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James E. "Jim" King, Jr., President

## STRATEGIES TO PROMOTE AND ENCOURAGE URBAN INFILL AND REDEVELOPMENT

### SUMMARY

Urban infill and redevelopment projects are intended to improve existing neighborhoods and encourage investment in those communities. The obstacles to these types of projects include land assembly, abandoned properties, inadequate infrastructure, environmental contamination, and zoning regulations. As a result of these barriers, communities may fall into decline and become distressed neighborhoods that experience higher crime rates. The Legislature passed legislation in 1999 that authorized a local government to designate an urban infill and redevelopment area and provided a number of incentives for designating such an area.

Land assemblage is difficult with urban infill and redevelopment projects due to the lack of availability of properties and the high costs. Some of the properties that could be used for infill and redevelopment are abandoned properties as the result of a tax lien. In Florida, a tax certificate holder may apply for a tax deed between 2 and 7 years after issuance of the certificate. A tax certificate becomes null and void if there is not an application for a tax deed within 7 years from the issuance of a tax certificate. However, some states have shortened this time period to expedite the return of a tax delinquent property to a tax revenue status.

In addition, the environmental contamination of some urban properties and inadequate infrastructure have hindered redevelopment efforts. Land development regulations may discourage mixed-use, high density development necessary to make an urban infill and redevelopment project profitable. Some local governments have dealt with the density issue by allowing for transferable development rights in urban areas.

Staff recommends that the Legislature consider reducing the time period for the issuance of a tax deed

and the time period for nullification of a tax certificate if a tax deed has not been applied for during that time; requiring the Department of Community Affairs to develop a model zoning ordinance that encourages mixed-use, high density development and also a model ordinance that provides for transferable development rights in urban areas; and clarifying the authority of counties to create a land bank for the purpose of clearing title and making property available for urban infill and redevelopment projects to expedite the return of the property to a tax revenue status.

### BACKGROUND

Urban infill and redevelopment projects are those projects that use vacant or under-utilized parcels within an urban area to improve existing neighborhoods and encourage economic development. In general, as communities have continued to grow with low density development and new public facilities towards the fringe, many older urban areas have begun to decline and are now considered distressed neighborhoods. The obstacles to infill and redevelopment in an urban area include land assemblage issues, abandoned properties, environmental contamination, outdated zoning regulations, and inadequate infrastructure.

At the same time urban infill and redevelopment projects are facing numerous barriers, the cost of housing continues to rise in many urban communities. Families move farther from work centers in search of housing that is within their income range. During the past three years, the median price for an existing home in Palm Beach County has risen by 73% while the county's median family income has risen by only 7%.<sup>1</sup> The median selling price for a home in Palm Beach

<sup>1</sup> \$240,000 *It's the New Norm in Palm Beach County*, Jennifer Peltz and John Maines, South Florida Sun-Sentinel, Nov. 24, 2003.

County is now \$290,000.<sup>2</sup> Similarly, Broward County has experienced a sharp increase in home prices. The median price for an existing single-family home is \$226,000.<sup>3</sup> However, a family earning the Broward County median household income of \$56,400 can only afford a \$162,000 home under federal standards which allow 30% of annual income as the upper limit of income payable towards housing.

In order to address the rising cost of housing, some communities have worked with community development corporations to build mixed-use and mixed-income projects in urban areas.<sup>4</sup> These types of projects are high density with multiple uses including retail, office, and residential units. Also, these projects may have a number of units available to reduced-income buyers at lower prices.<sup>5</sup> In general, these types of high density, mixed-use developments have been successful, but are still in need of incentives because of some of the impediments to urban infill and redevelopment.

Strategies for promoting and encouraging urban infill and redevelopment may include regulatory changes to reduce barriers to these projects, reducing developer's costs, and improving the market for high density development.<sup>6</sup> The Legislative Committee on Intergovernmental Relations produced an interim project report in 1997 on developing a state urban policy. The committee reached consensus on the following strategies that should be part of the framework for the state's urban policy:

- Supporting and promoting fiscally strong, sustainable, and livable urban centers;
- Recognizing infill development and redevelopment is necessary to promote and support fiscally strong, sustainable, and livable centers;
- Supporting compact, multi-functional urban centers through the adoption and support of policies that reduce urban sprawl;

<sup>2</sup> See *id.*

<sup>3</sup> \$226,000 *It's the New Norm for Homes in Broward County*, Brittany Wallman and John Maines, South Florida Sun-Sentinel, Nov. 23, 2003.

