

**SEMINOLE COUNTY GOVERNMENT
AGENDA MEMORANDUM**

SUBJECT: History of the CDBG Historic Preservation of the Hopper Academy

DEPARTMENT: Community Services **DIVISION:** Community Assistance

AUTHORIZED BY: David Medley **CONTACT:** David Medley **EXT.** 2363

Agenda Date <u>11/07/2006</u>	Regular <input type="checkbox"/>	Consent <input type="checkbox"/>	Work Session <input type="checkbox"/>	Briefing <input checked="" type="checkbox"/>
	Public Hearing – 1:30 <input type="checkbox"/>		Public Hearing – 7:00 <input type="checkbox"/>	

MOTION/RECOMMENDATION:

Staff is seeking direction from The Board of County Commissioners on a request to repay taxes to the Community Improvement Association of Seminole County for the property referred to as the Hopper Academy.

BACKGROUND:

In a letter dated September 19, 2006 Sanford City Commissioner Art Woodruff requested the Seminole County Board of County Commissioners to consider paying approximately \$11,000 of tax certificates for the Community Improvement Association of Seminole County (CIASC). These tax certificates related to the property known as "Hopper Academy" located at 1101 Pine Avenue in Sanford.

In 1995, the County provided \$23,347.88 in Community Development Block Grant funds to the Hopper Academy to provide "patchwork" repairs some windows, replace deteriorated drywall and patch areas where rain water was infiltrating the building.

On 7/14/98 the Board of County Commissioners approved the 1998/99 Consolidated Plan which included funding to the Community Improvement Association of Seminole County, Inc. (CIASC) for the historical preservation of the Hopper Academy.

This activity met the CDBG eligibility regulation under "Historic Preservation", and also met the CDBG national objective regulation under "Activities to address slums or blight on a spot basis". The national objective requirement for this activity is outside the requirements of the CDBG Program that requires that there be a benefit to low and moderate income persons. Therefore, it was not necessary that any low and moderate income benefit or service be "tied" to this activity. The national objective of addressing slums or blight on a spot basis for the purpose of historic preservation does not require on-going monitoring or oversight for this type of activity.

Reviewed by: _____
Co Atty: _____
DFS: _____
Other: _____
DCM: _____
CM: _____
File No. <u>BC555</u>

On 4/27/99 the County entered into a Subrecipient Agreement with CIASC. The purpose of the Agreement was to form a partnership for construction services to historically preserve the Hopper Academy located at 1101 Pine Avenue in the Georgetown Community of Sanford.

The County received authorization from CIASC to advertise a Request for Qualifications (RFQ), to award the RFQ to the firm with the best qualifications, and to execute a design/build agreement with the successful firm. On 8/24/99 the Board approved the RFQ award and authorization to execute a design/build Agreement with CPH Constructors (CPH). On 11/2/99 the County executed the agreement with CPH.

Construction began in December 1999 and was completed in December 2000 with final payment to CPH on December 6, 2000 in the amount of \$54,949.00. Construction costs totaled \$380,471.00 to complete the historic preservation of the building. Total CDBG funding from program years 1995 and 1998 to preserve the building was \$403,818.88.

During the second preservation phase staff held discussions with CIASC as to the types of services or activities that would be conducted. CIASC envisioned the following types of activities: vocational training, computer education, community meetings, arts & crafts classes, counseling, civic & fraternal meetings, and youth activities. CIASC began delivering these services to the community but the Sanford Fire Department deemed that the types of services and public assembly did not meet code requirements and services were subsequently suspended. The building at that point became vacant and is presently void of occupancy and delivery of services. Although staff held discussions with CIASC regarding the delivery of services at the restored facility, the agreement between CIASC and the County addressed only the preservation activities. Consequently, the failure to provide services did not constitute a breach of the contract as it was finalized.

A recent electronic search of the corporate status of CIASC on the Florida Department of State, Division of Corporations, Corporations Online, revealed that CIASC was classified as "Administrative Dissolution for Annual Report" on September 15, 2006. In other words, until the 2006 Annual Report is filed, the Division of Corporations has revoked recognition of the corporation as to its ability to conduct business. CIASC has been deemed in a state of administrative dissolution for lack of annual reporting in 2003, 2005, and 2006. Staff has been informed by the President of CIASC that the process to reactivate the organization has begun.

