FINANCING AND ECONOMIC DEVELOPMENT TOOLS

TRAINING SESSION

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College of Coastal Georgia
Brunswick, Georgia

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DEVELOPMENT AUTHORITY FINANCING
Brunswick and Glynn County Development Authority

- Created by local constitutional amendment in 1962
- Has specific powers enumerated in amendments to its creating legislation
  - Some of the important powers include:
    - Carry out “projects” which means the acquisition of lands, properties and improvements for development, expansion and promotion of industry, commerce, agriculture, natural resources and vocational training; and the construction of buildings and plants for the purpose of selling, leasing or renting such structures to private persons, firms or corporations
    - Borrow money, including issuing revenue anticipation certificates (revenue bonds)
    - Make contracts with respect to projects
    - If any project is to be on property owned by the City of Brunswick or Glynn County, each are authorized in their discretion to convey title to the property to the authority
Brunswick and Glynn County Development Authority

A couple of additional notes about powers:

- The term “commerce” was defined in amendments to include parking lot facilities, buildings (including municipal buildings), and cable television facilities.
- The term “project” was amended to include hotels and motels that provide food and lodging with not less than 80 guest rooms available for overnight accommodations.
- Amendment passed in 1983 specifically authorizes authority to contract with Jekyll Island-State Park Authority for projects located on Jekyll Island.

All property owned by the authority is exempt from taxation by the State and by the local jurisdictions.

Authority also has all of the powers found in the Development Authorities Law found in O.C.G.A. § 36-62-1 et seq.

**Important Note:** Whenever any decision is to be made regarding financing any project, authority should consult with counsel to determine if project is authorized.
Development Authority Financing

Example #1: using authority to finance private development

- Authority issues bonds and loans bond proceeds to private company to finance a project – enters into loan agreement with private company
  - Note: bonds would be federally tax-exempt or taxable depending on the type of project financed
- Private company agrees in loan agreement to build the project and to pay the debt service on the bonds
- Payments made by the private company under the terms of the loan agreement are pledged as security for and used to make the payments on the bonds
- Bonds are “limited obligations” of the authority payable solely from the payments made by the private company under the loan agreement – authority can take a lien or mortgage on the project as security for the private company’s payment obligations
  - Note: lien would likely be assigned to the bondholders as additional security
- Does not create any debt or obligation on the part of Brunswick or Glynn County
DEVELOPMENT AUTHORITY FINANCING

Example #1: Private Project

- **Bondholders**
  - Bond Payments
  - Bond Proceeds

- **Trustee**
  - Bond Payments
  - Bond Proceeds

- **Private Company**
  - Loan of Bond Proceeds
  - Loan Payments

- **Brunswick and Glynn County Development Authority**

- **Project**
Example #2: using authority to finance certain governmental projects

- Georgia Constitution permits two or more public entities to enter into intergovernmental contracts for up to 50 years
  - Provision of services or the joint or separate use of facilities
  - Contracts must deal with activities, services, or facilities that both the authority and the local government are authorized by law to undertake or provide
  - MOST COMMON EXAMPLE IS INFRASTRUCTURE
  - Consult with counsel

- Authority issues bonds to finance the project and enters into an intergovernmental contract to provide for the use of the project by a local government

- Local government agrees, pursuant to the intergovernmental contract, to pay for such use and to make the payments on the bonds

- Payments made by the local government under the terms of the intergovernmental contract are pledged as security for and used to make the payments on the bonds

- Avoids referendum requirement applicable to general obligation bonds
Example #2: Governmental Project

DEVELOPMENT AUTHORITY FINANCING

- Bondholders
  - Bond Payments
  - Bond Proceeds

- Trustee
- Local Government
  - Bond Payments
  - Bond Proceeds
  - Intergovernmental Contract

- Brunswick and Glynn County Development Authority

- Project
TAX INCREMENT FINANCING
TAX INCREMENT FINANCING

- **Tax Increment Financing**
  - Used in connection with Tax Allocation Districts (TADs)
  - TADs can be created for the purpose of financing redevelopment costs pursuant to Georgia’s Redevelopment Powers Law.
  - Redevelopment can include any of the following:
    - Construction of buildings or other facilities for use in any business, commercial, industrial, governmental, educational, charitable, or social activity
    - Renovation, rehabilitation, reconstruction, remodeling, repair, demolition, alteration, or expansion of:
      - Existing buildings or other facilities 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
      - Telecommunications infrastructure
      - Facilities for the improvement of pedestrian access and safety
TAX INCREMENT FINANCING