<sup>4</sup> *Housing Communities Near Atlantic Avenue Draw Good Review from Delray Residents*, Michelle Brown, Florida Sun Sentinel, Nov. 24, 2003.

<sup>5</sup> See *id.*

<sup>6</sup> See <http://www.lcd.state.or.us/tgm/pub/1infill.htm>, Transportation and Growth Management Program (Oregon).

- Encouraging communities to include a redesign step, involving citizens in the redesign initiative prior to redevelopment;
- Adopting macro-level urban policies and providing local governments with the flexibility to determine and address their urban priorities;
- Enhancing the linkages between land and water use planning and transportation planning for current and future designated urban areas;
- Amending existing concurrency requirements for urban areas in order to promote redevelopment efforts where such changes do not jeopardize public health and safety;
- Requiring that all proposed developments receive a full-cost accounting review in order to provide a more accurate estimate of the true development costs incurred by the local government;
- Requiring general-purpose local governments, school boards, and local community colleges to coordinate on educational issues, including planning functions and the development of joint facilities;
- Promoting mass transit systems for urban centers, including multi-modal transportation feeder systems;
- Integrating state programs that have been developed to promote economic development and neighborhood revitalization through incentives in order to promote the development of designated urban infill areas; and
- Encouraging the location of appropriate public facilities within urban centers.<sup>7</sup>

The Florida Legislature passed urban infill and redevelopment legislation in 1999, allowing local governments to designate urban infill and redevelopment areas.<sup>8</sup> The intent of this legislation was to have a holistic approach to revitalizing urban centers, ensuring the adequate provision of infrastructure and education facilities, and the creation of jobs and economic opportunity. The bill provided incentives for designating urban infill and redevelopment areas and created a grant program for local governments. The Legislature appropriated \$2.5 million in fiscal year 2000-01 to implement the Urban Infill and Redevelopment Assistance Grant Program.

<sup>7</sup> Report on the Development of a State Urban Policy, Legislative Committee on Intergovernmental Relations, February 1998 at 99-102.

<sup>8</sup> Ch. 99-378, § 1, Laws of Fla.

In addition, the legislation provided exceptions from transportation concurrency requirements, substantial deviation thresholds for Developments of Regional Impact, and limitations on comprehensive plan amendments for certain types of development within designated urban infill and redevelopment areas. The Florida Local Government Development Agreement Act was revised to provide certain assurances to the developer of a brownfields site. Also, it amended annexation laws to allow for the annexation of an unincorporated area through a single referendum of the residents in the area proposed for annexation. The bill authorized the use of eminent domain for an unincorporated enclave surrounded by a community development district. It also established procedures for a county or combination of counties and municipalities to develop and adopt plans to improve efficiency, coordination, and delivery of local services. Finally, the legislation created the State Housing Tax Credit Program authorizing tax credits to be issued against the state corporate income tax and established the Urban Homesteading Program within the Governor's Office to make single-family housing properties available to eligible low-income buyers.

The process for designating an urban infill and redevelopment area is provided in the Growth Policy Act that is contained in ss. 163.2511-163.2526, F.S. The local government must prepare a plan that describes the infill and redevelopment objectives for the proposed area and must demonstrate a commitment to address problems within the area along with programs to accomplish identified goals. The local government may offer incentives that include:

- The waiver of license and permit fees;
- An exemption from a local option sales tax imposed under s. 212.055, F.S.;
- A waiver of delinquent taxes;
- Expedited permitting;
- Lower transportation impact fees;
- Priority of infrastructure spending within the area; and
- Local government absorption of concurrency costs.<sup>9</sup>

The Legislature has provided incentives for a local government that has adopted an urban infill and redevelopment plan.<sup>10</sup> These incentives include the issuance of revenue bonds under s. 163.385, F.S., and the option of employing tax increment financing under s. 163.387, F.S., to finance the implementation of the

plan. Further, a local government that has adopted an urban infill and redevelopment plan may exercise the powers of a community redevelopment neighborhood improvement district under s. 163.514, F.S., that includes the authority to levy a special assessment. Finally, an area designated as an urban infill and redevelopment area is given a priority in the allocation of private activity bonds from the state pool under s. 159.807, F.S.

