Investigation of Allegations - Improper Spending by the Town of Eatonville's Community Redevelopment Agency

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Report 480
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The vision of the Orange County Comptroller's Office is to be recognized as a highly competent, cohesive team leading the quest for continuing excellence in the effective safeguarding and ethical management of public funds, assets, and documents.

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December 30, 2019

Mayor Eddie Cole
Town of Eatonville
370 East Kennedy Blvd.
Eatonville, FL 32751

Dear Mayor Cole:

On September 30, 2019, you provided my office allegations of improper governmental activities involving the use of the Town of Eatonville Community Redevelopment Agency funds and requested we review the allegations. On October 22, 2019, I notified you and the CRA Board that we planned to conduct a review of the books and records of the CRA to ensure that monies were spent in compliance with Orange County Resolution No. 97-M-17 and related interlocal agreements, Florida Statutes, the approved CRA Plan, and the CRA bylaws.

The authority to audit the spending of CRA revenues comes from the statute authorizing its creation. Florida Statute 163.410 allows a home-rule charter County the authority to, at its discretion, allow a municipality within its boundaries to establish a CRA. At the request of the Town of Eatonville, the Orange County Board of County Commissioners passed Resolution No. 97-M-17 on October 28, 1997, delegating certain powers and rights to Eatonville to establish a Community Redevelopment Agency (CRA) within its boundaries. However, the Statute specifically notes,

> Such a delegation to a municipality shall confer only such powers upon a municipality as shall be specifically enumerated in the delegating resolution. Any power not specifically delegated shall be reserved exclusively to the governing body of the county. [Emphasis added]

Florida Statute 163.358 relating to CRAs, notes that "Each county and municipality has all powers necessary or convenient to carry out and effectuate the purposes and provisions of this part..." Therefore, the County maintains the right to ensure that monies remitted to the CRA are spent in accordance with the above provisions.

Accordingly, we performed the testing and procedures outlined in this report. The information gathered provided sufficient evidence to reach our conclusions on the allegations. These conclusions are also included in this report.

Sincerely,

Phil Diamond, CPA
Orange County Comptroller

c: Orange County Board of County Commissioners
Byron Brooks, County Administrator
Town of Eatonville Community Redevelopment Agency Board
Michael Johnson, Community Redevelopment Agency Consultant Executive Director
Greg Jackson, Community Redevelopment Agency Attorney

Background

For background on Part III of Florida Statute 163 and the Town of Eatonville's Community Redevelopment Agency (TOECRA), see the Appendix to this report.

Allegations and Methodology

On September 30, 2019, we received several allegations regarding spending of the TOECRA funds. We reviewed the provided documents and requested additional information. Our office also conducted research into the organization, activities that occurred, and the parties involved with the organization. The alleging party provided various documents for each allegation.

We evaluated all documents received and determined that the investigation would focus on three allegations where sufficient evidence of the potential improper governmental activities was received. These allegations are categorized in this report as:

1) Unauthorized awarding of a $100,000 infill[1] program construction loan;
2) Payment of extra compensation from the TOECRA to four Town of Eatonville (Eatonville) employees; and,
3) Contracting for professional services in violation of procurement practices.

The tax-increment funding associated with the investigated allegations is shown below.

Allegation No.	Allegation	Associated Tax Increment Funds
1.	Infill Program Construction Loan	$100,000
2.	Extra Compensation	$8,000
3.	Professional Services Contract No. 1	$79,000
	Professional Services Contract No. 2	$45,000
	Total Funding	$232,000

We interviewed TOECRA Board member Mayor Eddie Cole, TOECRA Chairman Theodore Washington, and Consultant Executive Director Michael Johnson. Discussions

[1] Infill is defined as "new buildings constructed in the space available between existing structures." (Merriam-Webster Dictionary)

were also held with related third-parties, including the architectural firm associated with the contracts and Eatonville employees. We reviewed relevant state laws, Eatonville and County ordinances, resolutions, interlocal agreements, and the redevelopment plan. We also examined operational and program/project specific documents such as the TOECRA and Eatonville's policies and procedures, financial documents, TOECRA grant files, TOECRA Board agendas and minutes for selected meetings.

