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STATE OF FLORIDA AUDITOR GENERAL

Operational Audit

**DELRAY BEACH
COMMUNITY REDEVELOPMENT AGENCY**

Follow-Up on Report No. 2014-013



Sherrill F. Norman, CPA
Auditor General

Board Members and Executive Director

The Delray Beach Community Redevelopment Agency Board consists of seven members appointed by the City Council. The Board Members and Executive Directors who served from October 2013 through February 2015 are listed below:

Herman Stevens, Chair
Cathy Balestriere, First Vice Chair
Annette Gray, Vice Chair
Joseph Bernadel
William "Bill" Branning
Reginald Cox
Paul Zacks

Jeffrey Costello, Executive Director from 1-3-2015

Diane Colonna, Executive Director to 1-2-2015

The team leader was Ilene R. Gayle, CPA, and the audit was supervised by Diana G. Garza, CPA.

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DELRAY BEACH COMMUNITY REDEVELOPMENT AGENCY

Follow-Up on Operational Audit Report No. 2014-013

SUMMARY

This report provides the results of our audit to determine the extent to which the Delray Beach Community Redevelopment Agency (CRA) had taken, or was in the process of taking, corrective actions to address the findings included in our report No. 2014-013. Our follow-up procedures to determine the CRA's progress in addressing the 19 findings and recommendations contained in our report No. 2014-013 disclosed that, as of the completion of our follow-up procedures in June 2015, the CRA's actions had adequately corrected 10 findings (i.e., Nos. 2, 3, 5, 7, 8, 10, 11, 13, 14, and 19) and partially corrected 5 findings (i.e., Nos. 6, 9, 15, 16, and 17); however, 4 findings (i.e., Nos. 1, 4, 12, and 18) remained uncorrected.

BACKGROUND

Pursuant to the Community Redevelopment Act of 1969 (Act),¹ the City of Delray Beach (City) adopted Resolution 32-85, dated May 14, 1985, and City Ordinance 46-85, dated June 18, 1985, creating the Delray Beach Community Redevelopment Agency (CRA), establishing a CRA area of 1,858 acres, and providing that the CRA be governed by a seven-member Board of County Commissioners appointed by the City Council. City Commission Resolution 47-87, dated November 24, 1987, increased the CRA to its current size of 1,961 acres. The Act requires the establishment of a CRA Plan, approved by the CRA's governing body. Funding for the CRA is accomplished through tax increment revenues provided by each taxing authority (City and Palm Beach County), and expenditures of the CRA must be made in accordance with the approved CRA Plan.

As directed by the Legislative Auditing Committee, we conducted an operational audit of the CRA for the period October 2011 through March 2013, and selected actions taken subsequent thereto, and issued our report No. 2014-013 in September 2013. In accordance with State law,² we performed follow-up procedures, as deemed necessary, to determine the CRA's progress in addressing the findings and recommendations contained within that report.

¹ Chapter 163, Part III, Florida Statutes.

² Section 11.45(2)(j), Florida Statutes.

FINDINGS AND RECOMMENDATIONS

COMPLIANCE WITH THE COMMUNITY REDEVELOPMENT ACT

Finding 1: Promotional Activities and Socially Beneficial Programs

Previously Reported

During the period October 2011 through March 2013, the CRA paid a total of \$2,084,183 to various nonprofit organizations to fund their operations and for promotional activities or socially beneficial programs and contributed \$1,070,000 to the City of Delray Beach (City) as a sponsor for tennis tournaments. Neither the CRA Plan (Plan) nor CRA records clearly demonstrated the CRA Board's determination of the extent to which the funds provided to the organizations had been appropriately restricted to activities authorized by the Community Redevelopment Act (Act).

We recommended that, if it is the CRA's intent to continue funding the noted nonprofit organizations on an ongoing basis, the CRA seek guidance from the Attorney General as to whether the use of CRA funds for these agreements is allowable under the Act. Additionally, we recommended that the CRA document that these organizations' use of the funding is restricted to activities authorized by the Act.

Results of Follow-Up Procedures

The CRA's actions did not correct this finding. On March 11, 2014, the Attorney General issued an informal advisory legal opinion reiterating that CRA funds used to pay entities promoting tourism or providing socially beneficial programs should be supported by a demonstrated nexus to carrying out purposes of the Act. The opinion also indicated that the Delray Beach CRA should implement more thorough documentation procedures to ensure that CRA funds are only used for activities authorized by the Act.

During the period October 2013 through February 2015, the CRA provided funding totaling \$1.1 million to the City, as a sponsor for the International Tennis Championships, and \$1.9 million to seven nonprofit organizations, primarily for funding the organizations' operating expenses and for promotional activities or socially beneficial programs. The CRA revised the application for funding to nonprofit organizations to require applicants to indicate what Plan goals and objectives would be met through the funding requested. However, neither the Plan nor other CRA records evidenced the CRA Board's determination that the funds contributed to the City and the seven nonprofit organizations were restricted to activities authorized by the Act. Consequently, it was not apparent how the funding provided constituted an appropriate nexus to the purposes of the Act.

Recommendation: The CRA should document that the City's and nonprofit organizations' use of the funding is restricted to activities authorized by the Act.

Follow-up to Management's Response

Management stated in the written response that the CRA has consistently documented that the City's and nonprofit organizations' use of CRA funding is restricted to uses allowed by the Community

Redevelopment Act. However, such documentation was not included with the CRA's written response or evidenced in the CRA records we reviewed.

Finding 2: Property Leased from the City

Previously Reported

The CRA leased property from the City and subleased the property for considerably less than it was paying the City, the net effect of which appears to have been a \$423,833 subsidy of the City's operations. We recommended that the CRA ensure that any future transactions with the City do not have the effect of subsidizing the City's operations.

Results of Follow-Up Procedures

The CRA's actions corrected this finding. The CRA's lease agreement with the City and related subleases expired January 31, 2015, and were not renewed. As of June 24, 2015, the CRA had not entered into any new leases or subleases.

Finding 3: Support for CRA Expenditures

Previously Reported

The CRA's records did not demonstrate that amounts paid to the City for Project Manager and Neighborhood Planner services were appropriate based on the actual time those employees spent on CRA-related activities.

We recommended that, to ensure that CRA funds are used only for allowable purposes, the CRA ensure that amounts paid to the City are limited to actual salary expenditures based on actual time spent by these employees on CRA-related activities.

Results of Follow-Up Procedures

The CRA's actions corrected this finding. During the period October 2013 through February 2015, the CRA paid the City \$151,202 to fund a portion of the salaries and benefits for Project Manager and Neighborhood Planner positions for their work on CRA-related projects. Our review of these payments disclosed that they were based on actual time spent by these employees on CRA-related activities and were calculated using actual salary expenditures.

Finding 4: Ending Balances in CRA Trust Funds

Previously Reported

The CRA's records did not demonstrate compliance with State law³ regarding the disposition of unexpended CRA trust fund moneys at year-end.

We recommended that the CRA document that unused funds have either been obligated for purposes authorized by law or return such funds to the taxing authorities.

³ Section 163.387(7), Florida Statutes.

Results of Follow-Up Procedures

The CRA’s actions did not correct this finding. Pursuant to State law,⁴ unexpended moneys in the CRA trust fund at fiscal year-end must be appropriated pursuant to the Plan for specific redevelopment projects that will be completed within 3 years from the date of the appropriation, used to reduce indebtedness, placed in escrow to later reduce indebtedness, or returned to the taxing authorities.

The CRA prepared a spreadsheet that indicated a majority of the 2012-13 fiscal year unexpended balances were appropriated to 2013-14 fiscal year specific projects; however, the Board-adopted 2013-14 fiscal year budget included, for certain projects, estimated costs that were less than those listed on the spreadsheet. Further, although the CRA has routinely appropriated portions of unexpended moneys in the CRA trust fund for specific redevelopment projects for completion within 3 years of the respective appropriation dates, significant amounts of the appropriations were not used in the applicable fiscal year and the CRA did not employ the other options in State law for using the unexpended moneys. Also, as discussed in Finding 9, for the 2013-14 and 2014-15 fiscal year budgets, the CRA only included a portion of the available fund balance from the prior fiscal year when determining amounts available for appropriation, thereby increasing the risk that unexpended CRA trust fund moneys would not be properly disposed.

