



COMMUNITY INCENTIVES

- **WHAT WORKS**
- **WHAT DOESN'T**
- **BEST PRACTICES**

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LEARNING OBJECTIVES

- UNDERSTAND THE DIFFERENCES BETWEEN NEW PROJECT TYPES AND TRADITIONAL PROJECT TYPES
- KNOW WHAT COMMUNITY INCENTIVES WORK BEST WITH
 - NEW PROJECT TYPES
 - TRADITIONAL PROJECT TYPES
- HOW TO GRASP AND IMPLEMENT BEST PRACTICES



PROJECT TYPES

- NEW PROJECT TYPES
 - WHAT'S NEW IS THEIR BEING TREATED AS A PROJECT
 - RETAIL
 - OTHER COMMERCIAL
 - TOURISM, HOSPITALITY, RECREATION
 - PUBLIC/PRIVATE PARTNERSHIPS (P3)
 - GREEN ENERGY
- TRADITIONAL PROJECT TYPES
 - INDUSTRIAL
 - OFFICE
 - BACK-OFFICE
 - TECHNOLOGY
 - NOW MORE MAINSTREAM



NEW PROJECT TYPES

NEW PROJECT TYPES

- TEND TO BE MORE URBAN
 - BUT OFTEN ASSOCIATED WITH REDEVELOPMENT WHICH IS NOW MORE COMMON STATEWIDE
- PROSPECTS SEEK THE BEST INCENTIVE
 - BEST INCENTIVE IS “FREE MONEY”



NEW PROJECT TYPES

INDUSTRIAL DEVELOPMENT REVENUE BONDS

- MOST NEW TYPES OF PROJECTS DON'T QUALIFY FOR TAX-EXEMPT FINANCING
- EXCEPTION- SOLID WASTE DISPOSAL BONDS OR "SMALL ISSUE" MANUFACTURING BONDS FOR CERTAIN RENEWABLE ENERGY PROJECTS
 - pellet mills
 - biomass-to-electricity



NEW PROJECT TYPES

BEST INCENTIVE IS “FREE MONEY”

- IF PROSPECTS CAN'T GET AN OUTRIGHT GRANT, THEY ASK FOR-
 - FIRST PLACE- TIF/TAD
 - SECOND PLACE- SALES TAX REBATE
 - Georgia Tourism Development Act
 - “monetization” of sales and use taxes from TAD via tax allocation bonds



GEOGRAPHY COUNTS

- GEOGRAPHY OFTEN DRIVES THESE NEW TYPES OF PROJECTS
 - DISTRICT-BASED INCENTIVES
 - TIF/TAD
 - TIER-STATUS FOR JOB TAX CREDITS PURPOSES
 - JTC LESS IMPORTANT
 - OPPORTUNITY ZONE (OZ) VERY IMPORTANT
- WHAT DRIVES THE GEOGRAPHY?



PUBLIC POLICY

- PUBLIC POLICY DRIVES PROVIDING SPECIAL INCENTIVES IN SPECIAL DISTRICTS
 - EXAMPLE- UNDER-SERVED AREAS
 - SITUATION- NO GROCERY STORE
 - Federal incentives- "Food Desert" projects help a community development entity (CDE) for purposes of federal New Markets Tax Credits (NMTC) allocation
 - recognition for participating in Healthy Food Financing Initiative (HFFI)
 - Local Incentives- property tax "abatement" to incent grocery store to open in-
 - undeveloped portion of county in central Georgia
 - partially closed "strip" shopping center in city in east Georgia
 - Statutory development authorities and most Constitutional development authorities can issue "bonds for title" for incentives for commercial projects like these



PUBLIC POLICY

- EXAMPLE- REDEVELOPMENT AREAS
 - State/Local Policy- TIF/TAD
- EXAMPLE- STOP SALES TAX “LEAKAGE”
 - REGIONAL RETAIL PROJECT
 - Example (from a city incentives policy):
qualifies for incentives if contains at least 250,000 SF, attracts at least 50% of customer sales from outside of a 25 mile radius of the center of the community, and is not within 75 miles of the nearest competitor



