

THE BANNER

Urban Forum: A Commentary

by Neison O. Kasdin

Lifestyle preferences, diminishing developable land, environmental constraints, traffic congestion and public policy considerations are bringing residential life back to cities. But the obstacles to redevelopment of older urban-core neighborhoods are formidable, with most developers choosing to forgo the risks and complications of urban infill development for the green pastures of ever-expanding suburbia.

Increasingly, city and county governments are helping developers overcome the obstacles to urban infill development and redevelopment through public/private partnerships. These partnerships provide government inducements to private developers that reduce the developer's risk while at the same time furthering important public policy objectives such as providing inner-city jobs and revitalizing depressed neighborhoods.

Obstacles include inadequate infrastructure, antiquated zoning regulations, difficult land assembly for major projects, and expensive multistory construction of garages and buildings. Incentives include zoning changes, expedited regulatory approvals, and a broad range of financial incentives from grants and loans to sharing of property tax revenues for payment of infrastructure costs.

All successful public/private projects include the following components: a plan, leadership, a market, a willing and strong developer, adequate incentives and a professional support team.

The Midtown Miami project is one example of how those components come together. Midtown Miami is the former Buena Vista Rail Yard. Located approximately one mile north of downtown, this 56-acre tract was used for storage of cargo containers and greatly contributed to the deterioration of Wynwood and surrounding neighborhoods. In its place will rise two developments: The Shops at Midtown Miami by Developers Diversified Realty Corp. (DDR) and the Midtown Miami condominium and mixed-use project by Biscayne Development Partners (BDP).

Together, these developments will result in \$1.2 billion in development, creating more than 600,000 square feet of retail space, over 3,000 residences, offices and a hotel. The finished project will provide more than 3,000 jobs.

Working in collaboration with other consultants and professionals, my law firm represented DDR in obtaining, within one year, necessary zoning changes, site plan and other regulatory approvals, as well as a \$170 million incentive package from Miami-Dade County and the City of Miami, a figure that includes issuance cost and interest over the life of bonds that would pay for infrastructure costs.

Here's how the various components came together.

The Plan:

The City of Miami, under the leadership of Commissioner Johnny Winton, adopted the Florida East Coast (FEC) Railway Corridor Redevelopment Plan to



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reverse the decline of neighborhoods bordering the FEC Railway from downtown to the city limits. This planning effort, led by Florida International University and architect Bernard Zyscovich, envisioned development of a mixed-use residential, retail and commercial project on the Buena Vista Yard. It would have new streets connecting the site to the surrounding Edgewater, Wynwood and Design District neighborhoods. Large public spaces and pedestrian-friendly design would create a new center of commerce and residential life for Miami.

The Leadership:

To obtain approvals necessary to convert this property from an abandoned, polluted rail yard into a thriving new district required political and administrative leadership. Many city and county officials worked in concert, notably Miami Mayor Manny Diaz and Miami-Dade Commission Chairwoman Barbara Carey-Shuler. Although the development did not face opposition, it is rare for elected officials to champion an initiative of this scale.

The Market:

Market analysis showed that the urban core and surrounding communities, including Miami Beach, lacked the big-box and lifestyle stores found only in the suburbs. At the same time, demand for new residences in northeast Miami was continuing to grow, making mixed-use development feasible.

Willing and Strong Developers:

The two developers had the deep pockets and necessary expertise. DDR is the nation's largest open-air retail real estate investment trust, with a market capitalization approaching \$10 billion.

BDP's principals are Michael Samuels and the Cayre family, whose holdings include a 24-percent interest in the World Trade Center site in New York. Samuels and Cayre bought the property from the FEC Railway without infrastructure, zoning, project financing or a major retail developer. Both developers were willing to implement the city's plan for the neighborhood. Beyond that, the developers worked closely with neighborhood groups to obtain support for the development.

Adequate Incentives:

Typically, big box and lifestyle retail centers are built on large suburban tracts with acres of surface parking surrounding the stores. This is much less expensive than structured parking but destroys a sense of neighborhood. The city and developers agreed to provide all of the more than 3,000 parking spaces for the retail center in multistory garages and to substantially screen those garages from view with stores, residential and live-work space.

The cost of these garages and the creation of new public plazas will be \$51 million, which is being paid through bonds issued by the developer-created

Community Development District. The city and county agreed to pledge property tax revenues generated from the Midtown development to fund these bonds used to pay for construction of the public parking garages and other public plazas and pedestrian amenities. As the bonds are paid off, the city and county will receive hundreds of millions of dollars in additional tax revenue.

Without this incentive, any development built would have been much less beneficial to the city and surrounding neighborhoods. The CDD is issuing an additional \$26 million in bonds, paid by special assessments on the developer's property to fund roads, water, sewer and other infrastructure costs.

