



DEALMAKING
FOR DEVELOPMENT AUTHORITIES
**MAKING A PROJECT BY PUTTING THE
PIECES TOGETHER**

404-888-1883

FACEBOOK
<http://facebook.com/danmcrae68>

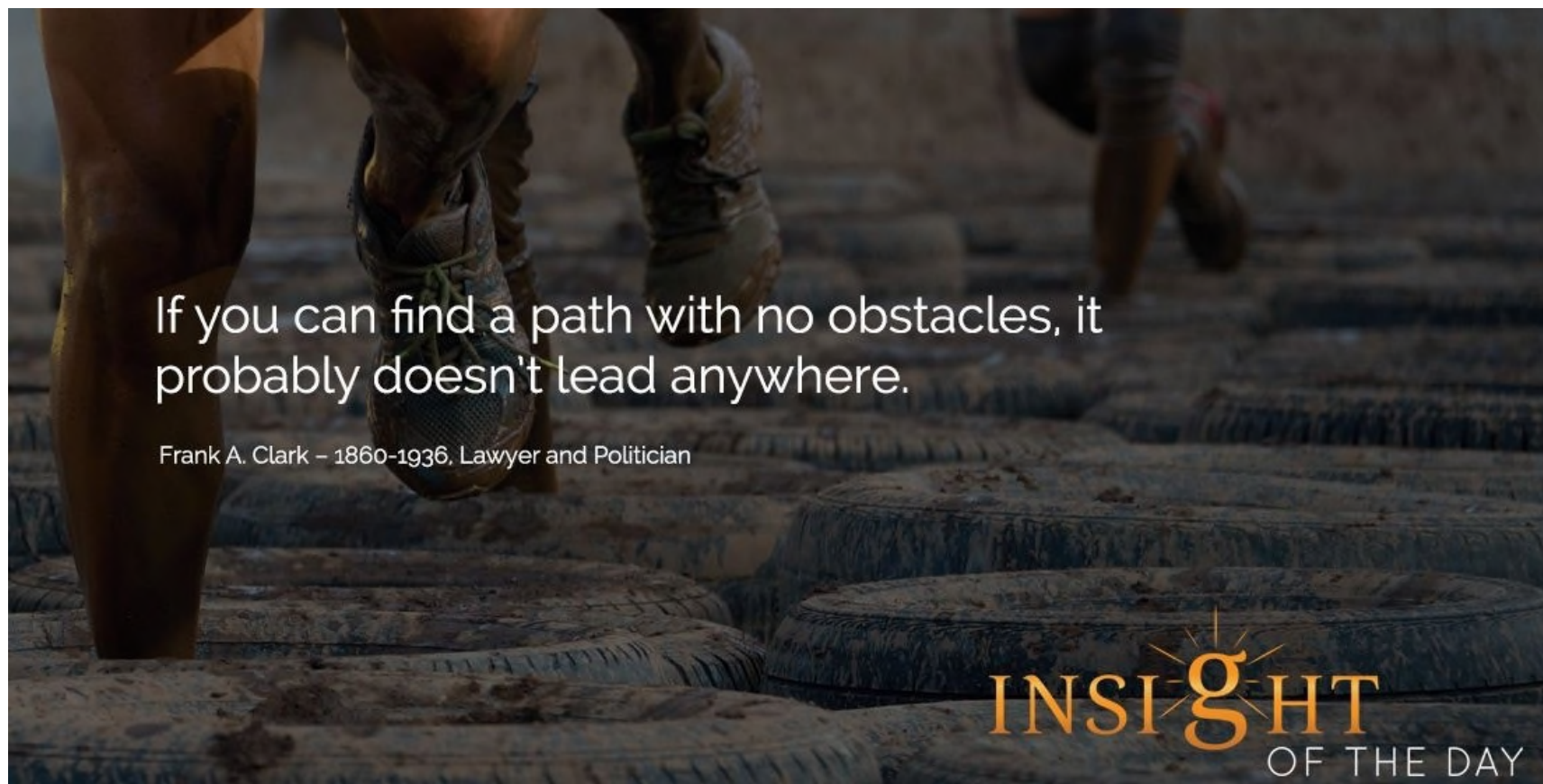
dmcrae@seyfarth.com

LINKEDIN [http://linkedin.com/
in/danmcrae2](http://linkedin.com/in/danmcrae2)

danmcrae.com

TWITTER
@McRaeDan

THE ROAD TO ECONOMIC DEVELOPMENT



If you can find a path with no obstacles, it probably doesn't lead anywhere.

