



**AGENDA REPORT
November 7, 2017**

SUBJECT:

Downtown Melbourne CRA and Olde Eau Gallie CRA Festival Expenses

FISCAL IMPACT:

Approximately \$311,000 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 Melbourne and Olde Eau Gallie CRAs have improperly used approximately \$684,500 of City and County TIF funds for festival expenses.

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

The Downtown Melbourne CRA is expected to receive approximately \$402,698 in County TIF revenue in FY 17-18 The Olde Eau Gallie CRA is expected to receive approximately \$93,930.

ATTACHMENTS:

Description

- ▢ [County Attorney Opinion](#)

REVIEWERS:

Department	Reviewer	Action
District 3	Tobia, John	Approved
County Manager	Abbate, Frank	Approved



November 8, 2017

M E M O R A N D U M

TO: Commissioner John Tobia, District 3

RE: Item VI.F.3., Board Discussion of Options and Consideration of Potential Course of Action to Protect the County's Fiscal Interests for Downtown Melbourne Community Redevelopment Agency (CRA) and Olde Eau Gallie CRA Festival Expenses

The Board of County Commissioners, in regular session on November 7, 2017, discussed operation and considered potential courses of action as it relates to protecting the County's fiscal interests for Downtown Melbourne CRA and Olde Eau Gallie CRA Festival Expenses, but took no formal action.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

Tammy Rowe, Deputy Clerk

cc: County Manager



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 : Use of CRA funds for "Four Points" approach "promotion" of CRAs
DATE : September 20, 2017

The City of Melbourne response to your inquiries about CRA funds used for parades and block parties raised some interesting legal issues warranting more detailed factual research and legal analysis. That said, you have asked the following additional questions relating to the Downtown Melbourne CRA and Old Eau Gallie CRA.

1. Given your previous opinion that diverting CRA funds to pay for festivals is not consistent with Florida Statutes, are the grants described below lawful?

Short Answer: No.

2. Specifically, does the fact that the grant is awarded to a 501(c)(3) nonprofit administered by the Florida Division of Natural Resources change your analysis?

Short Answer: No.

Analysis:

As will be explained in more detail under the subheadings that follow, 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. That question, in turn, is determined by whether or not redevelopment plan conforms to the statutory requirements identified in section 163.362, Florida Statutes.

In the context of the questions you have posed regarding the propriety of expending CRA trust funds on activities such as festivals, parades, block parties or other special events, the language in section 163.362(5)(c), Florida Statutes, must also 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**."¹ The work of redevelopment...pursuant to the [redevelopment] plan" will necessarily involve the expenditure of CRA redevelopment trust funds. Therefore, the plan must contain

¹ Section 163.362(5)(c), Florida Statutes

"safeguards" assuring that CRA trust funds are spent on the work of "redevelopment" as that term is defined in section 160.340(9),² Florida Statutes. Since section 163.387, Florida Statutes restricts the expenditure of funds to undertakings described in the community redevelopment plan, unless otherwise authorized by the Legislature,³ such the safeguards required by section 163.362(5)(c), Florida Statutes should restrict expenditures to the following "redevelopment" purposes identified in the definition of that terms 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;
- (e) rehabilitation and revitalization of economically distressed and deteriorating coastal resort and tourist areas; and
- (f) rehabilitation or conservation of community redevelopment areas

That section 163.387 and 163.362(5)(c), Florida Statutes, restrict the expenditure of CRA funds to the foregoing defined "redevelopment" purposes is supported by companion limitations on CRA trust fund expenditures found in section 163.370(3)(c), Florida Statutes which states that CRA tax increment revenues cannot be used to pay "[g]eneral government operating expenses unrelated to the planning and carrying out of a community redevelopment plan."

