



# THE DNA OF YOUR DDA

## UNDERSTANDING DOWNTOWN DEVELOPMENT AUTHORITIES

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# LEARNING OBJECTIVES

- ▶ CORPORATE GOVERNANCE
- ▶ THE ROLE OF THE BOARD, THE OFFICERS, AND THE STAFF
- ▶ RELATIONSHIPS WITH OTHER STAKEHOLDERS
- ▶ DO'S AND DON'TS
- ▶ CAN'S AND CAN'T'S



# IS A DOWNTOWN DEVELOPMENT AUTHORITY-

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- **PART OF THE CITY?**
- **A DEPARTMENT OF THE CITY?**
- **CONTROLLED BY THE CITY?**
- **A SEPARATE LEGAL ENTITY?**



# ANSWER

- **SEPARATE LEGAL ENTITY**
  - ▶ A DOWNTOWN DEVELOPMENT AUTHORITY IS A TYPE OF “PUBLIC CORPORATION.” See O.C.G.A. Sec. 36-42-3(1).



# CORPORATE GOVERNANCE

## A Downtown Development Authority is Governed By a Hierarchy—

- ▶ U.S. and Georgia Constitutions
- ▶ Its Governing Law
  - Specific Laws
    - Downtown Development Authorities Law for “statutory” development authorities. O.C.G.A. Sec. 36-42-1 et seq.
    - Its Local Constitutional Amendment and related local acts of General Assembly for “Constitutional” development authorities



# CORPORATE GOVERNANCE

- **Applicable Laws**
  - Example- Reporting of “public benefits” it provides. See O.C.G.A. Sec. 50-36-1
  - Example: Open Meetings Act, O.C.G.A. Sec. 50-14-1 *et seq.*,
  - Example: Open Records Act, O.C.G.A. Sec. 50-18-70, *et seq.*
  - Example: State Code of Ethics, O.C.G.A. Sec. 45-10-3



# CORPORATE GOVERNANCE

- ▶ Its Activating Resolution
  - If a Statutory Downtown Development Authority
- ▶ Its Bylaws
  - Adopted by Board of Directors
- ▶ Its Board of Directors
  - Set Policy and Adopt Resolutions
    - statutory downtown development authority-issuing bonds or notes must be approved by majority of whole board, not just majority of a quorum. O.C.G.A. Sec. 36-42-9(b)



# CORPORATE GOVERNANCE

## ▶ Its Officers

- Carry Out Policy and Implement Resolutions
- Officers:
  - Must also be directors: Chair; Vice-Chair
  - Can be directors: Secretary and Treasurer, or Secretary-Treasurer

## ▶ Its Staff

- Provides Support to Officers and Board





# CORPORATE GOVERNANCE

## ▶ Its Attorney

- Appointed by the DDA (not the City)
- Advises board, officers and staff
- Represents interests of downtown development authority
  - For example, acts as its “Issuer’s Counsel” when it issues revenue bonds



# CORPORATE GOVERNANCE

City retains more of a post-activation role with statutory downtown development authorities than with city-wide development authorities under the Development Authorities Law (O.C.G.A. Sec. 36-62-1 et seq.)

▶ Examples:

- City can-
  - Change the geographical jurisdiction of the DDA by prospectively re-designating its downtown development area (O.C.G.A. Sec. 36-42-6(1))
  - Disapprove any proposed issuance by the DDA of revenue bonds or notes (O.C.G.A. Sec. 36-42-6(3). See below for issues with this power.)



