Community Development District bonds

Number: INFORMAL

Date: September 26, 2007

Mr. Clifford B. Shepard
Attorney for the City of Mount Dora
Post Office Box 945050
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Dear Mr. Shepard:

You have asked whether the City of Mount Dora may voluntarily retire remaining community development district bonds for infrastructure improvements originally constructed by a community development district, but ownership having been transferred to the city, and impose special assessments on those property owners who have outstanding bond indebtedness in order to recoup the cost of retiring the outstanding bonds.

Alternatively, you inquire whether the city may adopt a termination plan pursuant to section 190.046(4), Florida Statutes, providing for the assumption and guarantee of the community development district's outstanding bond debt and impose a special assessment on the property of residents who have not paid their special assessment, as well as imposing a special assessment on all residents to recoup the cost of administering the district until the bond is retired.

This office has been advised that in 1993, the City of Mount Dora created a community development district (CDD) to govern and deliver urban services to Phase 2 of the Country Club of Mount Dora subdivision. The primary purpose of the district was to finance and construct roads and storm-water management infrastructure. Bonds were issued and special assessments were imposed for repayment of the bonds. In addition, an annual administrative fee was imposed on property owners to fund the operation of the CDD.

Ownership of the improvements constructed by the CDD has been transferred to the city. It has now been proposed that the city retire the outstanding bonds and dissolve the CDD, in order to save the residents who prepaid their bond debt the ongoing administrative expense of operating the CDD. The city proposes to levy a special assessment on the residents who have outstanding bond debts, to recoup the cost of retiring the original bonds. The question has arisen, however, whether this proposal confers a sufficient "special benefit" to validate the special assessments.

Alternatively, the city proposes to adopt a termination plan pursuant to section 190.046(4), Florida Statutes, whereby the city assumes the CDD's outstanding bond debt and imposes a special assessment upon the unpaid Phase 2 residents, as well as imposing a special assessment on all Phase 2 residents to recoup the city's cost of administering the CDD until retirement of the debt.

Due to the interrelated nature of your questions, they will be addressed together.

Chapter 190, Florida Statutes, the "Uniform Community Development District Act of 1980" (act), provides the exclusive and uniform method by general law for the establishment of independent special districts as an alternative method to manage and finance basic services for community development. The Legislature's stated intent is to "provide by general law for the uniform operation, exercise of power, and *procedure for termination* of any such independent district."[1] (e.s.) Section 190.003(6), Florida Statutes, defining "Community development district" states that this term means "a local unit of special-purpose government . . . the formation, powers, governing body, operation, duration, accountability, requirements for disclosure, and termination of which are as required by general law."

As this office recognized in Attorney General Opinion 2007-05, Chapter 190, Florida Statutes, constitutes a preemption of this area of the law.[2] Thus, the city lacks any authority to legislate in this area or to act in a manner inconsistent with the mandates of the act.[3]

Section 190.046(2), Florida Statutes, governs the termination of CDD's, stating that a district "shall remain in existence unless:

(a) The district is merged with another district as provided in subsection (3);

(b) All of the specific community development systems, facilities, and services that it is authorized to perform have been transferred to a general-purpose unit of local government in the manner provided in subsections (4), (5), and (6); or

(c) The district is dissolved as provided in subsection (7), subsection (8), or subsection (9)."

Given that the ownership of the systems has been transferred to the city, the procedures in subsections (4), (5), and (6) of section 190.046, Florida Statutes, must be followed. Those subsections provide:

"(4) The local general-purpose government within the geographical boundaries of which the district lies may adopt a nonemergency ordinance providing for a plan for the transfer of a specific community development service from a district to the local general-purpose government. *The plan must provide for the assumption and guarantee of the district debt that is related to the service by the local general-purpose government* and must demonstrate the ability of the local general-purpose government to provide such service:

(a) As efficiently as the district.

(b) At a level of quality equal to or higher than the level of quality actually delivered by the district to the users of the service.

(c) At a charge equal to or lower than the actual charge by the district to the users of the service.

(5) No later than 30 days following the adoption of a transfer plan ordinance, the board of supervisors may file, in the circuit court for the county in which the local general-purpose government that adopted the ordinance is located, a petition seeking review by certiorari of the

factual and legal basis for the adoption of the transfer plan ordinance.

(6) Upon the transfer of all of the community development services of the district to a general-purpose unit of local government, *the district shall be terminated in accordance with a plan of termination which shall be adopted by the board of supervisors and filed with the clerk of the circuit court*." (e.s.)

Assuming that all of the above procedures have been followed, the act does not specify how the city will repay the CDD's debt when it assumes the responsibility for the services. It would appear, however, that the imposition of a new special assessment would not be the appropriate manner for the city to recoup the expense of retiring the original bonds, since the properties have already been assessed for the special benefit they received when the facilities and services were initially constructed. While it has been recognized that a governing unit may impose a special assessment for an existing public work,[4] there appears to be no authority for the reassessment of property for which a special assessment was previously imposed and collected. Rather, the special assessments that are outstanding and enforceable would appear to be the proper source for funding the retirement of the outstanding debt.

While municipalities have the authority to impose special assessments and to issue bonds to pay for the construction of facilities and services such as those enumerated in section 170.01, Florida Statutes, my research has not disclosed any Florida appellate decision sanctioning the levy and collection of special assessments by a local government for the purpose of funding or augmenting the funding of general governmental functions and operations.[5] Community development districts are specifically granted the authority to raise by user charges or fees the amount of money necessary to conduct the district activities.[6] No similar authorization for municipalities has been brought to this office’s attention.

I trust that these informal comments will be of assistance to you in resolving the issues you have raised.

Sincerely,

Lagran Saunders
Assistant Attorney General

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[1] Section 190.002(3), Fla. Stat.

[2] *See also* s. 190.004, Fla. Stat., entitled: "Preemption; sole authority."

[3] While municipalities possess broad home rule powers, s. 166.021(3)(c), Florida Statutes, implementing those constitutional powers provides that a municipality may not legislate on "[a]ny subject expressly preempted to state . . . government by the constitution or by general law[.]"

See also City of Miami Beach v. Rocio Corporation, 404 So. 2d 1066 (Fla. 3d DCA 1981), *petition for rev. denied,* 408 So. 2d 1092 (Fla. 1981) (municipal ordinances are inferior to state law and must fail when conflict arises).

[4] *See Anderson v. City of Ocala*, 91 So. 182 (Fla. 1922), in which the Supreme Court of Florida concluded that special assessments may be levied upon an executed consideration, that is to say, for a public work already done. However, the facts of the *Anderson* case were that a reassessment was valid against property for improvements that had been previously assessed, but where the initial special assessment was held to be invalid.

[5] *See* Op. Att'y Gen. Fla. 82-103 (1982) (county not authorized to impose a special assessment for maintenance and operation of the county jail and the operation of the offices of the county property appraiser and tax collector).

[6] Section 190.011(10), Fla. Stat.