Professional Team:

DDR and BDP assembled professionals and consultants, including lawyers, planners, architects, engineers and financial advisers for all aspects of the development. The teams' credibility and the combined experience working on major projects and public/private initiatives enabled the developers to quickly overcome the numerous obstacles to achieving this complex development.

In little more than one year, Midtown went from acquisition to full entitlement, permits and project financing. Groundbreaking on the first condominium tower and all 600,000 square feet of retail has occurred, with construction to be completed by fall 2006.

I drew upon my experience helping lead Miami Beach's revitalization in the 1990s, which included many public/private projects. The most important of them was Loews Hotel, which revitalized the city's convention business and expanded the boundaries of South Beach's revitalization. It has also spurred hundreds of millions of dollars in additional hotel investments, generated significant lease and tax revenues to the city and created, directly and indirectly, thousands of jobs for county residents.

Midtown Miami can do much the same thing for Miami. It is one of the largest projects of its kind in the country, and arguably the most important economic development catalyst for the city in decades. Its success will be grounded in a true partnership between the public and private sectors.

Neisen O. Kasdin is a shareholder with Gunster Yoakley & Stewart in Miami. He practices land-use law, including incentives for development and public/private projects. He also chairs the Urban Land Institute's Southeast Florida/Caribbean District Council and was mayor of Miami Beach. Kasdin represents Developers Diversified Realty Corp., which is developing the retail component of Midtown Miami.

Editor's note: The FRA 2006 Annual Conference will be held in Midtown Miami.

Library

International Downtown Association

www.ida-downtown.org

Call the FRA, an IDA member, for research or to view directly what other cities are doing in several categories in the field of downtown revitalization. Click on the successful strategies link. You must be logged in as a member for access. Receive member discounts for joining the IDA if you are an FRA member, and visa versa.

International Economic Development Council

https://www.iedconline.org/cgi-bin/iedc_bookstore/iedc.cgi

Online publications catalog with books and manuals covering the scope of economic development. Non-members can browse by category, search for specific titles, or take a look at featured items.

International Council of Shopping Centers

<http://www.icsc.org/bookstore/>

Retail reports, books, audiocassettes, industry and topical reports and audiobooks provide how-to information. For more information on the ICSC books, call (301) 362-6900.

Smart City Radio

<http://www.smartcityradio.com/smartcityradio/>

Smart City™ is a weekly, hour-long public radio talk show that takes an in-depth look at urban life: the people, places, ideas and trends shaping cities. Host Carol Coletta talks with national and international public policy experts, elected officials, economists, business leaders, artists, developers, planners and others for a penetrating discussion of urban issues.

Florida League of Cities

www.flcities.com

45th Annual FLC Legislative Conference, Hyatt Regency Orlando International Airport Hotel, November 17-18, 2005.

The second of the League's annual meetings, this important conference sets the legislative policies and priorities for the upcoming session of the Legislature. Over the course of the two-day meeting, attendees will hear speakers at a general session, workshops and attend policy committee meetings.

Florida Department of State, Office of Cultural and Historical Programs

www.flheritage.com

Florida Main Street 2005 Annual Conference and Awards Dinner, Naples, November 1-3

Visit Florida

www.VISITFLORIDA.org

Downtown and Small Towns Forum, Delray Beach, October 13-15, 2005

Enterprise Florida

<http://eflorida.com/businessadvantages/whyflorida.pdf>

Visit Enterprise Florida's Web site to find out what the State of Florida is doing with rural issues, international activities, business grants, incentives and programs, and the Urban Working Group. This page includes the "Top ten reasons why a business should locate or expand in Florida," and a very good one-page Florida map, which is hard to find elsewhere.

Florida Festivals and Events Association

www.ffea.org

The Florida Festivals and Events Association reports that the Travel Industry Association of America offers concrete evidence that Florida is one of the top states in the country when it comes to destinations and spending, second only to California.

Florida Redevelopment Association

www.redevelopment.net

CRA Reporting Requirements at a Glance

Learn everything you need to know about reporting requirements for CRAs in Florida.

Urban Land Institute

<http://www.Orlando.uli.org/>

SEFlorida.uli.org

www.uli.org/bookstore

The Mom Factor by Nora Lee

Based on statistics and interviews with hundreds of moms, yet rich with examples, anecdotes and

Florida Redevelopment Association Annual Conference

October 19-21, 2005

St. Petersburg Hilton Bayfront

Thank you exhibitors,
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humor, this book explains how moms think when deciding how their families will spend their time and money in restaurants, stores, theme parks, museums and attractions, sporting venues, and other places designed to provide family entertainment. It sheds light on what business owners and managers need to know about what moms are looking for, what will attract them, and what it takes to keep them coming back.

www.uli.org/floridaregionalcooperation

Final report of the ULI Statewide Committee on Regional Cooperation

www.uli.org

Business Improvement Districts, 2nd Edition

by Lawrence O. Houstoun Jr.

