MODULE 2

DEALMAKING
FOR
DEVELOPMENT AUTHORITIES

some things development authorities can't do
and some workarounds to do them anyway

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EVERYDAY DEVELOPMENT AUTHORITY ISSUES

Can't- Confer "gifts or gratuities"

GA CONSTITUTION

Issue: incentives

Can't- Go beyond your powers

DEVELOPMENT AUTHORITIES LAW

Issue: new types of projects

Can't- Carry out public projects

GA CONSTITUTION

Issue: P3

Can't- Carry out road projects with local government

GA CONSTITUTION

Issue: large projects

Can't- exceed jurisdiction

DEVELOPMENT AUTHORITIES LAW

Issue: extra-territorial projects

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CAN'T- CONFER A "GIFT OR GRATUITY"

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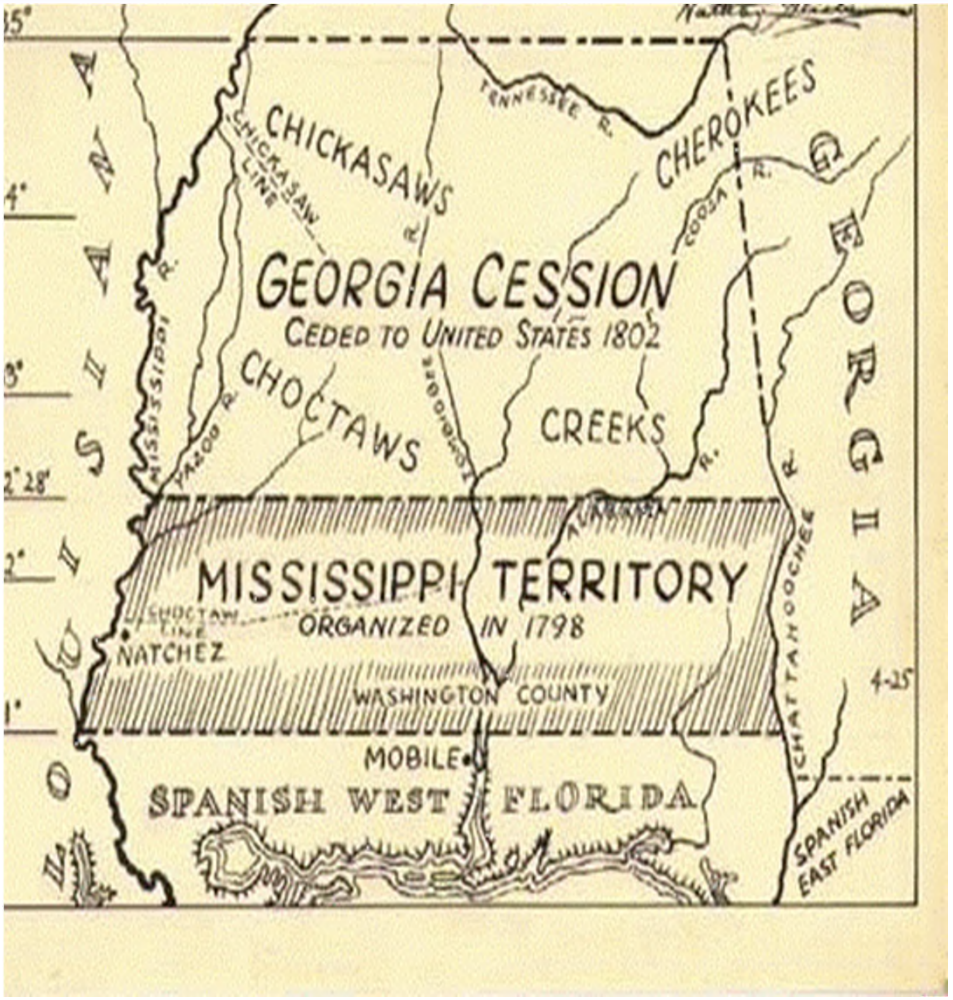
WHY “GIFTS AND GRATUITIES” WERE PROHIBITED

"The Yazoo land controversy was a massive, real estate fraud perpetrated, in the mid-1790s, by Georgia governor George Mathews and the Georgia General Assembly. Georgia politicians sold large tracts of territory in the Yazoo lands, in what are now portions of the present-day states of Alabama and Mississippi, to political insiders at very low prices in 1794….In the landmark decision in Fletcher v. Peck (1810), the [U.S. Supreme] Court ruled that the contracts were binding and the state could not retroactively invalidate the earlier land sales." Source: Wikipedia



Source: alabamapioneers.com

FROM “FORGIVABLE LOANS” TO REBA & ONEGEORGIA

Forgivable Loans

1995: ATTORNEY GENERAL RULED THE STATE’S “FORGIVABLE LOAN” PROGRAM UNCONSTITUTIONAL

“The forgiveness of loans made under the incentive loan program is clearly outside the scope of the legal powers of GHFA. Under the Constitution, the granting of any donation or gratuity or the forgiveness of any debt or obligation owing to the public is prohibited. Ga. Const. 1983, Art. III, Sec. VI, Para. VI (a)” 1995 Ga. Op. Atty. Gen. 55 (April 28, 1995).

State Grants

ONEGEORGIA AND REBA PROGRAMS WERE RESPONSE MADE TO “KEEP GEORGIA IN THE GAME” AND PERMIT GRANTS FOR PROSPECTS

concepts taken from bond financing: inducement, finding of equivalent public benefit and no “gratuity”

Communities

BUT- PROHIBITION OF “GIFTS AND GRATUITIES” APPLIES TO ALL INCENTIVES AND ALL AUTHORITIES

“This provision of the Constitution applies to the operations of public authorities…It has been held that the forgiveness of a loan operates as a gift to the debtor/donee.” 1995 Ga. Op. Atty. Gen. 55 (April 28, 1995).