- Redevelopment costs (cont.):
  - 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
  - Acquisition and retention or acquisition and disposition of property for redevelopment purposes, or use for redevelopment purposes of property already owned by a political subdivision or any agency or instrumentality
TAX INCREMENT FINANCING (TAX ALLOCATION DISTRICTS)

- TADs must be located within “redevelopment area”
  - Redevelopment area means
    - An urbanized area as determined by current data from the U.S. Bureau of the Census (urbanized area generally is area with population of 50,000 or more); OR
    - An area presently served by sewer that qualifies as
      - “blighted or distressed area”
      - “deteriorating area” OR
      - “area with inadequate infrastructure”
    - Statute contains specific criteria for determining whether an area meets one of the above
Once a TAD is created, the city or county may use tax increment financing (TIF) for the purpose of financing the redevelopment costs of projects located within the TAD.

TIF is the incremental increase in tax revenues collected within the TAD above a base level of tax revenues set upon the creation of the TAD – incremental revenues can be used for:

- Pay-as-you-go
- Tax allocation bonds
  - Not general obligations
  - No referendum requirement
  - Payable from the incremental increase in tax revenues collected within TAD

Incremental increases in revenues can occur if new development takes place in the TAD or if the value of existing property rises.

Upon the termination of TAD and the payment in full of any tax allocation bonds, the increases in revenue are payable to the local government.
TAX INCREMENT FINANCING (TAX ALLOCATION DISTRICTS)

- Specific statutory procedures must be followed to establish a TAD, including
  - Local act passed by General Assembly authorizing the city or county to exercise redevelopment powers
  - Voter approval in referendum held in city or county regarding the activation of the redevelopment powers
  - Redevelopment plan drafted by the city or county (or new redevelopment agency) and submitted to the local government for approval
  - Public hearing held within 60 days after redevelopment plan is submitted
Tax Increment Financing (Tax Allocation Districts)

- Statutory procedures to establish a TAD (cont.)
  - Approval of the redevelopment plan by the local city council and/or county board of commissioners within 45 days after the public hearing
    - Important Note: if school tax increments will be used in the tax increment financing, the school board must consent; same is true for other participating jurisdictions
    - Approval by the governing body generally must include a finding that growth and development is not reasonably anticipated to occur “but for” the redevelopment plan
  - Date of TAD creation is December 31 of year redevelopment plan is approved or December 31 of a subsequent year as determined by the city or county
    - No later than the creation date, application is made to State Commissioner of Revenue for a determination of tax allocation increment base of TAD
  - TAD will exist until terminated by resolution of the city or county that created the TAD
    - No limit
    - However, all redevelopment costs must be paid before termination
TAX INCREMENT FINANCING

TAX INCREMENT FINANCING (TAX ALLOCATION DISTRICTS)

- Effect on property taxes as a result of creating TAD:
  - Not abated – property owners continue to pay taxes on property
  - Not increased for the local governments during the existence of TAD – local governments will use taxable value for the property in the TAD that does not exceed the TAD base set at the beginning of TAD
  - Millage rates MAY be increased or decreased – no millage rate “freeze”

- Some examples of TADs in Georgia are located in:
  - Atlanta
  - Augusta
  - Savannah
  - Savannah
  - Gainesville
  - Union City
City of Atlanta TADs: *Atlantic Station*

- Facilitate the environmental remediation and redevelopment of this 138-acre brownfield site
- Atlantic Station mixed-use community to include: 1.6 million s.f. of retail, 6 million s.f. office and entertainment space, over 4,000 residential units, 1,150 hotel rooms, and create 30,000 new jobs
- $76.5 million bond issue in 2001; $166.5 million second funding in 2006
- Base Assessed Value: $7,193,480
- 2007 Assessed Value: $378,776,000
City of Atlanta TADs: *Atlantic Station TAD*

*Publix and TWELVE*

*Beazer Townhomes*

*18th Street in The District*
TAX INCREMENT FINANCING (TAX ALLOCATION DISTRICTS)

Review – Actions Required to Create TAD:

- **Step 1** – Georgia General Assembly must enact local law authorizing the activation of redevelopment powers by the City of Brunswick and/or Glynn County and designating redevelopment agency
  - Both would be required if the proposed TAD is geographically located within the unincorporated area of Glynn County and the incorporated area of the City of Brunswick
  - Redevelopment agency can be
    - Local government(s)
    - New public body created by resolution of the local government(s)
    - Existing Urban Redevelopment Agency
    - Downtown Development Authority
**TAX INCREMENT FINANCING**