Frank A. Clark – 1860-1936, Lawyer and Politician

INSIGHT
OF THE DAY



IT'S A SLIPPERY SLOPE



“Gifts and Gratuities”

No Local Government/Statutory Authority Road Projects in Concert

All Taxes Must Be Uniform

Bids or RFPs Required for Construction Projects

Real Public/Private Partnerships Are Unconstitutional



IT'S A SLIPPERY SLOPE



No Public Guaranties of Private Obligations

Local Governments Can't Bind Their Successors

Development Authorities Can't Do Purely Public Projects

PILOTs Can't Be Monetized without Taxing Authority Consent

Development Authorities Are Restricted to Limited Powers

SALES BELOW FMV

CAN A DEVELOPMENT AUTHORITY SELL LAND FOR LESS THAN FAIR MARKET VALUE? THE “COLUMBUS CASE”

“A Muscogee County Superior Court judge has sided with a Columbus-based hotel owner, issuing an injunction that will halt the sale of a prime piece of downtown property to a competing hotel company....[The plaintiff’s attorneys] argued that under state law the Development Authority, an arm of the Columbus Consolidated Government charged with economic development, could not sell land for less than fair-market value.”

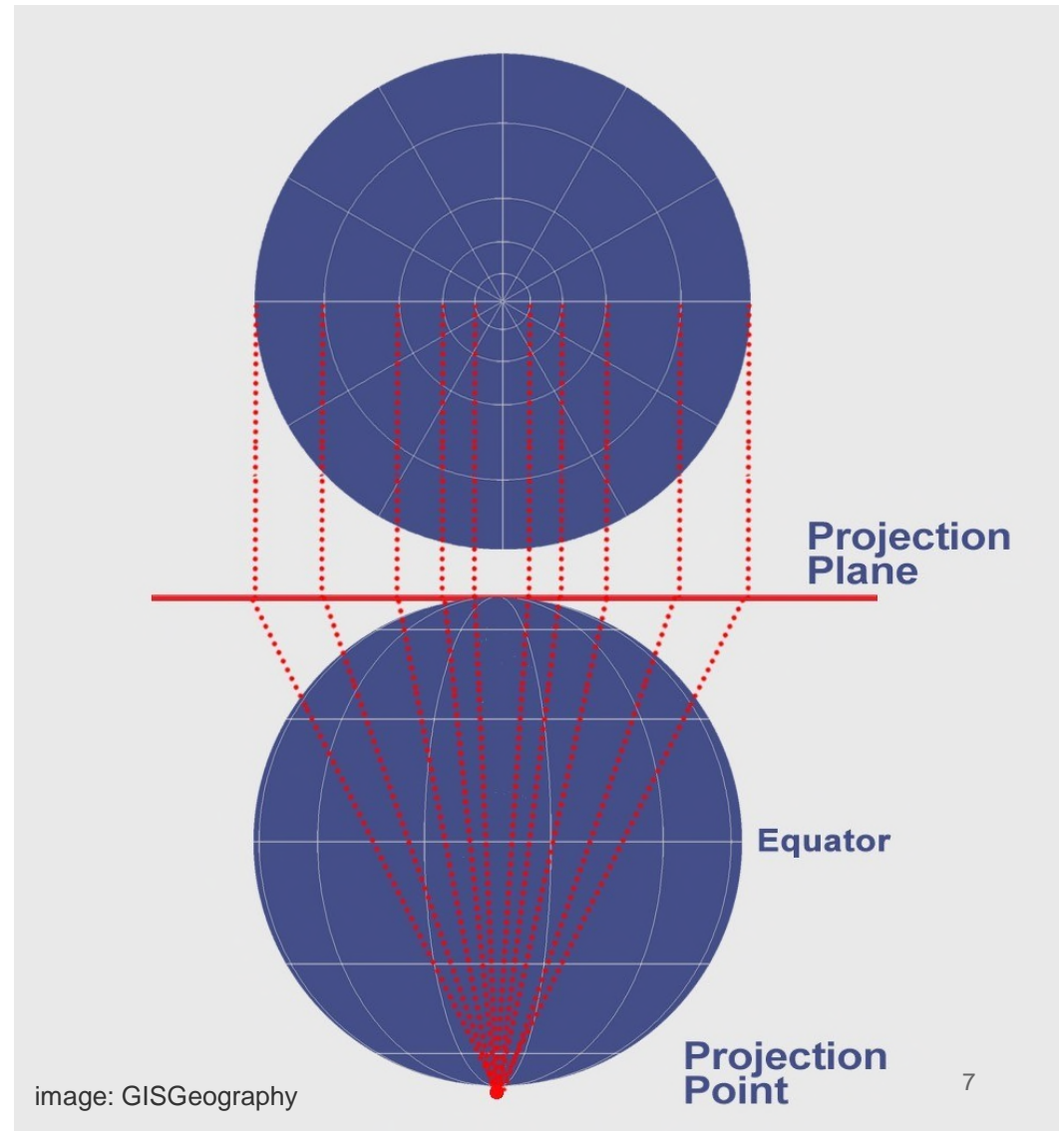


“AS THE WORLD TURNS” DOES THE DAL TURN ON PRICE?

HOTEL
OWNER

IF PRICE AT OR ABOVE
FAIR MARKET VALUE-
SALE OK

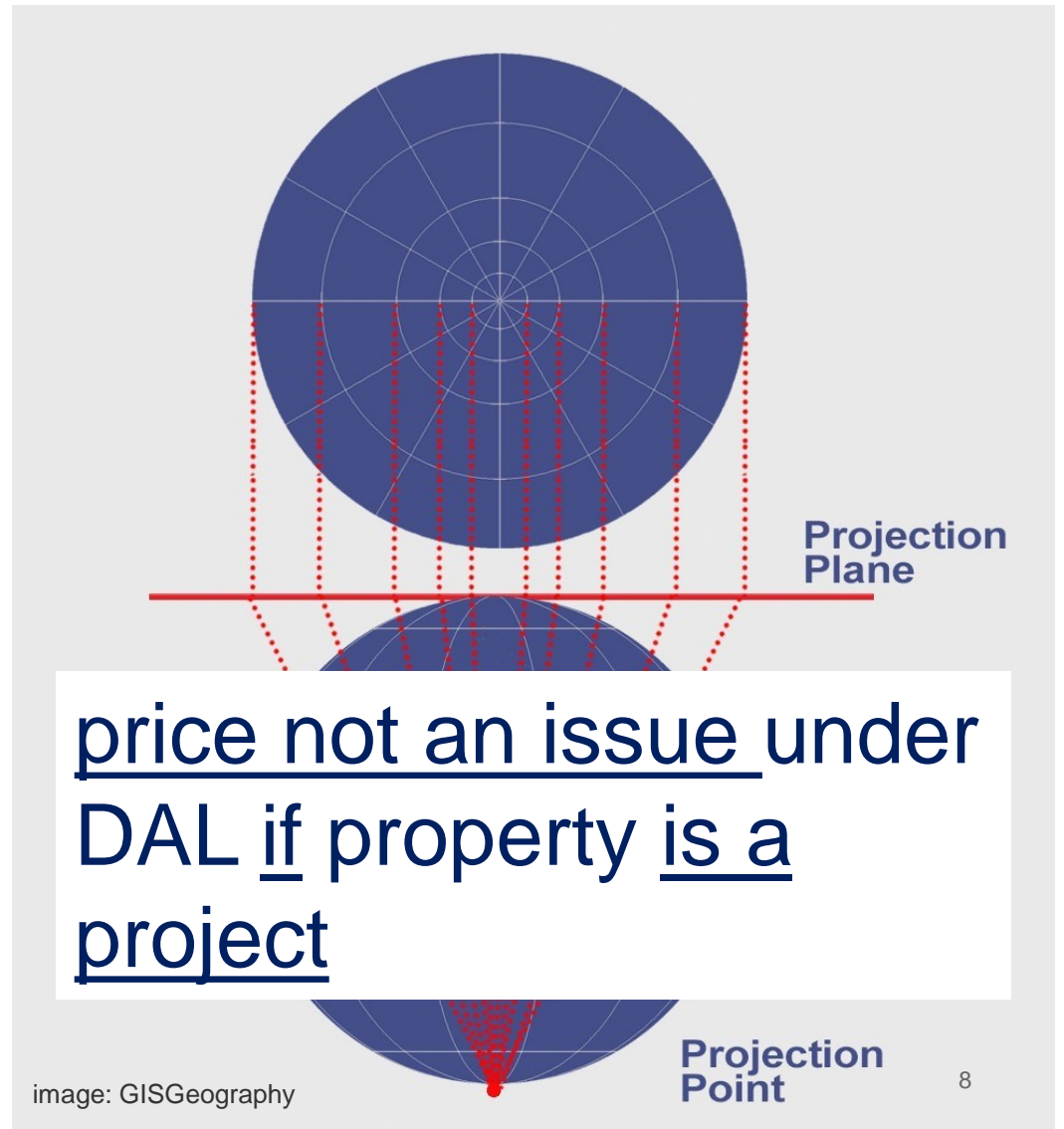
IF PRICE BELOW FAIR
MARKET VALUE-
SALE NOT OK UNLESS
SALE IS TO THE STATE
(and must be property
unusable for a project)



