type expenditures, and stated his opinion somewhat awkwardly:

I cannot say that the use of community redevelopment funds would be so limited that the expenditure of funds for the promotion of a redeveloped area would be prohibited. However, grants to entities which promote tourism and economic development, as well as to nonprofits providing socially beneficial programs would appear outside the scope of the community redevelopment act.

Thus, the AG recognized a narrow window, created by the then statutory language, that would allow the expenditure of CRA trust funds on marketing and promotional activities for the CRA so long as the marketing and promotional activities were authorized by the redevelopment plan, were within the CRA budget, and being spent exclusively in the district. Notably, however, even then the AG believed grants to entities which promote tourism and economic development, or nonprofits providing socially beneficial programs “would appear outside the scope” of the redevelopment act.

The 2019 Amendment

With the 2019 amendment, the words “including, but not limited to” no longer exist in the statute. This is a huge change, and not without legislative intention.

Historically, certain CRAs in Florida have pushed the boundaries of what they can spend redevelopment dollars on. As a result, the FRA has become a perpetual legislative watchdog as well as legal educator when it comes to trying to keep our membership on the “straight and narrow.” Unfortunately, it doesn’t

take many complaints on a perceived issue for a legislator to seek a statutory solution to what ultimately is a minor or even nonexistent problem.

The problem the legislature was attempting to address with the 2019 amendment was the perception that CRA trust fund expenditures had devolved into a “wild west” scenario, where CRAs were justifying all manner of expenditures, while hanging their hats on the “including, but not limited to” language cited by AG McCollum. The solution, as they saw it, was to take away that excuse so that accountability would be easier to achieve.

The introductory language to relevant portion of Fla. Stat. § 163.387(6) now reads:

Effective October 1, 2019, moneys in the redevelopment trust fund may be expended for undertakings of a community redevelopment agency as described in the community redevelopment plan only pursuant to an annual budget adopted by the board of commissioners of the community redevelopment agency and only for the purposes specified in paragraph (c).

While this is a significant and consequential change, it must be noted that there is still a long list of authorized expenditures for CRA trust funds under the existing law. That list includes:

- 1. Administrative and overhead expenses directly or indirectly necessary to implement a community redevelopment plan adopted by the agency.*
- 2. Expenses of redevelopment planning, surveys, and financial analysis, including the reimbursement of the governing body or the community redevelopment agency for such expenses incurred before the redevelopment plan was approved and adopted.*
- 3. The acquisition of real property in the redevelopment area.*
- 4. The clearance and preparation of any redevelopment area for redevelopment and relocation of site occupants within or outside the community redevelopment area as provided in s. 163.370.*
- 5. The repayment of principal and interest or any redemption premium for loans, advances, bonds, bond anticipation notes, and any other form of indebtedness.*
- 6. All expenses incidental to or connected with the issuance, sale, redemption, retirement, or purchase of bonds, bond anticipation notes, or other form of indebtedness, including funding of*

any reserve, redemption, or other fund or account provided for in the ordinance or resolution authorizing such bonds, notes, or other form of indebtedness.

7. The development of affordable housing within the community redevelopment area.

8. The development of community policing innovations.

9. Expenses that are necessary to exercise the powers granted under s. 163.370, as delegated under s. 163.358.

Moreover, the language “expenses necessary to exercise the powers granted under s. 163.370” adds the following into the mix:

1. Acquisition of property within a slum area or a blighted area by purchase, lease, option, gift, grant, bequest, devise, or other voluntary method of acquisition.

2. Demolition and removal of buildings and improvements.

3. Installation, construction, or reconstruction of streets, utilities, parks, playgrounds, public areas of major hotels that are constructed in support of convention centers, including meeting rooms, banquet facilities, parking garages, lobbies, and passageways, and other improvements necessary for carrying out in the community redevelopment area the community redevelopment objectives of this part in accordance with the community redevelopment plan.

4. Disposition of any property acquired in the community redevelopment area at its fair value as provided in s. 163.380 for uses in accordance with the community redevelopment plan.

5. Carrying out plans for a program of voluntary or compulsory repair and rehabilitation of buildings or other improvements in accordance with the community redevelopment plan.

6. Acquisition by purchase, lease, option, gift, grant, bequest, devise, or other voluntary method of acquisition of real property in the community redevelopment area which, under the community redevelopment plan, is to be repaired or rehabilitated for dwelling use or related facilities, repair or rehabilitation of the structures for guidance purposes, and resale of the property.

7. Acquisition by purchase, lease, option, gift, grant, bequest, devise, or other voluntary method of acquisition of any other real property in the community redevelopment area when necessary to eliminate unhealthful, unsanitary, or unsafe conditions; lessen density; eliminate obsolete or other uses detrimental to the public welfare; or otherwise to remove or prevent the spread of blight or deterioration or to provide land for needed public facilities.

8. Acquisition, without regard to any requirement that the area be a slum or blighted area, of air rights in an area consisting principally of land in highways, railway or subway tracks, bridge or tunnel entrances, or other similar facilities which have a blighting influence on the surrounding area and over which air rights sites are to be developed for the elimination of such blighting influences and for the provision of housing (and related facilities and uses) designed specifically for, and limited to, families and individuals of low or moderate income.

9. Acquisition by purchase, lease, option, gift, grant, bequest, devise, or other voluntary method of acquisition of property in unincorporated enclaves surrounded by the boundaries of a community redevelopment area when it is determined necessary by the agency to accomplish the community redevelopment plan.