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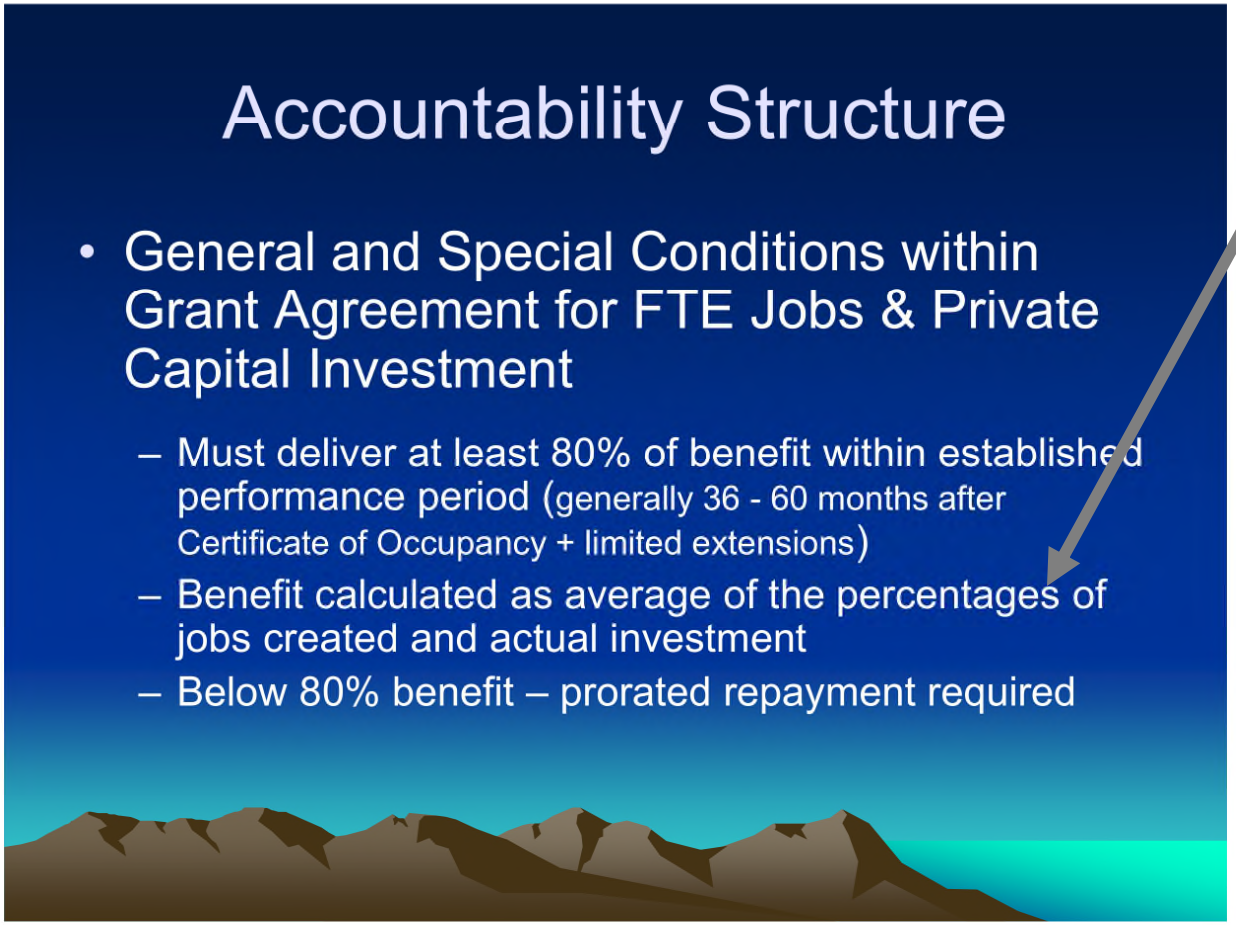
YOU CAN'T- "GIVE THINGS AWAY" BUT YOU CAN- MAKE A BARGAIN the MOU contains the bargain



Source: DCA

- When there is a state grant, these are the public benefits that the State is bargaining for.
- What is the community bargaining for?
- It can be whatever is important to it that the Company will agree to.
  - Example- In light of some recent long term, 100% abatements, some communities are considering removing investment from the clawback formula- making it 100% jobs. Rationale- What significance is the investment if no taxes are being paid on it?

THE BASIS FOR THE BARGAIN

"The Georgia Constitution prohibits the General Assembly from granting any donation or gratuity. Ga. Const. 1983, Art. III, Sec. VI, Para. VI....This office has opined repeatedly that agencies may not dispose of publicly owned property without obtaining fair market value, **or** its equivalent in an exchange, for the transaction. See, e.g., 1971 Op. Att'y Gen. U71-17; 1995 Op. Att'y Gen. 95-25; 1997 Op. Att'y Gen. 97-6.Therefore, based upon these legal authorities, it is my official opinion that the Department [of Transportation] must receive in return for the disposal of access rights under O.C.G.A. § 32-6-l33(b), the fair market value of such rights **or** other substantial benefit in aid of the performance of the Department's governmental mission." Op. Ga. Atty. Gen. No. 97-14

