

Downtown Development Authority

Board Member BASIC Training



**Carl Vinson
Institute of Government**
UNIVERSITY OF GEORGIA

Downtown Development Authority Board Member Basic Training Program

Training Agenda



8:30 – 9:00	<p>Welcome, Introductions & Overview</p> <p>Perry Hiott <i>Director, Community Development and Financial Services</i> Georgia Municipal Association</p> <p>Danny Bivins <i>Senior Public Service Associate</i> Carl Vinson Institute of Government The University of Georgia</p>
9:00 – 12:00	<p>DDA Law, Legal Issues</p> <p>Dan McRae <i>Partner, Seyfarth Shaw LLP</i> Atlanta, Georgia</p> <p>Establishment, Management and Operation</p> <ul style="list-style-type: none">• Membership• Jurisdiction• DDA Powers<ul style="list-style-type: none">○ “Governmental Mission”○ Statutory Powers○ “Imported” Powers• Public/Private Partnerships (“P3”)• Financing
Break	<p>DDA Law, Continued</p> <p>Kevin Brown <i>Partner, Seyfarth Shaw LLP</i> Atlanta, Georgia</p> <p>Ethics and Conflicts of Interest</p> <ul style="list-style-type: none">• Open meetings, Closed meetings• Open records• Ethics and Conflicts
12:00 –12:45	<p>Lunch</p>
12:45 –1:20	<p>Historic Preservation Perspective</p> <p>Jeff Harrison <i>Public Affairs Coordinator</i> Historic Preservation Division/DNR</p>

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Training Agenda



1:20 – 2:10

Financing Downtown Projects

Chris Higdon

Manager, Community Development

Georgia Municipal Association

Perry Hiott

Director, Community Development and Financial Services

Georgia Municipal Association

2:10-2:25

Break

2:25-3:05

Downtown Master Planning

Danny Bivins

Senior Public Service Associate, Institute of Government

The University of Georgia

3:05 -4:15

Downtown Topics, Practical Advice, Q & A Time

Jessica Reynolds- Moderator

Director, Office of Downtown Development

Georgia Department of Community Affairs

Amanda Glover

Executive Director Downtown Development Authority

City of Bainbridge

Allen Muldrew

Executive Director Downtown Statesboro Development Authority

City of Statesboro

Carlee Schulte

Main Street and Downtown Development Authority Executive

Director

City of Milledgeville

4:15 –4:30

Certificates

Danny Bivins, Perry Hiott, and Jessica Reynolds

Adjourn

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Speaker Bios



Perry Hiott serves as the *Community Development and Financial Services Director* for the Georgia Municipal Association. Prior to his employment with the Georgia Municipal Association in 1997, Mr. Hiott spent twelve years serving local governments in Georgia, including appointments as Director of Zoning for Fayette County, City Administrator for the City of McDonough, and City Manager for the City of Morrow.

Mr. Hiott received a B.A. degree in Political Science from Clemson University, and he received a Master of Public Administration degree from Georgia College & State University, where he serves as an adjunct instructor of public administration.

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Danny Bivins is a Senior Public Service Associate with The University of Georgia's Carl Vinson Institute of Government. Mr. Bivins specializes in working with downtowns utilizing asset based community development and currently directs downtown development projects for the Carl Vinson Institute of Government. He provides expertise in quality growth for community development in communities in Georgia and beyond. His efforts through the Georgia Downtown Renaissance Partnership have led to the successful implementation of sustainable community redevelopment initiatives.

Mr. Bivins coordinates the Downtown Develop Authority Training for the Carl Vinson Institute of Government with its downtown development partner The Georgia Municipal Association and the Georgia Cities Foundation. He has experience in design, historic preservation, planning, quality growth, regional planning and strategic planning. A native Georgian, Mr. Bivins holds two degrees from the University of Georgia, a Bachelor of Science degree in History and a Master's degree in Historic Preservation. In addition to his studies at UGA, Mr. Bivins has lived and studied at Portland State (Oregon), Hunter College (NYC), University of Charleston (SC) and Avignon, France. In 2009, Mr. Bivins was recognized as one of Georgia Trend Magazine's 40 Under 40.

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Daniel M. McRae is a partner in the Atlanta Office of Seyfarth Shaw LLP, a National Law Firm. Mr. McRae leads the Finance Team that handles the development and financing of private and public projects. Dan has handled finance and investment transactions amounting to billions of dollars for local authorities, local governments, and private companies.

He received the first ever “Bond Counsel of the Year” award from the largest issuer of revenue bonds in the State of Georgia.

Mr. McRae was the first practicing attorney to be elected director of the Georgia Economic Developers Association. He is a recipient of the Rip Wiley Award, GEDA’s highest award for achievement in economic development. Mr. McRae has served two tours as the Chair of GEDA’s Public Policy Committee.

He has received GEDA’s “Zell Miller Public Policy Leadership Award,” for highest achievement in the field of economic development policy. He is the only person ever to have won both the Rip Wiley and Zell Miller awards.

When GEDA initiated its “Deal of the Year” awards, Mr. McRae handled the project that won the first award. Last year, projects handled by Mr. McRae won every single one of the three “Deal of the Year” awards given by GEDA for the most outstanding project in different categories.

