

ADD ON

Meeting Date
1/26/2016



AGENDA	
Section	New Business
Item No.	VI F 1

AGENDA REPORT
 BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS

SUBJECT:	Dissolving and/or defunding Community Redevelopment Agencies (CRA)
DEPT/OFFICE:	Trudie Infantini, District 3 Commissioner

Requested Action:

Request the Board of County Commissioners direct the County Attorney to prepare Resolutions to dissolve or defund each municipal CRA listed in the attached spreadsheet, within the confines of the law regarding obligated debt. Additionally County Attorney is to draft a Resolution restricting North Brevard Development District (NBDD) tax increment revenue to the payment of existing debt/contracts only.

Summary Explanation & Background:

The county seeks to prioritize spending in order to fund the core functions of government, i.e. water, public safety and infrastructure.

Contact: Linda Mannier
 Phone: (321) 952-6300

Clerk to the Board instruction:

Exhibits Attached: County Attorney Memo and CRA/NBDD Spreadsheet

Contract /Agreement (If attached): Reviewed by County Attorney Yes No PR

County Manager	Deputy County Manager	Department Director / Extension
Stockton Whitten	Assistant County Manager	D3 County Commissioner <i>Trudie Infantini</i>



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January 27, 2016

MEMORANDUM

TO: Trudie Infantini, Commissioner District 3 Attn: Linda Mannier

RE: Item VI.F.1., Dissolving and/or Defunding Community Redevelopment Agencies

The Board of County Commissioners, in regular session on January 26, 2016, withdrew request for dissolving and/or defunding Community Redevelopment Agencies.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

Tammy Rowe, Deputy Clerk

/ds



BOARD OF COUNTY COMMISSIONERS

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

Inter-Office Memo

TO: HONORABLE CHAIRMAN AND MEMBERS OF THE BOARD OF COUNTY COMMISSIONERS

FROM: SCOTT L. KNOX, COUNTY ATTORNEY 

RE: BOARD'S ABILITY TO STOP CRA TAX INCREMENT APPROPRIATION

DATE: October 15, 2015

QUESTION 1: DOES THE BOARD OF COUNTY COMMISSIONERS HAVE THE AUTHORITY TO STOP APPROPRIATING TAX INCREMENTS OR RECAPTURE THE TAX INCREMENT FOR SPECIFIED COMMUNITY REDEVELOPMENT AGENCIES?

SHORT ANSWER: FOR SOME CRA'S, YES AND OTHERS NO.¹

Discussion

The BCC recently asked whether the County could stop appropriating tax increments for the various community redevelopment agencies in the County, including MIRA. The following discussion addresses that question.

Overview

There are currently fifteen (15) core CRAs in Brevard County, several of which have been expanded over the years (see attached Exhibit 1). Of the 15, four (Cocoa Village, Titusville, Melbourne Historic Downtown and MIRA) were created prior to July 1, 1994. Because the Board of County Commissioners authority over CRAs within cities is the result of a statute that did not apply until the date the county charter was adopted (July 1, 1994), of the four CRAs created before that date, only the Merritt Island Redevelopment Agency is subject to the jurisdiction and control of the Board of County Commissioners at this time.

Of the remaining eleven CRAs,² ten CRAs were created after July 1, 1994 by various cities and

¹ This opinion modifies and supersedes all prior opinions from this office relating to the tax increment.

one through joint action of the City of West Melbourne and the County. The ten created by the cities all involve the Board's delegation of the County's authority to create the CRA to each city, as is permitted under section 163.410, Florida Statutes.³

MIRA

The MIRA ordinance was enacted on December 9, 1991. The ordinance does not set forth a date when the tax increment will cease to be appropriated other than the following provision:

Section 7: All taxing authorities defined at § 163.340(2), Fla. Stat., shall:

a. Upon the adoption of this Ordinance providing for funding of the Redevelopment Trust Fund as herein provided, each taxing authority shall, by January 1 of each year, appropriate to such fund for so long as any indebtedness pledging increment revenues to the payment thereof is outstanding (but not to exceed thirty (30) years (sic) a sum which is no less than the increment as defined and determined in Section 6 of this Ordinance accruing to such taxing authority. No taxing authority is exempt from the provisions of this section.

The phrase "not to exceed thirty (30) years" is taken directly from the statute mandating appropriation of the tax increment established for a CRA, which reads as follows:

Section 163.3187(2)(a) reads as follows:

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

² The eleven are (Cocoa US 1 Corridor, Cocoa Diamond Square, Babcock Street, Palm Bay, Olde Eau Gallie, Rockledge, Satellite Beach, Cocoa Beach, Cape Canaveral, West Melbourne/County and Palm Shores), all created after July 1, 1994.

