



The RLRA is comprised of representatives from City Council, the City Planning Commission and the Reading Redevelopment Authority, along with two at large citizens selected by the Mayor. The Berks County Administrator also serves in an ad hoc capacity. *See* Bill No. 14-2009, *amending* Bill No. 39-2008.

The question presented to the Charter Board is “may representatives of City Council, Planning Commission and Reading Redevelopment Authority serve on the RLRA?”

## II. DISCUSSION

### A. Advisory Opinion

As the Board has cautioned previously, it is constrained to not answer under the guise of an advisory opinion retrospective questions that apply to actual or perceived violations of the Home Rule Charter (“Charter”) of the City. The Board will answer as advisory opinions only those questions that are prospective in application. *See* Adv. Ops. No. 11 (September 24, 2008) *and* No. 12 (January 12, 2009). Here, the RLRA is already constituted, the enabling legislation is in place, and the “representatives of City Council, Planning Commission and Reading Redevelopment Authority” already serve on the RLRA. Thus, the question of whether the RLRA is properly constituted has already passed the threshold between prospective and retrospective.

Nevertheless, the Board shall examine the question posed by Ms. Kelleher because the conduct (i.e. the composition of the RLRA) is continuing, and if such conduct is a violation of the Charter, it would be continuing violation. The composition of the RLRA is not a single act in the past on which the Board is now asked to apply the Charter under the technical process of an advisory opinion request.<sup>3</sup> *Compare* Adv. Op. No. 11 (all events transpired and were completed before the date of the request for advisory opinion) *and* Adv. Op. No. 12 (voting at issue

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<sup>3</sup> Charter Board Ordinance, §VI.

occurred after request for advisory opinion but before time advisory opinion was rendered). On the question now before the Board, the Board will render an advisory opinion.

**B. Applicable Charter and Statutory Provisions**

1. Charter, Article X

Article X of the Charter, entitled Boards and Commissions, provides the following:

**Section 1001. Establishment.**

(a) By Ordinance.

(i) City Council shall encourage the participation of citizens in their government through the establishment of boards, and commissions to carry out city business. Such boards, and commissions shall be established by ordinance including a clear statement of whether they shall be advisory in nature or they shall have power and authority under city ordinance or state or federal code.

(ii) City Council may not change the powers or authority of any board or commission except by ordinance

(iii) City Council may by ordinance abolish any board or commission not established by state or federal mandate or by this Charter.

**Section 1002. Membership.**

(a) Appointments. City Council shall approve all appointments for each board and commission. Broad citizen participation shall be encouraged in recruiting appointees and making appointments. No appointee of any board or commission shall hold any other elected public office or any compensated position for the City.

(b) Vacancies. Any vacancy caused by death or resignation shall be filled promptly pursuant to the procedure set forth in §209(b). The person so appointed shall serve for the unexpired term of the person vacating such position.

(c) Qualifications. As a general rule, members of boards and commissions shall be residents of the City. At the discretion of Council, persons not residents of the City, but who have a significant property or business interest in the City, may be

selected to serve. No person may concurrently serve on more than one authority, board or commission.

Ms. Kelleher's question implicates Article X, Section 1002(a) and (c).

## 2. Local Redevelopment Authorities

The RLRA is a creature created through a United States Department of Defense ("DoD") program.<sup>4</sup> The Office of Economic Adjustment ("OEA") is an organization within the DoD that is "in charge of helping communities plan for base closure and realignments" and which "also provides planning grants to impacted communities." BRR Manual at D.1.1.18, p.11. That program, typically referenced as BRAC,<sup>5</sup> disposes of closed DoD military installations and works cooperatively with local communities for the redevelopment of the affected land. The process includes utilization of a local redevelopment authority (here the RLRA) in the locality where the military installation is located for the purpose of preparing the redevelopment plan for that installation. *See* BRR Manual at D.1.1.16, p.11 *and* C5.4.2.1, p.54.