As shown in Table 1, for the 2008-09 to 2012-13 fiscal years, unused appropriations steadily increased from \$3.3 million to \$8.4 million, and the total unused amounts each fiscal year, including undesignated and unassigned fund balances, ranged from \$7.3 to \$9.7 million.

**Table 1
Unused Appropriations and Total Unused Amounts**

September 30	Ending Fund Balance Designated/Assigned for Appropriation in the Subsequent Fiscal Year	Less: Amount Used in Subsequent Fiscal Year	Unused Appropriation	Plus: Ending Fund Balance Undesignated/Unassigned	Total Unused
2009	\$5,980,620	\$(2,723,293)	\$3,257,327	\$4,450,685	\$7,708,012
2010	5,283,569	(486,637)	4,796,932	2,516,788	7,313,720
2011	5,019,518	0	5,019,518	2,473,620	7,493,138
2012	7,528,433	0	7,528,433	2,126,764	9,655,197
2013	9,615,051	(1,191,387)	8,423,664	951,427	9,375,091
2014	8,617,254	^a	^a	535,928	^a

^a The amounts used and unused during the 2014-15 fiscal year were not finalized as of the completion of our field work in June 2015.

Source: Auditor General calculations based on amounts included in the CRA’s audited financial statements.

Consequently, CRA records did not demonstrate compliance with State law regarding the disposition of unexpended trust fund moneys.

⁴ Ibid.

Recommendation: The CRA should enhance policies and procedures to document that unexpended trust fund moneys have either been obligated for purposes authorized by State law or returned to the taxing authorities.

GRANT AND FUNDING ADMINISTRATION

Finding 5: Business Development Grants

Previously Reported

The CRA made some business development grant awards in excess of program guidelines.

We recommended that the CRA ensure that grant awards are made in accordance with program guidelines.

Results of Follow-Up Procedures

The CRA's actions corrected this finding. During the period October 2013 through February 2015, the CRA made payments totaling \$269,827 related to 31 business development grants. Our test of 13 business development grants, with payments totaling \$222,918, disclosed that the CRA generally ensured that grant awards were made in accordance with program guidelines.

Finding 6: Monitoring of Funding Agreements

Previously Reported

The CRA did not adequately monitor funding provided to nonprofit organizations.

We recommended that the CRA amend funding agreements to require that moneys unexpended, or expended for unauthorized purposes, be refunded to the CRA. Additionally, we recommended that the CRA enhance controls over monitoring funding agreements to ensure that required reports are submitted and reviewed timely. We also recommended that the CRA not provide quarterly funding if required reports have not been submitted.

Results of Follow-Up Procedures

The CRA's actions partially corrected this finding. During the period October 2013 through February 2015, the CRA provided Achieving Goals Using Impact Driven Evaluation (A-GUIDE) program funding totaling \$1,462,328 to six nonprofit organizations. Our review of the CRA's administration of this funding disclosed the following:

- The A-GUIDE program guidelines limits CRA support to 25 percent of an organization's total operating budget for the year in which the grant is requested, and a transition plan was established for entities previously funded at higher levels to reduce such funding. While neither the program guidelines nor other CRA records specified whether the operating budget referred to budgeted revenues or expenses, CRA personnel indicated that the CRA funded the organizations based on a percent of each organization's budgeted revenues. CRA personnel also provided quarterly progress reports to the Board that identified an organization's CRA funding, program budgets, and status in reaching its goals. However, as budgeted and actual revenues and expenses may change throughout the year and the Board did not specify the basis for funding the organizations, the CRA may not have funded the organizations as the CRA Board intended.

- The funding agreements were revised to require organizations to refund CRA moneys expended that violated the agreements, and to allow the CRA to reduce funding if an organization’s final ending budget was revised below the original budget presented in the application. However, CRA records did not identify the nonprofit organizations’ expenses by funding source or account for unexpended CRA moneys, if any, and the funding agreements did not require that unexpended moneys be refunded to the CRA.

Our review of 2013-14 fiscal year financial reports submitted to the CRA disclosed that three of the six organizations may not have expended some or all of the CRA funding provided, as shown in Table 2:

Table 2
CRA Funding

Organization	CRA Funding Provided	Income in Excess of Expenses	Potential Unexpended CRA Funding
Delray Beach Community Land Trust	\$200,000	\$356,902	\$200,000
Expanding and Preserving Our Cultural Heritage	86,216	31,289	31,289
Puppetry Arts Center of the Palm Beaches	17,542	22,563	17,542

Source: CRA Records

Without records to determine whether unexpended CRA moneys existed and a requirement that nonprofit organizations refund unexpended CRA moneys, there is an increased risk that CRA funding may be used for unauthorized purposes.

- The organizations generally filed required reports in a timely manner and the CRA timely reviewed them; however, the 2014-15 fiscal year application submitted by one nonprofit organization did not include a strategic plan or a financial audit report, contrary to the application requirements. Documents provided with the organization’s application included a letter of engagement to develop a strategic plan and an engagement letter from a CPA firm to audit the organization’s 2012-13 fiscal year financial statements with a draft audit report for July 2014. Following a review of the organization’s application, the CRA requested a budget and balance sheet for one location, an organizational chart, and a letter stating the timeline for the strategic plan; however, no audit report of the financial statements was requested. Further, instead of submitting an audit report to the CRA, the organization provided a compilation report for the 2012-13 fiscal year on November 20, 2014.

Audited financial statements provide assurance regarding the organization’s financial health and validity of quarterly information previously provided to the CRA. Failure to enforce timely submission of documentation limits the CRA’s ability to adequately support funding decisions and, therefore, may also reduce the CRA’s ability to prevail in claims against the CRA’s funding process.

Recommendation: The CRA Board should clarify the basis for funding nonprofit organizations to ensure that funding is consistent with Board intent. In addition, the CRA should enhance procedures to require nonprofit organizations to identify their expenses by funding source, document unexpended CRA moneys, and refund unexpended moneys to the CRA. The CRA should also enhance monitoring procedures to verify that program application requirements are met.

Follow-Up to Management’s Response

Management stated in the written response that the CRA disagrees with the interpretation that there were unexpended CRA funds provided to the three organizations included in Table 2 and provided the

CRA-funded percentages of budgeted revenues for each of the organizations. However, the point of our finding is that the basis for CRA funding provided to the organizations is not apparent in the CRA's records. Further, the three organizations did not expend all of the revenues they received and, therefore, there were unexpended moneys. Because the CRA does not fund specific expenditure line items, the source of the unexpended moneys is not apparent. The written response also stated that all CRA funding was expended by the three organizations; however, no documentation was included in the CRA's response to evidence that all CRA funding had been expended.

FRAUD AND ETHICS CONTROLS

Finding 7: Fraud Policies

Previously Reported

The CRA Board had not adopted policies for the mitigation, detection, and reporting of fraud.

We recommended that the CRA establish fraud policies and procedures that clearly identify actions constituting fraud, incident reporting procedures, responsibility for fraud investigation, and consequences of fraudulent behavior.

Results of Follow-Up Procedures

The CRA's actions corrected this finding. On July 10, 2014, the CRA Board approved revisions to its *Accounting Policies and Procedures Manual (Manual)* to include Section 8.2 for the mitigation, detection, and reporting of fraud. Section 8.2 of the *Manual* contains information on actions constituting fraud, indicates that detected or suspected fraud must immediately be reported to the Executive Director or the Assistant Director, assigns responsibility for fraud investigation to the Executive Director or Assistant Director, provides that reports may be referred for outside investigation, and addresses consequences of fraudulent behavior.

Finding 8: Statement of Financial Interests

Previously Reported

Certain CRA Board members did not timely file statements of financial interests, contrary to State law.⁵

We recommended that the CRA ensure that all Board members required to file a statement of financial interests are advised of the filing requirements and that the applicable member names and positions are communicated to the appropriate coordinator.

Results of Follow-Up Procedures

The CRA's actions corrected this finding. On March 26, 2015, the CRA Board approved the revised *Operations Manual*, which provides for local coordinator notification of members required to file a statement of financial interests, as well as, verification that members filed the required statements.

⁵ Section 112.3145(2)(b), Florida Statutes.

Finding 9: Budget Preparation**Previously Reported**

The CRA's adopted budget did not include all prior year balances brought forward, contrary to State law,⁶ and did not reflect the true cost of the Green Market program.

