



AGENDA REPORT
October 24, 2017

SUBJECT:

Downtown Titusville CRA Festival Expenses

FISCAL IMPACT:

Approximately \$55,055 of County TIF revenue

DEPT/OFFICE:

District 3

REQUESTED ACTION:

It is requested that the Board discuss its options and consider potential courses of action as it relates to protecting the County's fiscal interests.

SUMMARY EXPLANATION and BACKGROUND:

The Downtown Titusville Community Redevelopment Agency has improperly used approximately \$120,123 of City and County TIF funds for festival expenses such as Food Truck Wars, Saturday Nite Live, and chili cook-offs.

According to the County Attorney's Office, these expenditures are unlawful under Chapter 163, Part III, Florida Statutes.

The Downtown Titusville CRA is expected to receive approximately \$302,928 in County TIF revenue in FY 17-18.

ATTACHMENTS:

Description

- **Downtown Titusville CRA Festival Expenses**
- **County Attorney Opinion**

REVIEWERS:

Department	Reviewer	Action
District 3	Prasad, Billy	Approved

VI, F. 3

City of Titusville

555 SOUTH WASHINGTON AVENUE
TITUSVILLE, FLORIDA 32796-3584
POST OFFICE BOX 2806 (32781-2806)



OFFICE OF THE MAYOR
(321) 567-3702
FAX (321) 383-5704

"Gateway to Nature and Space"
www.titusville.com

October 23, 2017

Sent Via Email: D4.Commissioner@BrevardFl.gov

Honorable Curt Smith, Chairman
Brevard County Commission
2725 Judge Fran Jamieson Way
Building C, Suite 214
Viera, FL 32940

Re: **Letter received from Commissioner Tobia regarding Titusville CRA**

Dear Chairman Smith:

I am writing this letter on behalf of the Titusville City Council in response to a letter sent by Commissioner Tobia to me as Mayor and the City Council, dated September 29, 2017, wherein he has personally chosen to malign the integrity of the Titusville Community Redevelopment Board and make demands of the City Council without justification and, it appears, without the knowledge or support of the Board of County Commissioners. It is our understanding that Commissioner Tobia now has included a last minute "add-on" to the County Commission agenda regarding expenditures by the Titusville CRA and we would like the Commission to consider the following information during your discussion.

The City of Titusville is extremely proud of the redevelopment work undertaken by the CRA Board and its efforts to rehabilitate and revitalize Titusville's downtown redevelopment area. As you are probably well aware, North Brevard was hit particularly hard as a result of the decline of the Space industry and the need for rehabilitation and redevelopment of the City's downtown area was imperative. The ability to promote and draw people to the downtown area was critical to its revitalization and, quite frankly, its survival. To that end, Titusville's community redevelopment funds have been spent in accordance with the Community Redevelopment Plan, the Community Redevelopment Act of 1969, Part II, Chapter 163, *Florida Statutes*, and the opinions issued by the Florida Attorney General's Office.

Section 163.387, *Florida Statutes*, provides that funds allocated to and deposited into the redevelopment fund shall be used by a community redevelopment agency to finance any community redevelopment it undertakes pursuant to the approved redevelopment plan. The City of Titusville Community Redevelopment Plan clearly states an intent to support special events within the downtown area and these events were specifically intended to help redevelop and revitalize the area.

In 2008, the Community Redevelopment Agency amended its community redevelopment plan to include the ability to support events that would specifically promote the use of the downtown area. This amendment to the Plan was implemented through the statutorily prescribed process, and Brevard County was provided notice of this amendment together with a copy of the Plan by certified mail several times over the past years. In addition to providing the County Commission with a copy of the CRA Plan expressly stating the CRA Board's intent to revitalize the community redevelopment area through promotional events, the County was provided a copy of the CRA budget detailing those expenditures. At no time did the Board of County

Commissioners, County Staff, County Manager, or the County Attorney's Office ever question the contents of the Plan, nor the manner in which the CRA funds were spent pursuant to that Plan.

The Titusville CRA has been very transparent in its operations and has been careful to comply with the procedures and processes as mandated by the Redevelopment Act. Each budgeted item has been evaluated by the CRA Board to determine its consistency with the Redevelopment Plan and compliance with the law as verified by opinions issued by the Florida Attorney General's office, which clearly supports the use of CRA funds to promote a redevelopment area. The Board and CRA staff is in constant dialogue with the Florida Redevelopment Agency which includes CRA plan reviews, training seminars, and on-site visits to ensure that its operations and expenditures are appropriate.

The Florida Attorney General's Office has consistently found that promoting the use of a redevelopment area is within the purposes of the Community Redevelopment Act of 1969, stating, "...to read the statute as precluding the promotion of a redevelopment area once the infrastructure has been completed would be narrowly viewing community redevelopment as a statue process." (AGO 2010-40). In confirming the opinion issued to the City of Sanford in AGO 2010-40, the Florida Attorney General issued an opinion to Senator Joseph Abruzzo stating "This office continues to consider promoting the use of a redevelopment area to be within the purposes of the Community Redevelopment Act of 1969."

The Titusville Downtown CRA has only utilized a very small percentage of tax increment funds to promote the CRA area. The total amount of funds spent by the CRA in any given year was only approximately 5% of the City's total portion of the tax increment revenues. The City's portion of the total tax increment greatly exceeds that of the County on an annual basis and therefore it would be incorrect to assume that any County tax increment was ever utilized to fund promotional events. As stated by the County Attorney in his Memorandum dated October 3, 2017, "...the County would arguably not be "injured" if City tax increment was used to fund special events. The County would not likely be deemed to have standing to challenge those expenditures for that reason and for the reason that the Titusville CRA was created prior to the legislative change vesting the County Commission in charter counties with the authority to delegate and rescind CRA powers granted to the City."

Accordingly, the Titusville City Council does not agree with Commissioner Tobia's demand for repayment and has no intention to cease the operations or dissolve the Titusville CRA. I would like to emphasize that the City of Titusville has enjoyed a very good and productive relationship with the County over many years, and the Titusville City Council looks forward to continue working together to help the City of Titusville, North Brevard and Brevard County thrive.

Respectfully yours,



Walt Johnson, Mayor

C: Rita Pritchett, County Commissioner, District 1
Frank Abbate, Brevard County Manager
Scott Knox, Brevard County Attorney

Enclosure: John Tobias Brevard County Commissioner, District 3, Letter dated September 29, 2017

COMMISSIONER JOHN TOBIA, DISTRICT 3

2539 Palm Bay Rd. NE

Suite 4

Palm Bay, Florida 32905

John.Tobia@Brevardfl.gov

Mayor Walt Johnson
P.O. Box 2806, (32781-2806)
555 S. Washington Avenue
Titusville, FL 32796

Received
OCT 10 2017
City Manager's Office

September 29, 2017

My office has compiled information, through public records, that approximately \$120,123 was misappropriated by the Titusville Community Redevelopment Agency ("CRA") between 2013 and 2016. The CRA used TIF revenue to fund festivals such as the Rotary Chili Cook-Off, Food Truck Wars, and Friday Nite Live. Of this \$120,123, approximately \$54,055 was derived from County TIF revenue, based on the proportion of revenues the CRA receives from various sources.

These expenditures are extraordinarily egregious. According to the Brevard County Attorney, Scott Knox, who issued a formal opinion on this matter (attached), Chapter 163, Part III, of Florida Statutes makes plain what expenditures are proper. Not surprisingly, he "find[s] nothing among those listed elements that remotely suggest that special events such as festivals, cook-outs, Veteran's parades or other special events are an authorized element of a redevelopment plan."

There are two possible explanations for these appropriations. Either the CRA Board has intentionally misappropriated funds, or it has been careless with precious resources. Regardless, I demand that the County be made whole; \$54,055, as well as any other unlawful expenditures that are identified after a thorough review, shall immediately be returned to the County with revenues derived from municipal TIF revenue or other lawful municipal sources. To be clear, the County must not be repaid with its own portion of TIF revenue.

Upon repayment for the unlawful use of County revenue, I insist that the Titusville CRA immediately cease operations and dissolve.

I trust that you will agree with these requirements, as there is no excuse for the recklessness, at minimum, which has led to the aforementioned expenditures that were

so glaringly improper. In light of the budgetary constraints that the County is facing, it is the only course of action that will put us on the path to regain the public trust that has been repeatedly violated by this agency.

Sincerely,



John Tobia

County Commissioner, District 3

CC:

Timothy Ford

Vice-Mayor Matt Barringer

Councilwoman Sarah Stoeckel

Councilman Dan Diesel

Councilwoman Jo Lynn Nelson ✓

City of Titusville

"Gateway to Nature & Space"

555 SOUTH WASHINGTON AVENUE
TITUSVILLE, FLORIDA 32796-3584
POST OFFICE BOX 2806 (32781-2806)



Planning & Growth Management
(321)-567-3778
Fax (321)-383-5700
www.titusville.com

September 18, 2017

Brevard County Commissioner John Tobia, District 3
2539 Palm Bay Road, NE Ste. 4
Palm Bay, FL 32905

Via John.Tobia@Brevardfl.gov

Commissioner Tobia,

This letter is per your request for information regarding the expenditures for parades and or festivals (special events) paid to private businesses and organizations with CRA funds to pay for such special events either in whole or in part for the past five (5) years. This letter was received electronically at 2:41 pm on September 7, 2017. Please find the amounts expended listed below by fiscal year along with the list of events and grantees.

FY 17 - \$0 (The CRA Special Events Grants Program was discontinued.)

FY 16 - \$30,327 (Funds were limited to \$3,635 per event to cover the costs of public services for the event at a maximum per diem rate of \$3,000 for road closure; \$325 for Police/Fire/EMS; and \$325 for restrooms).

The grantees included: Veterans Appreciation Parade (American Legion/Titusville Flag Committee); Art & Algorithms (Greater Titusville Renaissance); Rotary Chili Cook-off (Sunrise Rotary); Let it Snow (Smile Angel Foundation); Friday Nite Live – Monthly Street Events (Downtown Merchants Association); and Lights of Hope (Hope for North Brevard, Inc.).

FY 15 - \$42,749

The grantees included Food Truck Wars (Downtown Merchants Association); Art & Algorithms (Greater Titusville Renaissance); Rotary Chili Cook Off/Max K. Brewer Bridge 5-K Run (Sunrise Rotary); Let it Snow (Smile Angel Foundation); Sea Turtle Festival (Downtown Merchants Association); Friday Nite Live – Monthly Street Events (Downtown Merchants Association); Lights of Hope (Hope for North Brevard, Inc.); and Salute our Veterans Parade (American Legion/Titusville Flag Committee).

FY 14 - \$29,800

The grantees included Rotary Chili Cook Off/Max K. Brewer Bridge 5-K Run (Sunrise Rotary); Let it Snow (Smile Angel Foundation); Sea Turtle Festival (Downtown Merchants Association); Art &

Algorithms (Greater Titusville Renaissance); and Friday Nite Live – Monthly Street Events (Downtown Merchants Association).

FY 13 - \$19,223

Grantees included Rotary Chili Cook Off/Max K. Brewer Bridge 5-K Run (Sunrise Rotary); St. Gabriel's Episcopal Church 125th Anniversary Celebration (St. Gabriel's Church); Indian River Festival (Titusville Chamber of Commerce); Sea Turtle Festival (Downtown Merchants Association).

