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
Local govts use finance to attract private investment. Why?

Economic Development  Community Development

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

1. 1 per year
2. 2 per year
3. 3 per year
4. 4 or more
5. NONE/don't know
True Story: Lots of Tax Credits

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

Public Infrastructure & Facilities

Public Parking Deck
- Finance options?
- P3
- Lease
Finance the *private* side: Give loan, cash, or property?

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

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.”

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 all expenditures.
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

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.”

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
Maready v. City of Winston-Salem (1996)

Incentives must “primarily benefit the public” & ensure “net public benefit”

<table>
<thead>
<tr>
<th>Allowable means for incentives</th>
<th>Consideration in exchange for incentives</th>
<th>Procedural requirements for approval of incentives</th>
</tr>
</thead>
<tbody>
<tr>
<td>• “even the most innovative activities … are constitutional so long as they primarily benefit the public and not a private party.”</td>
<td>• “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</td>
<td>• “strict procedural requirements” prevent abuse 1. Necessity [“but for”] determination 2. Written policy or guideline 3. Notice &amp; hearing 4. Paid as reimbursement 5. Written agreement</td>
</tr>
<tr>
<td>• “While private actors will necessarily benefit … [it] is merely incidental.”</td>
<td>In competition for location (interstate?)</td>
<td></td>
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</table>

“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.
Pie Shop Seating Expansion: “Parallel to Maready?”

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

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
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?
Constitutionality depends on purpose

Economic Development  Community Development

How might Community Development apply to Pie Shop?
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

<table>
<thead>
<tr>
<th>Authority for Conveyance</th>
<th>Competitive Bidding Sale</th>
<th>Private Sale for Fair Market Value</th>
<th>Private Sale - Non-Monetary Consideration</th>
<th>Allowable Covenants/Conditions</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Economic Development</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
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<tr>
<td>Urban Redevelopment Law</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
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<tr>
<td>Disposition for redevelopment by private developer</td>
<td>✓</td>
<td>✓</td>
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<tr>
<td>Housing Authorities Law</td>
<td>✓</td>
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<tr>
<td>Conveyance to Historic Preservation Organizations</td>
<td>✓</td>
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<tr>
<td>Conveyance to Entities Carrying Out Public Purpose</td>
<td>✓</td>
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<tr>
<td>Downtown Dev Projects (DDP)</td>
<td>✓</td>
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**Authority for Conveyance**
- Economic Development: G.S. 158-7.1
- Urban Redevelopment Law: G.S. 160A-514(c)
- Disposition for redevelopment by private developer: G.S. 160A-456, G.S. 153A-376
- Housing Authorities Law: G.S. 157.9
- Conveyance to Historic Preservation Organizations: G.S. 160A-296b
- Conveyance to Entities Carrying Out Public Purpose: G.S. 160A-279

**Notes**
- G.S. 158-7.1(b)(2) allows renter 10 years of local government incentives to purchase property at a price not less than average wage and "parallel to Meready.."
- URA consistent with approved plan, as Redevelopment Plan (RPP) necessary.
- Only cities in CD areas in accord with CD plan, any unit may in URA, G.S. 160A-514.
- Conveyance must be in accord with CD plan, any unit may in URA.
- Housing Auth. exempt from disposition rates for housing for low and moderate income (LMI) persons.
- Conveyance to historic preservation organization.
- Conveyance to entities carrying out public purpose.
- Downtown Dev Projects (DDP).
- Public facility part of private development.

### “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.

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
**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 professionals involved?

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**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)

Seeking:
- Residential: 200 units
- Retail: 35,000 sq. ft
- Parking: 400 spaces ($12MM)

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

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
Need help? Pros or Grad Students

Graduate Student Teams

Questions or Comments

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