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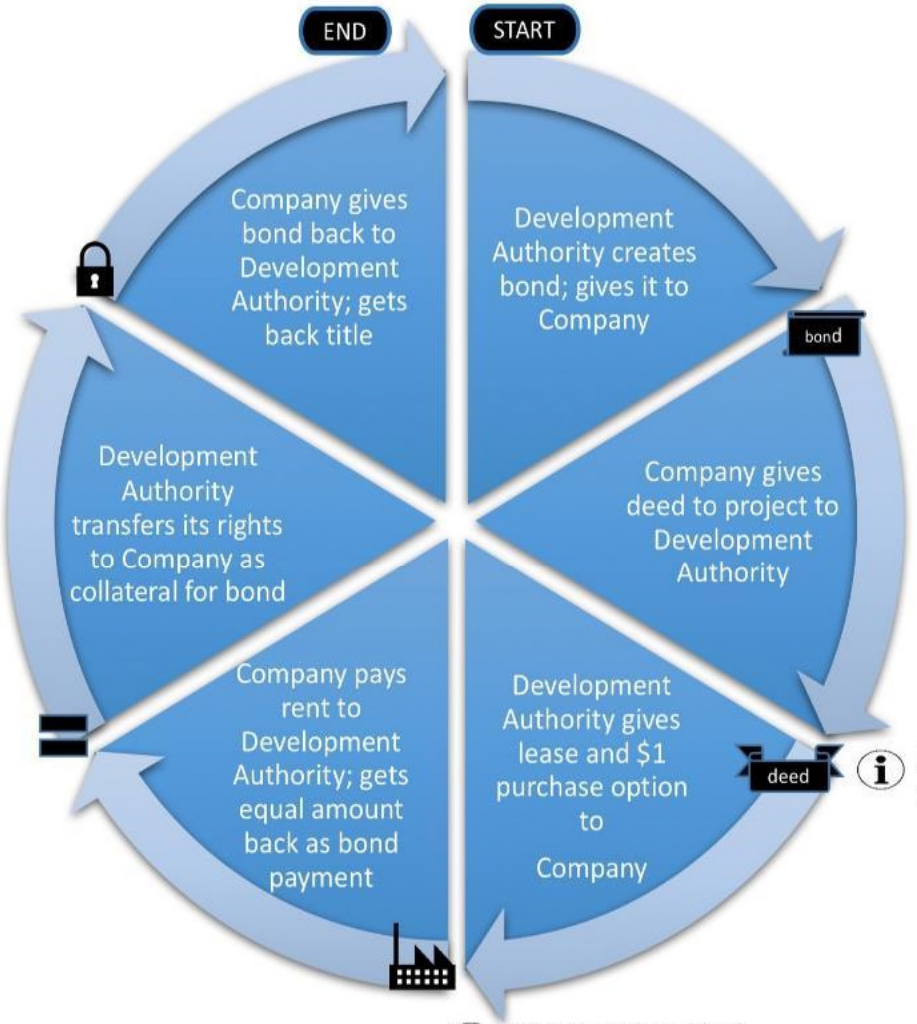
THE DEAL STRUCTURE- "BONDS FOR TITLE”

It's not just about property tax "abatement." Cash and in-kind incentives also flow through the development authority.

The lease is the conduit for the incentives- abatement, cash, in-kind.



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CAN’T- GO BEYOND YOUR POWERS

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CAN YOU CARRY OUT A PROJECT?

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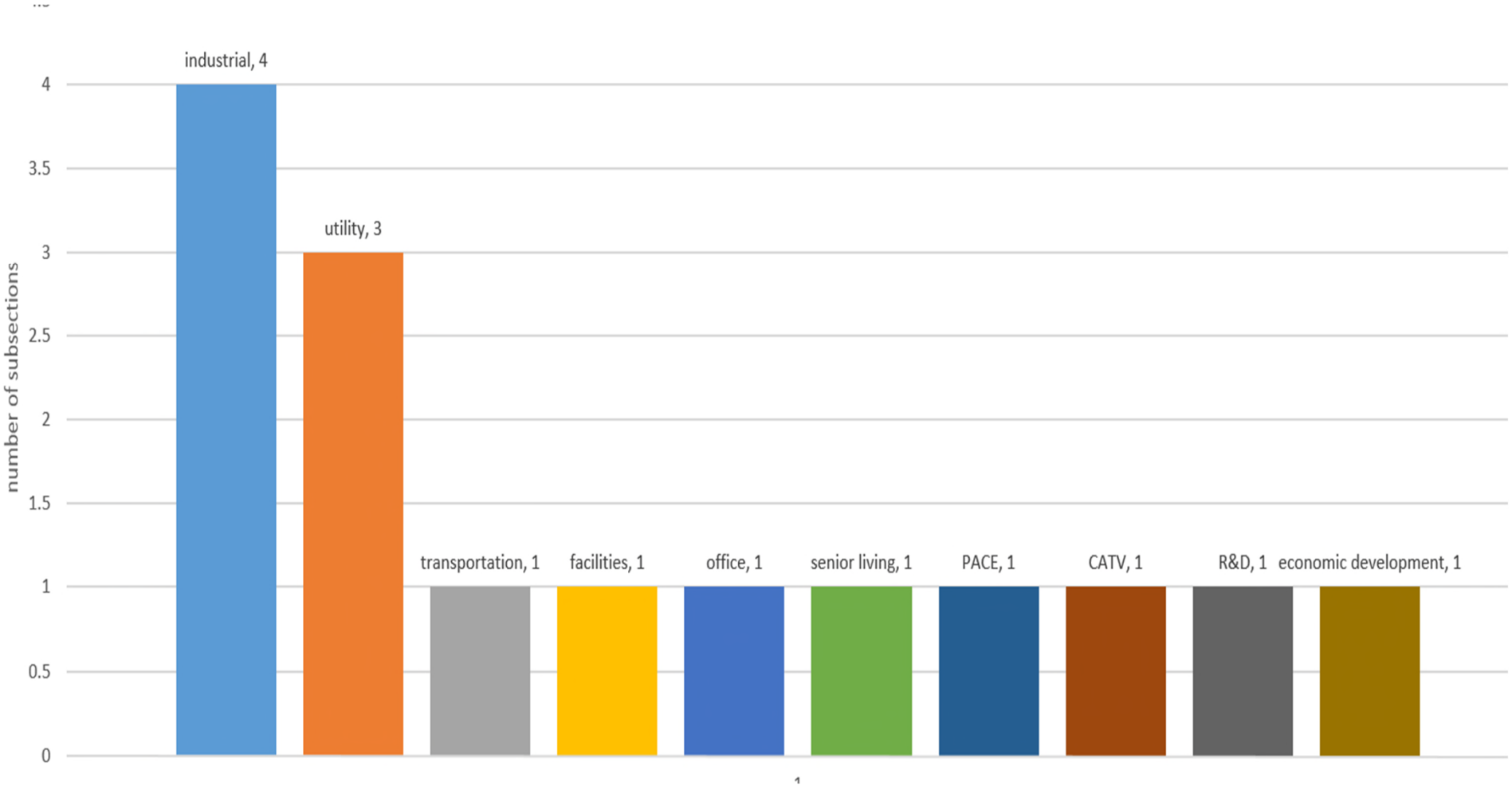
Menu