A distribution project Mr. McRae handled won the Atlanta Business Chronicle “Best in Atlanta Real Estate” award for 2012. Area Development magazine gave the “Silver Shovel” award to another one of his 2012 industrial projects. An urban mixed-use project he handled won the Urban Land Institute’s 2011 Development of Excellence Award. He is a lead instructor for the University of Georgia’s Carl Vinson Institute of Government, which trains members of development authorities, hospital authorities and other local authorities.

Mr. McRae has served as an officer in the U.S. Navy, and was a member of the Local Redevelopment Agency for NAS Atlanta, giving him personal redevelopment experience from the perspective of the local public body. He publishes a newsletter and a series of White Papers on finance, economic development and other topics. For more information, please visit <http://danmcrae.info>.

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Kevin T. Brown is a partner at Seyfarth Shaw LLP in Atlanta, Georgia. Mr. Brown regularly represents numerous governmental entities throughout Georgia in general and transactional settings, with a particular focus on acting as counsel for public authorities and agencies. Mr. Brown also practices in the areas of commercial and real estate transactions, public-purpose and conduit bond financing, and ad valorem taxation. Prior to joining the Seyfarth team, he was a partner with the law firm of Sell & Melton, L.L.P in Macon, Georgia.

Mr. Brown holds a B.B.A. in Economics and Management from Mercer University's Stetson School of Business and Economics, where he graduated summa cum laude, as well as a J. D. from Mercer University's Walter F. George School of Law, where he served on law review for both 2L and 3L years. He is admitted to the State Bar and all Superior and Appellate Courts of Georgia, United States District Court for the Northern, Middle and Southern

Districts of Georgia, and the Eleventh Circuit Court of Appeals. Mr. Brown regularly presents legal and practical training to diverse groups, including elected officials, government employees and appointees, and professionals.

In addition to his public finance and governmental representation practice, Mr. Brown has extensive governmental and commercial litigation experience, including numerous reported decisions in Georgia's appellate courts and unreported decisions in the United State District Court for the Middle and Southern Districts and the Eleventh Circuit Court of Appeals.

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Jeff Harrison joined the Historic Preservation Division in July 2015, as the Public Affairs Coordinator. In his capacity, Jeff heads communication and outreach efforts at HPD, fielding media requests, issuing press releases, administering Division social media accounts, designing division promotional material and conducting public outreach events.

Before joining HPD, Jeff held various media and communications positions, including jobs in Statesboro and Dalton, Ga., reporting on local city and county governments, and Downtown Development Authorities.

Jeff holds a bachelor's degree in Journalism from Georgia Southern University.

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Chris Higdon serves as the Community Development Manager for the Georgia Municipal Association. Mr. Higdon's roles include coordinating GMA's Community Development Policy Committee, working as the Association's liaison with the Downtown Renaissance Partnership, and serving as a district representative for GMA's outreach program. Additionally, Mr. Higdon assists in the management of the Georgia Cities Foundation's loan programs and has the role of staff support for the Georgia Downtown Association.

Mr. Higdon has 7 years of experience in community and economic development and 11 years private sector experience in design and construction management. Prior to his employment with GMA in 2010,

Mr. Higdon has worked with the Atlanta Regional Commission and the University of Georgia's Institute of Community and Area Development. Mr. Higdon received a B.L.A. degree in Landscape Architecture from the University of Georgia.

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Jessica Reynolds is the Director of the Office of Downtown Development at the Georgia Department of Community Affairs. Jessica most recently served as Communications and Training Coordinator for the Office of Downtown Development, a position she has held since the spring of 2013. Prior to her arrival at DCA, she worked at the High Museum of Art and as Main Street Director for the City of Carrollton. Her tenure as Main Street Director in Carrollton was marked by over 500 net new jobs and almost \$30 million of public and private funds invested into its revitalization efforts during challenging economic times, as well as 5 state awards received by program. Jessica also holds a BFA from the University of West Georgia (UWG) and was a recipient of UWG's inaugural "30 under 30" Award in 2013.

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Amanda Glover is the Executive Director of the Downtown Development Authority for the City of Bainbridge. Amanda, a longtime downtown development professional has served as the Executive Director of the Downtown Development Authority of Bainbridge for fourteen years. Glover has worked relentlessly to create a desirable, vibrant and thriving shopping atmosphere by encouraging community awareness on the importance of downtown as the most vital economic force in the city. The largest project undertaken during her tenure as a Main Street manager was the redevelopment of the 1901 Bon Air Hotel in downtown Bainbridge. The public-private

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Speaker Bios



partnership resulted in a rebirth of 10 apartments and 5 retail shops on the ground floor.

She has assisted with numerous Historic Preservation Tax Credit projects and developed downtown incentives for new and existing businesses. She also secured, managed and implemented three Streetscape Projects in downtown Bainbridge.

In January 2014, the City of Bainbridge was one of five cities in Georgia designated a Georgia Exceptional Main Street (GEMS) program by the Georgia Department of Community Affairs. This pilot program for Georgia's Main Street network provides advanced technical assistance to communities who have been proven leaders in their field of downtown development. The Bainbridge Main Street program has also been recognized as a National Main Street Program every year since its inception in 2003.

