

WHITE PAPER
CRA AND TIF CONCEPTS

Fact Sheet and Workbook Tool
CRA Ad Hoc Advisory Committee

Kris Van Lengen, City Planner

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Acknowledgements:

The City of Marco Island gratefully acknowledges the generous contributions of time and talent provided by three experts who provided a framework for understanding the basics of Community Redevelopment Areas in Florida. Their presentations and comments were made at a meeting of the City's Planning Board on May 21, 2010:

Jeffrey L Oris, CEcD, President, Planning and Redevelopment Consultants, Inc., Coconut Creek, FL

Martin Black, MPA, AICP, Kimley-Horn and Associates, Sarasota, FL

Lee Willer-Spector, MPA, Senior Administrator, Naples Community Development Agency

The content of the presentations informed the structure and content of this paper.

1. Introduction:

This white paper is intended to serve as a tool for establishing facts related to Community Redevelopment Agencies (CRAs) and Tax Increment Financing (TIF), so that committee members can better fulfill their intended mission as a committee: the ultimate recommendations as to whether a CRA of any kind or size should be created by the City, and an elaboration of the advantages and disadvantages in doing so.

As a tool this is intended to be "open-ended", and intended to avoid opinion content to the extent possible. You will find the sections below correspond generally to the organization of material presented by the experts noted above.

Staff assembled the material that follows and is solely responsible for its content. The material was reviewed by the experts and their corrections and responses to follow-up questions are incorporated as faithfully as possible. Answers to various questions scattered throughout provide attribution where feasible, though these were paraphrased at times.

The open ended approach to this document allows committee members to further challenge the facts as presented, or pose more specific or refined questions within an organized framework. Additional room in each section has been left for the purpose of adding notes or questions for upcoming meetings.

Items in italics reflect information specific to Marco Island.

2. Overview of CRAs

A. General Description:

CRAs are authorized by Florida Statutes (Chapter 163, Part III) but are created at the local level by cities and counties. Currently, there are 202 CRA districts in Florida. (Some CRAs have more than one District.) Generally, CRAs are the only entities in use that provide tax increment financing as a financing tool. CRAs do not have to use tax increment financing, but it is seen as a major reason to create CRAs.

For simplicity, this paper will refer to the City as the governing body, and will refer to the County only with respect to TIF implications.

B. Overview of Process:

In order to create a CRA, Florida Law requires a Finding of Necessity. Once adopted, the City may create the legal entity, establish the governing body, create a trust fund, prepare a financial analysis and adopt a Redevelopment Plan.

Once in place, the CRA governing body makes final decisions within its powers to do so, and may also make recommendations to the City with respect to redevelopment activities outside of its powers, but related to the district.

A CRA is an entity with a 20 to 40 year lifespan, although some created prior to 2002 could extend up to 60 years. CRAs can be dissolved at any time by the City, but the City would assume its liabilities. Give its intended lifespan, its vision, projects and priorities are geared toward long range goals. Revenue bonds are frequently used to “kick-start” the TIF process and private investment.

3. Finding of Necessity:

The first step in creating a CRA is the preparation and adoption by the City of a Finding of Necessity. While Florida law uses the terminology of “slum” and “blight”, those terms carry meanings that are distinct from their ordinary usage; inadequate or outdated infrastructure elements or development patterns, declining property values in relation to Citywide values or poor transportation facilities can qualify the area for CRA status.

The firm of Kimley-Horn was retained to study the area and prepare a report supporting a Finding of Necessity. That report is available as a separate document, which contains its data and analysis and findings. The Finding of Necessity was accepted by City Council on December 7, 2009. In brief, the Finding of Necessity concluded that the district qualified under FL statutes due to transportation network issues (sidewalks, interconnections, driveways, and bicycle facilities), lot configurations and ownership patterns, property value decreases when compared to the rest of the city and county, stormwater problems, landscape and design non-conformities, etc.

It is important to note that the items identified in the Finding of Necessity are not necessarily the same prioritization of items that the CRA or the community will choose to address. Rather, the CRA plan should reflect the community’s priorities and visions for the area, while addressing inadequacies noted in the Findings.

The Finding of Necessity is a necessary hurdle in the creation of the CRA, but it is not a Master Plan.