³ Section 163.410, Florida Statutes states, in pertinent part: "In any county which has adopted a home rule charter, the powers conferred by this part shall be exercised exclusively by the governing body of such county. However, the governing body of any such county which has adopted a home rule charter may, in its discretion, by resolution delegate the exercise of the powers conferred upon the county by this part within the boundaries of a municipality to the governing body of such a municipality. Such a delegation to a municipality shall confer only such powers upon a municipality as shall be specifically enumerated in the delegating resolution. Any power not specifically delegated shall be reserved exclusively to the governing body of the county. This section does not affect any community redevelopment agency created by a municipality prior to the adoption of a county home rule charter."

Since the phrase “not to exceed thirty (30) years” represents a possible period of between zero and thirty years, and there is currently no debt obligating MIRA, there is nothing in the statute that prevents the Board of County Commissioners from amending the MIRA ordinance to limit the number of years the BCC is required to appropriate the tax increment for less than the full thirty year maximum currently authorized by section 7 of the MIRA ordinance and by section 163.387(2)(a), Florida Statutes. Absent such an amendment, the tax increment would continue through 2044 since the MIRA redevelopment plan was amended in 2014 and the statutory maximum number of years the increment would have to be levied is 30 years.⁴

The provisions of the redevelopment law applicable to the 2014 redevelopment plan amendment are also consistent with the Board’s ability to shorten the time frame for appropriating the tax because the “not to exceed 30 years” language is found in the third sentence of section 163.387(2)(a) which reads:

If the community redevelopment plan is amended or modified pursuant to s. 163.361(1), each such taxing authority shall make the annual appropriation for a period **not to exceed 30 years** after the date the governing body amends the plan but no later than 60 years after the fiscal year in which the plan was initially approved or adopted.

This position is also buttressed by section 163.387(3)(a) from which it may be inferred that the BCC’s appropriation of the tax increment is no longer mandatory once indebtedness has been paid.

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

Therefore, since [1] MIRA has no debt; [2] prior to July 1, 1994, section 163.356(1), Florida Statutes authorized the County Commission to create MIRA; [3] subsequent to July 1, 1994—when the county charter was enacted— section 163.410, Florida Statutes vested the County Commission with the exclusive authority to create CRAs (unless that power was delegated by the county to one or more cities); and [4] the Board is also vested with the express power to enact an ordinance limiting the number of years the County’s tax increment can be levied to between zero years and thirty years, the Board necessarily has the implied power to repeal the MIRA ordinances at this time, thereby eliminating the payment of a MIRA tax increment.

⁴ Section 163.387(2)(a) Florida Statutes reads, in relevant part. “...If the community redevelopment plan is amended or modified pursuant to s. 163.361(1), each such taxing authority shall make the annual appropriation for a period **not to exceed 30 years** after the date the governing body amends the plan but no later than 60 years after the fiscal year in which the plan was initially approved or adopted...”

Alternatively, the Board could amend the MIRA ordinance and substitute itself for the MIRA board. In that circumstance, the Board would not have to spend any of the tax increment and the money would be returned to the County general fund at the end of the fiscal year.⁵

OTHER CRAs AND TAX INCREMENT FUNDED AGENCIES

County Commission's Authority to Amend Delegation Resolutions and Cease Appropriation of Tax Increments

As governing body of a charter county, the Brevard County Commission has exercised its discretion to delegate to ten city governments the authority to create community redevelopment agencies located within those cities.⁶ Such delegations of redevelopment powers are authorized by section 163.410, Florida Statutes, the relevant part of which is set forth below.

163.410 Exercise of powers in counties with home rule charters.—In any county which has adopted a home rule charter, the powers conferred by this part shall be exercised exclusively by the governing body of such county. However, the governing body of any such county which has adopted a home rule charter may, in its discretion, by resolution delegate the exercise of the powers conferred upon the county by this part within the boundaries of a municipality to the governing body of such a municipality. *Such a delegation to a municipality shall confer only such powers upon a municipality as shall be specifically enumerated in the delegating resolution. Any power not specifically delegated shall be reserved exclusively to the governing body of the county.*

The Board's power to delegate its community redevelopment powers was implemented through delegating resolutions adopted after November 8, 1994,⁷ all of which reserve the County Commission's right to revoke delegation of authority or to replace the CRA board with the BCC if the BCC deems it necessary for the protection of the health, safety, welfare or fiscal interests of the public or the redevelopment area,⁸ although in five resolutions (Rockledge, Satellite Beach, Palm Bay, Cocoa Beach and Palm Shores) the BCC's right to replace the CRA board is limited to circumstances in which there has been "non-performance" by the CRAs in the cities to whom the county's authority is delegated. In all cases, however, no revocation or substitution for the CRA board by the County can impair the redevelopment agency's outstanding contractual or financial obligations.⁹

⁵ See section 163.387(1), Florida Statutes, which provides as follows:

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

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

⁶ Section 163.410, Florida Statutes

⁷ This is the date the first charter was passed in Brevard.