Tax increment financing, as a strategy for encouraging urban infill and redevelopment, is intended to leverage public funds to attract private investors into the designated area. Basically, the dollar value of properties within the area is determined on a fixed date and this becomes the "frozen value". Any increase in real property value above the frozen value is the "tax increment" and is dedicated to redevelopment in specified area. The tax increment can be used for a particular project or be bonded as a means of increasing the available funds. In general, tax increment financing has not been widely used in urban infill and redevelopment areas.

## METHODOLOGY

Staff made site visits to Broward, Duval, and Palm Beach Counties to meet with interested parties, including the Local Initiatives Support Corporation, and representatives of community development corporations, developers, lenders, and local government officials and staff. In addition, staff met with the Office of Program Policy Analysis and Government Accountability and the Legislative Committee on Intergovernmental Relations.

At the Comprehensive Planning Committee's November 17th meeting, presentations were given on "Florida's Population Growth" by Stan Smith, Director of the Bureau of Economic Research; "Preparing for Growth" by Michael Busha, Executive Director of the Treasure Coast Regional Planning Council; "Urban Infill and Containing Urban Sprawl" by Janet Bowman, Legal Director of 1000 Friends of Florida; and "High Density Development and Redevelopment" by David Graham, Vice President of Planning and Development for the Bonita Bay Group.

## FINDINGS

### Proposed Solutions

Although we have made great strides towards an effective state urban policy, there are persistent barriers to urban infill and redevelopment projects. During site visits and discussions with interested parties, the

<sup>9</sup> S. 163.2517(3)(j), F.S.

<sup>10</sup> S. 163.2520, F.S.

following suggestions were offered as proposed solutions:

- Dedicate the Community Contribution Tax Credit exclusively to housing activities;
- Explore a state version of the federal commercial tax credit;
- Offer additional funding or incentives for updating infrastructure;
- Shorten the time frames for the issuance of a tax deed and sale of a tax delinquent property at a public sale in an effort to expedite the process for redeveloping abandoned properties;
- Provide assistance to developers for sites that are possibly contaminated;
- Streamline the permitting process by providing for a memorandum of agreement between cities and counties on the relevant zoning and regulatory matters affecting urban infill and redevelopment projects;
- Provide incentives for neighborhood master plans;
- Provide a model ordinance for waiving impact fees for affordable housing;
- Streamline the process for receiving predevelopment funding through the Florida Housing Finance Corporation;
- Encourage better coordination between the municipalities and counties regarding land assembly and donation;
- Review caps on housing subsidies because land assemblage and development costs continue to rise;
- Authorize a local government to exercise eminent domain similar to that of a community redevelopment agency for urban infill and redevelopment projects in limited circumstances;
- Encourage the waiver of impact fees for urban infill and redevelopment projects; and
- Revise the criteria for certain state funding sources that give priority to the number of units in a project, as opposed to the density, to enable urban infill and redevelopment projects to be more competitive.

### Land Assemblage

The assembling of property for a redevelopment project is sometimes a difficult task. Sometimes all of the parcel owners in the project area may not be willing sellers or, after several parcels have been purchased, the remaining sellers may dramatically increase the purchase price. However, eminent domain proceedings

may only be used when a governmental entity attempts to acquire a property for a public purpose.

The power of eminent domain, included in Florida's and the Federal Constitution, is the process of acquiring private property for a public purpose after paying just compensation for the property. Chapter 73, F.S., governs eminent domain proceedings. Following notification of the property owner by the local government that it plans to acquire a property for a public purpose, the governmental entity will arrange for a property appraisal. If the property owner and the local government agree on price, the proceeding is complete.

However, if the parties are unable to reach agreement, the local government may proceed under quick take procedures contained in ch. 74, F.S. Essentially, a quick take allows the governmental entity to take title if the judge finds the property is being acquired for a public purpose and an estimate of the property value is deposited with the Clerk of Court. There is also a slow take procedure under ch. 73, F.S., that does not allow for the transfer of title until a jury has determined the amount of compensation.