4. Creating a CRA Ordinance:

The City must create a CRA by Ordinance, following the Finding of Necessity. The Ordinance appoints a CRA Board, which can be the members of City Council, or an independent Board, including representatives of affected taxing authorities. The City Council also selects the Chairman and Vice-Chairman.

City Council acting as the CRA Board is the most common model (*and recommended by the City's consultant*), particularly in the early years of the CRA.

The Board is subject to FL Sunshine and Code of Ethics. Members serve 4 year terms.

The City passed an Ordinance at First Reading on March 15, 2010, but postponed consideration for second reading until June 7. The expectation is that it will be further postponed until the ad hoc committee provides a recommendation. See web page for copy of the Ordinance as presented at First Reading.

The Ordinance identifies the governing body (City Council), the CRA area, the powers and duties of the agency, the establishment of a standing CRA Advisory Committee, the establishment of a trust fund (subject to an additional ordinance), annual budget approval by the City Council and an annual report.

In general, a CRA Ordinance will provide all of the same powers and duties as allowed by FL statutes.

Question: Can the ordinance limit powers of the CRA in certain ways? For example, can it limit CRA expenditures such that, the City portion of the TIF increment, together with all other City spending for a fiscal year, does not exceed the spending cap under the City Charter? Alternatively, could this limitation go in the CRA Plan?

(A: Jeff Oris: he has not seen any CRAs that have done this, but the question should be out to legal counsel.)

(A: Marty Black: The state statute provides that at the end of each fiscal year, the TIF collected must either be committed to the projects within the CRA or CIP or be assigned for future projects. It is possible to adjust to future changes by reducing the amount of TIF claimed for use within the CRA. Any unallocated TIF funds are returned in proportion to the City and County each fiscal year. It may be helpful to think of this process as a return of excess funding. While most CRAs strive to spend or retain all of the TIF funds, the only requirement is that there is sufficient funding for any debt and to meet current obligations. Likewise, the CRA can be dissolved if the community finds that it is no longer useful or needed.)

(A: Lee Willer-Spector: The City Council approves the CRA budget annually. It is independent of the City budgeting process. It seems convoluted and overreaching to attempt to subordinate the intent of the Redevelopment Statutes in this way.)

5. Community Redevelopment Plan

The CRA governing body adopts a Master Redevelopment Plan after review by the Planning Board for Comprehensive Plan consistency. The plan may not exceed a period of 40 years.

Typically, Master Redevelopment Plans contain all of the possible or conceivable programs and projects, despite their likelihood of program funding.

Prioritizing is done through the CRA budget process.

However, the Plan should provide a vision or desired outcome, reflecting community consensus. Without consensus, Plans have little likelihood of success.

Plans can be amended, but the process is just like creating a new CRA. (Comment Jeff Oris: If there are many changes, development may be driving the plan rather than the plan driving development). (Comment: The CIP component should be updated annually and monitored for implementation adjustments over time.)

The Finding of Necessity qualifies a geographic area for CRA creation.

Question: Once created, is the CRA allowed to fund projects in a smaller geographic area if it so chooses?

(A: Jeff Oris: Yes, the CRA could fund a single project on a single piece of property if desired. However, this could lead to discontent unless funded projects benefit the whole area).

The CRA can not simply expand its boundaries. A new Finding of Necessity would be required for a new area, and an amended CRA plan would be required. Some jurisdictions have several CRA districts under a single CRA entity.

The Plan will include a legal description of the CRA and should provide a vision framework including depictions and text describing public spaces, street improvements, utility improvements, etc.

The Plan will also incorporate financial projections, forecasting TIF revenue, bond financing and matching these with costs of public expenditures and a timeline. Often this is done by illustration, with the understanding that accurate cost projections are difficult many years into the future. (Comment: Marty Black: We would recommend an engineer's probable opinion of cost for any items that could be reasonably anticipated. This keeps the process and cost transparent for the community and should be part of the prioritization process.)

Question: Does FL law require the “but for” test in allowing projects, as in other states? In other words, some states require the analysis that if desired redevelopment would not occur “but for” the creation of the CRA, then a CRA is allowed.

(A: Jeff Oris: No, not in Florida, but it may be good policy to follow).

(A: Marty Black: Some CRAs provide grants to private property owners to make improvements such as facades or fire suppression; other CRAs have made the decision not to do so, or to provide loans instead of grants.

