

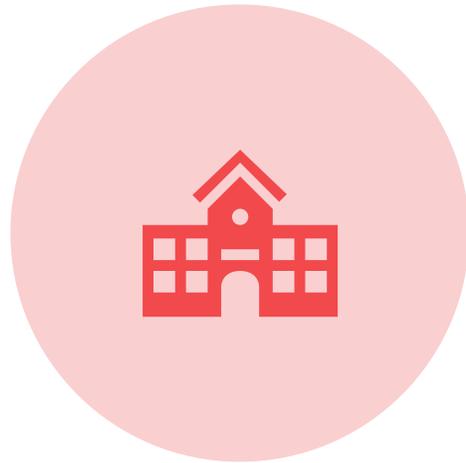
# POWER TOOLS

*Kathryn Rossmell*

Shareholder

*Lewis, Longman & Walker, PA*

# FOCUS ON TWO IMPROVEMENT MECHANISMS

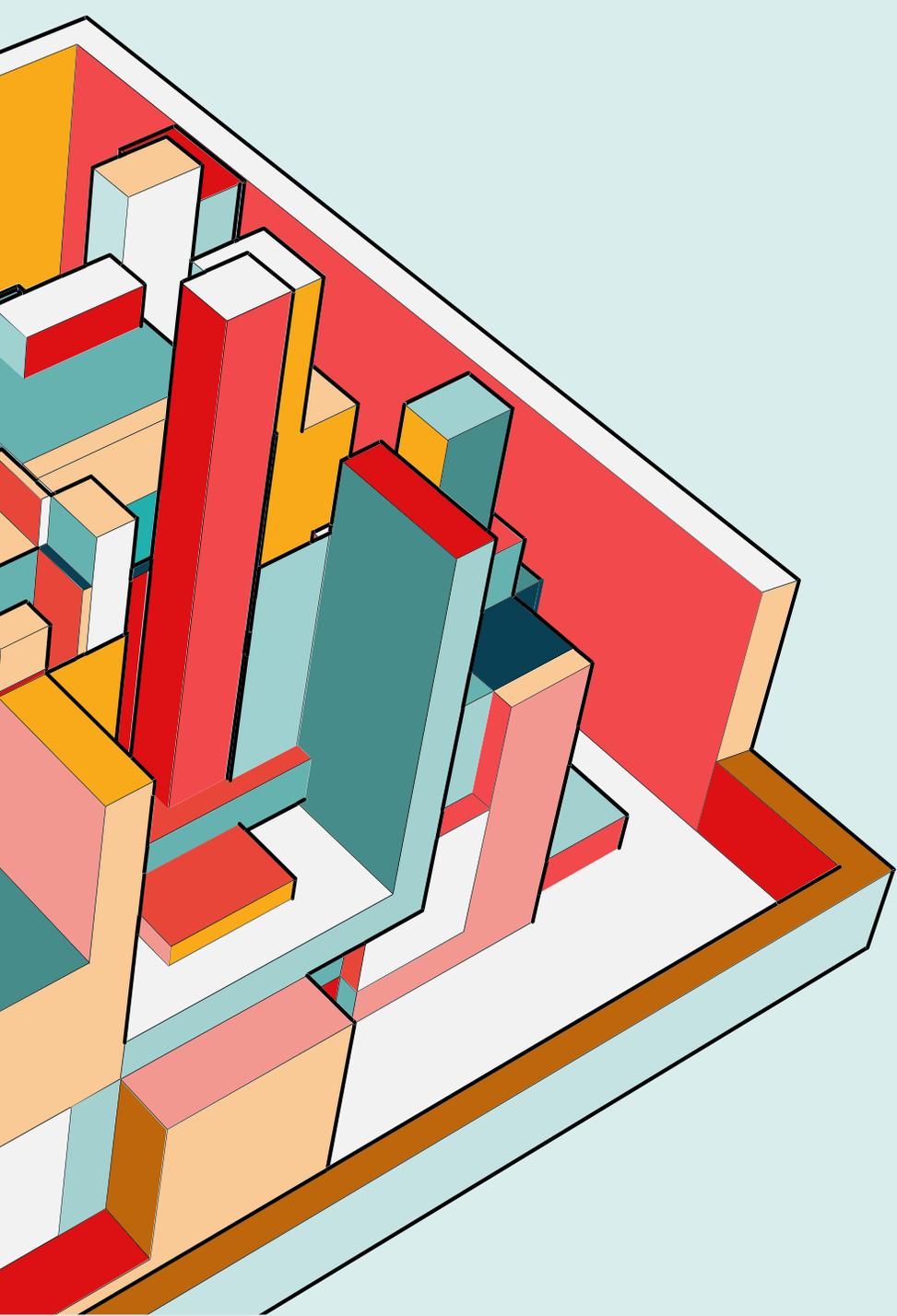


DEPENDENT SPECIAL  
DISTRICTS



LEVYING SPECIAL  
ASSESSMENTS

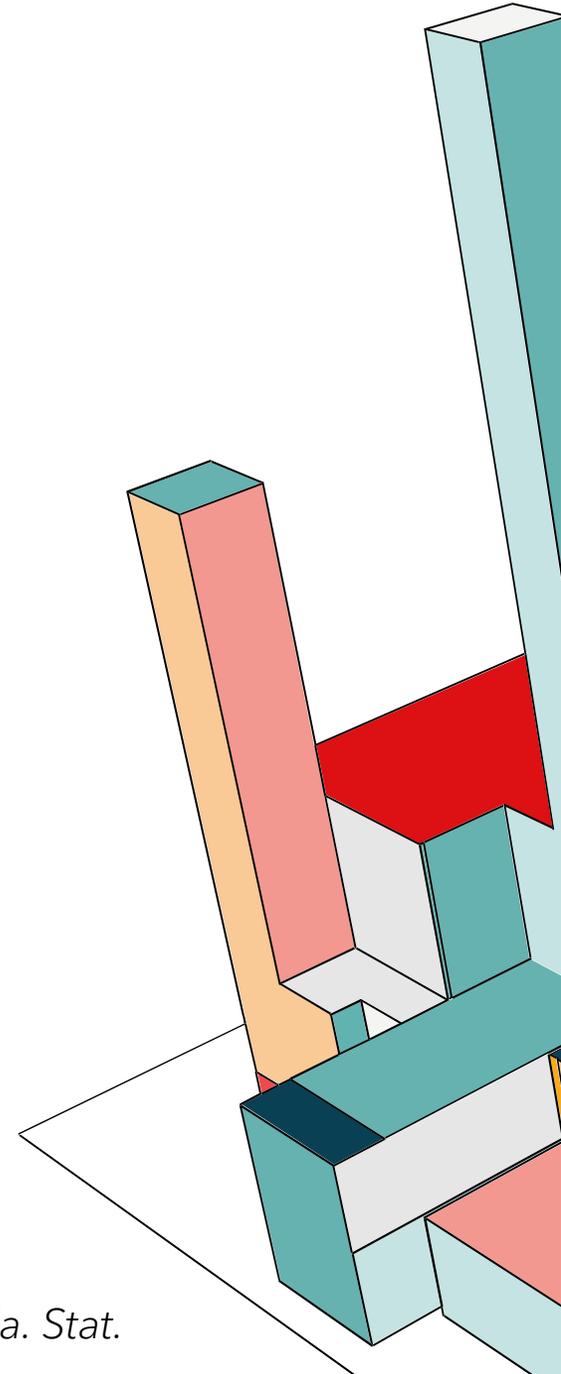




# **DEPENDENT SPECIAL DISTRICTS**

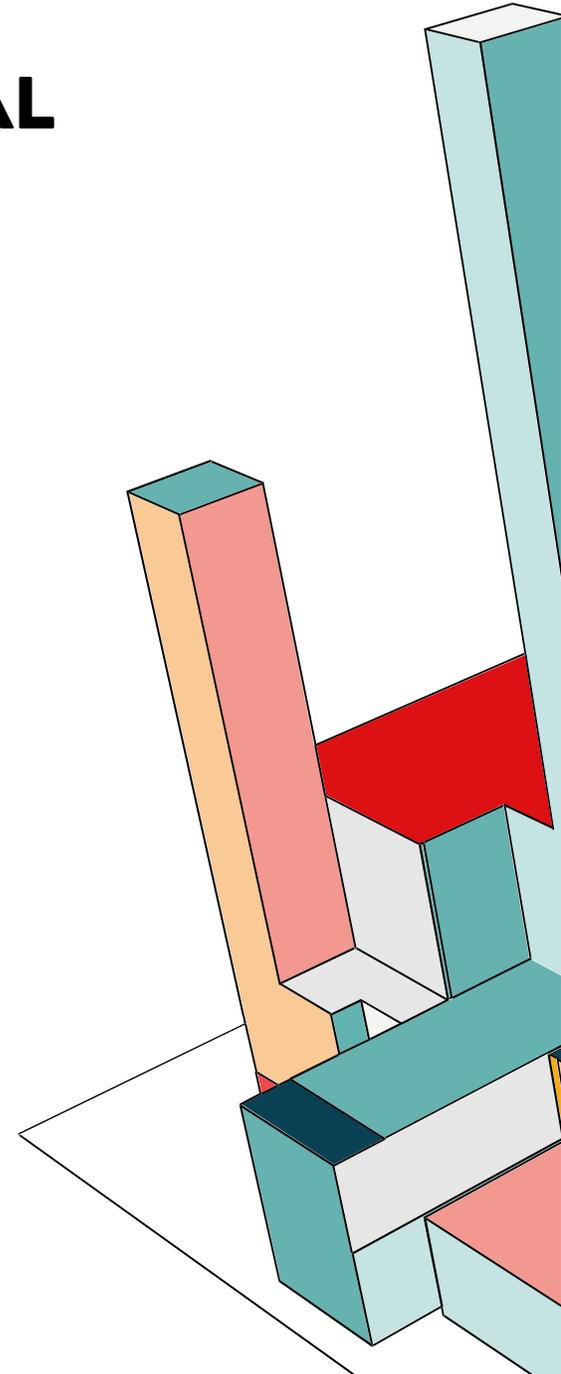
# DEPENDENT MEANS WHAT YOU THINK IT MEANS

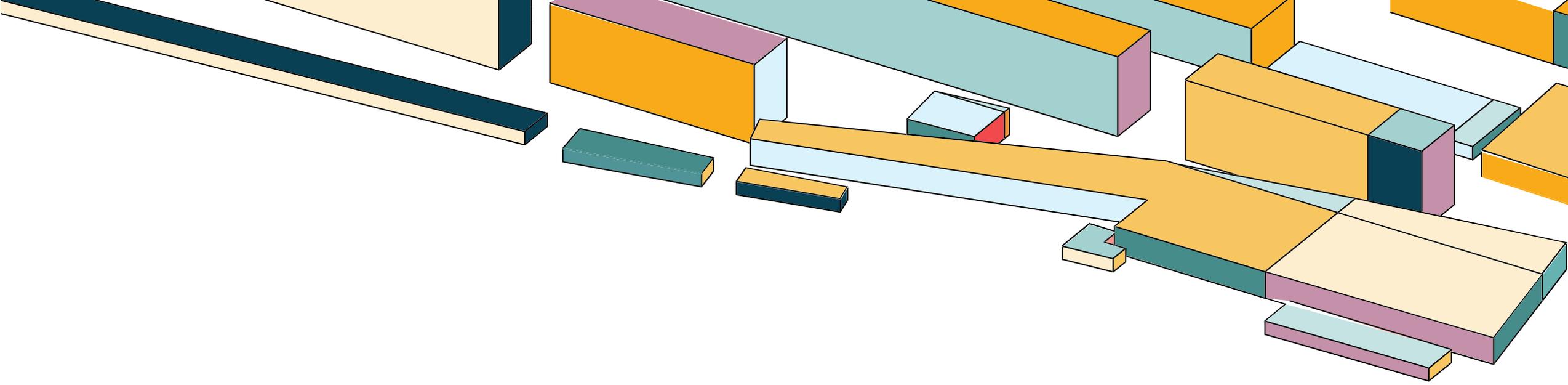
- Its fate depends on another local government.
- “Dependent special district” means a special district that meets at least one of the following criteria:
  - (a) The membership of its governing body is identical to that of the governing body of a single county or a single municipality.
  - (b) All members of its governing body are appointed by the governing body of a single county or a single municipality.
  - (c) During their unexpired terms, members of the special district’s governing body are subject to removal at will by the governing body of a single county or a single municipality.
  - (d) The district has a budget that requires approval through an affirmative vote or can be vetoed by the governing body of a single county or a single municipality.
- Its powers can be limited by the governing body creating the dependent special district.



# HOW DO I KNOW IF I'M IN A DEPENDENT SPECIAL DISTRICT? AN INCOMPLETE LIST OF SIGNS

- You Run for City Council → You Are Elected to City Council...
  - You receive a bunch of calendar invitations for the "CRA Meetings." Congratulations! You are now also a Community Redevelopment Agency Board Member!
- You build the **Perfect Budget**. It is a thing of beauty.
  - It is vetoed by a by a Board of County Commissioners, because they do not appreciate your mastery of the mathematical arts. No one stops them.
- You and your fellow newly-appointed Board Members are sworn in. Just as you finish congratulating yourselves, the Mayor runs up to the microphone and yells:
  - We put you in these seats, and we can take you out!