"With BIDs so common today, potential downtown investors, noting the absence of a BID, may conclude that such a place is a bad risk in that it fails to attract local business support. While the forces that have long buffeted downtowns remain formidable, the renewed business confidence that BIDs engender may by itself justify the costs. BIDS provide a test of popularity within the business community that is rare, if not unique, among economic development tools. The people who pay the rents and the taxes are also paying for BID services. That says a lot."

Houstoun is a principal with the Atlantic Group, an urban development-consulting firm. He has worked on economic development, design, security, and marketing issues in more than 70 commercial areas, helped draft New Jersey and Pennsylvania's business improvement district laws, and participated in the management of four BIDs.

American Planning Association

www.planning.org

New Markets Tax Credits: Leveraging Equity for Economic Development Projects by James Carras, FRA Regional Representative, Carras Community Investment, Inc., American Planning Association News and Views, Economic Development Division, Winter 2005.

International City and County Management Association

www.icma.org

ICMA Hosts Eminent Domain Webcast

On November 15, 2005, at 2:00 p.m. EST, the ICMA will host a 90-minute webcast, "Eminent Domain: Implications from the Kelo v. City of New London Case." The webcast will explore the major implications for local governments of the Supreme Court's decision, highlight how local governments have successfully used eminent domain in the past, and examine what actions Congress and the state legislatures are likely to take to curb local government powers.

American Bar Association

www.abanet.org/genpractice/newsletter/lawtrends/0506/realestate/preservationtaxcred.html

"An Overview of Opportunities (and Pitfalls) in the Federal Historic Preservation Tax Credits Program"

by Stephen J. Day, partner at the Real Property Law Group PLLC, in Seattle.

Day is a real estate/land use attorney as well as a licensed architect. He is currently the chair of the AIA Seattle Historic Resources Committee and works with a variety of clients in putting together real estate development projects, including those involving redevelopment of landmark historic properties. He can be reached at (206) 625-1511.

University of Washington Press, Seattle and London

www.washington.edu/uwpress, (206) 543-4050

Neighbor Power: Building Community the Seattle Way by Jim Diers. Diers is the liaison to Seattle communities for the University of Washington Office of Partnerships, director of the South Downtown Foundation, and on the faculties of the University of Washington Department of Architecture and the Asset-Based Community Development Institute.

"Jim Diers was the Pied Piper for the Seattle neighborhood movement which built a national and international reputation.....his writing is a must read for citizen activists, urban planners and elected officials." Paul Schell, former mayor of Seattle.

www.redevelopment.net



**FLORIDA
REDEVELOPMENT
ASSOCIATION**

Are you dedicated to the preservation and revitalization of Florida's communities?

We Are – Join Us!

Short Takes

In order to begin bidding on its portion of a \$40 million streetscape project (including utilities), the **Fort Myers DRA** had to have the funds in place. So they secured a loan through Bank of America, and the bank agreed that the tax increment revenue projections were strong enough to make the seven-year loan without any backup pledge from the city. The DRA is doing the streetscape in conjunction with a Public Works utility replacement project. All of the underground water and sewer lines are being replaced by the city, and since the streets will be torn up for this project, all the DRA has to pay for is the enhanced streetscape treatment (i.e., brick trimmed sidewalks and crosswalks, new landscaping, decorative lighting and street furniture). They are using the streetscape design that Andres Duany provided for them when he completed the downtown master plan. It will be a two-and-one-half-year project.

After much anticipation, the Grand Promenade Interim project has broken ground in **Miami's Overtown CRA**. The Grand Promenade is located between N.W. 10th and 11th Street from N.E. 2nd to N.W. 1st Avenue, within the Park West Entertainment District. The Park West Entertainment District came to fruition through the implementation of a zoning regulation that allotted 11, 24-hour liquor licenses for the district. People from entertainment clubs on Miami Beach and surrounding areas slowly trickled into the district during the weekends. Attracted by the lower land costs and availability of parking, the Grand Promenade is home to Players Sports Bar & Grill, Space 34, and the Fight Club nearby. The CRA has sustained the viability of the Entertainment District by implementing an interim project that will improve the abandoned Florida East Coast right of way. The interim project includes removing the railroad tracks, paving the existing alleyway, installing exterior lighting and landscaping. Dover Kohl, CRA planning consultant, authored the "Grand Promenade Special Area Plan," which references the design guidelines preferred for the long-term plan of the area. The long-term plan envisions a Grand Promenade that will create a lively pedestrian-friendly realm complete with decorative pavers, landscaping amenities for outdoor cafés, street lighting and plasma screens. The plan also recommends wider pedestrian-friendly medians providing access to the area attractions, i.e. American Airlines Arena, Bayside Marketplace, Performing Arts Center and Bicentennial Park.

