Community Redevelopment Agency, referendum

Number: INFORMAL

Date: May 24, 2012

Mr. James P. Beadle
Spira, Beadle & McGarrell, P.A.
5205 Babcock Street, Northeast
Palm Bay, Florida 32905

Dear Mr. Beadle:

A member of the City Council for the City of Satellite Beach has directed you, and a majority of the members of the city council have concurred, to request this office's comment on the authority of the city to adopt an ordinance requiring a referendum before the city's community redevelopment agency incurs any debt other than that relating to revenue bonds. While this office cannot comment on the duties and responsibilities of a collegial body such as the city commission at the request of a single member,[1] the following informal comments may be of assistance to you in advising this city council member.

According to your letter, the City of Satellite Beach questions the propriety of adopting an ordinance requiring a referendum prior to the city's community redevelopment agency incurring debt over an amount established by that ordinance. As discussed more fully herein, you have suggested that the statutory provision stating that revenue bonds issued pursuant to section 163.385, Florida Statutes, are "not subject to the provisions of any other law or charter" would suggest that other forms of agency indebtedness may be subject to limitation or regulation by the municipality through local legislation.

Part III, Chapter 163, Florida Statutes, the "Community Redevelopment Act of 1969," grants to the governing body of a municipality the option to create a community redevelopment agency upon a finding of necessity as prescribed in section 163.355, Florida Statutes, and a finding of need that such an agency operate within the municipality. It also prescribes with particularity the structural organization and powers of such agencies and the procedures to be used by a community redevelopment agency in funding projects and incurring debt for projects undertaken pursuant to Part III, Chapter 163, Florida Statutes. Among the powers which are retained by a municipality which has created a community redevelopment agency are the power to "grant final approval to community redevelopment plans and modifications thereof" and "[t]he power to authorize the issuance of revenue bonds[.]" The community redevelopment plan must 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."

After approval of a community redevelopment plan, a redevelopment trust fund must be

established for each community redevelopment agency created under section 163.356, Florida Statutes. Section 163.387(1)(a), Florida Statutes, provides that:

"Funds allocated to and deposited into this fund shall be used by the agency to finance or refinance any community redevelopment it undertakes pursuant to the approved community redevelopment plan. No community redevelopment agency may receive or spend any increment revenues pursuant to this section unless and until the governing body has, by ordinance, created the trust fund and provided for the funding of the redevelopment trust fund until the time certain set forth in the community redevelopment plan as required by s. 163.362(10). Such ordinance may be adopted only after the governing body has approved a community redevelopment plan. 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."

Annual funding of the redevelopment trust fund is required by statute to be "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" pursuant to Part III, Chapter 163, Florida Statutes. The amount of the increment is determined annually pursuant to a formula prescribed by statute. Thus, financing or refinancing community redevelopment pursuant to the approved community redevelopment plan is accomplished through the use of the redevelopment trust fund and the issuance of revenue bonds.

The City of Satellite Beach has created a community redevelopment agency, adopted a community redevelopment plan for the community redevelopment area, and created a trust fund pursuant to section 163.387, Florida Statutes, to fund the operation of the agency and the projects provided for in the community redevelopment plan. The city council has empowered the Community Redevelopment Agency governing board "to conduct any activities pursuant to Part III, Chapter 163, Florida Statutes, . . . which a Community Redevelopment Agency would otherwise be empowered to exercise or conduct . . . within the community redevelopment area."

Section 163.385(1)(a), Florida Statutes, provides that a community redevelopment agency, authorized to act pursuant to ordinance of the municipality, "has power in its corporate capacity, in its discretion, to issue redevelopment revenue bonds from time to time to finance the undertaking of any community redevelopment under this part[.]" The statute establishes financial timelines for repayment of redevelopment revenue bonds or other obligations issued to finance the undertaking of any community redevelopment under Part III, Chapter 163, Florida Statutes.

Your inquiry is based on the following language contained in section 163.385(2), Florida Statutes:

"Bonds issued under this section do not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction, and *are not subject to the provisions of any other law or charter relating to the authorization, issuance, or sale of bonds.* Bonds issued under the provisions of this part are declared to be issued for an essential public and governmental purpose and, together with interest thereon and income therefrom, are exempted

from all taxes, except those taxes imposed by chapter 220 on interest, income, or profits on debt obligations owned by corporations." (e.s.)