NO! THE WORLD TURNS ON.... “PROJECT OR NOT A PROJECT”

COURT OF APPEALS

Note- DDAL is different. Does not have separate sales clause about non-projects.



BUT WAIT- YOU FORGOT THE CONSTITUTION!

Court of Appeals:

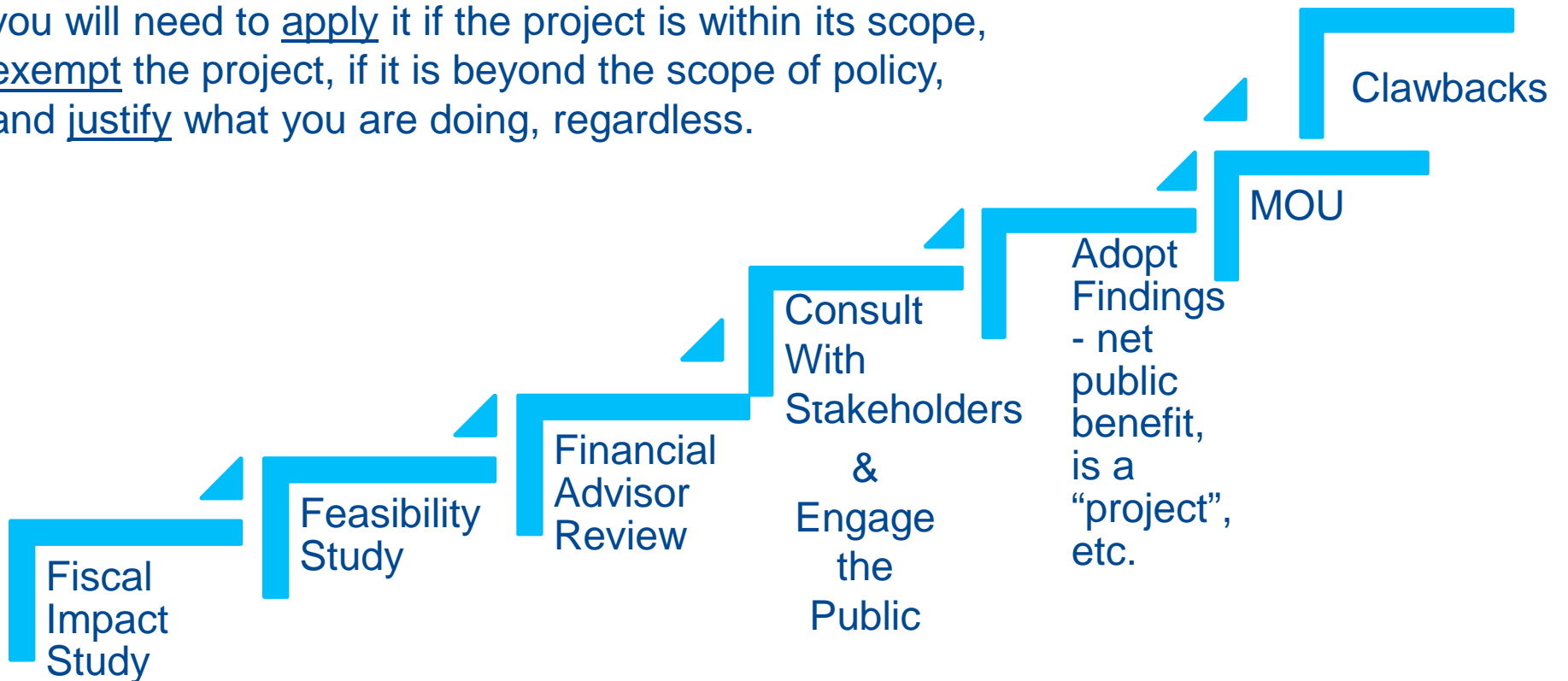
“In its appellate brief, Four JS also suggests that the Sale Agreement violated the constitutional prohibition against gifts and gratuities. See Ga. Const. of 1983, Art. III, Sec. VI, Par. VI (a) (1)....However, the trial court made no finding touching upon this question, which was not raised by the petition, and we do not reach the issue here....”