- A “MENU” OF POWERS IS PROVIDED IN THE DEVELOPMENT
- AUTHORITIES LAW AND IN THE DOWNTOWN DEVELOPMENT AUTHORITIES LAW
- THESE POWERS HAVE TO MEET CONSTITUTIONAL STANDARDS
  - YES, JUST BECAUSE IT’S IN THE CODE DOESN’T MEAN IT’S VALID
  - A LAW HAS TO BE CONSTITUTIONAL, TOO

MORE SUBSECTIONS OF THE DEVELOPMENT AUTHORITIES LAW AUTHORIZE “INDUSTRIAL” THAN ANY OTHER TYPE OF PROJECT



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CAN'T- GO BEYOND YOUR POWERS 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."

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http://www.ledger-enquirer.com/news/local/article71817147.html#storylink=cpy

WHAT THE HOTEL OWNER SAID
in effect… THE WORLD TURNS 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 has to be property unusable for a project)

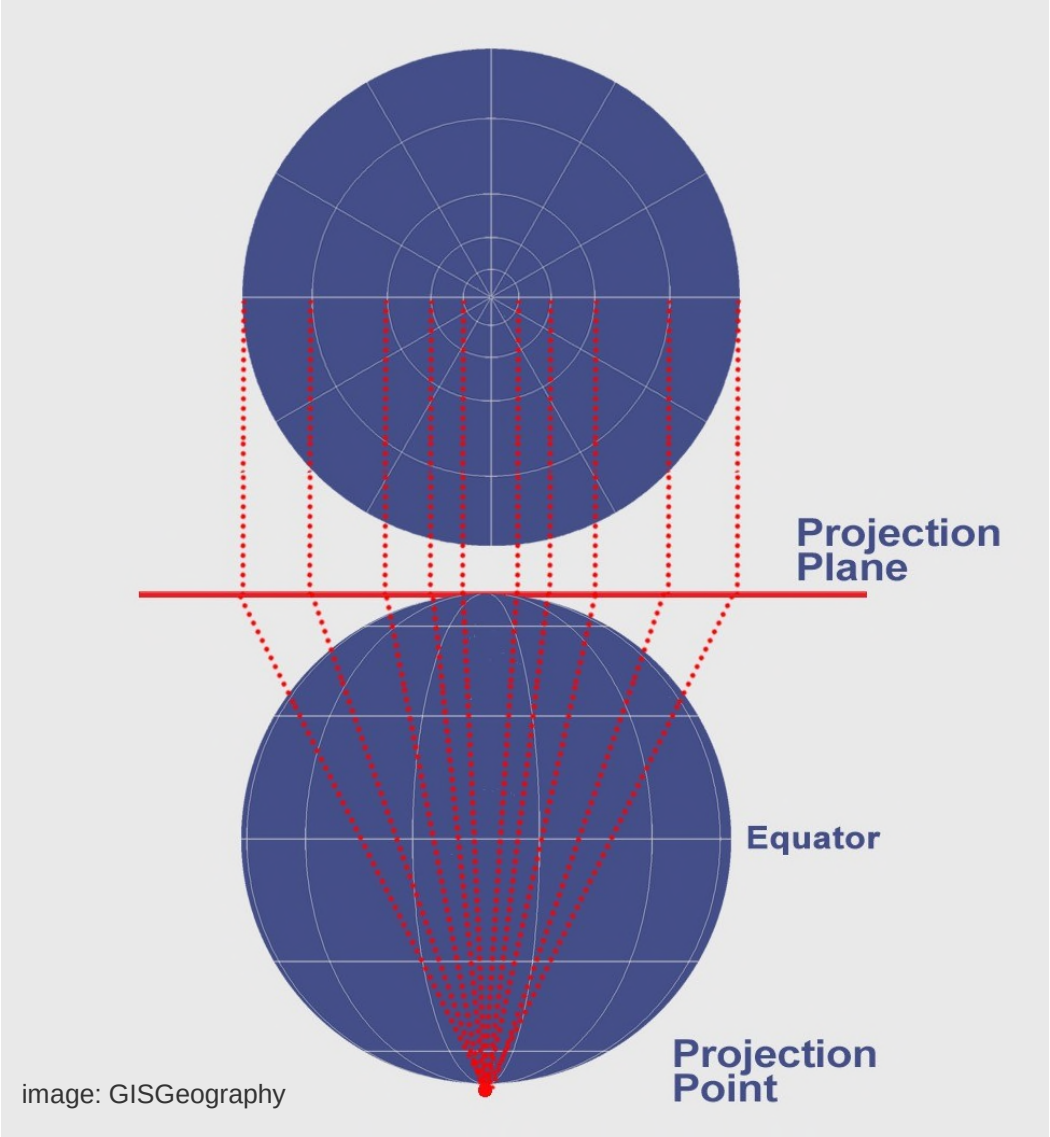

image: GISGeography

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WHAT THE COURT OF APPEALS SAID in effect… THE WORLD TURNS ON…. "PROJECT OR NOT A PROJECT"