In staff review of the status of the property in question, it was found that there are actually six (6) separate tax certificates on record totaling \$33,234.33. Staff would not recommend expenditure of any funds that would only partially resolve the issue, leaving the county in a vulnerable position in the event of a future tax deed sale.

In a memo dated October 4, 2006, the County Attorney provided several options for consideration in addressing the request for return of taxes paid by CIA. This memo is attached for review. The original agreement with CIASC in conjunction with the expenditure of \$403,818.88 in CDBG (as detailed above) funds expired in December, 2005 (five years after the last check was cut) and thus recapture of funds is not an option. In addition, utilization of CDBG funds to pay off the Tax Certificates is not allowable. Two options suggested in the attached memo are for CIASC to deed the property to either the City of Sanford, or to Seminole County. The President of CIASC has indicated a

willingness to consider those options. Should either of those options be accepted it would then be the responsibility of the owner to determine the subsequent use of the property and secure necessary funding to accomplish that purpose. Staff would not at this time recommend additional CDBG funding to complete any required upgrades necessary to bring the facility into compliance with relevant codes. Additional funding could only be recommended where tied directly to specific types of services, duration of those services and through an agency that has demonstrated successful delivery of services to our residents. Staff has also spoken with CIASC about getting the building listed on the Registry of Historic buildings which could open avenues for federal or state funds. This however would not provide an immediate remedy for the question of repayment of taxes.

Staff is seeking direction on how to proceed with the request for repayment of taxes to CIASC and the potential of additional funding for restoration and services at the Hopper Academy.



**COUNTY ATTORNEY'S OFFICE
MEMORANDUM**

To: David Medley, PhD., Acting Director, Community Development
Bob Heenan, HUD Grants Manager
Robert A. McMillan, County Attorney

From: Arnold W. Schneider, Assistant County Attorney *AS* 11-1-06
Ext. 7254

Date: October 4, 2006

Subject: Community Improvement Association of Seminole County, Inc., request for repayment of previously paid ad valorem taxes concerning the Hopper Academy

This memorandum summarizes the history of relevant facts and circumstances as well as my perception of possible new financing options regarding the above matter in view of the recent letter from Sanford Commissioner Art Woodruff to Chairman Henley seeking additional financial relief. Rob Heenan and I have spoken twice already on this and he has conveyed a summary of much the same options to Don Fisher in an e-mail last week. As a preliminary comment, please be advised that Community Improvement Association of Seminole County, Inc. ("CIA") is administratively dissolved at the present time for failing to file an annual report to the State. Thus, none of the options discussed below (other than suing the entity for past breach of contract) can be implemented unless and until the corporation is reactivated.

History of relevant facts and circumstances.

According to Rob Heenan, the \$400,000 of CDBG funding was given to CIA pursuant to a subrecipient agreement but was not the subject of a mortgage or any restrictive covenant that could be enforced. At this point, I do not have access to an available copy of that agreement and cannot comment on the viability of an action for alleged breach of contract for failing to provide services to income qualified citizens. That instrument likely required provision of meaningful services to Very Low Income and Low Income persons as a condition of CDBG funding, which were apparently never provided with any regularity over the years. Whether that agreement is still within its term life or expired, cannot be determined at this time.

The property was originally owned by the School Board and in 1993 was conveyed to the City of Sanford and in turn conveyed by the City to CIA's predecessor corporation shortly thereafter. The Clerk's on line records do not reflect that the County ever held title to the parcel at any time, indicating a mistaken assumption in the September 19th letter from the City Commissioner to Chairman Henley. For most of the tax years since conveyance to

CIA and its predecessor, the property did not enjoy tax exempt status, apparently for failing to use it for any statutory exempt purposes. That seems to confirm Rob Heenan's assertion that the County's intention to assist Low Income and Very Low Income persons was not honored. However, the 2006 tax roll does reflect the property as being wholly exempt for the current tax year.

At the present time there are several tax certificates outstanding on the property for tax years, 1999, 2000, 2001, 2003, 2004 and 2005 totaling \$33,234.33. The City paid off one 2002 certificate in the amount of \$13,072.73 in July, 2006. The letter from City Commissioner Woodruff now requests the county to pay approximately \$11,000 as a sort of refund for County taxes paid for 2005. A similar request is apparently being made to the School Board for tax proceeds collected and paid to that entity. However, this would seem to do little for relieving the overarching burden of the substantial tax certificate obligations still outstanding, many of which could be the subject of a tax deed application (and its triggering of a tax deed sale) in the near future. Moreover, the \$11,000 amount requested as a County contribution appears to be overstated; only \$9,004.79 is actually required to redeem tax certificate number 2006-323 for that year's taxes.