- **TAX INCREMENT FINANCING (TAX ALLOCATION DISTRICTS)**
  - **Review – Actions Required to Create TAD:**
    - **Step 2 – Referendum must be held**
      - Majority of the qualified voters of the City of Brunswick and/or Glynn County voting in the referendum must approve the activation of the redevelopment powers.
      - Note: activation of redevelopment powers does not require city or county to create a TAD or issue tax allocation bonds – redevelopment powers include other valuable abilities
    - Allows contracts for up to 30 years
    - Allows for the acquisition of property for redevelopment purposes and the disposition of property at public or private sale or by lease
    - Allows borrowing from financial institutions for up to 25 years to redevelopment costs

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TAX INCREMENT FINANCING (TAX ALLOCATION DISTRICTS)

- Review – Actions Required to Create TAD:
  - Step 3 – Redevelopment agency must draft and submit for consent a redevelopment plan including the proposed TAD to
    - (i) the Brunswick City Council and/or the Glynn County Board of Commissioners, AND
    - (ii) the Glynn County Board of Education.
TAX INCREMENT FINANCING (TAX ALLOCATION DISTRICTS)

Review – Actions Required to Create TAD:

- **Step 4** – Brunswick City Council and/or the Glynn County Board of Commissioners must adopt a resolution that approves the redevelopment plan
  - describes the boundaries of the TAD,
  - creates the TAD,
    - Note: limitation on the number of TADs in one city or county – taxable value of all TADs cannot exceed 10% of the city or county tax digest
  - assigns a name to the TAD,
  - specifies the estimated tax allocation increment base,
    - Note: base amount is certified by the State Revenue Commissioner
  - specifies the ad valorem property taxes used for computing tax allocation increments,
  - specifies the property to be pledged for payment or the security for payment of tax allocation bonds, and
  - contains findings – with explanations – that the redevelopment area meets the specific criteria set forth in the Redevelopment Powers Law
TAX INCREMENT FINANCING

- **Tax Increment Financing (Tax Allocation Districts)**
  - **Review – Actions Required to Create TAD:**
    - Redevelopment areas findings required ("but for" tests)
      - Redevelopment area on the whole has not been subject to growth and development through private enterprise and would not reasonably be anticipated to be development without the approval of the redevelopment plan, OR
      - Redevelopment area includes one or more natural, historical, or cultural assets which have not been adequately preserved, protected, or improved and such asset or assets would not reasonably be anticipated to be adequately preserved, protected, or improved without the approval of the redevelopment plan
    - **Important Note:** feasibility studies should be conducted when deciding whether to create a TAD and use TIF as a financing source
Community Improvement Districts (CIDs) are entities supported by business owners in a particular area, who tax themselves to support local projects. CIDs are authorized in the Georgia Constitution and can be created for the purpose of providing any one or more of the following governmental services and facilities:

- Street and road construction and maintenance, including curbs, sidewalks, street lights, and devices to control the flow of traffic on streets and roads
- Parks and recreational areas and facilities
- Storm water and sewage collection and disposal systems
- Development, storage, treatment, purification, and distribution of water
- Public transportation
- Terminal and dock facilities and parking facilities
- Such other services and facilities as may be provided for by general law
COMMUNITY IMPROVEMENT DISTRICTS

- **Community Improvement Districts**
  - Administrative body of the CID may levy taxes, fees, and assessments within the CID on non-residential real property
    - Any such tax, fee, or assessment may not be more than 2.5% of the value of such real property
    - May not tax, charge a fee, or assess property used for residential, agricultural, or forestry purposes, tangible personal property or intangible property
  - Administrative body of the CID will be local governing body of the county or city in which it is created unless otherwise provided for by the law creating the CID
  - Revenues collected must be used for the purpose of providing governmental services and facilities within the CID and not the county or city as a whole
  - CID is authorized to incur, without a voter referendum, debt backed by the CID revenues
COMMUNITY IMPROVEMENT DISTRICTS

- **Community Improvement Districts**
  - **Actions Required to Create CID:**
    - **Step 1** – Georgia General Assembly must enact a local law providing for the conditions under which the CID is to be created
    - **Step 2** – Brunswick City Council and/or Glynn County Board of Commissioners must adopt a resolution approving the establishment of the CID
      - Both would be required if the CID is geographically located within the unincorporated area of Glynn County and the incorporated area of the City of Brunswick
    - **Step 3** – written consent must be obtained from:
      - a majority of the owners of the real property within the CID that is subject to taxes, fees, and assessments levied by the CID, **AND**
      - the owners of the real property within the CID that is subject to taxes, fees, and assessments levied by the CID constituting at least 75% by value of all such real property
OPPORTUNITY ZONES