IF PROPERTY NOT A PROJECT, AUTHORITY HAS POWER TO-

- 1. dispose of any real property for fair market value, regardless of prior development of such property as a project, … **if** … such real property **no** longer can be used advantageously as a **project** ….
- O.C.G.A. Sec. 36-62-6(a)(7)
- 2. dispose of any real property for fair market value or any amount below fair market value … regardless of prior development of such property as a project, … **if** such real property **no** longer can be used advantageously as a **project** … **and if** title to such real property is to be **transferred to the state**. O.C.G.A. Sec. 36-62-6(a)(7.1)

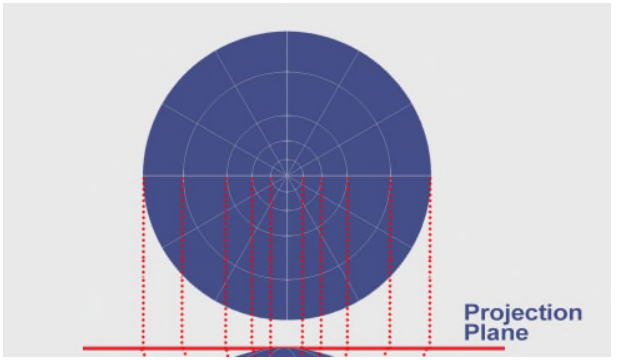
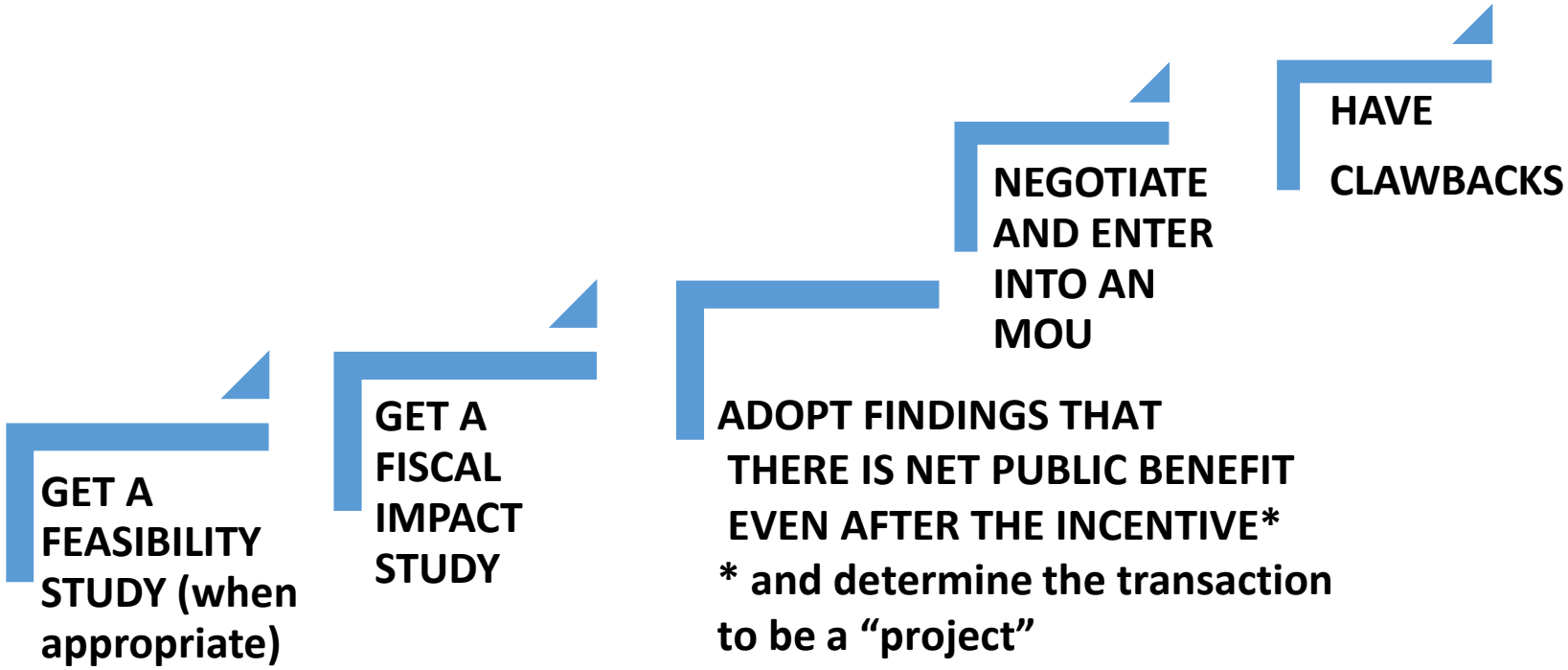


image: GISGeography

- price not an issue under DAL if property is a project
- prohibition of "gifts and gratuities" under Constitution STILL applies
- development authority "dodged a bullet"
- hotel owner failed to timely raise "gifts and gratuities" issue

IF YOUR PLAINTIFF AIMS BETTER HERE'S HOW TO STILL "DODGE A "BULLET"



Data Visualization: Dan McRae

CAN’T- CARRY OUT PUBLIC PROJECTS

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THE KEY TO P3

- THE DAL DEFINITION OF "PROJECT" INCLUDES THIS-

  (N) … A project may be for any industrial, commercial, business, office, parking, **public**, or other use, provided that a majority of the members of the authority determines, by a duly adopted resolution, that the project and such use thereof would further the public purpose of this chapter. O.C.G.A Sec. 36-62-2(6)(N)

- THIS POWER IS IMPORTANT, EVEN THOUGH DA's CANNOT CARRY OUT PURELY PUBLIC PROJECTS LIKE GOVERNMENTAL ADMINISTRATIVE BUILDINGS, OR, IN CONCERT WITH A LOCAL GOVERNMENT, STREET AND ROAD PROJECTS. *See Odom v. Union City Downtown Development Authority*, 251 Ga. 248, 305 S.E.2d 110 (1983); Ga. Const. Art. III, Sec. VI, Para. V (e).