When evaluating the allegations and evidence gathered our office uses a standard of proof that requires a preponderance of evidence[2] that demonstrates that the fact sought to be proved is more probable than not.

Overall Summary

The investigation concludes that the three allegations are substantiated:

- The awarding of the infill program construction loan for $100,000 was in violation of TOECRA policy.
- The extra compensation granted to four Eatonville employees was in violation of Florida Statute 215.425.
- The two professional services contracts were awarded in violation of Florida Statute 287.055.

Limitations on Our Conclusions

Our investigation did not include evaluating whether the infill loan program is an effective means of accomplishing the objectives outlined in the TOECRA Redevelopment Plan.

Our investigation relied on documents voluntarily provided by the TOECRA, Eatonville, and through public records requests. The allegations were evaluated based on the evidence provided.

[2] A preponderance of evidence is a standard of proof in civil cases and is evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it. That is, evidence which as a whole shows that the fact sought to be proved is more probable than not. (Black's Law Dictionary, Sixth Edition).

Allegation Findings

1. Program Funding Was Awarded in Violation of the Town of Eatonville Community Redevelopment Agency's Policy

On August 20, 2019, the TOECRA Board ratified resolution 2019-21 authorizing, "…administrative management staff to implement a pilot infill loan program…" Program funding is limited to $100,000 at a 7% annual interest rate for a 120-day loan period. The program requires applicants to own at least three infill lots and commit to developing affordable single-family housing on the lots. The Infill Loan Program does not have any formal evaluation procedures to dictate the assessment of applications or awarding of program funding.

The TOECRA received the first application, dated September 19, 2019, for the program from Classic Home Developers, Inc. (Company). According to Florida Division of Corporations records, the Company was established as a limited liability company on April 1, 2019, by former Eatonville Mayor, Anthony Grant. Mr. Grant and Brianna Grant, his daughter, were added as authorized members of the Company on August 12, 2019. On September 11, 2019, Brianna Grant signed quitclaim deeds to transfer three properties that she owned to the Company.

On September 30, 2019, TOECRA's Consultant Executive Director (Consultant) notified the Company that its application was approved. On October 2, 2019, the Consultant approved the $100,000 Infill Loan Program promissory note as the lender. On October 2, 2019, the Consultant and the Company executed a construction loan agreement outlining the requirements of the loan.

On October 8, 2019, the Consultant submitted a check request to Eatonville's Finance Department for the disbursement of $25,000 to the Company. The check was printed and signed by the TOECRA Chairman and a TOECRA Director on October 9, 2019. The signed check was confiscated by Eatonville's Mayor based on suspicion of improper governmental activity.

We examined the resolution, application and Company documents, and the TOECRA policies and procedures. We concluded that the approval and awarding of funding to Classic Home Developers, Inc. under the Infill Loan Program posed two issues: the authority of the Consultant to enter into the agreement and the disbursement of funds.

The Consultant's Authority

The TOECRA's Consultant approved the Company's application, signed loan documents, and submitted a check request for $25,000 to Eatonville's Finance Department.

However, TOECRA's policy 2.1.6 Authority to Commit the Agency states:

> Only the Board of Directors has the authority to commit the Agency through contracts, grants, agreements, subcontracts, consulting agreements, non-disclosure agreements, license agreements and other binding contractual instruments. Once authorized by the Board of Directors, the Executive Director, or other designee by the Board may sign the contractual document that obligates the Agency. Notwithstanding the above, the Executive Director is authorized to commit the Agency in contracts or agreements of up to $2,000 per month, provided that such contract of agreement requires the dual signature of the Chairman. Furthermore, any contract of agreement for the expenditure of CRA funds exceeding $500 shall require the dual signature of the Chairman.