2) Entertainment activities such as those you have raised in your current and prior questions on the propriety of CRA expenses are not, in the opinion of this office, contemplated in the "*the work of redevelopment*" or the activities described in the statutory definition of "redevelopment"

Uses of CRA tax increment funds for CRA undertakings described in the CRA plan

The uses of revenues deposited in a "redevelopment" trust fund are identified in section 163.387(6)(a), Florida Statutes, which provides as follows:

Fla. Stat. Ann. § 163.387 Redevelopment Trust Fund

² 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.

³ See FN 6, below

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

- (a) Administrative and overhead expenses necessary or incidental to the implementation of a community redevelopment plan adopted by the agency.
- (b) Expenses of redevelopment planning, surveys, and financial analysis, including the reimbursement of the governing body or the community redevelopment agency for such expenses incurred before the redevelopment plan was approved and adopted.
- (c) The acquisition of real property in the redevelopment area.
- (d) The clearance and preparation of any redevelopment area for redevelopment and relocation of site occupants within or outside the community redevelopment area as provided in s. 163.370.
- (e) The repayment of principal and interest or any redemption premium for loans, advances, bonds, bond anticipation notes, and any other form of indebtedness.
- (f) All expenses incidental to or connected with the issuance, sale, redemption, retirement, or purchase of bonds, bond anticipation notes, or other form of indebtedness, including funding of any reserve, redemption, or other fund or account provided for in the ordinance or resolution authorizing such bonds, notes, or other form of indebtedness.
- (g) The development of affordable housing within the community redevelopment area.
- (h) The development of community policing innovations.

Since the expenditure of CRA trust fund revenues is statutorily tied to "undertakings of a community redevelopment agency ***as described in the community redevelopment plan***" it is important to know what the Legislature has specifically prescribed as the elements of a community development plan.

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

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.⁴

In determining the required elements of a redevelopment plan, the Legislature used the mandatory "shall" language, not the permissive "shall include"—implying that plan elements other than those identified by the Legislature could also be adopted. Nor did the language give cities or counties the statutory discretion to adopt other, optional elements of a redevelopment plan, as was done in Chapter 163, Part II, and Florida Statutes. Instead, the Legislature chose to adopt a specific list of elements that are to comprise the redevelopment plan.

Under section 163.362, the contents of the plan can be fairly summarized as relating to physical elements (boundaries of the CRA; amount, size, and designate use of real property; capital

⁴ 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.

improvements; real estate related restrictions, residential housing); debt repayment and funding mechanisms for implementing the plan; and "safeguards that *the work of redevelopment* will be carried out pursuant to the plan" for redevelopment. A notable omission from any statutory list of "redevelopment" activities or "the work of redevelopment" are "special events," "festivals," "parades," or "block parties"—in sharp contrast to "policing innovations," which was explicitly added as a related activity for which CRA trust funds could be expended in 1998.⁵

The Attorney General, citing to various provisions in the community redevelopment statute, has also described community redevelopment primarily in terms of physical undertakings and activities in Fla. Op. Att'y Gen. 203 (1982)

"Section 163.370(1), F.S., provides that counties and municipalities shall have the powers necessary to carry out the purposes and provisions of the act, including the power to 'undertake and carry out community redevelopment projects and related activities within its area of operation, such projects to include: . . . 3. Installation, construction, or reconstruction of streets, utilities, parks, playgrounds, and other improvements necessary for carrying out in the community redevelopment area the community redevelopment objectives . . . in accordance with the community redevelopment plan.' (e.s.) Section 163.370(1)(a) 3., F.S. See also, §163.362(2)(d), F.S., which requires that every community redevelopment plan shall show the property 'intended for use as public parks, recreation areas, streets, public utilities, and public improvements of any nature.' (e.e.) It is my view therefore that 'public improvements of any nature' including utilities, sidewalks and other improvements constitute 'undertakings and activities' by a community redevelopment agency within the definition of a community redevelopment project contained in § 163.340(9), F.S.