# THE ORIGINS OF DDAs

- “Statutory”
  - ▶ Created by General Assembly under Downtown Development Authorities Law
  - ▶ 1981 and later
  - ▶ Statewide pattern
  - ▶ Activation by City required
- “Constitutional”
  - ▶ Pursuant to Local Constitutional Amendment (“LCA”)
  - ▶ 1987 and earlier
  - ▶ each LCA is different
  - ▶ referendum was required
- Local Act (of General Assembly, not under home rule powers)
  - ▶ Prior to 1981
  - ▶ no referendum required
  - ▶ each Local Act is different



# IN YOUR COMMUNITY- WHAT AUTHORITIES DO YOU HAVE?

- check local Constitutional amendment and local acts (Constitutional authorities only)
- check activating resolution of parent government (statutory authorities only)
- check filings with Secretary of State (statutory authorities only)
- check “Authorities Registration” with Georgia Department of Community Affairs (all authorities)



# STATUTORY DDA- ACTIVATION

- The governing body of the city “activates” the DDA via an “activating resolution”
  - ▶ The General Assembly has already created a DDA for each city
- The DDA cannot transact any business or exercise any powers until the city activates it
- In the activating resolution, the city must-
  - ▶ designate the city’s downtown development area (the geographical jurisdiction of the DDA)
  - ▶ appoint the initial directors of the DDA

O.C.G.A. Sec. 36-42-5



# STATUTORY DDA- AFTER ACTIVATION

- “A copy of the governing body's resolution shall be filed with the Secretary of State, who shall maintain a record of all authorities activated under [the Downtown Development Authorities Law], and with the Department of Community Affairs. The Department of Community Affairs may, but shall not be required to, furnish written comments to any authority within 30 days after the governing body's resolution is filed with the Department of Community Affairs.” O.C.G.A. Sec. 36-42-5(b).
- The City may make a prospective change in the designation of the central business district. O.C.G.A. Sec. 36-42-6(1).



# CONSTITUTIONAL DDA- CREATION

- CREATION PARTICULARS DEPEND ON THE LOCAL CONSTITUTIONAL AMENDMENT (LCA) AND ANY IMPLEMENTING LOCAL LAWS.
- FOR EXAMPLE,

“There is hereby created a body corporate and politic in the City of [City name] in [name] County to be known as the [City] Downtown Development Authority, which shall be an instrumentality of the City ... and a public corporation and which in this amendment is hereafter referred to as the ‘authority’.”



# DIRECTORS- STATUTORY DDA

- **Statutory DDAs have a fixed board size of 7 members**
  - ▶ In contrast, boards of statutory citywide or countywide development authorities under the Development Authorities Law can vary from 7 to 9 directors. O.C.G.A. Sec. 36-62-4(a)
- **Directors are appointed by the City**
- **Staggered terms are provided for the initial directors**
  - ▶ 2 directors for 2 year term, 2 directors for 4 year term, 3 directors for 6 year term
- **Thereafter, all terms are 4 years**
  - ▶ Exception- term of director who is also member of governing body of the City ends when such director is no longer a member of the City's governing body

**See O.C.G.A. Sec. 36-42-4**





# DIRECTORS- STATUTORY DDA

**“(a) Directors shall be:**

- **(1) Taxpayers residing in the municipal corporation for which the authority is created;**
- **(2) Owners or operators of businesses located within the downtown development area and who shall be taxpayers residing in the county in which is located the municipal corporation for which the authority is created; or**
- **(3) Persons having a combination of the qualifications specified in paragraphs (1) and (2) of this subsection;**
- **provided, however, that one of such directors may be a member of the governing body of the municipal corporation.**
- **(b) Not less than four of the directors having the qualifications specified in subsection (a) of this Code section shall be persons who, in the judgment of the governing body of the municipal corporation, either have or represent a party who has an economic interest in the redevelopment and revitalization of the downtown development area. Successors to the directors shall be appointed by the governing body of the municipal corporation.”** O.C.G.A. Sec. 36-42-7



# DIRECTORS- STATUTORY DDA

“(c.1) Notwithstanding subsection (a) of this Code section, one director appointed to the board may reside outside the county; provided, however, that such appointed director owns a business within the downtown development area and is a resident of the State of Georgia. If subsequently to his or her appointment to the board pursuant to this subsection, the director ceases to own a business within the downtown development area or reside in the State of Georgia, such director shall relinquish his or her seat on the board.” O.C.G.A. Sec. 36-42-7

- Question- How much ownership interest is required?
- Another question- If the ownership interest or residency terminates, is the loss of office automatic, or does it require an act by the director? If so, what if he doesn't act?



