SEYFARTH SHAW

INCENTIVES
FOR COMMUNITY DEVELOPMENT AND REDEVELOPMENT

Daniel M. McRae

Seyfarth Shaw LLP

404-888-1883

dmcrae@seyfarth.com

danmcrae.com

FACEBOOK
http://facebook.com/danmcrae68

LINKEDIN
http://linkedin.com/in/danmcrae2

TWITTER
@McRaeDan

Seyfarth Shaw LLP

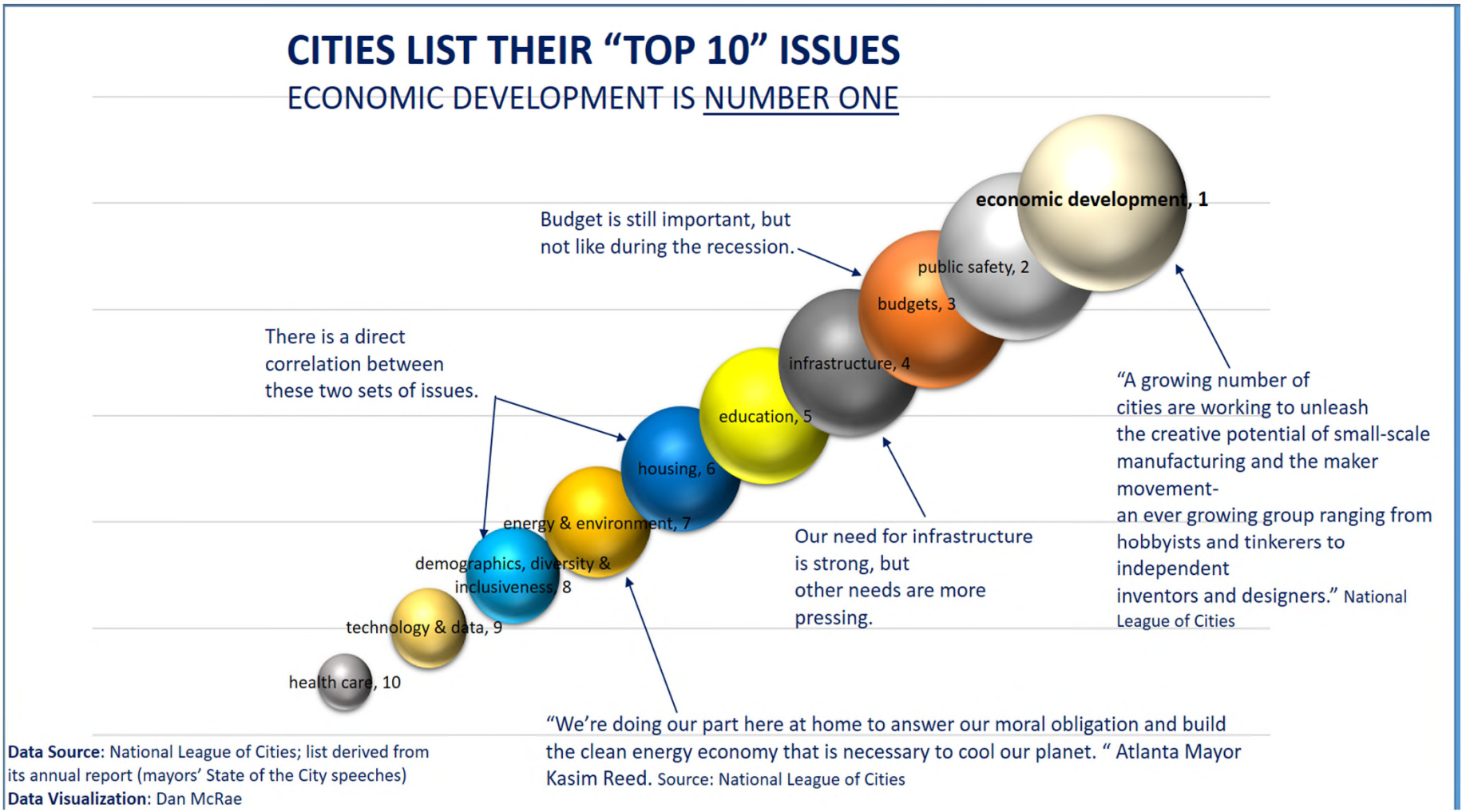
"Seyfarth Shaw" refers to Seyfarth Shaw LLP (an Illinois limited liability partnership).
©2016 Seyfarth Shaw LLP. All rights reserved.

November 2016

WHY INCENTIVES?

©2016 Seyfarth Shaw LLP

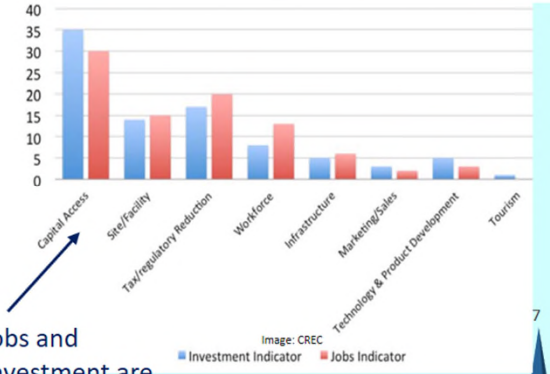
IF YOU WANT GROWTH, YOU HAVE TO HAVE INCENTIVES



©2016 Seyfarth Shaw LLP

WHAT INCENTIVES ARE OFFERED? AND HOW ARE THEY MEASURED?