Administered by the Georgia Department of Community Affairs (DCA)
Combination of three state programs: state enterprise zones, urban redevelopment areas, and job tax credits
Local governments can qualify certain older commercial and industrial areas for the maximum state job tax credit if the area has received an OZ designation
DCA considers designations for areas that
- are within or adjacent to a census block group with 15% or greater poverty, AND
- in which there also exists an enterprise zone or urban redevelopment plan that has been adopted pursuant to the relevant Georgia statutes
Any business that expands or locates within the OZ can claim a state job tax credit of $3,500 per eligible new job (compared with current tier system credit of $750 per job for Tier 4 counties)

- Credit is first applied against 100% of the business’ Georgia income tax liability
- Balance of credit is applied against Georgia withholding tax liability
- May be claimed for 5 years as long as job is maintained

Jobs creation threshold is 2 new jobs (compared with current tier system threshold of 25 for Tier 4 counties)

Example #1: calculation of the credit

- Business creates 2 new jobs
- Business maintains jobs for 5 years
- Total Credit = $35,000 ($3,500 x 2 jobs x 5 years)
<table>
<thead>
<tr>
<th>Total Jobs Created (Cumulative)</th>
<th>Jobs Tax Credit</th>
<th>Tax Liability</th>
<th>Withholding</th>
</tr>
</thead>
<tbody>
<tr>
<td>Year 1</td>
<td>2</td>
<td>$7,000</td>
<td>$2,100</td>
</tr>
<tr>
<td>Year 2</td>
<td>3</td>
<td>10,500</td>
<td>2,300</td>
</tr>
<tr>
<td>Year 3</td>
<td>3</td>
<td>10,500</td>
<td>2,700</td>
</tr>
<tr>
<td>Year 4</td>
<td>4</td>
<td>14,000</td>
<td>2,850</td>
</tr>
<tr>
<td>Year 5</td>
<td>4</td>
<td>14,000</td>
<td>3,000</td>
</tr>
<tr>
<td><strong>TOTALS</strong></td>
<td><strong>$56,000</strong></td>
<td><strong>$12,950</strong></td>
<td><strong>$43,050</strong></td>
</tr>
</tbody>
</table>

* In the example, an aggregate Jobs Tax Credit of $56,000 is generated, and business is able to utilize the entire amount of credit.
OPPORTUNITY ZONES

- **Opportunity Zones**
  - **Actions Required to Designate an OZ:**
    - **Step 1** – determine area(s) that meet the poverty criteria
    - **Step 2** – the Brunswick City Council and/or Glynn County Board of Commissioners take either of the following actions:
      - Designate the area as an enterprise zone, OR
      - Designating the area as an urban redevelopment area pursuant to an urban redevelopment plan
        - “Urban redevelopment area” is a “slum area which the local governing body designates as appropriate for an urban redevelopment project”
        - “Urban redevelopment plan” is a plan for an urban redevelopment project that
          - Conforms to the general plan for the local government, AND
          - Is sufficiently complete to indicate
            - The land acquisition, demolition and removal of structures, redevelopment, improvements, and rehabilitation proposed to be carried out in the urban redevelopment area
            - Zoning and planning changes
OPPORTUNITY ZONES

“Urban redevelopment plan” is a plan for an urban redevelopment project that
- Conforms to the general plan for the local government, AND
- Is sufficiently complete to indicate
  - The land acquisition, demolition and removal of structures, redevelopment, improvements, and rehabilitation proposed to be carried out in the urban redevelopment area
  - Zoning and planning changes, if any
  - Land uses
  - Maximum densities
  - Building requirements
  - The plan’s relationship to definite local objectives for land uses, improved traffic, public transportation, public utilities, recreational and community facilities, and other public improvements

Activation of urban redevelopment powers requires a resolution adopted by the local governing body

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ENTERPRISE ZONES
**Entreprise Zones (EZ)**

- **Purpose**: To improve geographic areas within cities and counties that are suffering from underdevelopment and economic decline – encourages private businesses to reinvest and rehabilitate areas.