# DIRECTORS- CONSTITUTIONAL DDA

- MEMBERSHIP DEPENDS ON THE LOCAL CONSTITUTIONAL AMENDMENT (LCA) AND ANY IMPLEMENTING LOCAL LAWS.
- FOR EXAMPLE,

“The authority shall be composed of nine members to be appointed and elected as hereinafter provided. One member of the authority shall be appointed by the mayor and city council of the City.... Five members of the authority shall represent the owners of real property and shall be known as Real Property Owner Group. The remaining three members of the authority shall represent the owners of business establishments whose principal place of business is located in the downtown [City] district and shall be the person or persons actually licensed and operating a business in the district. These members shall be known as the Business Owner Group. The appointment of the representative for the City ... to the authority shall be mandatory.”



# STATUTORY DDA- AREA OF OPERATIONS

- The City designates the downtown development area served by the DDA.
  - ▶ This is the “geographical area within the municipal corporation which, in the judgment of the governing body [of the city], constitutes the central business district.” O.C.G.A. Sec. 36-42-5(a).
- Is designation or redesignation subject to challenge?
  - ▶ In at least one Superior Court case a few years ago, businessmen in the traditional historical central business district successfully convinced the judge that the expansion of the designated area across a river so as to accommodate a big box retailer was improper.



## CONSTITUTIONAL DDA- WHERE CAN IT OPERATE?

LOOK AT WHAT ITS LOCAL CONSTITUTIONAL AMENDMENT SAYS (SUBJECT TO THE ORIGINAL REFERENDUM AND THE OTHER PROVISIONS OF THE CONSTITUTION)-  
FOR EXAMPLE-

“The above area encompassed shall also allow real property owners within 200 feet of the outer boundary with property contiguous to the district to become a part of the territory encompassed by the Downtown [City] Development Authority District, provided such businesses or property are not located more than 200 feet from the outer boundary as described above.”



# STAKEHOLDERS

- A DDA has a different cast of stakeholders than a citywide development authority or a countywide development authority
- DDA stakeholders include-
  - ▶ Local Government (city)
    - city manager
  - ▶ Business Owners
  - ▶ Property Owners
  - ▶ Other Local Authorities and Local Officials
  - ▶ The Public



# STAKEHOLDERS

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- DDA stakeholders also include-
- The State
  - ▶ Georgia Department of Economic Development
  - ▶ Georgia Department of Community Affairs
- State Legislative Delegation



## WHAT IF RELATIONS ARE BAD?

### IS DISSOLVING THE DDA AN OPTION?

- Statutory DDAs have “perpetual existence”. O.C.G.A. Sec. 36-42-7.
- A similar provision (O.C.G.A. Sec. 36-62-14) for statutory citywide and countywide development authorities under the Development Authorities prevented dissolution of such an authority by the parent local government.
- This Section of the Development Authorities Law was amended by the General Assembly in 2000 to allow the parent local government to dissolve a statutory citywide or countywide development authority if it did not have bonds (or bond anticipation notes) outstanding.
- No corresponding amendment was made to the Downtown Development Authorities Law.





# IS DISSOLVING THE DDA AN OPTION?

## CONSTITUTIONAL DDAs-

- They exist under their respective Local Constitutional Amendments (LCAs).
- An LCA can be repealed (but not amended). A referendum is required.
  - ▶ “(b) Any amendment which is continued in force and effect after July 1, 1987, pursuant to the provisions of subparagraph (a) of this Paragraph shall be continued in force and effect as a part of this Constitution, except that such amendment may thereafter be repealed but may not be amended. The repeal of any such amendment shall be accomplished by local Act of the General Assembly, the effectiveness of which shall be conditioned on its approval by a majority of the qualified voters voting thereon in each of the particular political subdivisions affected by the amendment.” Georgia Constitution Article XI, Section I, Paragraph IV
- Some LCAs have special dissolution provisions, typically providing for the Constitutional DDA’s property to pass to the City if the DDA is dissolved.
- Unlikely that a Court would permit a dissolution in a situation where it jeopardized repayment of any outstanding bonds.