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THE KEY TO P3

- PROPERLY INTEGRATED PUBLIC/PRIVATE PROJECTS (P3s) ARE PERMITTED. *Nations v. Downtown Development Authority of the City of Atlanta*, 255 Ga. 324, 338 S.E.2d 240 (1985).
- SO CARRYING OUT THE PUBLIC COMPONENT OF A P3 RELIES ON THIS POWER.
  - SOME CONSTITUTIONAL DA's ARE AUTHORIZED BY THEIR LCA TO CARRY OUT PURELY PUBLIC PROJECTS.

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PUBLIC/PRIVATE PARTNERSHIPS (P3

- PUBLIC/PRIVATE PARTNERSHIPS (P3) ARE VERY POPULAR NOW
- A RECENT SUCCESS STORY IN GEORGIA WAS A REGIONAL PROJECT
- THE ENGINEERED FLOORS PROJECT
  - NEW INVESTMENT IN DALTON COUNTY AND MURRAY COUNTY
  - $450 MILLION INVESTMENT
  - 2,400 NEW MANUFACTURING JOBS
- BUT- NEW PUBLIC INFRASTRUCTURE WAS REQUIRED, AND HAD TO BE FINANCED
- SOLUTION- P3

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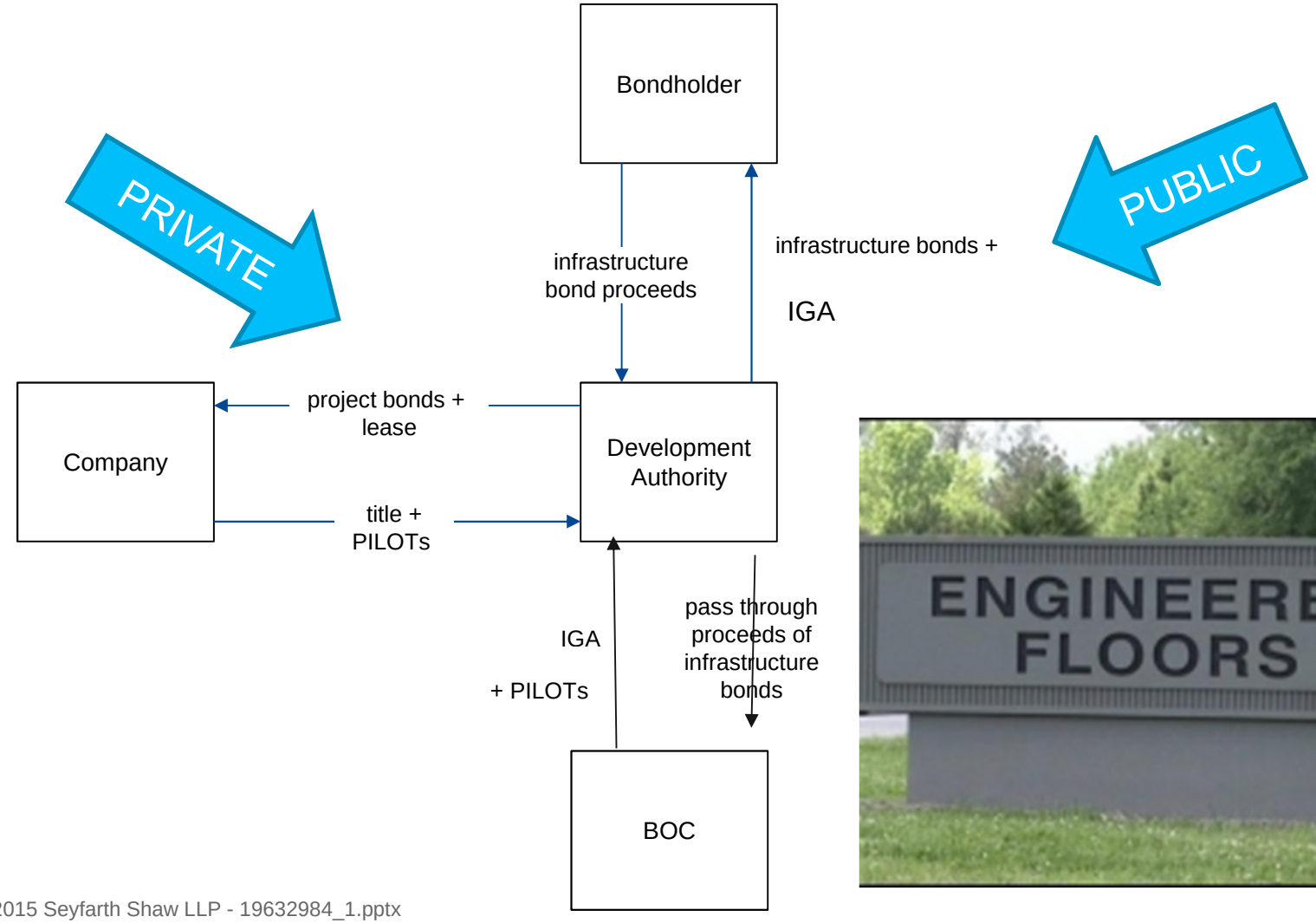
SUCCESSFUL P3 STRUCTURE
Won GEDA "Deal of the Year"
DALTON-WHITFIELD JDA



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CAN'T- CARRY OUT ROAD PROJECTS WITH LOCAL GOVERNMENT

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STRUCTURING AROUND A ROADBLOCK

- THE GEORGIA CONSTITUTION DOES NOT ALLOW A STATUTORY AUTHORITY TO "CONSTRUCT, IMPROVE OR MAINTAIN" ROADS OR STREETS IN CONCERT WITH A LOCAL GOVERNMENT.
- A COMMUNITY HAS A LARGE REDEVELOPMENT PROJECT.
- THE SITE IS DIVIDED BY AN ELEVATED RAIL LINE AND NEEDS AN UNDERPASS;*i.e.,* A COVERED ROAD.
- THE PROJECT WILL NOT SUCCEED UNLESS PUBLIC FINANCING IS MADE AVAILABLE FOR THE ROAD INFRASTRUCTURE.