A local redevelopment authority is defined as: "[a]ny entity (including an entity established by a State or local government) recognized by the Secretary of Defense as the entity responsible for developing the redevelopment plan with respect to the installation or for directing the implementation of such plan." BRR Manual at D.1.1.16, p.11. State and local governments are urged by the DoD to "create a redevelopment authority that includes the governmental body or bodies, if any, with land-use planning (i.e. zoning) authority over the installation." BRR Manual at C5.4.2.1, p.54.

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<sup>4</sup> *See generally* Base Redevelopment and Realignment Manual, DoD 4165.66-M (March 1, 2006) (cited herein as "BRR Manual").

<sup>5</sup> BRAC is an acronym standing for base realignment and closure.

A review of other local redevelopment authorities in Pennsylvania under this DoD program reveals that in some instances, the municipality itself serves as the authority.<sup>6</sup> For instance, the City of Philadelphia serves as the local redevelopment authority for two installations and the Township of Plains, Luzerne County, serves as the authority for one program. Further, two existing redevelopment authorities organized under Pennsylvania's Urban Redevelopment Law,<sup>7</sup> the Redevelopment Authority of Scranton and the Redevelopment Authority of Allegheny County, also serve in the capacity of the recognized local redevelopment authority for purposes of BRAC.<sup>8</sup>

C. Analysis

The Board's analysis begins with the general observation that Article X of the Charter pertains to boards and commissions, and authorities,<sup>9</sup> established by ordinance of City Council for the purpose of administering City business, and comprised of non-elected citizens who are not employees of the City. The encouragement by the City of broad participation of citizens in such boards and commissions is mandatory. Charter, Art. X, §§ 1001(a)(i) and 1002(a).

Specifically, boards and commissions under Article X have the following defining characteristics:

- i) They are *citizen* entities, that is, they are composed of non-elected individuals who are not City employees. Charter, §§ 1001(a)(i) and 1002(a).<sup>10</sup>

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<sup>6</sup> See <http://www.oea.gov/OEAWeb.nsf/LRA?readform> (accessed May 4, 2009).

<sup>7</sup> 35 P.S. §§ 1701, *et seq.*

<sup>8</sup> See footnote 6.

<sup>9</sup> For these purposes, the Board rejects the notion that the mere title of an organization or entity is dispositive of whether or not Article X of the Charter applies to it. Article X of the Charter employs the terms boards and commissions throughout and mentions an "authority" only a single time. For the purposes of this Advisory Opinion the Board considers those terms interchangeable.

<sup>10</sup> See *generally* Charter. Overall, the architecture of the Charter provides for elected or compensated institutions of City government in Articles II through IX and provides for citizen institutions and citizen's rights in Articles X and XI.

- ii) They are established by *ordinance*, with a clear statement of the scope of their powers. Charter, § 1001(a)(i).
- iii) They are established to *carry out* a specific aspect of City government, that is they are delegated authority by City Council to execute or administer City business within clearly delineated channels of accountability. Charter, § 1001(a)(i).
- iv) They are *established* entities that have an ongoing existence until such time as they are abolished or dissolved by ordinance. They are not entities, in the nature of a task force, which expire of their own accord once their mission is accomplished. Charter, § 1001(a)(i), (ii).

Entities which have these four defining characteristics are Article X boards and commissions, and their membership is subject to the restrictions found in Section 1002(a), (b) and (c) of the Charter. These restrictions were created to foster the broadest possible base of participation from the “laity” of the City, drawing from those persons who are not already otherwise serving as elected officials, employees of the City, or members of other boards or commissions.