Amanda graduated from Presbyterian College with a Bachelor of Science in Business Administration.

Amanda Glover
Executive Director Downtown Development Authority
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Allen Muldrew is the Executive Director of Downtown Statesboro Development Authority and Main Street Statesboro. Under his leadership, he and the board have revitalized Downtown Statesboro with a streetscape, downtown events and brought the Georgia Southern University City Campus to Main Street.

Mr. Muldrew graduated from University of Georgia with a BBA with a major in Real Estate. He started his career in the banking industry as a mortgage loan officer with First Federal Savings Bank of Georgia. Mr. Muldrew extended his career by starting a mortgage company, Southern Mortgage Lending Company. After that, he had the opportunity to open his own retail business called Great Discoveries. It was an apparel company he ran for the next 13 years. He had two successful locations, one in Athens, Georgia and the other in Statesboro, Georgia. Mr. Muldrew sold both businesses in 2002 and spent the next few years in the service of the 12th US Congressional District as a Field Director. Concluding his service in the 12th Congressional District, he worked as a consultant for a biodiesel firm and did feasibility studies on two proposed Interstate Highways. After completing this job, Mr. Muldrew was fortunate to be hired as the Downtown Statesboro Development Authority Executive Director.

Mr. Muldrew is a graduate of Leadership Bulloch, Georgia Academy for Economic Development and the Department of Community Affairs Main Street Training Program.

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Speaker Bios



Mr. Muldrew is married to Lisa Muldrew, Choral Director at Statesboro High, and has three beautiful daughters, Amanda, Julia and Alyssa. When he is not working he enjoys traveling and spending time with his family and friends.

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Carlee Schulte is the Executive Director for the City of Milledgeville. Carlee is a native of Atlanta and 12 year resident of Milledgeville. She is a graduate of Georgia College with a Bachelor's Degree in Marketing. Carlee has served as the Main Street/ Downtown Development Authority Executive Director for the City of Milledgeville since 2011. She provides leadership, support and resources to the downtown business district to grow the economic viability of the area. Under Carlee's direction, the program has won the Award of Excellence in Downtown Development as Program of the Year from the Georgia Department of Community Affairs and Georgia Downtown Association as well as the prestigious Great American Main Street Award from the National Main Street Center, a subsidiary of the National Trust for Historic Preservation. She has been recognized at the state level as a rising star in the downtown development profession. In addition to her work for the City, she also serves on the Rotary Club of Milledgeville and Georgia

Downtown Association's Board of Directors. She is a 2011 graduate of the Georgia Academy for Economic Development and in 2013 achieved certification as a Georgia Downtown Development Professional.

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Presentations Section

THE DYNAMIC DDA

UNDERSTANDING DOWNTOWN DEVELOPMENT AUTHORITIES

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BEFORE WE START, HERE'S A GLOSSARY

- DA = development authority
- DDA = downtown development authority
- IGA = intergovernmental agreement
- JDA = joint development authority
- Statutory = created under the Development Authorities Law or the Downtown Development Authorities Law
- DAL = the Development Authorities Law
- DDAL = the Downtown Development Authorities Law
- Constitutional = created by an LCA
- LCA = local constitutional amendment
- Local Government = city or county
- Authority includes a DA, a DDA and a JDA

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THE DYNAMIC DDA

- DDA'S ARE NO LONGER ACT LIKE A MERCHANT'S ASSOCIATION OR A MAINSTREET ORGANIZATION
- THEY ARE DYNAMIC, THEY DO DEALS
- GET READY TO RAMP UP AND TAKE OFF!

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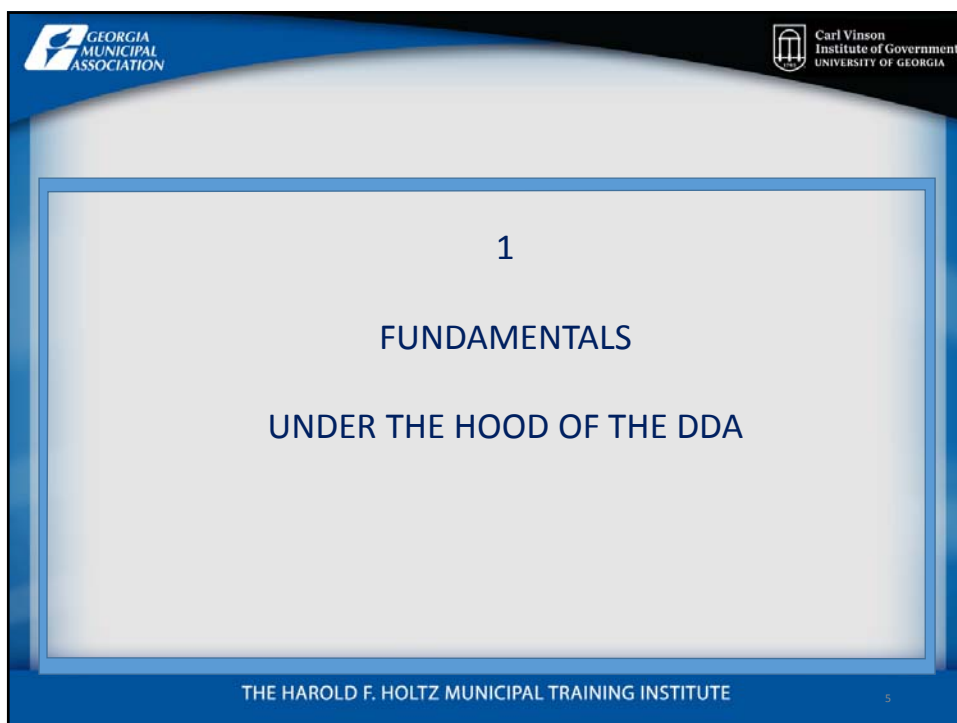