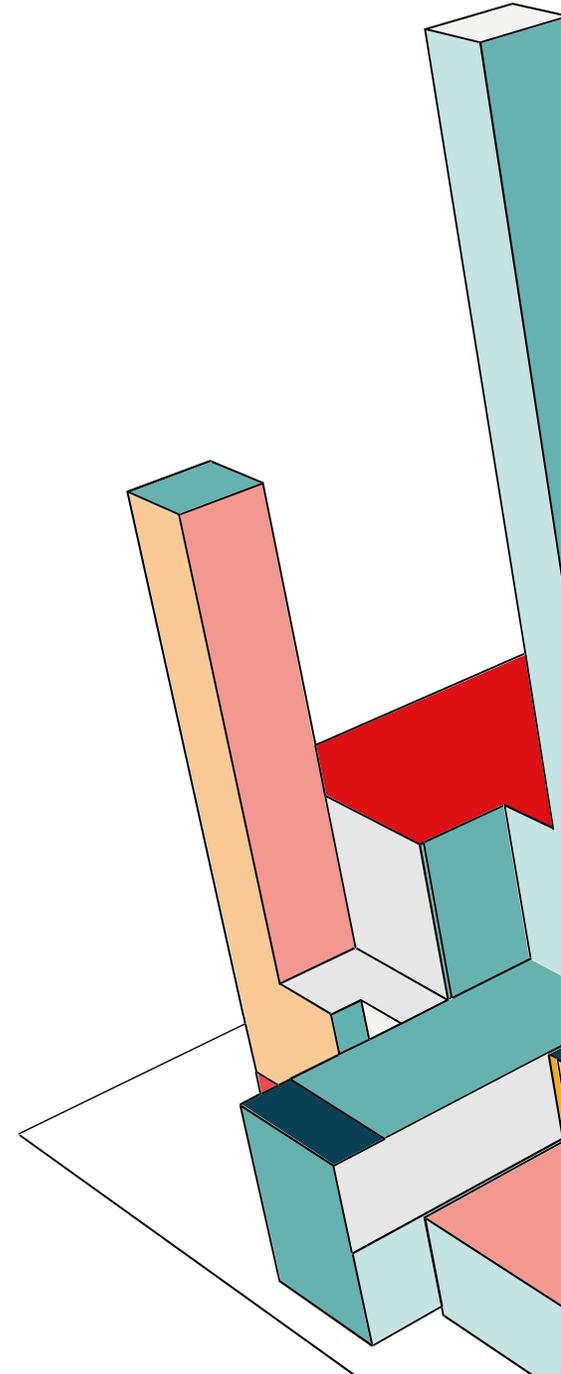




**SO WHAT GOOD ARE THESE THINGS?**

# FOCUSED FINANCING OR SERVICES

- Limited purpose → expertise and focus
- Directs funds to the geography from whence they came
- Many potential uses:
  - Airports
  - Affordable housing
  - Improvement Districts
  - Drainage
  - Beach Protection and Erosion



## SO LET'S TALK ABOUT TWO EXAMPLES

Community  
Redevelopment  
Agencies

Chapter 170  
Districts

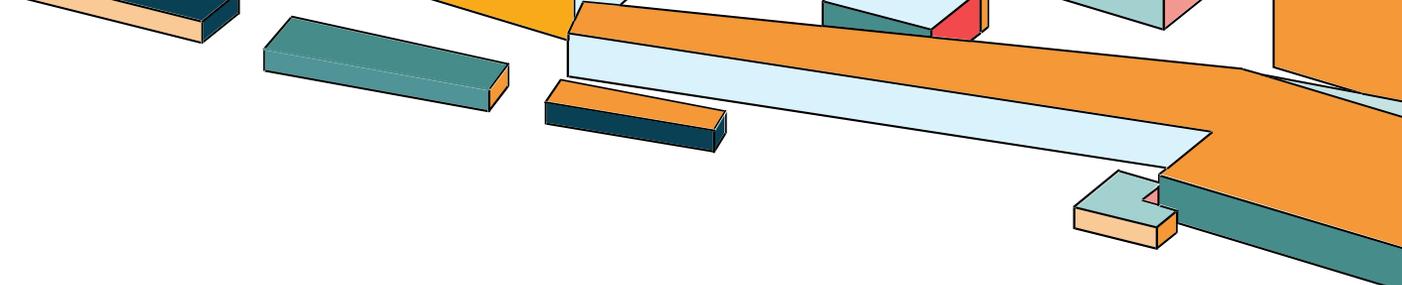




## **QUESTION TIME!**

What does "district" mean?

- a) A governmental entity
- b) A geographic area
- c) It depends



**ANSWER:  
C) IT DEPENDS**

- Lawyers love this answer!



# PAUSE FOR AN IMPORTANT VOCABULARY LESSON

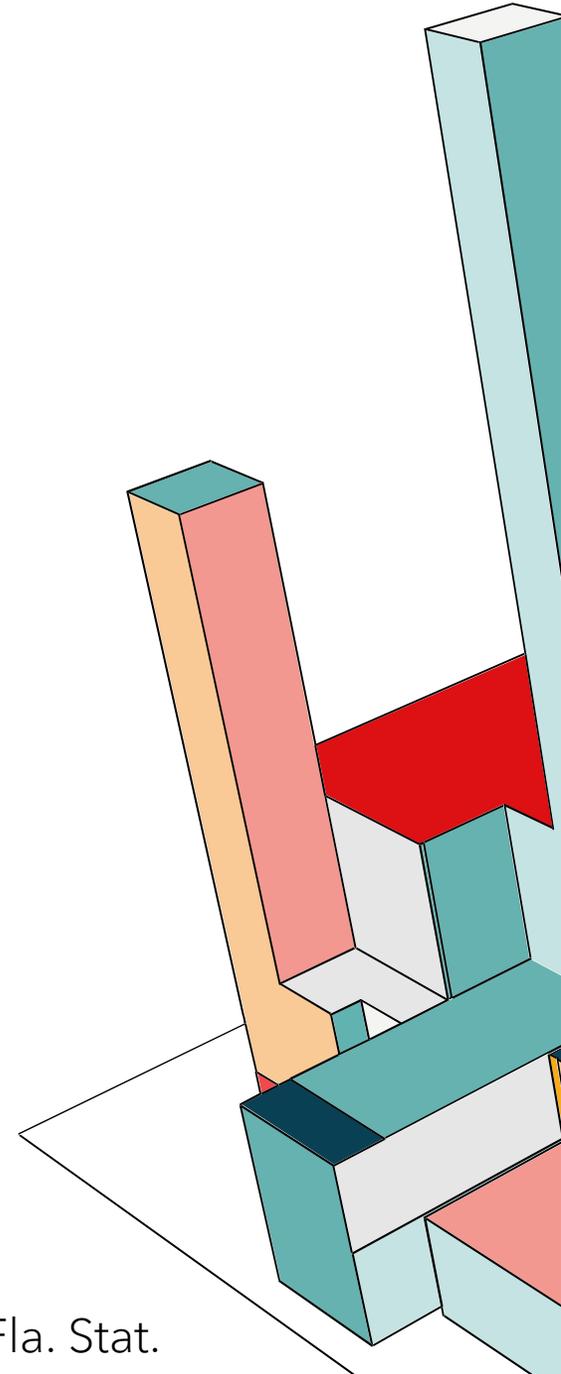
What is a “District”?

- Government or Geographic Area?
- It depends on the context.
  - Example: “CRA” can refer to a “Community Redevelopment Agency” or a “Community Redevelopment Area”
- ↳ For audits, contracts, and other purposes, it is important to clarify whether the subject is a land area or a unit of government.
  - Example: a contract to provide “all landscaping services for the CRA”
- It is possible to establish a geographic area, for purposes of assessments, without creating a dependent special district.



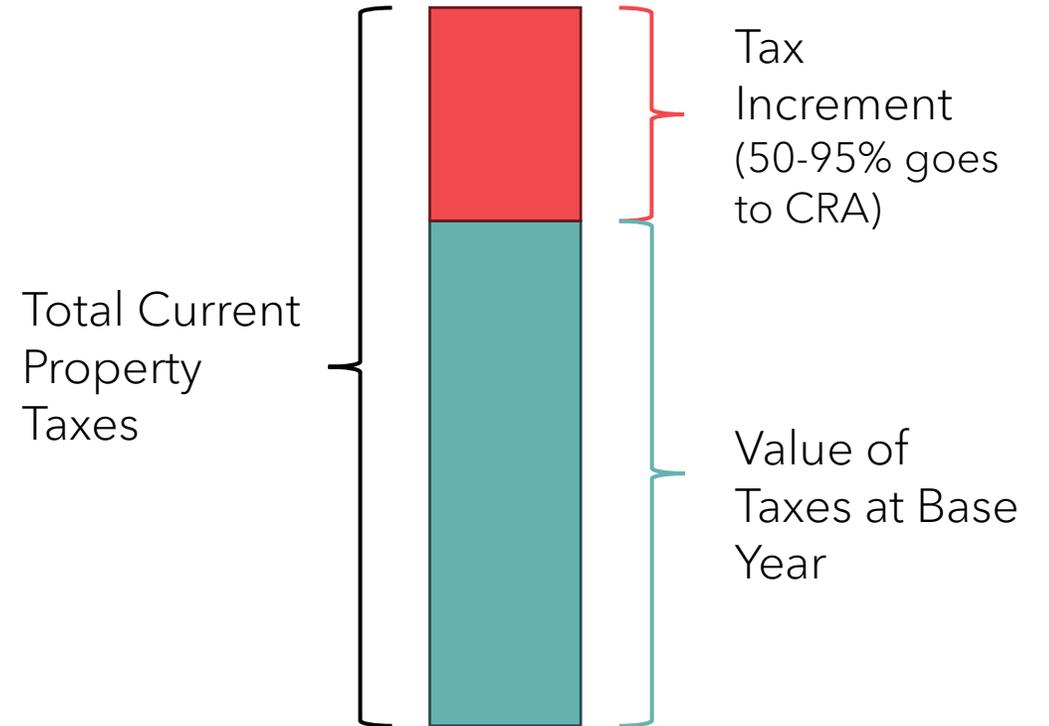
# COMMUNITY REDEVELOPMENT AGENCIES

- Created to combat slum and blight, after a finding of necessity
- **Slum** is an area “having physical or economic conditions conducive to disease, infant mortality, juvenile delinquency, poverty, or crime” as the result of impaired buildings, overcrowding, or dangerous conditions.
- **Blight** is an area “in which there are a substantial number of deteriorated or deteriorating structures; in which conditions, as indicated by government-maintained statistics or other studies, endanger life or property or are leading to economic distress” based on analysis of fifteen enumerated factors.
  - Generally, at least two of the fifteen factors must be present for an area to be deemed blighted.
  - Factors include:
    - inadequate streets or parking
    - plateauing tax values
    - unsanitary/unsafe conditions
    - falling lease rates
    - faulty lot layout
    - outdated density patterns
    - high crime rates
    - proportionately higher emergency calls
    - Higher number of Florida Building Code violations



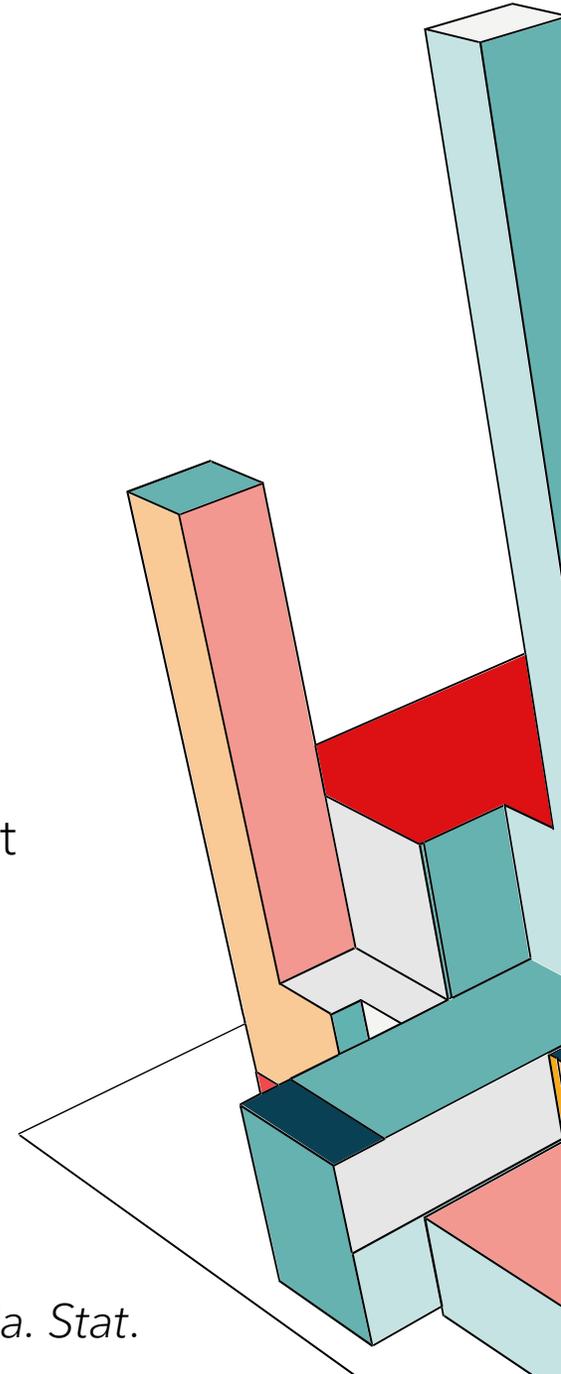
# HOW ARE CRAs FUNDED?

