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## MEMORANDUM

**TO:** Jose Smith, Esq., City Attorney  
**FROM:** Steven W. Zelkowitz, Esq.  
**DATE:** December 10, 2015  
**SUBJECT:** North Miami Beach Community Redevelopment Agency/Incentives for Mixed Use Projects

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**A. BACKGROUND FACTS.**

The North Miami Beach Community Redevelopment Agency (the "CRA")<sup>1</sup> is a dependent special district and was established under Chapter 163, Part III, of the Florida Statutes.<sup>2</sup> The CRA was created by City of North Miami Beach ("City") Resolution R2004-86 adopted on December 21, 2004 and Miami-Dade County ("County") Resolution R-1345-04 adopted on November 30, 2004. The County, City and CRA entered into that certain Interlocal Cooperation Agreement dated October 11, 2005 (the "Interlocal Agreement") in order to further delineate the responsibilities with respect to the redevelopment of the CRA Redevelopment Area. The CRA is funded from tax increment revenues ("TIF Revenues"). The purpose of this Memorandum is to provide a legal analysis and conclusions regarding the use of TIF Revenues for incentives for mixed use projects including, in particular, the Tax Increment Recapture Incentive Program.

**B. QUESTION PRESENTED.**

May CRA TIF Revenues be expended for mixed use projects including, in particular, the Tax Increment Recapture Incentive Program?

**C. SUMMARY ANSWER TO QUESTION PRESENTED.**

As discussed below, the definition of a "community redevelopment project" is a broad one, encompassing a wide variety of undertakings and activities in a community redevelopment area directed toward the elimination and prevention of the development or spread of slums and blight. There is very little case law or authority providing guidance as to what types of projects may or may not qualify as a

<sup>1</sup> As used in the Memorandum, the term CRA or CRAs shall also refer to a community redevelopment agency or agencies in general as the context shall dictate.

<sup>2</sup> All defined terms not defined herein shall have the meanings ascribed to them in the Part III of Chapter 163, Florida Statutes, and the various agreements and documents referenced in the Memorandum, as applicable.

Jose Smith, Esq., City Attorney  
December 10, 2015  
Page 2

community redevelopment project. CRAs throughout the State have developed and incentivized various mixed use projects using TIF Revenues. In this regard, the public purposes for which TIF Revenues may be spent are varied. Such include, of course, the overriding public purpose of preventing or eliminating slum and blight. Additionally, the statutory public purposes include (a) the revitalization and redevelopment of coastal and tourist areas that will vastly improve the economic and social conditions of the community, and (b) the preservation or enhancement of the tax base from which a taxing authority realizes tax revenues. The powers granted to the CRA pursuant to Florida Statutes, Section 163.370 and the Interlocal Agreement are broad and do not contain any prohibition on using TIF Revenues for mixed use projects. Based upon the foregoing, the use of TIF Revenues for mixed use projects will serve one or more of the statutory public purposes for which public funds may be spent. Additionally, consistent with the requirements of Florida Statutes, Sections 163.362, the CRA Redevelopment Plan expressly empowers the CRA to financially subsidize mixed use private development projects pursuant adopted guidelines. In this regard, the CRA adopted guidelines for the Tax Increment Recapture Incentive Program including eligibility and incentive. Accordingly, CRA TIF Revenues may be expended for expended for mixed use projects including, in particular, the Tax Increment Recapture Incentive Program.

#### D. LEGAL ANALYSIS

##### 1. Community Redevelopment.

The creation of a CRA means the governing body of a county or municipality has made a legislative determination that the conditions in certain areas are slum or blighted and in need of redevelopment, rehabilitation, or a combination thereof. §163.355, Fla. Stat. (2015). To achieve redevelopment, rehabilitation, or a combination thereof, the Community Redevelopment Act of 1969 (the "Act") authorizes redevelopment projects and related activities that expend public funds. Florida Statutes, subsection 163.335 declares the following:

(1) It is hereby found and declared that there exist in counties and municipalities of the state slum and blighted areas which constitute a serious and growing menace, injurious to the public health, safety, morals, and welfare of the residents of the state; . . . and that *the prevention and elimination of slums and blight is a matter of state policy and state concern* in order that the state and its counties and municipalities shall not continue to be endangered by areas which are focal centers of disease, promote juvenile delinquency, and consume an excessive proportion of its revenues because of the extra services required for police, fire, accident, hospitalization, and other forms of public protection, services, and facilities. (emphasis added).