THE RAMP UP

HOW THIS PRESENTATION IS ORGANIZED

1	Fundamentals	6	Constitutional Limits
2	Governance	7	Rules to Follow
3	Jurisdiction	8	Stakeholders
4	Projects	9	Financing Powers
5	Public Projects and Public/Private Projects	10	Special Powers/ Imported Powers

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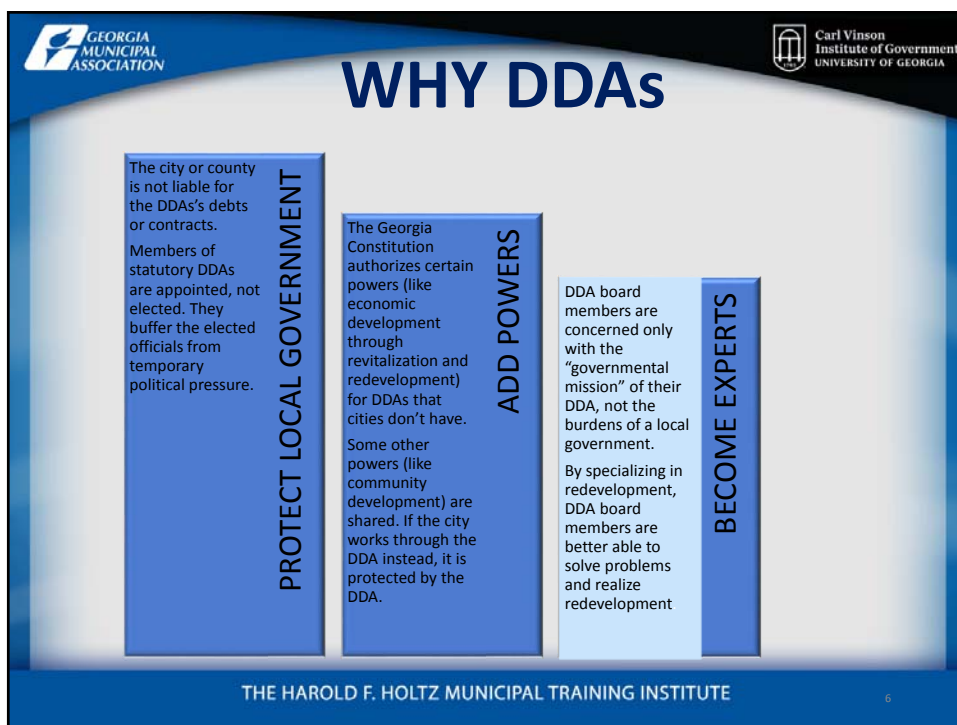
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FUNDAMENTALS

UNDER THE HOOD OF THE DDA

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WHY DDAs

The city or county is not liable for the DDAs's debts or contracts.

Members of statutory DDAs are appointed, not elected. They buffer the elected officials from temporary political pressure.

PROTECT LOCAL GOVERNMENT

The Georgia Constitution authorizes certain powers (like economic development through revitalization and redevelopment) for DDAs that cities don't have.

Some other powers (like community development) are shared. If the city works through the DDA instead, it is protected by the DDA.

ADD POWERS

DDA board members are concerned only with the "governmental mission" of their DDA, not the burdens of a local government.

By specializing in redevelopment, DDA board members are better able to solve problems and realize redevelopment

BECOME EXPERTS

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- THE DDA BOARD IS LIKE A “SUBJECT MATTER EXPERT”
- THE SUBJECT IS REVITALIZATION AND REDEVELOPMENT

A leader takes people where they want to go. A great leader takes people where they don't want to go, but ought to be.