⁸ This revocation/replacement provision was not included in the West Melbourne CRA resolution.

⁹ Section 163.387(3)(a), Florida Statutes, which reads in relevant part:

"Notwithstanding the provisions of subsection (2), the obligation of the governing body which established the community redevelopment agency to fund the redevelopment trust fund annually shall continue until all loans,

The County Commission's reservation of authority to revoke some or all of the authority delegated to the cities' could be structured to restrict or prevent the use of the County's tax increment for the benefit of city CRAs. Section 163.410, Florida Statutes¹⁰ and section 163.387(3)(b)¹¹ also give the Commission the ability to impose or negotiate limits on the powers delegated to the cities and CRAs, which limits can include:

1. modifications to the CRA's authority to borrow money in the future;
2. modifications to the CRA's authority to enter into future contracts by limiting those contracts to those funded solely by the City's tax increment;
3. modifications to the CRA or City's ability to appropriate funds as it relates to the County tax increment while allowing continuation of the use of the city tax increment within the CRA;
4. modifications to the expiration (sunset) date for the CRA;
5. negotiation of an interlocal agreement regarding the County tax increment—in lieu of an earlier CRA termination date or other CRA restriction setting an early expiration date for all or a portion of the County tax increment—while allowing the City tax increment to continue.

The Board's authority to make such modifications is constrained by two factors. The Board action cannot impair any existing CRA debt or contractual obligations.¹² To the extent debt exists, the County is required to continue appropriating the County tax increment for that CRA until the debt is extinguished.¹³ However, absent a negotiated interlocal agreement that limits or restricts the amount of the County tax increment, there is nothing to prevent the County's modification of delegating resolutions by limiting or even eliminating the use of the county's tax increment revenues for purposes other than existing debt service or contractual obligations while revoking any authority to appropriate or expend county tax increment funds or to contract in the future. The interlocal agreement option would allow the cities and County to negotiate how much tax increment revenue would be returned to the County, in lieu of restrictions or an earlier

advances, and indebtedness, if any, and interest thereon, of a community redevelopment agency incurred as a result of redevelopment in a community redevelopment area have been paid."

¹⁰ 163.410 **Exercise of powers in counties with home rule charters.**—In any county which has adopted a home rule charter, the powers conferred by this part shall be exercised exclusively by the governing body of such county. However, the governing body of any such county which has adopted a home rule charter may, in its discretion, by resolution delegate the exercise of the powers conferred upon the county by this part within the boundaries of a municipality to the governing body of such a municipality. *Such a delegation to a municipality shall confer only such powers upon a municipality as shall be specifically enumerated in the delegating resolution. Any power not specifically delegated shall be reserved exclusively to the governing body of the county.*

¹¹ Section 163.387(3)(b), Florida Statutes provides as follows:

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

¹² See section 163.387 (3)(a), Florida Statutes, which reads: "Notwithstanding the provisions of subsection (2), the obligation of the governing body which established the community redevelopment agency to fund the redevelopment trust fund annually shall continue until all loans, advances, and indebtedness, if any, and interest thereon, of a community redevelopment agency incurred as a result of redevelopment in a community redevelopment area have been paid."

¹³ See footnote 11

termination date, and such an interlocal agreement would statutorily supersede any mandatory tax increment appropriations that would normally apply to the County.¹⁴

In conjunction with revocation of future authority to contract or appropriate County increment revenues, the County could also set a CRA termination date that would end upon the date CRA debt or contractual obligations are satisfied.¹⁵

Estoppel

It is worth noting that, though the City of Titusville CRA created in 1982 is not within the jurisdiction of the County Commission, the Titusville City Attorney has delivered a letter laying out the argument that, under the legal doctrine of estoppel, the Board of County Commissioners could not modify or revoke the resolutions delegating the Board's authority to the city. This argument is based on the city's claimed reliance upon the delegation of CRA powers by undertaking financial obligations or other substantial changes in position which would make it inequitable for the Board to change the conditions of the delegating resolution. A copy of that letter is attached as Exhibit 3.

Though the letter is essentially unnecessary in view of the County's inability to affect the 1982 Titusville CRA, the letter is instructive in relation to the possible arguments that could be forthcoming from other cities were the Board to attempt to modify or revoke the delegation resolutions for the purpose of reducing or eliminating the County's tax increment.

North Brevard Development District

The North Brevard Development District is not a CRA, however, like a CRA the District is funded by a tax increment. The District, along with the Board, have committed in excess of \$16 million in incentives based on the revenues that will be generated by the County and City of Titusville tax increments payable to the District. Any change to the ordinances creating the tax increment and the District could not impair the incentive obligations that have been approved for the companies involved.

Subject to the impairment caveat, it is likely that the 31 year time limit on the District and collection of the tax increment can be changed by the Board, however, certain other changes to the ordinances creating the District and the tax increment may be necessary to accomplish that

¹⁴ See footnote 10 above.

