The Tiff over TIF: Using Tax Increment Financing to Protect Working Waterfronts

Introduction

- Florida local governments create Community Redevelopment Districts to improve areas considered to be suffering from “slum” or “blighted”
- Administered by Community Redevelopment Agency (CRA)
- Utilize Tax Increment Financing, TIF, as revenue source
- More than 200 CRAs in Florida, many encompass working waterfronts
- Most cases: CRA district boundaries end at waterline
- Florida’s CRA statute does not expressly authorize expenditures outside of districts boundaries

- TIF revenue could be used to make on-water improvements, such as:
  - Removal of derelict vessels
  - Installation of mooring fields
  - Navigation improvements (dredging)
  - Environmental Restoration
  - Sea level rise adaptation

Question Presented

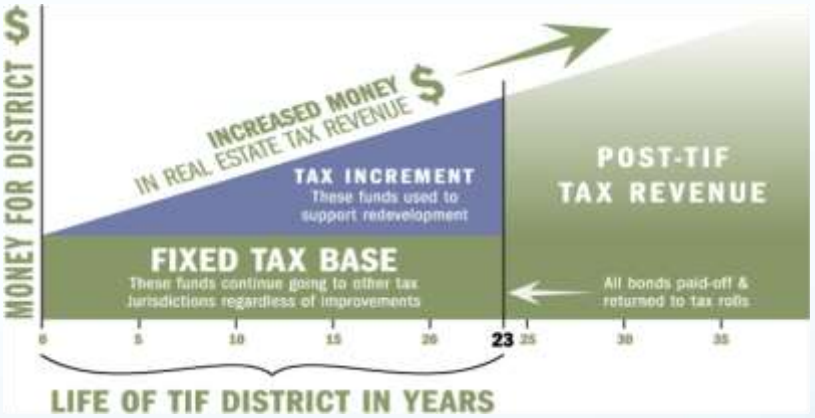
- Can a CRA spend tax increment revenue to improve sovereign submerged lands when the sovereign submerged lands are located outside but adjacent to the CRA boundary?
- Currently no court case on point in Florida; one Attorney General Opinion
- Issue has come up in at least two instances in FL
- First step: understanding Florida's CRA legislation

Establishing a CRA in FL

- 1969 Community Redevelopment Act (Act)
- Statutory purpose: promoting the “health, safety, welfare” of the community
- Local government must adopt a resolution finding:
  - designated area is a “slum” or is “blighted,”
  - improvement or redevelopment of the area is “necessary”
- “Blighted area”:
  - an area in which there are a substantial number of deteriorated structures in which conditions are leading to economic distress or endanger life or property
- Using TIF can help improve the “blighted area”

Funding a CRA: Tax Increment Financing

- Began in California in 1952; increased in 1980s to fund urban renewal projects
- Dollar value of all real property in an area is determined at a fixed date = “frozen value”
- Pursuant to a plan, tax revenues from increases in real property value deposited into CRA Trust Fund and dedicated to the redevelopment area
- Can be used immediately, saved for a particular project, or bonded to maximize funds



Empirical Research

- Using FL DEO website - 207 Florida CRAs use TIF
  - Over a quarter located on waterfronts
- No central geo-referenced database that provides maps of CRA district or municipal boundaries in Florida
- Compared municipal and CRA boundaries on city websites
- **Findings** - Three different boundary situations