We recommended that the CRA ensure that all balances brought forward from prior fiscal years are included in the adopted budgets for the CRA trust fund. In addition, we recommended that budgets accurately present all direct Green Market program expenditures to provide the CRA Board with accurate and complete information from which it can make informed decisions regarding the program.

Results of Follow-Up Procedures

The CRA's actions partially corrected this finding. In its 2013-14 and 2014-15 fiscal year budgets, the CRA presented all direct Green Market program expenditures. However, contrary to State law,⁷ in preparing these budgets, only a portion of the CRA's available fund balance was brought forward from prior fiscal years when determining the amounts available for appropriations and reserves. For the 2013-14 and 2014-15 fiscal year budgets, the CRA did not include fund balance totaling \$951,427 and \$535,928, respectively, from the prior fiscal years. CRA personnel indicated that the amounts excluded from the budgets represented 5 percent reserves for contingencies pursuant to Board policy; however, as discussed in Finding 4, balances remaining in the trust fund at fiscal year-end must be appropriated for certain specified purposes if those funds are not otherwise used as required by State law.⁸

Recommendation: The CRA should ensure that all balances brought forward from prior fiscal years are included in the adopted budgets for the CRA trust fund.

Finding 10: Budget Overexpenditures**Previously Reported**

The CRA needed to enhance its budgetary controls to ensure that expenditures are limited to budgeted amounts as required by State law.

We recommended that the CRA enhance budgetary controls to timely amend budgets as necessary to ensure that expenditures are limited to budgeted amounts as required by law.

Results of Follow-Up Procedures

The CRA's actions corrected this finding. The CRA's expenditures for the 2013-14 fiscal year did not exceed budgeted amounts.

⁶ Section 189.418(3), Florida Statutes (2013), and Section 189.016(3), Florida Statutes (2014).

⁷ Ibid.

⁸ Section 163.387(7), Florida Statutes.

CASH CONTROLS AND ADMINISTRATION

Finding 11: Electronic Funds Transfers

Previously Reported

The CRA had not entered into agreements with several financial institutions regarding electronic funds transfers (EFTs).

We recommended that the CRA ensure that it has current EFT agreements with each of its financial institutions.

Results of Follow-Up Procedures

The CRA's actions corrected this finding. In January and February 2015, the CRA executed EFT agreements with each of its financial institutions.

PROCUREMENT OF GOODS AND SERVICES

Finding 12: Disbursement Processing

Previously Reported

The CRA's disbursement processing controls could be enhanced.

We recommended that the CRA ensure that written contracts or purchase order forms are used to document the authorization of purchases prior to incurring an obligation for payment. We also recommended that the CRA enhance controls over disbursements to ensure that documentation is retained to demonstrate the receipt of goods and services prior to payment.

Results of Follow-Up Procedures

The CRA's actions did not correct this finding. The CRA recorded check disbursements totaling \$11,947,257 and credit card purchases totaling \$61,189 during the period October 2013 through February 2015. Our test of 34 disbursements totaling \$106,923 and 30 credit card purchases totaling \$12,879 disclosed that:

- Invoices for 3 disbursements totaling \$4,560 for software support, a lecture series sponsorship, and photography and video services were dated prior to the dates of the purchase orders.
- For 2 credit card purchases totaling \$1,535 for appliances and coffee, CRA records did not evidence when the items were received.
- For an \$85 credit card purchase for coffee and a \$200 disbursement for Green Market program entertainment services, CRA records, such as purchase order forms, did not evidence prior approval.

Absent adequate controls over the purchasing process, fraud or errors could occur and not be timely detected.

Recommendation: The CRA should enhance controls over disbursements to ensure that written contracts or purchase order forms are used to document the authorization of purchases of goods and services prior to payment.

Finding 13: Competitive Selection Process

Previously Reported

The CRA did not always comply with prescribed policies and procedures, or State law, regarding the competitive procurement of services.

We recommended that, for those purchases requiring competitive bids or proposals, the CRA ensure that documentation is retained evidencing the date and time bids or proposals are received, as well as, the selection committee's evaluations of bids or proposals. In addition, we recommended that procedures for evaluating bids or proposals for professional services include consideration regarding certified minority businesses, as required by State law. We also recommended that the CRA consider using a competitive selection process for acquiring General Counsel services.

Results of Follow-Up Procedures

The CRA's actions corrected this finding. We reviewed nine contracts procured during the period October 2013 through February 2015 for services that were subject to competitive bid or proposal requirements. The CRA made payments totaling \$937,912 for these contracts during that period. For the nine contracts, the CRA retained documentation evidencing the date and time the bids or proposals were received, as well as, the selection committees' evaluations of the bids or proposals. In addition, the CRA considered certified minority businesses for solicitations pursuant to State law⁹ and documented consideration of a competitive selection process for acquiring General Counsel services.

Finding 14: Credit Cards

Previously Reported

The CRA's controls over the issuance and use of credit cards could be enhanced.

We recommended that the CRA Board determine whether credit cards should be issued to CRA employees; set appropriate limits on transaction amounts and the types of goods and services that can be purchased; and implement appropriate policies and procedures regarding the issuance, use, and monitoring of credit cards. In addition, we recommended that such policies and procedures include a requirement for each cardholder to sign a statement certifying that he or she accepts the terms and conditions set by the CRA on credit card usage.

Results of Follow-Up Procedures

The CRA's actions corrected this finding. In July 2014, the CRA Board adopted Section 3.4 of the *Manual*, which provides that a credit card can be issued to CRA Directors (i.e., department heads) at the discretion of the Executive Director. The *Manual* requires CRA personnel, prior to receiving a credit card, to sign a credit card acknowledgement form that includes guidelines for the use of the credit card.

Our test of 30 credit card purchases totaling \$12,879 and made during the period October 2013 through February 2015 disclosed that purchases were properly authorized, for allowable purposes, and were

⁹ Section 287.055(3)(d), Florida Statutes.

within established limits; charges were reviewed prior to payment; and credit card users had generally signed the required acknowledgement forms.

Finding 15: Questioned Expenditures

Previously Reported

CRA records did not always evidence the public purpose served by expenditures.

We recommended that the CRA strengthen its procedures to require documentation that expenditures serve an authorized public purpose and comply with the CRA Plan and Section 163.387, Florida Statutes. In addition, we recommended that such documentation be present in the CRA's records prior to payment.

Results of Follow-Up Procedures

The CRA's actions partially corrected this finding. Our audit procedures found that, while the CRA made attempts to correct the finding, our tests of CRA records related to 34 disbursements totaling \$106,923 and 30 credit card purchases totaling \$12,879 also found that the authorized public purpose for 9 transactions (14 percent) totaling \$853 for food, apparel, and decorative items were not documented in the CRA records.

Recommendation: The CRA should continue efforts to ensure that disbursements and credit card purchases are properly documented.

REAL PROPERTY ACQUISITIONS

Finding 16: Property Appraisals

Previously Reported

The CRA Board had not approved policies and procedures for real property acquisitions and the procedures used by the CRA needed to be enhanced to ensure that real property is acquired at the best price possible.

We recommended that the CRA Board adopt written policies and procedures for real property acquisitions. In doing so, we recommended that the CRA Board require that appraisals be acquired for all real property acquisitions; at least two appraisals be acquired for acquisitions over a given dollar limit; a professional appraisal review be obtained in instances in which two appraisals are widely divergent; and the use of sales to nonprofit, governmental, or quasi-governmental entities be discouraged from consideration as comparable sales for appraisals obtained.

Results of Follow-Up Procedures

The CRA's actions partially corrected this finding. The CRA Board approved the *CRA Operations Manual* on March 26, 2015, which provides that "the CRA's offering price is typically determined based upon staff's knowledge of market conditions, but the sale and purchase agreement will be subject to the condition that a real estate appraisal must be completed, which typically occurs during the due diligence period. In cases where adequate sales data is unavailable, an appraisal may be ordered prior to a sale and purchase agreement being executed." The *Operations Manual* also requires at least two appraisals

for properties costing \$500,000 or more. However, the *Operations Manual* does not address the use of a review appraiser when two appraisals are widely divergent nor does it indicate that appraisals should not be determined based on comparable sales to nonprofit, governmental, or quasi-governmental entities.

