Community redevelopment agency -- transfer of authority

Number: AGO 2019-12

Date: December 04, 2019

Subject:
Community redevelopment agency -- transfer of authority

Mr. Gerald T. Buhr
City Attorney, City of Avon Park
7747 US Open Look
Lakewood Ranch, FL 34202

Dear Mr. Buhr:

On behalf of the City of Avon Park, you have requested an opinion on the following question:

> Whether the city council, presently sitting as the governing board of the city community redevelopment agency, can transfer its authority to an independent board?

In sum:

> Chapter 163, Florida Statutes, does not authorize the city council to transfer its existing authority as the city community redevelopment agency to an independent board.

The Community Redevelopment Act of 1969, codified in chapter 163, Florida Statutes, permits county and municipal governments to create community redevelopment agencies to redevelop and revitalize slum and blighted areas. A community redevelopment agency may only be created after the local government adopts a resolution making a finding of need.[1] Once created, a community redevelopment agency is a separate "public body corporate and politic"[2] from the local government. Generally, the Act provides that such a separate public agency when formed may be governed in two ways. First, the local government may, by ordinance, appoint a board of commissioners which may be comprised of members distinct from the members of the board of the local government.[3] Second, the local government's "governing body" may instead designate itself as the community redevelopment agency board.[4]

Consistent with chapter 163, Florida Statutes,[5] and its own Code of Ordinances,[6] the city council of the City of Avon Park, in creating a city community redevelopment agency, chose the latter structure and declared its members, by resolution, to be the commissioners of the community redevelopment agency. The city council now asks whether it can designate, as the

community development agency acting in its stead, a public agency configured as set forth in section 163.356, Florida Statutes.

Section 163.356(2), Florida Statutes, requires that a board of commissioners distinct from the city council be appointed "[w]hen the governing body adopts a resolution declaring the need for a community redevelopment agency." The statute is clear that the board of commissioners be established when the community redevelopment agency is established. There is no provision for transfer of governance of an established community redevelopment agency to a later constituted board of commissioners. Notably, the converse is not true. Section 163.357(1)(a), Florida Statutes, provides that, "[a]s an alternative to the appointment of not fewer than five or more than seven members of the agency, the governing body may, *at the time of the adoption of a resolution under s. 163.355, or at any time thereafter by adoption of a resolution*, declare itself to be an agency, in which case all the rights, powers, duties, privileges, and immunities vested by this part in an agency will be vested in the governing body of the county or municipality, subject to all responsibilities and liabilities imposed or incurred."[7] (Emphasis added.)

Therefore, I am of the opinion that the city council lacks statutory authority to transfer its authority as the community redevelopment agency of an existing agency to an independent board.

Sincerely,

Ashley Moody
Attorney General

AM/tlm

[1] § 163.355, Fla. Stat. (2019).

[2] § 163.356(1), Fla. Stat.

[3] §166.356(2), Fla. Stat.

[4] § 163.357(1)(a), Fla. Stat.; *see also* § 163.40(3), Fla. Stat. (defining "governing body" as "the council, commission, or other legislative body charged with governing the county or municipality").

[5] *See* § 163.357(1)(a), Fla. Stat. (2019).

[6] *See* Avon Park, Fla., Code of Ordinances Ch. 74, § 74-76 ("The city council shall, by resolution, declare themselves to be the commissioners of the community redevelopment agency.").

[7] The reference in section 163.357(1)(a) to “not fewer than five or more than seven members of the agency” appears to be a cross-reference to section 163.356(2), which now provides for a board composition of “not fewer than five or more than nine commissioners.” This language was added to section 163.357(1)(a) at the same time that identical language concerning the number of board members was added to section 163.356(2). *See* Ch. 83-231, § 1-2, Laws of Fla.