Sincerely,



Tim Ford

Redevelopment Planner



County Attorney's Office
2725 Judge Fran Jamieson Way
Building C, Room 308
Viera, Florida 32940

BOARD OF COUNTY COMMISSIONERS

TO: Hon. Commissioner John Tobia, District 3
FROM: Scott Knox, County Attorney
RE: Titusville Use of CRA funds
DATE: October 3, 2017

Commissioner, you have requested a formal opinion on the issue as to whether certain expenditures of CRA trust funds by the City of Titusville are proper under Part III, of chapter 163, Florida Statutes.

It is my understanding that you have asked the City of Titusville for "information regarding the expenditures for parades and or festivals (special events) paid to private businesses and organizations with CRA funds to pay for such special events either in whole or in part for the past five (5) years."

In response, the city sent a September 18, 2017 letter from planner Tim Ford listing the following expenditures:

FY 17 - \$0 (The CRA Special Events Grants Program was discontinued.)

FY 16 - \$30,327 (Funds were limited to \$3,635 per event to cover the costs of public services for the event at a maximum per diem rate of \$3,000 for road closure; \$325 for Police/Fire/EMS; and \$325 for restrooms).

The grantees included: Veterans Appreciation Parade (American Legion/Titusville Flag Committee); Art & Algorithms (Greater Titusville Renaissance); Rotary Chili Cook-off (Sunrise Rotary); Let it Snow (Smile Angel Foundation); Friday Nite Live - Monthly Street Events (Downtown Merchants Association); and Lights of Hope (Hope for North Brevard, Inc.).

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County Attorney's Office
 2725 Judge Fran Jamieson Way
 Building C, Room 308
 Viera, Florida 32940

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The apparent support for the City's approval of special events grants on the foregoing list is set forth on page 15 of the City of Titusville "2015 REDEVELOPMENT PLAN SUPPLEMENTAL REPORT"¹ which states:

Event Sponsorship and Marketing

The Downtown Community Redevelopment Agency has created a Special Events Grant program to support special events within the downtown area that are consistent with activities authorized by the Community Redevelopment Act. The events are intended to revitalize the area by increasing pedestrian traffic, provide opportunities for downtown merchants to attract new business, and provide visibility for vacant retail and restaurant space. The grant program began in 2012, and is anticipated to become more competitive as the program matures. It is also the intent of the CRA that the grant program assists special events to become self-sustaining after a number of years to permit funds to be utilized to establish other events or to be utilized for capital projects.

The CRA should consider other programs to market vacant buildings and existing businesses. For example, contests to attract entrepreneurs, encouraging pop-up stores and incubators are programs that are worthy of funding consideration by the CRA.

Indeed, the "Five-Year Capital Improvement and Funding Plan for CRA Projects" set forth in that same document contemplates between \$58,000 and \$60,000 funding for "Special Events," (below) although the text under that heading (below) does not mention special events.

Project Name	FY2016	FY2016-2017	FY2017-2018	FY2018-2019	FY2019-2020	Total
Perk Improvements/ Recreational Facilities		\$50,000	\$50,000	\$50,000	\$50,000	\$200,000
Amtrak Station Community				\$170,000	\$2,065,000	\$2,235,000
Policing Downtown	\$60,000	\$60,000	\$60,000	\$60,000	\$60,000	\$300,000
Stormwater Improvements Downtown			\$100,000			\$100,000
Building Improvements (Facade/Structural)	\$50,000	\$50,000	\$50,000	\$50,000	\$50,000	\$250,000
Marketing Master Plan Update		\$15,000	\$15,000	\$10,000	\$10,000	\$50,000
Property Acquisition				\$120,000		\$120,000
					\$1,000,000	\$1,000,000
Downtown Welcome Center	\$160,000					\$160,000
Special Event Grants	\$50,000	\$58,000	\$60,000	\$60,000	\$60,000	\$294,000
Total	\$328,000	\$233,000	\$365,000	\$520,000	\$3,945,000	\$4,891,000

(Supplemental Report p.10)

¹ <http://www.titusville.com/Page.asp?NavID=1014>



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2725 Judge Fran Jamieson Way
Building C, Room 308
Viera, Florida 32940

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"Five-Year Capital Improvement and Funding Plan for CRA Projects

Looking toward the future, the following projects have been identified in the Five Year Capital Improvement Plan (CIP) for the CRA. The CIP timeframe extends from Fiscal Year 2015-2016 to Fiscal Year 2019-2020. In addition to those capital projects identified below, the CRA will also utilize funding to maintain completed CRA projects, including monuments, park improvements, streetscape improvements and other redevelopment projects, as necessary."

(Supplemental Report P.11)

There is one other provision in the Supplemental Report that describes Titusville as a "Trail Town." This provision mentions the need for "additional amenities" for special events.

"With the convergence of these trails, the CRA has established the goal of becoming a "Trail Town", taking advantage of the economic opportunity that an influx of visitors can bring. As the downtown becomes more of a destination for commerce and special events, additional amenities will be needed. These may include additional street furniture, ADA improvements, and other amenities that enhance the functionality of the downtown. The CRA may choose to fund these improvements directly, or contribute funds to public/private partnerships for the funding of needed amenities." (Supplemental Report p. 11)

It is worth noting that this last-mentioned provision in the Supplemental Report identifies physical redevelopment structures or facilities as the "additional amenities" that will support more special events. The significance of this recognition of "additional amenities" as redevelopment, as opposed to the special events such facilities may support, is the City's representation that no grant funds have been released in 2017. That action suggests the City may have concluded that special events, themselves, do not fit within the statutory definition of "redevelopment" upon which tax increment funds can be spent, an issue that will be discussed more fully below.

Analysis

As mentioned in my prior opinion, the critical factor in determining the validity of a CRA trust expenditure is whether an expenditure is made for an *undertaking described in the community redevelopment plan*, as required by section 163.387(6), Florida Statutes, a question that turns on whether or not the City redevelopment plan conforms to the statutory requirements identified in section 163.362, Florida Statutes. In the case of Titusville, it appears that grant funding for special events has been specifically listed in the Supplemental Report comprising an amendment to the CRA plan. Therefore, it is important to know what the Legislature has specifically prescribed as the elements of a community redevelopment plan.

The core substantive requirements for a redevelopment plan are set forth in section 163.362, Florida Statutes, as follows:



County Attorney's Office
2725 Judge Fran Jamieson Way
Building C, Room 308
Viera, Florida 32940

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163.362. Contents of community redevelopment plan

Every community redevelopment plan shall:

- (1) Contain a legal description of the boundaries of the community redevelopment area and the reasons for establishing such boundaries shown in the plan.
- (2) Show by diagram and in general terms:
 - (a) The approximate amount of open space to be provided and the street layout.
 - (b) Limitations on the type, size, height, number, and proposed use of buildings.
 - (c) The approximate number of dwelling units.
- (d) Such property as is intended for use as public parks, recreation areas, streets, public utilities, and public improvements of any nature.
- (3) If the redevelopment area contains low or moderate income housing, contain a neighborhood impact element which describes in detail the impact of the redevelopment upon the residents of the redevelopment area and the surrounding areas in terms of relocation, traffic circulation, environmental quality, availability of community facilities and services, effect on school population, and other matters affecting the physical and social quality of the neighborhood.
- (4) Identify specifically any publicly funded capital projects to be undertaken within the community redevelopment area.
- (5) *Contain adequate safeguards that the work of redevelopment will be carried out pursuant to the plan.*
- (6) Provide for the retention of controls and the establishment of any restrictions or covenants running with land sold or leased for private use for such periods of time and under such conditions as the governing body deems necessary to effectuate the purposes of this part.
- (7) Provide assurances that there will be replacement housing for the relocation of persons temporarily or permanently displaced from housing facilities within the community redevelopment area.
- (8) Provide an element of residential use in the redevelopment area if such use exists in the area prior to the adoption of the plan or if the plan is intended to remedy a shortage of housing affordable to residents of low or moderate income, including the elderly, or if the plan is not intended to remedy such shortage, the reasons therefor.
- (9) Contain a detailed statement of the projected costs of the redevelopment, including the amount to be expended on publicly funded capital projects in the community redevelopment area and any indebtedness of the community redevelopment agency, the county, or the municipality proposed to be incurred for such redevelopment if such indebtedness is to be repaid with increment revenues.²

² The statute also contains the following additional requirements:

(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.

(11) Subsections (1), (3), (4), and (8), as amended by s. 10, chapter 84-356, Laws of Florida, and subsections (9) and (10) do not apply to any governing body of a county or municipality or to a community redevelopment agency if such governing body has approved and adopted a community redevelopment plan pursuant to s. 163.360 before chapter 84-356 became a law; nor do they apply to any governing body of a county or municipality or to a community redevelopment agency if such governing body or agency has adopted an ordinance or resolution authorizing the issuance of any bonds, notes, or other forms of indebtedness to which is pledged increment revenues pursuant only to a community redevelopment plan as approved and adopted before chapter 84-356 became a law.



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2725 Judge Fran Jamieson Way
Building C, Room 308
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In determining the required elements of a redevelopment plan, the Legislature used the mandatory "shall" language, not the permissive "shall include" language, the latter of which implies that plan elements other than those identified by the Legislature could also be adopted. The use of "shall" does not give cities or counties the statutory discretion to adopt other, optional elements of a redevelopment plan as, for example, was the case in Chapter 163, Part II, Florida Statutes where optional elements in a comprehensive plan are authorized. Instead, the Legislature chose to adopt a specific list of elements that are to comprise the redevelopment plan. I find nothing among those listed elements that remotely suggest that special events such as festivals, cook-outs, Veteran's parades or other special events are an authorized element of a redevelopment plan.

In the context of the questions you have posed regarding the propriety of expending CRA trust funds on special event activities presented by the City of Titusville, the language in section 163.362(5)(c), Florida Statutes, must be considered. That provision states "every redevelopment plan shall [c]ontain adequate *safeguards* that the *work of redevelopment* will be carried out *pursuant to the plan.*"³ The work of redevelopment...pursuant to the [redevelopment] plan" will necessarily involve the expenditure of CRA redevelopment trust funds. Therefore, the plan must contain "safeguards" assuring that CRA trust funds are spent on the work of "redevelopment," as that term is defined in section 163.340(9),⁴ Florida Statutes. Such "safeguards" must, therefore, restrict expenditures to the following types of "redevelopment" identified in the definition of that term, as set forth in the community redevelopment statute:

- (a) prevention and elimination of blight;
- (b) reduction and prevention of crime;
- (c) provision of affordable housing;
- (d) slum clearance;

³ Section 163.362(5)(c), Florida Statutes

⁴ S.163.340, Florida Statutes:

"(9) Community redevelopment" or "redevelopment" means undertakings, activities, or projects of a county, municipality, or community redevelopment agency in a community redevelopment area *for the elimination and prevention of the development or spread of slums and blight*, or for the *reduction or prevention of crime*, or for the *provision of affordable housing*, whether for rent or for sale, to residents of low or moderate income, including the elderly, and *may include slum clearance and redevelopment in a community redevelopment area or rehabilitation and revitalization of coastal resort and tourist areas that are deteriorating and economically distressed, or rehabilitation or conservation in a community redevelopment area*, or any combination or part thereof, in accordance with a community redevelopment plan and may include the preparation of such a plan.



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2725 Judge Fran Jamieson Way
Building C, Room 308
Viera, Florida 32940

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- (e) rehabilitation and revitalization of economically distressed and deteriorating coastal resort and tourist areas; and
- (f) rehabilitation or conservation of community redevelopment areas⁵

I can find no part of this statute or any other provision in Chapter 163, Part III, relating to community redevelopment, that allows “promotion of redevelopment areas” as an authorized expenditure of CRA tax increment funds.