¹⁵ Although there are limitations on the number of years a local government is required to contribute its tax increment once a redevelopment agency is created and has outstanding debt, the only statutory provision governing cessation of community redevelopment agency activities appears in the law establishing the contents of a community redevelopment plan. Section 163.362, Florida Statutes provides as follows:

“Every community redevelopment plan shall:

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

modification because the District covers the City of Titusville and the City Council's consent was required to establish the District at the outset.

The Board could also revoke District authority to use County tax increment revenues for payment of any future debt or contractual obligations and restrict the use of county tax increment funds to the payment of existing debt/contracts until the current debt/contractual obligations expire.

Alternatively, the Board could change the ordinance to substitute itself as the District Board, thereby controlling any future expenditure of the tax increment revenues.

Summary Spread Sheet

This office has prepared the attached spread sheet to show which of these limitations and principles can be applied for each existing CRA (Exhibit 1) and the District. A spread sheet showing the financial impact of the County tax increment on each CRA and the District has also been attached (Exhibit 2).

District	Year Established	Agency	Loan Obligation	Contract Obligation	Loan Maturity	Balance	CRA Expiration	Comment	Status	Possible County Action
2	2011	Cocoa Beach Downtown CRA	264000	264000		264000	30 yrs	Only unincorporated area CRA under sole BCC control	Requires tax increment levy not longer than 2004 due plan amendment in 2014 under statute requiring the levy of the increment for an additional not to exceed 30 years after amendment	1. BCC can: (a) prohibit any additional borrowing or extension of existing debt until after date county increment is no longer being paid; (b) Revoke CRA, delegation (c) Replace CRA Board (if non-performance exists) due to financial interests of public (d) modify resolution to reduce expiration date relative to county tax increment; (e) Modify or restrict ability to contract by limiting to use of city tax increment funds in future (f) Re-negotiate s. 163.387(3)(b) interlocal agreement for reduction or elimination of County increment
2	1998	Merritt Island Redevelopment Agency (B1)	0	0	See 13 above	0	30 yrs	MIRA plan amended in 2014	See 13 above	1. BCC can: (1) take over MIRA Board and recapture tax increment at the end of each fiscal year, or (2) amend the MIRA ordinance to terminate the CRA at any time and end the tax increment because "not to exceed 30 year" restriction does not prohibit the creation of an earlier CRA termination date.
2	1990	Merritt Island Redevelopment Agency (B2)	See 13 above	See 13 above	See 13 above	See 13 above	See 13 above	MIRA plan amended in 2014	See 13 above	See 13 above
2	2005	Merritt Island Redevelopment Agency (B3)	See 13 above	See 13 above	See 13 above	See 13 above	See 13 above	MIRA plan amended in 2014	See 13 above	See 13 above
2	2014	Merritt Island Redevelopment Agency (Expansion)	See 13 above	See 13 above	See 13 above	See 13 above	See 13 above	MIRA plan amended in 2014	See 13 above	See 13 above
3	1998	Palm Bay Downtown Area	6,000,000	6,000,000	2024	3,545,000	25 yrs per county resolution	loan taken out 2006		1. BCC can: (a) modify resolution to prohibit any additional borrowing or extension of existing debt until after date county increment is no longer being paid; (b) Revoke CRA, delegation (c) Replace CRA Board (if non-performance exists) due to financial interests of public (d) modify resolution to reduce expiration date relative to county tax increment; (e) Modify or restrict ability to contract by limiting to use of city tax increment funds in future (f) Re-negotiate s. 163.387(3)(b) interlocal agreement for reduction or elimination of County increment
3	1982	Melbourne Downtown Unit 1 (K1)							Predates County charter.	Negotiate s. 163.387(3)(b) interlocal agreement for reduction or elimination of County increment.
4	2003	Palm Shores Area (J1)	0	0	N/A	0	25 yrs per county resolution			1. BCC can: (a) modify resolution to prohibit any additional borrowing or extension of existing debt until after date county increment is no longer being paid; (b) Revoke CRA, delegation (c) Replace CRA Board (if non-performance exists) due to financial interests of public (d) modify resolution to reduce expiration date relative to county tax increment; (e) Modify or restrict ability to contract by limiting to use of city tax increment funds in future (f) Re-negotiate s. 163.387(3)(b) interlocal agreement for reduction or elimination of County increment

