Financing & P3 for Community & Economic Development

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Introduction to Local Government Finance
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Objectives

- Neutral exploration of why and how local governments seek to attract private investment for community economic development
- Explain the limits of local government legal authority to participate in private development activities:
  - Financial participation in private development
  - Conveyance of real property in support of private development
  - Public-private partnerships in support of private development
- Describe how SOG assists local governments with public-private partnerships

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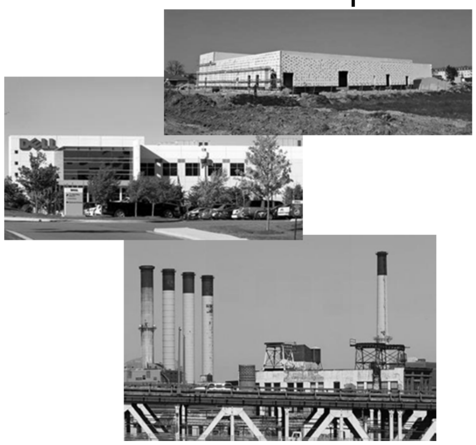
Local govts use finance to attract <u>private</u> investment. Why?

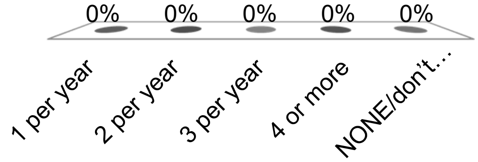
Economic Development



Community Development

Times per year you estimate that your local government gives serious consideration to supporting a *<u>private</u>* development project through *<u>public participation</u>*

1. 1 per year
2. 2 per year
3. 3 per year
4. 4 or more
5. NONE/don't know



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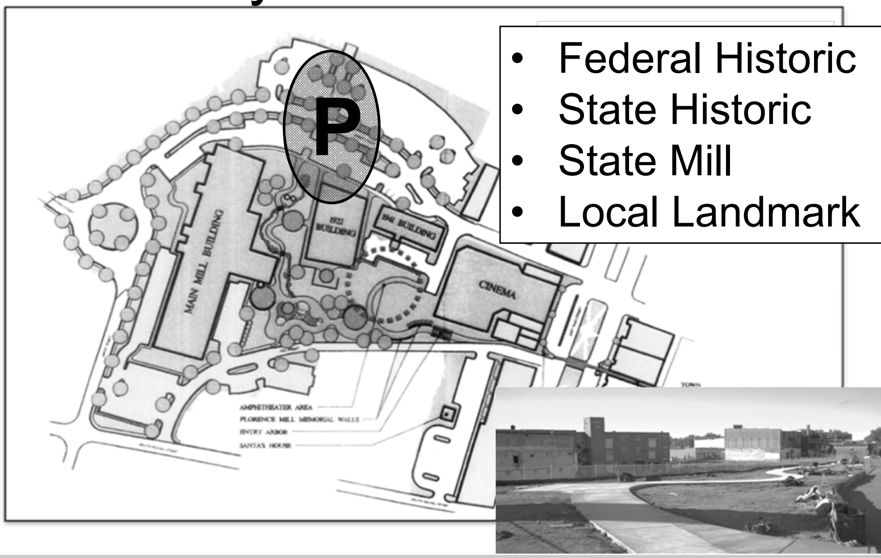
True Story: Lots of Tax Credits



- Federal Historic
- State Historic
- State Mill
- Local Landmark

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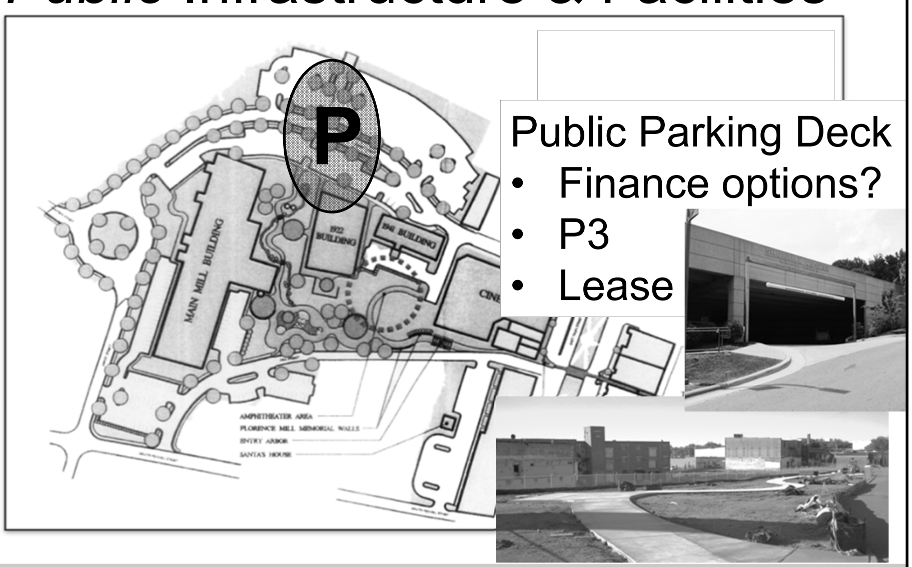
Public Infrastructure & Facilities



