

# Community & Economic Development: Finance and Public-Private Partnerships

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Introduction to Local Government Finance  
Fall 2019



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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 (time permitting)
- Describe how SOG assists local governments with public-private partnerships

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# Local govts use finance to attract private investment. Why?

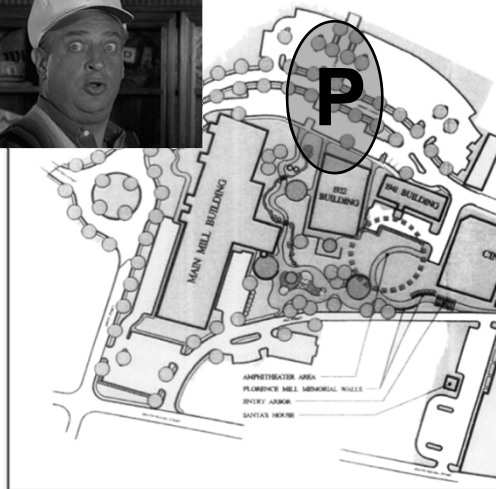
## Economic Development

## Community Development



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## True Story: Lots of Tax Benefits



- Federal Historic
- State Historic
- State Mill
- Opportunity Zone
- Local Landmark



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## Private Financing

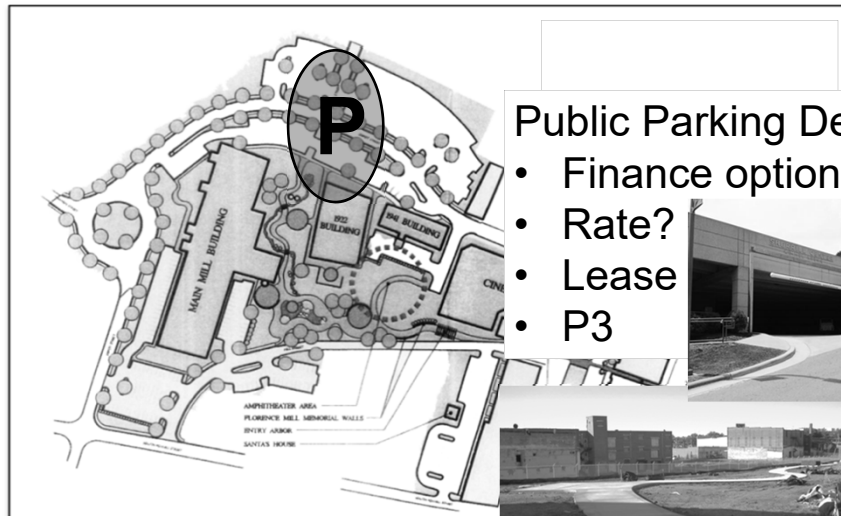


\$10 MM Cost (\$8M rehab, \$2M parking)

\$7.5 MM bank loan (75%) (5% interest rate)

Equity needed? (demands 15%++ IRR)

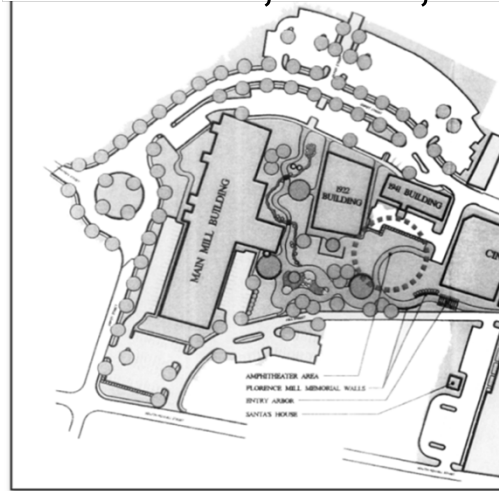
## Public Infrastructure & Facilities



### Public Parking Deck

- Finance options?
- Rate?
- Lease
- P3

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



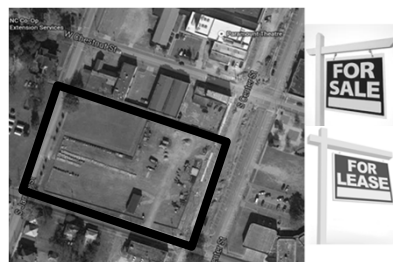
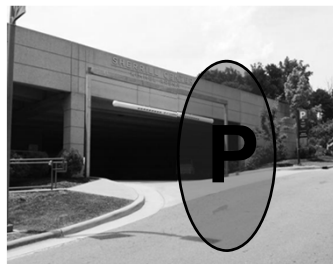
- Loan guarantee?
- Loan



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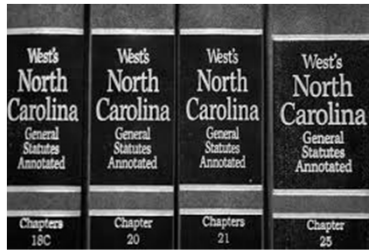
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## Local Government P3 Tools – Where Find Legal Authority?