“GEOGRAPHY-LESS” PROJECTS

PROJECTS WHOSE ECONOMIC IMPACT MAKES THEM DESIRABLE REGARDLESS OF WHERE IN THE COMMUNITY THEY LOCATE

- ALTHOUGH LOCAL FACTORS CAN BE A SITE LOCATION FACTOR
- EXAMPLE- DESTINATION RETAIL
 - From a city retail incentives policy: A Destination Retail Project is a development that contains a retailer or group of retailers who will offer a product and or good (subject to sales tax) that is unique to the market and which is not otherwise available for purchase at a retail business physically located in the City. A destination retailer is expected to attract new sales tax dollars or retain sales tax dollars that may otherwise go to a nearby city or metropolitan area. Each destination retailer must have a minimum of \$30.0 million in annual sales (subject to sales tax).



DESTINATION RETAIL INCENTIVES

COMMUNITY INCENTIVES FROM AN ACTUAL DESTINATION RETAIL MOU (MEMORANDUM OF UNDERSTANDING)

- CASH
 - LOCAL GRANT OUT OF HOTEL/MOTEL TAXES
 - Structure must satisfy Constitutional rules on “gifts and gratuities”; i.e., need “bonds for title” sale-leaseback structure
 - WAIVER OF DEVELOPMENT AUTHORITY’S FINANCING FEE
- IN-KIND
 - LOCAL GOVERNMENT FEE WAIVERS
 - INSTALLATION OF ACCESS ROAD
 - ONLY A PORTION OF THESE ROAD COSTS WERE SUBJECT TO “CLAWBACKS”
- PROPERTY TAX SAVINGS
 - 10 YEAR FULL GRADUATED “ABATEMENT” SCHEDULE
 - again, need “bonds for title”



INVENTORY DILEMMA

- HOW BADLY DOES A COMMUNITY WANT TO ATTRACT RETAIL AND DISTRIBUTION PROJECTS?
- THINK “DESTINATION RETAILER”
- THINK DISTRIBUTION CENTER WITH SIGNIFICANT IN-STATE SALES
- HB 48 ALLOWS A COMMUNITY TO EXEMPT RETAIL BUSINESS INVENTORY FROM THE INVENTORY TAX
 - “level 2” freeport HB 48 (O.C.G.A. Sec. 48-5-48.6, eff. April 17, 2012.)
 - voter referendum and approval (20% increments) by local government required
 - covers all business inventory not already covered in the current freeport exemption (“level 1” freeport)



INVENTORY DILEMMA

CAN THE COMMUNITY AFFORD THAT?

- “Initially “there will be some communities that are aggressive” in passing this, suggested [bill sponsor, State Rep. Jay] Powell, and then neighboring communities will be pressured by their businesses to pass the tax cut as well.” (from news reports)



“GEOGRAPHY-LESS” PROJECTS

EXAMPLE- REGIONAL RECREATION PROJECT

- 300+ acre sports complex
 - Baseball Fields
 - Lacrosse / Soccer Fields
 - 118,000 SF Indoor Sports Pavilion for Lacrosse, Soccer, Wrestling, Baseball, Volleyball, Gymnastics and Cheerleading
- sports complex will produce approximately 2,400 jobs
 - entire development at full build out is projected to produce up to 26,000 jobs
- Over 1 Million SF of Mixed-Use / Retail with Approximately 20 Restaurants
- Approximately 1,500 Hotel Rooms On Site



REGIONAL RECREATION INCENTIVES

INCENTIVES EXAMPLE – SALES TAX REBATE

- GEORGIA TOURISM DEVELOPMENT ACT
 - company approved by the Governor and by the governing authority of the city, if in an incorporated area, and the county, where the project is to be located
 - granted a sales and use tax refund over a period of 10 years from the incremental sales and use tax on the sales generated by the company and arising at the tourism attraction.
 - total sales and use tax refund equal to the lesser of the total amount of the incremental sales and use tax liability of the company or 25% of the approved costs (basically, capital costs)
 - accrues over the term of the agreement in an annual amount equal to the lesser of the incremental sales and use tax liability of the company for that year or 2.5% of the approved costs
 - H.B. 318 would remove local sales and use taxes from the rebate



REGIONAL RECREATION INCENTIVES

EXAMPLE OF OTHER INCENTIVES

"We are working through 'what are the needs of the development?' This one is a little bit different. [We are] exploring some tools that the state has that may benefit the project, things like opportunity zones, or tax allocation district, a number of incentive type tools. ... We are still trying to put a puzzle together if you will," [the community economic developer] said, adding that a property tax abatement or phase in was a possibility.