Many local governments in Florida have combined the use of eminent domain with the exercise of those powers by a community redevelopment agency to assist with a redevelopment effort.<sup>11</sup> In 2002, the Florida Legislature redefined "slum area" and "blighted area" for the purposes of designating the boundaries for a community redevelopment area. The condemnation of property for a redevelopment project is not without controversy. Property owners may resist having their property condemned for the purposes of transferring ownership to another party. However, the condemning authority is seeking ways to promote commercial development, encourage investment in the community, and provide jobs. Earlier courts afforded great deference to a governmental entity's finding of public purpose when condemning a property. Recently, courts have moved towards a strict scrutiny review of whether the property to be condemned for purposes of redevelopment is blighted or is a slum area under the legislative definition.<sup>12</sup>

### Abandoned Properties

<sup>11</sup> *Eminent Domain's Role in Redevelopment: The Evolution of the Public Purpose Doctrine*, Theodore C. Taub, Shumaker, Loop, & Kendrick, LLP, American College of Real Estate Lawyers 2002 Annual Meeting.

<sup>12</sup> *See id.*

The issue of returning property that is encumbered by a tax lien and publicly owned properties to productive use has become an important issue in many areas of the country. The ability of a municipality to deal efficiently with tax delinquent properties affects urban infill and redevelopment projects. Abandoned or vacant properties in an urban area often become a haven for criminal activity, cause surrounding property values to decline, and discourage investment by current and potential residents and commercial investors. The benefits of returning these properties to productive use include increased tax revenues, improvement of surrounding properties by current residents and business owners, new residential and commercial investment, and improvement in the quality of life for neighborhood residents.<sup>13</sup>

Most often property that could be put to a more productive use in an urban area is either a tax delinquent property or already in public ownership. A tax delinquent property may have a lien against the property that exceeds its fair market value and, therefore, discourages any improvement to the property. Other properties may have already gone into foreclosure and have been transferred to the city, county, or state as the result of delinquent taxes, other government liens, or a government mortgage. The local government's enforcement of a tax lien is an important tool for transferring ownership of an abandoned or neglected property to a person or corporation willing to invest in the community.<sup>14</sup>

Chapter 197, F.S., provides the exclusive method for enforcing tax liens resulting from unpaid ad valorem taxes and special assessments. All taxes are due on November 1 of each year, or as soon thereafter as the tax collector receives the certified tax roll. Taxes become delinquent on April 1 following the year in which taxes are assessed or after 60 days have expired from the original mailing of the tax notice, whichever is later. The tax collector is authorized to collect delinquent ad valorem taxes through the sale of tax certificates. A tax certificate, as defined in s. 197.102(3), F.S., is a legal document representing unpaid delinquent real property taxes and costs and charges, that is issued against a specific property and becomes a first lien thereon.

Under s. 197.502, F.S., the holder of a tax certificate may apply for a tax deed within 2 to 7 years after the issuance of the certificate. When a tax deed is applied for, the tax collector must notify the clerk of court, who is required to notify certain persons of the impending sale of the property. Section 197.502, F.S., specifies procedures for disposing of land to satisfy the respective liens against a property. The only liens that survive the issuance of a tax deed are those liens of record that are held by a municipal or county government, special district, or community development district. The property owner is entitled to any proceeds from the sale after all outstanding certificates, taxes, interest, fees, and any other liens against the property have been satisfied. However, if a tax deed has not been applied for on the property covered by the tax certificate, the certificate is null and void after the expiration of a 7-year period from the date of issuance.<sup>15</sup>

Section 197.502(7), F.S., provides that if there are no bidders at a public sale, the property is listed as "land available for taxes" and the clerk is required to notify the county commission and all certificate holders the land is available. Within 90 days from the public sale, the county may purchase the land for the opening bid. For county held certificates on nonhomestead property, the opening bid is the value of all outstanding tax certificates plus omitted years' taxes, delinquent taxes, interest, and all fees and costs paid by the county.<sup>16</sup> The opening bid for an individual certificate holder on nonhomestead property must include the amount of money paid to the tax collector by the certificate holder at the time of the application, the amount required to redeem the applicant's tax certificate, and all other costs and fees paid by the applicant.<sup>17</sup>

Section 197.502(8), F.S., provides that land not bought during a public sale is transferred 3 years from the day of the sale to the county and all certificates and liens against the property are cancelled. This 3-year period was reduced from 7 years as part of legislation enacted in 1999. In addition, the bill authorized a county to cancel county-held tax certificates and omitted years' taxes on properties acquired under that section to provide infill housing. Also, property acquired by the county under s. 197.502, F.S., for infill housing does not have a right of redemption, i.e., the county is prohibited from transferring such property back to the previous owner or any entity in which the taxpayer or

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<sup>13</sup> *Renewing Public Assets for Community Development*, Professor Frank S. Alexander, LISC [Local Initiatives Support Corporation] Online Resource Library at 1.