- Primarily funded through "Tax Increment Revenue"
  - Debt service millage is subtracted from property taxes prior to TIR calculation
  - Base year = year before trust fund is established
- May also bond, receive grants, accept funds from other governments, and seek other funding



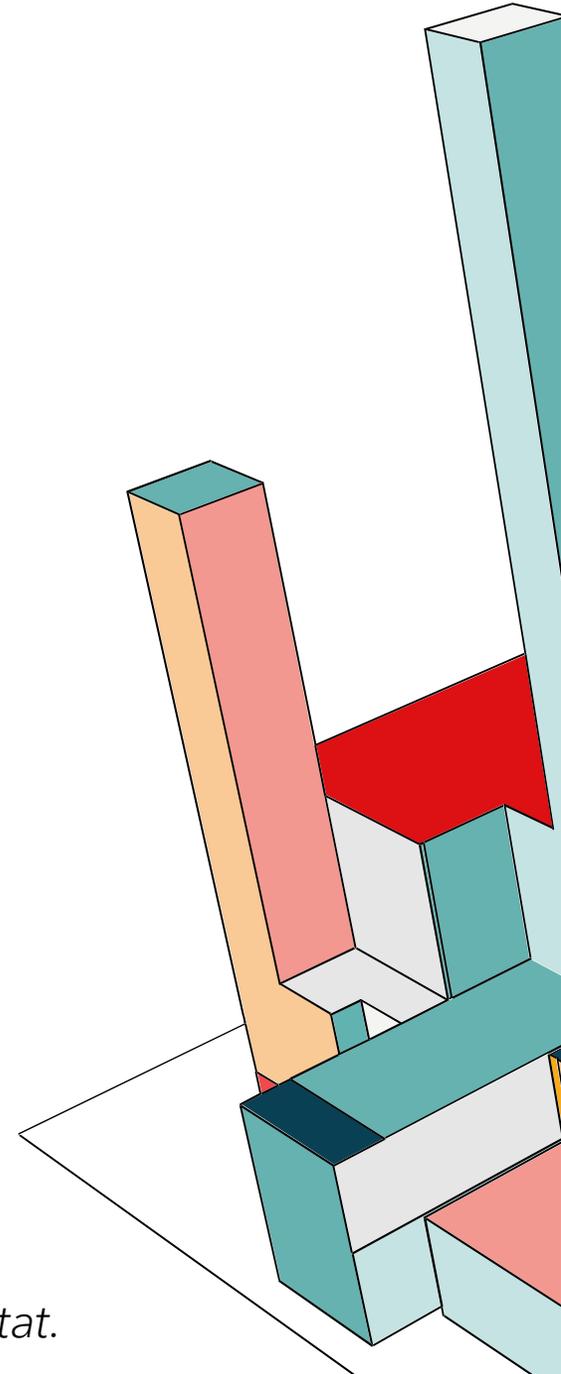
# SO WHAT DO THEY DO?

- Mostly physical improvements – brick and mortar
- Assist with providing affordable housing
- Provide community policing innovations
- Acquire and dispose of property
- Demolish buildings and improvements
- Install, construct, and reconstruct:
  - Streets
  - Utilities
  - Parks
  - Playgrounds
  - Other improvements necessary for carrying out redevelopment
- Public areas of major hotels that are constructed in support of convention centers, including meeting rooms, banquet facilities, parking garages, lobbies, and passageways



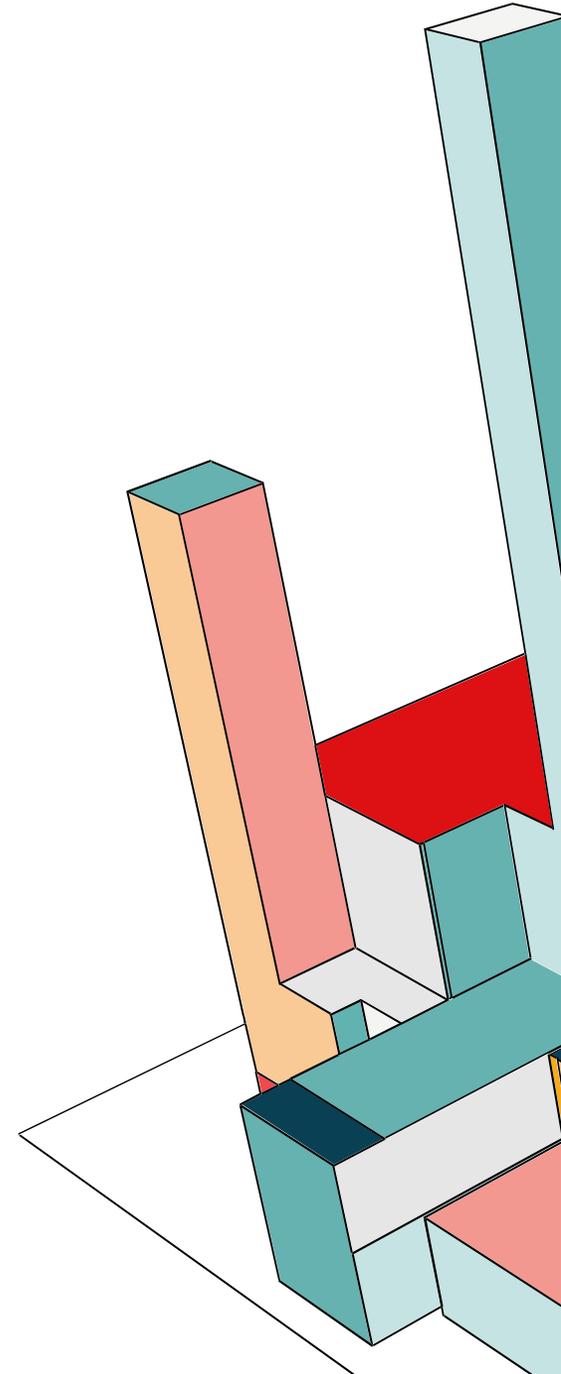
# EXCEPTIONS TO BRICK AND MORTAR

- Community policing innovations (but can include neighborhood station)
- Assisting with relocations of persons displaced from CRA area
- Zoning and rezoning property
- To provide, or to arrange or contract for, the furnishing...by any person or agency...of services, privileges...for or in connection with a community redevelopment. (§163.370(2)(d), Fla. Stat.)
- To develop, test, and report methods and techniques, and carry out demonstrations and other activities, for the prevention and elimination of slums and urban blight..." (§163.370(i), Fla. Stat.)



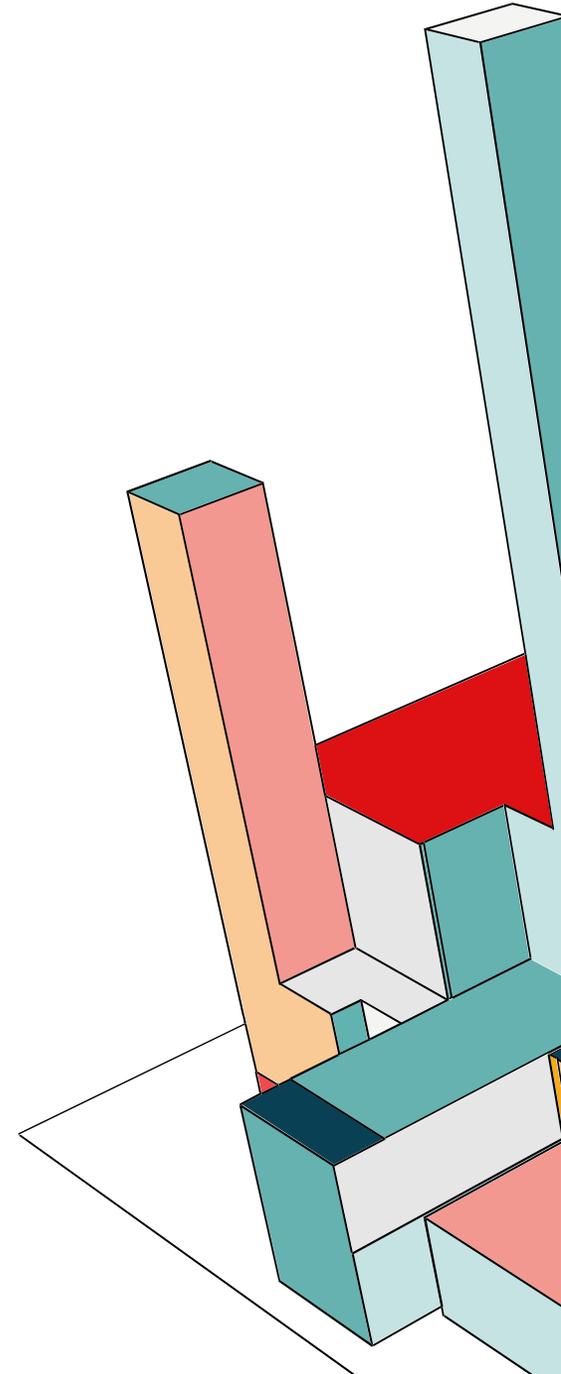
# SOME EXAMPLES

- Tax Increment Revenue Funding Agreements
  - Return a portion of tax increment revenue received to development as incentive to build
- Acquire property (can pay more than FMV) and
  - Prepare it for development (tear down, resurface, rezone)
  - Dispose of it for development purposes (can be less than FMV with approval of governing body)
    - Purchase and Development Agreements
- Land consolidation
- Grant Programs
- Fund “above and beyond” community policing innovations



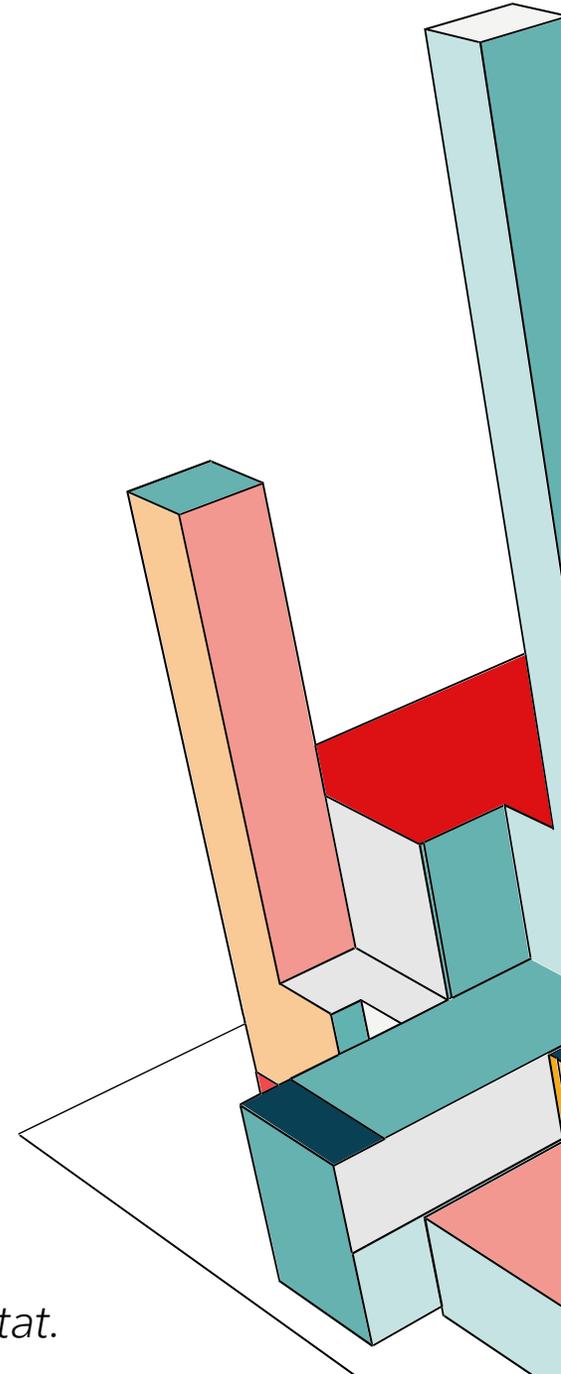
# AND WHAT CAN'T THEY DO?