I therefore conclude that other sources of City revenue should be used to fund grants to special events in the redevelopment area. However, I would note, that the City has indicated it no longer utilizes CRA tax increment on special events, as is evidenced in the excerpt from the September 18, 2017 sent by the City planner, as set forth on page 1 of this memo.

The City has relied upon AGO 2010-40, in which Florida Attorney General, Bill McCollum, reached a different conclusion. In the opinion, the Attorney General correctly stated—though misapplied—the applicable law as follows:

“While the statute specifically states that the use of community redevelopment trust funds is not limited to those purposes enumerated therein, the community redevelopment agency is a statutorily created administrative agency that may only exercise those powers that have been expressly granted by statute or that are necessarily exercised in order to carry out an express power. (FN omitted) Any reasonable doubt as to the lawful existence of a particular power sought to be exercised must be resolved against the exercise thereof. (FN omitted) Moreover, it is well settled that legislative intent is the polestar that guides a court's statutory construction analysis (FN omitted) and would, therefore, limit the expenditures by the community redevelopment agency.”

⁵*Diamond Aircraft Indus., Inc. v. Horowitch*, 107 So. 3d 362, 367 (Fla. 2013) **Legislative intent** is the polestar that guides our analysis regarding the construction and application of the statute. *See Bautista v. State*, 863 So.2d 1180, 1185 (Fla.2003). Our statutory analysis begins with the plain meaning of the actual language of the statute, as we discern **legislative intent** primarily from the text of the statute. *See Heart of Adoptions, Inc. v. J.A.*, 963 So.2d 189, 198 (Fla.2007). If statutory language is “clear and unambiguous and conveys a clear and definite meaning, there is no occasion for resorting to the rules of statutory interpretation and construction; the statute must be given its plain and obvious meaning.” *Holly v. Auld*, 450 So.2d 217, 219 (Fla.1984) (quoting *A.R. Douglass, Inc. v. McRaney*, 102 Fla. 1141, 137 So. 157, 159 (1931)). In instances of an **ambiguity** in statutory language, we may resort to the rules of statutory construction, which permit us to examine the legislative history to aid in our determination regarding **legislative intent**.



County Attorney's Office
2725 Judge Fran Jamieson Way
Building C, Room 308
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However, legislative intent is derived from the wording of the statute. Resort to rules of statutory construction or interpretation are only relevant where the meaning of the statute is ambiguous.⁶ Clearly, the Attorney General's found no ambiguity in the statute, as indicated above and in the following elaboration of the discussion in the above-quoted excerpt:

“The enumerated uses of community redevelopment trust fund moneys are likewise couched in terms of redevelopment activities involving "bricks and mortar," in a manner of speaking, rather than promotional campaigns to encourage people to populate the area once the redevelopment has been accomplished.”

Yet, despite the lack of ambiguity in the statute, the Attorney General reaches the incongruous opinion expressed in the remainder of that paragraph:

“However, 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.”

By taking an expansive view of what is in an unambiguous statute, the Attorney General has essentially “read into” the statute a provision that does not exist. Amending the statute is a legislative function—not a function of the Attorney General's Office. As mentioned in previous opinions on this subject, this legislative function was clearly demonstrated in the Legislature's 1998 amendment to the statute, which established “policing innovations”—a non-brick and mortar program—as an authorized use of tax increment funds.

This office, therefore, stands behind its previous opinion that use of tax increment funds for festivals, block parties and special events is not an authorized use under the community redevelopment statutes.

The Titusville Situation

After discussing this opinion with the Titusville City Attorney, it became apparent that the Titusville circumstances may be distinguishable from the Melbourne circumstances for two reasons.

First, though the CRA redevelopment plan includes a policy for the award of Special Events grants using CRA tax increment revenues, as of fiscal year 2016-2017, the City no longer



County Attorney's Office
2725 Judge Fran Jamieson Way
Building C, Room 308
Viera, Florida 32940

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provides such grants—as is evidenced by the list of expenditures referenced in the September 18, 2017 letter from the City Planner.

Second, as indicated by the City Attorney, the tax increment amounts expended for special events grants in years prior to 2017, as shown in the September 18 letter, are far-exceeded by the City's tax increment revenues for the same CRA. As the City Attorney pointed out, the City's position would be that the CRA used City tax increment, not County tax increment, to fund the past special events grants.⁷

While even the use of city CRA tax increment revenues for such purposes is unauthorized, the County would arguably not be “injured” if City tax increment was used to fund special events. The County would not likely be deemed to have standing to challenge those expenditures for that reason and for the reason that the Titusville CRA was created prior to the legislative change vesting the County Commission in charter counties with the authority to delegate and rescind CRA powers granted to the City.

⁷ The City of Melbourne may well take the same position if the City tax increment funds in either the Downtown Melbourne CRA or Olde Eau Gallie CRA substantially exceed the County tax increment revenues.

1. Legal use of funds for a CRA to use on festival?

- a. The CRA in Sanford was questioned on CRA use of funds for festivals and items that promoted population into the downtown.
 - i. **Attorney General Opinion 2010-40: Bill McCollum Attorney General**
 1. I would note that the Redevelopment Plan and Finding of Necessity for the Lake Monroe Waterfront and Downtown Sanford Redevelopment Area contains a "Promotional Marketing" component, recognizing the importance of funding for events, advertising and marketing to bring people to the redevelopment area." "Therefore, ultimately, it is a decision for the governing body of the City of Sanford to determine whether promotional expenditures may be included in the SCRA budget.
 2. "However, 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" "I cannot say that the use of community redevelopment funds would be so limited that the expenditure of funds for the promotion of the a redeveloped area would be prohibited." Bill McCollum Attorney General
- b. March 11, 2014 In a response to Senator Joseph Abruzzo who again questioned the legality of the use of these funds for Delray Beach Community
 - i. **Redevelopment Agency Attorney General (Pam Bondi) ...** No substantive changes that would change their conclusion in opinion 2010-40. Attorney General Opinion continues to consider promoting the use of a redeveloped area to be within the purposes of the Community Redevelopment Act of 1969.
- c. Carol Westmoreland, Executive Director of Florida Redevelopment Association
Travels and educate CRAs on procedure in her training presentation *it is Ok Market/direct funding events.*
- d. Gray Robinson attorneys at law Gray Robinson – ABC's of CRA's
 - i. • **Question to AG:** May a CRA expend funds for festivals or street parties designed to promote tourism and economic development, advertisements for such events, grants to entities which promote tourism and economic development, and grants to non-profit entities providing socially beneficial programs?
 - ii. • **AG Answer:** I cannot say that the use of community redevelopment funds would be so limited that the expenditure of funds for the promotion of a redeveloped area would be prohibited. However, grants to entities which promote tourism and economic development, as well as to nonprofits providing socially beneficial programs would appear outside the scope of the community redevelopment act
 - If a CRA's plan specifically provides for such expenditures and activities then a CRA may, upon making express finding that the contract for the appropriation and expenditure for the activity furthers the purposes of the Act and is necessary to carry out the redevelopment program, spend funds on activities, events, and promotion. Special events, marketing material, advertising and other such non-capital expenditure have frequently been used as a means to carry out redevelopment.

2. City of Titusville's Community Redevelopment Agency

Amended redevelopment plan in 2008 to include events that would specifically promote the use of the downtown area. *Brevard County was provided notice of the amendment with a copy of the plan in 2008, 2011, 2012, and 2015 and the budget detailing the expenditures. The expenditures were not questioned by the county.*

Event Sponsorship and Marketing

The Downtown Community Redevelopment Agency has created a Special Events Grant program to support special events within the downtown area that are consistent with activities authorized by the Community Redevelopment Act. The events are intended to revitalize the area by increasing pedestrian traffic, provide opportunities for downtown merchants to attract new business, and provide visibility for vacant retail and restaurant space. The grant program began in 2012, and is anticipated to become more competitive as the program matures. It is also the intent of the CRA that the grant program assists special events to become self-sustaining after a number of years to permit funds to be utilized to establish other events or to be utilized for capital projects.

The CRA should consider other programs to market vacant buildings and existing businesses. For example, contests to attract entrepreneurs, encouraging pop-up stores and incubators are programs that are worthy of funding consideration by the CRA.

3. Richard Broome City of Titusville

- a. Legality – It has been in the CRA Plan since 2008 – Must be in accordance with a CRA plan.
- b. The County was provided a copy of the CRA budget detailing those expenditures and at no time has Brevard County Commissioners or staff questioned the CRA's plan or expenditures relative to event sponsorship or marketing of the downtown CRA. He cited the Florida Attorney General's office. His opinion is that the expenditures of funds by the city of Titusville's Community redevelopment Agency has met the requirement of Florida Statutes within the scope of the Community Redevelopment Act and in line with the Redevelopment Plan.

4. Scott Knox

- a. After discussing this opinion with the Titusville City Attorney, it became apparent that the Titusville circumstances may be distinguishable from the Melbourne circumstances for two reasons.
 - i. **First**, though the CRA redevelopment *plan includes a policy for the* award of Special Events grants using CRA tax increment revenues, as of fiscal year 2016-2017, the City no longer provides such grants—as is evidenced by the list of expenditures referenced in the September 18, 2017 letter from the City Planner.
 - ii. **Second**, as indicated by the City Attorney, the tax increment amounts expended for special events grants in years prior to 2017, as shown in the September 18 letter, *are far-exceeded by the City's tax increment revenues for the same CRA*. As the City Attorney pointed out, the City's position would be that the CRA used City tax increment, not County tax increment, to fund the past special events grants.¹
- b. While even ***IF*** the use of city CRA tax increment revenues for such purposes is unauthorized, ***the County would arguably not be "injured"*** if City tax increment was used to fund special events. The County would not likely be deemed to have standing to challenge those expenditures for that reason and for the reason that the Titusville CRA was created prior to the legislative change vesting the County Commission in charter counties with the authority to delegate and rescind CRA powers granted to the City.

CRAAS: The Basics

2014

Carol Westmoreland, Executive Director

cwestmoreland@flcities.com

850-701-3608



AGENDA

- ▶ **How does redevelopment work?**
- ▶ **What are Community Redevelopment Agencies (CRAs)?**
- ▶ **What can CRAs Do and Not Do?**
- ▶ **What are the “Rules of Engagement”?**
- ▶ **How to be an effective CRA Leader**
- ▶ **What are the Best Practices?**

Reasons to Revitalize

- ▶ Restore “Blighted” Area defined in statute
- ▶ Create Clean and Safe Places,
- ▶ Reduce Crime
- ▶ Economic Development
- ▶ Housing
- ▶ Streetscapes/Infrastructure
- ▶ Historic Buildings/Resources
- ▶ Retain/Recruit Business
- ▶ Enhance Parks/Recreation
- ▶ Reverse Declining Tax Bases

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What is a CRA? Area or Agency?

- ▶ **Dependent Special District**
- ▶ **Appointed Board Members**
- ▶ **One Community Redevelopment Agency (Board) per jurisdiction**
- ▶ **Except in Charter Counties over 1.6 million people**
- ▶ **One CRA may have multiple CRA districts**
- ▶ **Districts have separate trust funds, accounting, uses, plans**

Long and Short Story

- ▶ Redevelopment Act 1969...Chapter 163 Part III, F.S.
- ▶ Popular after *State of FL v. Miami Beach* 1980
- ▶ Modeled after New York, Michigan and California (FL differs greatly from CA)
- ▶ Reaffirmed by FL Supreme Court *Strand v. Escambia County*, 2007
- ▶ Home rule increment, CDD, BID, special assessments are all alternatives
- ▶ Very few amendments or case law
- ▶ 214 CRAs today in Florida
- ▶ More districts than that total

Isn't it really all about....?