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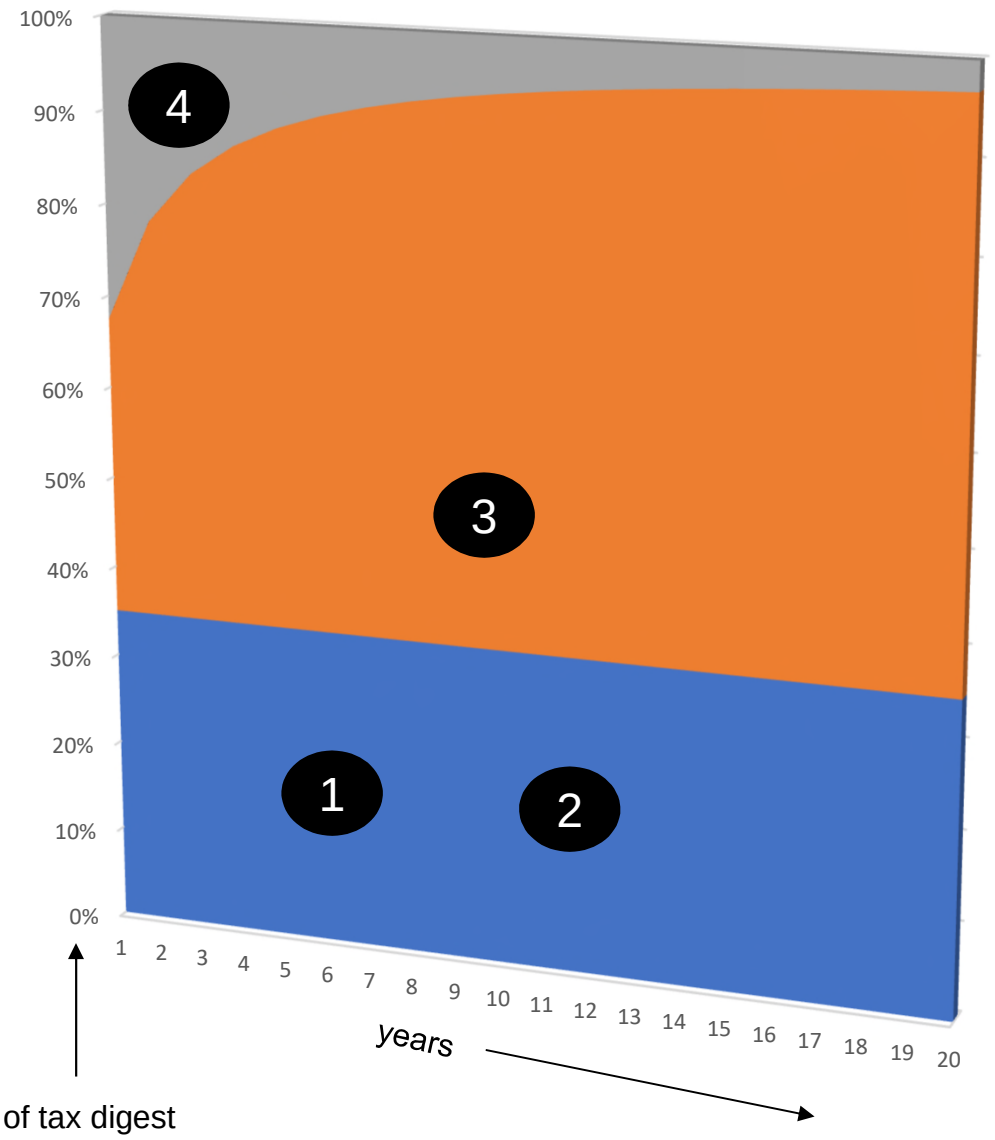
1. to avoid a net increase in property taxes, the DDA issues bonds for title to the developer, creates a long term, constant 35% property tax savings ("abatement")

2. a CID is created and levies its maximum of 25 mills, fills the gap created by the abatement

3. the city creates a TAD, the county consents, and revenues from their joint increment are added to the CID millage to repay CID bonds issued to finance the road infrastructure

4. the taxing jurisdictions continue to collect the unabated portion of the TAD's base value



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CAN’T- EXCEED JURISDICTION

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LIGHTING STRIKES THRICE

3 EXAMPLES OF PROJECTS WHERE THE FACILITY LOCATION INVOLVED TWO COUNTIES

3 DIFFERENT SOLUTIONS

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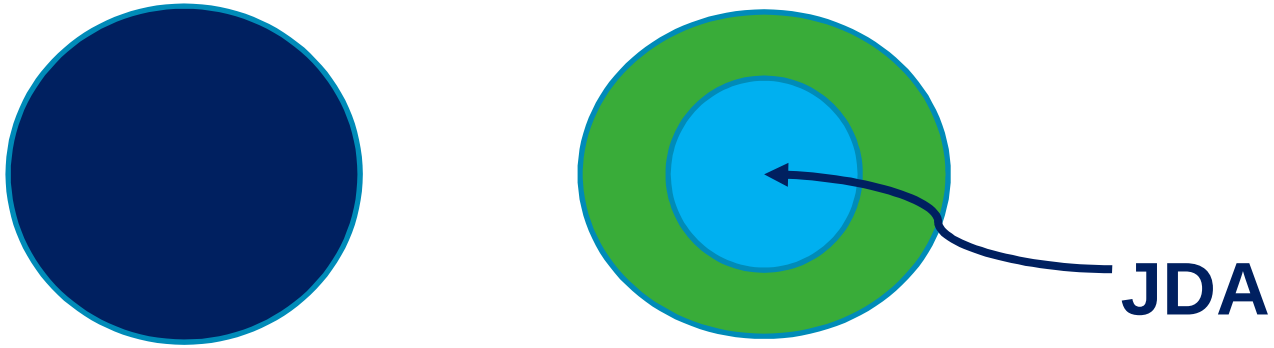
MANDO AUTOMOTIVE SUPPLIER
MERIWETHER COUNTY: OWNED PARK
TROUP COUNTY: SITE OF PARK