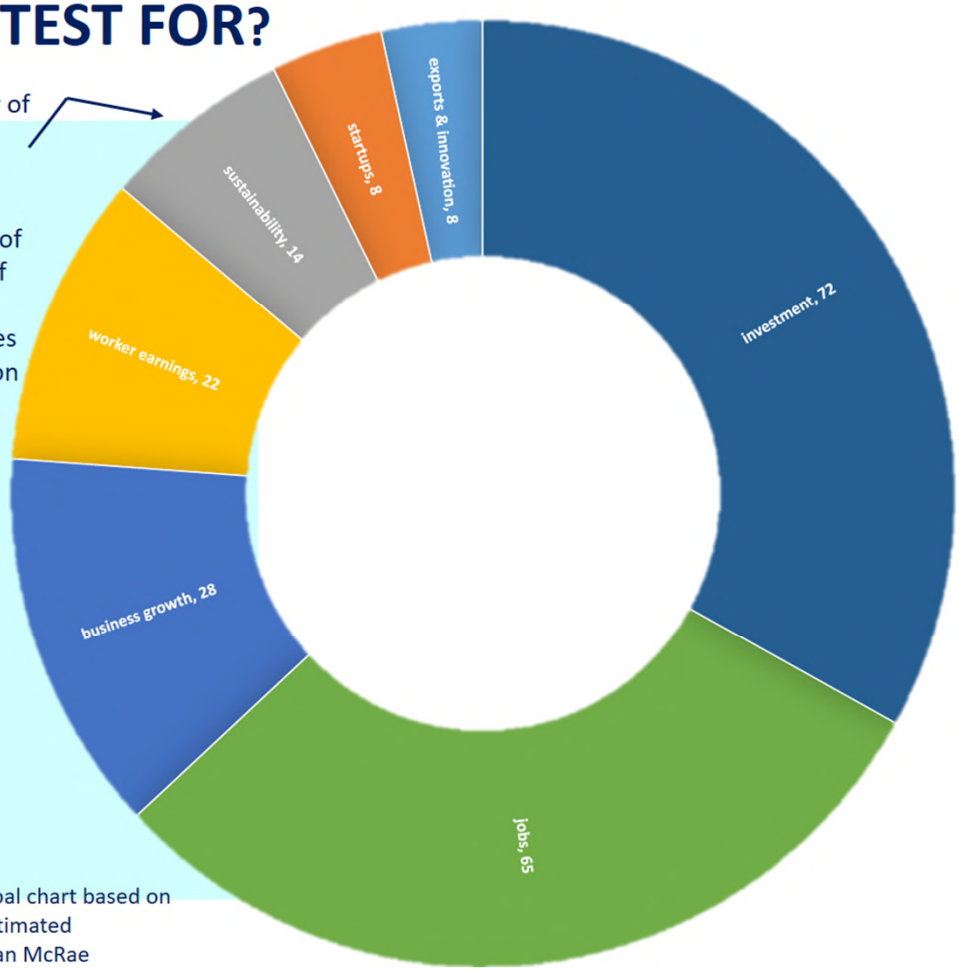
WHAT GOALS DO COMMUNITIES TEST FOR?



jobs and investment are the traditional goals (performance indicators), regardless of the type of incentive offered

there are a number of incentives programs serving each business need

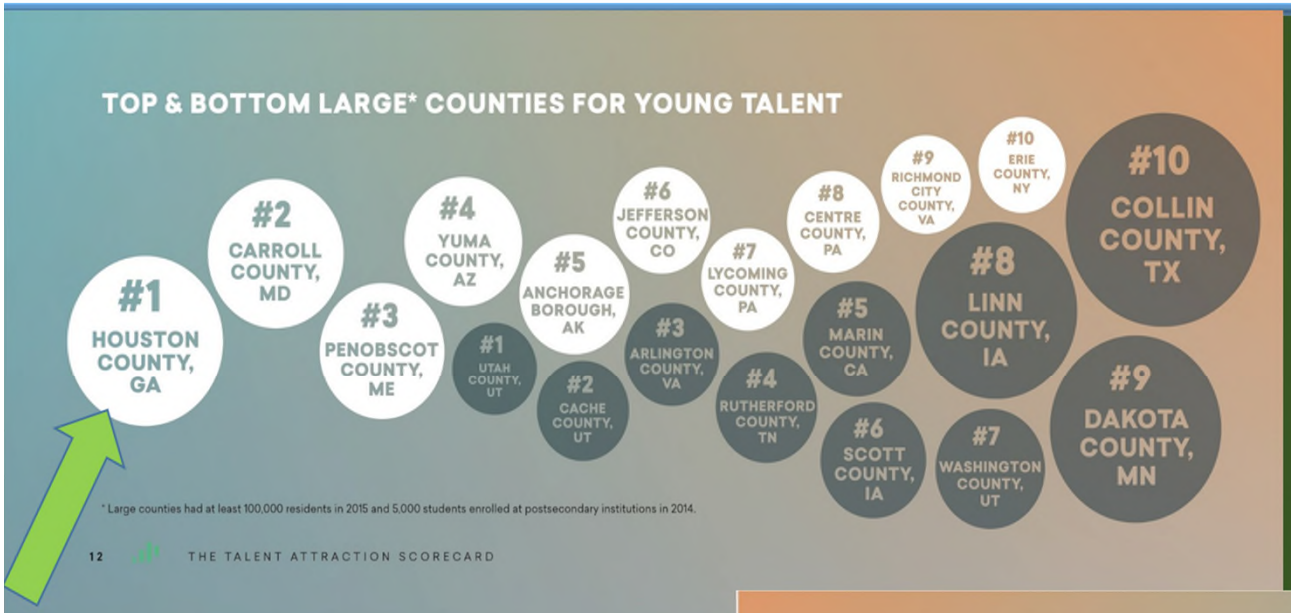
the number of times programs require attainment of each type of goal, shows goals besides or in addition to jobs and investment are now common



Data Source: CREC; goal chart based on interpolation- data estimated
Data Visualization: Dan McRae