- ▶ \$\$\$ Money
- ▶ 😊 People
- ▶ 😞 Taxes
- ▶ “Give Aways” to developers
- ▶ Having say so over how areas develop
- ▶ Politics
- ▶ Public-Private Partnerships
- ▶ Increased services for residents

Mission: Eradicate Blight*

- ▶ Area of declining health/safety/welfare
- ▶ Crime/social/housing issues – not safe
- ▶ Decline of businesses/residences
- ▶ Preserve and enhance the tax base
- ▶ Land use issues: layout, parcels, assembly
- ▶ Traffic problems
- ▶ Flooding/hazards/contamination
- ▶ *Not Webster's definition - when U C it....

Powers of Redevelopment (City, County and/or CRA)

- ▶ 163.345 Encouragement of private enterprise
- ▶ 163.358 Exercise of powers in carrying out redevelopment
- ▶ 163.360 CR Plans and private enterprise
- ▶ 163.370 Powers; counties/municipalities; CRAs
- ▶ 163.380 Disposal of Real Property
- ▶ 163.400 Cooperation by public bodies
- ▶ 163.410 Exercise of powers, charter counties
- ▶ 163.415 Exercise of powers, non-charter counties

City/County Creates CRA

1. Approves doing a blight* finding
2. Prepares “Finding of Necessity” (adopts)
3. Establishes CRA Board (adopts)
4. Writes Redevelopment Plan (land planning agency reviews) (adopts)
5. Trust Fund is created (adopts)

* Blight is defined by statute. Adoptions may be by resolution. Time frame for creation is typically one year.

Intergovernmental

- ▶ No state approval required, but statutory *reporting requirements*
- ▶ Charter counties “*delegate*”, veto powers
- ▶ Non-charter counties can’t delegate or veto
- ▶ But charter & non-charter can challenge
- ▶ State not involved in creation or administration
- ▶ But state JLAC is the appeals body
- ▶ Auditor General can audit anytime they wish
- ▶ Counties have different authority to audit

What Does Governing Body Do?

- ▶ County/city has all powers necessary or convenient to carry out and effectuate statute
- ▶ County/city delegates powers to the CRA Board
- ▶ Exclusive to governing body:
 - Determination of area slum or blighted
 - Final approval of CRA plans/modifications
 - Issuance of revenue bonds
 - Acquisition, demolition, removal, disposal of property
 - Liability for loss
 - Approval of community policing innovations
- ~~The power of eminent domain.~~

Who is the CRA Board?

- ▶ Elected 97%, or can be appointed
- ▶ Interlocal agreement may include representatives of other taxing authorities
- ▶ If governing body is only 5 members then it can be governing body + 2 appointed
- ▶ Chair and Vice Chair of the CRA designated by governing body (not the CRA Board)

What Does the CRA Do?

- ▶ **Prepare annual CRA budget for city/co.**
- ▶ **Annual strategic planning session**
- ▶ **Identify funding and program priorities**
- ▶ **Proposes plan amendments/modifications**
- ▶ **Allocates trust fund monies**
- ▶ **Receives and reviews state reports**
- ▶ **Directs staff, public input, visioning, etc.**
- ▶ **Can sign contracts, consultants, etc.**
- ▶ **Carries out/Implements redevelopment plan**

How a CRA Operates

- ▶ Meets quarterly
- ▶ Separate minutes, notices, meetings
- ▶ Special and separate redevelopment plan
- ▶ Separate projects v. city comp plan projects
- ▶ Separate trust funds if multiple districts
- ▶ Major Fund in city CAFR/audit
- ▶ Component unit of city/co. audit
- ▶ May do separate audit
- ▶ Separate legal entity – check E/O insurance

The Deal with the Private Sector

- ▶ Statutes/case law encourages public \$\$ with private enterprise
- ▶ All local tax dollars so “increment envy” occurs
- ▶ Diverse groups may vastly differ on how to use \$\$
- ▶ Look out for mission drift: lack of vision/leadership/buy-in
- ▶ You are and will be held responsible, so go slowly
- ▶ Public does not understand – so splain it plainly!
- ▶ Constitution supports CRAs
- ▶ Investment is not give-away
- ▶ Incentives – what is expected ROI? Record the answer.
- ▶ Time is MONEY for both sectors

What Can City/CRA Board do?

- **Contracts**
- **Code enforcement of property in the CRA area;**
- **Acquisition of real property and improvements (mortgage, pledge, hold, purchase, lease, insure);**
- **Demolition, removal, installation, repair, rehabilitation, construction;**
- **Hotels in support of convention centers;**
- **Disposition of real property/repair/rehabilitation of buildings, air rights;**
- **Housing, utilities, parking, parks and playgrounds;**
- **Public improvements, grants, loans, debt;**
- **Solicitation of proposals, invest funds, redeem bonds;**
- **Appraisals, surveys, plans, code enforcement, weatherization, disaster mitigation**
- **Vacate streets, develop community policing innovations**

163.370(3) The following projects may not be paid for or financed by increment revenues:

- Construction/expansion of administrative buildings for public bodies, police or fire
- Exception: Each taxing authority agrees to it
- Exception: Construction or expansion is part of community policing innovation
- Capital improvements/projects that were on a previously approved public capital improvement (overall city CIP) schedule or plan
- Unless such projects or improvements were removed from the list three or more years ago.
- General government operating expenses unrelated to the planning and carrying out of a community redevelopment plan.
- **THEME:** CRAs are not “special project” funds to be used when revenues are not available in GR or other recurring funds.

Redevelopment Plan = Blueprint

- ▶ Put everything you might want to do in the plan.
- ▶ Even if it is in the plan, does not need to be done.
- ▶ If program/project is NOT in Plan it CANNOT be undertaken.
- ▶ Include only projects in the CR area/boundaries.
- ▶ *Must be consistent with other city or county land plans*
- ▶ Be ready to point to where outlined in the plan
- ▶ Update the plan every five years = best practice
- ▶ Post redevelopment plan and agendas online
- ▶ Tie in budget and expenditures to plan language
- ▶ Good record keeping/paper trail will pay off

What is the Trust Fund?

- ▶ “Tax Increment Financing” or “TIF”
- ▶ Contributed by cities, counties, certain districts
- ▶ Not school boards, water or library districts
- ▶ Increases in taxable value from year of creation
- ▶ May include sales taxes, utility fees, donations, loans
- ▶ Goal: leverage with private money
- ▶ Technically not ad valorem tax – “amount equal to”
- ▶ Miami Beach 1980 and Strand case 2007
- ▶ 95% is most common amount that city/county writes the check for...(5% admin fee)
- ▶ Different % by inter local agreements

Calculating Increment

- All taxable properties in the CRA
- City/county millage rates apply
- Amount of money from increases in property values X millage rates of county and city between now and base year
- Does not include debt service millage
- Collected for up to 40 years (up to 60 < 2002)
- Charter counties may limit their contributions

OK Trust Fund Expenditures

s.163.387(6), including not limited to:

- Administrative and overhead expenses
- Redevelopment planning, surveys, & financial analysis
- Acquisition of real property in the CRA district
- Clearance/preparation & relocation of occupants
- Repayment of borrowed funds
- All expenses related to bonds/other indebtedness
- Development of affordable housing
- Community policing innovations

OK CRA Expenditures

- ▶ **Capital Expenditures**
- ▶ **Promotion, Marketing & Events**
- ▶ **Non Profit activities**
- ▶ **Incentives and grants**
- ▶ **Code enforcement**
- ▶ **Land Acquisition**
- ▶ **Cost sharing/allocation for services**
- ▶ **Maintenance and Repair of CRA built projects**

OK Admin/Overhead Expenses

- ▶ **Executive Director**
- ▶ **Technical experts**
- ▶ **Educational/Professional Development**
- ▶ **Other such agents & employees as required**
- ▶ **Counsel and legal staff**

What CRAs are not OK to Pay For (s.163.370)

- ▶ Construction / expansion administrative buildings for public bodies/police/fire facilities
- ▶ *Publicly owned capital improvements* if scheduled in city or county capital improvement plan until removed from schedule or plan and 3 years have elapsed.
- ▶ General government operating expenses unrelated to the planning & carrying out of a community redevelopment plan

Other Things CRAs Can't Pay For

- **Activities/projects not covered in plan**
- **Board Members/Commissioners**
payment for service as CRA Board member
- **Project or program outside of the development area**
- **Exceptions by interlocal agreement**

Be Careful With...

- ▶ **Market/direct funding events (AG-2010-40)**
- ▶ **Funding non-profits (AG-2010-40)**
- ▶ **Substitution of CRA funding for city/country duties/projects done previously by them**
- ▶ **Maintenance and repair of city property/projects**
- ▶ **Community Policing – details, details**
- ▶ **Reimbursement to city/country for expenses (Auditor General 2006)**
- ▶ **GASB requirements**

Not allowed by statute...

163.370 Any project or program not outlined in the Community Redevelopment Plan (CRP) and not expended in the CRA district

(Even if the statute authorizes it!)

All throughout the statute, it says do not spend CRA money unless the expenditure is in the plan and within the CRA boundaries.

Interlocal Agreements

- ▶ 163.387 (3)(b)
- ▶ Alternate provisions contained in an interlocal agreement between a taxing authority and the governing body....
- ▶ May supersede the provisions of this section with respect to that taxing authority
- ▶ The CRA *may* be an additional party to the agreement

Reporting Requirements

1. Send CRA budget to governing body and web post 2 days prior/30 days after (*Sept/Oct*)
2. Annual filing \$175 to Florida Special District Office in DEO (*Oct*)
3. CRA annual report to citizens (*March 31*)
4. Audit as major fund, send to each taxing authority and Auditor General (*June 30*)
5. Include CRA as major fund in annual financial report (AFR/CAFR) of governing body (*Dec*)

5) Audit - Drill Downs

Annual audit of trust fund – F.S. 163.387(8)

- ✓ Auditor opinion on CRA Trust Fund: a) separate audit; b) inclusion of CRA in the local governing authority's audit as a Major Fund; or c) inclusion of CRA in the local governing authority's audit as a "non-major fund with separate audit opinion"
- ✓ Audit report must include: a) amount/source of trust fund deposits; b) purpose of trust fund withdrawals; c) principal and interest paid on any indebtedness to which increment is pledged; d) remaining debt to which increment is pledged; and e) proof it was sent to every taxing authority who levies taxes within boundaries

Annual audit financial report - F.S 218.39

- ✓ Also states CRAs (special districts) w specified revenue or expenditure thresholds must provide for an annual financial audit. A dependent district (CRA) may provide for a financial audit by being included in the audit of local government upon which it is dependent. i.e., as a "component unit".

More Detail on Other Four Reports

- 1) Proposed budget – F. S. 189.418**
- 2) October filing fee to DEO – F.S. 189.418(1)**
- 3) Annual financial report (AFR) – F. S. 218.32**
(Sent to FL Dept Financial Services by city or county and must include the CRA's major fund info)
- 4) March 31 annual report – F.S. 163.356(3)(c)**

(CRA creates and makes report available re its activities for the prior fiscal year. Must notice in newspaper that report is available. Must include complete financial statements w assets, liabilities, income, and operating expenses.)