Options for County Consideration

1. Do nothing. This is not intended to be a facetious comment. There is no legal requirement for the County to do anything. Over \$400,000 of County CDBG funds were spent in the 1990's with essentially nothing to show for it. Certainly, the County's intent to channel CDBG funding for the benefit of Very Low Income and Low Income persons was not fulfilled by CIA or its predecessor. Doing nothing avoids exposing the County to further financial loss and expenditure of effort for a project that may well end up in a tax sale in the immediate future. Moreover, there is no legal basis to appropriate general revenues or tax dollars (other than targeted HUD funds as allowed by Federal law) to the aid and benefit of a private entity even if the County desired to do so. Finally, the current administrative dissolution of CIA makes it illegal for that entity to transact any business unless and until it is reactivated.

2. Recover past CDBG funding for breach of contract. Despite not being able to transact new or ongoing business while administratively dissolved, a corporation can still be sued. While this option is theoretically possible, no assessment of the chances of success can be made in the absence of a detailed review of the subrecipient agreement with respect to the past \$400,000 funding. Presumably, a cause of action lies for failing to provide described services to income qualified persons over the life of the contract. However, if the agreement's term has expired for more than five years, the County may be subject to a statute of limitations defense which could result in dismissal of any action predicated on that written instrument. Final comments and recommendations must await recovery and review of the subject agreement. If the suit was successful, recovery up to the amount of judgment against CIA's assets (including the Hopper Academy) property would be possible.

3. CIA deeds property to the County with a lease back to CIA. This option makes possible financial assistance from general taxes and revenues (which can include or exclude HUD/CDBG funds) while affording tighter supervision and control over the use of the property. However, the corporation would have to be reactivated in order to execute any warranty deed and lease. Consideration for the transaction is assumed to be redemption of

all outstanding tax certificates, which must still be honored regardless of County ownership.¹ A title search would be required to find out what other encumbrances already impact the parcel which could affect the conveyance. Deeding the property to the County overcomes the legal prohibitions of appropriating local tax dollars to the aid and benefit of a private person because there would be a bona fide public property interest. The lease provisions could accomplish what is normally handled by a subrecipient agreement or restrictive use covenant, i.e., required usage for provision of specified services to income qualified individuals and households, violation of which would be grounds for eviction. If the County decides to provide additional financial assistance under the present facts and circumstances, this is probably the best option and the least difficult to implement.

4. CIA immediately begins to provide services to the Georgetown community. This option assumes limited further financial assistance from the County in the form of funding for programs and services, not building renovation, operating or delinquent tax expenses. If the pre-existing agreement can be located and is still in effect, the legal grounds for compelling CIA to perform are already in place. Supplemental enforcement efforts could take the form of CIA's execution and recording of a Restrictive Use Covenant similar to that frequently used by other community development agencies and subrecipients of County funding. If no agreement is still in effect, a new agreement may be necessary in conjunction with the Restrictive Covenant; however, this raises the issue of sufficient consideration which could come in the form of supplemental funding for provision of specified services and programs as stated above. Given the threat of loss of title because of the tax certificate issue and CIA's unreliable past performance, this option seems very problematic.

5. Other. It is possible to create a secured loan to CIA in the form of a deferred payment mortgage which would be forgiven after a specified period of satisfactory performance of community service and outreach. Once again, the corporation must first be reactivated. Loan proceeds would be used to redeem the outstanding tax certificates. This can be done with CDBG funds *provided* some portion of the property was rehabilitated with proceeds of earlier CDBG funding pursuant to 24 CFR 570.202(3) (allows refinancing for existing indebtedness secured by property rehabilitated with CDBG funds). However, this is a business decision which the County decision makers must weigh in view of past failed performance and repeated lapses in the annual corporate registration requirements. Given CIA's checkered history, the prognosis is not encouraging.

Please call if you have any further questions or comments on this matter. Thanks.

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¹ Since acquisition of properties by a CDBG funding recipient such as the County is authorized by 24 CFR 570.201(a), this suggested approach facilitates using CDBG funds to redeem the tax certificates where it might not otherwise be permissible except as stated in paragraph 5.