Did you know Miami had a mangrove forest? The **Miami Mangrove Forest** is a volunteer public art project, created with the help of Hands on Miami and students from Miami International University of Art Design, in coordination with volunteers from the Downtown Neighborhood Enhancement Team (NET). The "forest" helps beautify the interstate's underpasses in downtown, Little Havana and Allapattah neighborhoods. With the help of Xavier Cortada's artwork, the entire project has been brought to life. Cortada chose images of Mangrove trees in their early cycle of growth. This also serves as a metaphor to honor the early settlers who planted roots in Miami. Creating a natural environment reminds us of the way things were in the past. The Downtown Net offices, presenters, sponsors and volunteers strive to improve the appearance of the downtown Miami area and hope to expand this project throughout the NET area not only to beautify, but to also unify, the community.

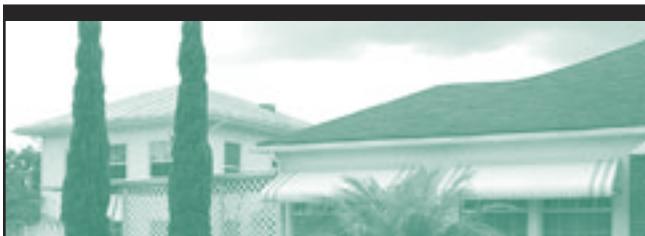
Black History Tours – The Miami Dade Transit Authority completed its annual tour of Overtown for the month of February in honor of Black History Month. The tours were offered Saturday mornings and allowed passengers to ride through some of the most historic and cultural significant areas of the community – noteworthy to the many people who had contributed to making Overtown famous throughout the years. The free tours passed through 9th Street Mall and the D.A. Dorsey Avenue (3rd Avenue), with stops at Greater Bethel AME Church, the Chapman House and the Ward Rooming House. The Black History Bus Tours were a collaborative effort between **Miami Dade Transit Authority** and **The Black Archives History and Research Foundation**, dating back to 1994.

Don Shea, executive director of the **St. Petersburg Partnership**, is the current chairman of the Board of the **International Downtown Association** Board of Directors. After hosting a successful Downtown Institute in St. Petersburg last February, the IDA is looking forward to its 2005 annual conference in Denver, and the World Congress on Downtown Revitalization in New York in 2007. The FRA Annual Conference will be held in St. Petersburg at the Hilton bay front on October 19-21. Visit www.ida-downtown.org.

Smart Growth America reports that voters are sending mixed signals about how they want their communities to grow, but one thing is clear: voters want more control on issues that hit closer to home and are less satisfied with the performance of their elected and appointed officials. Twenty-

five states had a total of 140 local initiatives on the ballot related to funding for the protection of parks, open space and agricultural land. Of the 140, 111 passed, totaling an estimated \$2.4 billion of new funding for green space protection. Visit www.smartgrowthamerica.com.

Two years ago, the **Northwood Business Development Corporation (NBDC)** collaborated with the **City of West Palm Beach**, the **Local Initiatives Support Corporation (LISC)**, and **Complete Property Management, Inc.** to create the first comprehensive "Model Block" in Palm Beach County. Ten years earlier, Delray Beach had developed a very successful Model Block program on N.W. 5th Avenue. More than 2,300 homes were



Where am I?

I have 49 churches, one bar, one chamber of commerce, a CRA, a city manager, 80 percent occupancy downtown, and many wonderful natural resources with potentially an eco-tourism market.

Answer: Avon Park. FRA members Jim Edwards and Wes Larson visited this quaint little city under the Redevelopment Assistance Program. FRA members give their time and effort to perform this valuable service for the education and outreach to redevelopment programs of all sizes and types. For further information on no cost redevelopment technical assistance provided by the FRA, call the office or go to www.redevelopment.net/oldsite/includes/files/RAPserviceagreement.doc.



built on infill lots in Palm Beach County through the efforts of public, private and nonprofit groups working with LISC. Model Blocks build new homes and support street and facade improvements. The LISC Center for Home Ownership chose the program as a national "Best Practice Model." Now, due to the large number of new luxury residential units planned in the Northwood Business District of West Palm Beach, a major commercial developer is looking at a four-acre site as the location for its supermarket anchor tenant. The RMC Property Group has developed more than 20 Publix stores and is confident that the downtown Northwood site will attract a major supermarket chain. Initial negotiations have already begun with the premier chain. RMS is currently building two downtown condo-retail developments with urban-designed Publix supermarkets – one in Sarasota and a \$72 million project in Orlando. For more information, e-mail tmurray@northwoodrenaissance.org.