During the period October 2013 through February 2015, the CRA purchased 11 properties totaling \$3,421,300. Our review of records related to the 11 real property acquisitions disclosed that the CRA paid amounts in excess of the appraised values for 3 properties. Specifically, we noted:

- One property, which required two appraisals, was appraised at \$1,430,000 and \$1,590,000. The property was purchased for \$1,875,000, which exceeded the average appraised value of \$1,510,000 by \$365,000 (19 percent).
- One property purchased for \$365,000 exceeded the appraised value of \$346,000 by \$19,000 (5 percent).
- One property purchased for \$225,000 exceeded the appraised value of \$215,000 by \$10,000 (5 percent).

Although our review of CRA real property acquisitions did not indicate widely divergent sales comparisons or use of sales to nonprofit, governmental, or quasi-governmental entities, the appraisals for these properties were acquired after the CRA had negotiated the purchase prices and executed the purchase agreements. The CRA Board approved each of these acquisitions stating that the properties were key or critical acquisitions for the CRA. Absent reliable property appraisals obtained prior to negotiation and execution of a purchase agreement, the CRA's ability to negotiate a fair price for acquired property is significantly reduced.

Recommendation: The CRA should enhance written policies and procedures for real property acquisitions to require that appraisals be obtained prior to the negotiation of a purchase price or the execution of the purchase agreement. In addition, the policies and procedures should require the use of a professional appraisal review in instances where two appraisals are widely divergent and discourage the use of sales to nonprofit, governmental, or quasi-governmental entities as comparable sales for appraisals.

CONTRACTUAL SERVICES

Finding 17: Contractual Agreements

Previously Reported

The CRA did not have a current written agreement for General Counsel services and some written agreements did not contain statutorily required provisions.

We recommended that the CRA ensure that written contracts are used for all professional services, contracts include all required terms and conditions, and payments for contractual services are supported by detailed invoices sufficient to allow a determination of contract compliance prior to payment.

Results of Follow-Up Procedures

The CRA's actions partially corrected this finding. The CRA approved a 2-year written contract for General Counsel services on October 24, 2013. However, our review of ten other contracts for various contractual services during the period October 2013 through February 2015, disclosed that:

- The CRA entered into three contracts for professional architectural services that did not contain statutorily required provisions¹⁰ related to the prohibition of contingency fees. By prohibiting contingency fees, contracts establish greater assurance that service providers were selected in a fair, equitable, and economic manner.
- Although the auditors' contract with the CRA for the 2013-14 fiscal year financial audit included a statement that invoices for fees will be rendered each month as work progresses and indicated the hourly rates for each position within the firm, it did not include a provision requiring submittal of sufficiently detailed invoices, and our tests disclosed an instance in which a CRA payment for audit services was not supported by a detailed invoice. Specifically, the CRA received and paid a progress billing invoice for \$13,875 for services rendered through November 2014 related to the 2013-14 fiscal year audit; however, the invoice did not detail the amount of hours spent and applicable hourly rates for the work performed through November 2014. As such, CRA records did not demonstrate that the amount invoiced and paid was in accordance with the contract or that the invoices were sufficiently detailed, as required by State law.¹¹

Recommendation: The CRA should ensure that contracts include all statutorily required terms and conditions and that payments for contractual services are supported by invoices sufficiently detailed to allow a determination of contract compliance prior to payment.

Finding 18: Contract Monitoring

Previously Reported

The CRA's monitoring of compliance with contractual reporting requirements could be enhanced.

We recommended that the CRA enhance its monitoring procedures to ensure that required reports are received and contain all information required by the contract.

Results of Follow-Up Procedures

The CRA's actions did not correct this finding. Our test of ten interlocal agreements between the CRA and the City disclosed deficiencies in the CRA's compliance monitoring and payment procedures. Specifically:

- One agreement required the CRA to pay the City \$50,000 to be disbursed to the Palm Beach County School Board for the Eagle Nest Program Project No. 3 at Atlantic High School no later than 7 days following the conveyance of the property on which the Eagle Nest House would be constructed. The CRA conveyed the property to the City on April 10, 2014; however, payment was not made until January 23, 2015, more than 9 months after the payment was due.

¹⁰ Section 287.055(6), Florida Statutes, requires contracts for professional services to contain a prohibition against contingent fees stating that the contractor warrants that he/she has not paid anyone other than a bona fide employee working solely for the contractor, any fee, commission, or other consideration contingent upon or resulting from the award of the contract.

¹¹ Section 218.391, Florida Statutes, requires that the procurement of audit services for the financial audit required by Section 218.39, Florida Statutes, be evidenced by a written contract that includes certain provisions, such as a requirement that invoices for fees or other compensation be submitted in sufficient detail to demonstrate compliance with the terms of the contract.

- Two agreements for construction and professional services funding required the City, upon receipt of project funding from the CRA, to provide the CRA with monthly reports detailing each project's progress. The reports were to include the contract amount, the amount of funds paid to the contractor, the status of the project, and the total of any change orders related to the project. The Project Manager provided monthly status updates for the CRA's monthly progress report; however, CRA records did not evidence that these updates included the amount of the funds paid to the contractor or the total change orders related to the project.

Failure to properly monitor contract terms could result in the CRA making payments in excess of contract amounts or for services that were not adequately provided. Ineffective monitoring may also negatively affect the timely and cost-effective completion of CRA projects.

Recommendation: The CRA should enhance monitoring procedures to ensure that required reports contain all information required by the contract. Additionally, the CRA should ensure that payments related to contracts are timely made.

TRAVEL

Finding 19: Travel Expenditures

Previously Reported

The CRA's policies and procedures regarding travel expenditures could be enhanced.

We recommended that the CRA revise *Human Resources Policies and Procedures* to establish uniform mileage reimbursement rates as required by State law¹² and to require supervisory approval of travel vouchers. We also recommended that the CRA enhance controls to ensure that all travel reimbursements are made in accordance with the CRA's *Human Resources Policies and Procedures* and State law.

Results of Follow-Up Procedures

The CRA's actions corrected this finding. The CRA approved revised *Human Resources Policies and Procedures (Policies and Procedures)* in September 2014, establishing uniform mileage reimbursement rates in accordance with State law. Additionally, the CRA revised its travel voucher form to provide for supervisory approval.

During the period October 2013 through February 2015, CRA travel expenditures totaled \$9,355. Our test of 14 travel expenditures totaling \$1,740 disclosed that travel vouchers were generally prepared in accordance with the CRA's *Policies and Procedures* and were approved by supervisory personnel.

OBJECTIVES, SCOPE, AND METHODOLOGY

Pursuant to Section 11.45(2)(j), Florida Statutes, no later than 18 months after the release of a report on the audit of a local government, we must perform appropriate follow-up procedures as we deem necessary to determine the audited entity's progress in addressing the findings and recommendations contained within our previous report. Pursuant to Section 11.45(3)(a), Florida Statutes, we conducted an

¹² Section 112.061(14), Florida Statutes.

audit of the CRA and issued report No. 2014-013. The objectives of this audit were to determine the extent to which the CRA had taken, or was in the process of taking, actions to address the findings included in our report No. 2014-013. Our audit included transactions, as well as events and conditions, occurring during the period October 2013 through February 2015.

This follow-up audit was conducted in accordance with applicable generally accepted government auditing standards. Those standards require that we plan and perform the follow-up audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

An audit by its nature does not include a review of all records and actions of management, staff, and vendors, and as a consequence, cannot be relied upon to identify all instances of noncompliance, fraud, waste, abuse, or inefficiency.

For those activities and functions included within the scope of our follow-up audit, our audit work included, but was not limited to, communicating to management and those charged with governance the scope, objectives, timing, overall methodology, and reporting of our audit; obtaining an understanding of the activities and functions; exercising professional judgment in considering significance and audit risk in the design and execution of interviews, tests, analyses, and other procedures included in the audit methodology; obtaining reasonable assurance of the overall sufficiency and appropriateness of the evidence gathered in support of our audit findings and conclusions; and reporting on the results of the audit as required by governing laws and auditing standards.