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## 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

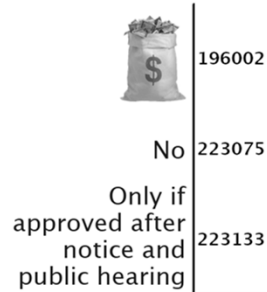
G.S. 158-7.1

“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.

**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?**

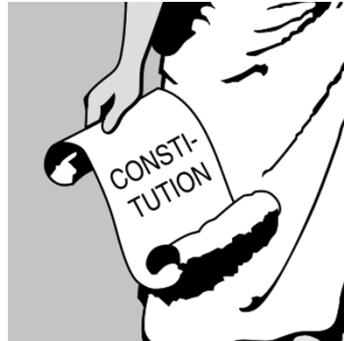


## Statutes Are Nothing



## 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**

## 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”

Allowable means for incentives	Consideration in exchange for incentives	Procedural requirements for approval of incentives
<ul style="list-style-type: none"> <li>“even the most innovative activities ... are constitutional <i>so long as they primarily benefit the public</i> and not a private party.”</li> <li>“While private actors will necessarily benefit ... [it] is merely incidental.”</li> </ul>	<ul style="list-style-type: none"> <li>“ensure a net public benefit”               <ol style="list-style-type: none"> <li>Jobs for “displaced workers”</li> <li>“better paying” jobs</li> <li>Tax base (recoup incent. w/in “three to seven years”)</li> <li>Diversify the economy</li> </ol> </li> <li>Competition with “other states” (3X)</li> </ul>	<ul style="list-style-type: none"> <li>“strict procedural requirements” prevent abuse</li> <li>“Typical procedures”               <ol style="list-style-type: none"> <li>Necessity [“but for”] determination</li> <li>Written policy or guideline</li> <li>Notice &amp; hearing</li> <li>Paid as reimbursement</li> <li>Written agreement</li> </ol> </li> </ul>



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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*?”



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

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



- Unwise business decision
  - Low interest public loan would replace private loan and/or be paid last.
- Implied grant/subsidy
  - Buys down interest rate or pays part of interest
  - Unconstitutional unless “parallel” to *Maready*

## Pay for wages of long-term unemployed?

### NC Const. Art XI, Sec. 4

**“Beneficent provision for the poor, the unfortunate, and the orphan is one of the first duties of a civilized and a Christian state.”**

## 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

- Competitive bidding
  - Sealed bid, upset bid, public auction
  - Cannot impose restrictions on sale
  - Always permissible
- Private sale  $\geq$  FMV
  - Specific CED purposes
  - Procedural hurdles
- Private sale  $<$  FMV
  - Almost NEVER



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## “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



## Conveyance of Property

North Carolina law requires real property to be disposed without conditions on buyers through one of three competitive bidding procedures—Sealed Bid (G.S. 160A-268), Upset Bid (G.S. 160A-269), or Public Auction (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
<b>Economic Development</b> G.S. 158-7.1	✓	✓	✓	Construct within 5 yrs or reverts to local govt, 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 <i>Maready</i> .”
<b>Urban Redevelopment Law</b> 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.
<b>Disposition for redevelopment by private developer</b> 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.”
<b>Housing Authorities Law</b> 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.
<b>Conveyance to Historic Preservation Organizations</b> 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.
<b>Conveyance to Entities Carrying Out Public Purpose</b> 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 ( <i>Brumley v. Baxter</i> , 251 N.C. 691 (1945)). No conveyance to a for-profit corporation.
<b>Downtown Dev Projects (DDP)</b> 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.

## 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.



## 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?



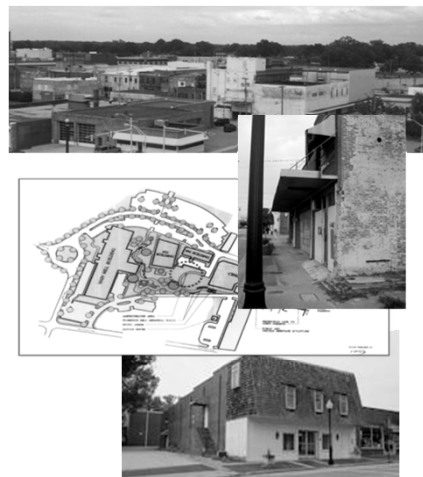
## Role of Finance Professionals: Think Like an Investor

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



## Development finance courses and technical assistance

- Course:
  - Development Finance Toolbox (December 10-11)
- Technical Assistance:
  - Development Finance Initiative (DFI)
  - UNC Graduate Student Course Project (application form)



Visit [ced.sog.unc.edu](http://ced.sog.unc.edu)

## Need help? Pros or Grad Students

**dfi** development  
finance  
initiative

Graduate Student  
Teams



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## Questions or Comments

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