Telling Your Story

- ▶ *People love and respond to a good story*
- ▶ Numbers are just half
- ▶ Don't wait for the inquiries to come
- ▶ Communicate at each step - frame issue simply
- ▶ Plan communication who/what/how/when
- ▶ When in doubt, it is all public
- ▶ Transparency totally
- ▶ Reporting = communicating = support

Amending the Redevelopment Plan

- ▶ Changes to boundaries, terms, language, trust fund, board composition, etc. all are amendments
- ▶ Almost identical to creation process
- ▶ Governing body amends, CRA board recommends
- ▶ Governing body notices all taxing entities w millage in CRA
- ▶ Full set of public hearings
- ▶ Finding of Necessity adopted for new or expanded area
- ▶ Local planning agency/charter county reviews/approves changes

\$\$ End of the Fiscal Year

Funds left in the Redevelopment Trust Fund on the last day of the Fiscal Year shall be:

- ▶ Returned to the taxing authorities
- ▶ Used to reduce debt
- ▶ Deposited in an escrow account for reducing debt later
- ▶ Appropriated to a specific project contained in the Redevelopment Plan that will be completed within three (3) years
- ▶ No traditional “carryover” into the next fiscal year – also no “undesignated fund balance”

***Indeed, it has been said that democracy
is the worst form of government except
all those other forms that have been
tried from time to time.***

-- Winston Churchill

The Rules

- ▶ Open Meetings
- ▶ Open Records
- ▶ Ethics
- ▶ Quasi-judicial
- ▶ Legal guidance when in doubt
- ▶ Conflicts of Interest
- ▶ Doing Business with One's Agency
- ▶ 1% rule

CRAAs: What do our citizens gain?

- ▶ **Empowerment for businesses, neighborhoods**
- ▶ **Public say so is built into plan creation**
- ▶ **Transparent way to attract private \$\$**
- ▶ **Stopping deterioration brings up neighboring areas**
- ▶ **CRAAs attract many public and private \$\$**
- ▶ **Sustainable tax base for all of city**
- ▶ **Elimination of drain on government services**
- ▶ **Investment for future**
- ▶ **Without this investment, what will happen?**
- ▶ **Finite and focused process**

What Does the Private Sector Gain?

- ▶ Predictability
- ▶ Consistency
- ▶ Recurring and Long Term Funding
- ▶ Return on Investment (ROI)
- ▶ Successful leveraging of their money
- ▶ Agreements that outlast election cycles
- ▶ Clear and Comprehensive Planning for their \$\$
- ▶ Defined, limited and strategic commitment

Redevelopment = Contact Sport

- Know Your Market(s)
- Market, ROI, Feasibility Studies = best practice
- Understand how investors measure ROI
- Adjust the imbalance between cost/revenues
- How do lenders evaluate your CRA risk?
- Lenders have their “CRA” responsibilities
- Meet w lenders personally, invite them to tour
- CRAs are usually secondary pledges for repay
- Bonding may be coming back as option

Do you have your “sound bite”?

“CRAs use increases in taxable values, for a limited period of time within a deteriorating area, to transform those areas into one that again contributes to the overall health of the community.”

How to be a 'CRA Leader'

- ▶ Do your homework - www.redevelopment.net
- ▶ Seek input from citizens, businesses/build consensus
- ▶ Adopt shared vision and personal commitment
- ▶ Explain '*Who, What, When, Where & Why*' as many times as necessary
- ▶ Get out of the way – steer don't row
- ▶ Work for redevelopment success, not credit

Homework: *Things to Know*

- ▶ History of your CRA
- ▶ What has been accomplished?
- ▶ What are the current projects?
- ▶ What programs does the CRA offer?
- ▶ What's in the plan? Read it in entirety (really!)
- ▶ How much money is in the trust fund now?
- ▶ How much does the county v. city contribute?
- ▶ How much longer has the CRA to operate?
- ▶ When was the last time the plan was amended?

Successful CRAs

- ▶ **Leadership**
- ▶ **Stay on course or officially change it**
- ▶ **Partnerships – county (number one) and businesses, chambers, economic development councils, lenders, Main Streets, Enterprise FL, DEO, non-profits, regional health, volunteers, charities, universities, faith based, support organizations, etc.**
- ▶ **Community support and trust is all that**
- ▶ **Patience and compromise to move forward**
- ▶ **“Open” for business and focused on people**

Building Consensus

- ▶ Use experts, universities, students
- ▶ Develop innovative and creative ways to gather opinions/data and post them
- ▶ Did you understand “what they just said”?
CRAs are unlike anything else in Florida – complicated - ask questions
- ▶ You can over think it: timing can be a factor
- ▶ Easy and clear measures progress/success
- ▶ Implement simple/effective communication system for CRA reports, activities

Best Practices

- ▶ Be realistic on what can be done - **bold in goal setting**
- ▶ Keep the plan and budget front & center
- ▶ Understand/mitigate private sector profit needs
- ▶ Annotate CRA budget to tell the \$\$\$ story
- ▶ Understand project development cycle(s)
- ▶ Ask questions all the time
- ▶ If you don't understand, how will citizens?

Best Practices

- ▶ **Use MOUs to clarify expectations/deadlines**
- ▶ **Use service agreements w CRA and city**
- ▶ **Value training for and experience in staff**
- ▶ **Get professional references for RFPs and contracts**
- ▶ **Ask questions re: your fiduciary responsibilities**
- ▶ **With current economy, demand “value added”**
- ▶ **Widely disseminate reports and good news**
- ▶ **Public wants real success stories w real people**

Best Practices

- ▶ **CRA mission statement (e.g.) “we will do our job so well the CRA will be out of business in 10 years...”**
- ▶ **Is zoning or variances a problem?**
- ▶ **Work plan, plan work – bite sized**
- ▶ **One person who can speak for CRA**
- ▶ **Create positive “buzz” in the district**
- ▶ **Review codes for conflicts w CRA plan**

Best Practices

- ▶ **Hold CRA meetings before commission meetings**
- ▶ **Consider joint procedures for CRA and city, e.g.. personnel policies, purchasing**
- ▶ **Carefully monitor CRA contracts**
- ▶ **Use legal counsel - pay now or more later?**
- ▶ **Dialogue, not monologue**

The Future . . .

- ▶ **Inter local agreements may be used more to outline who pays for what, when, how and why**
- ▶ **We are forever fighting legislative attacks on powers of CRAs – FRA has strong legislative advocacy - any changes to the redevelopment act should empower, not limit. If you hear of anything locally, let us know.**
- ▶ **Some counties in FL seeking to limit their contributions for city CRAs – counties can be great partners, but they may need communication and negotiation**

FRA is Here for You

www.redevelopment.net

- ▶ **Advocacy / Legislative**
- ▶ **Speakers Bureau**
- ▶ **Daily News Clips**
- ▶ **Social Sphere**
- ▶ **Technical Assistance**
- ▶ **Professional Development and Training**
- ▶ **Annual conference Miami October 7-10, 2014**

Resources

- ▶ Special District Information floridajobs.org
Jack Gaskins Jr., (850) 717-8430
- ▶ FRA...redevelopment.net
- ▶ International Downtown Association ida.org
- ▶ International Council of Shopping Centers icsc.org
- ▶ Urban Land Institute uli.org
- ▶ Florida Brownfield Association fba.org
- ▶ Florida League of Cities fcities.com
- ▶ Florida Association of Counties fcounties.com
- ▶ Greater Fort Lauderdale Alliance gfalliance.org
- ▶ Economic Development Palm Beach County economiccouncilpbc.org
- ▶ Florida Chapter of the American Planning Association floridaplanning.org



www.redevelopment.net

Carol Westmoreland, Executive Director

850.701.3608

cwestmoreland@flcities.com

Jan Piland, Executive Assistant

jpiland@flcities.com

**TITUSVILLE COMMUNITY DEVELOPMENT AGENCY
EVENT EXPENDITURES**

Fiscal Year	Event Funding	City TIF	County TIF
FY17	\$0	\$503,281	\$289,586
FY16	\$30,327	\$486,526	\$280,157
FY15	\$42,749	\$442,925	\$269,287
FY14	\$29,800	\$437,745	\$265,156
FY13	\$19,223	\$373,927	\$257,562
Total	\$122,099	\$2,244,404	\$1,361,748

$\$122,099 / \$2,244,404 = 5.4\%$ of City Revenues

$\$122,099 / \$3,606,152 = 3.4\%$ of Total TIF Revenues



**CITY OF TITUSVILLE
FY2018 PROPOSED BUDGET**

REVENUE SUMMARY BY SOURCE

FUND: 104- CRA

	FY 2015 ACTUAL	FY2016 ACTUAL	FY 2017 REVISED BUDGET	% OF REVISED BUDGET	FY2018 PROPOSED BUDGET	% OF PROPOSED BUDGET	% CHANGE FY 2017 to FY 2018
PROPERTY TAXES							
311.50-01 TAX INCREMENT - BREVARD COUNTY	269,287	280,157	289,586	36.52%	301,924	35.17%	4.26%
311.50-03 TAX INCREMENT - CITY OF TITUSVILLE	442,925	486,526	503,281	63.48%	556,434	64.83%	10.56%
TOTAL - PROPERTY TAXES	\$712,212	\$766,683	\$792,867	82.60%	\$858,358	100.00%	8.26%
INVESTMENT EARNINGS							
361.15-10 INTEREST ON INVESTMENTS - CUSTODIAL INTEREST - PE	776	6,357	-	-	-	-	-
361.15-50 INTEREST ON INVESTMENTS - SHORT TERM	0	-	-	-	-	-	-
361.30-00 NET INC/DEC MARKET VALUE	9,091	(1,253)	-	-	-	-	-
TOTAL - INVESTMENT EARNINGS	\$9,867	\$5,105	-	-	-	-	-
PRIOR YEAR APPROPRIATIONS							
389.11-04 PRIOR YEAR APPROPRIATION - RESTRICTED	-	-	165,814	100.00%	-	-	(100.00%)
TOTAL - PRIOR YEAR APPROPRIATIONS	-	-	\$165,814	17.27%	-	-	100.00%
INTERFUND TRANSFERS IN							
381.13-04 TRANSFER FROM - CRA CAPITAL PROJECTS	66,857	-	1,229	100.00%	-	-	(100.00%)
TOTAL - INTERFUND TRANSFERS IN	\$66,857	-	\$1,229	0.13%	-	-	100.00%
TOTAL FUND: 104 - CRA	\$788,936	\$771,788	\$959,910	100.00%	\$858,358	100.00%	(10.58%)