The award-winning Community Redevelopment Plan for the 14th Street West **Manatee County CRA** was adopted, providing a strategic framework for carrying out redevelopment initiatives. The 14th Street West CRA district adjoins the **City of Bradenton CRA** districts, and the redevelopment plan recommended a joint approach to implementing infrastructure improvements. In connection with this, a streetscape concept plan was named as the 14th Street CRA's first design project in 2004, and will be coordinated with the city's plans. Slated for construction in 2005 on the perimeter is a Lowe's store, which will help the nearby Books-a-Million. There was a multi-million dollar sale and renovation of a senior care facility in the residential section of the CRA district in 2004, and planning is ongoing for a new bus transfer station and pedestrian greenway featuring a mix of retail and service uses. For a copy of the annual report, e-mail Info@ManateeCRA.com.

The **City of Lakeland** is blessed with four beautiful and picturesque lakes in their downtown CRA, spaced on the points of an almost "square" area within the district. The Downtown Development Authority (DDA), as the Advisory Board to the Community Redevelopment Agency (which became the City Commission in 2001), the city Public Works, Lakeland Electric and Parks and Recreation all pitch in when a streetscape project is planned and funded by Tax Increment Financing (TIF). A block of streetscape in Lakeland costs about \$272,000. In 2000-04, the DDA and CRA funded parking, facade, residential and commercial innovative design projects. For a copy of the annual report and pictures, go to www.ldda.org.

Legislative Matters

Your FRA lobbyists, board and members – in partnership with the Florida League of Cities, the National League of Cities, and other state redevelopment associations – are gearing up for legislative efforts to revise state law regarding eminent domain and community redevelopment agency powers. Keep close watch on the FRA and FLC Web sites as we provide updates (www.redevelopment.net and www.flcities.com).

The U.S. Supreme Court “Kelo” decision enabled the media to stoke wildfires in the public about the use of eminent domain by local governments in redevelopment projects. As a result, almost every state legislature and the U.S. Congress produced legislation designed to “keep what happened in New London, Connecticut, from happening here.” On June 24, the day after the case was decided, Florida’s Speaker of the House Allan G. Bense created the **Florida House of Representatives Select Committee to Protect Private Property Rights**.

Members, House Select Committee to Protect Private Property Rights.

Chair: Marco Rubio (R)
Dean Cannon (R)
Greg Evers (R)
Anitere Flores (R)
Bill Galvano (R)
Ron Greenstein (D)
Denise Grimsley (R)
Arthenia Joyner (D)
Jeffrey Kottkamp (R)
Dick Kravitz (R)
Ralph Poppell (R)
Julio Robaina (R)
John Seiler (D)
Dwight Stansel (D)
Anthony Traviesa (R)

Members, Senate Judiciary Committee

Chair: Daniel Webster (R)
Vice Chair: J. Alex Villalobos (R)
Dave Aronberg (D)
Carey Baker (R)
Walter G. “Skip” Campbell Jr. (D)
Charlie Clary (R)
Steven A. Geller (D)
Bill Posey (R)

The committee has met twice since August. It has sent out surveys and is seeking input from a broad spectrum of stakeholders for their feedback. The **Senate Judiciary Committee** has asked the FRA to assist in sending out a survey on eminent domain/CRA in Florida.

The FLC and FRA have responded – indeed, we are drafting bills on both the eminent domain and CRA issues separately. However, we need to make the case for not “throwing out the baby with the water,” with strong facts and strong local case studies. If you have used eminent domain in your program and have not sent us before-and-after pictures of the project, please do so as soon as possible. The members of the Property Rights Committee and Senate Judiciary Committee are listed below. If your representative or senator is on these lists, and you have not already done so, we urge you to meet with them as soon as possible about the benefits and successes of your CRA. For further information, contact the FRA Executive Director Carol Westmoreland at (850) 224-6779, ext. 115.