- **EZ Criteria**: An area that meets at least 3 of the following 5 criteria:
  - **Pervasive poverty**: Established using the most recent decennial census – 15% of the area’s population below the poverty level.
  - **Unemployment**: At least 10% higher than state average or significant job dislocation.
  - **Underdevelopment**: Evidenced by lack of building permits, licenses, land disturbance permits in the area or lower than development activity within the local government’s jurisdiction as a whole.
  - **General distress**: Evidenced by adverse conditions other than pervasive poverty and unemployment
    - Examples include a high crime rate, abandoned or dilapidated structures, deteriorated infrastructure, and substantial population decline.
  - **General blight**: Evidenced by the inclusion of any portion of the area in an urban redevelopment area.
Enterprise Zones (EZ)

Incentives available in an EZ – will apply to businesses that create and maintain 5 new jobs or improve the value of their property such that the value of the improved property exceeds the value of the land by a ratio of 5:1

- Property tax exemption for 10 years according to following schedule
  - Years 1 – 5 = 100%
  - Years 6 – 7 = 80%
  - Year 8 = 60%
  - Year 9 = 40%
  - Year 10 = 20%

- Local government may also exempt or abate occupation taxes, regulatory fees, building inspection fees, and other fees that would otherwise have been imposed

- EZ will be in existence for 10 years from the first day of the calendar year immediately following its designation – property tax exemption for a qualifying business remains in effect for full 10 years regardless of EZ termination date
TAX ABATEMENT BOND TRANSACTIONS
Property tax abatements using a bond-lease transaction
Leasehold estate created when local development authority enters into bond transaction agreement with private developer of real property
Development authority issues bonds – private developer conveys fee simple title to property to authority – authority property is tax-exempt
Bonds are secured by the lease payments from the private company
Actual financing can be the purpose of the bonds; however, often the sole purpose of the bond-lease transaction is the tax abatement
Private development “buys” the bonds, making company both the obligor on the bonds through the lease payments and the holder of the bonds
Private company pays taxes on the basis of the leasehold estate
TAX ABATEMENT BOND TRANSACTIONS

- Trustee
- Bondholder
- Private Company
- Project
- Brunswick and Glynn County Development Authority

Bond Payments
Lease Agreement
Legislative Action
- O.C.G.A. § 36-80-16.1(e)
- Effective April 22, 2009
- Expressly authorizes each county board of tax assessors to employ method of valuing leasehold estate based on the private company’s increasing interest in property over the term of the lease
- Statute effectively approves the application of the “ramp up” formula
(e) This Code section shall not affect revenue bonds or other revenue obligations which any local government authority has issued or which have been judicially validated on or before April 22, 2009. Each county board of tax assessors shall continue, notwithstanding this Code section, to exercise its powers and discharge its duties and is specifically authorized, without limitation, to use a method or methods of valuation for leases related to revenue bonds or other revenue obligations issued by a local government authority for a capital project or projects to be leased primarily to a nongovernmental user or users, based on assessments of the increasing interest of the nongovernmental user or users in the real or personal property, or both, over the term of the lease, or to use a simplified method or methods employing a specified percentage or specified percentages of such leasehold interests. Each local government authority that is authorized to issue revenue bonds or other revenue obligations secured by a taxable property interest, such as a taxable lease of a capital project, shall continue, notwithstanding this Code section, to exercise its powers and discharge its duties, including, in the case of development authorities, the development of trade, commerce, industry, and employment opportunities. Any local government or local government authority which directly or indirectly receives payments in lieu of taxes shall be authorized to use the same for any governmental or public purpose of such local government or local government authority.
TAX ABATEMENT BOND TRANSACTIONS

- Challenge to Transactions and 2010 Georgia Supreme Court Ruling
  - Trial court order dismissed a challenge to the valuation method
  - Supreme Court reversed and remanded the case with the direction that the Superior Court examine and rule upon the validity and reasonableness of the valuation method
    - Defendants “have not presented evidence that [the] methodology actually resulted in a fair valuation of the leasehold estate.” . . . They assert that we should just assume that every leasehold estate is worth 50 percent of its fee simple estate, but offer no evidence to support this assumption.”
  - Court addressed argument that challenge was barred as a collateral attack on a concluded bond validation
    - Supreme Court: “[P]resent challenge . . . will only constitute a prohibited collateral attack . . . if the memoranda [relating to the valuation method] were specifically adjudicated in the proceedings and held valid by the bond judgment.”

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Current Status & Effect of Ruling

- Trial court must decide whether valuation method “fairly and justly establishes” FMV of leasehold estate and is not “arbitrary or unreasonable”
- Case offers some general guidelines for future tax abatement bond transactions
  - Supreme Court held that board of assessors is not required to use any particular method for determining FMV; however, must establish that method meets the above standard such that it is not arbitrary or unreasonable
  - Development Authority of Fulton County now introduces memorandum of agreement containing valuation method into evidence in bond validation
    - Presents expert testimony at bond validation hearing that memorandum sets forth reasonable and non-arbitrary method for determining FMV
    - Seeks express finding in the validation order
THANK YOU!

If you have any further questions, please do not hesitate to contact me directly:

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