You have suggested that, in light of the other revenue sources described in Part III, Chapter 163, Florida Statutes, the statutory limitation stating that revenue bonds issued pursuant to section 163.385, Florida Statutes, are "not subject to the provisions of any other law or charter," may mean that other forms of agency indebtedness, such as non-revenue bonds, may be subject to limitation or regulation by the municipality. However, this office has concluded in a number of previous opinions that Part III, Chapter 163, Florida Statutes, the Community Redevelopment Act, was intended to limit the powers of a municipality except as to those expressly granted or necessarily implied therein.

Part III, Chapter 163, Florida Statutes, contains references to revenue sources other than revenue bonds which may be available to the agency. Section 163.370(2)(e)4., refers to mortgages. Section 163.370(2)(g), Florida Statutes, authorizes a community redevelopment agency "[t]o borrow money and to apply for and accept advances, loans, grants, contributions, and any other form of financial assistance from the Federal Government or the state, county, or other public body or from any sources, public or private, for the purposes of this part[.]" Section 163.385(6), Florida Statutes, includes a reference to "bonds, notes, or other forms of indebtedness to which is pledged increment revenues[.]" Bonds and notes are referenced in section 163.387(4), Florida Statutes. The community redevelopment agency is empowered, as an administrative entity, to exercise any specific or implied powers it possesses to accomplish these duties and responsibilities. However, despite mention of other potential revenue sources, section 163.387, Florida Statutes, provides specifically that funds allocated to and deposited into the redevelopment trust fund are to be used by the agency to finance or refinance any community redevelopment it undertakes pursuant to the approved community redevelopment plan.

Section 163.387, Florida Statutes, relates to expenditures from the redevelopment trust fund and provides:

"Funds allocated to and deposited into this fund shall be used by the agency to finance or refinance any community redevelopment it undertakes pursuant to the approved community redevelopment plan. No community redevelopment agency may receive or spend any increment revenues pursuant to this section unless and until the governing body has, by ordinance, created the trust fund and provided for the funding of the redevelopment trust fund until the time certain set forth in the community redevelopment plan as required by s. 163.362(10). Such ordinance may be adopted only after the governing body has approved a community redevelopment plan. 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."

The statutory scheme contemplates consideration of redevelopment projects and their costs during the process of approval of the redevelopment plan and while considering the financing of the trust fund. When a statute expressly provides the manner in which a thing is to be done, it impliedly prohibits the thing from being done in a different manner.[2] While the law does not in

express terms prohibit the accomplishment of a thing in a different manner, the fact that the law has prescribed the manner in which the subject matter shall be done is itself a prohibition against a different manner of doing it.

I find no provision in Part III, Chapter 163, Florida Statutes, which authorizes or otherwise empowers the city commission to impose additional limitations on the community redevelopment agency's authority to incur debt such as the one you have suggested, *i.e.*, a requirement that referendum approval be secured prior to an agency's incurring certain debt. The City of Satellite Beach adopted the resolution provided for in section 163.355, Florida Statutes, and proceeded to exercise the authority conferred by Part III of Chapter 163, Florida Statutes. The city's redevelopment plan and the redevelopment projects included within that plan were not adopted pursuant to Chapter 166, Florida Statutes.

While municipalities possess home rule powers, such powers are not unlimited and it appears that the Legislature has created a scheme that is so pervasive that local regulation is prohibited. Part III, Chapter 163, Florida Statutes, establishes a framework for establishing a trust fund, the repayment of bonds, notes and other obligations incurred for purposes of community redevelopment, the funds to be used for repayment, and any refunding or renewal of these obligations. The act limits a community redevelopment agency's ability to finance or refinance any community redevelopment it undertakes to the terms of the approved community redevelopment plan.

Since the Legislature has prescribed with particularity the procedures to be used by a Community Redevelopment Agency in funding and incurring debt for projects undertaken pursuant to Part III, Chapter 163, Florida Statutes, and has not delegated to or authorized the governing body of the municipality the power to impose additional limitations on undertaking such projects, it does not appear that the City Commission of the City of Satellite Beach may require, by ordinance, that debt incurred by the community redevelopment agency over a specific amount be approved by referendum.[3]

However, while it has historically been the position of this office that the legislative scheme represented by Part III, Chapter 163, Florida Statutes, is pervasive and does not lend itself to local regulation, the Second District Court of Appeal in a recent case held that certain local regulations could co-exist with Part III, Chapter 163, Florida Statutes. In *Citizens for Responsible Growth v. City of St. Pete Beach*,[4] a 2006 case, the district court considered a proposed city charter amendment requiring that certain land use and redevelopment measures be submitted to a general referendum before adoption and held that "the citizens of the City of St. Pete Beach are entitled to express their views on how their City Commission should handle land use problems, despite a pervasive statutory framework implementing a statewide policy on growth and redevelopment."[5]