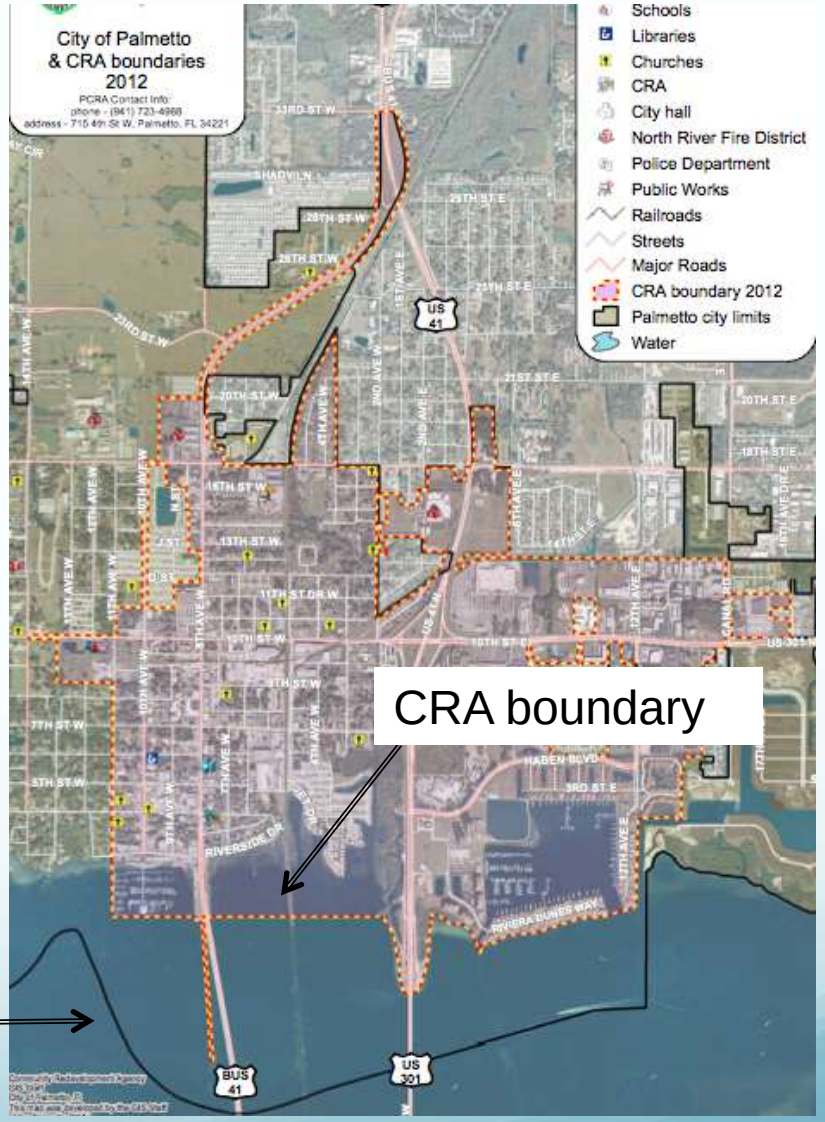
- First, only 9 CRAs had both municipal and CRA boundaries that extended into the water

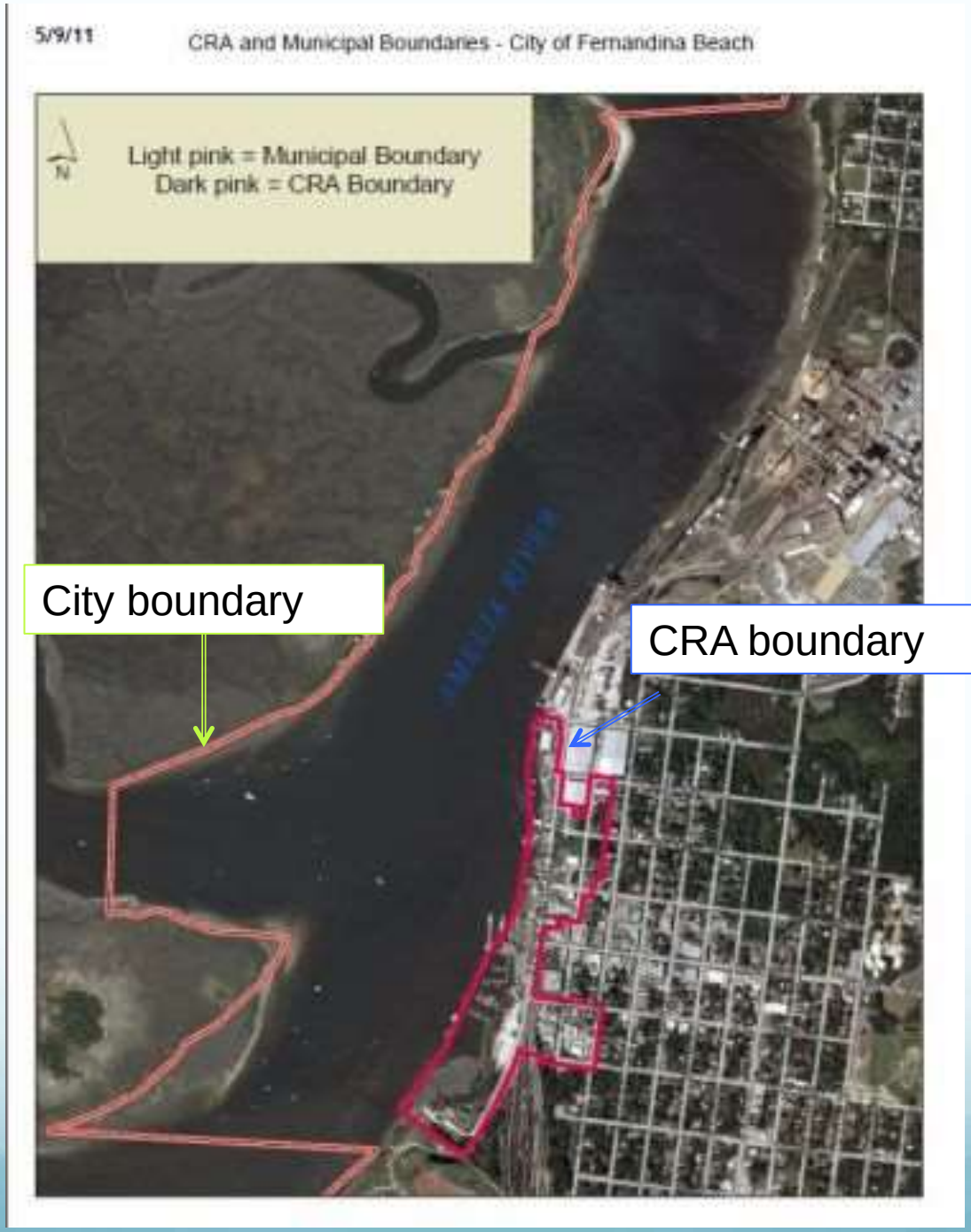
- Example: City of Punta Gorda CRA boundary covers a large area of the Peace River