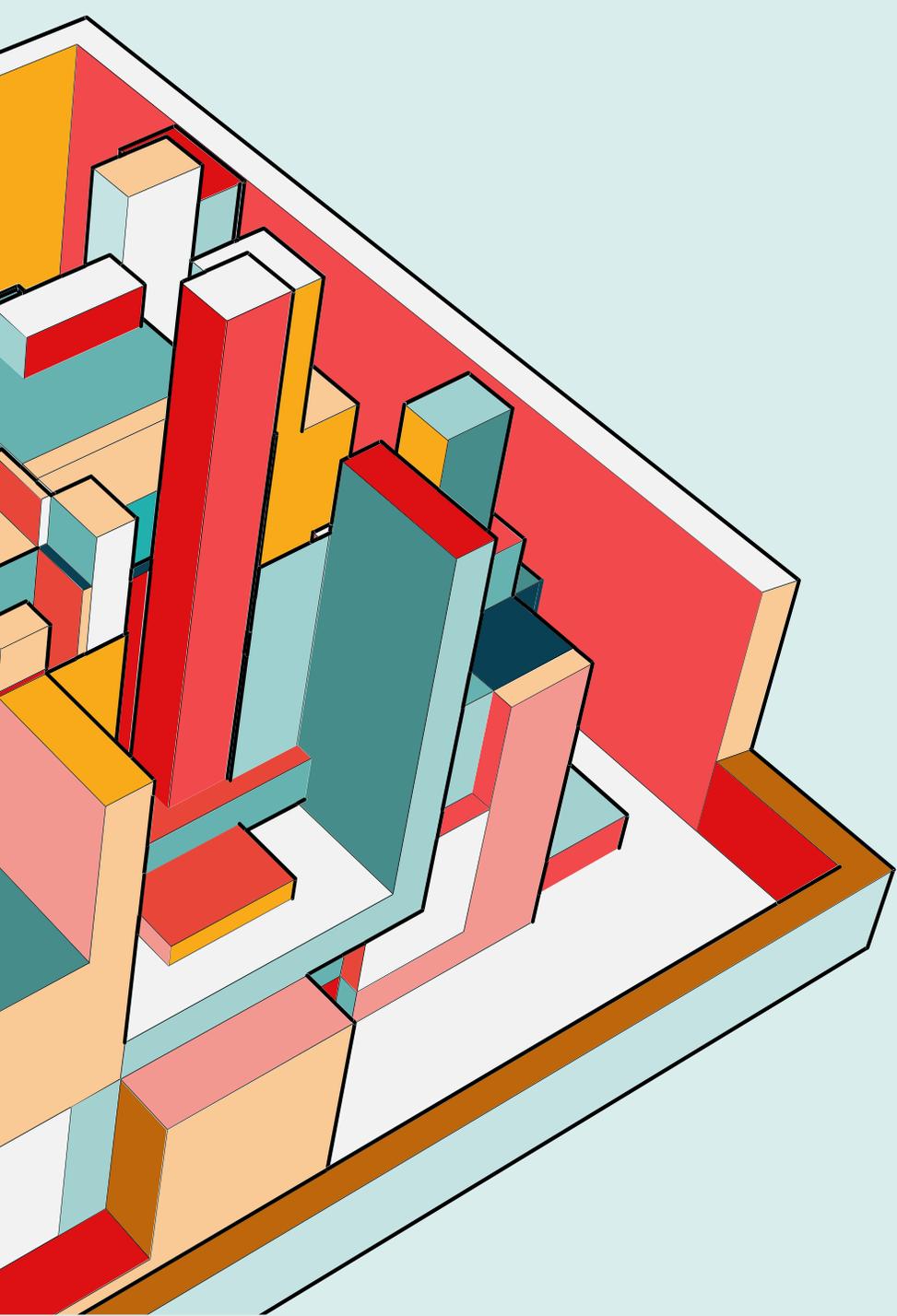
- No power of eminent domain
- Generally not thought to have the power to construct buildings to then act as a landlord
- Generally cannot pay for expansion of government facilities for public bodies, police, and fire (except for community policing innovations)
- Cannot fund capital improvements that had been previously planned for construction within 3 years, unless they are removed from the list for at least 3 years
- Cannot fund general government operating expenses



# WHAT MAKES THEM UNIQUE?

- “Encouragement of Private Enterprise”
  - “Any county or municipality, to the **greatest extent** it determines to be feasible in carrying out the provisions of this part, shall afford **maximum opportunity**, consistent with the sound needs of the county or municipality as a whole, to the rehabilitation or redevelopment of the community redevelopment area **by private enterprise.**” (§ 163.345, Fla. Stat.)
- Governed by a Community Redevelopment Plan
- The governing body that creates a CRA may also sit as its Board.
  - If the governing body has 5 members, it may appoint 2 additional persons to be CRA Board Members
- Time limited – they all sunset

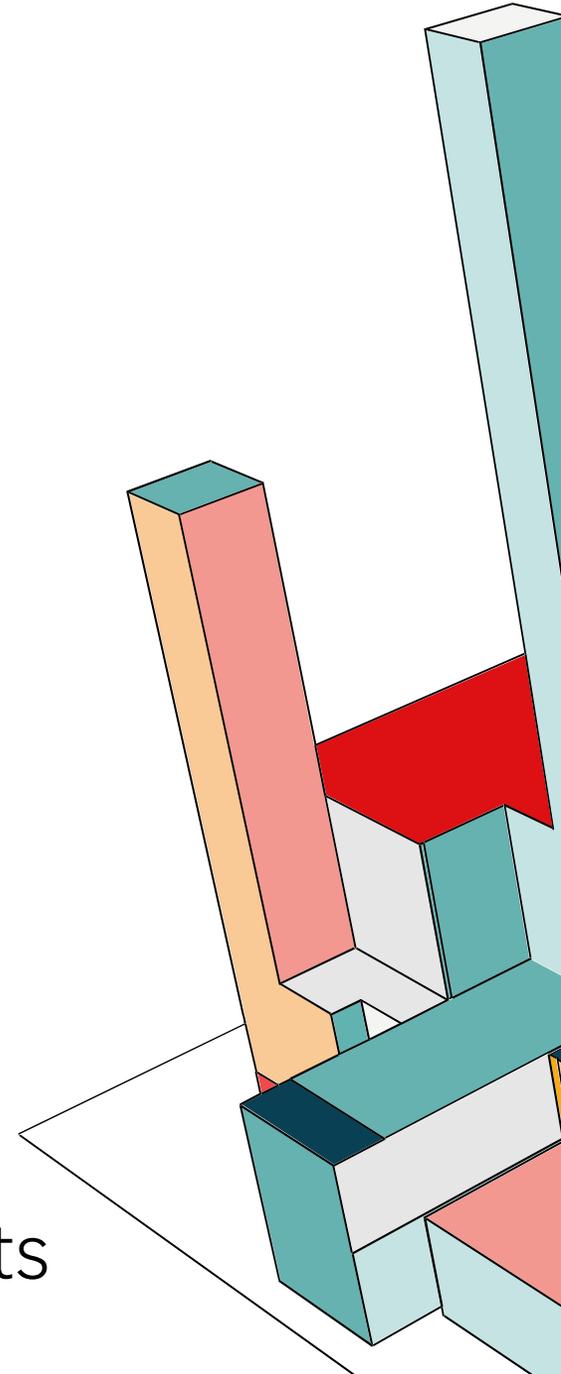




# **CHAPTER 170 DISTRICTS**

# WHAT DOES CHAPTER 170 DO?

**SUPPLEMENTAL AND ALTERNATIVE  
METHOD OF MAKING LOCAL MUNICIPAL  
IMPROVEMENTS**

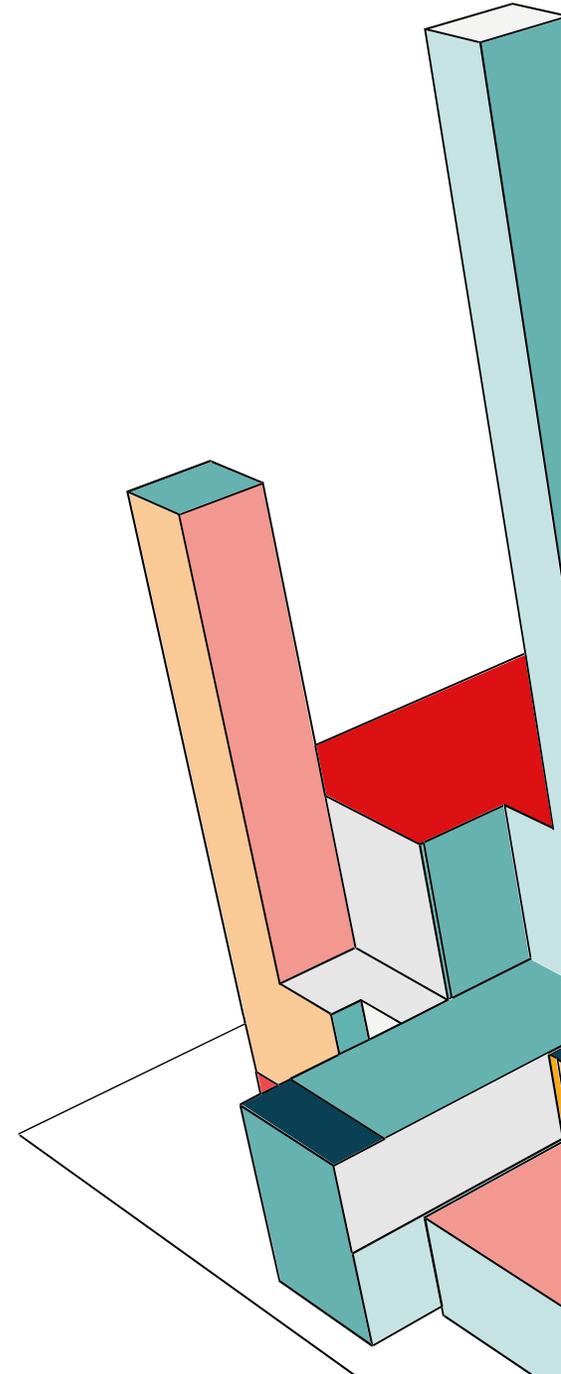


...it authorizes certain special assessments



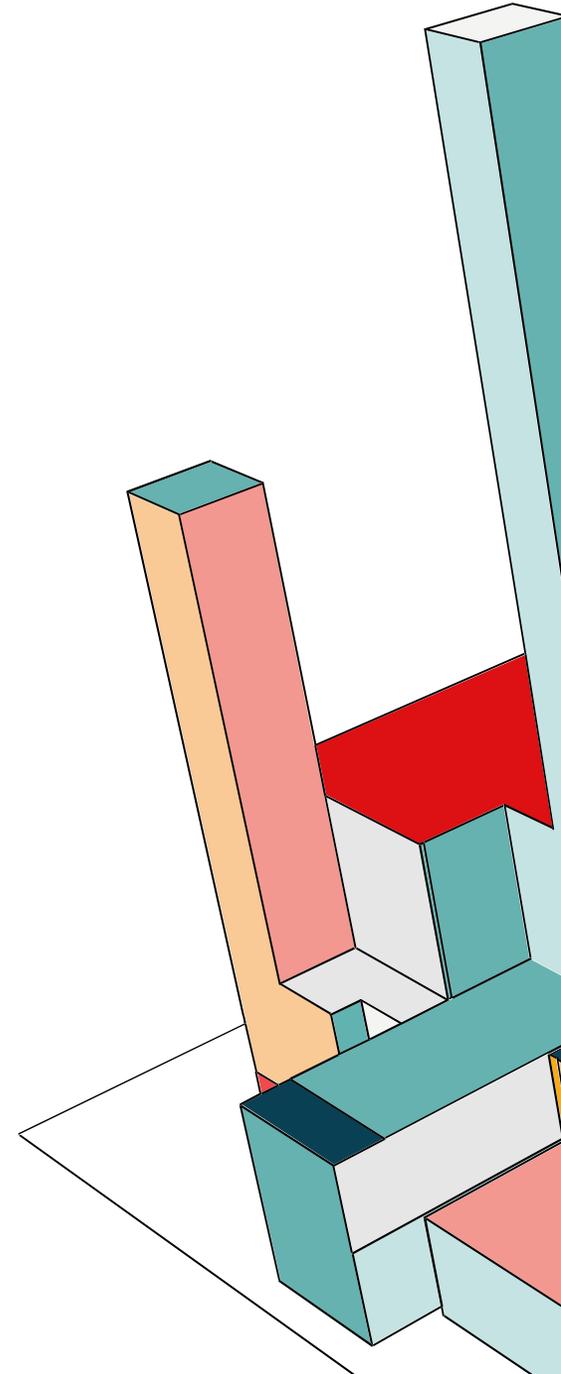
# MAY ALSO BE KNOWN AS IMPROVEMENT DISTRICTS OR BUSINESS IMPROVEMENT DISTRICTS

- For municipalities
- Intended to assist with improving a specific area
- Improvements can include installation/repair of streets, sidewalks, drainage, sanitary sewers, water supply, parks, seawalls, parking facilities, desalination, aquifer storage and recovery, mass transportation...the list goes on
- With approval of affected properties, can also stabilize and improve business districts and nationally recognized historic districts
- Funded through assessments of specially benefitted properties