©2016 Seyfarth Shaw LLP

A "MILLENNIAL ENVIRONMENT" IS ESSENTIAL TO GROWTH BUT ISN'T LIMITED TO ATLANTA



IN A NATIONAL RANKING

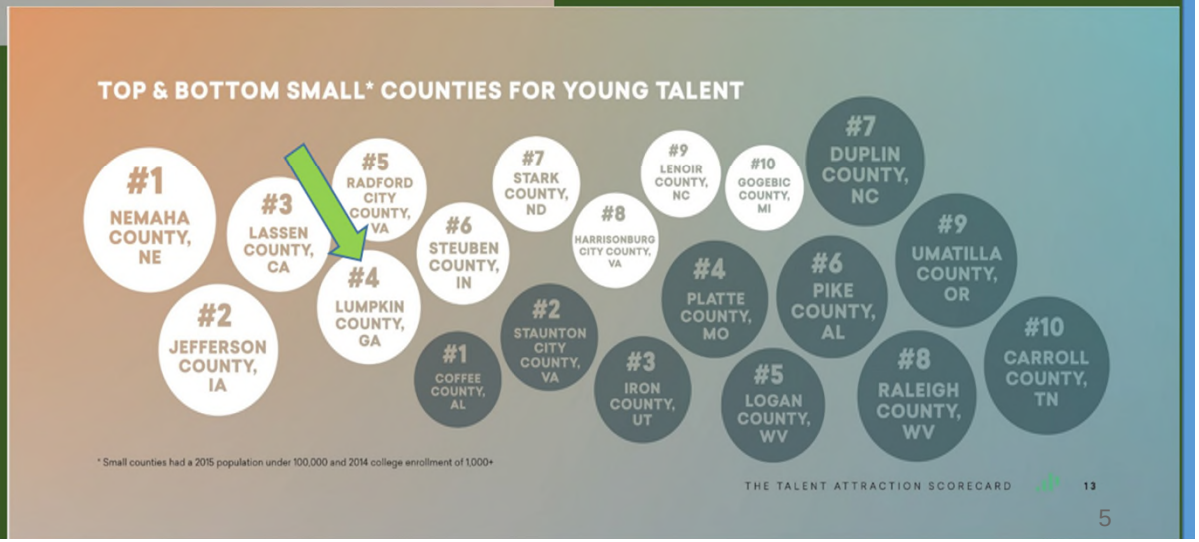
OF LARGE AND SMALL COUNTIES ON HOW WELL THEY

ATTRACT AND DEVELOP YOUNG TALENT

A GEORGIA COUNTY WAS IN THE TOP 10 IN EACH CLASS

Metrics used in scoring were college enrollment growth per capita, and millennial population growth per capita.

- ✓ Houston County's score was helped by huge enrollment growth at Central Georgia Technical School.
- ✓ But its millennial population was also up by 8%.



Source: EMSI

THE GEORGIA WAY
Discretionary Incentives

©2016 Seyfarth Shaw LLP

CAN'T CONFER A "GIFT OR GRATUITY"

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).

©2016 Seyfarth Shaw LLP

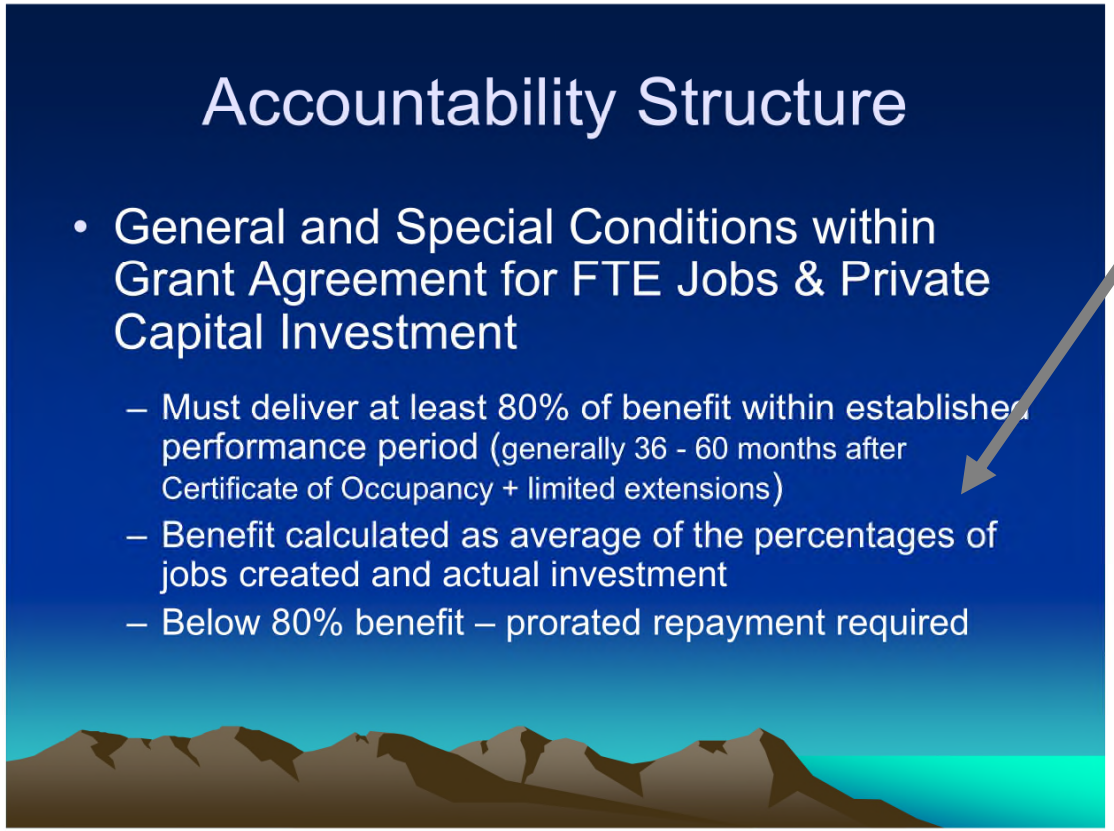
WHY "GIFTS AND GRATUITIES" WERE PROHIBITED

•"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

©2016 Seyfarth Shaw LLP

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?