The $100,000 approved loan amount exceeded the Consultant's commitment authority by $98,000. Further, the application and loan documents did not receive Board approval prior to notifying the Company or submitting a $25,000 check request. In signing the $25,000 check, the TOECRA Chairman and the TOECRA Director also violated the above policy by denying the TOECRA Board its power to review and authorize the agreements.

We discussed our conclusion regarding authorization with the Consultant. He claimed that the section of the resolution authorizing "the administrative management staff to

implement a pilot infill loan program" delegated to him the authority to approve loan documents and authorize the payments. In discussing the authority that can be delegated by a Board, Attorney General Opinion 2001-29 concludes:

> Duties involving the exercise of independent judgment and discretion are governmental, and may not be delegated absent statutory authority. Those that do not require the exercise of independent governmental discretion, judgment or authority are considered ministerial and may be delegated.

In our opinion, approving a $100,000 loan application for an agency that receives approximately $300,000 of annual tax revenues requires, "significant independent judgment and discretion" and is not "ministerial" in nature. Therefore, while it is understood the Consultant could review the applications and make a recommendation to the Board, the approval constitutes a discretionary duty of the TOECRA Board and cannot be delegated to the Consultant. Delegating such a duty removes the oversight by the TOECRA Board to ensure that tax revenues are only expended for purposes allowed in the redevelopment plan and permitted by Part III of Florida Statute 163.

Disbursement of Funds

A work and payment schedule was included as part of the construction loan agreement. The schedule outlines the tasks required for mobilization, framing, drywall, and trim out. Mobilization tasks on the form include permits and impact fees, slab, lintel[3], and placement of exterior frame walls, among other tasks. Further, the approval of the Infill Loan Program application stipulated that the applicant must complete all required inspections prior to the disbursement of funds. There is no evidence in the application or other documents received that any of the mobilization tasks, inspections, or permitting took place before the Consultant approved the $25,000 mobilization disbursement.

Additionally, section 2.8.4 of the construction loan agreement states that "Lender will hold ten (10%) percent of each Disbursement for the Work ("Holdback"). Lender will disburse Holdback only as part of the final Disbursement." However, the check request submitted by the Consultant was for the full $25,000 of mobilization funding. The disbursement, contingent on Board approval and documentation that the terms were met, should be for $22,500 ($25,000 minus the 10% holdback of $2,500).

[3] A lintel is a beam placed across the openings like doors, windows etc. in buildings to support the load from the structure above.

Conclusion

Sufficient evidence was provided to conclude that the consultant exceeded his authority granted by TOECRA's policies. In addition, the mobilization payment did not comply with the terms of the agreement.

2. Additional Compensation Provided to Four Eatonville Employees Was in Violation of Florida Statute 215.425

On August 20, 2019, the TOECRA Board approved resolution 2019-10 to provide $8,000 in additional compensation to four Eatonville employees "for years of service without due compensation." This extra compensation[4] was provided in addition to the employees' regular Eatonville wages for performing Eatonville and TOECRA duties. TOECRA policy does not authorize the awarding of extra compensation to any employees. Eatonville has a special merit program within its policies, but there was no evidence provided that this extra compensation met the requirements of this policy.

Florida Statute 215.425(1), states "No extra compensation shall be made to any officer, agent, employee, or contractor after the service has been rendered or the contract made" Florida Statute 215.425(3), states, "Any policy, ordinance, rule, or resolution designed to implement a bonus scheme must:

(a) Base the award of a bonus on work performance;
(b) Describe the performance standards and evaluation process by which a bonus will be awarded;
(c) Notify all employees of the policy, ordinance, rule, or resolution before the beginning of the evaluation period on which a bonus will be based; and
(d) Consider all employees for the bonus."