Public Parking Deck
- Finance options?
- P3
- Lease

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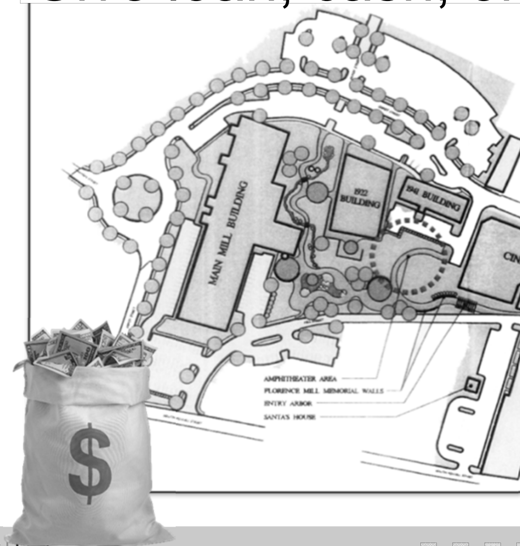
Finance the *private* side: Give loan, cash, or property?

- Loan guarantee?
- Loan
  - Above market
  - Below market
- Cash grant
- Convey property



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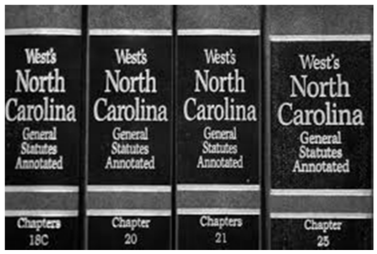
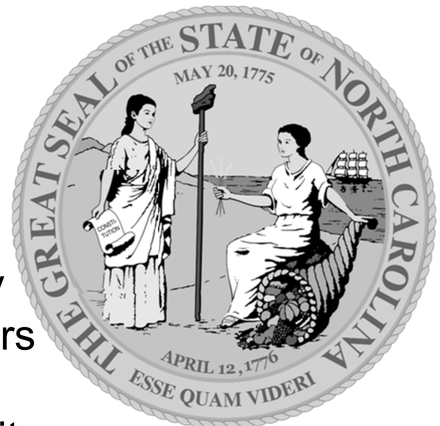
Local Government P3 Tools – Legal Authority?

Statutes Are Everything





"The General Assembly … may give such powers and duties to counties, cities, and towns … as it may deem advisable."

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Local Development Act of 1925

G.S. 158-7.1

"Each county and city … is authorized to make appropriations for *economic development* purposes.

Those appropriations must be determined by the governing body … to increase the population, taxable property, agricultural industries, employment, industrial output, or business prospects of the city or county."

Notice and hearing for <u>all</u> expenditures.

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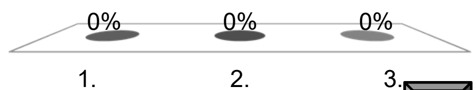
Pie Shop – Seating Expansion

The Town of Yall proposes to make a cash grant to assist the locally owned pie shop with building an addition to its downtown store. Permissible?

1. Yes
2. No
3. Only if approved after notice and public hearing



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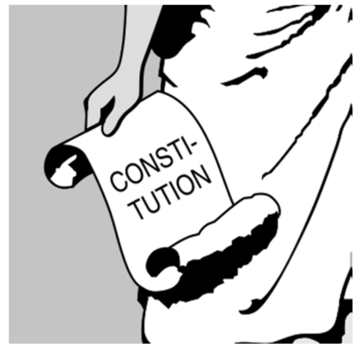
Statutes Are Nothing

Public Purpose Required by NC Constitution

- "No person … is entitled to … privileges from the community **but in consideration of public services**" (no gifts)
- The power of taxation shall be exercised … **for public purposes only**…."
- "[A] public corporation may contract with and appropriate money to any person, association, or corporation for … **public purposes only**."



NO GIFTS

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When do cash grants to private businesses serve public purpose?

