

Development Finance & P3 Primer for Government Finance Officers

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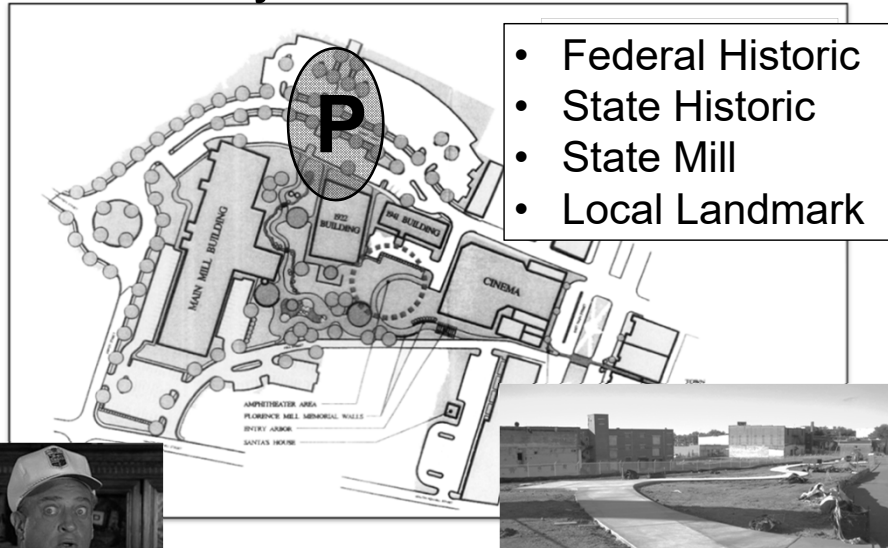
Overview (and go to pollev.com/tmulligan)



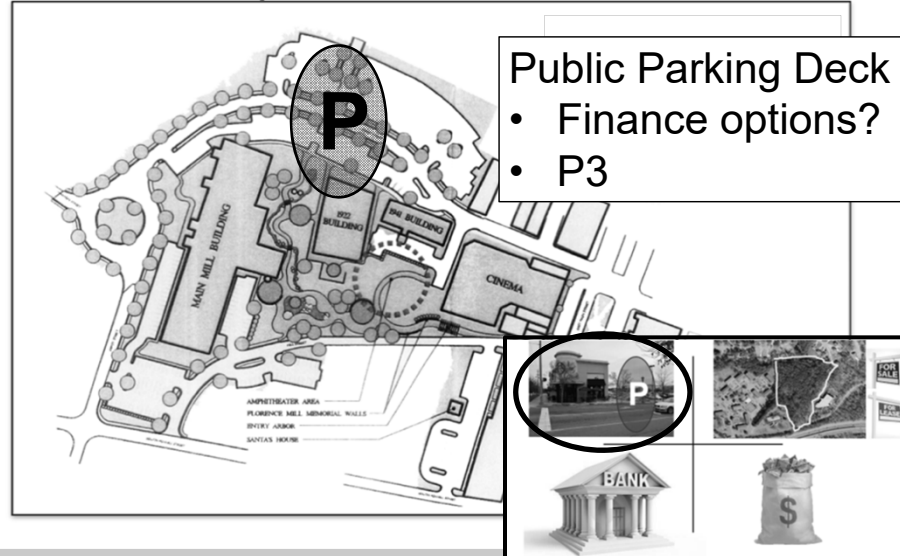
Public officials must understand the private side: a (mostly) true story