<sup>14</sup> *See id.* at 4.

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<sup>15</sup> S. 197.482, F.S.

<sup>16</sup> S. 197.502(6), F.S.

<sup>17</sup> S. 197.502(6), F.S.

the taxpayer's family has an interest. Several components of this same legislation were not included in the final version of the bill. This legislation would have reduced the time period for declaring that a tax certificate is null and void if there has not been an application for a tax deed from 7 years to 4 years. Further, it would have reduced the time period for noncounty tax certificate holders to apply for a tax deed from between 2 and 7 years to between 1 and 4 years after the issuance of a tax certificate.

Nationally, states have adopted various approaches to return tax delinquent properties into revenue-generating properties.<sup>18</sup> Legislation allowing for the creation of a land bank is a strategy for increasing the number of tax delinquent properties available for redevelopment that has been implemented in several states. For example, the State of Ohio enacted legislation allowing a municipality to create a Land Reutilization Program or a land bank. This law was amended in 1988 to dedicate 5% of the income from delinquent taxes towards funding a research department and computerized title searches, to authorize tax abatement for properties in the land bank, and to require notification of affected parties by certified mail.<sup>19</sup>

Under Ohio's legislation, the City of Cleveland, Ohio has established a land bank. The county in which Cleveland is located, Cuyahoga County, collects property taxes twice per year. Property is certified as tax delinquent following nonpayment of taxes for one year which leads to foreclosure proceedings.<sup>20</sup> The city identifies properties on a list of all tax delinquent properties generated by the county which should be included in the land bank. After receiving a Judgment of Foreclosure and Order of Sale, the tax delinquent property is made available for purchase at a sheriff's sale which occurs three times per year. Properties are

<sup>18</sup> *Bottom Fishing: Emergent Policy Regarding Tax Delinquent Properties*, Larry Keating and David Sjoquist, Fannie Mae Foundation, <http://www.fanniemaefoundation.org/programs/hff/v3il-fishing.shtml>.

<sup>19</sup> *Abandonment of Cleveland's Housing Stock and Potential for Redevelopment of Vacant Land*, Mark C. Hoffman, Housing Policy research program, The Urban Center, Maxine Goodman Levin College of Urban Affairs, Cleveland State University, June 11, 1990.

<sup>20</sup> *Cleveland Case Study: Model Practices in Tax Foreclosure and Property*, LISC Online Resource Library, [http://www.liscnet.org/resources/2003/01/foreclosure\\_1067.shtml?Planning+%26+Land+Use](http://www.liscnet.org/resources/2003/01/foreclosure_1067.shtml?Planning+%26+Land+Use).

deemed forfeited and the land bank is declared the winning bidder if the property is not sold after two sheriff's sales. Any forfeited properties not identified by the city as appropriate for the land bank revert to the State of Ohio to be sold to the highest bidder.

The title of properties that enter the land bank are free and clear of all other private liens and interests, but remains subject to covenants and easements created prior to the tax delinquency. Properties remain in the land bank until a development proposal is submitted and approved. Once a property is part of the land bank, a community development corporation must submit a plan for infill or redeveloping the property. This plan is evaluated by land bank staff, a neighborhood planner, and a neighborhood advisory council. The city and the purchaser execute an agreement that the purchaser will use the property as described in the plan and comply with any covenants or restrictions on the use of the property that the city has imposed to ensure an effective redevelopment project.<sup>21</sup> Similar to the Cleveland, Ohio land bank, some counties in Florida have infill housing programs that attempt to expedite the process of "recycling" tax delinquent properties. However, at least one county has experienced delays in clearing title to those properties.