Never …

until 1996

- Maready v. City of Winston-Salem (1996)
- NC Supreme Court gets last word on meaning of public purpose

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Maready v. City of Winston-Salem (1996)

Incentives must "primarily benefit the public" & ensure "net public benefit"

Allowable means for incentives	**Consideration** in exchange for incentives	**Procedural requirements** for approval of incentives
• "even the most innovative activities … are constitutional *so long as they primarily benefit the public* and not a private party." • "While private actors will necessarily benefit … [it] is merely incidental."	• "ensure a net public benefit" 1. Jobs for "displaced workers" 2. "better paying" jobs 3. Tax base (recoup incent. w/in "three to seven years") 4. Diversify the economy • In competition for location (interstate?)	• "strict procedural requirements" prevent abuse • "~~Typical procedures~~" 1. Necessity ["but for"] determination 2. Written policy or guideline 3. Notice & hearing 4. Paid as reimbursement 5. Written agreement

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"Parallel" to *Maready* incentives

- All court cases evaluating incentives have involved:
  – Job creation/ retention
  – Increased tax base
  – "**Necessary**" in interstate competition

- It is hard to say how a court would handle a different set of facts.

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Pie Shop Seating Expansion: "Parallel to *Maready*?"

5 mins: How Support Pie Shop LEGALLY? (No Unconstitutional Gifts!)

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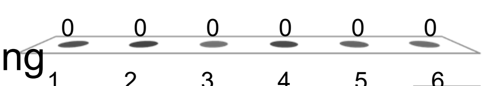
How Support Pie Shop LEGALLY?

1. Forgivable loan
2. Loan at 1% interest (below market)
3. Loan at 10% interest (at/above market)
4. Pay for signage and marketing of downtown
5. Grant to move to blighted area (URA)
6. Subsidize hiring of unemployed by paying first week's wages



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What about below market loan terms, such as forgivable or 1%?

- Unwise business decision
  - Low interest public loan would replace/ compete with private loan
- Implied grant/subsidy
  - Buys down interest rate or pays part of interest
  - Unconstitutional unless "parallel" to *Maready*

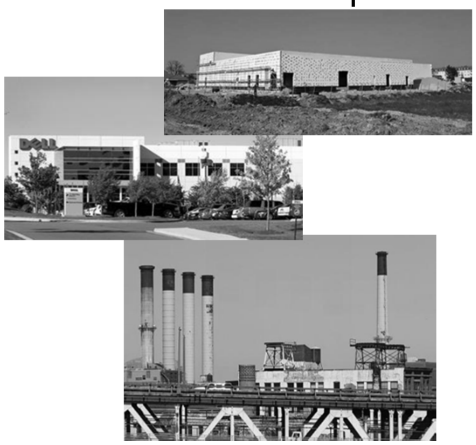
Are Grants to Businesses Possible When NOT Parallel to *Maready*?

(Parallel)

(NOT Parallel)

Constitutionality depends on purpose

Economic Development



Community Development

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How might Community Development apply to Pie Shop?

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Statutory authority to levy taxes and make appropriations

- **Economic development** expenditures (any incentives must be "parallel to *Maready*")
  - G.S. 158-7.1(a); G.S. 153A-149(c)(10b) (counties); G.S. 160A-209(c)(10b) (municipalities).
- **Redevelopment Areas** (Blight)
  - G.S. 160A-520
- **Community development and affordable housing for LMI persons**
  - Municipalities: G.S. 160A-456; G.S. 160A-209(c)(9a), (15a), (31a)
  - Counties are limited in that they may use local and state funds only for affordable housing and housing rehabilitation, unless pursuant to referendum: G.S. 153A-376; G.S. 153A-149(c)(15a), (15b)

Real Property Conveyance for Development

Conveyance of Property

North Carolina law requires *real p*[illegible] be dispo[illegible]ed *withou*[illegible] *conditions on buyers* through one of three competitive bidding procedures—
Sealed Bid (G.S. 160A-268), Upset Bid ([illegible]69), o[illegible] Public Aucti[illegible]n (G.S. 160A-270)—*unless another method of conveyance is specifically authorized.*