# DIRECTORS- CAN THE CITY REMOVE THEM FROM OFFICE?

- STATUTORY DDAs- NO REMOVAL PROVISION.

“The City takes the position that because the Act is silent as to removal, it must be presumed that the directors who are appointed by the City serve at the City's pleasure. We do not agree. The fact that the legislation provides specified terms for the office of director is inconsistent with the idea of tenure at the pleasure of the City.”

... “Because the matter is not before us, we express no opinion as to whether directors may be removed for cause, or under what procedures that might be done.” *Hernandez v. Downtown Development Authority of the City of St. Marys*, 56 Ga. 356, 349 S.E.2d 449 (1986).

- CONSTITUTIONAL DDAs- REMOVAL POSSIBILITY DEPENDS ON LOCAL CONSTITUTIONAL AMENDMENT.

- ▶ SOME LCAs HAVE REMOVAL PROVISIONS.



# DO'S AND DON'TS FOR DIRECTORS - CONFLICTS OF INTEREST

- Avoid conflicts of interest.
- If in doubt, recuse.
- If conflict is financial self dealing, consider the “safe harbor,” O.C.G.A. Sec. 36-62A-1(a)(1).



# DO'S AND DON'T'S FOR DIRECTORS – THE “TEN COMMANDMENTS”

## *“Do’s for Directors”*

1. **Do** get insurance for the DDA.
2. **Do** be diligent. Spend the time that the job requires.
3. **Do** be knowledgeable. Don’t hesitate to seek the advice of experts such as accountants, financial advisors and attorneys when needed.
4. **Do** exercise good, independent business judgment.
5. **Do** follow the rules that the law provides for your entity.



# DO'S AND DON'T'S FOR DIRECTORS – THE “TEN COMMANDMENTS”

## “*Don't's for Directors*”

1. **Don't** approve or sign important documents without knowing what's in them.
2. If you don't understand something, **don't** hesitate to ask.
3. **Don't** ignore “**red flags.**”
4. **Don't** abdicate your responsibilities.
5. It's good to be “***disinterested***” (*i.e.*, no conflicts of interest), but **don't** be ***uninterested!***



# DO'S AND DON'T'S FOR DIRECTORS – THE “ELEVENTH COMMANDMENT”

Despite the demands on you, somehow get the job done!



# CAN'S AND CAN'T'S

**HOW CAN A DDA CARRY OUT ITS MISSION?**

**WHAT IS ITS MISSION?**

**A DOWNTOWN DEVELOPMENT  
AUTHORITY HAS ITS OWN  
“GOVERNMENTAL MISSION”**



# IT'S IN THE CONSTITUTION

GEORGIA CONSTITUTION ARTICLE IX, SEC. VI,-

**“PARAGRAPH III. *DEVELOPMENT AUTHORITIES.*** THE DEVELOPMENT OF TRADE, COMMERCE, INDUSTRY, AND EMPLOYMENT OPPORTUNITIES BEING A PUBLIC PURPOSE VITAL TO THE WELFARE OF THE PEOPLE OF THIS STATE, THE GENERAL ASSEMBLY MAY CREATE DEVELOPMENT AUTHORITIES TO PROMOTE AND FURTHER SUCH PURPOSES OR MAY AUTHORIZE THE CREATION OF SUCH AN AUTHORITY BY ANY COUNTY OR MUNICIPALITY OR COMBINATION THEREOF UNDER SUCH UNIFORM TERMS AND CONDITIONS AS IT MAY DEEM NECESSARY.”