With most of the development falling within [the] city limits -- two small annexations will be required -- the city has begun taking steps to prepare for such an enormous economic impact.

"As this growth happens, [the city] is attempting to be proactive with a more comprehensive set of zoning ordinances. The hotel/motel tax will allow us to obtain funds to help us provide services to the development without making the current citizens of [the city] having to pay the bill." Source: Newspaper Reports



FIRST PLACE REQUEST- TIF/TAD

- **DEVELOPER /PROSPECT IS LOOKING FOR “FREE MONEY”.**
- **A TAX ALLOCATION DISTRICT PAYS REDEVELOPMENT COSTS OUT OF A “POSITIVE TAX INCREMENT”.**
- **WHAT PROJECT COSTS CAN A TAD PAY?**



FIRST PLACE REQUEST- TIF/TAD

TAD revenues are used to pay “redevelopment costs”, including costs for-

- The construction of any building or other facility for use in any business, commercial, industrial, governmental, educational, charitable, or social activity;
- The renovation, rehabilitation, reconstruction, remodeling, repair, demolition, alteration, or expansion of:
 - any existing building or other facility for use in any business, commercial, industrial, governmental, educational, charitable, or social activity;
 - public or private housing;
 - public works or other public facilities necessary or incidental to the provision of governmental services;
 - buildings or sites which are of historical significance;
 - public art and arts and cultural facilities;
 - structures, equipment, and facilities for mass transit,
 - telecommunication infrastructure;
 - facilities for the improvement of pedestrian access and safety;
- The preservation, protection, renovation, rehabilitation, restoration, alteration, improvement, maintenance, and creation of open spaces, green spaces, or recreational facilities;
- Improving or increasing the value of property; and
- The acquisition and retention or acquisition and disposition of property for redevelopment purposes or the use for redevelopment purposes of property already owned by a political subdivision or any agency or instrumentality thereof.



HOW DO I CREATE A TAD?

HERE ARE THE STEPS-

1. The General Assembly passes a local act authorizing the city or county to exercise redevelopment powers.
2. The voters within the city or county approve the exercise of redevelopment powers in a referendum.
3. The redevelopment agency (city or county, or a new agency created by the local government) submits a Redevelopment Plan for approval by the city or county.
4. After publishing notice, the city or county holds at least one public hearing within 60 days after the Redevelopment Plan is submitted.
5. In order to use tax increments of the county (for a city TAD) or the school board, their consents must be obtained. With school taxes, also need “impact analysis.”
6. After publishing another notice, the city or county adopts the Redevelopment Plan (within 45 days after hearings completed). There is no vote by general public, just by elected officials.
7. The TAD’s creation date is December 31 of year Redevelopment Plan approved or of a subsequent year as determined by the city or county. By the creation date, the redevelopment agency applies in writing to the state revenue commissioner for a determination of the tax allocation increment base of the TAD (as of TAD creation date).

DEPENDING ON THE FACTS, THIS CAN TAKE MORE THAN A YEAR!



“FREE MONEY” – YOUR OPTIONS

When property taxes are “monetized”, TADs are just in the middle of the spectrum of choices.

- PILOT BONDS

At one end of the extreme, potentially all of the property taxes can be monetized when PILOT Bonds (repayable out of payments in lieu of taxes) are used.

- TAD BONDS

TAD bonds are in the middle of the spectrum. This is because TAD bonds only monetize a “positive tax increment”, and only the positive tax increments of the property taxes of the jurisdictions that can, and do, participate.

- CIDs

At the other extreme, when special tax districts, [or] Community Improvement Districts (“**CIDs**”) are used,, only the additional tax or assessment is used.”

“October 2008-Quick Takes: A Primer On PILOT Bonds.”
<http://danmcrae.info/quicktakes.asp>



THE BEST FREE MONEY

THE BEST “FREE MONEY” IS MONEY
THAT’S FREE TO YOU, TOO!