Neither the foregoing plan elements specifically listed in s.163.362, the statutory definition of "redevelopment" found in s. 163.340(9), Florida Statutes, nor any other provision in the community redevelopment statutes explicitly, or even implicitly, suggest that entertainment activities, special events, parades, festivals or block parties are encompassed within redevelopment or "*the work of redevelopment*" that "will be carried out pursuant to the plan." Had the Legislature intended to include such activities in a redevelopment plan or authorize expenditures for such activities, the words "entertainment activities," "special events," "promotions," "festivals," "parades" or similar words could have been added to any provision in the statute authorizing a specific plan element, expenditure, or related activity—as the Legislature did when adding "policing innovations" as a redevelopment "related activity" eligible for CRA tax increment funding.

The Four Points Approach

The City suggests that expenditures for special events entertainment activities are authorized under the "Four Point Approach" published as part of the Active Florida Main Street programs sponsored by the Florida Department of State, Division of Historical Preservation⁶ because the Downtown Melbourne CRA

⁵ Chapter 98-314, Laws of Florida adding "policing innovations" to sections 163.340(12)(d);163.358(5); 163.360(3); 163.370(2)(o); 163.387(6)(h), Florida Statutes

⁶ <http://dos.myflorida.com/historical/preservation/main-street-program/the-four-point-approach/>

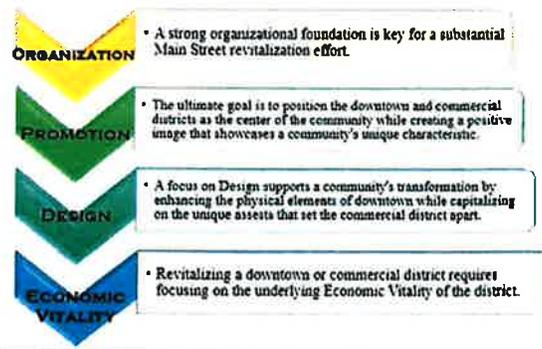
is a certified designated "Florida Main Street Community." The "Four Point Approach" is described on the Department website as follows:

The Four Point Approach



The Refreshed Four Point Approach

The Main Street Approach is most effective in places where community residents have a strong emotional, social, and civic connection and are motivated to get involved and make a difference. This approach works where existing assets—such as older and historic buildings and local independent businesses—can be leveraged. It encourages communities to take steps to enact long term change, while also implementing short term, inexpensive and place-based activities that attract people to the commercial core and create a sense of enthusiasm and momentum about their community. Both small-city downtowns and urban neighborhoods throughout the nation are renewing their community centers with Main Street methodology.



The refreshed Main Street Approach (see an overview of the refresh process [here](#)) is a common-sense, strategy driven framework that guides community based revitalization efforts. Building off three-decades of success, this updated model harnesses the social, economic, physical, and cultural assets that set a place apart, and ultimately leads to tangible outcomes that benefit the entire community

Certified Local Governments

Compliance and Review

Florida Folklife Program

Great Floridians Program

Florida Heritage Trails

Historical Markers

Florida Main Street

- Florida Main Street Communities
- Calendar
- **The Four Point Approach**
- Meetings and Conferences
- Program of the Month
- Reinvestment Statistics
- Florida Main Street Application
- Program Opportunities
- Job Listings

Master Site File

National Register



It should be noted that the second point of the Four Points approach is "PROMOTION" where the articulated goal is as follows: "The ultimate goal is to position the downtown and commercial districts as the center of the community while creating a positive image that showcases a community's unique character."

However, it should also be noted that the Florida Main Street Communities Program is sponsored under the auspices of the State of Florida, Secretary of State, Division of Historical Resources. The duties and responsibilities of that Division of state government set forth under s. 267.031(5), Florida Statutes, include the following:

(g) Cooperate with local governments and organizations and individuals in the development of local historic preservation programs, including the Main Street Program of the National Trust for Historic Preservation, or any similar programs that may be developed by the division.

(i) Take such other actions necessary or appropriate to locate, acquire, protect, preserve, operate, interpret, and promote the location, acquisition, protection, preservation, operation, and interpretation of historic resources to foster an appreciation of Florida history and culture.