©2016 Seyfarth Shaw LLP

THE “COLUMBUS CASE”

©2016 Seyfarth Shaw LLP

WHAT HAPPENED

"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."

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

©2016 Seyfarth Shaw LLP

THE MAIN ARGUMENTS

- DOES THIS SECTION OF THE DEVELOPMENT AUTHORITIES LAW LIMIT BELOW FMV SALES TO SALES OF UNUSABLE PROPERTY TO THE STATE?
- O.C.G.A. Sec. 36-6-6-(7.1) Notwithstanding any other provision of this chapter to the contrary, to dispose of any real property for fair market value or any amount below fair market value as determined by the board of directors of the authority, regardless of prior development of such property as a project, whenever the board of directors of the authority may deem such disposition to be in the best interests of the authority if the board of directors of the authority prior to such disposition shall determine that such real property no longer can be used advantageously as a project for the development of trade, commerce, industry, and employment opportunities and if title to such real property is to be transferred to the state;

©2016 Seyfarth Shaw LLP

THE MAIN ARGUMENTS

- DOES THIS SECTION OF THE DEVELOPMENT AUTHORITIES LAW GENERALLY AUTHORIZE BELOW FMV SALES?
- O.C.G.A. Sec. 36-6-6(6) To sell, lease, exchange, transfer, assign, pledge, mortgage, dispose of, or grant options for any real or personal property or interest therein for any such purposes;

©2016 Seyfarth Shaw LLP

NOT CITED

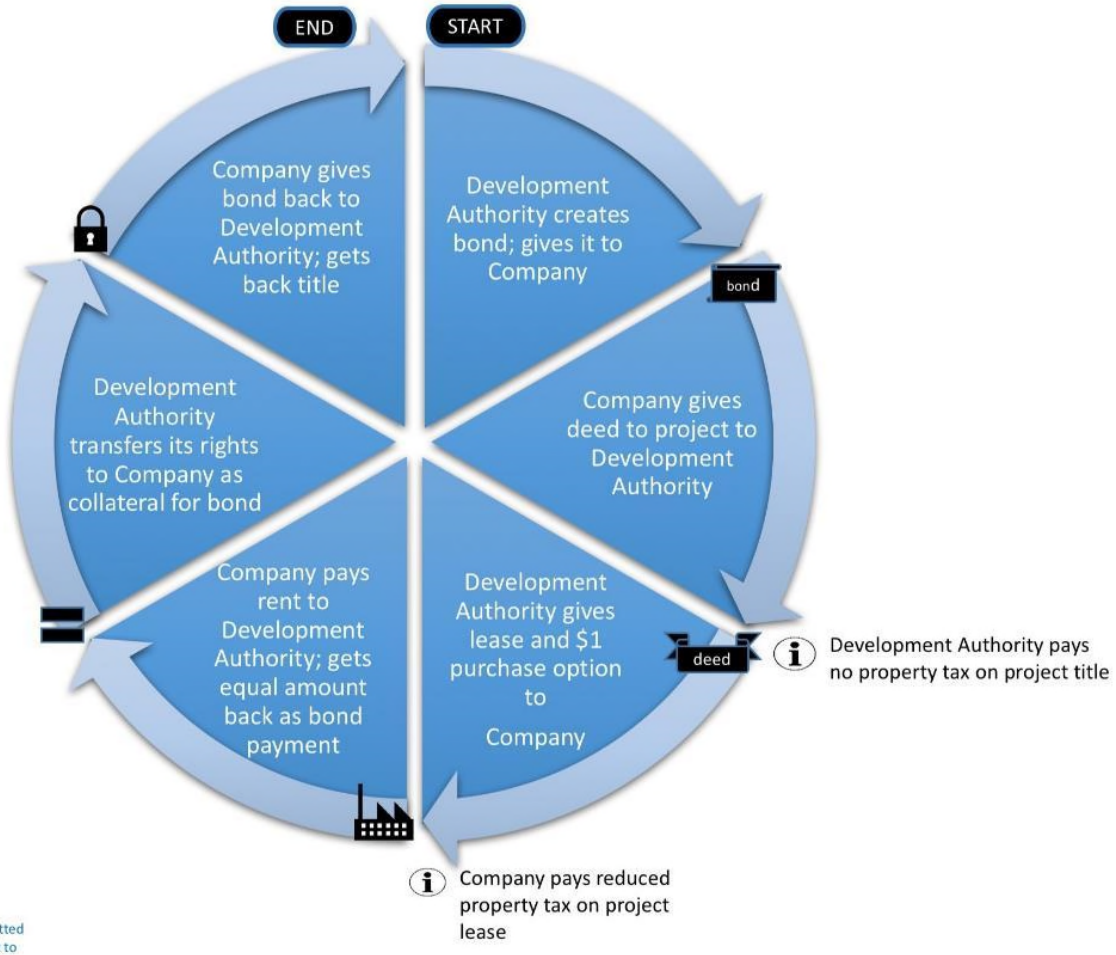
"The Georgia Constitution prohibits the General Assembly from granting any donation or gratuity. Ga. Const. 1983, Art. III, Sec. VI, Para. VI....This office has opined repeatedly that agencies may not dispose of publicly owned property without obtaining fair market value, **or** its equivalent in an 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

©2016 Seyfarth Shaw LLP

PROPERTY TAXES, REAL ESTATE, AND OTHER INCENTIVES

©2016 Seyfarth Shaw LLP

HOW “ABATEMENT” WORKS



Copyright 2016 Dan McRae (dmcrae@seyfarth.com). Reproduction permitted provided this copyright notice and disclaimer included. Document subject to disclaimer at http://www.danmcrae.com/copyright.html .