Authority for Conveyance	Competitive Bidding Sale	Private Sale for *Fair Market Value*	Private Sale - *Non-Monetary Consideration*	Allowable Covenants/ Conditions	Notes
Economic Development G.S. 158-7.1	✓	✓	✓	Construct w/in 5 yrs or reverts to local gov't, plus any other desired conditions	G.S. 158-7.1(d2) allows next 10 years of local government revenue to count as consideration if purchaser creates "substantial number of jobs" paying above average wage **and "parallel to *Maready*."**
Urban Redevelopment Law G.S. 160A-514(c) Boards exercise powers directly: G.S. 160A-456, G.S. 153A-376	✓			In URA consistent with approved plan, as Redev. Comm'n deems necessary	Within formally designated urban redevelopment area (URA) consistent with redev plan; conveyance must comply with Art. 12 competitive bidding procedures.
Disposition for redevelopment by private developer G.S. 160A-457 (cities) G.S. 153A-377 (counties)	✓	(cities only, in CD area only, in accord with CD plan)		Only cities in CD areas in accord with CD plan; any unit may in URA, G.S. 160A-514	Acquire/convey blighted or inappropriately developed property. Cities: private sale only in commun. develop. (CD) areas (to remove blight or assist low-income), price no less than "appraised value."
Housing Authorities Law G.S. 157-9 Boards exercise powers directly: G.S. 160A-456, G.S. 153A-376	✓	✓	✓	Covenants and restrictions to ensure housing serves LMI persons	Housing Auth exempt from disposition rules for housing for low and moderate income (LMI) persons. Comply with G.S. 157-9.4 set aside. Counties have additional statute for affordable housing: G.S. 153A-378.
Conveyance to Historic Preservation Organizations G.S. 160A-266(b)	✓	✓		Historic covenants, limits on further sale	Historic covenants affect appraised value, but does not allow for conveyance for less than appraised. Also G.S. 160A-400.8.
Conveyance to Entities Carrying Out Public Purpose G.S. 160A-279 (cities and counties only)	✓	✓	✓	Ensure *recipient* puts property to public use, no subsequent sale	City or county must be authorized to appropriate funds to entity. Public use must continue or return property to local govt (*Brumley v. Baxter*, 251 N.C. 691 (1945)). No conveyance to a for-profit corporation.
Downtown Dev Projects (DDP) G.S. 160A-458.3 **P3 for construction** G.S. 143-128.1C	✓	✓		Any	Public facility part of private development. Private sale if public facility <50% total project cost/financ. P3: Must use RFQ.

"Fair Market Value" – No Gifts

Economic Development	"conveyance may not be less than fair market value"
Urban Redevelopment Area	conveyance to charity "shall not be less than the fair market value"
Redevelopment	"conveyance shall not be less than the appraised value"
Brumley v. Baxter, 251 N.C. 691, 700 (1945)	Deed invalidated when below FMV conveyance to charitable entity was not conditioned on perpetual public use

Development Finance Initiative: Abandoned Mill Proposal

Scenario: Developer to rehab vacant historic manufacturing facility in city's downtown, owned by county. Mixed use space, no tenants yet.

1. City to provide $200K CDBG Grant
2. County asked to give property to developer.

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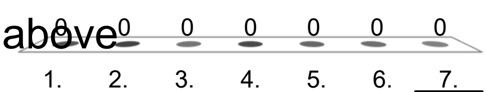
Which allows county to give the property to the developer?

1. Economic Development
2. Redevelopment
3. Housing Authority
4. Historic Preservation
5. Carrying out public purpose
6. At least one of the above
7. None of the above



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DFI Case: Public-Private Partnerships

- City-owned parking deck needs replacement
- How might city encourage private development at the same time?
- How are LG finance professnls involved?

DFI Case: Public-Private Partnerships

- Local gov't buys public facility at "reasonable" price
  - Downtown Development Projects (G.S. 160A-458.3)
  - P3 Construction Contract (G.S. 143-128.1C)

Developer $60MM proposal:
Residential: 275 units
Retail: 35,000 sq. ft
Parking: 400 spaces
Plus hotel

Role of Finance Professionals: Think Like an Investor

- Loans: market terms and adequate security (lien)
- Convey property at FMV
- If public pays for facility, public should own it!
- Grants are not *necessary*

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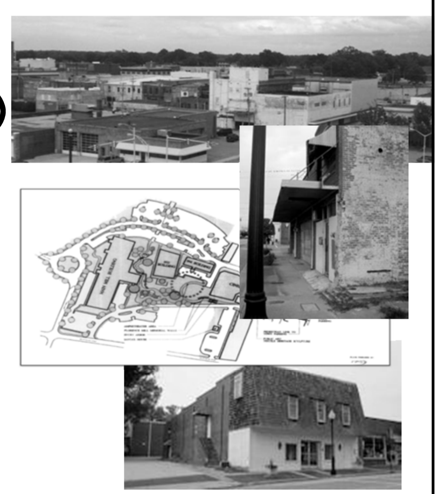
Development finance courses and technical assistance

- Course:
  - Development Finance Toolbox (September 19-20)
- Technical Assistance:
  - Development Finance Initiative (DFI)
  - UNC Graduate Student Course Project (application form)

Visit ced.sog.unc.edu



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Need help? Pros or Grad Students

dfi development finance initiative

Graduate Student Teams

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Questions or Comments

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