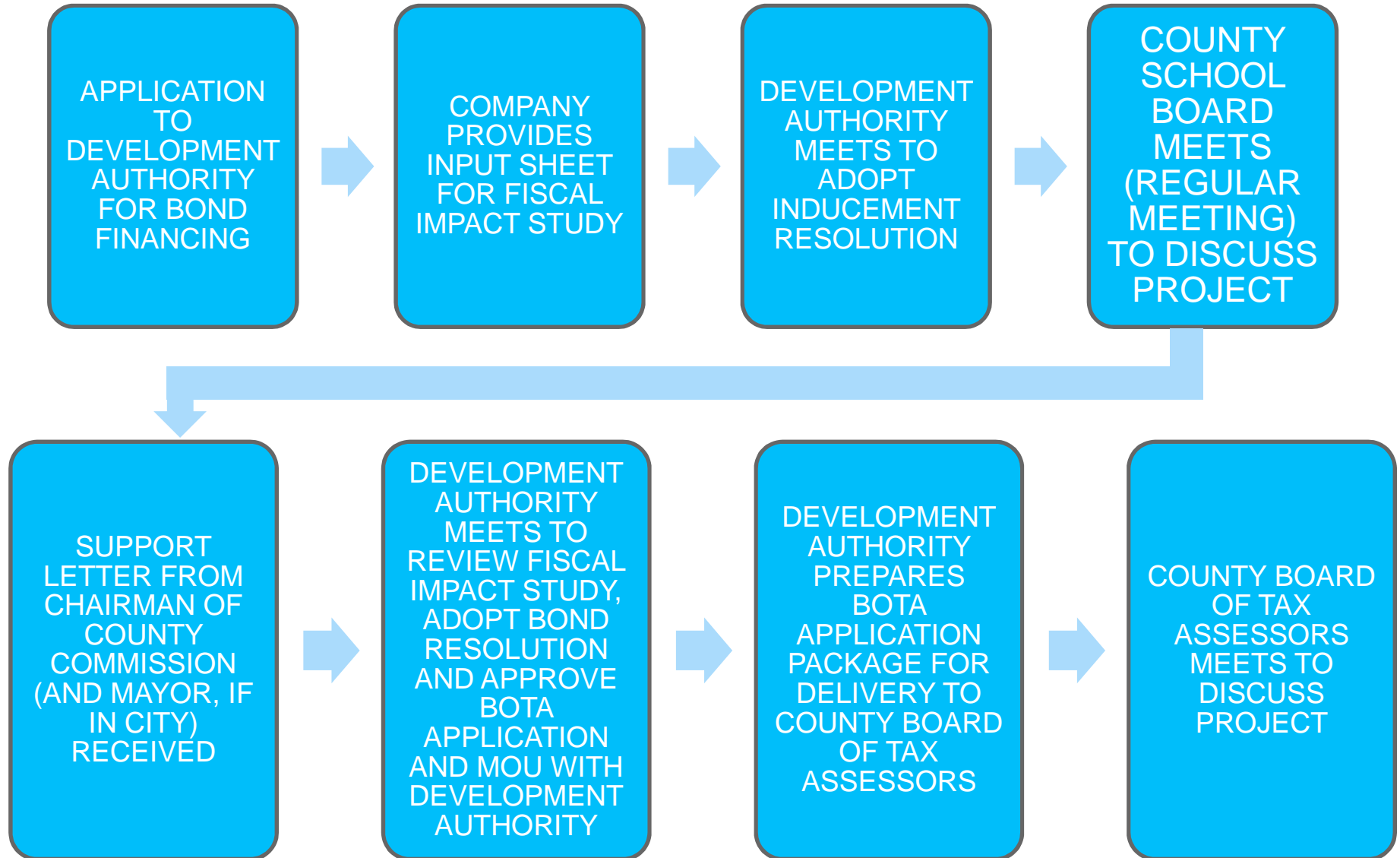
Bargain or gift? If you want to dodge your own bullet, what process should you follow?