Our audit included the examination of pertinent CRA records and transactions, inquiry of CRA personnel, observation of procedures in practice, and additional procedures as appropriate. Unless otherwise indicated in this report, records and transactions were not selected with the intent of projecting the results, although we have presented for perspective, where practicable, information concerning the relevant population value or size and quantifications relative to the items selected for examination. Specifically, we:

- Determined whether the CRA requested an opinion from the Attorney General regarding the use of CRA funds in accordance with the Community Redevelopment Act.
- Reviewed changes to the CRA Plan and the funding program for nonprofit organizations for the 2013-14 and 2014-15 fiscal years to determine whether the CRA documented that funds provided to the City and nonprofit organizations were restricted to activities authorized by the Community Redevelopment Act.
- Determined the status of the property leased from the City and subleased to other organizations.
- Reviewed the ten agreements with the City and tested all payments made to the City totaling \$1,428,022 to determine whether funds were used for allowable purposes and whether payments were based on actual time and effort by employees and salary expenditures or allocated using a systematic and rational approach.
- Evaluated the disposition of ending balances in the CRA trust fund as of September 30, 2013, and 2014, for compliance with Section 163.387(7), Florida Statutes.
- Examined business development grants awarded during the period October 2013 through February 2015 to determine compliance with program guidelines.

- Reviewed A-GUIDE program (program) funding agreements for the 2013-14 and 2014-15 fiscal years to determine whether the agreements had been revised to require that moneys unexpended, or expended for unauthorized purposes, be refunded to the CRA. Examined documentation submitted with program applications for funding to determine completeness. Tested payments totaling \$725,504 made to six nonprofit organizations for the fourth quarter of the 2013-14 fiscal year and first quarter of the 2014-15 fiscal year to determine whether payments were made in accordance with the funding agreements and applicable program guidelines, including timely receipt of reports from the organizations. Determined whether CRA records evidenced whether unexpended CRA moneys remained with the organizations.
- Determined whether the CRA had established fraud policies and procedures and whether such policies and procedures include clearly identified actions constituting fraud, incident reporting procedures, responsibility for fraud investigation, and consequences of fraudulent behavior.
- Evaluated CRA policies and procedures designed to advise individuals of their obligation to file statements of financial interests and to notify the appropriate coordinator of applicable individual's names and positions. Determined whether the six Board members who served during the 2013 calendar year filed statements of financial interests as required by Section 112.3145(2)(b), Florida Statutes.
- Reviewed the CRA budgets for the 2013-14 and 2014-15 fiscal years to determine whether all balances were brought forward from the prior fiscal years and whether all direct Green Market program expenditures were accurately presented. Reviewed budget-to-actual variances for the 2013-14 fiscal year to determine whether the CRA overexpended the budget.
- Determined whether the CRA had executed agreements with the three financial institutions with which it did business and reviewed 8 of 31 EFT transactions to determine compliance with the agreements.
- Tested 34 disbursements totaling \$106,923 to determine whether they were adequately supported and for allowable purposes.
- Reviewed nine contracts for the acquisition of goods and services totaling \$937,912 that met the threshold for use of competitive bids or proposals to determine whether they were competitively acquired in accordance with law and evaluated the adequacy of documentation supporting the selection process.
- Determined whether the Board approved the issuance of credit cards to employees and established guidance for the use of credit cards. Reviewed credit card issuances for compliance with CRA policies. Tested 30 credit card purchases totaling \$12,879 to determine whether the purchases were properly authorized, for allowable purposes, and within established limits, and whether the charges were reviewed prior to payment.
- Tested 64 disbursements totaling \$119,802 to determine whether the public purpose of the expenditure was documented.
- Determined whether the CRA adopted written policies and procedures for real property acquisitions. Tested 11 real property acquisitions totaling \$3,421,300 for compliance with CRA policies and procedures and good business practices.
- Reviewed the 2014-15 fiscal year contract for General Counsel services and ten other contracts for professional services to determine whether the contract documents contained required provisions. Tested 49 contract payments totaling \$905,688 to determine whether invoices were sufficiently detailed to determine compliance with the contract, payments were made in accordance with contract terms, and monitoring procedures were sufficient to ensure that services and required information were provided in accordance with contract provisions.
- Determined whether the CRA revised its travel policy to address mileage rates and to require supervisory approval of travel. Tested 14 travel expenditures totaling \$1,740 to determine whether expenses were adequately supported and reimbursed in compliance with CRA policies and Section 112.061, Florida Statutes, and whether travel vouchers were properly approved by the employee's supervisor.

- Communicated on an interim basis with applicable officials to ensure the timely resolution of issues involving controls and noncompliance.
- Performed various other auditing procedures, including analytical procedures, as necessary, to accomplish objectives of the audit.
- Prepared and submitted for management response the findings and recommendations that are included in this report and which describe the matters requiring corrective actions. Management's response is included in this report under the heading **MANAGEMENT'S RESPONSE**.

AUTHORITY

Pursuant to the provisions of Section 11.45(2)(j), Florida Statutes, I have directed that this report be prepared to present the results of our follow-up procedures regarding findings and recommendations included in our report No. 2014-013, operational audit of the Delray Beach Community Redevelopment Agency.

A handwritten signature in blue ink that reads "Sherrill F. Norman". The signature is written in a cursive style with a large initial 'S'.

Sherrill F. Norman, CPA
Auditor General

MANAGEMENT'S RESPONSE



October 8, 2015

Ms. Sherrill F. Norman, CPA
Auditor General
State of Florida
G74 Claude Pepper Building
111 West Madison Street
Tallahassee, Florida 32399-1450

**RE: Delray Beach Community Redevelopment Agency
Response to Preliminary and Tentative Audit Findings Report**

Dear Ms. Norman:

Pursuant to Section 11.45(4)(d), Florida Statutes, we hereby submit the attached written response to the Auditor General's Preliminary and Tentative Audit Findings Report.

We appreciate the opportunity to respond to the findings and look forward to working with your staff to provide any additional information that is needed. We are committed to continually improving the policies and procedures of the Delray Beach Community Redevelopment Agency.

Please feel free to contact us with any additional questions or concerns you may have.

Sincerely,


Reginald A. Cox
CRA Chair


Jeff Costello
CRA Executive Director

c: Delray Beach CRA Board of Commissioners
Delray Beach Mayor and Commissioners
Don Cooper, City Manager

DELRAY BEACH COMMUNITY REDEVELOPMENT AGENCY
RESPONSE TO FLORIDA AUDITOR GENERAL
PRELIMINARY AND TENTATIVE FINDINGS REPORT DATED SEPTEMBER 8, 2015

1: Promotional Activities and Socially Beneficial Programs

The CRA has consistently taken action and documented that the City's and non-profit organizations' use of the funding is restricted to uses as allowed by the Community Redevelopment Act.

The CRA Board of Commissioners makes findings at the time it approves funding agreements with the respective organizations that receive funding pursuant to the A-Guide Grant Program. These findings include that the program is consistent with the City's Community Redevelopment Plan, that the program supports the goals and objectives of the City's Community Redevelopment Plan, and that the funding serves both municipal and public purposes. Therefore, consistent with the Attorney General's opinion, the CRA Board of Commissioners, through its actions, establishes the nexus between the Redevelopment Act and the A-Guide Grant Program. The CRA Staff and Board will continue to receive quarterly reports and monitor the status the organization's program goals, and ensure compliance.

The CRA has not obtained an Attorney General Opinion regarding the allowable uses for the CRA's A-Guide Grant Program, as the CRA considers the Attorney General Opinions previously issued to provide the necessary guidance on this issue. *See, Attorney General Opinion 2010-40, September 27, 2010; and Informal Attorney General Opinion dated March 11, 2014 addressed to Senator Joseph Abruzzo.* Notably, the Informal Opinion dated March 11, 2014, stated, "Ultimately, however, the determination of whether a particular project satisfies the terms of the act is to be made by the redevelopment agency itself."

#4: Ending balances in CRA Trust Funds

The adopted Community Redevelopment Plan calls for the agency to fund or otherwise participate in the implementation of projects contained within numerous plans adopted for specific areas (i.e. Downtown Master Plan, West Atlantic Redevelopment Plan, Southwest Neighborhood Plan, etc.). For instance, the Downtown Master Plan contains millions of dollars in infrastructure projects that were to be funded with CRA dollars, most of which were scheduled to be completed within an estimated time frame of 2 to 5 years (reference pg. 73 of Delray Beach Downtown Master Plan). Due to the length of time involved in designing, permitting and bidding the projects, as well as obtaining grant funding from other sources, many of these projects took longer to accomplish than anticipated. This caused a temporary delay in the expenditure of dollars in the trust fund, however, there was never a situation where the money was not targeted to projects that were intended to be completed within the stipulated 3-year time frame. The moneys in the trust fund have since been expended and/or specifically allocated to projects in the subsequent, FY 13/14, FY 14/15 and FY 15/16 budgets. It is noted the unassigned fund balance as of September 30, 2014 was \$535,928. This amount was carried forward along with the FY 14/15 ending balance and the carry forward in FY 15/16 Budget in the amount of \$7,605,448, and appropriated as provided by F.S.; 163.387(7). Thus, this item has been corrected.