5(A) CRA Powers

A CRA can buy properties (opportunistic buying), sell at “fair value” (may be different than “fair market value”), develop properties, construct and repair infrastructure and public parks, increase code enforcement, public safety, and accept grants.

It must get permission from the City to borrow, including bonding.

Bond repayment can not exceed the life of the CRA.

CRA can not:

- pay general government building or operating expenses
- repair user fee utilities (water/sewer)

(Comment: Marty Black: CRA can replace infrastructure that is outdated, the difference being that the CRA can not fund normal/routine maintenance or repairs, but can and often do pay for new utility extensions and replacements.

As an example, water line replacement with upgrades for fire protection or hydrant replacement can be funded, but water line break repair could not.)

- pay for improvements outside of the designated CRA area
- regulate land use
- exercise eminent domain

However, the last 2 bullets are areas in which the CRA might make recommendations to the City. CRAs may recommend zoning changes, landscape and architectural regulations, but those changes can only be implemented after review by the Planning Board and full public notice and hearing at City Council.

Annual Report required

Annual Audit required

6. CRA Trust Fund

Created by Ordinance

Question: Same Ordinance as creation of CRA, or must it be separate? (See Ord., 1st Reading)

(A: Jeff Oris: this must be a separate Ordinance.)

Sources:

- donations
- grants
- allocation from City
- TIF revenues

Allowable expenses:

- Administrative (staff time allowed; CRA Board can not be compensated)
- plans, financial analysis, surveys
- property acquisition
- development
- infrastructure improvements
- repayment of borrowed funds

Prior expenses associated with CRA creation, such as Finding of Necessity consultant costs, can be recouped under CRA Ordinance as written. However, this is optional, and doing so may create a drag on the CRA in the early years. Some general governments simply front-end these costs. (Comment: Marty Black: It is better to fully account for all costs in order to assure transparency of effort and costs to the community. Our recommendation has and remains that the City include the (start-up) costs since that assures that the community is aware of and can track the true cost of CRA implementation.

Question: If a capital improvement is on the 5 year CIP, can it ever be funded through TIF financing/bonding? What if it is removed for a number of years?

(A: Jeff Oris: If currently in the CIP and not listed as a source of funding, then it can not be funded now. If the City changes its CIP in order to fund the project through the TIF, then it is a question for the City attorney.)

(A: Marty Black: As an example, the Planning for Veteran's Community Park included future potential CRA funding, so it is eligible, but bridge replacement did not so it does not qualify.)

(A: Weiss Serota: Per Section 163.370 (3)(a) and (b), F.S., construction or expansion of administrative buildings are generally prohibited from using TIF,

and any CIP project that was scheduled to be installed, constructed, reconstructed, repaired or altered within 3 years of approval of the Plan are prohibited from using TIF unless and until the project has been removed from the CIP plan or schedule and 3 additional years have elapsed.)

Fiscal Planning: use it or lose it. Funds remaining at end of fiscal year must be returned to respective taxing authorities unless “encumbered” or allocated to a project to be completed in 3 years, used to pay debt or put into a sinking fund for future debt payment.

7. Tax Increment Financing (TIF)

Defined: Increases in taxes collected by certain taxing authorities over what is collected in a “base year”, used for CRA redevelopment plan purposes. This means that the City and County continue to receive property taxes on the current values for parcels in the CRA. Only taxes on the increased value from this point on go to the CRA.

Not all of the “increment” goes to the CRA:

- 95% of the increment for each taxing district
- The County increment can not exceed the City increment

Question: Is the School District increment treated the same as the County increment?

(A: Jeff Oris: School Districts do not contribute to the TIF- they are not “taxing authorities” under state law.)

The community has at least 3 critical concerns in the TIF scenario:

1. *If a portion of the increment used to fund the CRA comes from the City ad valorem, then taxpayers outside of the District will be paying higher taxes to make up the difference in non-CRA expenditures.* The answer may be “it depends”. It depends on the extent to which projects within the district would have been undertaken eventually by the City anyway, in which case the City enjoys the leverage of other taxing district funds and may reduce the burden on areas outside the district; it also depends on the difference in the “increment” in the CRA scenario versus increases in taxable values that would have occurred without a CRA- if the absence of the CRA results in flat assessed values for a long period of time, there would be little tax effect on the area outside the district by creating a CRA. (Comment: Lee Willer-Spector: The City of Naples has never raised taxes for the purpose of having to make up the difference from the TIF. Last year, the TIF represented less than 1% of the City of Naples budgeted expenditures.
2. *Property owners inside the district are concerned that a successful CRA will increase their property values, and thus increase their taxes, possibly hurting their businesses or forcing them out.* This is a very real

concern, and may affect different enterprises differently. It was suggested at the May 21 presentation that the CRA Plan include provisions to ensure that businesses are retained, particularly those that provide services to residents that would otherwise be available only off-Island.