IF YOUR PROJECT IS LARGE OR CONTROVERSIAL

If you have a written incentives policy, you will need to apply it if the project is within its scope, exempt the project, if it is beyond the scope of policy, and justify what you are doing, regardless.



LOCAL PROCESSES-COUNTY DA EXAMPLE



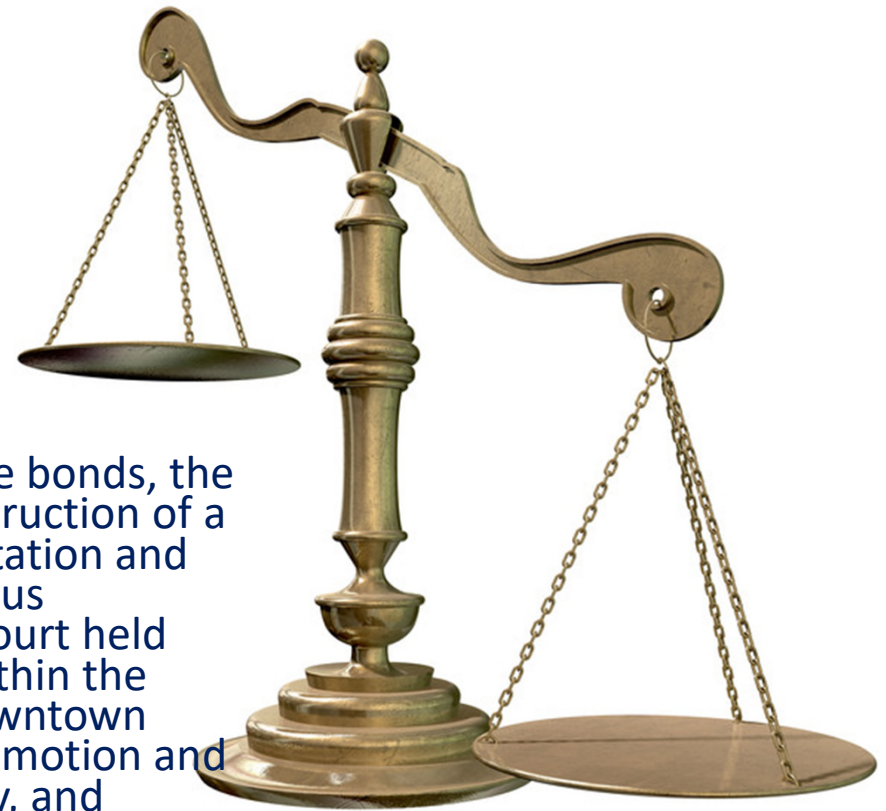
BINDING SUCCESSORS, MONETIZING
PILOTS, PUBLIC/PRIVATE PARTNERSHIPS,
PROPERTY TAX “ABATEMENT”