Prior to the acquisition, preservation, interpretation, or operation of a historic property by a state agency, the division shall be provided a reasonable opportunity to review and comment on the proposed undertaking and shall determine that there exists historical authenticity and a feasible means of providing for the preservation, interpretation, and operation of such property.

Clearly, subsection (g), above, would authorize the use of state grant funds processed by or through the Division of Historical Resources to "promote the location...of historic resources to foster an appreciation of Florida history and culture." And equally clear is the Division's apparent characterization of "Florida Main Street Communities" as historical resources. It follows that expenditure of Division approved grant funds for "promotion" of a special event or entertainment activities in Melbourne CRAs would be appropriate.

However, none of the duties, responsibilities or rule-making authority granted to the Division of Historical Resources by the Legislature extends to or encompasses Community Redevelopment under Part III of chapter 163, Florida Statutes. Indeed, the operational scope of the community redevelopment statutes is confined to local government and those entities are not authorized to use CRA tax increment trust funds for "promotion" through entertainment activities. "Promotion" of a redeveloped downtown area is not an element included in the statutorily limited, legislatively established elements of a community redevelopment plan, nor is promotion mentioned or authorized as a strategy or recognized redevelopment undertaking or related activity in any provision of Part III of chapter 163, Florida Statutes, interpreting case law, or in any attorney general opinions relating to CRAs.

It is interesting to note that the Downtown Melbourne CRA plan does not contain any statement identifying "promotion" of the downtown area as a goal, policy or strategy of the community redevelopment plan. Moreover, the Downtown Melbourne CRA plan does not reference, incorporate, or adopt either the Florida Main Street Communities program or the "Four Points Approach" as a means of identifying a policy or strategy of "promotion," though the Downtown CRA plan does mention "promotion" and "special events" in various parts of the plan,⁷ perhaps conflating the Community

⁷ Under the heading "Revitalization Strategy," the Downtown CRA redevelopment plan does mention *special events* as a means of increasing visitation to the Downtown area:

Increase Visitation to Downtown/Envlrons

The City of Melbourne and environs currently have significant resources to attract a large number of transients. These resources include:

- Ocean, Indian River, and the areas' harbors/marinas,
- Ecological resources associated with Indian River,
- Historical and cultural resources,
- Arts and crafts,
- ***Special events***, and
- Performing arts.

The Downtown CRA redevelopment plan also mentions "promotion" or the Four Points goal of promoting a "positive image" on the following pages:

Arts and Crafts The environs of the Downtown have become a hub of artistic activity. The area is now home to a large number of artisans. Unfortunately, most work out of their homes which are not located in Downtown. The

Redevelopment statutory elements of a community redevelopment plan and the Four Points approach concept embraced by the Florida Main Street Communities program.

That same conflation is evident in the Olde Eau Gallie Riverfront CRA redevelopment plan which contains a specific strategy calling for the use of grant and loan funds "to promote and market the area:"

Olde Eau Gallie Riverfront CRA Redevelopment Plan

B. Management Plan

Implementation of the Plan will require both human and financial resources. Until the Tax Increment Fund accumulates resources, the City should assume its manpower needs, internal funding sources, and other resources. Initial efforts may include grants and loans, *in order to promote and market the area*, reviewing development plans, leveraging investments, assisting small businesses, providing for special events, providing day to day management and review for the implementation of this important program. Only with a dedicated staff and revenue stream can the City make this work to its highest capability. Left to "plug-along" on its own, the area will languish further. P.67

However, promotion is not one of the limited statutory elements to be included in a community redevelopment plan or a redevelopment "related activity." Consequently, section 163.387, Florida Statutes does not authorize the expenditure or grant of CRA trust funds for purposes of "promotion"—although the expenditure of state grant historical preservation grant funds; city grants of general fund tax revenue; or city revenues from other sources, such as tourist development taxes, may be authorized for such purposes.⁸