LEASEHOLD VALUATION "ABATEMENT"

INVEST ATLANTA

Bond Inducement Resolution Fact Sheet
LEASE PURCHASE REVENUE BONDS
GEORGIA PACIFIC LLC

PROJECT NAME: Georgia Pacific LLC

LOCATION: 133 Peachtree Street, NE
Atlanta, Georgia 30303
Council District 2; NPU M

INVESTMENT: Approximately $150,000,000

PROJECT DESCRIPTION: Georgia Pacific will reconfigure 23 floors of their headquarters building located in Downtown Atlanta. The ability to acquire, reconstruct and install the improvements is a material factor in the company's decision to maintain its 2,600 headquarters employees at the location. In addition to the current employees in the building, the project will permit the company to relocate up to an additional 600 of its employees to the building and/or make room for leases to other businesses for location of their employees in the building.

Project improvements include creating a modernized open office environment and technological upgrades attractive to millennial employees. Project improvements also include energy efficiency upgrades and other improvements which will result in reduced costs for lighting, heating/air conditioning and water consumption. These investments will materially decrease the use of energy and water, improving the efficiency of the building by an amount to be determined.

ECONOMIC BENEFITS:

- Approximately $150 million of investment in Downtown Atlanta.
- Potential addition of up to 600 employees with a projected average salary of $100,000.
- The building owner projects that the modernized layout will allow the building to accommodate an additional 1,300 workers, 600 of which could be employees of Georgia Pacific.
- The new building layout will be more efficient for the people currently employed in the building and will be a material factor in the retention of those positions and the attraction of new resources.
- The building will be more energy and resource efficient.
- Estimated tax savings of $7.2 million over 10 years.
- Estimated new City of Atlanta taxes of $1.2 million per year and estimated new Fulton County taxes of $1.7 million per year.*

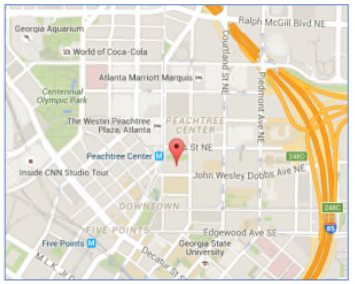
$

ANTICIPATED CLOSING DATE: May 2016

*Based on IMPLAN Analysis

fiscal impact study- new norm

Georgia-Pacific



Source: Invest Atlanta

©2016 Seyfarth Shaw LLP

LEVERAGING EXAMPLE-
COLLEGE PARK GATEWAY PROJECT

Atlanta Airport Marriott Gateway

College Park, GA
403 rooms & 22,000 sf meeting space

Awards & Recognition:
2012 Marriott Hotel of the Year – The Americas
2012 ULI Atlanta Development of Excellence Award
US Green Building Council, LEED Silver

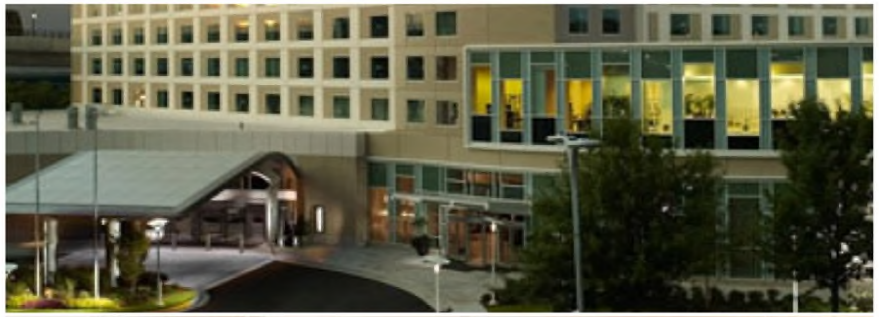
The Atlanta Airport Marriott Gateway Center and Atlanta Airport SpringHill Suites are the only two hotels connected to the World's busiest airport. Connected to both Hartsfield-Jackson Airport and the consolidated rental car facility via the new ATL Skytrain, these hotels have unparalleled connectivity. The full-service Marriott with its 403 rooms,

Credit: Stormont

©2016 Seyfarth Shaw LLP

PILOT BONDS

beautifully designed first-class facilities and 22,000 square feet of flexible meeting space is already a market leader since its opening in 2010. The limited-service SpringHill Suites, completed in 2009, features 147 suites and meeting rooms and provides efficient and convenient accommodations for all travelers.



These hotels were capitalized with a unique blend of public and private capital sourced from development authority "PILOT" bonds and conventional construction lenders as part of a six-lender syndicate. This funding represents an allocation of a two-hotel cross collateralized $76 million loan. The balance of the development costs were funded with equity from partners, affiliates and investors of Grove Street Partners, including Jim Stormont.

This unique development authority bond structure was accomplished by creating a legal structure wherein the property is not subject to real or personal property taxes and therefore, the developer agreed to make Payments in lieu of taxes ("PILOT") which the authority used to fund a portion of the bond debt service. By creating a successful public-private partnership, the City of College Park was able to c

jobs, stimulate economic development and substantially increase the demand and profitability of the adjacent Georgia International Convention Center.

Credit: Stormont

©2016 Seyfarth Shaw LLP

WHAT CITIES ARE DOING NOW

CITIES ARE "TAKING CONTROL OF THEIR OWN DESTINIES"

CITY AUTHORITIES HAVE BECOME "DEAL MAKERS"

PROPERTY TAXES (EVERYBODY'S) ARE A TOOL CITIES USE TO ATTAIN CITY GOALS

OTHER TOOLS- CITY OWNED REAL ESTATE, LAND USE REGULATION, etc.