### **Inadequate Infrastructure**

A community's infrastructure capability is critical to the success of any urban infill and redevelopment project. The lack of necessary infrastructure and the cost prohibitive nature of upgrading infrastructure diminishes the appeal for urban projects as opposed to suburban projects where new services and facilities are available. In some cases, development has "skipped" over an area with inadequate infrastructure. Those areas continue to decline when urban infill and redevelopment projects move to sites with better infrastructure. Notwithstanding any incentives or assistance currently available, some developers find that upgrading the infrastructure in certain areas is cost prohibitive depending on the size of the project.

### **Environmental Contamination**

The issue of environmental contamination is a concern for some urban redevelopment projects. If a developer has a Phase I environmental assessment performed and there are any concerns raised, this often results in the developer not exercising the option to buy a property.

<sup>21</sup> *Acquisition/Disposition Techniques: Profiles of Techniques Utilized by Municipalities to Transfer Property to CDCs*, Prim Lawrence and Associates and Erica Pascal, Esq., March 1999.

This is more prevalent in urban areas with former building sites and abandoned properties. With smaller building sites, the site assessment represents a greater portion of the market value of the property. As a result of the contamination and the costs associated with site assessments and remediation, these properties often continue to remain idle and hinder redevelopment efforts.

The U.S. Department of Housing and Urban Development and the U.S. Environmental Protection Agency jointly funded a study in 1995 by the Urban Institute on the effect of environmental hazards on urban redevelopment.<sup>22</sup> The study focused on three major questions:

- Whether environmental contamination and regulation is a greater deterrent to investment than other non-environmental barriers;
- Which environmental barriers are the most troublesome; and
- Which state and local economic policies offer the greatest potential to encourage redevelopment on contaminated sites.<sup>23</sup>

The results of this study demonstrated that non-environmental factors such as the “market” and its reflection of redevelopment costs and demand were a greater concern than contamination. The study found that projects went forward and were successful despite concerns over contamination. In some cases, a site was successfully redeveloped following the failure of an earlier project.<sup>24</sup>

As far as the most troublesome environmental barrier, the study reports that the anticipated or actual costs to remediate a contaminated site posed the greatest barrier to redevelopment. Of the developers that stated environmental contamination was a critical concern when deciding whether to invest in a redevelopment project, many realized later that they had exaggerated those costs. Typically, developers fear liability for large, unknown remediation expenses, but they also have concerns over the actual cost of remediation. However, these developers weigh those concerns against the effects of project financing and state programs for redevelopment.<sup>25</sup>

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<sup>22</sup> *The Effects of Environmental Hazards and Regulation on Urban Redevelopment*, Urban Institute, Northeast-Midwest Institute, University of Louisville, University of Northern Kentucky, UI Project No. 06542-003-00, Aug. 1997.

<sup>23</sup> *See id.* at 3.

<sup>24</sup> *See id.* at 5.

<sup>25</sup> *See id.* at 6.

Finally, the study discusses what state or local policies have the greatest likelihood of encouraging redevelopment. The study argues that state intervention has a positive effect on the number of contaminated sites that developers choose to remediate if the policy:

- Establishes basic rules that protect the public health while allowing efficient economic transactions;
- Creates a market by stimulating multiple, simultaneous investment into targeted areas; and
- Acquires and disseminates information more efficiently than is possible in the private sector.<sup>26</sup>

Florida has made significant efforts towards encouraging the redevelopment of brownfields. However, the impact of some programs intended to address environmental contamination is limited by available funding. However, the Brownfields Redevelopment Act, ss. 376.77-376.85, F.S., provides a number of incentives to encourage developers to commit financial resources to redevelop and reuse brownfields. A “brownfield area” is defined by s. 376.79(3), F.S., as a site that is generally an abandoned, idled, or underused industrial or commercial property where development is complicated by perceived or actual contamination. Section 376.80, F.S., provides a process for local governments to designate a brownfield area for rehabilitation. Designation of a brownfield outside a community redevelopment area, enterprise zone, empowerment zone, closed military base, or a designated brownfield pilot project requires at least one public hearing in the area proposed for designation as a brownfield.<sup>27</sup>

The local government, in determining what areas should be designated, must consider the economic development potential of the area, whether the proposed area to be designated is too large in geographic coverage, the potential for private sector participation in rehabilitation, and whether the proposed area has sites suitable for recreational open space, cultural, or historic preservation purposes.<sup>28</sup> Section 376.84, F.S., encourages local governments to offer financial and regulatory redevelopment incentives and technical assistance to induce private investment into brownfield sites. In addition, the state offers a

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<sup>26</sup> *See id.* at 7.