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NO PUBLIC PROJECTS

Solution: Public/Private Partnership

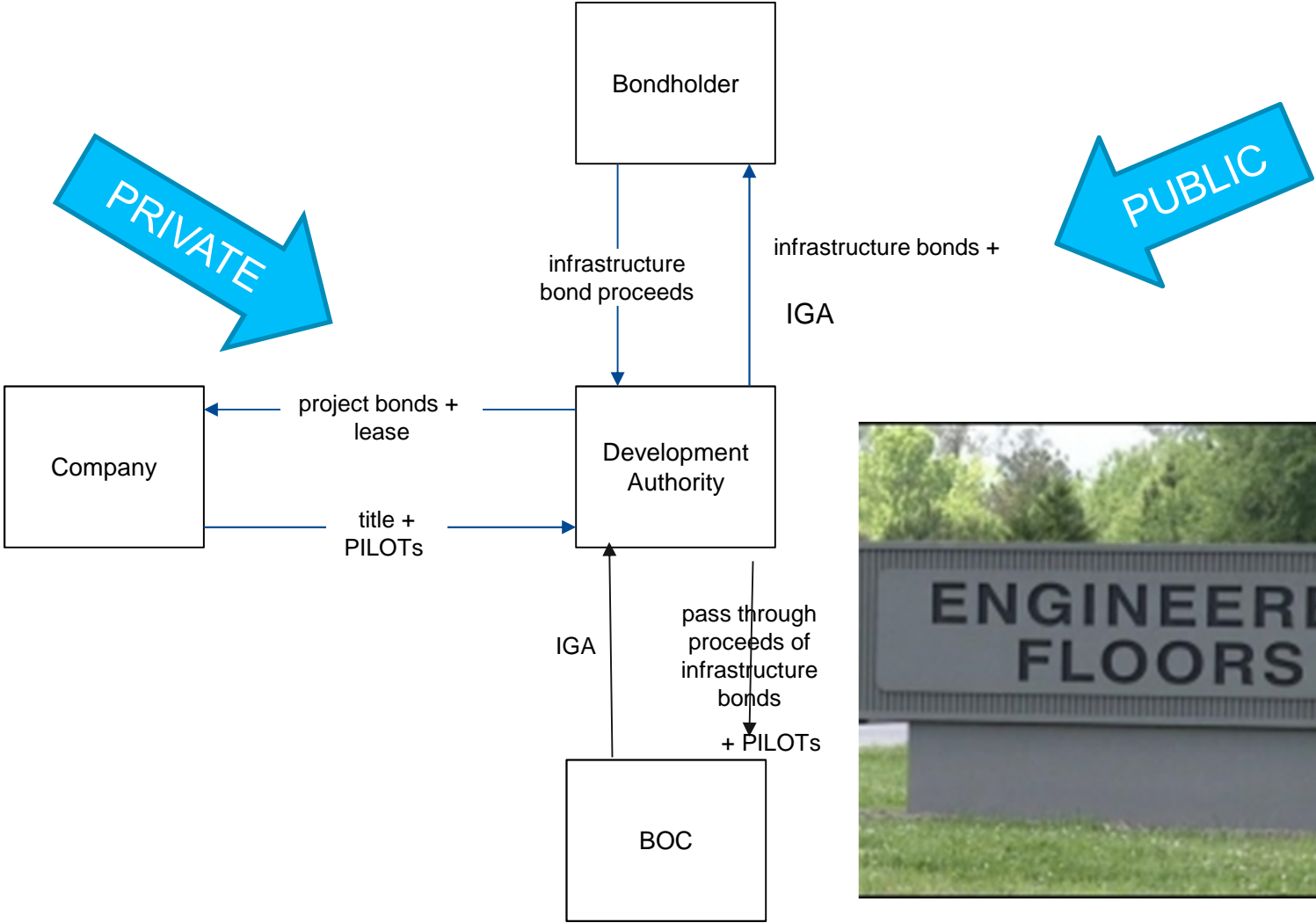
“ In Odom, the DDA sought to issue revenue bonds, the proceeds of which would finance the construction of a new city hall, renovate the existing police station and jail, and improve city streets. The project thus consisted of purely public elements. This court held that the scope of this project did 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).