10. Construction of foundations and platforms necessary for the provision of air rights sites of housing (and related facilities and uses) designed specifically for, and limited to, families and individuals of low or moderate income.

(d) To provide, or to arrange or contract for, the furnishing or repair by any person or agency, public or private, of services, privileges, works, streets, roads, public utilities, or other facilities for or in connection with a community redevelopment; to install, construct, and reconstruct streets, utilities, parks, playgrounds, and other public improvements; and to agree to any conditions that it deems reasonable and appropriate which are attached to federal financial assistance and imposed pursuant to federal law relating to the determination of prevailing salaries or wages or compliance with labor standards, in the undertaking or carrying out of a community redevelopment and related activities, and to include in any contract let in connection with such redevelopment and related activities provisions to fulfill such of the conditions as it deems reasonable and appropriate.

(e) Within the community redevelopment area:

- 1. To enter into any building or property in any community redevelopment area in order to make inspections, surveys, appraisals, soundings, or test borings and to obtain an order for this purpose from a court of competent jurisdiction in the event entry is denied or resisted.*
 - 2. To acquire by purchase, lease, option, gift, grant, bequest, devise, or other voluntary method of acquisition any personal or real property, together with any improvements thereon.*
 - 3. To hold, improve, clear, or prepare for redevelopment any such property.*
 - 4. To mortgage, pledge, hypothecate, or otherwise encumber or dispose of any real property.*
 - 5. To insure or provide for the insurance of any real or personal property or operations of the county or municipality against any risks or hazards, including the power to pay premiums on any such insurance.*
 - 6. To enter into any contracts necessary to effectuate the purposes of this part.*
 - 7. To solicit requests for proposals for redevelopment of parcels of real property contemplated by a community redevelopment plan to be acquired for redevelopment purposes by a community redevelopment agency and, as a result of such requests for proposals, to advertise for the disposition of such real property to private persons pursuant to s. 163.380 prior to acquisition of such real property by the community redevelopment agency.*
- (f) To invest any community redevelopment funds held in reserves or sinking funds or any such funds not required for immediate disbursement in property or securities in which savings banks may legally invest funds subject to their control and to redeem such bonds as have been issued pursuant to s. 163.385 at the redemption price established therein or to purchase such bonds at less than redemption price, all such bonds so redeemed or purchased to be canceled.*
- (g) To borrow money and to apply for and accept advances, loans, grants, contributions, and any other form of financial assistance from the Federal Government or the state, county, or other public body or from any sources, public or private, for the purposes of this part and to give such security as may be required and to enter into and carry out contracts or agreements in connection therewith; and to include in any contract for financial assistance with the Federal Government for or with respect to community redevelopment and related activities such conditions imposed*

pursuant to federal laws as the county or municipality deems reasonable and appropriate which are not inconsistent with the purposes of this part.

(h) To make or have made all surveys and plans necessary to the carrying out of the purposes of this part; to contract with any person, public or private, in making and carrying out such plans; and to adopt or approve, modify, and amend such plans, which plans may include, but are not limited to:

1. Plans for carrying out a program of voluntary or compulsory repair and rehabilitation of buildings and improvements.

2. Plans for the enforcement of state and local laws, codes, and regulations relating to the use of land and the use and occupancy of buildings and improvements and to the compulsory repair, rehabilitation, demolition, or removal of buildings and improvements.

3. Appraisals, title searches, surveys, studies, and other plans and work necessary to prepare for the undertaking of community redevelopment and related activities.

(i) To develop, test, and report methods and techniques, and carry out demonstrations and other activities, for the prevention and the elimination of slums and urban blight and developing and demonstrating new or improved means of providing housing for families and persons of low income.

(j) To apply for, accept, and utilize grants of funds from the Federal Government for such purposes.

(k) To prepare plans for and assist in the relocation of persons (including individuals, families, business concerns, nonprofit organizations, and others) displaced from a community redevelopment area and to make relocation payments to or with respect to such persons for moving expenses and losses of property for which reimbursement or compensation is not otherwise made, including the making of such payments financed by the Federal Government.

(l) To appropriate such funds and make such expenditures as are necessary to carry out the purposes of this part; to zone or rezone any part of the county or municipality or make exceptions from building regulations; and to enter into agreements with a housing authority, which agreements may extend over any period, notwithstanding any provision or rule of law to the

contrary, respecting action to be taken by such county or municipality pursuant to any of the powers granted by this part.

(m) To close, vacate, plan, or replan streets, roads, sidewalks, ways, or other places and to plan or replan any part of the county or municipality.

(n) To organize, coordinate, and direct the administration of the provisions of this part, as they may apply to such county or municipality, in order that the objective of remedying slum and blighted areas and preventing the causes thereof within such county or municipality may be most effectively promoted and achieved and to establish such new office or offices of the county or municipality or to reorganize existing offices in order to carry out such purpose most effectively.

(o) To develop and implement community policing innovations.

Conclusion

While CRA trust funds can no longer be spent on promotional and marketing activities, and could never be spent on grants to entities which promote tourism and economic development, or nonprofits providing socially beneficial programs, there are still a large number of authorized expenditures under the redevelopment act, which continues to exist as Florida's best vehicle for successful local government redevelopment efforts across the state.