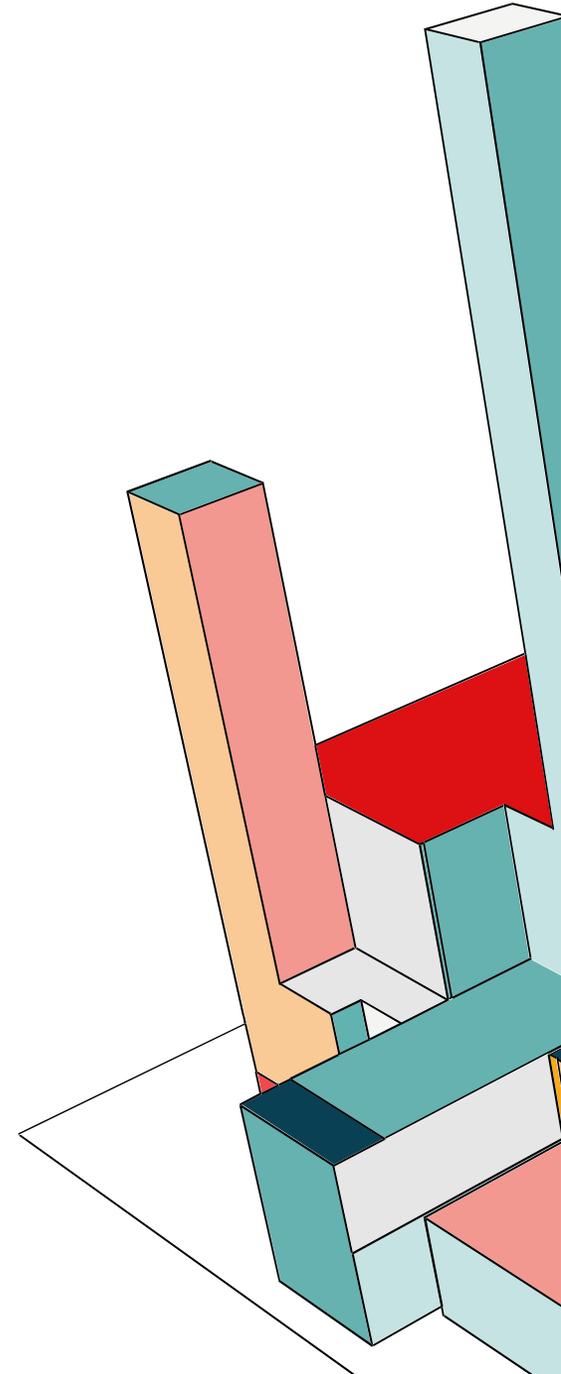
# WHO'S RUNNING THIS SHOW?

- Choose your own adventure!
- Municipalities may:
  - Establish a geographic area for assessment purposes, but not provide for separate governance
  - Establish assessments and a dependent special district
    - ↳ See also Ch. 189
  - Establish boundaries and assessments, form a 501(c)(6) composed of landowners to govern the district, and contract with that 501(c)(6) for such purposes
- Some Chapter 170 areas are registered on the Official List of Special Districts, even if they were not formed under Chapter 189



# FUNDING THE IMPROVEMENTS

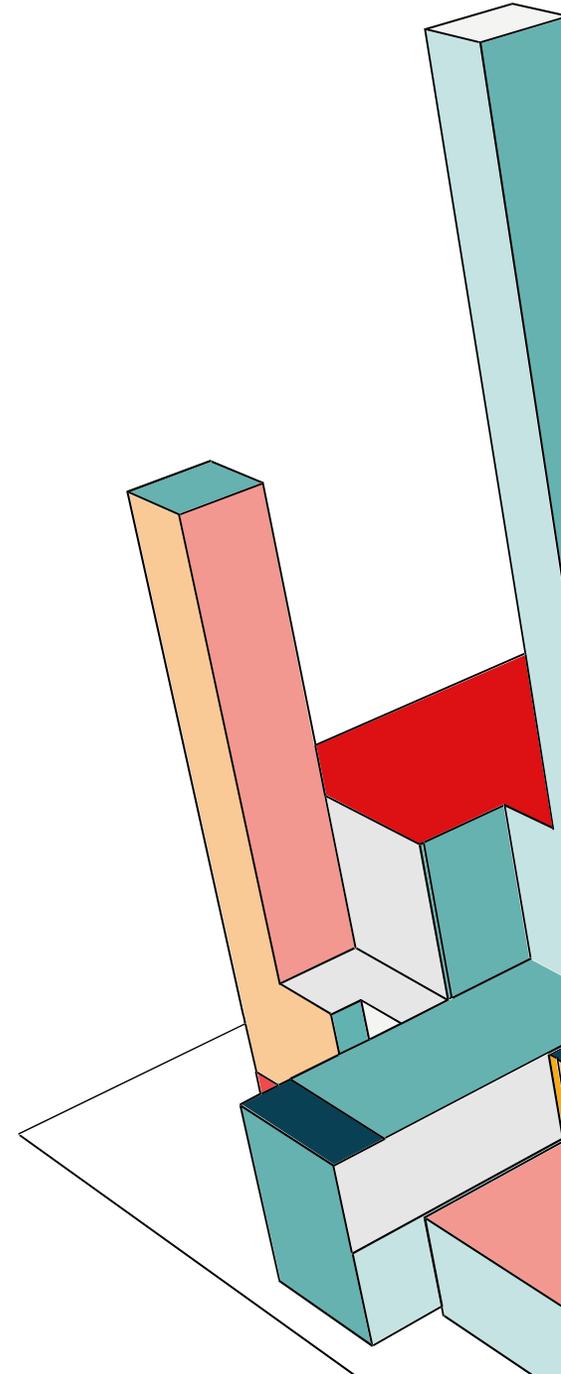
- After establishment of special assessments, Improvement Bonds may be issued.
  - Bonds will be repaid through the assessments.
- Improvements may be funded through assessments levied on specially benefitted properties.
  - Above and beyond ordinary services
  - Municipalities may contribute additional funds
  - May fundraise
- Even if special district established, municipality will typically levy the assessments



# EXAMPLES OF STABILIZING AND IMPROVING BUSINESS DISTRICTS

*"...through promotion, management, marketing, and other similar services in such districts..."*

- Enhanced Landscaping
- Sidewalk and Bike Lane Installation
- Enhanced Cleaning
- Events to Attract Customers
- Marketing and Advertising Efforts



# WHICH MAKES MORE SENSE FOR MY GOVERNMENT?

- A CRA may be the right tool if...

- The area qualifies as slum and blight
- Redevelopment is needed on a large scale, over a long period of time
- Affordable housing would be part of the redevelopment
- A separate governmental entity is desired
- You are a county

- Chapter 170 may be the right tool if...

- You have a specific infrastructure need or desire
- Funding is needed sooner rather than later
- A group of business owners wants to enhance a defined area
- The municipality wants to control the process, or is open to various governing structures

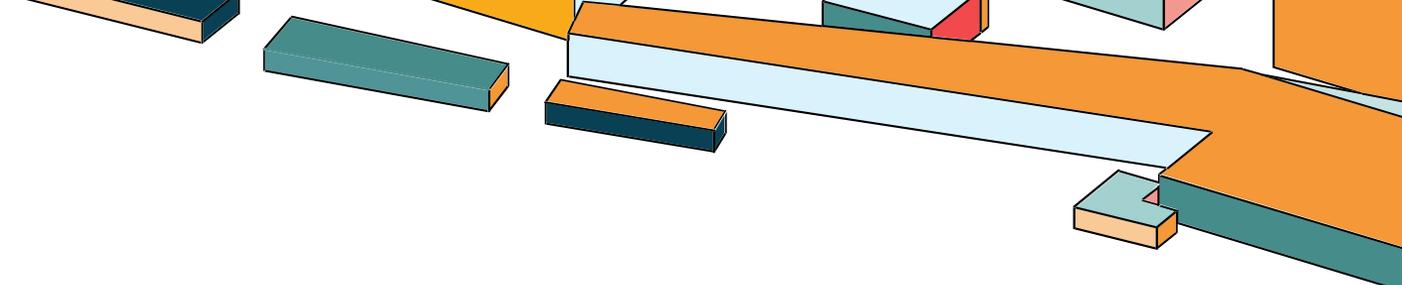




# QUESTION TIME!

Who is the greatest TV character of all time?

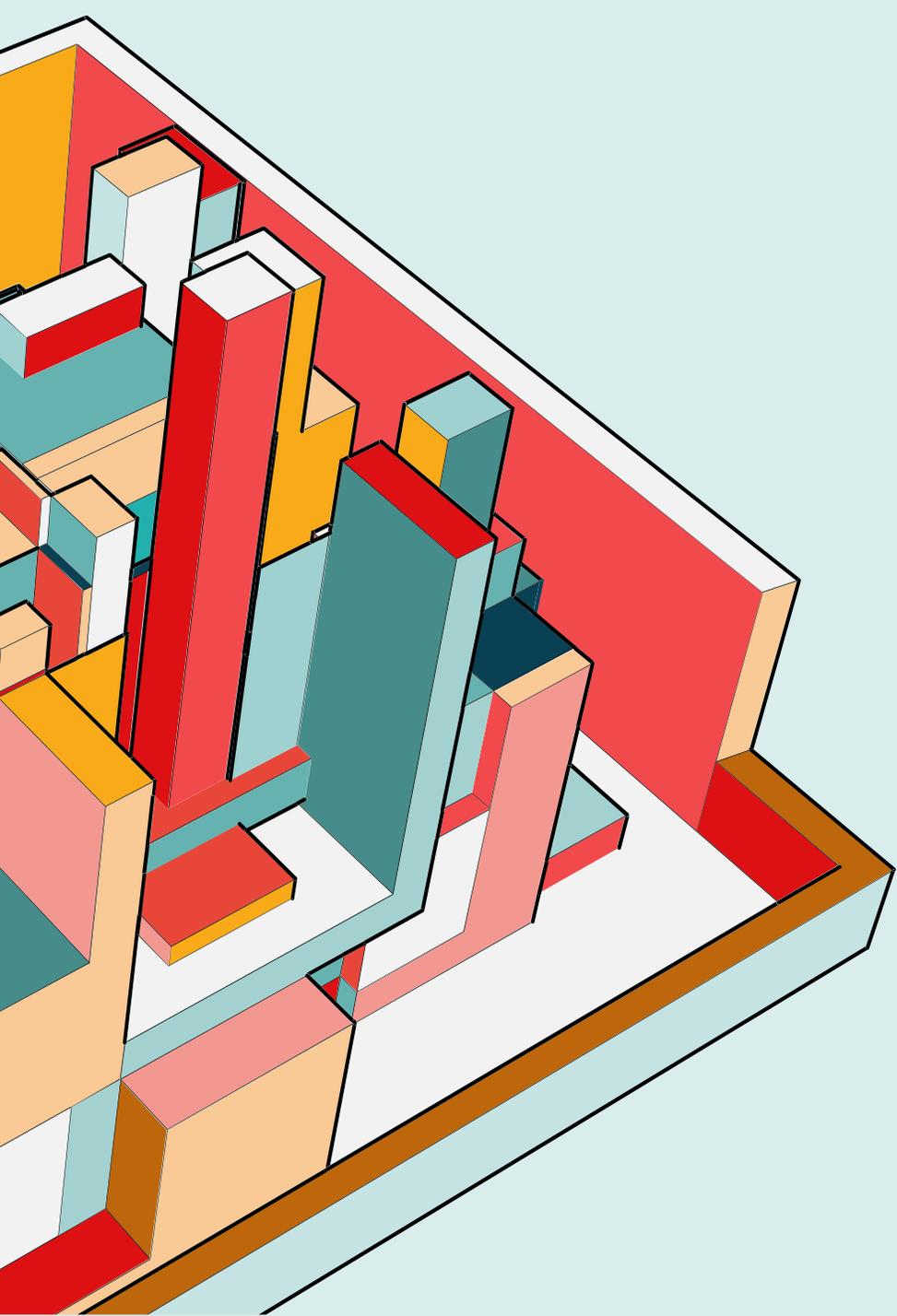
- a) Ron Swanson, from Parks and Rec
- b) Ron Swanson, from Parks and Rec
- c) Someone else. HINT: This is the wrong answer.



## **ANSWER:**

- I sincerely hope you got this right.