Florida Redevelopment Association Policy Statement • Eminent Domain

*Adopted by FRA Board of Directors
on August 20, 2005*

The Florida Legislature has specifically authorized the use of eminent domain for the redevelopment of slum and/or blighted areas.ⁱ A historical role of a Community Redevelopment Agency (“CRA”) in Florida has often been to acquire land for sale or lease to the private sector to remove or prevent slum or blight. Most often the land is acquired through negotiated purchase with a willing seller. If negotiated purchase is unsuccessful, CRAs may acquire the property through the exercise of the power of eminent domain. The use of eminent domain should be a last resort to complete the land assembly process.ⁱⁱ

A CRA may not use the eminent domain power unless and until the elected governing body that

created the CRA has authorized the use of the power for a specified property.ⁱⁱⁱ

The United States Supreme Court recently addressed the use of eminent domain in an economic development context and the application of the 5th Amendment's "public use" provision.^{iv} A majority of the Court found that based on long-standing precedent, the City of New London had the authority to take private real property for the purpose of economic development and conveyance to a private developer. That case did not involve the use of eminent domain to take real property in an area found to be slum or blighted. The United States Supreme Court found that such a taking was permissible under the 5th amendment in 1954.^v

Florida authorized the use of eminent domain for community redevelopment in 1969 when the Legislature enacted the Community Redevelopment Act of 1969.^{vi} This power had also been provided in various special acts creating downtown development authorities during the 1960s.^{vii}

In 1980 the Florida Supreme Court found the tax increment financing program established in §163.387, Florida Statutes (1999)^{viii} to be permissible under Florida's Constitution.^{ix} In its opinion the Court found that the use of eminent domain by a community redevelopment agency to acquire property from one person to convey it to another for redevelopment was permissible as serving a public purpose.

Subsequent court decisions have upheld the acquisition of property by a CRA for conveyance to a private party for a redevelopment project.^x

There are also federal tax benefits to the property owner selling property under threat of condemnation, i.e. eminent domain, or having property acquired through the eminent domain process. In the absence of condemnation, property owners have one (1) year to reinvest the proceeds from the sale of their property before the capital gains tax is applied. But according to federal tax law a property owner has two (2) years to reinvest the proceeds of a sale of property sold under threat of condemnation or pursuant to an order of taking before the capital gains tax applies.^{xi} Thus, eminent domain is often used as a threat to take advantage of the federal tax benefit rather than as an involuntary taking of property.

Land assembly for community redevelopment is important because the market for larger, consolidated properties is much preferred than that for small, fragmented properties. Developers are reluctant to undertake the costly, time-consuming land assembly process, particularly when they are unsure of the ultimate outcome. By assembling properties, CRAs can attract private investment. Land assembly supports smart growth initiatives

to recycle older, urban areas. Without the power of eminent domain, CRAs will have much difficulty in assembling land, especially where many landowners are involved.

Principles for Use of Eminent Domain for Redevelopment

1. CRA initiated land assembly should be an inclusive process initiated with a discussion amongst residents and local businesses in the target area.

2. Eminent domain should be used as a last resort in the land assembly process. It should be used when a property owner is unwilling to sell or refuses to sell at a fair market value plus premium and relocation costs and only after attempted negotiations have failed.

3. When embarking on a redevelopment project that requires land assembly, all reasonable efforts should be made to avoid relocating occupied residences and businesses. The community must carefully weigh the benefits of redevelopment versus displacement.

4. In cases where eminent domain is used for occupied residential or business properties, relocation costs must be covered. Relocation costs should not be just the appraised cost of the taken residence or the business, but should take into account the market to which the displaced property owner will be looking for replacement housing or business location.

¹ §163.346, Florida Statutes (2005).

² Most condemnation proceedings for redevelopment have been uncontested. The contested actions have been in Delray Beach, Jacksonville Beach, downtown St. Petersburg, and Charlotte County.

³ §163.346, Florida Statutes (2005).

⁴ *Kelo vs. City of New London* (Case No. 04-108; Decision released 6/24/05)

⁵ *Berman vs. Parker*, 348 U.S. 28 (1954)

⁶ Codified as Part III, Chapter 163, Florida Statutes (2005), originally enacted as Chapter 69-305, Laws of Florida.

⁷ For example, see Chapter 65-1541, Laws of Florida, creating the Fort Lauderdale Downtown Development Authority

⁸ As added to the Community Redevelopment Act by Chapter 77-588, Laws of Florida.

⁹ *State vs. Miami Beach Community Redevelopment Agency*, 392 So. 2nd 875 (Fla. 1980).

¹⁰ See *Holloway vs. Lakeland Downtown Development Authority*, 417 So. 2nd 963 (Fla. 1982); *State vs. Panama City Beach Redevelopment Agency*, 831 So. 2nd 662 (Fla. 2002).

¹¹ §1033, Internal Revenue Code

Florida Department of Transportation Rules on Wayfinding – No More Local Designs on State Roads?