#6: Monitoring of Funding Agreements

With respect to the A-Guide Grant Program, the CRA Board of Commissioners makes findings at the time it approves funding agreements with the respective organizations that receive funding pursuant to the

A-Guide Grant Program. These findings include that the program is consistent with the adopted Community Redevelopment Plan, that the program supports the goals and objectives of the Community Redevelopment Plan, and that the funding serves both municipal and public purposes.

The funding agreements state that, in event that the organization's final budget is less than the projected budget included in the application, the CRA *may* adjust the funding amount to reflect the allowable percentage of funding pursuant to the CRA's A-GUIDE guidelines. In addition, the CRA A-GUIDE funding supports programs that further the adopted Community Redevelopment Plan and may not exceed 25% of the organization's total operating budget. The CRA disagrees with the interpretation that there were unexpended CRA funds as indicated in Table 2. The following clarification is provided:

With regard to the Delray Beach Community Land Trust (DBCLT), the amount of funding did not exceed the allowable percentage of funding. Based upon the DBCLT's final revenue of \$863,704, the funding for FY 13-14 was 23% of the DBCLT's budget. The CRA funded the DBCLT's program of Affordable Housing which is the organization's mission; "to foster healthy communities thorough the creation, stabilization and preservation of quality long-term affordable housing". Therefore, the CRA funding of \$200,000 was expended in the DBCLT's yearend expenses of \$506,802 towards affordable housing.

With regard to Expanding and Preserving Our Culture (EPOCH), the CRA Board approved the amount of \$86,216 and did not include a provision in the agreement to adjust the amount based on actual revenue. The CRA funded the EPOCH's program of Museum Programing which is the organization's mission; "to expand, preserve and present the culturally diverse history of the black communities of Palm Beach County". Therefore, the CRA funding of \$86,216 was expended in the EPOCH's yearend expenses of \$164,785 towards museum programming.

With regard to the Puppetry Arts Center of the Palm Beaches (PAC), the amount of funding did not exceed the allowable percentage of funding. Based upon the PAC's final revenue of \$78,550, the funding for FY 13/14 was 23% of the PAC's budget. The CRA funded the PAC's program of Unique Puppet Traditions for Diverse Young Audiences which is the organization's mission of "a non-profit devoted to the art of puppetry". Therefore the CRA funding of \$17,541.75 was expended in the PAC's yearend expenses of \$55,987 towards the art of puppetry.

With respect to the issue of whether Creative City Collaborative (CCC) needed to submit a financial audit, the CRA Funding Agreement with the CCC did not include a specific provision that would have required the CRA to cease funding if the CRA did not receive the CCC's Financial Audit. The Funding Agreement with the CCC did include a requirement that the CCC report the CRA's funds separately in the CCC's annual audit. The CRA included this provision in the CCC's Funding Agreement because the CRA wanted to insure that the CRA's funds were not to be commingled with any other donor funds which the CCC received, and that any of the CCC's expenditures of the CRA's funds was properly documented. The fact that the CCC did not perform a complete audit would be used by the CRA in the evaluation of the CCC's A-GUIDE application for FY 15/16. Staff indicated that the Funding Agreement for FY 15/16 would not be considered by the CRA Board until the CRA received the completed financial audit with the reporting of the CRA donor funds as described above.

The CRA Board approved FY 15/16 A-GUIDE funding based on specific amount for each organization. The funding agreements did not include a provision to adjust the amount based on actual revenue.

However, the CRA Staff and Board will continue to receive quarterly reports and monitor the status of the organization's program goals to continue to ensure that the CRA funds are expended appropriately.

9: Budget Preparation

It is noted the unassigned fund balance as of September 30, 2014 was \$535,928. This amount was carried forward along with the 2014-2015 ending balance as the carry forward in FY 2015-16 Budget in the amount of \$7,605,448. The CRA will enhance its Financial Policies and Procedures to include a specific policy related towards Carry Forward Funds.

12: Disbursement processing

The CRA received an e-mail from the vendor upon delivery of the appliances and photos of the installed items were provided as evidence. Payment was not disbursed until after the installation of the appliances was completed.

The CRA disbursement processing controls have been enhanced to provide additional documentation of goods and services received, and to improve the Purchase Order process. On March 26, 2015, the CRA's Procurement Policies and Procedures Manual was amended to include changes to Section 3 - Exceptions to the Procurement Policy to include *web hosting, delivery services, benefit expenses, and Green Market entertainment*, and Section 10 – Purchase Order Policy was modified to include a list of exceptions to the purchase order policy. Thus, this item has been corrected.

15: Questioned expenditures

The expenditures of \$853 were used for CRA activities and events. Lunch was provided at a 3-hour long workshop meeting to the volunteer board who take time out of their work day to service the public. Refreshments and snacks are provided at community meetings, and for the Board for various evening meetings.

The above expenditures were appropriate in that the expenditures support CRA programs and events, promote employee morale and productivity, provide decorative elements to enhance the appearance of the downtown area, and help inform the public about the CRA's activities and programs. In the future, the CRA will ensure that a public purpose for expenditures is documented and available as a public record (i.e. CRA Meeting Minutes).

16: Property Appraisal Procedures—recommended use of Review Appraisers

The CRA obtains at least one appraisal for every property it purchases. The CRA utilizes qualified state certified real estate appraisers for all real estate acquisitions, several of whom have the MAI designation. The CRA did not engage in any acquisitions in which it received appraisals that were widely divergent.

For the property valued at \$1,875,000, the CRA obtained two separate appraisals, one of which was from an MAI designated appraiser. The CRA Board approved a purchase 19% greater than the appraised value, and determined that the property fronting on W. Atlantic Avenue was a critical piece in the redevelopment of the surrounding CRA owned properties (5.5 acres) and the West Atlantic Avenue corridor as a whole. The property was included in the RFP to redevelop the properties and is now under

contract and included as part of a proposed mixed-use project that will contribute to the CRA's revitalization efforts.

For the properties valued at \$346,000 and \$215,000, the CRA Board approved a purchase price 5% greater than the appraised value, as each of the properties were determined to be critical in the CRA's land acquisition goals and objectives this property is a critical piece in the redevelopment of the surrounding CRA owned properties and the West Atlantic Avenue corridor as a whole. The purchase price for these properties recognized the importance of each acquisition for the CRA's redevelopment programs. Gaining control of the properties will enable the CRA to further the goals and objectives envisioned in the redevelopment of the West Atlantic Avenue corridor to eliminate slum and blight, and to provide for larger scale development and neighborhood-serving commercial uses.

There have also been instances where the CRA has paid less than appraised value. We believe the acquisitions are in an acceptable range, as an appraisal is an opinion of value.

The CRA will continue to obtain appraisals from qualified firms. The CRA is unaware of any statutory requirement to obtain an appraisal review in the event there are widely divergent appraisals, nor is it aware of a requirement to obtain an appraisal prior to the negotiation of a purchase price. It is noted the existing acquisition policies and procedures were adopted by the CRA Board on March 26, 2015. Based upon the CRA Board's direction, in August, 2015, appraisals are being prepared for property owners who have expressed an interest to sell their property, prior to preparing a Purchase and Sale Agreement for board consideration. Staff will evaluate the cost effectiveness of using review appraisers instead of obtaining more than one appraisal in certain cases.

#17: Contractual Agreements

Contract Provisions:

- *Audit Services—Invoices did not provide sufficient detail of hours expended*

We will examine our audit agreement and ensure that the CRA is receiving the level of detail that is called for with respect to invoices for services.

- *Contingent Fees—CRA contracts must include clause prohibiting contingent fees*

The Agreements are in the process of being amended to include the contingency fee language.