# THE PUBLIC POLICY OF A STATUTORY DDA

**“The revitalization and redevelopment of the central business districts of the municipal corporations of this state develop and promote for the public good and general welfare trade, commerce, industry, and employment opportunities and promote the general welfare of this state by creating a climate favorable to the location of new industry, trade, and commerce and the development of existing industry, trade, and commerce within the municipal corporations of this state. Revitalization and redevelopment of central business districts by financing projects under this chapter will develop and promote for the public good and general welfare trade, commerce, industry, and employment opportunities and will promote the general welfare of this state. It is, therefore, in the public interest and is vital to the public welfare of the people of this state, and it is declared to be the public purpose of this chapter, so to revitalize and redevelop the central business districts of the municipal corporations of this state.”** O.C.G.A. SEC. 36-42-2



# THE PUBLIC PURPOSE OF A CONSTITUTIONAL DDA

WHAT ITS LOCAL CONSTITUTIONAL AMENDMENT  
SAYS. FOR EXAMPLE,

“The General Assembly shall be authorized to create in and for [the City] the Downtown [City] Development Authority for the purpose of redevelopment of the Downtown [City] area.”



# HOW TO CARRY OUT YOUR MISSION

- MOST DDAs ARE FOCUSED ON CBD BUSINESSES.
- THEY ADMINISTER PROGRAMS; e.g., THOSE SPONSORED BY DCA'S OFFICE OF DOWNTOWN DEVELOPMENT.
- HOWEVER, DDAs HAVE THE POWER TO CARRY OUT "PROJECTS."
- "Project" means:
  - (A) The acquisition, construction, installation, modification, renovation, or rehabilitation of land, interests in land, buildings, structures, facilities, or other improvements located or to be located within the downtown development area, and the acquisition, installation, modification, renovation, rehabilitation, or furnishing of fixtures, machinery, equipment, furniture, or other property of any nature whatsoever used on, in, or in connection with any such land, interest in land, building, structure, facility, or other improvement, any undertaking authorized by Chapter 43 of this title as part of a city business improvement district, any undertaking authorized in Chapter 44 of this title, "the Redevelopment Powers Law," when the downtown development authority has been designated as a redevelopment agency, or any undertaking authorized in Chapter 61 of this title, the "Urban Redevelopment Law," when the downtown development authority has been designated as an urban redevelopment agency, all for the essential public purpose of the development of trade, commerce, industry, and employment opportunities in its authorized area of operation; and



# HOW TO CARRY OUT YOUR MISSION

(B) The provision of financing to property owners for the purpose of installing or modifying improvements to their property in order to reduce the energy or water consumption on such property or to install an improvement to such property that produces energy from renewable resources.

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 determine, by a duly adopted resolution, that the project and such use thereof would further the public purpose of this chapter. Such term shall include any one or more buildings or structures used or to be used as a not for profit hospital, not for profit skilled nursing home, or not for profit intermediate care home subject to regulation and licensure by the Department of Community Health and all necessary, convenient, or related interests in land, machinery, apparatus, appliances, equipment, furnishings, appurtenances, site preparation, landscaping, and physical amenities.

O.C.G.A. Sec. 36-42-3(6).



# DDA PROJECTS

- WHEN THE GENERAL ASSEMBLY DEFINED “PROJECT” FOR DDAS, THE LEGISLATIVE INTENT WAS TO CONFER UPON DDAs THE POWER TO ACT UP TO THE FULL CONSTITUTIONAL LIMIT. See *Odom v. Union City Downtown Development Authority*, 251 Ga. 248, 305 S.E.2d 110 (1983).
- AS GEORGIA BECOMES INCREASINGLY URBAN, MORE AND MORE DDAs-
  - CARRY OUT PROJECTS
  - ISSUE REVENUE BONDS TO FINANCE PROJECTS