Rosalynn Carter // Quoteistan.com

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GEORGIA IS DEVELOPMENT AUTHORITY-CENTRIC

DEVELOPMENT AUTHORITY

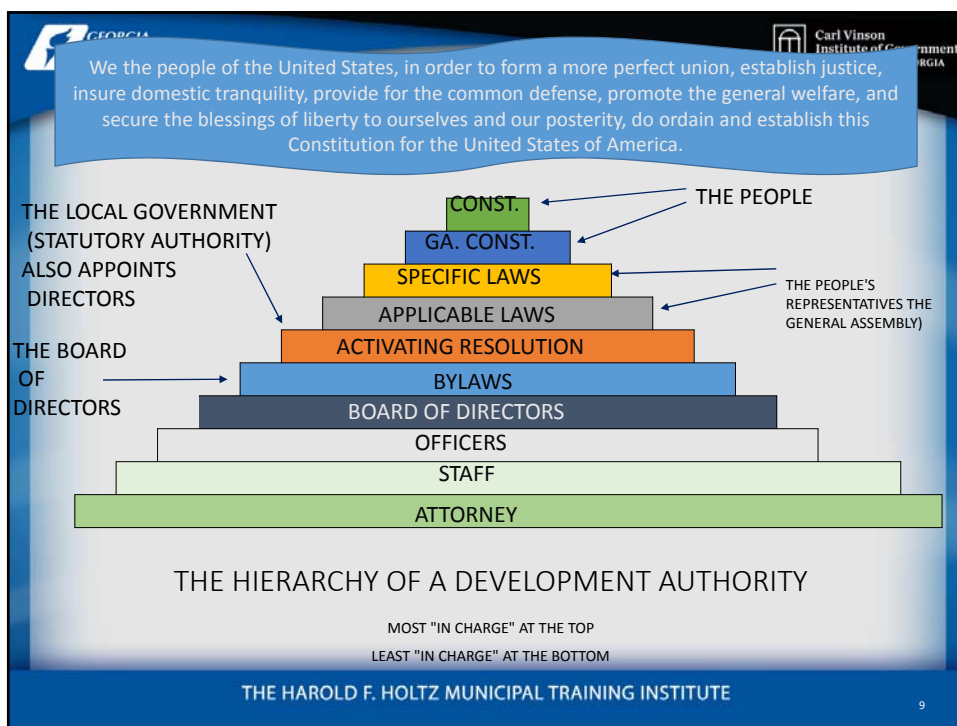
incentives

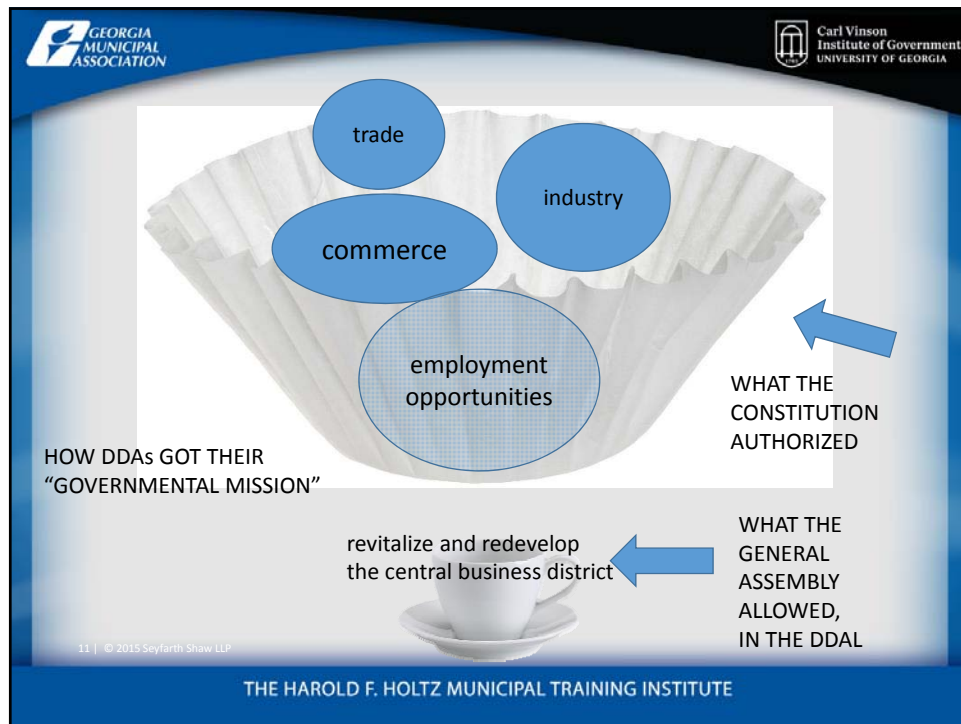
powers

bonds

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GOVERNANCE OF THE DDA

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STATUTORY DDA ACTIVATING RESOLUTION

- 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

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STATUTORY DDA ACTIVATING RESOLUTION

- 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
- The activation, the designation and the appointment are all supposed to be done at the same time
- What’s the result if there never was a resolution that designated the downtown development area?
- What’s the result if the activation, the designation, and the appointment were done, but were done by different resolutions adopted at different times?

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ORGANIZING THE DDA

BOARD	BYLAWS	OFFICERS
<ul style="list-style-type: none"> • Statutory DDA: 7 members; (can include 1 person from mayor or council); term (after first appointments) 4 years (city official's term ends when no longer in office); majority of quorum to pass resolution except issuing debt (needs majority of whole board) • Constitutional DDA- all set by LCA 	<ul style="list-style-type: none"> • Adopted by board • Best practice: include only matters not dictated by governing law, such as officer terms, calling special meetings, meeting schedule • Directors must comply with procedures in bylaws such as notice required before amending bylaws 	<ul style="list-style-type: none"> • Statutory DDA: Chair and Vice Chair (both members), Secretary and Treasurer or Secretary-Treasurer (membership optional) • Constitutional authority- all per LCA

What if a City has a local authority created by the General Assembly by local act, and a statutory DDA. The local act provides for 2 year terms for directors. Can the City harmonize its board appointments by adopting an ordinance specifying 2 year terms for all local authorities, including the DDA?