PUBLIC/PRIVATE PARTNERSHIPS (P3) ARE COMMON

"ABATEMENTS" FOR DEVELOPERS CAN REACH 20 YEARS, 25 YEARS OR LONGER

BARGAINS ARE IMPOSED- MAKEWHOLE CITY TAXES, CLAWBACKS, LIMIT TO OFFSETTING EXCESS COSTS, etc.

END GAME- CURTAIL INCENTIVES AS GOALS ARE ATTAINED

©2016 Seyfarth Shaw LLP

CONTRACT REVENUE BONDS

©2016 Seyfarth Shaw LLP

CONTRACT REVENUE BONDS

- SOME LOCAL AUTHORITY BONDS ARE BACKED BY MILLAGE PLEDGE THROUGH INTERGOVERNMENTAL AGREEMENT ("IGA") WITH LOCAL GOVERNMENT
  - city contracts with city development authority, DDA or URA
  - called "contract revenue bonds" (formerly called "back-door G.O. bonds")
  - PROPER INTERGOVERNMENTAL CONTRACT "BINDS SUCCESSORS" AND CAN LAST FOR UP TO 50 YEARS

©2016 Seyfarth Shaw LLP

LIMITING OBLIGATIONS

- MILLAGE COMMITMENT MAY BE LEGALLY LIMITED
  - EXAMPLE: ECONOMIC DEVELOPMENT MILLAGE
    - 1 MILL FOR COUNTY
    - 3 MILLS FOR CITY
  - "GOVERNMENTAL PURPOSE" MILLAGE CAN BE "FULL FAITH AND CREDIT"
    - not limited by statute
    - can be limited by contract
  - CITY-CONSIDER MILLAGE LIMITATIONS IN CHARTER
  - NO REFERENDUM
    - example of exception: If O.C.G.A. Sec. 36-75-11(c) applies (in practice, this applies only to DeKalb County).

©2016 Seyfarth Shaw LLP

KEY ISSUES

BOTH THE CITY AND THE LOCAL AUTHORITY MUST HAVE THE POWER TO CARRY OUT THE PROJECT BEING FINANCED

CITY DEVELOPMENT AUTHORITIES AND DDAs (statutory)- PRIVATE PROJECTS AND PROPER P3's

DOWNTOWN PROJECTS OFTEN START AS PRIVATE BUT CAN BECOME PUBLIC-

ANTICIPATE IN BOND DOCUMENTS

MANY CITY CONTRACT REVENUE BONDS ARE PRIVATELY PLACED

PRIVATE PLACEMENT MARKET: 3-4%, INTEREST ONLY FIRST FEW YEARS, POSSIBLE AMORTIZATION, PROJECT AND IGA AS COLLATERAL

ALTERNATIVE STRUCTURES-

"GUARANTY"

GRANT

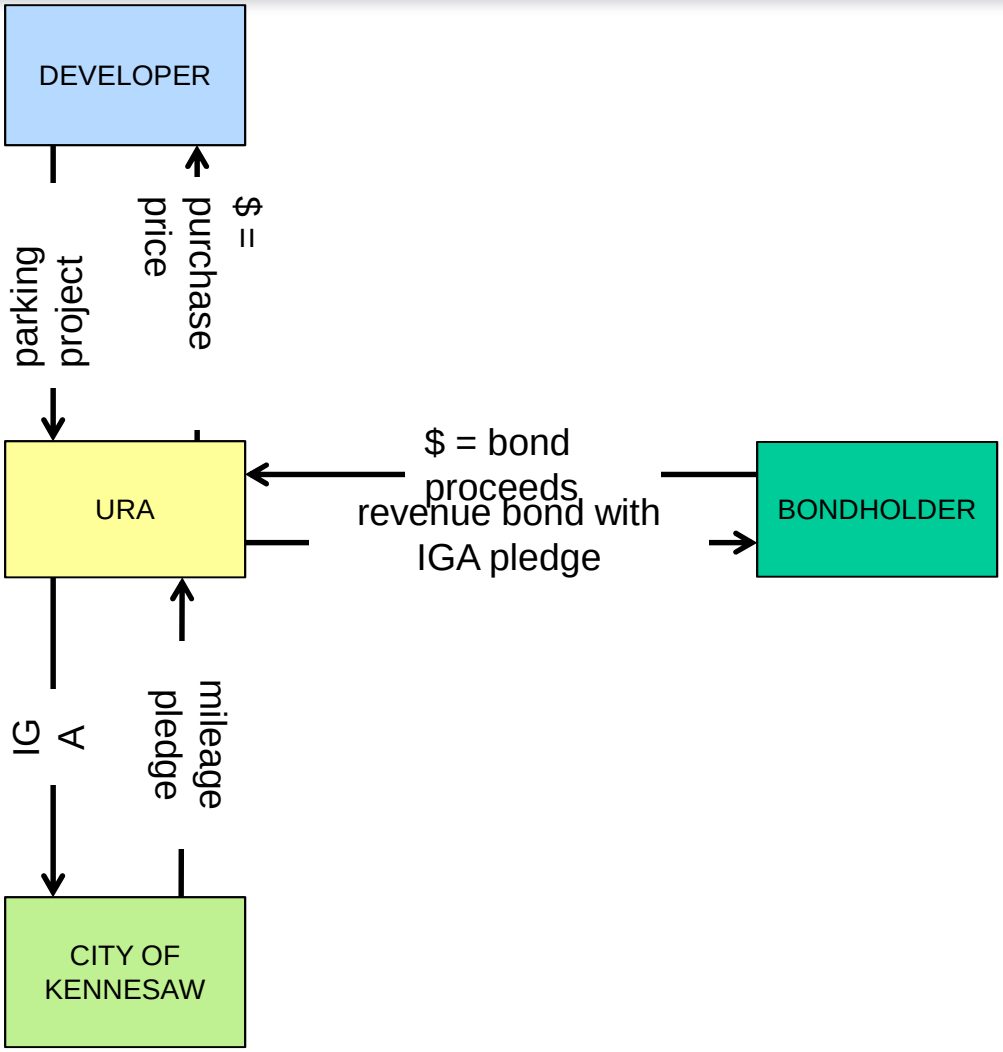
PASS-THROUGH OF INCREMENTAL PUBLIC REVENUES

