



FRA Legislative Policy Statement 2006

The Florida Redevelopment Association's purpose is to promote the improvement of downtown and urban areas through redevelopment and development activities. Our association opposes any amendments to the Community Redevelopment Act (Ch.163, Part III) that affect the ability of community redevelopment agencies to carry out their mission. In those areas in Florida where there are issues between municipalities and their respective counties, FRA believes these issues should be worked out at the local level and not through legislative amendments. Our position is identical to the Florida League of Cities, Inc.:

We support legislation that preserves the home rule powers of municipalities to create and effectively use community redevelopment agencies to redevelop and revitalize their urban areas, including the use of tax increment financing. We further support local control and disposition of any disputes between local governments over the use of such agencies and financing.

In addition, the FRA supports changes to Chapter 163, Part III, that further clarify CRA roles, powers and the use of interlocal agreements between city CRAs and counties. Changes, however, should be limited to new CRAs only.

For the past thirty-three years cities throughout Florida have created community redevelopment agencies ("CRAs") to focus on the needed redevelopment and revitalization of the urban core. CRAs rely heavily on tax increment financing as a means to finance public redevelopment projects and to, in many instances, match private investment. This type of financing is very popular and successful because it provides specific public services without increasing taxes or levying any new taxes. In addition, both residents and business owners favor this system because the taxes they pay on their investment are rewarded with direct benefits from the CRA. In most cases, these benefits have been in the form of infrastructure improvements.

Recently, some county governments have proposed changes that would unduly restrict the creation and expansion of CRAs by municipalities and would upset the carefully crafted redevelopment policy this state has been following since 1969. The Legislature should resist any attempt to restrict the use of tax increment financing, particularly if the object is to restrict the amount of money to be available for redevelopment or to obtain control over its use, and not about the merits of revitalizing blighted areas.

CRAs and tax increment financing have been integral tools for cities and counties to provide improvements to blighted urban cores for more than 30 years. It is not in the state's best interest to restrict their ability to revitalize and redevelop areas that are the most in need of every possible tool.

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.¹ 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.²

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.³

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.⁴ 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 1954.⁵

Florida authorized the use of eminent domain for community redevelopment in 1969 when the Legislature enacted the Community Redevelopment Act of 1969.⁶ This power had also been provided in various special acts creating downtown development authorities during the 1960s.⁷

In 1980 the Florida Supreme Court found the tax increment financing program established in §163.387, Florida Statutes (1999)⁸ to be permissible under Florida's Constitution.⁹ 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.¹⁰

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.¹¹ 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