- OZ = OPPORTUNITY ZONE



OZ- REAL PROJECTS

“At least two recent substantial economic development projects in metro Atlanta have ties to Opportunity Zones.

- General Motors is converting a former UPS property into an information technology research facility in a Roswell zone, where it will employ about 1,000 people.
- Athenahealth, a health care IT firm, is scouting Atlanta for new offices to accommodate an expansion of hundreds of jobs. People familiar with its search say the company is negotiating for space in Ponce City Market, the former City Hall East, which is also in an Opportunity Zone.” Source: News Reports



OZ INCENTIVES

Under the Opportunity Zone Jobs Tax Credit Program, the following incentives apply:

- a \$3,500 tax credit for five years beginning with the first taxable year in which the new full-time employee job is created and for the four immediately succeeding taxable years;
- the credit may be claimed against 100% of the employer's income tax liability and employee payroll withholding;
- a reduced threshold of 2 new jobs; and
- in addition to eligible “business enterprises”, the tax credit is available to businesses of any nature.

Available in any tier!



BEAT THE OZ POWER CURVE

NEED EZ OR URA

- EZ = ENTERPRISE ZONE
- URA = URBAN REDEVELOPMENT AREA
- URA IS LESS DIFFICULT
 - ADOPT A REDEVELOPMENT PLAN
 - URBAN REDEVELOPMENT LAW (NO LOCAL ACT OF GENERAL ASSEMBLY OR REFERENDUM REQUIRED)
 - IDENTIFY THE URA



“FREE MONEY” FROM THE FEDS

- EXAMPLES FROM RECENT REQUESTS FOR INFORMATION (RFIs) -
 - “THE COMPANY PREFERS A SITE THAT IS ELIGIBLE FOR NMTC FINANCING.”
 - COMING SOON: “THE COMPANY WILL LIMIT ITS SEARCH TO SITES THAT ARE QUALIFIED FOR EB-5 PURPOSES.”
- UNDER NEW PROGRAMS FOCUSED ON TARGETED AREAS, FINANCEABILITY OF A PROJECT IS GREATLY ENHANCED IF IT IS WITHIN ONE OF THOSE AREAS.



NEW MARKETS TAX CREDITS (NMTC)

- NEW MARKETS TAX CREDITS (NMTC)-QUALIFIED CENSUS TRACT, BASED ON POVERTY OR INCOME.
- “IF CENSUS TRACT NOT QUALIFIED, SOMETIMES “TARGETED POPULATION” APPROACH IS WORKAROUND
- NMTC FINANCINGS PRODUCE “FORGIVEABLE LOANS.”
 - LEGAL BECAUSE ONLY PRIVATE FUNDS ARE INVOLVED.



EB-5: FOREIGN INVESTMENT IN PROJECTS

- **TARGETED EMPLOYMENT AREA, OR TEA, ALLOWS FOREIGN PASSIVE INVESTMENT IN THE PROJECT AT THE \$500,000 PER INVESTOR LEVEL. 10 DIRECT OR INDIRECT JOBS PER INVESTOR MUST BE CREATED**
 - **BASED ON RURAL LOCATION OR HIGH UNEMPLOYMENT.**
 - **PRODUCES LOW INTEREST LOANS OR EQUITY FOR PROJECTS.**



ADD THESE PROGRAMS TO YOUR INCENTIVES

- NMTC AND EB-5 QUALIFICATION IS BECOMING A STRONG SITE LOCATION FACTOR.
- COMMUNITIES CAN PREPARE BY IDENTIFYING AND MARKETING THEIR QUALIFIED SITES.
- STATE CAN HELP QUALIFY OTHERWISE UNQUALIFIED AREA AS TEA BASED ON HIGH UNEMPLOYMENT



THE INTRODUCTION OF PUBLIC/PRIVATE PARTNERSHIPS (P3)

- For a long time now, it has not been possible for a project of any size to locate without public sector involvement.
- Typical involvement is incentives.
- Today, many projects need more direct public sector involvement.
- Example: Metro-Atlanta city wanted to locate a hotel with a retail (restaurant) component, but parking was inadequate.
- Solution- Two issues of bonds through local development authority.
 - Contract revenue bonds (tax-exempt eligible) to finance city parking structure that also served hotel.
 - Backed by pledge of millage pursuant to intergovernmental contract (IGA) between city and development authority.
 - Industrial development revenue bonds (taxable) to finance hotel for developer.