©2016 Seyfarth Shaw LLP

CASE STUDIES

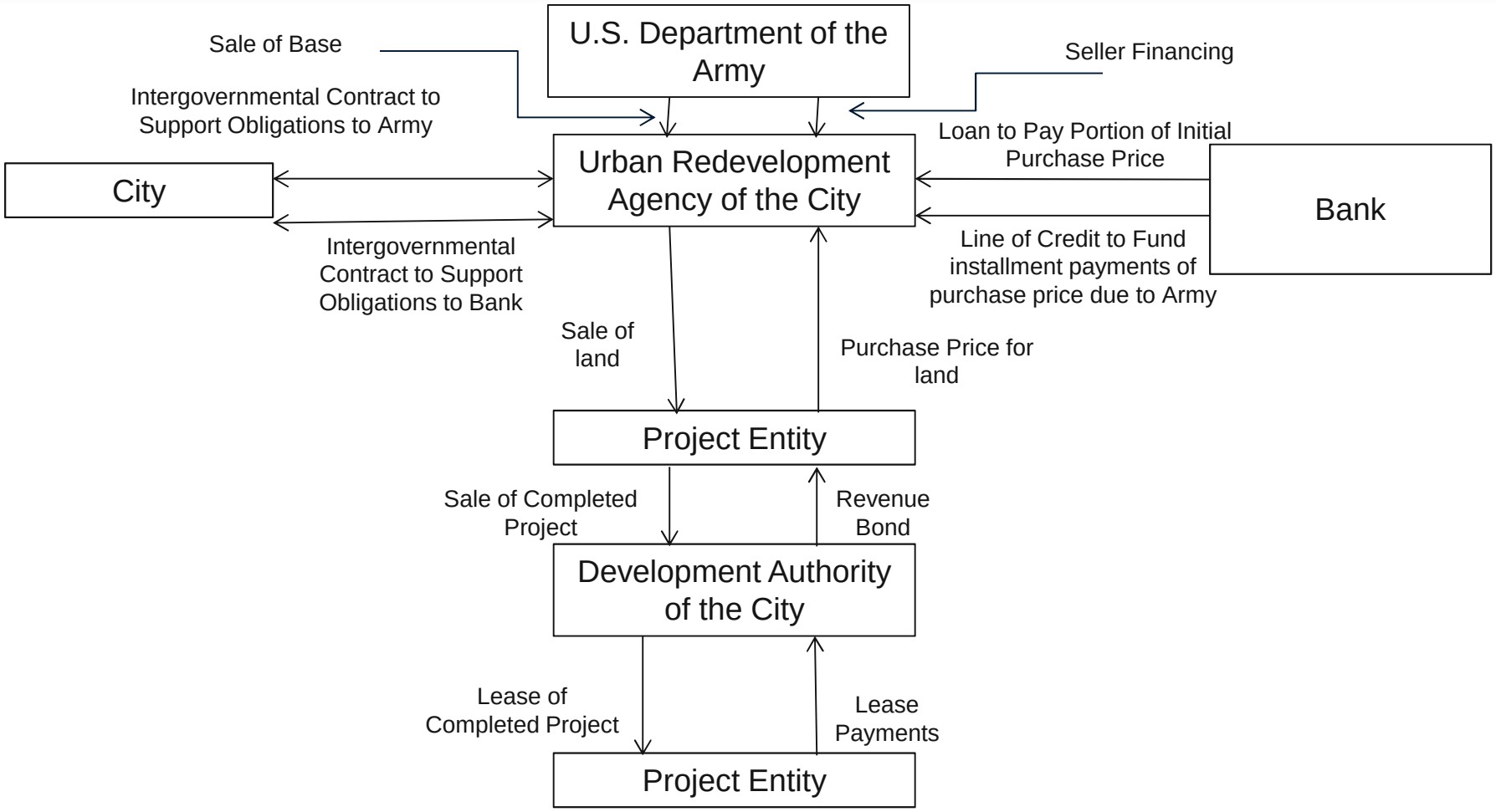
©2016 Seyfarth Shaw LLP

SUCCESS STORY- KENNESAW PARKING DECK



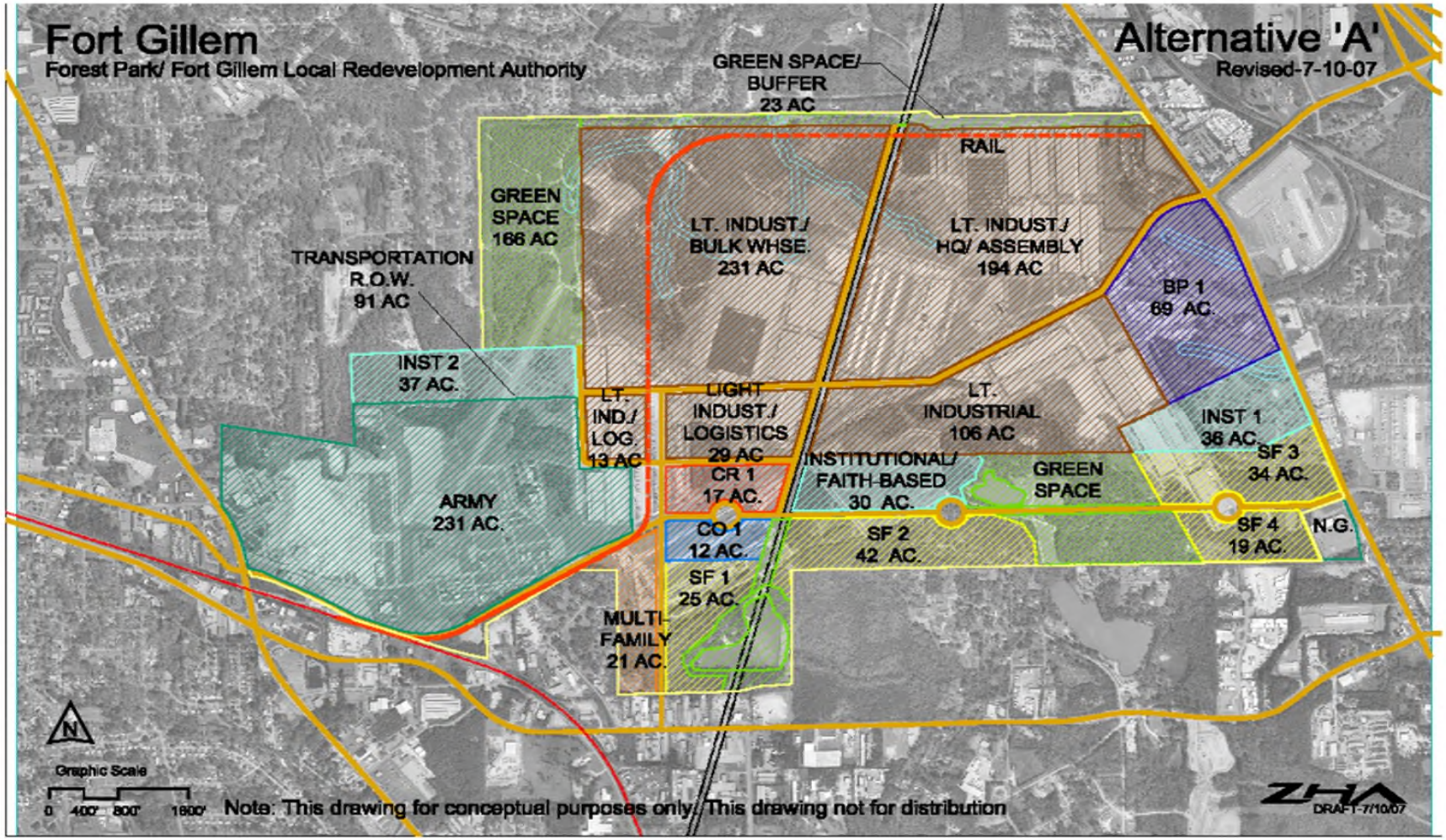
©2016 Seyfarth Shaw LLP

SUCCESS STORY- FORT GILLEM KROGER DISTRIBUTION CENTER



©2016 Seyfarth Shaw LLP

FORT GILLEM KROGER DISTRIBUTION CENTER- IT'S JUST THE BEGINNING



Credit: Wildmor Realty

©2016 Seyfarth Shaw LLP

FORT GILLEM KROGER DISTRIBUTION CENTER- IT'S JUST THE BEGINNING

Just a few weeks after grocery giant Kroger Co. announced their plans to take a portion of Fort Gillem for an enormous refrigerated distribution center, we learn that Kroger's move is just the beginning of Fort Gillem's transformation. After years of negotiating, the major of Fort Gillem's land has been turned over to Forest Park officials, which is the first step in redeveloping Fort Gillen from a vacant and unused Army base to one of Atlanta's largest logistical parks.

Starwood Capital has joined forces with Weeks Robinson Properties to transform Fort Gillem into Gillem Logistics Center, a state-of-the-art logistics hub with unparalleled access to 675, 75, and the Atlanta Airport. The first step in renovating the 1,000 acre project will be widening Hood Avenue and improving the ingress/egress from Moreland Avenue. There are also several brick buildings scattered across the property that will need to be demolished to make room for Kroger and its future neighbors.

Fort Gillem is a great example of the redevelopment trends sweeping across the US market. In years past, companies were looking away from major cities to develop their manufacturing and logistical operations; as online shopping has become more pervasive, however, companies are realizing the importance of interstate and airport access. A similar, albeit smaller, project is taking place near the Fulton County Airport where $150 million in redevelopment is underway on a portion of the land.