#18: Contract Monitoring

- *Payment of funds to City to be disbursed to Palm Beach County School Board for Eagle Nest Program delayed*

The City and the CRA worked cooperatively with the School Board to provide a project that offered job skill training to public school students. The project also provides affordable housing for a deserving family. While the Agreement stipulated the time frame to pay funds for the project within 7 days following conveyance of the property to the City, the payment was made once the project construction schedule was established. The CRA will enhance procedures and modify agreements to ensure timely payments.

- *Construction/Professional Services Agreement with City – required monthly reports were not submitted*

The status of all CRA-funded projects including those contained within the subject agreement is provided to the CRA Board in the Monthly Status Report, which is routinely updated by CRA and City staff. CRA staff will work with City staff to ensure that the information related to funds paid to contractor required per the Construction/Professional Services Agreement is provided either in that report or in a separate report.

Attachments: Attorney General Opinion 2010-40, September 27, 2010; Informal Attorney General Opinion dated March 11, 2014 addressed to Senator Joseph Abruzzo.

Florida Attorney General Advisory Legal Opinion

Number: AGO 2010-40

Date: September 27, 2010

Subject: Community Redevelopment, promotional activities

Mr. Lonnie Groot
1001 Heathrow Park Lane
Suite 4001
Lake Mary, Florida 32746

RE: COMMUNITY REDEVELOPMENT - MUNICIPALITIES - use of community redevelopment funds for promotional activities. Part III, Ch. 163, Fla. Stat.

Dear Mr. Groot:

On behalf of the City of Sanford Commission, you ask substantially the following question:

May the City of Sanford's Community Redevelopment Agency expend funds for festivals or street parties designed to promote tourism and economic development, advertisements for such events, grants to entities which promote tourism and economic development, and grants to non-profit entities providing socially beneficial programs?

In sum:

Promoting the use of a redeveloped area would appear to fall within the purposes of the community redevelopment act. Use of community redevelopment funds to pay entities promoting tourism or providing socially beneficial programs, however, does not have an apparent nexus to carrying out the purposes of the community redevelopment act.

You state that the City of Sanford has implemented the provisions of the Community Redevelopment Act of 1969, Part III, Chapter 163, Florida Statutes, in creating the City of Sanford Community Redevelopment Agency (SCRA). The SCRA proposes to use funds to stage festivals or street parties to promote tourism and economic development, to provide grants to entities that

encourage tourism and economic development, and to provide grants to non-profit entities which provide a wide range of socially beneficial programs. The question has arisen, however, whether such expenditures may be paid by the SCRA.

Pursuant to the act, a local government may determine that an area is a slum or is blighted and designate such area as appropriate for community redevelopment.[1] The Legislature has declared that slum and blighted areas constitute a serious and growing menace to the public health, safety, morals, and welfare of the residents of the state.[2] To address this matter, local governments, upon adoption of a resolution based upon legislative findings that the conditions in an area meet specified criteria described in the act, may create a community redevelopment agency.[3] The agency's purpose is to carry out community redevelopment purposes set forth in the act.[4]

"Community redevelopment" or "redevelopment" is defined in the act as:

"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." [5]

Among the powers granted by the act to carry out community redevelopment are: to make contracts; to disseminate slum clearance and community redevelopment information; to undertake community redevelopment and related activities; [6] to furnish or repair streets, public utilities, playgrounds, and other public improvements; to hold or dispose of property for redevelopment. [7]

Section 163.387, Florida Statutes, establishes a redevelopment trust fund for each community redevelopment agency created pursuant to section 163.356, Florida Statutes, and provides for its annual funding. Pursuant to subsection (1) of the statute,

funds allocated to and deposited into the fund shall be used by a community redevelopment agency "to finance or refinance any community redevelopment it undertakes pursuant to the approved community redevelopment plan."

The expenditure of moneys in the redevelopment trust fund is specifically authorized by section 163.387(6), Florida Statutes, "for undertakings of a community redevelopment agency as described in the community redevelopment plan," 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."

While the statute specifically states that the use of community redevelopment trust funds is not limited to those purposes enumerated therein, the community redevelopment agency is a statutorily created administrative agency that may only exercise those powers that have been expressly granted by statute or that are necessarily exercised in order to carry out an express power.[8] Any reasonable doubt as to the lawful existence of a particular power sought to be exercised must be resolved against the exercise thereof.[9] Moreover, it is well settled that legislative intent is the polestar that guides a court's statutory construction analysis[10] and would, therefore, limit the expenditures by the community redevelopment agency.

I would note that the Redevelopment Plan and Finding of Necessity for the Lake Monroe Waterfront and Downtown Sanford Redevelopment Area[11] contains a "Promotional Marketing" component, recognizing the importance of funding for events, advertising and marketing to bring people to the redevelopment area. The plan notes that the SCRA budget is subject to approval by the City of Sanford. Therefore, ultimately, it is a decision for the governing body of the City of Sanford to determine whether promotional expenditures may be included in the SCRA budget. Although a city has home rule powers, in matters involving the imposition of a tax and the expenditure of the proceeds from such a tax, the city must be able to point to statutory or constitutional authority.[12] The courts of this state have recognized the general rule that tax revenues must be expended for the purposes for which they were collected, that is, funds raised by taxation for one purpose cannot be diverted to another use.[13] In addition, this office has stated, for example, that moneys collected pursuant to the original ordinance imposing a tourist development tax could only be used to accomplish the purposes set forth in the original plan for tourist development and could not be expended for the purposes set forth in the new ordinance or considered in a new tourist development plan.[14]

As discussed above, it would appear that the primary focus of a community redevelopment agency is to eliminate and prevent the development or spread of slums and blight. This may be accomplished by reducing or preventing crime, by providing affordable housing, clearing slums and redeveloping in a community redevelopment area, or by rehabilitating or conserving in a community redevelopment area, or any combination or part thereof. The enumerated uses of community redevelopment trust fund moneys are likewise couched in terms of redevelopment activities involving "bricks and mortar" in a manner of speaking, rather than promotional campaigns to encourage people to populate the area once the redevelopment has been accomplished. However, to read the statute as precluding the promotion of a redeveloped area once the infrastructure has been completed would be narrowly viewing community redevelopment as a static process.

Accordingly, I cannot say that the use of community redevelopment funds would be so limited that the expenditure of funds for the promotion of a redeveloped area would be prohibited. However, grants to entities which promote tourism and economic development, as well as to nonprofits providing

socially beneficial programs would appear outside the scope of the community redevelopment act.

Sincerely,

Bill McCollum
Attorney General

BM/tals

[1] See s. 163.358, Fla. Stat.

[2] Section 163.335(1), Fla. Stat.

[3] Section 163.355, Fla. Stat. Subsections 163.340(7) and (8), Fla. Stat., provide definitions for "[s]lum area" and for "[b]lighted area" for purposes of the act:

"(7) 'Slum area' means an area having physical or economic conditions conducive to disease, infant mortality, juvenile delinquency, poverty, or crime because there is a predominance of buildings or improvements . . . which are impaired by reason of dilapidation, deterioration, age, or obsolescence, and exhibiting one or more of the following factors:

(a) Inadequate provision for ventilation, light, air, sanitation, or open spaces;

(b) High density of population, compared to the population density of adjacent areas within the county or municipality; and overcrowding, as indicated by government-maintained statistics or other studies and the requirements of the Florida Building Code; or

(c) The existence of conditions that endanger life or property by fire or other causes.

(8) 'Blighted area' means an area in which there are a substantial number of deteriorated, or deteriorating structures, in which conditions, as indicated by government-maintained statistics or other studies, are leading to economic distress or endanger life or property, and in which two or more of the following factors are present:

(a) Predominance of defective or inadequate street layout, parking facilities, roadways, bridges, or public transportation facilities;

(b) Aggregate assessed values of real property in the area for

ad valorem tax purposes have failed to show any appreciable increase over the 5 years prior to the finding of such conditions;

- (c) Faulty lot layout in relation to size, adequacy, accessibility, or usefulness;
- (d) Unsanitary or unsafe conditions;
- (e) Deterioration of site or other improvements;
- (f) Inadequate and outdated building density patterns;
- (g) Falling lease rates per square foot of office, commercial, or industrial space compared to the remainder of the county or municipality;
- (h) Tax or special assessment delinquency exceeding the fair value of the land;
- (i) Residential and commercial vacancy rates higher in the area than in the remainder of the county or municipality;
- (j) Incidence of crime in the area higher than in the remainder of the county or municipality;
- (k) Fire and emergency medical service calls to the area proportionately higher than in the remainder of the county or municipality;
- (l) A greater number of violations of the Florida Building Code in the area than the number of violations recorded in the remainder of the county or municipality;
- (m) Diversity of ownership or defective or unusual conditions of title which prevent the free alienability of land within the deteriorated or hazardous area; or
- (n) Governmentally owned property with adverse environmental conditions caused by a public or private entity.

