



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

New Business - County Attorney

I.1.

12/5/2023

Subject:

Legislative intent and permission to advertise an ordinance re: Housing Finance Authority TEFRA hearing notification and municipal participation requirements.

Fiscal Impact:

None.

Dept/Office:

County Attorney's Office on behalf of District 3

Requested Action:

It is requested that the Board of County Commissioners approve legislative intent, direct staff to prepare, and grant permission to advertise, an ordinance amending Chapter 2, Article VI, Division 3 of the Brevard County Code of Ordinances pertaining to the Housing Finance Authority to provide for additional TEFRA hearing notification and municipal participation requirements.

Summary Explanation and Background:

At the November 14 Board of County Commissioners meeting, the Board directed the County Attorney to research whether the Board can lawfully adopt requirements to ensure that property owners receive notice of new construction projects when Board approval of private activity bond financing is requested. The County Attorney's research confirmed that the Board can impose additional notice requirements. The County Attorney coordinated this legislative proposal with Commissioner Tobia, who initially suggested the additional notice and municipal input requirements.

Since the adoption of the Tax Equity and Fiscal Responsibility Act of 1982 ("TEFRA"), the Internal Revenue Code (the "Code") has afforded tax-exempt status to private activity bonds only if the "applicable elected representative" of a governmental unit having jurisdiction of the area containing the financed facility approves the issuance of the bond after a public hearing following reasonable public notice.

Because the governing boards of county housing finance authorities in Florida are appointed, these entities do not have an "applicable elected representative" under the Code. To satisfy this provision, the Board of County Commissioners is called upon to approve the Housing Finance Authority's issuance of tax-exempt bonds.

The public hearing that the Code requires does not have to occur before the "applicable elected representative," but it must provide a "reasonable opportunity for interested individuals to express their views, orally or in writing, on the proposed issue of bonds and the nature of the proposed projects to be financed." Treas. Reg. sec. 1.147(f)-1(d)(1). In Brevard, these public hearings are held by the Housing Finance Authority, with the comments being reported to the Board.

Under Florida law, a county that creates a housing finance authority may, at its sole discretion, and at any time, alter or change the structure, organization, programs, or activities of the authority or may terminate the authority, subject to any limitation on the impairment of contracts entered into by the authority and subject to limitations set forth in the Housing Finance Authority Law. Section 159.604(3), Florida Statutes.

Currently, the Housing Finance Authority publishes notices of its TEFRA hearings only on its own website and on the meetings calendar on the public meetings calendar on the County's website. The Housing Finance Authority then holds the TEFRA hearing, typically at the Brevard County Agricultural Center in Cocoa. Unlike County zoning hearings, notice is not mailed to adjacent and nearby property owners and the subject property is not posted. So, for example, the residents near the proposed Venue at Heritage Oaks project in West Melbourne asserted that they were not aware of the TEFRA hearing held by the Housing Finance Authority in Cocoa on October 25.

To complicate matters, because of the Live Local Act recently adopted by the State, the project will not require a land use or zoning change from the City of West Melbourne. Rather, if the project meets certain affordability requirements, West Melbourne will have to administratively approve of the project. The neighbors will not have an opportunity to voice their concerns at a City Council meeting on the project. That is why many residents appeared at the Board of County Commissioners' November 14 meeting to express their views on the proposed project, rather than at the public hearing required by TEFRA.

The proposed ordinance is intended to avoid such situations in the future by providing for enhanced notification requirements for Housing Finance Authority TEFRA hearings. The following requirements are proposed for new construction projects when Board approval of private activity bond financing is requested and the subject property is not already zoned for multifamily residential housing:

1. Notice of the TEFRA hearing held by the Housing Finance Authority should be equivalent to the notice provided for rezoning requests, including publication on the County's Legal Ads and Notices publicly accessible website, posting of the property, and mailed notice to properties within 500 feet, with the developer to pay the notification cost.
2. If the property is within a municipality, written notice of the TEFRA hearing must be provided to the municipality. The bond authorization request to the Board must be accompanied by written input from the governing body of the municipality in the form of a resolution or correspondence approved by the governing body and signed by the mayor or chief administrative officer.

Clerk to the Board Instructions:

Provide Clerk Memo to the County Attorney's Office.



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December 6, 2023

M E M O R A N D U M

TO: Morris Richardson, County Attorney

RE: Item I.1., Legislative Intent and Permission to Advertise an Ordinance for Housing Finance Authority Tax Equity and Fiscal Responsibility Act (TEFRA) Hearing Notification and Municipal Participation Requirements

The Board of County Commissioners, in regular session on December 5, 2023, granted legislative intent and permission to advertise for an ordinance amending Chapter 2, Article VI, Division 3 of the Brevard County Code of Ordinances pertaining to the Housing Finance Authority; directed staff to prepare an ordinance for additional TEFRA hearing notification; and municipal participation requirements with hearing taking place in a municipality or a zip code before going to the Board of County Commissioners.

Your continued cooperation is always appreciated. to prepare the

Sincerely,

BOARD OF COUNTY COMMISSIONERS
RACHEL M. SADOFF, CLERK

A handwritten signature in cursive script, reading "Kimberly Powell".

Kimberly Powell, Clerk to the Board

/ns

cc: Commission John Tobia

RF – I have an amendment if you would consider a friendly amendment, that the hearing take place in a municipality or a zip code before going to the Board of County Commissioners

JT – I move to approve legislative intent⁺ and permission to advertise, and directed staff to prepare an ordinance amending Chapter 2, Article VI, Division 3 of the Brevard County Code of Ordinances, pertaining to the Housing Finance Authority to provide for additional TEFRA hearing notification and municipal participation requirements, with the friendly amendment by RF