BOCC CRA INDEBTEDNESS AND TAX INCREMENT OPTIONS

District	Year Established	Agency	Loan Obligation	Contract Obligation	Loan Maturity	Balance	CRA Expiration	Comment	Status	Possible County Action
1	1982	Titusville Downtown Area	1719000	1719000	2022	254581.25	N/A		Predates County charter	Negotiate s. 163.387(3)(b) interlocal agreement for reduction or elimination of County Increment. 1. Subject to the impairment caveat, the 31 year time limit on the District and collection of the tax increment can be changed by the Board, however, certain other changes to the ordinance creating the District and the tax increment may be necessary to accomplish the modification because the District covers the City of Titusville and City Council's consent was required to establish the District at the outset. 2. Alternatively, the Board could revoke District authority to use County tax increment revenues for payment of any future debt or contractual obligations and restrict the use of county tax increment funds to the payment of existing debt/contracts until the current debt/contractual obligations expire. 3. A final option is the Board can install itself as the existing District Board.
1	2012	North Brevard Economic Development Zone		16,000,000+			31 Yrs		Contractual obligations cannot be impaired / tax increment must be levied until contract obligations paid. Any change to the ordinances creating the tax increment and the District could not impair the incentive obligations that have been acted upon by the companies for which those incentives were approved.	
1	2007	US 1 Corridor	0	0			N/A	project is completed	Disallowed by Titusville	No action required 1. BCC can: (a) modify resolution to prohibit any additional borrowing or extension of existing debt until after date county increment is no longer being paid; (b) Revoke CRA delegation (c) Replace CRA board (if non-performance exists) due to financial interests of public (d) modify resolution to reduce expiration date relative to county increment; (e) Modify or restrict ability to contract by requiring use of only city tax increment funds in future (f) Negotiate s. 163.387(3)(b) interlocal agreement for reduction or elimination of County Increment
2	2012	Cape Canaveral CRA	1000000	1000000	2023	77000	30 yrs per County Resolution/CRA plan	General fund loan, yearly payments of 11,033	Contractual obligations cannot be impaired / tax increment must be levied until contract obligations paid	Contractual obligations cannot be impaired / tax increment must be levied until contract obligations paid
2	1981	Cocoa Downtown Unit 1	470000	470000	2025	470000		Wastewater loan, first payment due 1/2016	Contractual obligations cannot be impaired / tax increment must be levied until contract obligations paid	Negotiate s. 163.387(3)(b) interlocal agreement for reduction or elimination of County Increment 1. BCC can: (a) prohibit any additional borrowing or extension of existing debt until after date county increment is no longer being paid; (b) Revoke CRA (c) Replace CRA board due to financial interests of public (d) modify delegation resolution to reduce expiration date relative to county tax increment; (e) Modify or restrict ability to contract by limiting to use of city tax increment funds in future (f) Negotiate s. 163.387(3)(b) interlocal agreement for reduction or elimination of County Increment
2	1997	Cocoa Diamond Square	0	0			25 yrs per county resolution			
2	1997	Cocoa Corridor 1	0	0			25 yrs per County resolution			1. BCC can: (a) prohibit any additional borrowing or extension of existing debt until after date county increment is no longer being paid; (b) Revoke CRA (c) Replace CRA board due to financial interests of public (d) modify delegation resolution to reduce expiration date relative to county tax increment; (e) Modify or restrict ability to contract by limiting to use of city tax increment funds in future (f) Negotiate s. 163.387(3)(b) interlocal agreement for reduction or elimination of County Increment