In that case, a citizens group proposed amendments to the city charter seeking to circumscribe the city commission's authority to amend the city's community development plans as defined in Chapter 163, Florida Statutes, by requiring voter approval of such changes. With regard to community redevelopment, the proposed amendment to the city charter required that a community redevelopment plan could not be adopted by the city commission until such proposed community redevelopment plan was submitted to a referendum pursuant to section 166.031,

Florida Statutes.[6] The city filed for declaratory relief claiming that the "all-encompassing legislative directives contained in chapter 163 preempted the proposed amendments."[7] However, the Second District Court of Appeal disagreed with the trial court and held that the proposed charter amendments merely added another step in an already detailed process and could co-exist with the statutory framework regulating the adoption and amendment of community redevelopment codes.

Further, the court held that the proposed amendments were "inferentially permitted" by statutory provisions which authorized the use of the initiative or referendum process for certain development orders. As the court explained:

"Clearly, the Legislature has proscribed use of the initiative and referendum process in matters affecting five or fewer parcels of land [citing s.163.3167(12), Fla. Stat.]. And just as clearly, the Legislature inferentially permitted use of the initiative and referendum process in development orders or comprehensive plans or amendments affecting six or more parcels. This conclusion logically derives from a general principle of statutory construction, *expressio unius est exclusio alterius*, which means that 'express mention of one thing is the exclusion of another.' *Inman v. State*, 916 So.2d 59, 61 (Fla. 2d DCA 2005). Thus, because the law expressly describes the particular situation to which the prohibition against referenda applies (e.g., amendments affecting five or few parcels), the inference must be drawn that those situations not included by specific reference (e.g., amendments affecting six or more parcels) were intentionally omitted or excluded. *See, e.g., Gay v. Singletary*, 700 So.2d 1220 (Fla.1997)."

The court held that the placement of the proposed amendments on the ballot did not conflict with Chapter 163, Florida Statutes, and ordered that all four proposed amendments be placed on the ballot.

Thus, while this office has historically taken the position that the statutory scheme set forth in Part III, Chapter 163, Florida Statutes, is pervasive and would not lend itself to local regulation, *Citizens for Responsible Growth* would suggest that such local legislative action may be authorized to the extent that any such proposed ordinance or charter "complements" rather than conflicts with the statutory framework.[8]

This informal advisory opinion was prepared by the Department of Legal Affairs in an effort to assist you in advising your client and expresses the conclusions of the writer and should not be considered a formal Florida Attorney General Opinion.

Sincerely,

Gerry Hammond
Senior Assistant Attorney General

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[1] *See* s. 16.01(3), Fla. Stat., and Statement Concerning Attorney General Opinions (it is the policy of the Florida Attorney General to issue opinions on matters concerning the duties and

responsibilities of collegial bodies only at the request of a majority of the members of the collegial body).

[2] *See Alsop v. Pierce*, 19 So. 2d 799, 805 (Fla. 1944); *Dobbs v. Sea Isle Hotel*, 56 So. 2d 341, 342 (Fla. 1952); *Thayer v. State*, 335 So. 2d 815, 817 (Fla. 1976).

[3] *Cf.* Op. Att'y Gen. Fla. 84-55 (1984) concluding that Ch. 162, Fla. Stat., the "Local Government Code Enforcement Boards Act," does not delegate any power to local governments to enact any legislation to alter, add to, modify, or deviate from the terms of Ch. 162, Fla. Stat.

[4] 940 So. 2d 1144 (Fla. 2d DCA 2006).

[5] *Citizens for Responsible Growth, supra* n.4 at 1150.

[6] While specifically not addressing the wisdom of the proposed amendments, the court noted that the petition relating to redevelopment plans appeared "to provide merely for an advisory opinion by the electorate[.]"

[7] *Citizens for Responsible Growth, supra* n.4 at 1146.

[8] *Cf. Telli v. Broward County*, -- So. 3d ---, 2012 WL 1623041, No. SC11-1737 (Fla., May 10, 2012) (holding that interpreting Florida's Constitution to find implied restrictions on powers otherwise authorized is unsound in principle and that express restrictions must be found, not implied).