THE EVOLUTION OF PUBLIC/PRIVATE PARTNERSHIPS (P3)

- The Georgia Supreme Court is most comfortable with development authorities when they only finance private projects.
- However, in the 21st Century, many private projects have public involvement.
- Our Courts are receptive to some P3 projects if they are properly “integrated.”
 - “This Project is designed to fulfill the governmental functions of improving streets and of providing facilities for municipal administration and police and jail services. Accordingly, it does not appear to fit within the definitions of commerce, trade, or industry.” *Odom* case, 1983.
 - “ In *Odom*, the DDA sought to issue revenue bonds, the proceeds of which would finance the construction of a new city hall, renovate the existing police station and jail, and improve city streets. The project thus consisted of purely public elements. This court held that the scope of this project did not fall within the constitutionally designated purposes of Downtown Development Authorities which are the promotion and development of "trade, commerce, industry, and employment opportunities." 1983 Georgia Constitution, Art. IX, Sec. VI, Par. III. In the case before us the project is comprised of both public and private components which are integrated so as to produce the desired purposes. The trial court found that the project will promote and develop the public purposes of trade, commerce, industry, and employment opportunities. There is evidence in the record to support this determination.” *Nations I*, 1985 (Underground Atlanta project).
- Some Constitutional development authorities, have power to carry out purely public projects.



TRADITIONAL PROJECTS

RETAIN FOCUS ON TRADITIONAL INCENTIVES

- GRANTS
 - COMMUNITY CAN STRUCTURE PERFORMANCE-BASED GRANTS FROM LOCAL FUNDS TO INCENT JOB CREATION
- IN-KIND
 - SITE IMPROVEMENTS
 - OFF-SITE IMPROVEMENTS
 - CONSULTANTS USUALLY NOT WILLING TO “COUNT” AS INCENTIVES



TRADITIONAL PROJECTS

- CAPITAL EXPENDITURE LIMITS MAKE “SMALL ISSUE” TAX-EXEMPT MANUFACTURING REVENUE BONDS LESS USEFUL
- STILL NEED TAXABLE “BONDS FOR TITLE” FOR PROPERTY TAX “ABATEMENT” AND CASH AND IN-KIND INCENTIVES
 - SALE-LEASEBACK STRUCTURE
- ABATEMENT” CAN BE AT 100% LEVEL IF NECESSARY
 - GRADUATED SCHEDULES ARE MORE COMMON



TRADITIONAL PROJECTS

- MANY NEW INCENTIVES FOR NEW PROJECT TYPES ALSO WORK FOR TRADITIONAL PROJECTS
 - NMTC
 - EB-5
 - OZ



MANUFACTURER DILEMMA

- HOW BADLY DOES A COMMUNITY WANT TO ATTRACT MANUFACTURERS?
- HB 386 ALLOWS A COMMUNITY TO IMPOSE A NEW EXCISE TAX TO OFFSET LOSS OF THE SALES AND USE TAX FROM THE NEW ENERGY EXEMPTION
 - The exemption applies to “energy which is necessary and integral to the manufacture of tangible personal property at a manufacturing plant,”. HB 386 (signed by Governor 4/19/12; various effective dates)
- HEAD’S UP- UNINTENDED CONSEQUENCES FROM THE ENERGY EXEMPTION WHEN APPLIED TO AN ENERGY PROJECT’S PERSONAL PROPERTY



MANUFACTURER DILEMMA

- CAN THE COMMUNITY AFFORD THAT?

“Enacting a new excise tax is not appealing to [the Chair of the County Commission], but with the county’s low millage rate and lack of a special purpose local sales tax, the lost revenue will have to be found elsewhere, he said, possibly through a property tax increase or local tax.