District	Year Established	Agency	Loan Obligation	Contract Obligation	Loan Maturity	Balance	CRA Expiration	Comment	Status	Possible County Action
4	2001	Rockledge Downtown Area	2,000,000	2,000,000	2022	2,000,000	25 yrs per county resolution Not to exceed 30 yrs per city resolution	Barton Blvd project		<p>1. BCC can:</p> <p>(a) modify resolution to prohibit any additional borrowing or extension of existing debt until after date county increment is no longer being paid;</p> <p>(b) Revoke CRA delegation</p> <p>(c) Replace CRA board (if non-performance exists) due to financial interests of public</p> <p>(d) modify resolution to reduce expiration date relative to county tax increment;</p> <p>(e) Modify or restrict ability to contract by limiting to use of city tax increment funds in future</p> <p>(f) Re-negotiate s. 163.387(3)(b) interlocal agreement for reduction or elimination of County increment</p>
4	2001	Sawelle Beach CRA	3,996,800	3,996,800	2027	3,996,800	25 yrs per county resolution		Has a negotiated interlocal agreement re: county tax increment reimbursement	<p>1. BCC can:</p> <p>(a) modify resolution to prohibit any additional borrowing or extension of existing debt until after date county increment is no longer being paid;</p> <p>(b) Revoke CRA delegation</p> <p>(c) Replace CRA board (if non-performance exists) due to financial interests of public</p> <p>(d) modify resolution to reduce expiration date relative to county tax increment;</p> <p>(e) Modify or restrict ability to contract by limiting to use of city tax increment funds in future</p> <p>(f) Re-negotiate s. 163.387(3)(b) interlocal agreement for reduction or elimination of County increment</p>
5	1997	Melbourne Babcock St Unit II (K2, K4, K5)	0	0	N/A	0	25 yrs per county resolution			<p>1. BCC can:</p> <p>(a) modify resolution to prohibit any additional borrowing or extension of existing debt until after date county increment is no longer being paid;</p> <p>(b) Revoke CRA delegation</p> <p>(c) Replace CRA board due to financial interests of public</p> <p>(d) modify delegation resolution to reduce expiration date relative to county tax increment;</p> <p>(e) Modify or restrict ability to contract by limiting to use of city tax increment funds in future</p> <p>(f) Negotiate s. 163.387(3)(b) interlocal agreement for reduction or elimination of County increment</p>
5	2001	Melbourne Babcock St Unit II (K4)	0	0	N/A	0	See #23 above			See #23 above
5	2004	Melbourne Babcock St Unit II (K5)	0	0	N/A	0	See #23 above			See #23 above
5	2000	Melbourne Eau Gallie Area (K3)	0	0	N/A	0	25 yrs per county resolution			<p>1. BCC can:</p> <p>(a) modify resolution to prohibit any additional borrowing or extension of existing debt until after date county increment is no longer being paid;</p> <p>(b) Revoke CRA</p> <p>(c) Replace CRA board due to financial interests of public</p> <p>(d) modify delegation resolution to reduce expiration date relative to county tax increment;</p> <p>(e) Modify or restrict ability to contract by limiting to use of city tax increment funds in future</p> <p>(f) Negotiate s. 163.387(3)(b) interlocal agreement for reduction or elimination of County increment</p>
5	2005	Melbourne Eau Gallie Area (K6)	0	0	N/A	0	See #25 above	Melb. Ord 2015-31. Old Eau Gallie Redevelopment plan approved	Because of the 25 yr expiration in BCC delegating resolution, this CRA will still terminate in 2025 despite plan adoption in 2015	See #25 above
5	2011	West Melbourne Joint CRA					30 yrs	No revocation or substitution provided		Despite the lack of a revocation or substitution provision, the BCC's statutory power to delegate implies the power to modify that delegation authority. The exercise of that authority could be consistent with the options set forth in #25 above.

BOCC CRA Payments

District	Established Year	Age	Agency	Base Year Value	2015 Value	% Increase	2015
1	1982	33	Titusville Downtown Area (A1)	20,495,020	85,312,850	416.26%	\$269,287
2	2007	8	U.S. 1 Corridor Community Redev Area - 2007	10,163,000		0.00%	
3	2012	3	North Brevard Economic Development Zone	547,951,310	1,276,559,170	232.97%	\$3,231,392
4	1981	34	Cocoa Downtown Unit I - D1	26,410,420	125,796,180	476.31%	\$425,529
5	1988	27	Merritt Island Redevelopment (B1)	124,138,790	278,024,430	223.96%	\$652,594
6	1990	25	Merritt Island Redevelopment (B2)	17,082,580	40,407,000	236.54%	\$94,841
7	1997	18	Cocoa Downtown Unit II - D2	24,617,590	32,730,400	132.96%	\$30,259
8	1997	18	Cocoa Downtown Unit III - D3	66,090,850	74,308,230	112.43%	\$28,792
9	2005	10	Merritt Island Redevelopment (B3)	50,549,420	41,291,930	81.69%	\$0
10	2014	1	Merritt Island Redevelopment (Expansion)	86,165,030	88,383,220	102.57%	\$0
11	2011	4	Downtown Cocoa Beach Commun Redevelop Agcy	119,086,930	139,034,830	116.75%	\$45,810
12	2012	3	Cape Canaveral Redevelopment Agency	230,897,350	266,733,600	115.52%	\$70,810
13	1982	33	Melbourne Downtown - Unit I (K1)	23,595,020	101,608,490	430.64%	\$333,447
14	1998	17	Palm Bay Downtown Area (U1)	100,372,760	153,768,150	153.20%	\$213,989
15	2005	10	Melbourne Downtown - (K7)	19,599,330	31,823,810	162.37%	\$39,503
16	2001	14	Rockledge Downtown Area - E1	145,259,660	247,557,160	170.42%	\$412,222
17	2001	14	Satellite Beach Downtown Area (M1)	124,686,190	234,831,182	188.34%	\$424,265
18	2003	12	Palm Shores Area - J1	9,181,870	33,217,050	361.77%	\$84,542
19	1997	18	Melbourne Babcock St - Unit II (K2)	66,708,980	130,583,370	195.75%	\$251,237
20	2000	15	Melbourne Eau Gallie Area - Unit III (K3)	16,958,230	36,721,700	216.54%	\$80,468
21	2001	14	Melbourne Babcock St - Unit II (K4)	7,579,380	7,859,990	103.70%	\$59
22	2004	11	Melbourne Babcock St - Unit II (K5)	311,060	421,860	135.62%	\$490
23	2005	10	Melbourne Eau Gallie Area - (K6)	44,041,890	47,587,790	108.05%	\$2,369
24	2011	4	West Melbourne Joint CRA	219,775,470	243,879,480	110.97%	\$59,133
				895,554,830	3,718,441,872	415.21%	\$6,751,038
Totals							

City of Titusville

"Gateway to Nature and Space"

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



Richard C. Bowman, City Manager
Christine A. Boush, Assistant City Manager
City Administrator/Finance Director
Phone: (321) 275-1600
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September 25, 2015

Sent Via Email: scott.knox@brevardcounty.us

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

Re: Titusville CRA

Dear Scott:

It is my understanding that the District 4 Commissioner has requested your opinion regarding the status of CRA's within the County and the Board of County Commissioner's ability to terminate CRA's.