3. *If the Town Center District benefits from this CRA, will it be at the expense of other commercial areas on the Island?*

Questions:

Do CRAs voluntarily limit the percentage of TIF below the statutorily allowed percent or threshold, due to objections or concerns of other taxing authorities?

(A; Jeff Oris: They can limit to a percentage between 50% and 95%.)

(A: Marty Black: This may only be available in Charter Counties, to be discussed with City Attorney.)

(A: Weiss Serota: Per Section 163.387(1)(a), F.S., only a County established pursuant to 125.011(1), F.S., may limit the TIF to between 50 and 95%.

Municipally established funds are to be contributed at 95%.)

Do they ever create different limitations with different taxing districts?

(A: Jeff Oris: Hasn't really seen this. Usually it's a matter of exempting them completely.)

Commentators identify two different accounting methods, parcel and aggregate methods: which is recommended or typically used in FL?

(A: Jeff Oris: Aggregate method.)

Can the City make the CRA and TIF (City increment portion) subject to the spending cap through the Ordinance or Plan document?

(A: Jeff Oris: This is back to the interpretation of the ability to change TIF percentages- a new untested area.)

(A: Marty Black: This requires a legal opinion.)

(A: Weiss Serota: Per Section 163.387(1)(a), F.S., the TIF is set at or equal to 95% of the difference between the amount of ad valorem levied each year on the taxable real property and the ad valorem which would have been produced in subsequent years. There is no ability to reduce this amount for a CRA established by a municipality as the governing body.)

(Staff commentary/further question: Despite the fixed revenue percentage per statute, is there some other way to limit total spending such that the City portion of TIF funds expended plus all City expenditures fall below the spending cap?

Can the Plan work to limit this, or would the City Charter have to be amended?)

The geographic area in the Finding of Necessity is primarily commercial. Optional areas are residential. Does TIF financing affect the residential areas in a different

way? If property values increase, is there a danger of gentrification (forcing people to move)?

(A: Jeff Oris: TIF is calculated the same way whether the area is commercial, residential, industrial or mixed. If the residential properties are homesteaded, their values do not increase beyond the reach of existing homeowners. If an area is successful, values may go up for residential properties in a greater percentage than other areas, but this is not an overnight process.)

(A: Marty Black: The reason for including the residential areas is because they are an eligible community development block grant neighborhood per HUD.)

8. CRA v. other alternatives

(Some of these points may go to “pros and cons” question of creating a CRA)

CRAs focus attention on a specific area, through

- set plan
- defined goals
- built-in funding
- annual reporting
- local decision-making

CRAs may be eligible for grants.

The focus of a CRA should be revitalization and building community character, with possible consideration of cultural benefits.

The creation of the CRA does not increase or change existing allowable density.

Small changes can make big differences in community character, such as pocket parks and street amenities.

Alternative Redevelopment tools:

- Downtown Development Authorities- created at state level, none created in last 30 years.
- Neighborhood Improvement Districts- four types are authorized, based on who petitions for the creation; can levy up to 2 mils within the district for improvements within the district
- Main Street Program- a NFP entity, typically using volunteers, often used with grant money, or funded by the City or CRA (if within) and administered in FL by Bureau of Historic Preservation
- Special Assessment Districts- City can create (under FS 170) to fund capital programs (no operational expenses) for projects that benefit a district; common for street-lighting or stormwater projects; funding through assessments

9. Geographic Area:

The selected legal description for the CRA Ordinance can be smaller than the Finding of Necessity study areas, but any additional areas of the City would require a new Finding of Necessity

The suggestion of removing Smokehouse Bay residential areas is related to retaining those tax increments for City, not CRA use, to retain better balance, and because redevelopment is not projected for those areas.