We examined the extra compensation award, paychecks, and timesheets for a three-month period including the period of extra compensation, as well as statements of work performed for TOECRA by the four Eatonville employees. Our review concluded there

[4] "Extra compensation generally refers to an additional payment for services performed or compensation over and above that fixed by contract or law when the services are rendered…The purpose of such a provision is to prevent payments in the nature of gratuities for past service, and the restriction pertains to extra compensation given after service has been performed, not to compensation earned during service. Therefore, the payment of retroactive compensation, lump sum allowances, or other forms of compensation not provided for by law or contract is generally prohibited by section 215.425, Florida Statutes." (AG Opinion 2005-30)

was no evidence of any work performed by the four employees outside of the work hours for which they already received compensation. As such, the payments represented "gratuities for past service" (See footnote 5). Sufficient evidence was obtained to conclude the extra compensation provided is in violation of Florida Statute 215.425.

Additionally, as part of our review we inquired about the variance between the $8,000 approved in the resolution and the $8,659.70 TOECRA check deposited into Eatonville's payroll account. Eatonville's Finance Director stated that the $8,659.70 consisted of $7,500 for the fulfillment of resolution 2019-10, and $1,159.70 for the wages of a TOECRA employee. The $500 shortage of the deposit was the result of a check request error by the TOECRA Consultant. Eatonville funds were used to cover the $500 shortage and related payroll taxes. As of the end of fieldwork, TOECRA has not reimbursed the funds to Eatonville.

3. Professional Services Were Contracted in Violation of Florida Statute 287.055

On August 20, 2019, the TOECRA Board ratified resolutions 2019-12 and 2019-13, accepting the proposed contracts of an architectural firm to develop conceptual master plans for 1) Kennedy Boulevard and City Hall and 2) Denton Johnson Center Park. The contracted prices of these master plans were $79,000 and $45,000, respectively. On August 22, 2019, the TOECRA Chairman and architectural firm signed the two contracts approved by the Board.

We examined the two contracts awarded as well as the 2011 continuing contract between the architectural firm and Eatonville that we were informed the contracts were granted under[5]. However, the 2011 continuing contract expired one year after it was granted and no evidence was provided that it was ever renewed. In addition, the two contracts awarded did not adhere to the pricing or other specifications of the continuing contract. The TOECRA Consultant Executive Director (Consultant) also provided an unsigned version of TOECRA Resolution 2010-16 as potential evidence of a continuing contract with the architectural firm. However, the resolution was for the "Zora Square Project" and the document provided does not indicate that other services may be contracted through the resolution. The contract proposed in Resolution 2010-16 was not provided to our office.

[5] This information was provided to us on November 13, 2019. The 2011 continuing contract was not referenced in any of the contract documents.

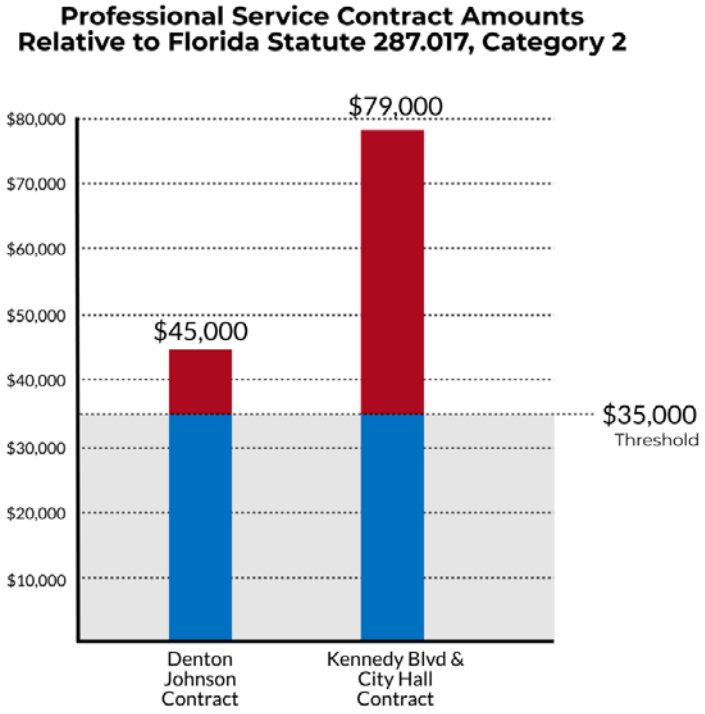
TOECRA Procurement Policies and Procedure 3.5.7.1 dictates that:

> The procurement of professional architectural, engineering, landscape architectural and surveying and mapping services within the scope of Chapter 287, Florida Statutes, shall comply with the requirements of Section 287.055, the Consultants Competitive Negotiation Act ("CCNA"), as amended.