Credit: Wildmor Realty

©2016 Seyfarth Shaw LLP

CONCLUSION

©2016 Seyfarth Shaw LLP

DO WHAT YOU CAN

- THERE ARE **SOME** THINGS YOU CAN DO SOMETHING ABOUT
- AND THERE ARE **SOME** THINGS YOU CAN'T DO ANYTHING ABOUT
- THE DESTINY OF DOWNTOWN IS IN ITS STAKEHOLDERS!
- SO DO WHAT YOU CAN
- I HOPE THIS PRESENTATION HELPS

©2016 Seyfarth Shaw LLP

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
danmcrae.com

©2016 Seyfarth Shaw LLP

FOR MORE INFORMATION

- THIS PRESENTATION AND MY WHITE PAPERS ON ECONOMIC DEVELOPMENT AND OTHER TOPICS CAN BE DOWNLOADED

at http://danmcrae.com/whitepapers

©2016 Seyfarth Shaw LLP

SCOPE

This presentation is a quick-reference guide for elected and appointed officials and their staffs, company executives and managers, economic developers, participants in the real estate and financial industries, and their advisors. The information in this presentation is general in nature. Various points which could be important in a particular case have been condensed or omitted in the interest of readability. Specific professional advice should be obtained before this information is applied to any particular case. Any tax information or written tax advice contained herein is not intended to be and cannot be used by any taxpayer for the purpose of avoiding tax penalties that may be imposed on the taxpayer. (The foregoing legend has been affixed pursuant to U.S. Treasury Regulations governing tax practice.)

©2016 Seyfarth Shaw LLP