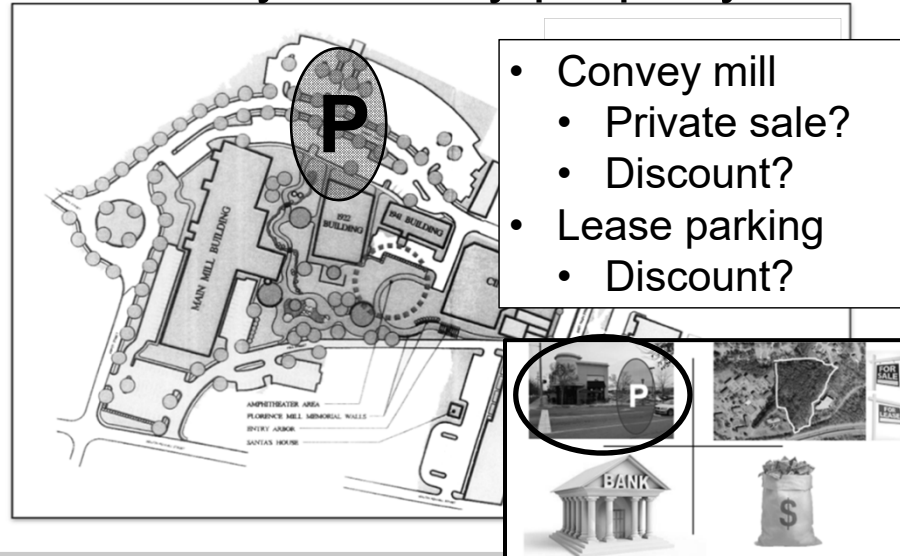
True Story: Lots of Tax Credits



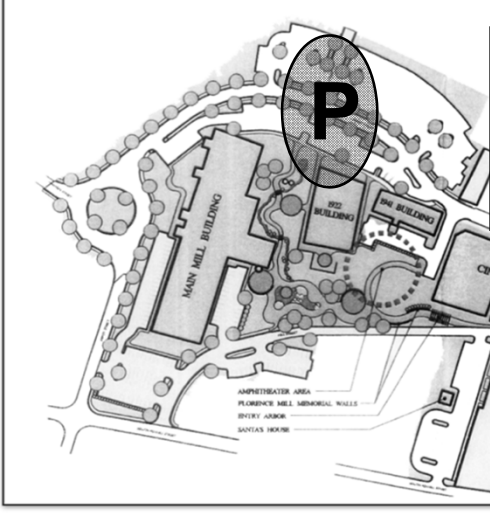
True Story: Finance *Public* Side?




True Story: Convey property?



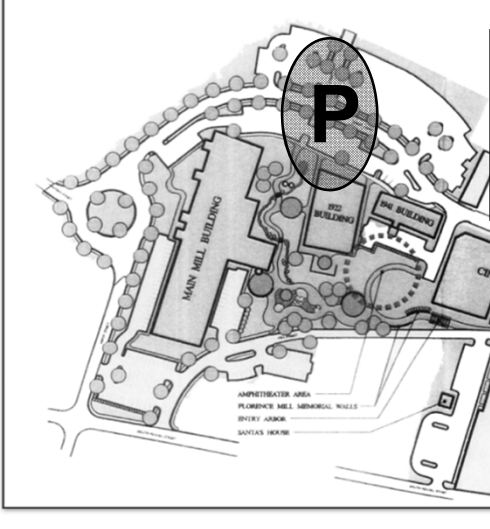
True Story: Make loan to project?



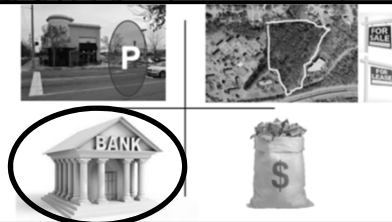
- Loan guaranty?
- Market rate loan
 - Market interest rate
 - Adequate security
- Below market loan?



True Story: Bag O' Cash?



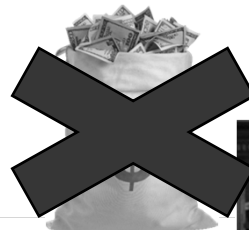
- Annual grant?
 - 5 years
 - 50% of new tax revenue



Which local gov't tool is LEAST "necessary" to make project go forward? pollev.com/tmulligan

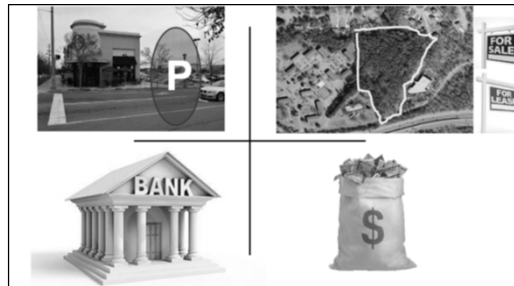


Which local gov't tool is LEAST "necessary" to make project go forward? pollev.com/tmulligan





Why?



Time Value of Money

- Site control & timing of land sale reduces carrying costs
- P3 buys big part of project in first year after construction

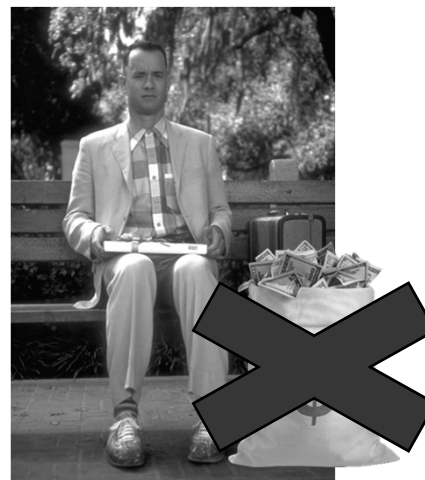
Capital is priced on risk (high interest loan still cheaper than equity)



\$10 million project		
	Return/ Interest	\$ Amount
Primary Loan	5%	\$7 MM
Mezz Loan	~10%	
Investor Equity	15%+	\$3 MM
		<hr/> \$10 MM

Grants are never necessary in absence of location competition

- Loan is enough to make real estate projects work
- Annual operating grant doesn't address capital needs
- Grant can always be structured as a loan.
- What does Forrest say about local govt grants?
- "Think like an investor."