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STATUTORY DDA DIRECTOR QUALIFICATIONS

A DIRECTOR OF A STATUTORY DDA HAS TO HAVE (AND MAINTAIN AT ALL TIMES) ONE OF THESE QUALIFICATIONS-

1. City resident
2. Resident of City's County and own or operate a business in the downtown development area
3. Qualified under both 1 and 2
4. Member of City's governing body

(at least 4 of the Directors in the above categories have to have or represent a party who has an economic interest in the redevelopment and revitalization of the downtown development area)

5. Resident of Georgia and own a business in the downtown development area

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CONSTITUTIONAL DDA DIRECTORS

- 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.”

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STAFF

- Provides Support to Officers and Board
- Can be hired and compensated
- Can be loaned, assigned or "seconded" by city to DDA
 - Regular salary wouldn't be paid by DDA, so are really appointed instead of hired
 - Sometimes DDA pays additional compensation
 - Careful with bonuses- could be prohibited "gift or gratuity"
 - Understand issues about who is the employer and who has what liabilities

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STAFF

Conflict of interest situations can arise

- Classic example: executive director is city employee and city (or city manager) disagrees with DDA policies or actions

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ATTORNEY

- DDA engages its own attorney
 - city attorney not automatically attorney for DDA
 - if city attorney also engaged by DDA conflicts of interest can arise
 - Example- intergovernmental agreement
- Advises board, officers and staff
- Represents interests of DDA
 - For example, acts as its “Issuer’s Counsel” when it issues revenue bonds

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THE DDA'S JURISDICTION

WHERE IT CAN OPERATE

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STATUTORY DDA AREA OF OPERATIONS

- The DDA is supposed to operate in the downtown development area.
- How is the downtown development area determined?
 - 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).
- The City from DDA to time can update the authorized area by adopting a resolution specifying the area which, in the judgment of the City, “at the time constitutes the central business district.” O.C.G.A. Sec. 36-42-6(1)
- Is designation or re-designation 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.

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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."

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YOU ARE NOT ALONE

jurisdiction begins at center and extends to where arrow points

ALL DDAs

ALL CITY DEVELOPMENT AUTHORITIES

SOME CONSTITUTIONAL CITY DEVELOPMENT AUTHORITIES AND DDAs



ALL COUNTY DEVELOPMENT AUTHORITIES

SOME CONSTITUTIONAL CITY DEVELOPMENT AUTHORITIES

Statutory DDAs have citywide jurisdiction for certain PACE-type projects.

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PROJECTS

WHAT THE DDA CAN DO

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THINK BIG



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.

- ❑ “[The Downtown Development Authorities Law] expands the scope of permissible authority projects beyond that of the DAL to include all types of commercial projects.... This expansion obviously stemmed from the legislative recognition that much of downtown business tends to consist of commerce, and that the effectiveness of the authorities in revitalizing downtown areas would be diminished if they were unable to dangle the lure of revenue financing before the full range of retail and wholesale business.”

Odom v. Union City Downtown Development Authority, 251 Ga. 248, 305 S.E.2d 110,114 (1983).

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WHAT'S A "PROJECT"?

- STATUTORY 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, ...;

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BROAD SCOPE



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. ..."

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

- Note that the DDAL was amended to authorize DDAs to carry out PACE (property assessed clean energy) projects citywide.

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PUBLIC PROJECTS AND PUBLIC/PRIVATE PROJECTS (P/3)

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DDA PROJECTS CAN'T BE TOO "PUBLIC"

For DDAs, whether or not a project is too "public" is an everyday issue.
Recent guidance- *Bremen*, 1999.

- "[The Development Authority's] proposal to construct an 18-hole public golf course is designed to fulfill the **governmental function** of providing **recreational** facilities and services to area residents. Despite charging admission fees in an attempt to cover its operating expenses and debt service, the project is **not a traditional business enterprise conducted for profit** and thus does not meet the definition of a trade, industry, or commerce."

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HOW “PUBLIC” IS TOO “PUBLIC”?

- Although the DDAL authorizes “public” projects, the case law does not, and the case law controls.
- What is the difference between a DDA-owned golf course, that is operated by a management company, and a DDA-owned farmer’s market?
- Note- Some Constitutional DDAs are authorized under their LCAs to carry out even purely public projects.

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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 21st Century, many private projects have public involvement.
- Our Courts are receptive to some public/private partnership projects (P3) if they are properly “integrated.”

□ *Odom* case, 1983.

“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.”