- Second, a number of waterfront CRAs end at or near the waterline while municipal boundary encompasses water

- Example: City of Palmetto city boundary goes over Tampa Bay, but the CRA boundary stops short of waterline

City boundary

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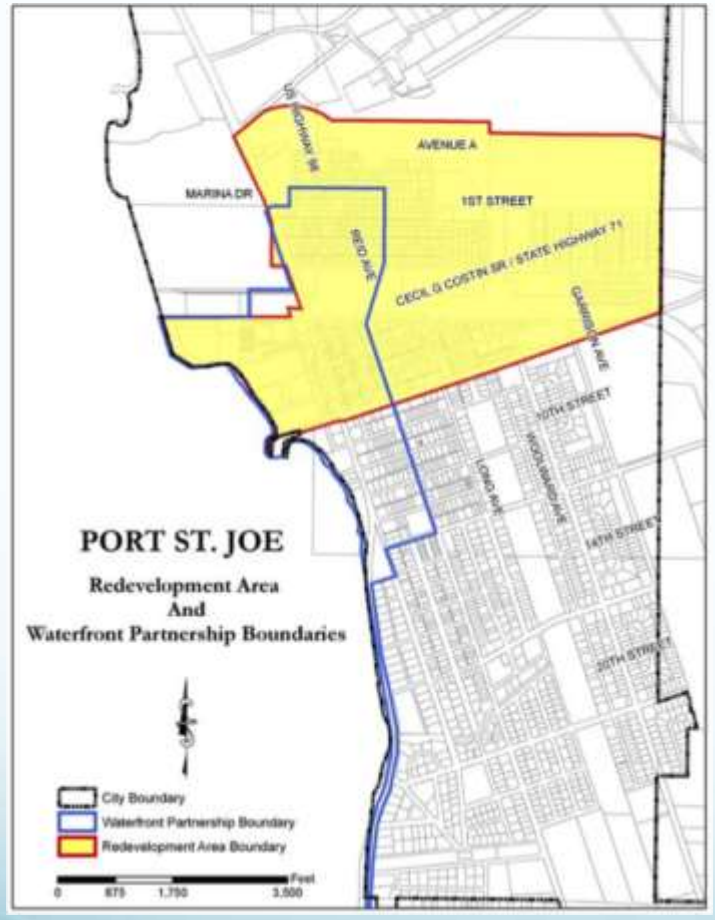
CRA and Municipal Boundaries - City of Fernandina Beach
Light pink = Municipal Boundary
Dark pink = CRA Boundary
N
City boundary
CRA boundary



- Lastly, a number of CRA boundaries and city boundaries both end at the waterline

Sub-Issues

- Can a CRA spend tax increment revenue to improve sovereign submerged lands when the sovereign submerged lands are located outside but adjacent to the CRA boundary?