The City may have assumed that the broad statutory language in sections 163.358 and 163.370(2)—"[e]ach county and municipality has all powers necessary or convenient to carry

area, however, does have an active **Arts Council** (Brevard County Arts Council) housed in Downtown Melbourne which promotes local artists and is **active in promoting Downtown events**, the most notable being the **Melbourne Arts Festival**, one of the largest in the State of Florida. P.22

(Ch. 3: Revitalization Program, Redevelopment Concept)

Private Contributions- Voluntary contributions by private companies, foundations and individuals are a potential source of income to the Redevelopment Agency. Although such contributions may account for only a small portion of redevelopment costs, they do provide opportunities for community participation with positive promotional benefits. P.40

"[I]mage management is critical to change public perceptions of Downtown. Local print and electronic media play a central role in creating and reinforcing Downtown's image as "the place to be" Being perceived as the regional center for culture and arts and entertainment helps forge a **positive, popular image**. P.9

⁸ The Attorney General has opined that "promotion," as it relates to the statute authorizing the use of tourist development tax for "promotion of tourism" *does include* special events such a free outdoor concert open to the public, the purpose of which to provide entertainment for community residents and visitors in order to spotlight the community as a desirable place to live or visit. Florida Op. Atty. Gen. 92-16 (March 6, 1992).

out and effectuate the purposes and provisions of this part"—gives cities the leeway to expend funds for special events such as those you have inquired about. However, that provision limits "necessary or convenient" to carrying out the "purposes and provisions" of community redevelopment statutes containing three provisions restricting the expenditure of CRA trust funds to "redevelopment" and "related activities," as defined in the statute—which includes policing innovations, but not special events, parades, festivals or block parties.

The fact that CRA trust funds are deemed to be a grant given to a not for profit entity sponsoring a special event does not change the foregoing analysis.

Board of County Commissioners meeting 11-7-2017

Verbatim -Item Vi.F.3., Board Discussion of Options and Consideration of Potential Courses of Action to Protect the County's Fiscal Interests, Re: Downtown Melbourne CRA and Olde Eau Gallie CRA Festival Expenses

Tobia - Thank you Mr. Chair. Through public record request I sought information on the spending practices of all CRAs in the County. After reviewing this information I requested the County Attorney's Office to review and issue an opinion based on the Downtown Melbourne CRA and the Olde Eau Gallie River CRA. The County attorney issued an opinion that was pretty clear, that both the Downtown Melbourne CRA and the Olde Eau Gallie CRA was not acting in the proper manner and in addition to that the same Attorney General's opinion that Titusville relied on, goes into direct contradiction of to what both the Olde Eau Gallie CRA and the Downtown Melbourne CRA. So for those facts and the opinion offered not only by the Attorney General, but that of our County Attorney, I would request that we provide or we conduct a performance audit on both the Downtown Melbourne CRA and the Olde Eau Gallie Rivers CRA. The question has been brought up as to the cost associated with that, which was a very good question and one I did not have an answer to, and thank you for our County Manager getting us one estimate back from RSM, who outlined on a performance audit that included compliance with all appropriate policies, rules, and laws that it would fall somewhere in the range of \$15,000 and \$50,000. So given the opinion of the County Attorney and the opinion of the Attorney General of the State of Florida, I would like to make a motion that we conduct a compliance audit on both the Downtown Melbourne again CRA and the Olde Eau Gallie River CRA. I would be more than willing to go into the opinion that states that these funds were used in a manner that was not consistent with Statute if need be.

Smith - Thank you Mr. Tobia. Commissioner Isnardi.

Isnardi - I was just wondering if there was any, rather than because that expenditure seemed rather high to do the audit, I was wondering if there was any remedy of, if we thought about the option of, I mean if the funds were used illegally according to our Attorney, then perhaps we need to ask them for the TIF funds back. I mean if that's the opinion of our County Attorney, maybe we just need to ask for it, you know, or we withhold the next years TIF. Has that been explored or is that something this Commission would consider, or is that, is that unreasonable? I know that we...