The Florida Department of Transportation (FDOT) is proposing new rules on the design of local “wayfinding signs.” The rule will be included in the *FDOT Traffic Engineering Manual*. The intent of the new rule is to help district FDOT traffic operations offices review wayfinding master signing plans that are submitted. The department says that without this section, most signs within the proposed wayfinding or sign plans may be denied, because they could violate both existing state and federal signing standards. Some of these standards include being devoid of logos, and certain color restrictions (green/white in this case). A copy of the

current section in the *Traffic Engineering Manual on Supplemental Guide Signs/Custom Place Name Signs* is available at www.dot.state.fl.us/trafficoperations/temanual/Chapter2/2.16.pdf and www.dot.state.fl.us/trafficoperations/temanual/Chapter2/2.7.pdf.

A copy of the proposed rule/section may be obtained from Carol Westmoreland at the FRA office, 1-(800) 616-1513, ext. 115. If you have comments, or if have been denied or are being denied signage approval by the FDOT, please contact the FRA office. Comments on the rule may be forwarded to Gail Holley, Highway Signing Program Manager, Florida Department of Transportation, State Traffic Operations Office, (850) 414-4860, Fax: (850) 414-5251/SC 994-5251, or e-mail: gail.holley@dot.state.fl.us.

Resources

The Urban Land Institute offers a Basic Real Estate Finance Workshop online that can be accessed 24 hours a day, seven days a week. It is designed to give students an introduction to the basic principles of real estate finance, and is broken into seven segments. The course will acquaint the students with fundamental real estate finance terms and concepts including income-producing real estate, net operating income, percentage rents, compound interest, discounting process, internal rates of return, and mortgage financing and leverage. Each segment is an hour long and may be viewed up to three times over a 30-day period. For further information, go to www.basicfinance.uli.org.

Want to sharpen your nonprofit organization’s skills? Two resources are available for nominal fees: the Florida Association of Nonprofit Organizations, www.fano.org, and the NonProfit Institute, www.forthepublic.net. These organizations offer training on volunteerism, advocacy skills, media relations, audits and funding, and ethics/professional standards.

The Resource for Advanced Public Transportation Systems (RAPTS) was established by the **Florida Department of Transportation** (FDOT) to: (1) provide technical expertise; (2) facilitate information exchange; and (3) foster statewide coordination to ensure successful and cost-effective deployment of public transportation throughout Florida. The Center for Urban Transportation Research (CUTR) at the University of South Florida makes this happen under contract with the FDOT. For further information, go to www.rapts.cutr.usf.edu.

The American Planning Association and the Lincoln Institute of Land Policy have instituted

Web conferences for planning commissioners, and appointed and elected officials. Each year they feature “Planning, Environmental and Land-Use Law for Planners and Planning Officials.” For more information, go to www.planning.org/audiokonference/index.htm.

If you have wondered where to find training on the Sunshine and Public Records, Ethics Laws in Florida, the John Scott Dailey **Florida Institute of Government** (IOG), <http://iog.fsu.edu/>, offers online and traditional courses throughout the state. Their mission is to improve effectiveness in state or local government. Florida’s Code of Ethics, Sunshine Law and Public Records Act online training is available now. The course was developed under the auspices of the Legislature, in partnership with the Commission on Ethics and the Florida Attorney General’s Office, funded by the Legislature. Free to all elected officials, and for a nominal fee for others. If you are an elected official, you need a promotional code to use in “purchasing” your free course. Visit the “Help” page for more information, at <http://iog.fsu.edu/>. CLER credits are available.

The Florida League of Cities is proud to present the release of “Getting to Know Your Florida Cities,” a new training DVD. This e-version general overview is designed to help citizens, the media, civic organizations, schools and others learn more about municipal governments in the Sunshine State. The DVD is provided to cities, schools and newly elected officials. It also is available to print and television media personnel throughout the state. Each chapter can stand alone, or it may be used with the rest of the DVD material for a “full course” on municipal government. To request a copy of the “Getting to Know Your Florida Cities” DVD, go to www.flcities.com.

Legal Corner *by* David Cardwell

FRA General Counsel, The Cardwell Law Firm, Orlando

Q: Does a charter county, by virtue of its charter powers, have approval over the use of eminent domain in a city?

A: The Redevelopment Act does not give the county express authority to approve or disapprove the use of eminent domain, but the county can reserve that approval through the delegation of powers. In Dade County, the county takes the position that the “governing body” referred to in the act is the Board of County Commissioners, not the City Commission.

Q: Our city expanded the boundaries of the existing downtown community redevelopment agency (CRA) to include areas contiguous to the existing boundaries. Prior to this occurring, a blight study was completed, and an appropriate resolution was adopted by council. Additionally, an amended CRA plan was prepared and adopted by council, after being recommended by the CRA Board. This plan included the expanded boundaries. A redevelopment trust fund exists for the CRA pursuant to Section 163.387(1).