- SOLUTION: CREATE JOINT DEVELOPMENT AUTHORITY OF MERIWETHER COUNTY AND THE CITY OF HOGANSVILLE (SITE OF PROJECT IN TROUP COUNTY)
- JDA ISSUES BONDS FOR TITLE AND HOLDS TITLE TO THE PROJECT
- TROUP COUNTY BOARD OF TAX ASSESSORS APPROVED MOU BETWEEN MANDO AND THE JDA
- JDA'S JURISDICTION LIMITED BY CONCURRENT ACTIVATING RESOLUTIONS TO THE INDUSTRIAL PARK

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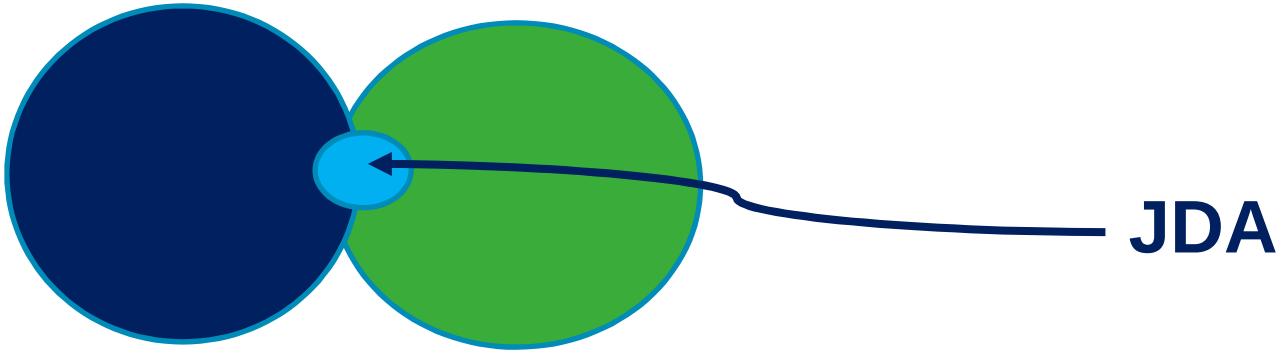
DOLLAR GENERAL DISTRIBUTION CENTER
FACILITY LOCATED IN BOTH BUTTS COUNTY AND SPALDING COUNTY



- SOLUTION: CREATE JOINT DEVELOPMENT AUTHORITY OF BUTTS COUNTY AND SPALDING COUNTY
- JDA ISSUES BONDS FOR TITLE AND HOLDS TITLE TO THE PROJECT
- INTERGOVERNMENTAL AGREEMENT BETWEEN THE COUNTIES REGULATES WHO ASSESSES TAXES, WHO ISSUES BUILDING PERMIT, SPLIT OF REVENUES, WHO PROVIDES UTILITIES, ETC.
- JDA'S JURISDICTION LIMITED BY CONCURRENT ACTIVATING RESOLUTIONS TO THE SITE OF THE FACILITY

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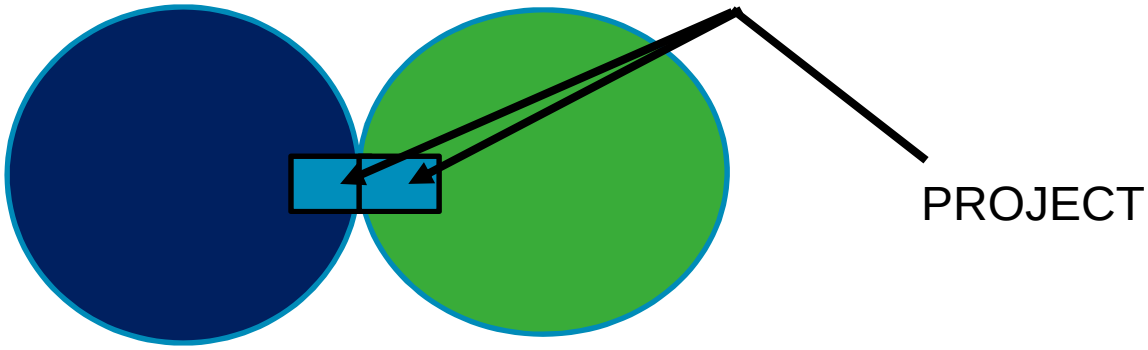
CATERPILLAR CONSTRUCTION EQUIPMENT MANUFACTURING PLANT

LOCATED IN BOTH ATHENS-CLARKE AND OCONEE COUNTY



- SOLUTION: EACH LOCAL GOVERNMENT'S DEVELOPMENT AUTHORITY ISSUED ITS OWN BONDS FOR TITLE FOR ITS PORTION OF THE PROJECT
- IN ADDITION TO CATERPILLAR, THE LOCAL GOVERNMENTS, THEIR ASSESSORS, AND THEIR DEVELOPMENT AUTHORITIES ENTERED INTO AN MOU WHICH, AMONG OTHER THINGS, PROVIDED FOR ASSESSMENT OF BOTH PORTIONS OF THE PROJECT TO FOLLOW A JOINT LEASEHOLD VALUATION SCHEDULE

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CONCLUSION

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“DEAL STRUCTURING” IS HOW DEVELOPMENT AUTHORITIES GET IT DONE

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

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MORE INFORMATION

QUESTIONS?

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

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