Smith - Mr. Knox.

Isnardi - Didn't we do something similar with Satellite Beach for a much larger amount of money?

Knox - Yeah we found that with Satellite Beach and also the Town of Palm Shores and they both responded with, well with Satellite Beach responded with an amicable agreement agreeing to use the, the a tax increment to pay us back.

Isnardi - Well I don't, I wasn't here with that whole Satellite Beach debacle, I would never would've agreed to that but I'm saying for as far as what they've expended the funds on, I mean, whether they're going to get another, it's not an exorbitant amount of money perhaps, I mean...

Knox - You know Palm Shores also agreed to pay us back in full, so I think, they did,

Isnardi - Right.

Knox - It has worked in the past, to ask.

Isnardi - Would that be something, Commissioner Tobia, that you would be willing to do in lieu of having to go through the expense of a, of an audit, or would you want the audit just to see what else you can find?

Tobia - Thank you. I, this was limited to my office, that did this, did this research, and while I have a very capable staff, one made up of an attorney, as well as a someone who is wonderful in interior design, I do not have any performance or compliance auditors so if this is what my office was able to find, I would like to know if there is anything else out there, so I believe in good faith that Melbourne and Olde Eau Gallie would remit those funds immediately, but on top of that, even if they were willing to do that, I certainly would like to get somebody that knows what they are doing so they are able to go in there and figure out if there's anything that is, else out of compliance. We have an opinion, again from the Attorney General as well as from our own Attorney that says we probably should do a compliance or performance audit, so I think that we should take that council and proceed with that on both of these. So while that's a good start I certainly would, and I'm sure Downtown Melbourne as well as Olde Eau Gallie has nothing to hide, so you know, this is a County expense, again, remember that a Palm Shores is no longer collecting payments here from the County so we have extra money that a we have the ability to use to find out that all these CRAs are acting in compliance, hopefully with Statute. And unfortunately these two that we have cause to believe that they are not.

Isnardi - And I, and I wouldn't assume that there's malicious intentions there, but I don't, I think an audit is a good idea because even if it brings to, brings to light anything that perhaps, I don't know, that they're doing wrong, that would fix that problem too, so I'm okay with an audit.

Smith - So we have a, we have a motion and a second. Any other discussion? I would just like to weigh in. I, I'm kind of torn with this, I don't know enough facts to feel comfortable voting for it. I reserve the right to investigate it further and if I change my mind and say that this, there's something here that needs to be investigated I'd be happy to bring it up again, but right now I'm not in favor of it. So we have a motion on the floor, any other comments? All those in favor. Commissioner Tobia.

Tobia - Thank you, Mr. Chair. I just want to find out what that level of comfort is. We have an Attorney General of the State of Florida saying what they did was inconsistent with Statute. We have the County Attorney who's saying it is inconsistent, short of Jesus Christ coming down here and telling us that this is inconsistent, what is it that you're looking for to find out that will get you across that hump that probably we need to do our job and make sure that the County funds that are being expended are being expended consistent with State Statute? I'm just looking what, what your level of comfort and I appreciate you know your ability to do your homework. This was put on the Agenda almost two weeks ago. The opinion was put on the Agenda almost two weeks ago. So I saw that you had the opportunity to go out and campaign, while you were in Satellite Beach. I saw that on your Facebook. So is it, was it a timing issue or are you waiting for divine providence?

Smith - I find it odd that you invoke the name of Jesus Christ since you don't believe in him anyway, that's number one. Number two, I find it odd also that you refer to Attorney Knox when you want to. When he agrees with you, then you use him as your foil and when you don't agree

with him you dismiss him. So with that, I'm not going to respond to your questions. We have a, your motion on the floor and we have a second, all those in favor of your motion say aye.

Isnardi and Tobia - Aye

Smith - Opposed?

Smith, Barfield, Pritchett - Nay.

Smith - It passes, fails 3:2, the nay votes being Commissioner Barfield, Pritchett, and Smith.