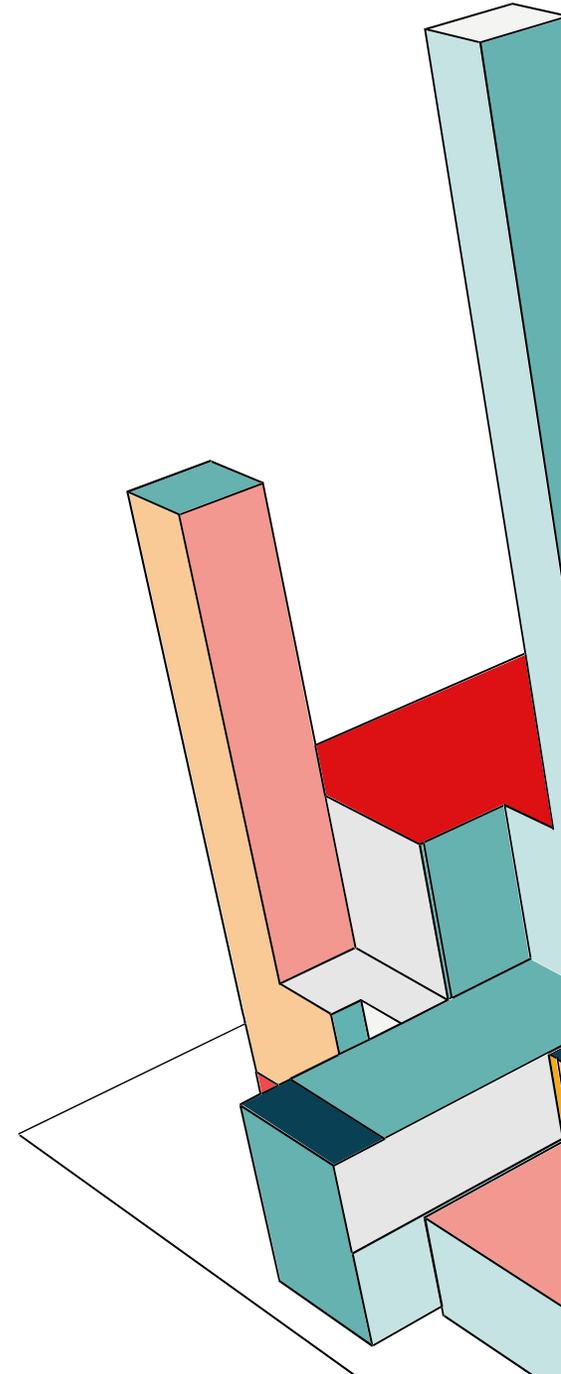




# **SPECIAL ASSESSMENTS**

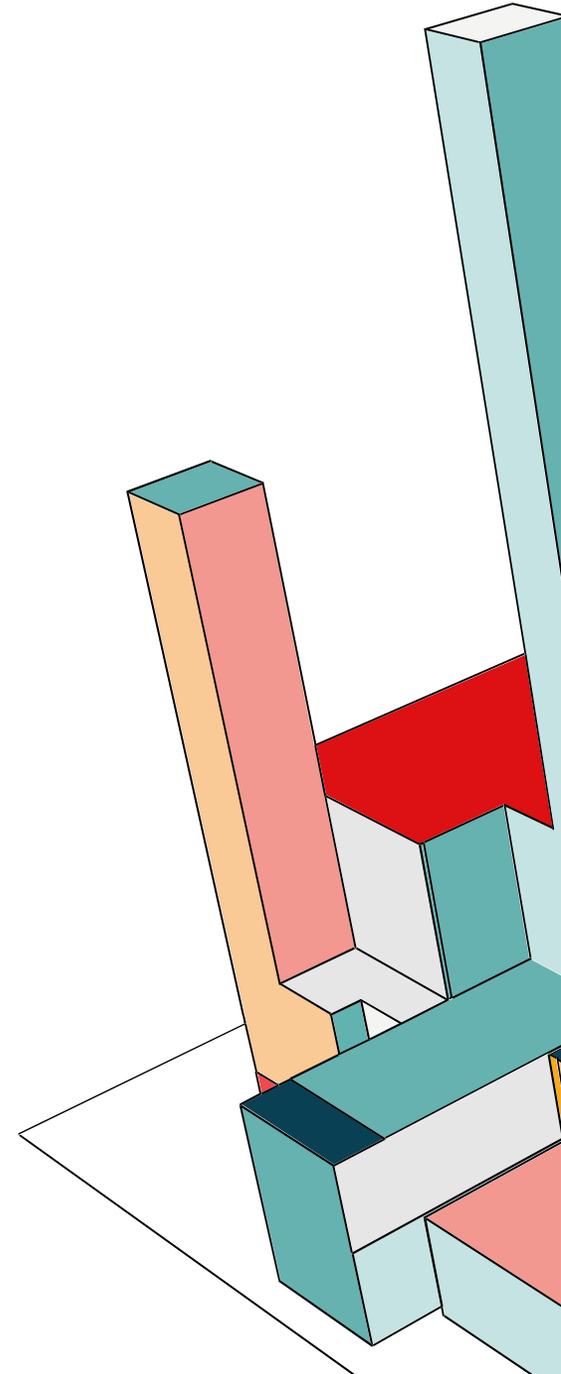
# WHAT IS A SPECIAL ASSESSMENT?

- “Non-ad valorem assessment” means only those assessments which are not based upon millage and which can become a lien against a homestead as permitted in s. 4, Art. X of the State Constitution. (§ 197.3632, Fla. Stat.)
  - Charge levied by a public body on specifically defined, specially benefitted property, for specific purposes.
- Payment is compulsory, and failure to pay may result in a lien
- May appear on TRIM notices or be self-assessed
- Differs from a tax because:
  - Use of funds must confer special benefit on assessed property
  - Must be properly apportioned



# AUTHORITY FOR SPECIAL ASSESSMENTS

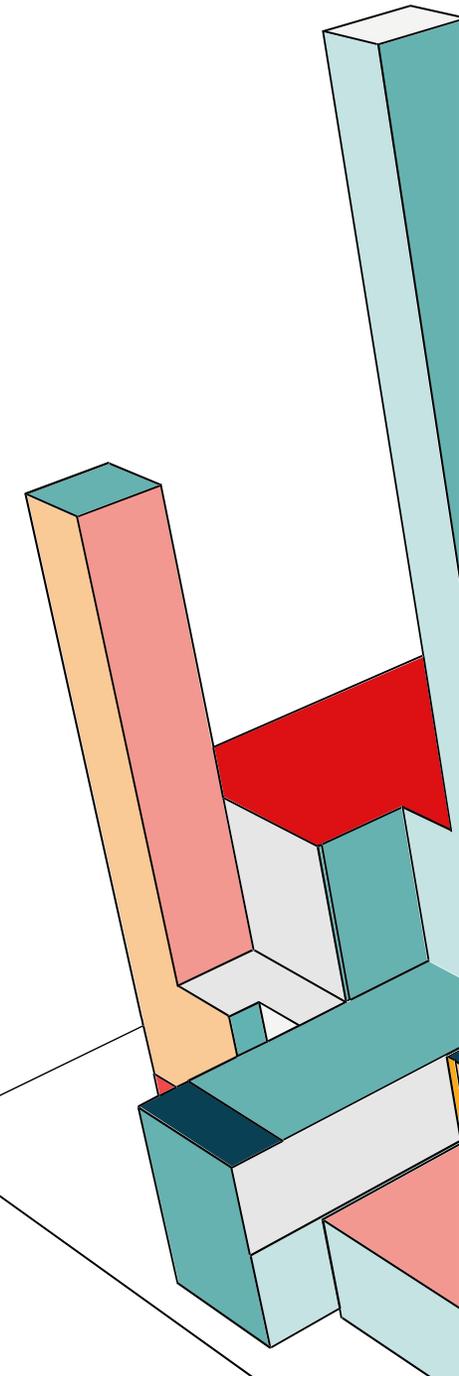
- Cities and counties are authorized by constitutional grant of home rule powers
- Certain specific statutory authority (a few examples):
  - Chapter 153 - Water and Sewer Districts
  - Chapter 163 - CRAs, Local government neighborhood improvement districts
  - Chapter 170 - "improvement districts"
  - Chapter 191 - Independent Fire Districts
  - Chapter 298 - Drainage Districts



## “SPECIAL BENEFIT”

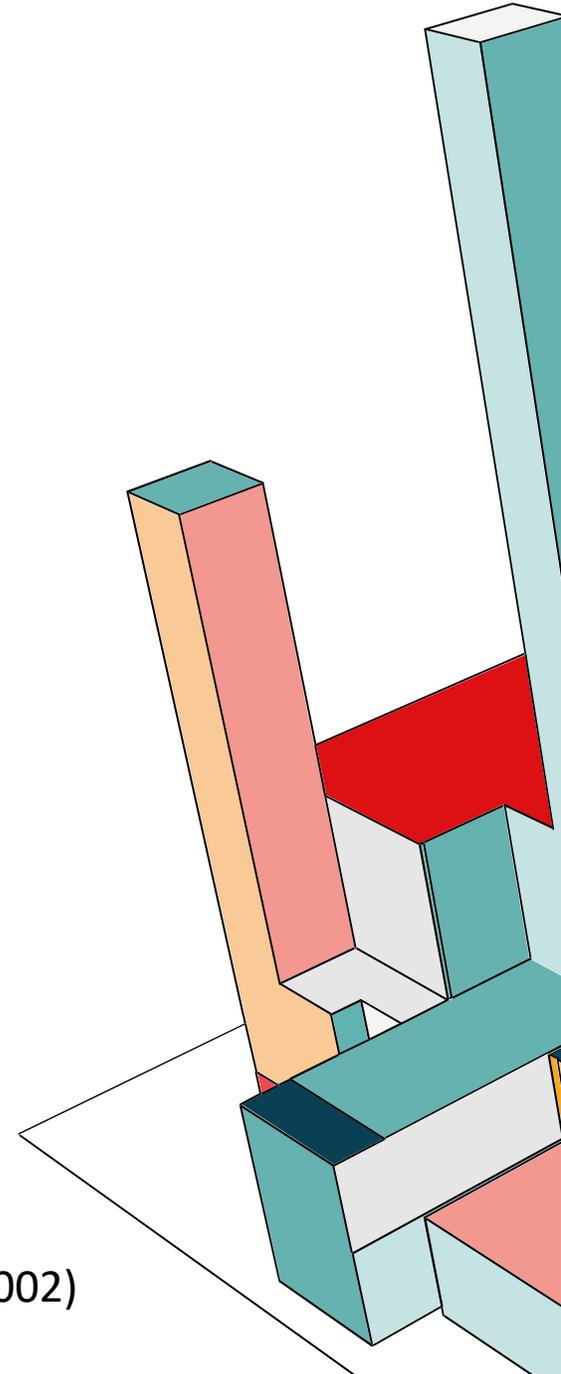
Whether there is a logical relationship between the services provided and the benefit to real property.

Lake County v. Water Oak Management Corporation, 695 So. 2d 667, 669 (Fla. 1997)



# ECONOMIC BENEFIT - EXAMPLE

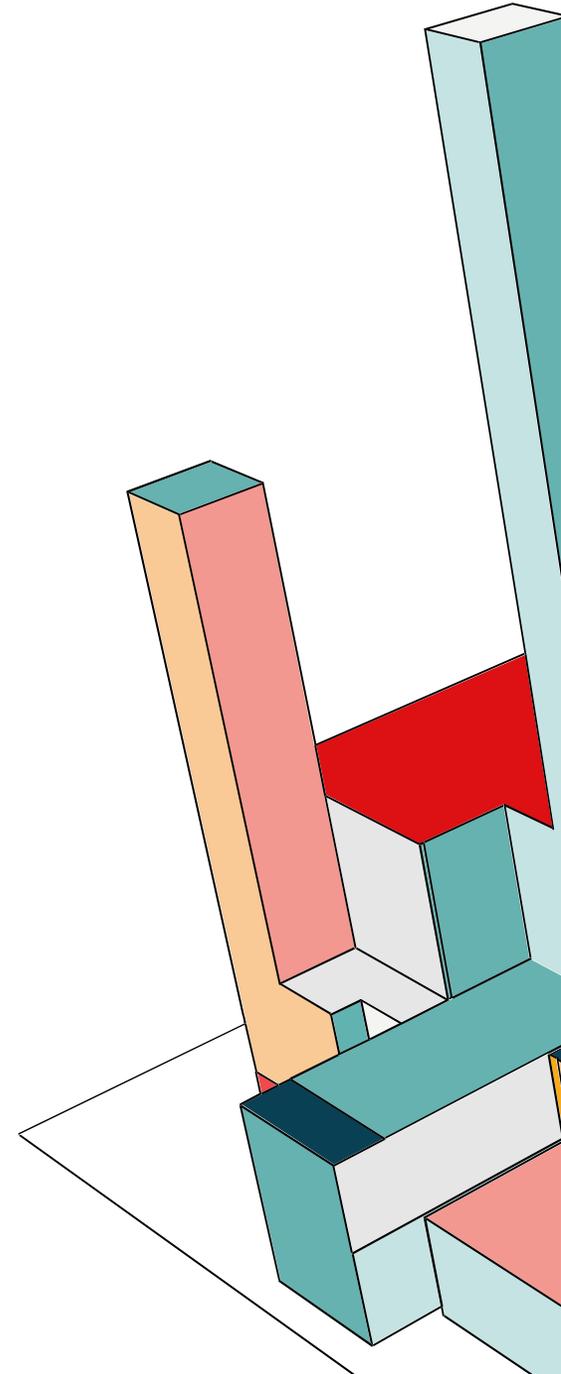
- Fire Protection and EMS
  - Fire Protection → Valid, decreases insurance costs
  - Advanced EMS → Not valid, no economic benefit to  
property



# PROPER APPORTIONMENT

The assessment must be fairly and reasonably apportioned among the properties that receive the benefit.