**CITY OF TITUSVILLE
FY 2016 ADOPTED BUDGET**

REVENUE SUMMARY BY SOURCE

FUND: 104- CRA

	FY 2013 ACTUAL	FY2014 ACTUAL	FY 2015 REVISED BUDGET	% OF REVISED BUDGET	FY2016 ADOPTED BUDGET	% OF PROPOSED BUDGET	% CHANGE FY 2015 to FY 2016
PROPERTY TAXES							
311.50-01 TAX INCREMENT - BREVARD COUNTY	257,562	265,156	269,740	37.86%	269,740	35.67%	-
311.50-03 TAX INCREMENT - CITY OF TITUSVILLE	373,927	434,745	442,753	62.14%	486,526	64.33%	9.89%
TOTAL - PROPERTY TAXES	\$631,489	\$699,901	\$712,493	86.47%	\$756,266	85.76%	6.14%
INVESTMENT EARNINGS							
361.10-00 INTEREST - OPERATING	2	-	-	-	-	-	-
361.15-10 INTEREST ON INVESTMENTS - CUSTODIAL INTEREST - PE	2,284	3,113	-	-	-	-	-
361.15-50 INTEREST ON INVESTMENTS - SHORT TERM	0	0	-	-	-	-	-
361.30-00 NET INC/DEC MARKET VALUE	0	(6,051)	-	-	-	-	-
TOTAL - INVESTMENT EARNINGS	\$2,286	(\$2,938)	-	-	-	-	-
PRIOR YEAR APPROPRIATIONS							
389.11-04 PRIOR YEAR APPROPRIATION - RESTRICTED	-	-	111,514	100.00%	125,574	100.00%	12.61%
TOTAL - PRIOR YEAR APPROPRIATIONS	-	-	\$111,514	13.53%	\$125,574	14.24%	12.61%
MISCELLANEOUS REVENUES							
369.90-00 MISCELLANEOUS REVENUE	2,214	231	-	-	-	-	-
TOTAL - MISCELLANEOUS REVENUES	\$2,214	\$231	-	-	-	-	-
TOTAL FUND: 104 - CRA	\$635,989	\$697,194	\$824,007	100.00%	\$881,840	100.00%	7.02%

City of Titusville

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555 SOUTH WASHINGTON AVENUE
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POST OFFICE BOX 2806 (32781-2806)



Planning & Growth Management
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Fax (321)-383-5700
www.titusville.com

September 18, 2017

Brevard County Commissioner John Tobia, District 3
2539 Palm Bay Road, NE Ste. 4
Palm Bay, FL 32905

Via John.Tobia@Brevardfl.gov

Commissioner Tobia,

This letter is per your request for information regarding the expenditures for parades and or festivals (special events) paid to private businesses and organizations with CRA funds to pay for such special events either in whole or in part for the past five (5) years. This letter was received electronically at 2:41 pm on September 7, 2017. Please find the amounts expended listed below by fiscal year along with the list of events and grantees.

FY 17 - \$0 (The CRA Special Events Grants Program was discontinued.)

FY 16 - \$30,327 (Funds were limited to \$3,635 per event to cover the costs of public services for the event at a maximum per diem rate of \$3,000 for road closure; \$325 for Police/Fire/EMS; and \$325 for restrooms).

The grantees included: Veterans Appreciation Parade (American Legion/Titusville Flag Committee); Art & Algorithms (Greater Titusville Renaissance); Rotary Chili Cook-off (Sunrise Rotary); Let it Snow (Smile Angel Foundation); Friday Nite Live – Monthly Street Events (Downtown Merchants Association); and Lights of Hope (Hope for North Brevard, Inc.).

FY 15 - \$42,749

The grantees included Food Truck Wars (Downtown Merchants Association); Art & Algorithms (Greater Titusville Renaissance); Rotary Chili Cook Off/Max K. Brewer Bridge 5-K Run (Sunrise Rotary); Let it Snow (Smile Angel Foundation); Sea Turtle Festival (Downtown Merchants Association); Friday Nite Live – Monthly Street Events (Downtown Merchants Association); Lights of Hope (Hope for North Brevard, Inc.); and Salute our Veterans Parade (American Legion/Titusville Flag Committee).

FY 14 - \$29,800

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Algorithms (Greater Titusville Renaissance); and Friday Nite Live – Monthly Street Events (Downtown Merchants Association).

FY 13 - \$19,223

Grantees included Rotary Chili Cook Off/Max K. Brewer Bridge 5-K Run (Sunrise Rotary); St. Gabriel's Episcopal Church 125th Anniversary Celebration (St. Gabriel's Church); Indian River Festival (Titusville Chamber of Commerce); Sea Turtle Festival (Downtown Merchants Association).

Sincerely,

A handwritten signature in cursive script that reads "Tim Ford".

Tim Ford
Redevelopment Planner

COMMISSIONER JOHN TOBIA, DISTRICT 3

2539 Palm Bay Rd. NE

Suite 4

Palm Bay, Florida 32905

John.Tobia@Brevardfl.gov

Mayor Walt Johnson
P.O. Box 2806, (32781-2806)
555 S. Washington Avenue
Titusville, FL 32796

September 29, 2017

My office has compiled information, through public records, that approximately \$120,123 was misappropriated by the Titusville Community Redevelopment Agency ("CRA") between 2013 and 2016. The CRA used TIF revenue to fund festivals such as the Rotary Chili Cook-Off, Food Truck Wars, and Friday Nite Live. Of this \$120,123, approximately \$54,055 was derived from County TIF revenue, based on the proportion of revenues the CRA receives from various sources.

These expenditures are extraordinarily egregious. According to the Brevard County Attorney, Scott Knox, who issued a formal opinion on this matter (attached), Chapter 163, Part III, of Florida Statutes makes plain what expenditures are proper. Not surprisingly, he "find[s] nothing among those listed elements that remotely suggest that special events such as festivals, cook-outs, Veteran's parades or other special events are an authorized element of a redevelopment plan."

There are two possible explanations for these appropriations. Either the CRA Board has intentionally misappropriated funds, or it has been careless with precious resources. Regardless, I demand that the County be made whole; \$54,055, as well as any other unlawful expenditures that are identified after a thorough review, shall immediately be returned to the County with revenues derived from municipal TIF revenue or other lawful municipal sources. To be clear, the County must not be repaid with its own portion of TIF revenue.

Upon repayment for the unlawful use of County revenue, I insist that the Titusville CRA immediately cease operations and dissolve.

I trust that you will agree with these requirements, as there is no excuse for the recklessness, at minimum, which has led to the aforementioned expenditures that were

so glaringly improper. In light of the budgetary constraints that the County is facing, it is the only course of action that will put us on the path to regain the public trust that has been repeatedly violated by this agency.

Sincerely,



John Tobia

County Commissioner, District 3

CC:

Timothy Ford

Vice-Mayor Matt Barringer

Councilwoman Sarah Stoeckel

Councilman Dan Diesel

Councilwoman Jo Lynn Nelson

City of Titusville

"Gateway to Nature and Space"

COPY



555 South Washington Avenue
Titusville, FL 32796-3584
Post Office Box 2806 (32781-2806)
www.titusville.com

Richard C. Benzene, City Attorney
Chelsea A. Benzel, Assistant City Attorney
CityAttorney@Titusville.com
Phone: (321) 263-3695
Fax: (321) 338-3034

September 29, 2017

Sent Via Email: Scott.Knox@brevardfl.gov

Mr. Scott Knox, County Attorney
Brevard County Attorney's Office
2725 Judge Fran Jamieson Way
Building C
Viera, FL 32940

**Re: Commissioner Tobia's Public Record Request for Expenditures by
City of Titusville's CRA to Promote its CRA**

Dear Mr. Knox:

In establishing the "Community Redevelopment Act of 1969", the Florida Legislature defined community redevelopment as redevelopment or rehabilitation of a community redevelopment area in accordance with a community redevelopment plan. The legislature further found and declared that the preservation or enhancement of the tax base is essential to a taxing authority's existence and financial health. We are all well aware of the negative impacts caused by the decline of the space industry several years ago, and this further impacted the redevelopment and rehabilitation efforts of the City of Titusville's downtown CRA.

Section 163.387, *Florida Statutes*, provides that funds allocated to and deposited into the redevelopment trust fund shall be used by a community redevelopment agency to finance or refinance any community redevelopment it undertakes pursuant to the approved community redevelopment plan. In an effort to rehabilitate and revitalize the downtown community redevelopment area, in 2008 the Community Redevelopment Agency amended its community redevelopment plan to include events that would specifically promote the use of the downtown area. This amendment to the Plan was implemented through the statutorily prescribed process, and Brevard County was provided notice of this amendment together with a copy of the Plan by certified mail in 2008, 2011, 2012, and 2015.

Mr. Scott Knox, County Attorney
Brevard County Attorney's Office
September 29, 2017
Page Two

In addition to providing the County with a copy of the CRA Plan expressly stating the commission's intent to revitalize the community redevelopment area through promotional events, the County was provided a copy of the CRA budget detailing those expenditures. At no time has Brevard County Commissioners or staff questioned the CRA's plan or expenditures relative to event sponsorship or marketing of the downtown CRA.

The Florida Attorney General's Office has consistently found that promoting the use of a redevelopment area is within the purposes of the Community Redevelopment Act of 1969, stating, "...to read the statute as precluding the promotion of a redevelopment area once the infrastructure has been completed would be narrowly viewing community redevelopment as a statue process." (AGO 2010-40). In confirming the opinion issued to the City of Sanford in AGO 2010-40, the Florida Attorney General issued an opinion to Senator Joseph Abruzzo stating "This office continues to consider promoting the use of a redevelopment area to be within the purposes of the Community Redevelopment Act of 1969."

Accordingly, it is the opinion of this office that the expenditure of funds by the City of Titusville's Community Redevelopment Agency has met the requirement of Florida Statutes, within the scope of the Community Redevelopment Act, and in line with the Redevelopment Plan.

Should you wish to discuss this matter further, please feel free to contact my office.

Sincerely,



Chelsea A. Farrell, Esq.
Assistant City Attorney

CAF:man



AGENDA REPORT
October 24, 2017

SUBJECT:

Downtown Titusville CRA Festival Expenses

FISCAL IMPACT:

Approximately \$55,055 of County TIF revenue

DEPT/OFFICE:

District 3

REQUESTED ACTION:

It is requested that the Board discuss its options and consider potential courses of action as it relates to protecting the County's fiscal interests.

SUMMARY EXPLANATION and BACKGROUND:

The Downtown Titusville Community Redevelopment Agency has improperly used approximately \$120,123 of City and County TIF funds for festival expenses such as Food Truck Wars, Saturday Nite Live, and chili cook-offs.

According to the County Attorney's Office, these expenditures are unlawful under Chapter 163, Part III, Florida Statutes.

The Downtown Titusville CRA is expected to receive approximately \$302,928 in County TIF revenue in FY 17-18.

ATTACHMENTS:

Description

- Downtown Titusville CRA Festival Expenses
- County Attorney Opinion

REVIEWERS:

Department	Reviewer	Action
District 3	Prasad, Billy	Approved



October 25, 2017

M E M O R A N D U M

TO: John Tobia, District 3 Commissioner

RE: Item VI.F.3., Board Discussion for the Downtown Titusville Community Redevelopment Agency (CRA) Festival Expenses

The Board of County Commissioners, in regular session on October 24, 2017, took no action on the Downtown Titusville CRA Festival Expenses.

Your continued cooperation is always appreciated.

Sincerely,

**BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK**

Tammy Rowe, Deputy Clerk

/ds

cc: County Manager

City of Titusville

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September 18, 2017

Brevard County Commissioner John Tobia, District 3
2539 Palm Bay Road, NE Ste. 4
Palm Bay, FL 32905

Via John.Tobia@Brevardfl.gov

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Sincerely,

A handwritten signature in blue ink that reads "Tim Ford". The signature is written in a cursive style with a large, stylized "T" and "F".

Tim Ford
Redevelopment Planner



County Attorney's Office
2725 Judge Fran Jamieson Way
Building C, Room 308
Viera, Florida 32940

BOARD OF COUNTY COMMISSIONERS

TO: Hon. Commissioner John Tobia, District 3
FROM: Scott Knox, County Attorney
RE: Titusville Use of CRA funds
DATE: October 3, 2017

Commissioner, you have requested a formal opinion on the issue as to whether certain expenditures of CRA trust funds by the City of Titusville are proper under Part III, of chapter 163, Florida Statutes.