The question before the Board now is whether the RLRA is an Article X board or commission such that the membership restrictions of Charter, § 1002(a) and (c), apply. Applying the preceding analysis to the RLRA the Board notes first that membership of the RLRA is intended by both the City and the DoD to include stakeholders within the City, already empowered with decision making authority, who can expedite the planning and implementation of a base redevelopment plan. BRR Manual at C5.4.2.1, p.54. BRAC regulations specifically urge the inclusion of governmental bodies and those with land use/zoning authority. *Id.* This not only expedites the redevelopment process, but also includes personnel with know how and expertise, and allows the creation of a redevelopment plan that is in sync with existing planning policy and community goals in the locality in which the military facility is located. It is certainly

the intent of the BRAC regulations for the DoD<sup>11</sup> to recognize an entity with participation of those with land use planning authority. This, of course, causes the proposed redevelopment plan to be more likely to succeed. BRAC regulations actually discourage the large scale participation of ordinary citizens, and it seems, they are not intended to be the exclusive members of local redevelopment authorities.

The membership structure of the RLRA does not meet the first of the four factors for being an Article X board or commission. The RLRA is not intended to be an exclusively lay citizen entity, nor could it function effectively with such a membership structure.

As for the second and third criteria for being an Article X board or commission, those criteria appear to be satisfied by the RLRA as it is currently constituted. City Council established the RLRA by ordinance and the nature of its power and authority are clearly addressed. Further, the RLRA does carry out and administer a specific aspect of City business, the land planning and redevelopment of a significant parcel of land, bringing that parcel out of the stewardship of the Federal government and back into the local community.

As for the fourth factor, after reviewing all data available to the Board at present, it is unclear whether the RLRA is an entity with an ongoing existence or whether it is time limited. The Board renders this Advisory Opinion under the presumption that the RLRA's power and authority is limited to only the Base, *see* Bill Nos. 39-2008 *and* 14-2009, and that its role and function will end upon the conclusion of the redevelopment of the Base.

Because the RLRA does not meet the first factor and quite possibly the fourth factor, it is apparent that it is not an Article X board or commission. Since the RLRA is not an Article X board or commission, the membership restrictions of Charter, § 1002, do not apply to it. In

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<sup>11</sup> Technically the OEA officially recognizes the local redevelopment authority and assists the authority with its redevelopment planning responsibilities. BRR Manual at C5.4.2.1, 54.

particular, there is no prohibition against elected officials or compensated City staff serving on the RLRA, and no prohibition against persons serving on the RLRA and also on another board, authority or commission.

In the Board's view, the RLRA is in reality an entity created by the City through ordinance only for the purpose of serving as the local redevelopment authority. The local redevelopment authority is nothing more than the "entity" recognized by the DoD as "responsible for developing the redevelopment plan with respect to the installation or for directing the implementation of such plan." BRR Manual at D.1.1.16, p.11. The RLRA is not an authority organized under Pennsylvania law and is not clothed with any of the powers of such authorities. *See for example* Municipality Authorities Act, 53 Pa. C.S. §§ 5601, *et seq.*, and Urban Redevelopment Law, 35 P.S. §§ 1701, *et seq.*

From the Board's perspective, the creation of the RLRA may have been surplusage, and its creation and membership composition provided the opportunity for this potential conflict with Article X of the Charter to develop. It appears to the Board that the City itself or the Reading Redevelopment Authority could have served as the local redevelopment authority under the BRAC program without possibly implicating Article X of the Charter.<sup>12</sup>

In this instance, the Board will see through the mere name of the RLRA for what it in fact really is: a planning and working group of the City, comprised of various City planning stakeholders, organized solely for the purpose of compliance with the BRAC regulations so that a particular parcel (i.e. the Base) can be redeveloped within a defined time frame.

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<sup>12</sup> *See* footnote 6, *supra.*, and Section II (B)(2), above.

**III. OPINION OF THE BOARD**

The Opinion of the Board is that the RLRA does not violate Article X of the Charter, nor does the continued service by the current members of the RLRA. The RLRA may continue to have as its membership representatives of City Council, the City's Planning Commission and the Reading Redevelopment Authority.

CITY OF READING CHARTER BOARD

By: *Susan T. Gibson*  
Susan Gibson, Chair

Date: *May 12, 2009*