City of Boca Raton v. State, 595 So. 2d 25, 29 (Fla. 1992)





# THIS IS NOT ABOUT YOU.

- I am sure you are wonderful.
- And we agree, *people* benefit from services like advanced EMS.
- But special assessments are based on the relationship of the *benefits* to the *property*.
  - Determining assessments based on the character of property owners or inhabitants would be fraught with danger.
  - So we focus on value that attaches to the property.



# APPORTIONMENT

- There is no hard and fast rule.
  - Cannot be arbitrary, but can take many forms.
- May be upheld for entire city or county area, so long as each property receives a benefit.

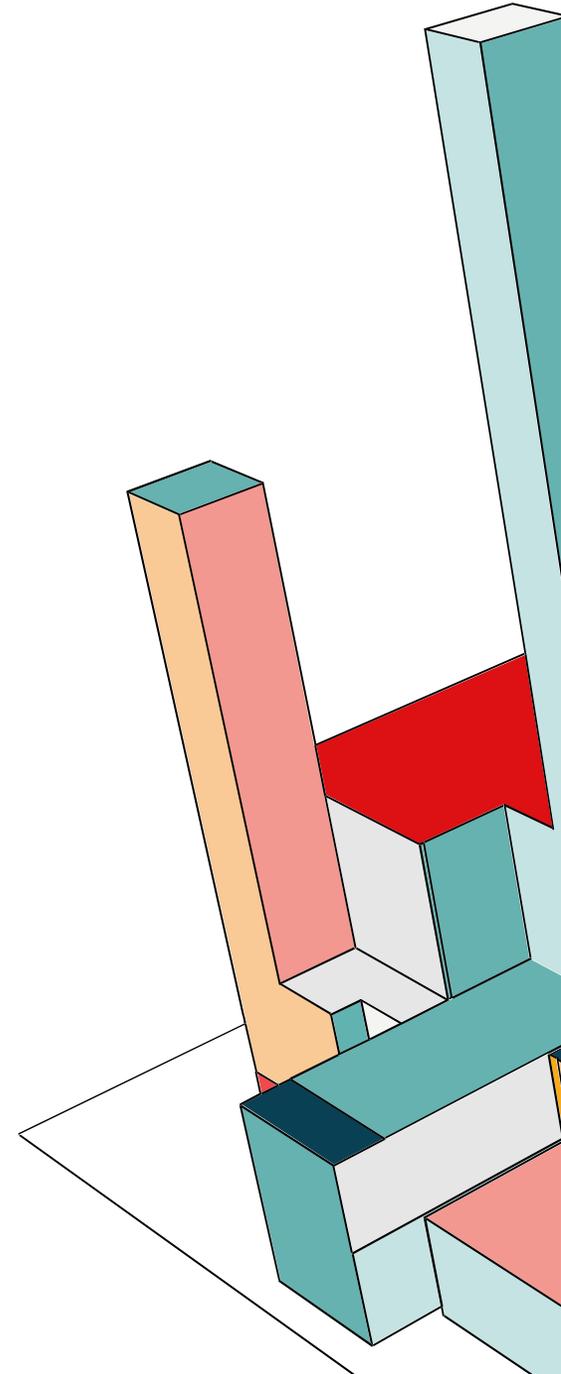
Lake County v. Water Oak Management Corporation, 695 So. 2d 667, 668 (Fla. 1997); City of North Lauderdale v. SVM Properties, Inc., 825 So. 2d 343 (Fla. 2002)

- Different rates may be charged to different users as long as the classifications are not arbitrary, unreasonable, or discriminatory.

City of Gainesville v. State Department of Transportation, 778 So. 2d 519 (Fla. 1st DCA 2001)

- Valid reasons include:
  - Cost of service
  - Purpose for which service is received
  - Different character of service
  - Time of use

City of Gainesville



# COMMON FACTORS FOR CONSIDERATION

- Use Type
  - Use Type History
    - What percentage of fire rescue calls go to commercial? Residential?
  - Vacancy
    - Sometimes there is a benefit, sometimes it is reduced.
  - Size and density of improvements.
  - “De Minimus”
  - Relative benefit (e.g. property owners may benefit more from fire protection services)
- ↳ Consultants can assist with benefit, apportionment, and notice requirements



# EXEMPTIONS

- Agricultural properties are exempt from fire rescue assessments
- State-owned lands are exempt unless the legislature has authorized an assessment on the state lands
- Municipalities may exempt religious, educational, state-funded elderly or disabled housing from 170 assessments
- Can municipalities discount certain uses instead of exempting them?
  - There is no statutory authorization for this.



# VALID APPORTIONMENTS – MIX N’ MATCH

Square Footage

Lot Frontage

Flat Rate

Commercial v.  
Residential

Residential by  
Size

Residential by  
Type (Single  
Family v.  
Apartments)

Commercial by  
Use Type

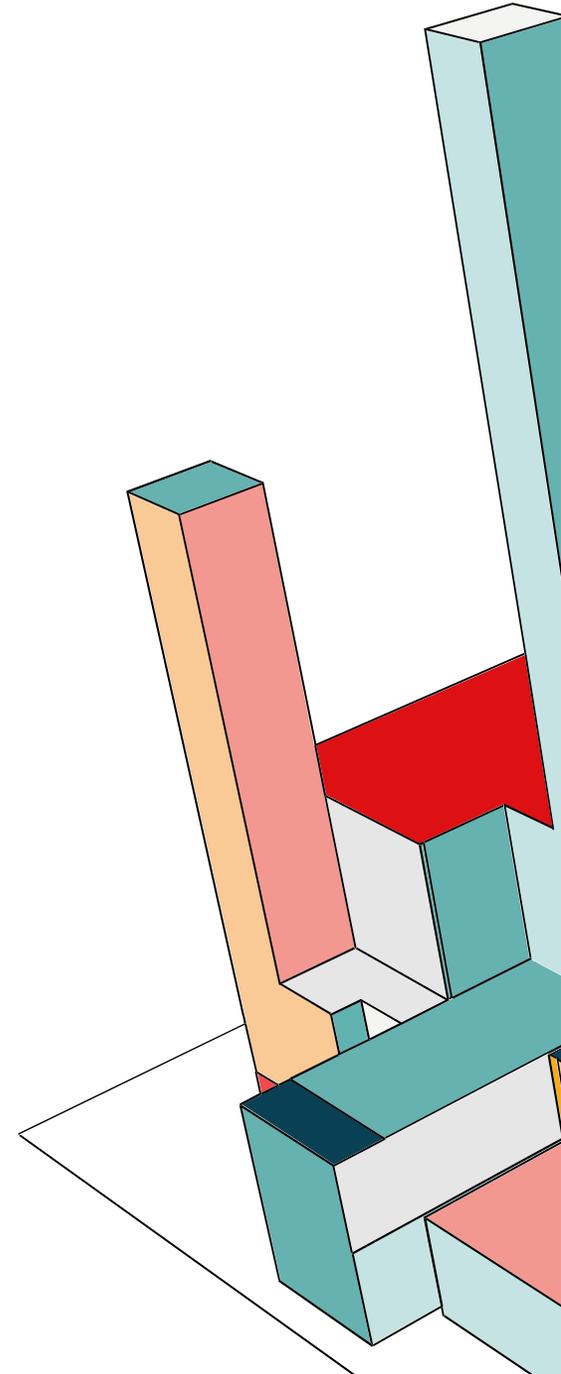
Commercial by  
Size

Other  
Reasonable  
Methods



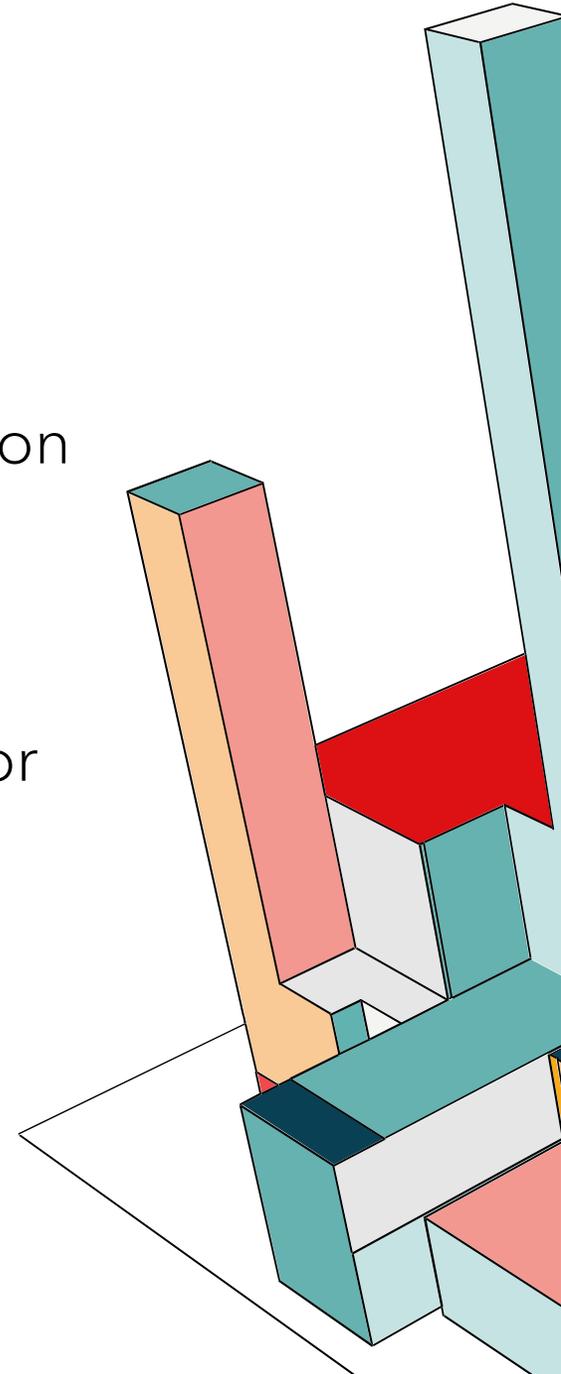
# PROCESS OVERVIEW TO COLLECT ASSESSMENT THROUGH TAX COLLECTOR

- Chapter 197, Uniform Method of Assessment Collection
- Publish notice of public meeting once a week for four weeks prior to public meeting concerning intent to use uniform method
- Adopt resolution of intent to use “uniform method of assessment collection”
- Submit the resolution to the Property Appraiser and Tax Collector by January 1 (or by March 1 with PA and TC permission)
- Enter into agreement for administrative costs with PA and TC
  - ↳ Can be done at any time in the process, but the earlier the better



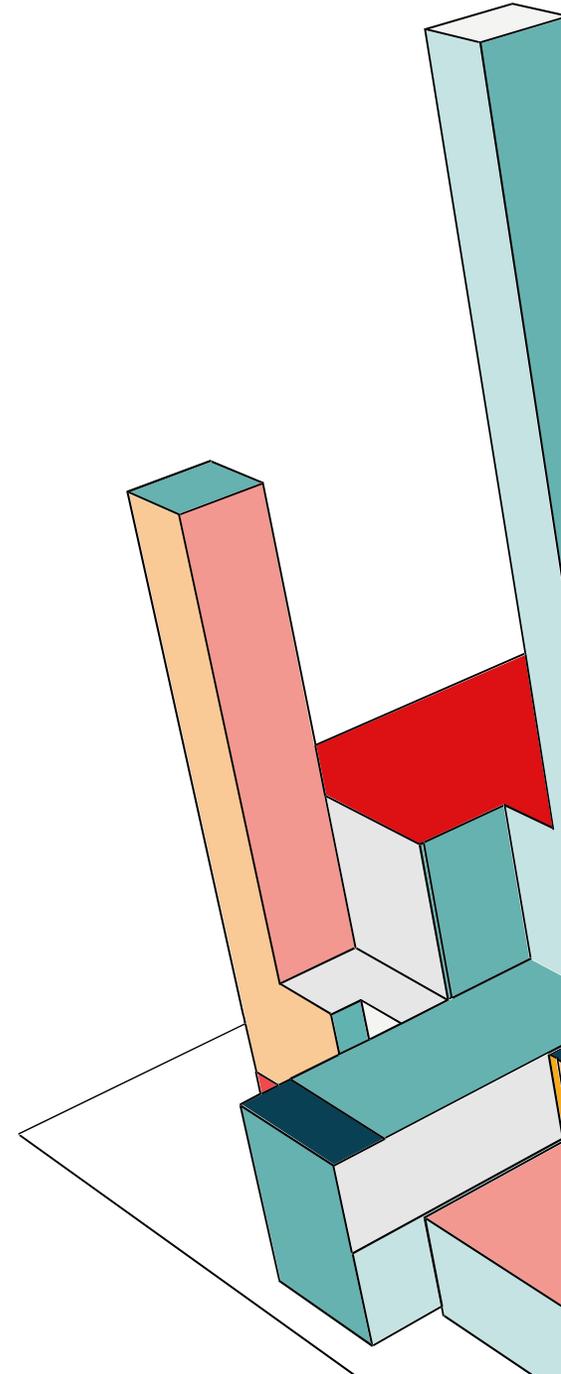
# PROCESS CONTINUED

- By June 1, property appraiser will provide property information to the local government.
- Local government must provide notice of public hearing at least 20 days prior to hearing (publication and mail).
- Adopt assessment role at public hearing by September 15 (or September 25 for charter counties).
  - But earlier is better! See next bullet.
- Certify assessment to tax collector by September 15 (or September 25 for charter counties).