In an effort to assist you in your analysis, I offer the following information regarding the Titusville CRA and this CRA issue for your consideration:

- Brevard County is not among the class of counties that may reduce their TIF contributions as authorized by Florida Statutes Chapter 125.011(1).
- It would likely be an impairment of contractual obligations by a county to reduce TIF payments to a municipal CRA which revenues have been pledged to the payment of debt.
- The City of Titusville and the Titusville Downtown Community Redevelopment Agency amended its Community Redevelopment Plan (CRP) by Resolution No. 18-2008 on May 27, 2008, pursuant to Chapter 163, Florida Statutes, following appropriate notices to the Board of County Commissioners of the proposed amended CRP.
- Relying upon this amended CRP the CRA has pledged its TIF funds for a project known as the US 1 Corridor Streetscape project; a pledge and commitment of 2.5 million dollars of CRA funds.
- The CRP was most recently amended pursuant to Chapter 163, Florida Statutes, by Ordinance 20-2015 on May 26, 2015.
- Chapter 163.387(2)(a) provides... "If the community redevelopment plan is amended or modified pursuant to s. 163.361(1), each such taxing authority shall make the annual appropriation for a period not to exceed 30 years after the date the governing body amends the plan." Based upon the amended CRP cited above and this statute, the County

Scott Knox, County Attorney
Brevard County Attorney's Office
September 25, 2015
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would be estopped from any rights to reduce the annual appropriation for the City of Titusville CRA.

- The City of Titusville Downtown CRA has since its early inception had outstanding indebtedness for which tax increment financing has been pledged.
- AGO 95-39 (attached) reflects "a taxing authority within a community redevelopment area is required to contribute incremental tax revenues to the redevelopment trust fund as long as there is outstanding indebtedness (not to exceed 30 years for which the revenues have been pledged)."
- The City of Titusville Downtown CRA predated Chapter 84-356 of the Laws of Florida and as such, many of the limitations on CRA's are not applicable to this CRA.

In addition, it should be noted that the County Attorney's Office, through a senior law clerk, on December 19, 2005, expressly addressed this issue and quoted from an Attorney General Opinion 95-39 and said:

"To summarize the AG's response, "as tax authority within the city's redevelopment area required to contribute incremental tax revenues to the community redevelopment trust fund, the county has no discretion to withhold incremental revenue derived from or held in connection with the undertaking and carry out of community redevelopment as long as there is any outstanding indebted (but not to exceed 30 years) for which incremental revenues have been pledged."

Accordingly, based upon the aforementioned, it is the City of Titusville's position that the County is not authorized to dissolve the Titusville CRA and must continue to contribute the payment of TIF revenue to the redevelopment trust fund.

Very truly yours,



Richard C. Broome,
City Attorney

RCB:man
Enclosure

Florida Attorney General Advisory Legal Opinion

Number: AGO 95-39

Date: June 12, 1995

Subject: Contributions/incremental tax revenues to trust fund

Mr. Thomas Gerald Holley
Washington County Attorney
Post Office Box 268
Chipley, Florida 32428

RE: COMMUNITY REDEVELOPMENT--MUNICIPALITIES--COUNTIES--TAXATION--
county may not rescind contributions of incremental tax revenues to
community redevelopment trust fund as long as there is outstanding
indebtedness for which such revenues have been pledged. ss. 163.346,
163.356, 163.358, 163.360, 163.362, and 163.387, F.S.

Dear Mr. Holley:

On behalf of the Washington County Commission, you ask substantially
the following question:

May the county rescind its annual contribution of incremental tax
revenue to the Chipley Redevelopment Agency Trust Fund?

In sum:

As a taxing authority within the city's redevelopment area required
to contribute incremental tax revenues to the community redevelopment
trust fund, the county has no discretion to withhold incremental
revenue derived from or held in connection with the undertaking and
carrying out of community redevelopment as long as there is any
outstanding indebtedness (but not to exceed 30 years) for which
incremental revenues have been pledged.