# DDAs ARE SPECIAL

- CONSTITUTIONAL DDAs HAVE WHATEVER POWERS WERE INCLUDED IN THEIR LOCAL CONSTITUTIONAL AMENDMENTS AND RELATED LOCAL ACTS
- BUT EVEN STATUTORY DDAs HAVE SOME POWERS THAT CITYWIDE OR COUNTYWIDE DEVELOPMENT AUTHORITIES DON'T HAVE UNDER THE DEVELOPMENT AUTHORITIES LAW
- SPECIAL STATUTORY DDA POWERS-
  - ▶ OPERATE OR MANAGE PROJECTS. O.C.G.A. Sec.. 36-42-8(a)(5)
    - APPARENTLY DDA CAN GO INTO BUSINESS.
    - IN REALITY, THERE ARE CONSTITUTIONAL LIMITS. *See Smith v. State*, 222 Ga. 552, 150 S.E.2d 868 (1966)(Constitutional amendment invalid, in part, because it did not limit the activities of the county in furnishing facilities to private enterprise to relieve unemployment, or for any other public purpose).
  - ▶ “EXERCISE ANY POWER GRANTED BY THE LAWS OF THIS STATE TO PUBLIC OR PRIVATE CORPORATIONS WHICH IS NOT IN CONFLICT WITH THE PUBLIC PURPOSE OF THE [DDA]. O.C.G.A. Sec.. 36-42-8(a)(20)
    - THIS POWER COULD HAVE AUTHORIZED CONFERENCE CALL MEETINGS OF THE DIRECTORS PRIOR TO THE EFFECTIVENESS OF HB 397 (NEW OPEN MEETINGS/OPEN RECORDS LAW)



# DDAs ARE SPECIAL

- **SPECIAL STATUTORY DDA POWERS-**
  - ▶ **ISSUE PROMISSORY NOTES.** O.C.G.A. Sec. 36-42-8(a)(6).
    - DDA NOTES HAVE TO BE “REVENUE NOTES” PAYABLE OUT OF PLEDGED REVENUE, NOT OUT OF THE FULL FAITH AND CREDIT OF THE DDA. O.C.G.A. Sec. 36-42-9(a)
  - ▶ **DDAs CAN ALSO ISSUE REVENUE BONDS** O.C.G.A. Sec. 36-42-8(a)(6)
  - ▶ **SPECIAL RESTRICTIONS-**
  - ▶ **MAJORITY VOTE OF ALL OF THE MEMBERS OF THE BOARD REQUIRED TO AUTHORIZE ISSUING BONDS OR NOTES (OR OTHER OBLIGATIONS)** O.C.G.A. Sec. 36-42-9(b)
    - **NO BONDS, NOTES OR OTHER OBLIGATIONS CAN BE ISSUED UNLESS THE BOARD FINDS BY RESOLUTION THAT THE PROJECT BEING FINANCED PROMOTES THE OBJECTIVES FOR WHICH DDAs WERE AUTHORIZED**
      - **REVITALIZATION AND REDEVELOPMENT OF THE CENTRAL BUSINESS DISTRICT**
      - **PROMOTE TRADE, COMMERCE, INDUSTRY AND EMPLOYMENT OPPORTUNITIES**
      - **PROMOTE LOCATION AND DEVELOPMENT OF NEW AND EXISTING INDUSTRY, TRADE AND COMMERCE.** O.C.G.A. Sec. 36-42-2