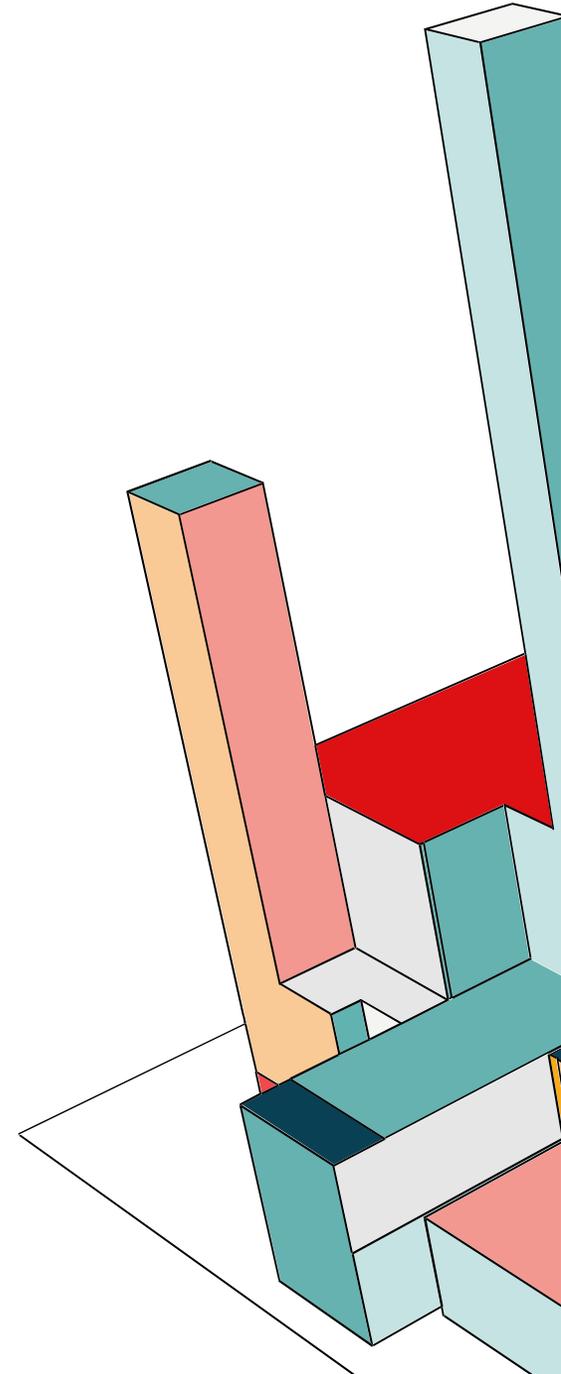
# PUBLIC HEARING – A FEW MORE DETAILS

- Public hearings are required under § 197.3632 when:
  1. The non-ad valorem assessment is levied for the first time;
  2. The non-ad valorem assessment is increased beyond the maximum rate authorized by law or judicial decree at the time of initial imposition;
  3. The local government's boundaries have changed, unless all newly affected property owners have provided written consent for such assessment to the local governing board; or
  4. There is a change in the purpose for such assessment or in the use of the revenue generated by such assessment.



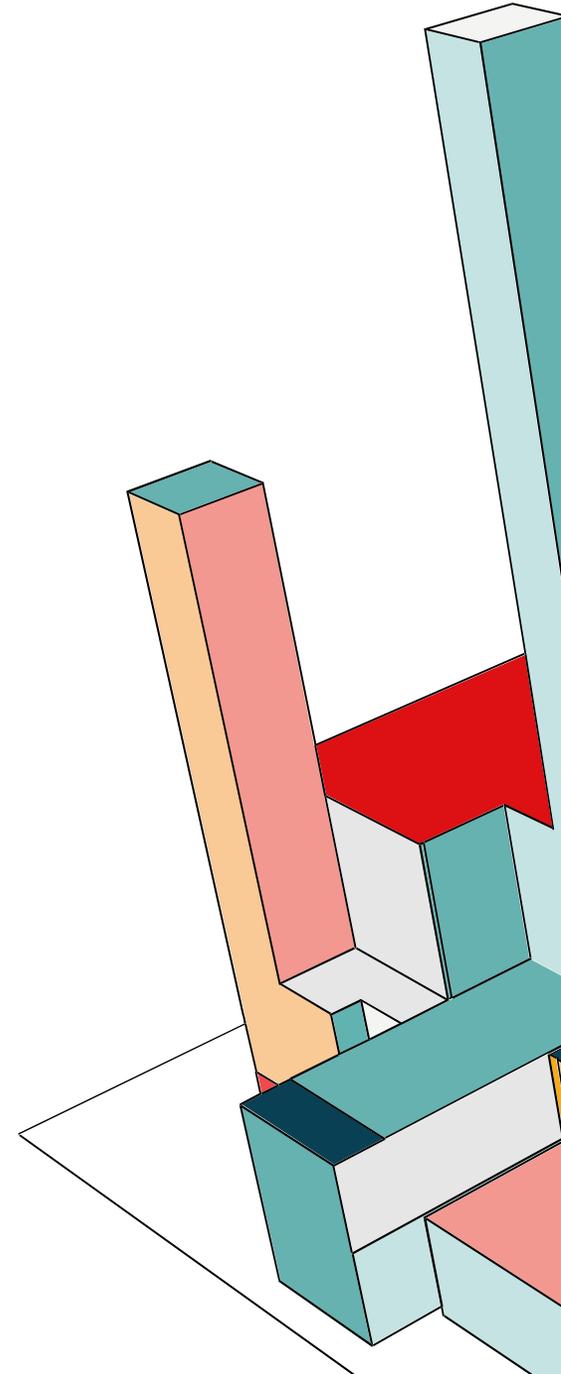
# PUBLIC HEARING – CONTINUED

- Adopt assessment role at public hearing by September 15.
  - By ordinance or resolution
  - ↪ Ordinances require two readings. Resolutions only require one.
  - ↪ Governing body has ability to adopt different rates than were advertised.
- Determinations of special benefit and cost apportionment should be upheld unless they are “arbitrary.”
- Public comment must be accepted as part of the public hearing.
  - (Note: the required mailed notice contains details of proposed assessments for each property.)



# UPDATING ASSESSMENTS

- Tax roll must be certified every year.
- Not necessary to have a public hearing every year if one of the four factors is not triggered.
- Resolution or ordinance adopting the resolution can include an escalator provision.
  - Percentage
  - Tie to Consumer Price Index

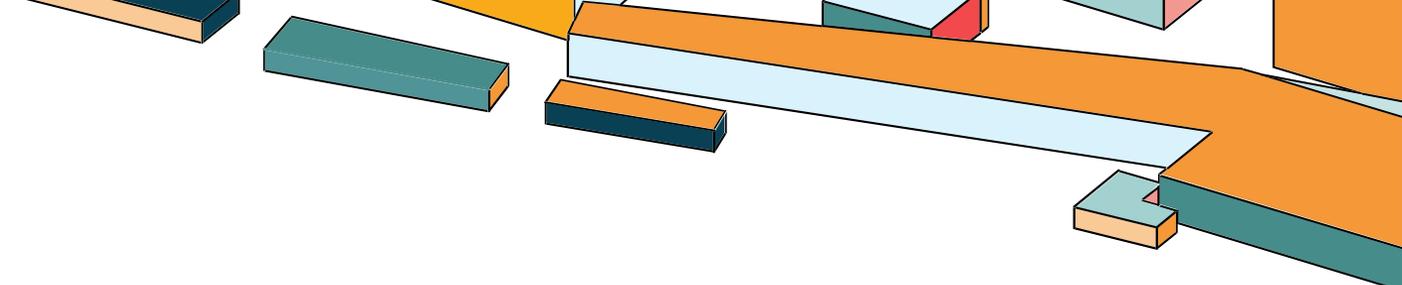




# QUESTION TIME!

Who collects the special assessments levied by counties or municipalities?

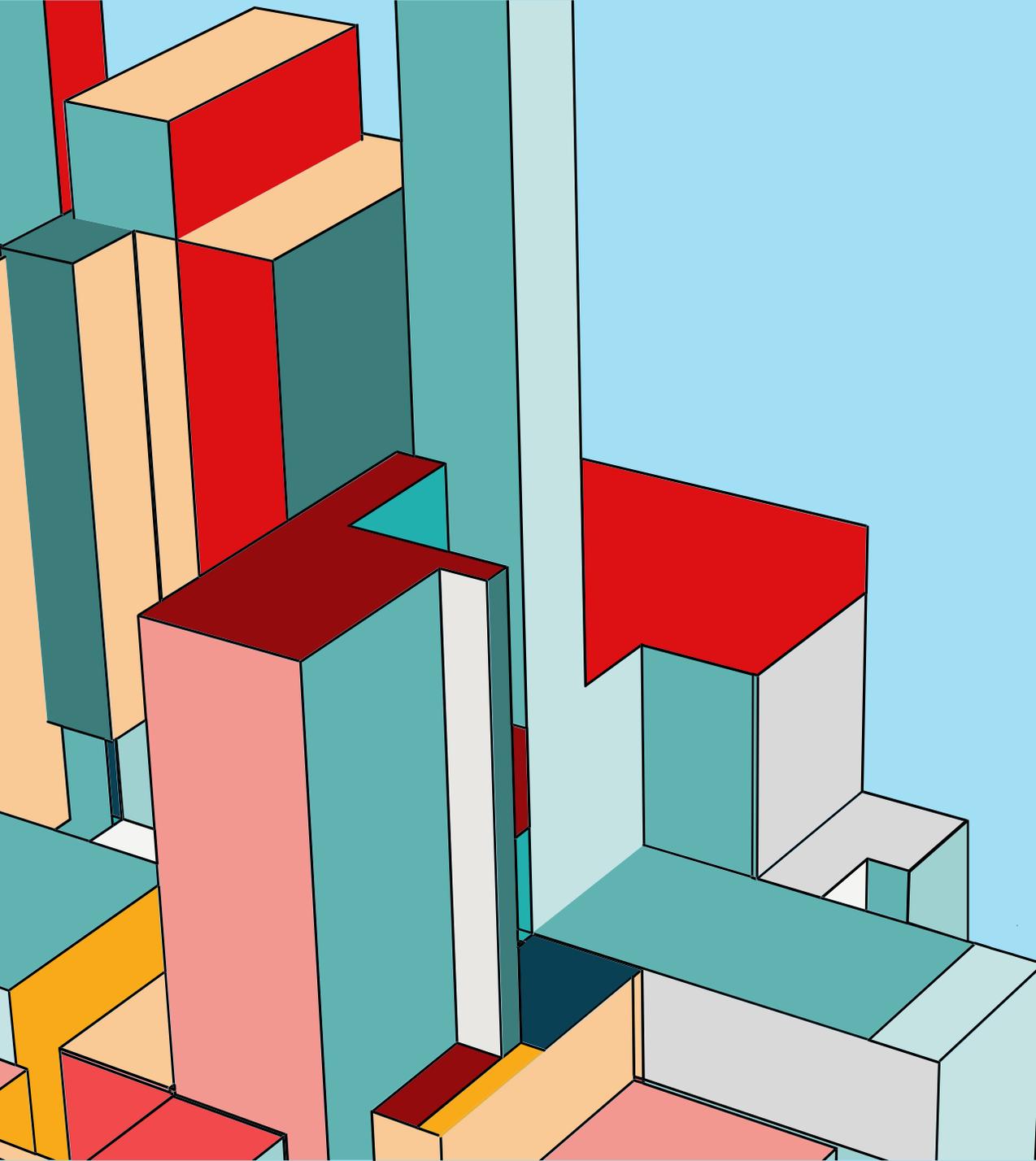
- a) Tax Collector
- b) Governing Body levying the assessment
- c) It depends



## **ANSWER: C) IT DEPENDS**

- Again, lawyers love this answer.
- We just walked through Chapter 197, which will allow the tax collector to levy the assessments.
- Cities and counties may choose to independently invoice the assessments.





**ANY QUESTIONS?**

Kathryn Rossmell

[krossmell@llw-law.com](mailto:krossmell@llw-law.com)

(561)640-0820