- Three parts:
  - 1) Whether inadequate and poorly maintained navigation infrastructure and deteriorating coastal resources constitute “blight” as defined in the statute
  - 2) Whether existing CRA plans adequately address on-water blight and maritime infrastructure
  - 3) Whether TIF funds expended for this purpose can be spent on improvements outside the boundary of a “land-locked” CRA district
    - Florida Attorney General has opined that expenditure for capital improvements outside district boundaries is unlawful; but what are capital improvements in a maritime context?

Statutory Interpretation of “Blight”

- Act has a bias toward landside redevelopment, especially for housing and transportation infrastructure
- However, language broad to encompass variety of on-water improvements
- Initial blight definitional requirement of “deteriorated or deteriorating structures”
- Term “structure” is not defined in the Act; presumably dredged channels, aids to navigation and derelict vessels could qualify as structures for this purpose
- Act expressly gives communities authority to utilize “appropriate private and public resources to eliminate and prevent the development or spread of slums and urban blight” and “to encourage needed community rehabilitation” Fla. Stat. § 163.350 (2012)
- On-water improvements may accomplish both purposes, addressing blight (derelict vessels) and community rehabilitation (new maritime infrastructure)
- No absolute requirement that all of the area within the CRA qualifies as blighted

Statutory Interpretation of Spending Outside a Boundary

- The definitions of "community redevelopment" and "redevelopment" argue against interpreting act to allow spending outside the boundary. These terms are defined as "undertakings, activities or projects in a county, municipality or community redevelopment agency in a community redevelopment area…" FLA. STAT. § 163.340(9) (2012) (emphasis added).

- Overriding focus of section on redevelopment plans stresses planning for activities that are within the redevelopment area, and TIF revenue must be spent pursuant to that plan

- Only one specific use of the term "outside the redevelopment area" – authorizing expenditure of funds for the "relocation of site occupants." FLA. STAT. § 163.387(6)(d) (2012).

- However, Florida AG has opined that expenditure for capital improvements outside district boundaries is unlawful
  - AG opinion in context of construction of homeless shelter outside CRA boundaries and relocation of inhabitants
  - AG left open question of spending on activities other than capital improvements; derelict vessel removal arguably not be a capital improvement

Other State Approaches to Extrajurisditional TIF Spending

- North Carolina: “TIF funds are generally spent inside the boundaries of the TIF district, but they can also be spent outside the district if necessary to encourage development within it.” N.C. Gen. Stat. §§159-103 (2012)
- California: local courts authorized spending outside project area if spending benefits the project area; however, state has now eliminated all CRAs
- Minnesota: tax increments may be “pooled” and used for activities located outside of the boundaries of the district; limited to 20 or 25% of total funds

Possible Remedies

- Amending CRA boundaries to extend as far as municipal boundaries
  - Need public hearing and resolution

- City could amend its boundaries where boundaries end at or near waterline

Possible Remedies

- Attorney General Opinion
  - Local government entity would need to seek opinion
  - Opinion affirming district's ability to spend tax increment revenue past CRA boundaries for on-water improvements
  - AG opinions are persuasive only; decision to spend could still be found unlawful
- Riparian Rights
  - Waterfront property tax payers w/in district have riparian rights which extend over the water outside the district
  - Sufficient interest to justify expenditures outside the district
    - Ex – right to a view and derelict vessel removal

Possible Remedies

- Amending Statute
  - Narrowly tailored language authorizing use of TIF funds for on-water improvements outside district

Possible Remedies

- Home rule authority
  - Theory that local governments have home rule authority to use the TIF vehicle for programs and activities that are outside of the scope of the Community Redevelopment Act
  - A local TIF program to develop and implement municipal harbor management plans without the necessity of a blight finding may be sufficiently distinct from Act to avoid preemption
    - implicates state constitutional questions concerning the authority of local governments to levy taxes

Recommendations

- Waterfront advocates should review CRA plans for inclusion of on-water activities
- Local government should consider whether to amend CRA and/or city boundaries to include adjacent waters
- FL legislature should consider authority of waterfront CRAs to expend TIF revenue on adjacent waters
- State should maintain a central spatial database that provides geo-referenced maps of CRA district or municipal boundaries in Florida

- For more information visit:

- http://www.law.ufl.edu/conservation/waterways/