It is my understanding that you have asked the City of Titusville for "information regarding the expenditures for parades and or festivals (special events) paid to private businesses and organizations with CRA funds to pay for such special events either in whole or in part for the past five (5) years."

In response, the city sent a September 18, 2017 letter from planner Tim Ford listing the following expenditures:

FY 17 - \$0 (The CRA Special Events Grants Program was discontinued.)

FY 16 - \$30,327 (Funds were limited to \$3,635 per event to cover the costs of public services for the event at a maximum per diem rate of \$3,000 for road closure; \$325 for Police/Fire/EMS; and \$325 for restrooms).

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BOARD OF COUNTY COMMISSIONERS

The apparent support for the City's approval of special events grants on the foregoing list is set forth on page 15 of the City of Titusville "2015 REDEVELOPMENT PLAN SUPPLEMENTAL REPORT"¹ which states:

Event Sponsorship and Marketing

The Downtown Community Redevelopment Agency has created a Special Events Grant program to support special events within the downtown area that are consistent with activities authorized by the Community Redevelopment Act. The events are intended to revitalize the area by increasing pedestrian traffic, provide opportunities for downtown merchants to attract new business, and provide visibility for vacant retail and restaurant space. The grant program began in 2012, and is anticipated to become more competitive as the program matures. It is also the intent of the CRA that the grant program assists special events to become self-sustaining after a number of years to permit funds to be utilized to establish other events or to be utilized for capital projects.

The CRA should consider other programs to market vacant buildings and existing businesses. For example, contests to attract entrepreneurs, encouraging pop-up stores and incubators are programs that are worthy of funding consideration by the CRA.

Indeed, the "Five-Year Capital Improvement and Funding Plan for CRA Projects" set forth in that same document contemplates between \$58,000 and \$60,000 funding for "Special Events," (below) although the text under that heading (below) does not mention special events.

Project Name	FY2015-2016	FY2016-2017	FY2017-2018	FY2018-2019	FY2019-2020	Total
Park Improvements/Recreational Facilities		\$50,000	\$50,000	\$50,000	\$50,000	\$200,000
Amtrak Station Community Policing	\$60,000	\$60,000	\$60,000	\$60,000	\$60,000	\$300,000
Downtown Stormwater Improvements			\$100,000			\$100,000
Downtown Stormwater Plan						5 250,000
Building Improvements (Facade/Structural)	\$50,000	\$50,000	\$50,000	\$50,000	\$50,000	\$250,000
Marketing Master Plan Update		\$15,000	\$15,000	\$10,000	\$10,000	\$50,000
Property Acquisition				\$120,000		\$120,000
Downtown Welcome Center	\$160,000					\$160,000
Special Events Grants	\$56,000	\$58,000	\$60,000	\$60,000	\$60,000	\$294,000
Total	\$326,000	\$253,000	\$315,000	\$220,000	\$5,545,000	\$4,398,000

(Supplemental Report p.10)

¹ <http://www.titusville.com/Page.asp?NavID=1014>



BOARD OF COUNTY COMMISSIONERS

"Five-Year Capital Improvement and Funding Plan for CRA Projects

Looking toward the future, the following projects have been identified in the Five Year Capital Improvement Plan (CIP) for the CRA. The CIP timeframe extends from Fiscal Year 2015-2016 to Fiscal Year 2019-2020. In addition to those capital projects identified below, the CRA will also utilize funding to maintain completed CRA projects, including monuments, park improvements, streetscape improvements and other redevelopment projects, as necessary."

(Supplemental Report P.11)

There is one other provision in the Supplemental Report that describes Titusville as a "Trail Town." This provision mentions the need for "additional amenities" for special events.

"With the convergence of these trails, the CRA has established the goal of becoming a "Trail Town", taking advantage of the economic opportunity that an influx of visitors can bring. As the downtown becomes more of a destination for commerce and special events, additional amenities will be needed. These may include additional street furniture, ADA improvements, and other amenities that enhance the functionality of the downtown. The CRA may choose to fund these improvements directly, or contribute funds to public/private partnerships for the funding of needed amenities." (Supplemental Report p. 11)

It is worth noting that this last-mentioned provision in the Supplemental Report identifies physical redevelopment structures or facilities as the "additional amenities" that will support more special events. The significance of this recognition of "additional amenities" as redevelopment, as opposed to the special events such facilities may support, is the City's representation that no grant funds have been released in 2017. That action suggests the City may have concluded that special events, themselves, do not fit within the statutory definition of "redevelopment" upon which tax increment funds can be spent, an issue that will be discussed more fully below.

Analysis

As mentioned in my prior opinion, the critical factor in determining the validity of a CRA trust expenditure is whether an expenditure is made for an *undertaking described in the community redevelopment plan*, as required by section 163.387(6), Florida Statutes, a question that turns on whether or not the City redevelopment plan conforms to the statutory requirements identified in section 163.362, Florida Statutes. In the case of Titusville, it appears that grant funding for special events has been specifically listed in the Supplemental Report comprising an amendment to the CRA plan. Therefore, it is important to know what the Legislature has specifically prescribed as the elements of a community redevelopment plan.

The core substantive requirements for a redevelopment plan are set forth in section 163.362, Florida Statutes, as follows:



BOARD OF COUNTY COMMISSIONERS

163.362. Contents of community redevelopment plan

Every community redevelopment plan shall:

- (1) Contain a legal description of the boundaries of the community redevelopment area and the reasons for establishing such boundaries shown in the plan.
- (2) Show by diagram and in general terms:
 - (a) The approximate amount of open space to be provided and the street layout.
 - (b) Limitations on the type, size, height, number, and proposed use of buildings.
 - (c) The approximate number of dwelling units.
 - (d) Such property as is intended for use as public parks, recreation areas, streets, public utilities, and public improvements of any nature.
- (3) If the redevelopment area contains low or moderate income housing, contain a neighborhood impact element which describes in detail the impact of the redevelopment upon the residents of the redevelopment area and the surrounding areas in terms of relocation, traffic circulation, environmental quality, availability of community facilities and services, effect on school population, and other matters affecting the physical and social quality of the neighborhood.
- (4) Identify specifically any publicly funded capital projects to be undertaken within the community redevelopment area.
- (5) *Contain adequate safeguards that the work of redevelopment will be carried out pursuant to the plan.*
- (6) Provide for the retention of controls and the establishment of any restrictions or covenants running with land sold or leased for private use for such periods of time and under such conditions as the governing body deems necessary to effectuate the purposes of this part.
- (7) Provide assurances that there will be replacement housing for the relocation of persons temporarily or permanently displaced from housing facilities within the community redevelopment area.
- (8) Provide an element of residential use in the redevelopment area if such use exists in the area prior to the adoption of the plan or if the plan is intended to remedy a shortage of housing affordable to residents of low or moderate income, including the elderly, or if the plan is not intended to remedy such shortage, the reasons therefor.
- (9) Contain a detailed statement of the projected costs of the redevelopment, including the amount to be expended on publicly funded capital projects in the community redevelopment area and any indebtedness of the community redevelopment agency, the county, or the municipality proposed to be incurred for such redevelopment if such indebtedness is to be repaid with increment revenues.²

² The statute also contains the following additional requirements:

(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.

(11) Subsections (1), (3), (4), and (8), as amended by s. 10, chapter 84-356, Laws of Florida, and subsections (9) and (10) do not apply to any governing body of a county or municipality or to a community redevelopment agency if such governing body has approved and adopted a community redevelopment plan pursuant to s. [163.360](#) before chapter 84-356 became a law; nor do they apply to any governing body of a county or municipality or to a community redevelopment agency if such governing body or agency has adopted an ordinance or resolution authorizing the issuance of any bonds, notes, or other forms of indebtedness to which is pledged increment revenues pursuant only to a community redevelopment plan as approved and adopted before chapter 84-356 became a law.



BOARD OF COUNTY COMMISSIONERS

In determining the required elements of a redevelopment plan, the Legislature used the mandatory “shall” language, not the permissive “shall include” language, the latter of which implies that plan elements other than those identified by the Legislature could also be adopted. The use of “shall” does not give cities or counties the statutory discretion to adopt other, optional elements of a redevelopment plan as, for example, was the case in Chapter 163, Part II, Florida Statutes where optional elements in a comprehensive plan are authorized. Instead, the Legislature chose to adopt a specific list of elements that are to comprise the redevelopment plan. I find nothing among those listed elements that remotely suggest that special events such as festivals, cook-outs, Veteran’s parades or other special events are an authorized element of a redevelopment plan.

In the context of the questions you have posed regarding the propriety of expending CRA trust funds on special event activities presented by the City of Titusville, the language in section 163.362(5)(c), Florida Statutes, must be considered. That provision states “every redevelopment plan shall [c]ontain adequate *safeguards* that the *work of redevelopment* will be carried out *pursuant to the plan*.”³ The work of redevelopment...pursuant to the [redevelopment] plan” will necessarily involve the expenditure of CRA redevelopment trust funds. Therefore, the plan must contain “safeguards” assuring that CRA trust funds are spent on the work of “redevelopment,” as that term is defined in section 163.340(9),⁴ Florida Statutes. Such “safeguards” must, therefore, restrict expenditures to the following types of “redevelopment” identified in the definition of that term, as set forth in the community redevelopment statute:

- (a) prevention and elimination of blight;
- (b) reduction and prevention of crime;
- (c) provision of affordable housing;
- (d) slum clearance;

³ Section 163.362(5)(c), Florida Statutes

⁴ S.163.340, Florida Statutes:

“(9) Community redevelopment” or “redevelopment” means undertakings, activities, or projects of a county, municipality, or community redevelopment agency in a community redevelopment area *for the elimination and prevention of the development or spread of slums and blight*, or for the *reduction or prevention of crime*, or for the *provision of affordable housing*, whether for rent or for sale, to residents of low or moderate income, including the elderly, and *may include slum clearance and redevelopment in a community redevelopment area or rehabilitation and revitalization of coastal resort and tourist areas that are deteriorating and economically distressed, or rehabilitation or conservation in a community redevelopment area*, or any combination or part thereof, in accordance with a community redevelopment plan and may include the preparation of such a plan.



BOARD OF COUNTY COMMISSIONERS

- (e) rehabilitation and revitalization of economically distressed and deteriorating coastal resort and tourist areas; and
- (f) rehabilitation or conservation of community redevelopment areas⁵

I can find no part of this statute or any other provision in Chapter 163, Part III, relating to community redevelopment, that allows “promotion of redevelopment areas” as an authorized expenditure of CRA tax increment funds.

I therefore conclude that other sources of City revenue should be used to fund grants to special events in the redevelopment area. However, I would note, that the City has indicated it no longer utilizes CRA tax increment on special events, as is evidenced in the excerpt from the September 18, 2017 sent by the City planner, as set forth on page 1 of this memo.

The City has relied upon AGO 2010-40, in which Florida Attorney General, Bill McCollum, reached a different conclusion. In the opinion, the Attorney General correctly stated—though misapplied—the applicable law as follows:

“While the statute specifically states that the use of community redevelopment trust funds is not limited to those purposes enumerated therein, the community redevelopment agency is a statutorily created administrative agency that may only exercise those powers that have been expressly granted by statute or that are necessarily exercised in order to carry out an express power. (FN omitted) Any reasonable doubt as to the lawful existence of a particular power sought to be exercised must be resolved against the exercise thereof. (FN omitted) Moreover, it is well settled that legislative intent is the polestar that guides a court's statutory construction analysis (FN omitted) and would, therefore, limit the expenditures by the community redevelopment agency.”