# DDAs ARE SPECIAL

## SPECIAL STATUTORY DDA POWERS-

- ▶ SPECIAL RESTRICTIONS-
- ▶ CONSISTENT WITH GENERAL PATTERN, DDA REVENUE BONDS HAVE TO BE JUDICIALLY VALIDATED. O.C.G.A. Sec. 36-42-10(a)
- ▶ SPECIAL RIGHT- DDA HAS THE OPTION TO GET ITS PROMISSORY NOTES JUDICIALLY VALIDATED. O.C.G.A. Sec. 36-42-10(a)
- ▶ CITY CAN “DISAPPROVE ANY PROPOSED ISSUE OF REVENUE BONDS, NOTES, OR OTHER OBLIGATIONS OF THE [DDA], IN THE MANNER PROVIDED IN [THE DOWNTOWN DEVELOPMENT AUTHORITIES LAW]”. O.C.G.A. Sec. 36-42-6(3)
  - **HOWEVER, DOWNTOWN DEVELOPMENT AUTHORITIES LAW DOESN'T PROVIDE ANY MANNER FOR DISAPPROVAL.**
    - » *WHAT HAPPENS IF A CITY TRIES TO “DISAPPROVE?”*
    - » *AT WHAT POINT IS THE PROPOSED ISSUE FREE FROM THE RISK OF DISAPPROVAL?*





# DDAs ARE SPECIAL

## SPECIAL STATUTORY DDA POWERS-

- ▶ PER O.C.G.A. SEC. 36-42-3(6), A DDA CAN IMPORT POWERS UNDER-
  - CITY BUSINESS IMPROVEMENT DISTRICT ACT (O.C.G.A. Sec. 36-43-1 et seq.)



# DDAs ARE SPECIAL


## SPECIAL STATUTORY DDA POWERS-

- ▶ PER O.C.G.A. SEC. 36-42-3(6), A DDA CAN IMPORT POWERS UNDER-
  - REDEVELOPMENT POWERS LAW (O.C.G.A. Sec. 36-44-1 et seq.)
    - WHEN THE CITY HAS REDEVELOPMENT POWERS AND THE DDA HAS BEEN DESIGNED AS A REDEVELOPMENT AGENCY
    - A CITY CAN HAVE TWO REDEVELOPMENT AGENCIES
      - \* DDA WITHIN THE DOWNTOWN AREA IF IT'S WITHIN THE REDEVELOPMENT AREA
      - \* ANOTHER REDEVELOPMENT AGENCY FOR THE REST OF THE REDEVELOPMENT AREA. O.C.G.A. Sec. 36-44-4(f)
    - IF A TAD IS CREATED UNDER THE REDEVELOPMENT POWERS LAW AND TAX ALLOCATION BONDS WILL BE ISSUED, THOSE BONDS ARE ISSUED BY THE CITY, NOT THE DDA.
    - DDA CAN ACT AS “PROGRAM MANAGER”



# DDAs ARE SPECIAL

- SPECIAL STATUTORY DDA POWERS-
  - ▶ PER O.C.G.A. SEC. 36-42-3(6), A DDA CAN IMPORT POWERS UNDER-
    - URBAN REDEVELOPMENT LAW (O.C.G.A. Sec. 36-61-1 et seq.)
      - WHEN THE DDA HAS BEEN DESIGNATED AS AN URBAN REDEVELOPMENT AGENCY
- DDA CAN ENTER INTO COOPERATION AGREEMENTS WITH THE CITY'S URBAN RESIDENTIAL FINANCE AUTHORITY



# 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 21<sup>st</sup> 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 DDAs have power to carry out purely public projects.



# VALIDATION IS A BEST PRACTICE FOR ECONOMIC DEVELOPMENT PROJECTS

- Judge's final validation order is “forever incontestable and conclusive.” Ga. Const. Art. IX, Sec. VI, Para. IV
- Traditional- Use validation orders to cover-
  - ▶ Incentives don't violate Constitutional prohibition of “Gifts and Gratuities”
  - ▶ Validity of “abatement” structure
    - leasehold valuation
    - usufruct
      - nontaxable lease
      - PILOT (payment in lieu of taxes) bonds