Florida Statute 287.055(3), requires that:

> Each agency shall publicly announce, in a uniform and consistent manner, each occasion when professional services must be purchased for… a planning or study activity when the fee for professional services exceeds the threshold amount provided in s. 287.017 for CATEGORY TWO, except in cases of valid public emergencies certified by the agency head. The public notice must include a general description of the project and must indicate how interested consultants may apply for consideration.

Florida Statute 287.017, defines Category Two as $35,000.



Our review of all documents provided and discussions with TOECRA parties and with the architectural firm provided sufficient evidence that the two professional services contracts were not publicly advertised or based on a valid continuing contract. Therefore, the contracts were awarded in violation of the requirements of Florida Statute 287.055.

APPENDIX – COMMUNITY REDEVELOPMENT AGENCY BACKGROUND

Florida Statutes, Chapter 163, Part III, Community Redevelopment

The creation of a community redevelopment agency (CRA) in county or municipal boundaries that have areas that meet certain criteria are governed by the Community Redevelopment Act of 1969.

Before a CRA can be created, the county or municipality must first show a finding of necessity as to the redevelopment of the area. Specifically, Florida Statute 163.355, requires that:

> No county or municipality shall exercise the community redevelopment authority conferred by this part until after the governing body has adopted a resolution, supported by data and analysis, which makes a legislative finding that the conditions in the area meet the criteria described in s. 163.340(7) or (8). The resolution must state that:
>
> (1) One or more slum or blighted areas, or one or more areas in which there is a shortage of housing affordable to residents of low or moderate income, including the elderly, exist in such county or municipality; and
>
> (2) The rehabilitation, conservation, or redevelopment, or a combination thereof, of such area or areas, including, if appropriate, the development of housing which residents of low or moderate income, including the elderly, can afford, is necessary in the interest of the public health, safety, morals, or welfare of the residents of such county or municipality.

Upon the creation of a CRA through resolution, a CRA board, redevelopment plan, trust fund, and appropriate interlocal agreements are established. The CRA exercises its authority through the CRA board, which is comprised of local government officials or other individuals appointed by the municipality and/or the county. The redevelopment plan identifies economic improvements within the designated area(s) that will address the cited community concerns. The trust fund is funded by municipal and county property tax revenues. These taxes are collected from properties within the boundaries of the CRA. The funding is comprised of the property tax revenues that are above the base-tax amounts that existed during the year in which the CRA was created. These captured and diverted tax revenues are referred to as tax-increment funding (TIF). According to Florida Statute 163.387(1)(a), tax revenues of up to 95% of the additional revenues from the tax increases may be used to fund CRAs. The revenues are required to only be used for activities included in the redevelopment plan.

APPENDIX – COMMUNITY REDEVELOPMENT AGENCY BACKGROUND

Town of Eatonville Community Redevelopment Agency Overview

The Town of Eatonville Community Redevelopment Agency (TOECRA) was established and is governed by Orange County Resolution 97-M-47 and the 2004 Amended Interlocal Agreement between Orange County, the TOECRA. Resolution 97-M-47 declared the geographic area of the TOECRA to be the entire Town of Eatonville. The area was determined to have one or more of the issues cited in Part III of Florida Statute Chapter 163.

The TOECRA Board includes the Eatonville Mayor and members of the Town Council. It also includes an appointee of the Town Council and an appointee of the District 2 Orange County Commissioner. The TOECRA has a Neighborhood Coordinator, a Consultant Executive Director, and an Attorney.

In accordance with the 2004 Amended Interlocal Agreement, the TOECRA received $300,000 in tax increment funding from Orange County and Eatonville in fiscal year 2019.