Now the questions: Does a new trust fund need to be established for the expanded areas? Does it matter that the expansion areas are contiguous to the original CRA area? I could understand the establishment of a new redevelopment trust fund if council that is separate subsequently approves a new expansion area and distinct from the existing area. This would ensure the tax increment funds are being used for that CRA area only.

A: There is no hard-and-fast rule whether to create a separate trust fund or use the existing fund. Different cities have done it different ways. I believe the majority have kept one trust fund and created separate “accounts” in that fund for each area. The expanded area will have a different base year value for calculating TIF than the original area.

Q: Do CRAs have to comply with the requirements for **CCNA** professional services as defined in Chapter 287, Florida Statutes, or are they exempt? If exempt, what is the statutory reference for exemption? More specifically, is competitive bidding necessary for an update to an existing redevelopment plan?

A: CRAs must comply with CCNA. They are considered a “district” for purposes of Chapter 189,

Florida Statutes, and the CCNA statutes. I don’t think competitive bidding is required for a plan update. That is a consulting service that is not within the reach of CCNA in my opinion.

Q: What does the 30-day notice before you dispose of redevelopment property really mean? Does it mean you do one notice in a public newspaper that you will be selecting proposals within 30 days? Or can you do the notice and start an RFP process that lasts 60 days to selection?

A: One notice in the legal notices section of a newspaper of general circulation in the redevelopment area is sufficient. You can start the process earlier with a request for proposals. However, you will have to do the statutory 30-day notice before selecting a developer, to dispose of property and before entering into an agreement to do so.

Q: Can CRA required notices be mailed certified instead of registered?

A: Section 1.01, Florida Statutes, contains definitions that apply throughout all of the Florida Statutes. Note subsection (11) where “registered mail” also includes “certified mail with return receipt.” The answer is yes.

Q: As a CRA, what can the board spend the TIF monies on? Are there guidelines?

A: Although the statute is specific in some ways, it is very vague as to a hard-and-fast test.

A general guideline is that the expenditures have to be related to the conditions of blight found to exist. For example, you can’t make a finding of blight on the basis of lack of affordable housing and then spend most of the TIF money on transportation improvements. There can be some expenditures that do not relate to the blight conditions, but it should be less than half of the expenditures, and clearly addressed in the redevelopment plan.

Q: When does a CRA need to report a change in its status to the Department of Community Affairs, and what special budget considerations are there for a CRA budget?

A: CRAs are dependent special districts for purposes of Chapter 189, Florida Statutes. When a CRA

changes the composition of its governing board (e.g. from appointed board to the elected city commission), the CRA must notify the Department of Community Affairs (Section 189.418(2), Florida Statutes (2003)). The DCA must also be notified when there is a change in the CRA boundaries. This filing must be done within 30 days of the action. Also, see Section 189.418(3), Florida Statutes (2003), which requires a CRA to adopt a budget every year by resolution. The adopted budget must regulate expenditures of the CRA. It is unlawful for any officer of a special district to expend or contract for expenditures in any fiscal year except as provided in a budgeted appropriation.

Q: How does Florida law address the use of eminent domain by CRAs?

A: A taking of property pursuant to the Redevelopment Act, Chapter 163, Part III, Florida Statutes, is for a public purpose. The Florida Supreme Court in 1980 said the legislature made that determination when it enacted the Community Redevelopment Act in 1969. But a CRA taking property under the Redevelopment Act must strictly comply with the provisions of that act and have the ability to take property included in the plan.

CRA REPORTING REQUIREMENTS

All CRAs are required to file an annual report of activities and financial statement for the preceding fiscal year, as of each March 31. The report must be filed with the governing body that created the CRA, and a notice of the availability of the report must also be published in a local newspaper. The requirement to file the report with the auditor general was removed from the statute (Section 163.356(3)(c), Florida Statutes), but this does not mean that the annual report is not required locally. The FRA urges all members to send written reports to all taxing entities that contribute to the TIF trust fund every year with the annual audit. Go to www.redevelopment.net or call the FRA office for a complete checklist of requirements, as well as for sample reports.

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New Regional Reps Give Members More

At the FRA Annual Conference, you probably met your new FRA regional representative appointed by the FRA board. We are excited about the opportunities that the regional rep system can present for your agency, business, city, county and, ultimately, our state. These dedicated FRA members want you to meet valuable contacts in your area, to know what you think and what you would like the FRA to offer, and they want you to be up on the latest in the redevelopment field. These regions can also strengthen our legislative network (they are patterned after the Florida Regional Planning Council's 11 regions). They can't do it alone. If you want to become more involved in your region, please let them know.

Refer to the following list to find out who your new rep is. If your region is not currently represented, why not put your hat in the ring? Call the FRA office for more information at (850) 222-9684.

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