# VALIDATION IS A BEST PRACTICE FOR ECONOMIC DEVELOPMENT PROJECTS

Now- Also use validation orders to cover-

- P3 project is properly integrated
- the project is not subject to the Georgia Local Government Public Works Construction Law (O.C.G.A. § 36-91-1 *et seq.*)
- the bonds do not constitute a “business loan” or confer any other “public benefit” within the meaning of O.C.G.A. § 50-36-1 (HB 87)
- neither the Company nor any other participant in the transaction involving the bonds or the project and their respective counsel constitute an “applicant for public benefits” within the meaning of O.C.G.A. § 50-36-1
  - ▶ therefore, such persons are not subject to Systematic Alien Verification of Entitlement (SAVE)
- the bonds are not subject to the PILOT Restriction Act (O.C.G.A. § 36-80-16.1)
- the bond issue and the expenditure of the proceeds thereof are exempt from the performance audit and performance review provisions of O.C.G.A. § 36-82-100



# MONEY MAKES THE WORLD GO 'ROUND

- Community development and redevelopment, and economic development, require funding
  - ▶ Where does the money come from?
- Some Constitutional DDAs have the power to tax or assess within their area of operations
- A City has the power to create a special tax district to financially support the DDA and its projects (subject to other legal constraints). Ga. Const. Art. IX, Sec. II, Para, VI; O.C.G.A. Sec. 36-42-16.



# MONEY MAKES THE WORLD GO 'ROUND

- Local governments have the option to financially support their development authorities.
  - ▶ County: 1 mill to a county development authority or a joint city/county development authority (O.C.G.A. Sec. 48-5-220 (20))
  - ▶ City: 3 mills to a city development authority or a joint city/county development authority (O.C.G.A. Sec. 48-5-350)
  - ▶ More: if governmental purpose or if provided in Local Constitutional Amendment
- Some Local Constitutional Amendments (LCAs) authorize additional millage support
- An intergovernmental agreement (IGA) between the local government and the development authority can be used to “monetize” this millage.
  - ▶ Monetization is through “contract revenue bonds.”
  - ▶ IGA can be multiyear.





# BONDS

- The interest on bonds issued by a development authority (industrial development revenue bonds, or IDBs) is either federally taxable or federally tax-exempt.
- Federally tax-exempt bonds are more desirable.
  - Advantages of tax-exempt financing
    - Lower interest rate
    - Longer term
    - Greater marketability
    - More availability of interest-only/ capitalized interest
    - Smaller bond issues more do-able



# BONDS

- Historically, DDAs were active in the bond financing of downtown projects
- But federal tax law changes in the 1980's removed access to tax-exempt financing for most types of DDA projects.
- When tax-exempt bond financing is available, it's still the best way to finance a project.



# CONCLUSION- DDAs ARE IMPORTANT

- BOTH CITYWIDE DEVELOPMENT AUTHORITIES AND COUNTY DEVELOPMENT AUTHORITIES HAVE JURISDICTION WITHIN A DDA'S AREA OF OPERATIONS. SO, WHY DO WE NEED DDAs?  
ANSWER

- ▶ ONE SIZE DOES NOT FIT ALL;
- ▶ DDAs ARE A SPECIALIZED RESPONSE TO A SPECIALIZED NEED;
- ▶ DDAs ARE THE MOST INVOLVED WITH THE DOWNTOWN DEVELOPMENT AREA;
- ▶ DDAs HAVE SOME SPECIAL POWERS THAT CAN BE VERY HELPFUL IN SPECIAL SITUATIONS;
- ▶ DDAs' DIRECTORS REPRESENT THE DOWNTOWN STAKEHOLDERS; AND
- ▶ DDAs HAVE AN IMPORTANT ROLE TO PLAY!



# REFERENCES

THIS PRESENTATION AND OTHER REFERENCES CAN BE DOWNLOADED AS FOLLOWS:

- June 2012- “Bonds 101”
- January 2013- “Development Authorities 101”
- 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>



# QUESTIONS?

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# MORE INFORMATION

This presentation is a quick-reference guide for company executives and managers, elected and appointed officials and their staffs, 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.)