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(3) It is further found and declared that the powers conferred by this part are for public uses and purposes for which *public money may be expended* and police power exercised, and *the necessity in the public interest for the*

Jose Smith, Esq., City Attorney  
December 10, 2015  
Page 3

*provisions herein enacted is declared as a matter of legislative determination.* (emphasis added).

§163.335(1) and (3), Fla. Stat. (2007); *Striton Properties, Inc. v. Jacksonville Beach*, 533 So. 2d 1174 (Fla. 1 DCA 1989); *State v. Miami Beach Redevelopment Agency*, 392 So. 2d 875 (1980).<sup>3</sup>

Florida Statutes, Section 163.340(9) provides that “[C]ommunity 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.

Based upon the foregoing, the definition of a “community redevelopment project” is a broad one, encompassing a wide variety of undertakings and activities in a community redevelopment area directed toward the elimination and prevention of the development or spread of slums and blight. There is very little case law or authority providing guidance as to what types of projects may or may not qualify as a community redevelopment project. In *Panama City Beach CRA v. Fla.*, the court interpreted the statute in flexible terms without strict limitations and supported the contention that legislative determinations (i.e., these projects serve a public purpose) should be given deference in Florida law. 831 So. 2d 662 (Fla. 2002) (CRA developing a fairgrounds facility and an athletic field).

## **2. Community Redevelopment Plan.**

Similarly, Florida Statutes, Section 163.360 also provides that community redevelopment in a community redevelopment area shall not be initiated unless the governing body has determined such area to be a slum area, a blighted area, or an area appropriate for community redevelopment and adopted a community redevelopment plan. Florida Statutes, Sections 163.360 and 163.362 also address the general requirements with respect to the community redevelopment plan and based upon a review of the statutes, the community redevelopment plan needs to contain a myriad of information with respect to the redevelopment and rehabilitation of the redevelopment area.

<sup>3</sup> The Florida Supreme Court receded from its decision in *State v. Miami Beach Redevelopment Agency* on unrelated grounds.

### 3. CRA Powers.

Counties, municipalities and CRAs are given all powers necessary or convenient to carry out and effectuate the purposes and provisions of the Act. §163.370(2), Fla. Stat. (2007); Op. Att’y Gen. Fla. 1995-39 (1995); §163.358, Fla. Stat. (2007). The general statutory grant of powers along with the enumerated powers set forth in Florida Statutes, Section 163.370, provide CRAs with broad powers to carry out community redevelopment projects. As there is no case law or authority directly on point with respect the scope of such CRA powers, a review of case law relative to municipal powers was performed. In this regard, according to case law, a municipality may exercise governmental power for a municipal purpose except when expressly prohibited by law. *City of Boca Raton, Fla. v. Fla.*, 595 So. 2d 25 (Fla. 1992). Applying this holding by analogy, this generally means a CRA may act when the powers are necessary and convenient to carry out the purposes of the Act and authorize a public body to act unless the act is expressly prohibited by law.

Pursuant to Florida Statutes, Section 163.370(3), there are only three redevelopment projects which may not be paid or financed by TIF Revenues as follows:

- (a) Construction or expansion of administrative buildings for public bodies or police and fire buildings, unless each taxing authority agrees to such method of financing for the construction or expansion, or unless the construction or expansion is contemplated as part of a community policing innovation.
- (b) Installation, construction, reconstruction, repair, or alteration of any publicly owned capital improvements or projects if such projects or improvements were scheduled to be installed, constructed, reconstructed, repaired, or altered within 3 years of the approval of the community redevelopment plan by the governing body pursuant to a previously approved public capital improvement or project schedule or plan of the governing body which approved the community redevelopment plan unless and until such projects or improvements have been removed from such schedule or plan of the governing body and 3 years have elapsed since such removal or such projects or improvements were identified in such schedule or plan to be funded, in whole or in part, with funds on deposit within the community redevelopment trust fund.
- (c) General government operating expenses unrelated to the planning and carrying out of a community redevelopment plan.

### 4. CRA 2010-2011 Amended Redevelopment Plan.

In accordance with Part III of Chapter 163, Florida Statutes, the CRA prepared and adopted the CRA 2010-2011 Amended Redevelopment Plan (the “CRA Redevelopment Plan”), which updated and revised the CRA Redevelopment Plan adopted in 2004. The purpose of the CRA Redevelopment Plan is

Jose Smith, Esq., City Attorney  
December 10, 2015  
Page 5

to provide and formulate an effective plan for guiding redevelopment in the CRA redevelopment area. With respect to the incentives for mixed use projects, Section 8.A.1, provides in pertinent part:

“The Agency will be empowered to financially subsidize commercial, residential and mixed-use private development projects, including but not limited to direct grants and the sale of real estate owned by the Agency at a discounted price. The Agency will prepare and adopt guidelines for determining eligibility and the amount of the incentive payment or discount before such initiatives are implemented.” (emphasis added)

In furtherance of the foregoing, the CRA Board adopted guidelines for the Tax Increment Recapture Incentive Program (the “Program”). The purpose of the Program is to use TIF Revenues to encourage economic development in the Community Redevelopment Area. The Program provides a tax increment recapture to the owner of a qualifying project. A qualifying project is one that is anticipated to create at least \$2,000,000 in net new taxable value in the first full year following completion. There is a Base Tax Increment Recapture of 50% of the Net New Tax Increment Revenue generated by the project. The CRA Board may award additional Tax Increment Recapture of up to 25% for projects that meet public policy goals. The Program does not define project as any particular type (e.g., commercial, residential or mixed use) and does not prohibit any particular type of project.

## **E. DISCUSSION.**

### **1. Expenditure of TIF Revenues for Mixed Use Projects.**

Florida Statutes tend to contemplate redevelopment and related activities within designated boundaries. This is clear in the definition of “community redevelopment” or “redevelopment” which means, among other things, 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. However, the form that community redevelopment project may take is not specifically defined by statute. Accordingly, such projects may encompass a wide variety of undertakings and activities in a community redevelopment area directed toward the elimination and prevention of the development or spread of slums and blight and the statutory public purposes set forth the Act. Finally, in order to use public funds for redevelopment projects and related activities, the powers exercised under the Act must (i) serve a public purpose and (ii) be in accordance with an approved community redevelopment plan.

The public purposes for which public funds may be spent are varied. Such include, of course, the overriding public purpose of preventing or eliminating slum and blight. Additionally, the statutory public purposes include (a) the revitalization and redevelopment of coastal and tourist areas that will vastly improve the economic and social conditions of the community, and (b) the preservation or enhancement of the tax base from which a taxing authority realizes tax revenues. Again, the only statutory prohibition relates to the use of eminent domain for which the Legislature has found and declared that the prevention or elimination of a slum area or blighted area as defined in this part and the preservation or enhancement of the tax base are not public uses or purposes for which private property may be taken by eminent domain.

Jose Smith, Esq., City Attorney  
December 10, 2015  
Page 6

A survey of other CRAs and the Florida Redevelopment Association indicated the following mixed use projects have been or are currently being developed:

**a. Boca Raton CRA:** The development of Mizner Park was accomplished through a public/private partnership including the City of Boca Raton, the CRA, a developer of the mixed-use facilities, and cultural users.

**b. Pensacola CRA.** The City recently embarked on a project that included a breakwater, a 92-slip marina, the 7,200 square foot Harbormaster Building housing a restaurant and professional offices, and a 21,000 square foot Class-A office building known as the Ice House. The second phase of the development, the construction of two buildings totaling 72,000 square feet of mixed-use space, was recently completed. For sale in the building are 12 high-end residences, all with dramatic views of Pensacola Bay, and for lease are 36,000 square feet of retail/office space. The mixed-use condominium is a model that offers interesting possibilities to creative developers. As a part of the public/private partnership, the city invested \$1.2 million along the pier to construct a waterfront promenade, landscape pedestrian plazas, and install new railing and historically styled lighting. Phase three of Palafox Pier is in the planning stages, awaiting a decision on the future of the Bayfront Auditorium.

**c. West Palm Beach CRA:** The development of City Place was accomplished through a public/private partnership and includes townhomes and rental units. The Rosemary Streetscape Project and trolley are currently underway.

**d. Boynton Beach CRA:** The Boynton Beach CRA oversaw the completion of a 1.4 acre boulevard extension and waterfront promenade just north of the expanding downtown and marina district. Strategically planned by the CRA, the 3-year, \$13 million project helps preserve the City's heritage and charm and is serving as a catalyst for new investment and development in the surrounding area such as Marina Village, and Town Center at Waterpoint Park and Ocean Tower.

**e. Coral Springs CRA:** Anchoring the first phase of Downtown Coral Springs is One Charter Place, a 95,000 square-foot, four-story, Class A office building surrounded by a free-standing bank, parking garage and retail structures.

A review of the CRA Redevelopment Plan indicates that it expressly empowers the CRA to financially subsidize mixed use private development projects pursuant adopted guidelines. In this regard, the CRA adopted guidelines for the Tax Increment Recapture Incentive Program including eligibility and incentive. Accordingly, CRA TIF Revenues may be expended for expended for mixed use projects including, in particular, the Tax Increment Recapture Incentive Program.