⁵*Diamond Aircraft Indus., Inc. v. Horowitch*, 107 So. 3d 362, 367 (Fla. 2013) **Legislative intent** is the polestar that guides our analysis regarding the construction and application of the statute. *See Bautista v. State*, 863 So.2d 1180, 1185 (Fla.2003). Our statutory analysis begins with the plain meaning of the actual language of the statute, as we discern **legislative intent** primarily from the text of the statute. *See Heart of Adoptions, Inc. v. J.A.*, 963 So.2d 189, 198 (Fla.2007). If statutory language is “clear and unambiguous and conveys a clear and definite meaning, there is no occasion for resorting to the rules of statutory interpretation and construction; the statute must be given its plain and obvious meaning.” *Holly v. Auld*, 450 So.2d 217, 219 (Fla.1984) (quoting *A.R. Douglass, Inc. v. McRainey*, 102 Fla. 1141, 137 So. 157, 159 (1931)). In instances of an **ambiguity** in statutory language, we may resort to the rules of statutory construction, which permit us to examine the legislative history to aid in our determination regarding **legislative intent**.



BOARD OF COUNTY COMMISSIONERS

However, legislative intent is derived from the wording of the statute. Resort to rules of statutory construction or interpretation are only relevant where the meaning of the statute is ambiguous.⁶ Clearly, the Attorney General's found no ambiguity in the statute, as indicated above and in the following elaboration of the discussion in the above-quoted excerpt:

"The enumerated uses of community redevelopment trust fund moneys are likewise couched in terms of redevelopment activities involving "bricks and mortar," in a manner of speaking, rather than promotional campaigns to encourage people to populate the area once the redevelopment has been accomplished."

Yet, despite the lack of ambiguity in the statute, the Attorney General reaches the incongruous opinion expressed in the remainder of that paragraph:

"However, 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."

By taking an expansive view of what is in an unambiguous statute, the Attorney General has essentially "read into" the statute a provision that does not exist. Amending the statute is a legislative function—not a function of the Attorney General's Office. As mentioned in previous opinions on this subject, this legislative function was clearly demonstrated in the Legislature's 1998 amendment to the statute, which established "policing innovations"—a non-brick and mortar program—as an authorized use of tax increment funds.

This office, therefore, stands behind its previous opinion that use of tax increment funds for festivals, block parties and special events is not an authorized use under the community redevelopment statutes.

The Titusville Situation

After discussing this opinion with the Titusville City Attorney, it became apparent that the Titusville circumstances may be distinguishable from the Melbourne circumstances for two reasons.

First, though the CRA redevelopment plan includes a policy for the award of Special Events grants using CRA tax increment revenues, as of fiscal year 2016-2017, the City no longer



County Attorney's Office
2725 Judge Fran Jamieson Way
Building C, Room 308
Viera, Florida 32940

BOARD OF COUNTY COMMISSIONERS

provides such grants—as is evidenced by the list of expenditures referenced in the September 18, 2017 letter from the City Planner.

Second, as indicated by the City Attorney, the tax increment amounts expended for special events grants in years prior to 2017, as shown in the September 18 letter, are far-exceeded by the City's tax increment revenues for the same CRA. As the City Attorney pointed out, the City's position would be that the CRA used City tax increment, not County tax increment, to fund the past special events grants.⁷

While even the use of city CRA tax increment revenues for such purposes is unauthorized, the County would arguably not be "injured" if City tax increment was used to fund special events. The County would not likely be deemed to have standing to challenge those expenditures for that reason and for the reason that the Titusville CRA was created prior to the legislative change vesting the County Commission in charter counties with the authority to delegate and rescind CRA powers granted to the City.

⁷ The City of Melbourne may well take the same position if the City tax increment funds in either the Downtown Melbourne CRA or Olde Eau Gallie CRA substantially exceed the County tax increment revenues.

City of Titusville

555 SOUTH WASHINGTON AVENUE
TITUSVILLE, FLORIDA 32796-3584
POST OFFICE BOX 2806 (32781-2806)

T.F.3
Attachment



OFFICE OF THE MAYOR
(321) 567-3702
FAX (321) 383-5704

"Gateway to Nature and Space"
www.titusville.com

October 23, 2017

Sent Via Email: D4.Commissioner@BrevardFl.gov

Honorable Curt Smith, Chairman
Brevard County Commission
2725 Judge Fran Jamieson Way
Building C, Suite 214
Viera, FL 32940

Re: **Letter received from Commissioner Tobia regarding Titusville CRA**

Dear Chairman Smith:

I am writing this letter on behalf of the Titusville City Council in response to a letter sent by Commissioner Tobia to me as Mayor and the City Council, dated September 29, 2017, wherein he has personally chosen to malign the integrity of the Titusville Community Redevelopment Board and make demands of the City Council without justification and, it appears, without the knowledge or support of the Board of County Commissioners. It is our understanding that Commissioner Tobia now has included a last minute "add-on" to the County Commission agenda regarding expenditures by the Titusville CRA and we would like the Commission to consider the following information during your discussion.

The City of Titusville is extremely proud of the redevelopment work undertaken by the CRA Board and its efforts to rehabilitate and revitalize Titusville's downtown redevelopment area. As you are probably well aware, North Brevard was hit particularly hard as a result of the decline of the Space industry and the need for rehabilitation and redevelopment of the City's downtown area was imperative. The ability to promote and draw people to the downtown area was critical to its revitalization and, quite frankly, its survival. To that end, Titusville's community redevelopment funds have been spent in accordance with the Community Redevelopment Plan, the Community Redevelopment Act of 1969, Part II, Chapter 163, *Florida Statutes*, and the opinions issued by the Florida Attorney General's Office.

Section 163.387, *Florida Statutes*, provides that funds allocated to and deposited into the redevelopment fund shall be used by a community redevelopment agency to finance any community redevelopment it undertakes pursuant to the approved redevelopment plan. The City of Titusville Community Redevelopment Plan clearly states an intent to support special events within the downtown area and these events were specifically intended to help redevelop and revitalize the area.

In 2008, the Community Redevelopment Agency amended its community redevelopment plan to include the ability to support events that would specifically promote the use of the downtown area. This amendment to the Plan was implemented through the statutorily prescribed process, and Brevard County was provided notice of this amendment together with a copy of the Plan by certified mail several times over the past years. In addition to providing the County Commission with a copy of the CRA Plan expressly stating the CRA Board's intent to revitalize the community redevelopment area through promotional events, the County was provided a copy of the CRA budget detailing those expenditures. At no time did the Board of County

Mr. Curt Smith, D4 County Commissioner/Chairman
October 23, 2017
Page 2

Commissioners, County Staff, County Manager, or the County Attorney's Office ever question the contents of the Plan, nor the manner in which the CRA funds were spent pursuant to that Plan.

The Titusville CRA has been very transparent in its operations and has been careful to comply with the procedures and processes as mandated by the Redevelopment Act. Each budgeted item has been evaluated by the CRA Board to determine its consistency with the Redevelopment Plan and compliance with the law as verified by opinions issued by the Florida Attorney General's office, which clearly supports the use of CRA funds to promote a redevelopment area. The Board and CRA staff is in constant dialogue with the Florida Redevelopment Agency which includes CRA plan reviews, training seminars, and on-site visits to ensure that its operations and expenditures are appropriate.

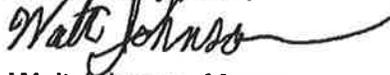
The Florida Attorney General's Office has consistently found that promoting the use of a redevelopment area is within the purposes of the Community Redevelopment Act of 1969, stating, "...to read the statute as precluding the promotion of a redevelopment area once the infrastructure has been completed would be narrowly viewing community redevelopment as a statue process." (AGO 2010-40). In confirming the opinion issued to the City of Sanford in AGO 2010-40, the Florida Attorney General issued an opinion to Senator Joseph Abruzzo stating "This office continues to consider promoting the use of a redevelopment area to be within the purposes of the Community Redevelopment Act of 1969."

The Titusville Downtown CRA has only utilized a very small percentage of tax increment funds to promote the CRA area. The total amount of funds spent by the CRA in any given year was only approximately 5% of the City's total portion of the tax increment revenues. The City's portion of the total tax increment greatly exceeds that of the County on an annual basis and therefore it would be incorrect to assume that any County tax increment was ever utilized to fund promotional events. As stated by the County Attorney in his Memorandum dated October 3, 2017, "...the County would arguably not be "injured" if City tax increment was used to fund special events. The County would not likely be deemed to have standing to challenge those expenditures for that reason and for the reason that the Titusville CRA was created prior to the legislative change vesting the County Commission in charter counties with the authority to delegate and rescind CRA powers granted to the City."

Accordingly, the Titusville City Council does not agree with Commissioner Tobia's demand for repayment and has no intention to cease the operations or dissolve the Titusville CRA.

I would like to emphasize that the City of Titusville has enjoyed a very good and productive relationship with the County over many years, and the Titusville City Council looks forward to continue working together to help the City of Titusville, North Brevard and Brevard County thrive.

Respectfully yours,



Walt Johnson, Mayor

C: Rita Pritchett, County Commissioner, District 1
Frank Abbate, Brevard County Manager
Scott Knox, Brevard County Attorney

Enclosure: John Tobias Brevard County Commissioner, District 3, Letter dated September 29, 2017

COMMISSIONER JOHN TOBIA, DISTRICT 3

2539 Palm Bay Rd. NE
Suite 4

Palm Bay, Florida 32905
John.Tobia@Brevardfl.gov

Mayor Walt Johnson
P.O. Box 2806, (32781-2806)
555 S. Washington Avenue
Titusville, FL 32796

Received
OCT 10 2017
City Manager's Office

September 29, 2017

My office has compiled information, through public records, that approximately \$120,123 was misappropriated by the Titusville Community Redevelopment Agency ("CRA") between 2013 and 2016. The CRA used TIF revenue to fund festivals such as the Rotary Chili Cook-Off, Food Truck Wars, and Friday Nite Live. Of this \$120,123, approximately \$54,055 was derived from County TIF revenue, based on the proportion of revenues the CRA receives from various sources.

These expenditures are extraordinarily egregious. According to the Brevard County Attorney, Scott Knox, who issued a formal opinion on this matter (attached), Chapter 163, Part III, of Florida Statutes makes plain what expenditures are proper. Not surprisingly, he "find[s] nothing among those listed elements that remotely suggest that special events such as festivals, cook-outs, Veteran's parades or other special events are an authorized element of a redevelopment plan."

There are two possible explanations for these appropriations. Either the CRA Board has intentionally misappropriated funds, or it has been careless with precious resources. Regardless, I demand that the County be made whole; \$54,055, as well as any other unlawful expenditures that are identified after a thorough review, shall immediately be returned to the County with revenues derived from municipal TIF revenue or other lawful municipal sources. To be clear, the County must not be repaid with its own portion of TIF revenue.

Upon repayment for the unlawful use of County revenue, I insist that the Titusville CRA immediately cease operations and dissolve.

I trust that you will agree with these requirements, as there is no excuse for the recklessness, at minimum, which has led to the aforementioned expenditures that were

so glaringly improper. In light of the budgetary constraints that the County is facing, it is the only course of action that will put us on the path to regain the public trust that has been repeatedly violated by this agency.

Sincerely,



John Tobia

County Commissioner, District 3

CC:

Timothy Ford

Vice-Mayor Matt Barringer

Councilwoman Sarah Stoeckel

Councilman Dan Diesel

Councilwoman Jo Lynn Nelson ✓