You state that the City of Chipley has created a community
redevelopment agency (CRA) and the requisite redevelopment trust fund
pursuant to Part III, Chapter 163, Florida Statutes, the "Community
Redevelopment Act of 1969" (act). The Washington County Board of
County Commissioners (board) in support of the CRA adopted an
ordinance pledging the incremental income and revenue derived by the
county from the community redevelopment project area to the CRA until
all loans, advances and indebtedness incurred by the agency have been
paid. [1]

Prior to creating a CRA, the governing body must provide public notice of its proposed action and by registered mail notify each taxing authority that levies ad valorem taxes on taxable real property within the geographic boundaries of the redevelopment area. [2] The governing body approves the redevelopment plan after holding a public hearing and making specific findings. [3]

Section 163.387, Florida Statutes, requires the establishment of a redevelopment trust fund for each community redevelopment agency created. The act states in pertinent part:

"The annual funding of the redevelopment trust fund shall be in an amount not less than that increment in the income, proceeds, revenues, and funds of each taxing authority derived from or held in connection with the undertaking and carrying out of community redevelopment under this part." [4] (e.s.)

By January 1 of each year each taxing authority must appropriate its share of incremental tax revenues "for so long as any indebtedness pledging increment revenues to the payment thereof is outstanding (but not to exceed 30 years). . . ." [5] The act exempts several entities from the incremental contribution requirements and authorizes the local governing body that creates a CRA to exempt special districts that levy ad valorem taxes within the community redevelopment area. [6] Neither of these exemptions, however, would be applicable in the instant situation.

Where the Legislature has designated the manner in which a thing is to be done, it is in effect a prohibition against its being done in any other way. [7] Moreover, when a statute enumerates exceptions to its operation, no others may be implied to be intended. [8] Thus, the act contemplates that incremental revenue contributions will be made by all taxing authorities within a community redevelopment area, except those that have been specifically exempted. The obligation to make such contributions continues so long as there is any outstanding indebtedness for which incremental revenues have been pledged, but may not exceed 30 years.

While there appears to be no discretion on the part of a taxing authority imposing ad valorem taxes within a community redevelopment area as to whether incremental revenue contributions will be made to the redevelopment trust fund, the act does provide for an annual return of unused funds to the taxing authorities in the proportion that each authority's contribution relates to the total amount paid into the trust fund. [9] Thus, in those years in which there is a lack of activity by the CRA and there is no outstanding indebtedness, the county would have its proportionate share of any unused funds returned.

A community redevelopment agency created pursuant to the act is given

all powers necessary or convenient to carry out and effectuate the purposes of the act, except, among others, the power to authorize the issuance of revenue bonds.[10] The power to authorize the issuance of revenue bonds remains vested in the governing body of the county or municipality. As the CRA in this instance was created by the city, the city retains the power to authorize the issuance of revenue bonds and the CRA would not have to rely upon such approval by the county.

Accordingly, unless specifically exempted, a taxing authority within a community redevelopment area is required to contribute incremental tax revenues to the redevelopment trust fund as long as there is outstanding indebtedness (not to exceed 30 years) for which the revenues have been pledged.

Sincerely,

Robert A. Butterworth
Attorney General

RAB/tls

[1] Washington County Ordinance No. 90-5, adopted October 18, 1990.

[2] See, s. 163.346, Fla. Stat. (1993).

[3] See, s. 163.360(4), (5) and (6), Fla. Stat. (1994 Supp.).

[4] Section 163.387(1), Fla. Stat. (1994 Supp.). The subsection goes on to provide that the increment shall be determined annually and shall be the amount equal to 95 percent of the difference between:

"(a) The amount of ad valorem taxes levied each year by each taxing authority, exclusive of any amount from any debt service millage, on taxable real property contained within the geographic boundaries of a community redevelopment area; and

(b) The amount of ad valorem taxes which would have been produced by the rate upon which the tax is levied each year by or for each taxing authority, exclusive of any debt service millage, upon the total of the assessed value of the taxable real property in the community redevelopment area as shown upon the most recent assessment roll used in connection with the taxation of such property by each taxing authority prior to the effective date of the ordinance providing for the funding of the trust fund."

[5] See, s. 163.387(2)(a), Fla. Stat. (1994 Supp.).

[6] See, s. 163.387(2)(c), Fla. Stat. (1994 Supp.), enumerating those

public bodies or taxing authorities created prior to July 1, 1993, that are exempt from the annual appropriation of incremental tax revenues to the CRA. And see, s. 163.387(3), Fla. Stat. (1994 Supp.), authorizing the local governing body that creates a community redevelopment agency to exempt from the incremental tax contribution special districts that levy ad valorem taxes within the community redevelopment area.

[7] See, *Alsop v. Pierce*, 19 So. 2d 799, 805-806 (Fla. 1944) (where the Legislature prescribes the mode, that mode must be observed).

[8] See, *Dobbs v. Sea Isle Hotel*, 56 So. 2d 341, 342 (Fla. 1952) (where a statute sets forth exceptions, no others may be implied).

[9] See, s. 163.387(3), Fla. Stat. (1994 Supp.).

[10] See, s. 163.358(3), Fla. Stat. (1993).