“Levying the excise tax kinda defeats the purpose. We want to entice new industry,” he said. “We haven’t made a decision, but it would be kind of going in the opposite direction. If we could get a local SPLOST passed for capital projects, we could do that instead of impacting the county budget.” (from news reports)



BEST PRACTICES

- **YOU NEED THE BEST MEMORANDUM OF UNDERSTANDING THAT YOU CAN GET.**
- **WHAT GOES IN AN MOU?**
 - **STATUTORY INCENTIVES**
 - **MEMORIALIZE WHAT PROSPECT IS EXPECTING**
 - **WHAT COMMUNITY WILL DO TO SEE THAT INCENTIVES ARE RECEIVED**
 - **KNOW WHAT YOU CAN PROMISE AND WHAT YOU CAN'T PROMISE**



WHAT GOES IN AN MOU?

- EXAMPLES

- CAN

- represent what your Tier is
 - represent that you are a member of a Joint Development Authority (JDA), if you are a member, or that you will apply to join, if you are not
 - » *so job tax credit is increased*
 - agree to apply for Opportunity Zone (OZ) status for the site
 - development authority can agree to support rezoning or initiate it, if it owns site or has the right

- CAN'T

- warrant that job tax credits will be received
 - warrant that JDA is compliant with legal requirements (unless due diligence done)
 - warrant that you will become a member of a JDA if you are not
 - takes unanimous approval by all participating local governments
 - warrant that site will qualify as an OZ
 - » *factual issues, plus takes DCA approval*
 - agree to re-zone site (if local government)



WHAT GOES IN AN MOU?

- DISCRETIONARY INCENTIVES
- COMMUNITY GRANTS
 - SAME “BONDS FOR TITLE” STRUCTURE REQUIRED
- PROPERTY TAX SAVINGS (“ABATEMENT”)
 - THREE BASIC APPROACHES TO PROPERTY TAX “ABATEMENT”
 - LEASEHOLD VALUATION
 - USUFRUCT
 - EXEMPT PROPERTY
 - » *A FEW CONSTITUTIONAL DEVELOPMENT AUTHORITIES (NOT ALL)*
 - » *STILL NEED BOND-FINANCED SALE-LEASEBACK*
- WHAT IS COMMUNITY’S POLICY?
 - EXAMPLE: HOW ARE PILOT PAYMENTS ADMINISTERED? (PAYMENTS IN LIEU OF TAXES)



WHAT GOES IN AN MOU?

- LAND
 - OWN? CONTROL? AGREE TO ACQUIRE? “FREE”?
DISCOUNTED PRICE?
- SITE DEVELOPMENT WORK
- OTHER
 - EXAMPLES:
 - “MOST FAVORED NATION” CLAUSE
 - LOCK OUT OF COMPETITORS CLAUSE
 - *CAUTION: NONDISCRIMINATION, ANTI-TRUST, AND CODE OF ETHICS ISSUES APPLY*



CONCLUSION

- THERE ARE NO SMALL PROJECTS
 - BUT SOME PROJECTS ARE LARGER THAN OTHERS
- TRADITIONAL INCENTIVES WORK WITH TRADITIONAL PROJECTS
- BUT NEW TYPES OF PROJECTS REQUIRE NEW WAYS OF THINKING ABOUT INCENTIVES
- GOOD NEWS! THERE ARE SOME NEW TOOLS IN THE TOOLBOX
 - AND SOME WILL WORK WITH TRADITIONAL PROJECTS, TOO
- I HOPE YOU USE THEM WISELY!



QUESTIONS?

If you have any questions or comments on this presentation, please do not hesitate to let me know.

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REFERENCES

THIS PRESENTATION AND OTHER REFERENCES CAN BE DOWNLOADED AS FOLLOWS:

- March 2013- “The DNA of Your DDA”
- January 2013- “Development Authorities 101”
- November 2012- "In-Sourcing Capital: EB-5 Loans and Equity; NMTC Tax Credit Equity; and Non-Recourse Project Finance Bonds“
- August 2012- “Bonds 101”
- October 2011 - “Project Finance - No Banks, No Recourse, No Problem!”
- June 2011- "TIFs and TADs in Tough Times“; TIFs and TADs Questions and Answers
- January 2011 - “Introduction to Tax-Exempt Bonds”
- January 2011 - “Introduction to 'Taxable Floaters' ”
- August 2010 – "Bonds For Title"

at <http://danmcrae.info/whitepapers>



MORE INFORMATION

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