However, the term 'blighted area' also means any area in which at least one of the factors identified in paragraphs (a) through (n) are present and all taxing authorities subject to s. 163.387(2) (a) agree, either by interlocal agreement or agreements with the agency or by resolution, that the area is blighted. Such agreement or resolution shall only determine that the area is blighted. For purposes of qualifying for the tax credits authorized in chapter 220, 'blighted area' means an area as defined in this subsection."

[4] Section 163.356(1), Fla. Stat.

[5] Section 163.340(9), Fla. Stat.

[6] Section 163.340(12), Fla. Stat., defines "[r]elated activities" as: planning work for the preparation of a general neighborhood redevelopment plan or for the preparation or completion of a communitywide plan or program pursuant to s. 163.365, Fla. Stat.; functions related to the acquisition and

disposal of real property; development of affordable housing for residents of a redevelopment area; and the development of community policing innovations.

[7] See s. 163.370, Fla. Stat., which contains numerous other powers, none of which specifically include programs which would encompass a street festival or party to promote tourism or community redevelopment.

[8] See, e.g., *Gardinier, Inc. v. Florida Department of Pollution Control*, 300 So. 2d 75, 76 (Fla. 1st DCA 1974); *Williams v. Florida Real Estate Commission*, 232 So. 2d 239, 240 (Fla. 4th DCA 1970).

[9] See *Halifax Drainage District of Volusia County v. State*, 185 So. 123, 129 (Fla. 1938); *State ex rel. Greenberg v. Florida State Board of Dentistry*, 297 So. 2d 628 (Fla. 1st DCA 1974), cert. dismissed, 300 So. 2d 900 (Fla. 1974); *City of Cape Coral v. GAC Utilities, Inc., of Florida*, 281 So. 2d 493 (Fla. 1973). And see, e.g., Ops. Att'y Gen. Fla. 02-30 (2002) and 04-48 (2004).

[10] See *State v. Rife*, 789 So. 2d 288, 292 (Fla. 2001); *McLaughlin v. State*, 721 So. 2d 1170, 1172 (Fla. 1998).

[11] Originally drafted November 21, 1995; Last updated July 29, 2009.

[12] See generally *Contractors and Builders Association of Pinellas County v. City of Dunedin*, 329 So. 2d 314, 317 (Fla. 1976). See also *City of Tampa v. Birdsong Motors, Inc.*, 261 So. 2d 1 (Fla. 1972) (municipality's power to tax is subject to the restrictions in Art. VII, s. 9, Fla. Const.).

[13] See *Supreme Forest Woodmen Circle v. Hobe Sound Company*, 138 Fla. 141, 189 So. 249 (1939); *Dickinson v. Stone*, 251 So. 2d 268, 273-274 (Fla. 1971) (it is a violation of an elemental principle in the administration of public funds for one who is charged with the trust of their proper expenditure not to apply those funds to the purposes for which they are raised). And see *Oven v. Ausley*, 106 Fla. 455, 143 So. 588 (1932); *Taylor v. Williams*, 142 Fla. 756, 196 So. 214 (Fla. 1940).

[14] See Op. Att'y Gen. Fla. 96-26 (1996). And see Ops. Att'y Gen. Fla. 86-39 (1986), 82-54 (1982), and 77-26 (1977).

Informal

March 11, 2014

The Honorable Joseph Abruzzo
Senator, 25th District
Room 222, Senate Office Building
404 South Monroe Street
Tallahassee, Florida 32399-1100

Dear Senator Abruzzo:

Thank you for your letter of March 5th, 2014, requesting that this office review Attorney General Opinion 2010-40 in light of the Auditor General's Operational Audit Report No. 2014-013 of the Delray Beach Community Redevelopment Agency. Attorney General Bondi has asked me to respond to your letter.

The Florida Attorney General is statutorily limited to providing legal advice and opinions to governmental officers on questions of law relating to their own duties and responsibilities.[1] Any comment from this office regarding an audit performed on the Delray Beach Community Redevelopment Agency and suggesting that the agency request an Attorney General's Opinion on matters covered by the audit would most appropriately come from the redevelopment agency itself. Thus, after reviewing the information you have submitted, it does not appear that this matter is appropriate for formal comment by this office.

However, in an effort to assist you, I offer the following informal comments.

You have specifically requested that this office review Attorney General Opinion 2010-40. I have reread the opinion and updated the statutory and case law cited therein and determined that there are no substantive changes to either that would change our conclusion in that opinion. Thus, I find that Attorney General Opinion 2010-40 continues to reflect this office's position as the current statement of the law on this question. As you know, Attorney General Opinions are, by statute, advisory, and are not binding. Attorney General Opinions constitute this office's best legal advice on the particular question presented and are considered persuasive by Florida courts.[2]

This office continues to consider promoting the use of a redeveloped area to be within the purposes of the Community Redevelopment Act of 1969. We would, of course, suggest that community redevelopment funds to pay entities promoting tourism or providing socially beneficial programs should demonstrate a nexus to carrying out the purposes of the act in order to justify the use of community redevelopment funds. It appears from the Operational Audit of the Delray Beach Community Redevelopment Agency that the Auditor General agrees with this conclusion. I note the following language from page 5 of the audit:

"The CRA provided us an opinion from its General Counsel characterizing the above-noted contributions as being for promotional activities and indicating that through inclusion of these activities in the CRA Plan, the CRA's contributions were consistent with State law. However, neither the CRA Plan nor CRA records clearly demonstrated the CRA Board's determination of the extent to which the funds contributed to the above-noted organizations had been appropriately restricted to activities authorized by the Act."

Thus, the recommendation by the Auditor General that "the CRA should document in its records that these organizations' use of the funding is restricted to activities authorized by the Act." It appears that the CRA should implement more thorough documentation procedures ensuring the use of funding only for those activities authorized by the community redevelopment act.

As this office suggested in Attorney General Opinion 2010-40:

"[I]t would appear that the primary focus of a community redevelopment agency is to eliminate and prevent the development or spread of slums and blight. This may be accomplished by reducing or preventing crime, by providing affordable housing, clearing slums and redeveloping in a community redevelopment area, or by rehabilitating or conserving in a community redevelopment area, or any combination or part thereof. The enumerated uses of community redevelopment trust fund moneys are likewise couched in terms of redevelopment activities involving "bricks and mortar" in a manner of speaking, rather than promotional campaigns to encourage people to populate the area once the redevelopment has been accomplished. However, to read the statute as precluding the promotion of a redeveloped area once the infrastructure has been completed would be narrowly viewing community redevelopment as a static process."

The opinion also suggests that "grants to entities which promote tourism and economic development, as well as to nonprofits providing socially beneficial programs would appear outside the scope of the community redevelopment act." Ultimately, however, the determination of whether a particular project satisfies the terms of the act is to be made by the redevelopment agency itself.

Should either you or the Auditor General have concerns that these issues may reflect possible criminal misconduct, please forward this matter to the State Attorney for the 15th Judicial Circuit, The Honorable Dave Aronberg. Allegations of violations of the Code of Ethics for Public Officers and Employees, Part III, Chapter 112, Florida Statutes, should be forwarded directly to the Florida Commission on Ethics.

I trust that these informal comments will be helpful to you.

Sincerely,

Gerry Hammond
Senior Assistant Attorney General

GH/tsh

Enclosures

[1] See section 16.01(3), Florida Statutes, and Department of Legal Affairs Statement Concerning Attorney General Opinions (copies enclosed).

[2] See *American Home Assurance Company v. National Railroad Passenger Corporation*, 908 So. 2d 459 (Fla. 2005); *State v. Family Bank of Hallandale*, 623 So. 2d 474, 478 (Fla. 1993) (although an opinion of the Attorney General is not binding on a court, it is entitled to careful consideration and generally should be regarded as highly persuasive).