<sup>27</sup> S. 376.80(2)(a), F.S.

<sup>28</sup> S. 376.80(2)(a), F.S.

number of incentives for redevelopment of brownfields through the Department of Environmental Protection, the Office of Tourism, Trade and Economic Development and Enterprise Florida, Inc., and the Department of Revenue.

Specifically, the state incentives offered for redeveloping a brownfield include liability protection for developers agreeing to cleanup a site and lenders, tax credits on intangible personal property or corporate income, job creation bonuses for eligible businesses, low interest loans to purchase liens or tax certificates, cleanup criteria based on risk-based corrective action principles, sales tax credit on building materials purchased after July 1, 2001 for redevelopment projects in certain designated areas, and up to 5 years of state loan guarantees of loan loss reserves.

The federal incentives for redevelopment include appropriations to the Department of Housing and Urban Development and the U.S. Environmental Protection Agency for brownfields related projects, community development block grants for eligible brownfields remediation and redevelopment projects and site assessments, and low or no-interest loans from the clean water state revolving fund to correct or prevent water quality problems.

The developer of a brownfields site also enjoys some immunity from liability. Section 376.82, F.S., provides that a party executing and successfully implementing a brownfields site rehabilitation agreement is relieved of further liability for remediation of the site to the state and to third parties. In addition, the party that remediates a site under such an agreement is not liable in contribution to any other party that incurs cleanup liability for the contamination. These limitations on liability do not restrict the right of a third party to bring an action for damages to property or person. However, the action may not compel site rehabilitation beyond what is required by the agreement. The Department of Environmental Protection will also attempt to negotiate an agreement with the U.S. Environmental Protection Agency regarding any federal corrective action. Also, s. 376.82(4), F.S., provides similar liability protection for lenders that have not caused or contributed to the contamination of the site.

### **Land Development Regulations**

Many local zoning codes and land use designations discourage high density development. In particular, many mixed-use developments or those that combine commercial and residential uses require a variance or zoning change. Such projects usually also require an

increase in density under existing zoning regulations. The cost associated with developing or redeveloping a property that does not conform to existing zoning regulations may deter some developers. Alternatively, the developer may pursue a lower-density project outside the urban area that contributes to sprawl.

Some municipalities have dealt with the density issue creatively through the use of transferable development rights. The concept of transferable development rights has typically been used to allow the purchase or transfer of density units from rural lands to allow for a higher density development in a selected area. However, some local governments have begun using transferred development rights for redevelopment projects. The City of West Palm Beach recently adopted an ordinance allowing the owner of a building that is smaller than allowed under existing zoning regulations to sell the difference to a developer upon agreeing to a historic designation for the structure.<sup>29</sup> Those development rights are then transferred to eligible properties. Under the ordinance, the developer may exceed certain height restrictions when using transferred development rights.

The City of West Palm Beach has approximately 38 properties that have a historic designation or are eligible for such designation which could yield as much as 1.7 million square feet of space available to be purchased by developers.<sup>30</sup> City officials estimate the cost for purchasing this density is \$10 per square foot while other downtown properties sell for \$40 to \$100 per square foot.<sup>31</sup> Several local governments are considering a similar ordinance.<sup>32</sup>

## **RECOMMENDATIONS**

Staff recommends the Legislature consider the following:

- Reducing the time period, currently 2 to 7 years, for the issuance of a tax deed;
- Reducing the time period, currently the expiration of a 7-year period, for nullification of a tax certificate if a tax deed has not been applied for during that time;
- Requiring the Department of Community Affairs to consult with local governments and develop a model

<sup>29</sup> Sec. 94-116, West Palm Beach Code of Ordinances. *See also Law Lets Building Owners Cash in on History*, Thomas R. Collins, Palm Beach Post, Sept. 15, 2003.

<sup>30</sup> *See id.*

<sup>31</sup> *See id.*

<sup>32</sup> *See id.*

zoning ordinance that encourages mixed-use, high density development;

- Requiring the Department of Community Affairs to consult with local governments and develop a model ordinance on transferable development rights in urban areas; and

- Clarifying the authority of counties to create a land bank for the purpose of clearing title and making property available for urban infill and redevelopment projects to expedite the return of the property to a tax revenue status.