SUCCESSFUL P3 STRUCTURE

Won GEDA “Deal of the Year”

DALTON-WHITFIELD JDA



ROAD PROJECTS, "GIFTS AND
GRATUITIES", CONSTRUCTION LAW,
PUBLIC/PRIVATE PARTNERSHIPS

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CASE STUDY- EXTENDING A ROAD

The TopGolf Project in Augusta



... the road extension is the only public incentive Topgolf is receiving. ... the facility, which aims to open in March, will be a \$10 million to \$15 million investment creating more than 100 jobs.”

Source (image and quote): Augusta Chronicle

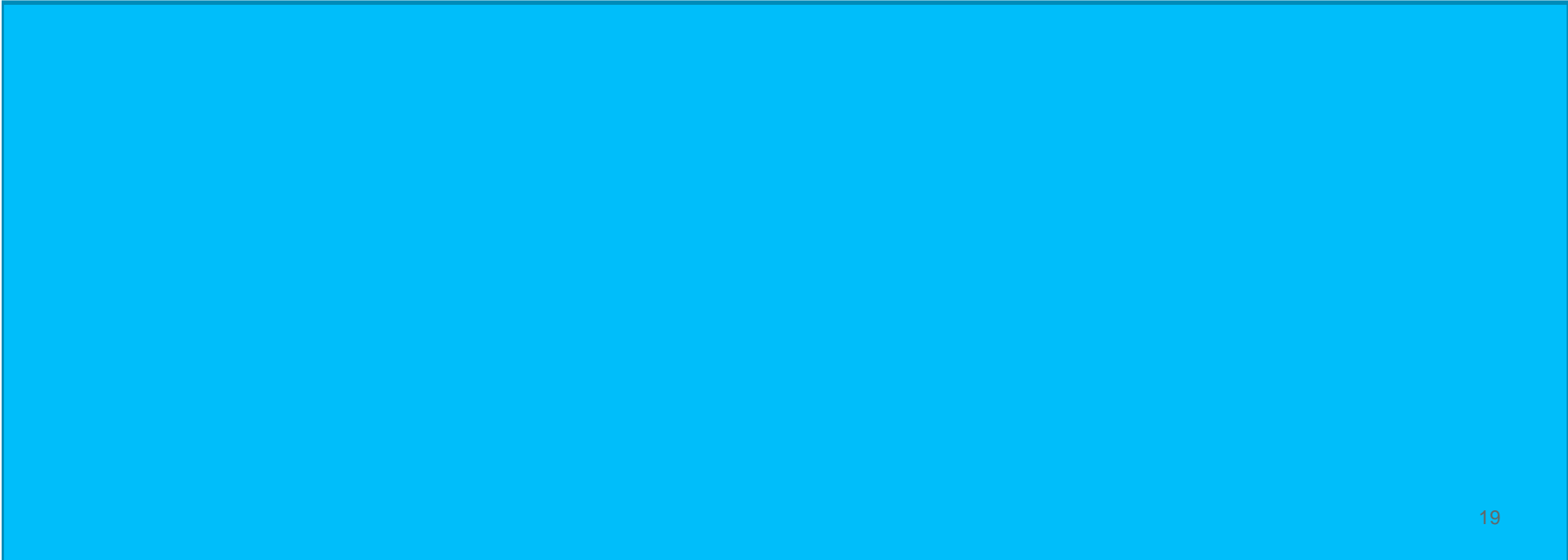
- Important- No direct payment of grant to prospect
- Prospect to construct entertainment center
- Create jobs and make investment
- Prospect also constructs road extension on land owned by landowner
- Entertainment center and road extension determined to be economic development project
- No Authority or local government obligation to construct road
- Amount of road cost paid as purchase price upon completion of road
- Road conveyed to local government
- Public benefit determined to be sufficient to justify purchase price

CONCLUSION

**“DEAL STRUCTURING” IS HOW
DEVELOPMENT AUTHORITIES GET IT DONE**

**“It’s hard to beat a person
who never gives up.”
Babe Ruth**

MORE INFORMATION



QUESTIONS?

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

Daniel M. McRae, Partner
Seyfarth Shaw LLP
1075 Peachtree Street, N.E.
Suite 2500
Atlanta, GA 30309
404.888.1883
404.892.7056 fax
dmcrae@seyfarth.com
danmcrac.com

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