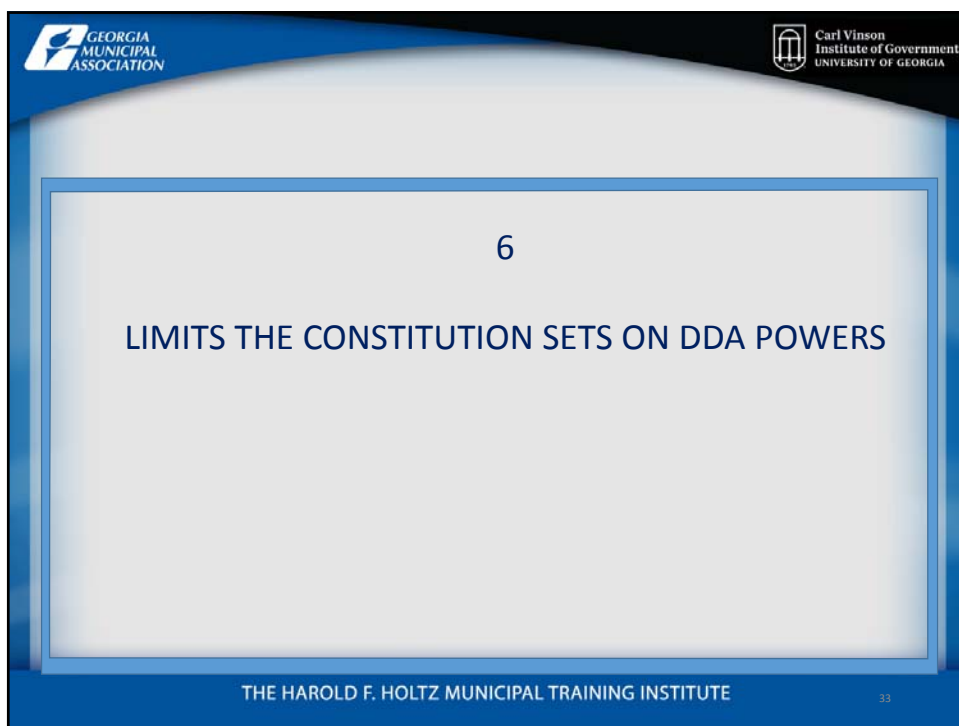
□ *Nations I* case, 1985 (Underground Atlanta project).

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.”

- Both *Odom* and *Nations I* involved statutory downtown development authorities.

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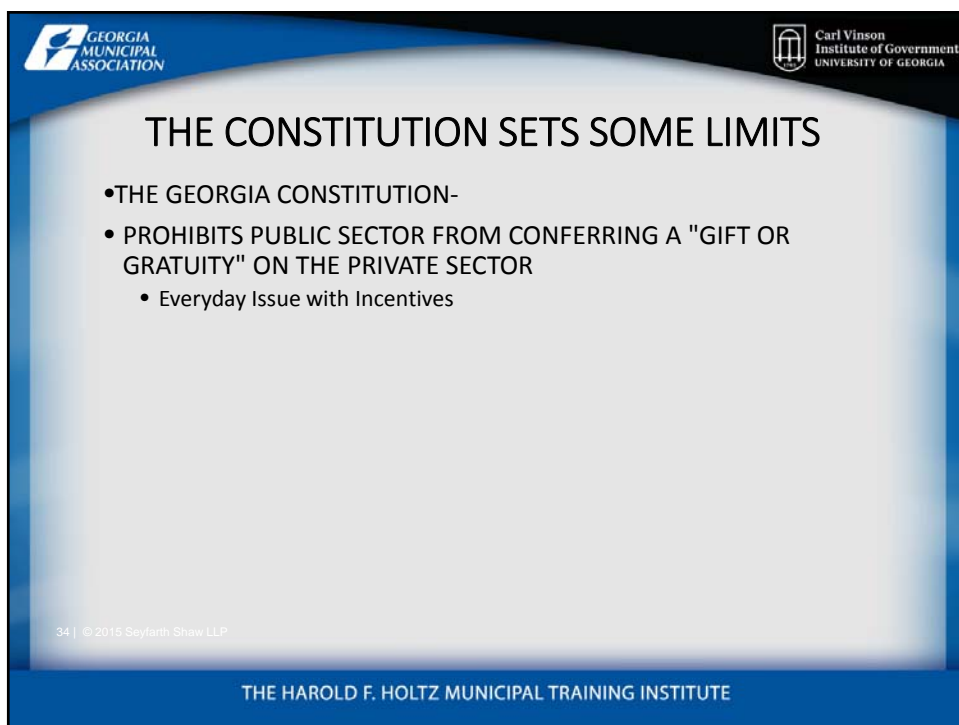
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LIMITS THE CONSTITUTION SETS ON DDA POWERS

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THE CONSTITUTION SETS SOME LIMITS

- THE GEORGIA CONSTITUTION-
- PROHIBITS PUBLIC SECTOR FROM CONFERRING A "GIFT OR GRATUITY" ON THE PRIVATE SECTOR
 - Everyday Issue with Incentives

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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

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THE CONSTITUTION SETS SOME LIMITS

- THE GEORGIA CONSTITUTION-
- PROHIBITS STATUTORY LOCAL AUTHORITIES FROM ROAD CONSTRUCTION PROJECTS INVOLVING LOCAL GOVERNMENTS
 - CID Can Be Useful Partner in Road Projects

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RULES THE DDA MUST FOLLOW

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YOU HAVE TO FOLLOW THE RULES

Applicable Laws

- 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

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YOU HAVE TO FOLLOW THE RULES