Local Government (*Public*) Development Finance Tools



Please go to pollev.com/tmulligan

Legal Authority Tied to Purpose

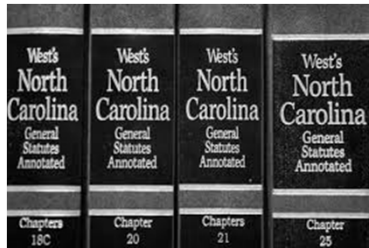
Economic Development



Community Development



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 the locally owned pie shop to aid owners with building an addition to its downtown store. Permissible?



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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

When do incentives serve public purpose?

Never ... in case after case...

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"> “even the most innovative activities ... are constitutional <i>so long as they primarily benefit the public</i> and not a private party.” “While private actors will necessarily benefit ... [it] is merely incidental.” 	<ul style="list-style-type: none"> “ensure a net public benefit” <ol style="list-style-type: none"> Jobs for “displaced workers” “better paying” jobs Tax base (recoup incent. w/in “three to seven years”) Diversify the economy In competition for location (interstate?) 	<ul style="list-style-type: none"> “strict procedural requirements” prevent abuse “Typical procedures” <ol style="list-style-type: none"> Necessity [“but for”] determination Written policy or guideline Notice & hearing Paid as reimbursement 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*?”



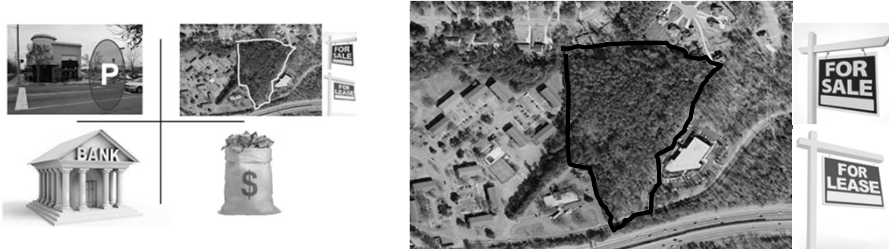
How support pie shop LEGALLY?
Respond at pollev.com/tmulligan

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



- Unwise business decision
 - Public loan would replace private loan
- Implied grant/subsidy
 - Buys down interest rate or pays part of interest
 - Unconstitutional unless “parallel” to *Maready*

Real Property Conveyance for Development



Types of Conveyance

**Competitive
Bidding**

**Private Sale at
Fair Market Value**

**Private Sale at
Discount**

North Carolina law requires real property be disposed without conditions on buyers through one of three competitive bidding procedures—Sealed Bid (G.S. 160A-268), Open 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
Economic Development G.S. 156-7.1	✓	✓	✓	Construct within 5 yrs or reverts to local govt's plus any other desired conditions	G.S. 156-7.1(c2) allows next 10 years of local government revenue to count as consideration if purchaser creates "substantial number of jobs" paying above average wage and comply with minority.
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 Rader, Council deems necessary	Within formally designated urban redevelopment area (URA) consistent with redevelopment 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 common, 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	Exempt from disposition rules, but disposal must fit within statutory authority and serve constitutional public purpose (housing project for low and moderate income (LMI) persons, G.S. 157-3(12) and 157-9.4).
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. No conveyance to a for-profit corporation.
Downtown Dev Projects (DDP) G.S. 160A-459.3 P3 for construction G.S. 143-128.1C	✓	✓		Any	Public facility part of private development. Private sale if public facility <50% total project coefficient. P3: Must use RFP.

Conveyance at a Discount?

Answer at
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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*

[illegible]

P3 for Public Facility



DFI Case: Public-Private Partnerships

- City-owned parking deck needs replacement
- How might city encourage private development at the same time?
- Finance professionals play important role!



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



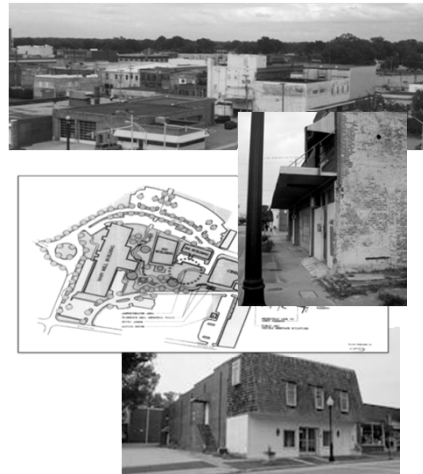
Role of Finance Professionals: Think Like an Investor

- Loans: market terms and adequate security (lien)
- Convey property at FMV
- If public pays for infrastructure, public owns 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)



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dfi development
finance
initiative



Graduate Student
Teams



Questions or Comments

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