Applicable Laws

- Example- Reporting of “public “benefits” it provides (applies to certain incentives). *See* O.C.G.A. Sec. 50-36-1
- Example: Georgia Local Government Public Works Construction Law. O.C.G.A. Sec. 36-91-1 *et seq.*
 - for DDA projects
 - doesn’t cover properly structured projects for prospects
- Federal and State environmental laws

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GETTING ALONG WITH STAKEHOLDERS A “MUST” FOR THE DDA

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YOU HAVE TO GET ALONG WITH YOUR STAKEHOLDERS

- A DDA has a different cast of stakeholders than a citywide development authority or a countywide development authority
- DDA stakeholders include-
 - City
 - City Manager
 - City offices like planning & zoning, building permits
 - Business Owners
 - Property Owners
 - Chamber of Commerce

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STAKEHOLDERS

- DDA stakeholders include-
- Other Local Authorities and Local Officials
- The Public
- The State
 - Georgia Department of Community Affairs
- State Legislative Delegation

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WHAT IF YOU CAN'T GET ALONG?

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.

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WHAT IF YOU CAN'T GET ALONG?

IS DISSOLVING THE DDA AN OPTION?

- 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.
 - 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.

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WHAT IF YOU CAN'T GET ALONG?

- CAN THE CITY REMOVE DIRECTORS 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.

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FINANCING POWERS

HOW THE DDA GETS PROJECTS DONE

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ONE OF "DAN'S RULES FOR LIFE"

THIS IS ONE OF "DAN'S RULES FOR LIFE" -

IF YOU'VE GOT MONEY, ANYTHING'S POSSIBLE.

IF YOU DON'T, NOTHING IS.

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DDAs HAVE SPECIAL FINANCING POWERS

- LIKE OTHER DEVELOPMENT AUTHORITIES, DDAs CAN ISSUE REVENUE BONDS O.C.G.A. Sec. 36-42-8(a)(6)
- BUT DDAs CAN ALSO 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)

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DDAs HAVE SPECIAL FINANCING POWERS

- THE CITY IS NOT LIABLE FOR DDA REVENUE BONDS OR NOTES.
- BUT DDA REVENUE BONDS AND NOTES CAN BE SUPPORTED BY AN INTERGOVERNMENTAL AGREEMENT WITH THE CITY.
- GEORGIA CONSTITUTION AUTHORIZES STATE, LOCAL GOVERNMENTS, AND LOCAL AUTHORITIES TO ENTER INTO CONTRACTS AMONG THEMSELVES FOR UP TO 50 YEARS
- Georgia Supreme Court Upheld "Right to Bind Successors" in 2015
- Confirmed Bonds for Braves and Falcons

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DDAs HAVE SPECIAL FINANCING POWERS

- THE CITY CAN COMMIT UP TO 3 MILLS TO FINANCIALLY ASSIST THE DDA PER O.C.G.A. SEC. 48-5-350
 - CHARTER CONSTRAINTS ON CITY MILLAGE SHOULD BE CONSIDERED
- THE DDA CAN PLEDGE THE IGA'S REVENUES TO REPAY DDA BONDS OR NOTES.
- DDA BONDS OR NOTES SECURED BY A CITY IGA ARE VERY MARKETABLE.
- INTEREST RATES AND TERMS ARE VERY GOOD.

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DDAs HAVE SPECIAL FINANCING POWERS

- 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)

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SPECIAL POWERS IMPORTED POWERS

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DDAs HAVE OTHER SPECIAL POWERS

- 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)

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DDAs HAVE OTHER SPECIAL POWERS

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.)

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DDAs HAVE OTHER SPECIAL 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 (O.C.G.A. Sec. 36-61-1 et seq.)
 - 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
 - WHEN THE CITY QUALIFIES FOR AN URFA

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DDAs HAVE OTHER SPECIAL POWERS


- 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"

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TAKE OFF!


WHAT SOME DDAs ARE DOING WITH THEIR POWERS

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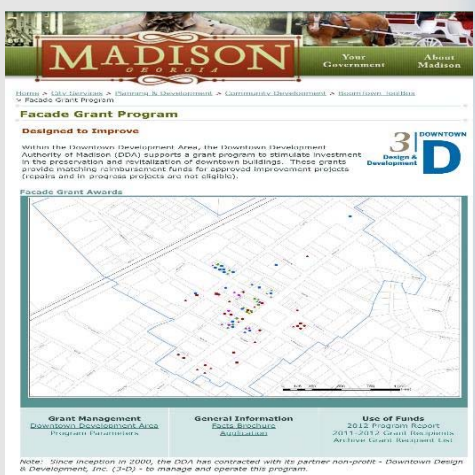
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FAÇADE GRANT PROGRAMS

- Around 40 DDAs have them
- Must promote revitalization of CBD
- Must be structured to avoid violating Georgia Constitution's prohibition on "Gifts and Gratuities"
- Process should be transparent
- A good application form solves many issues



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REDEVELOPMENT

- Typical DDA activities-
- Property acquisition
- Town Center
- Town Green
- Incentives for redevelopment by private sector
- Public/Private
- Partnership Projects (P3) with private sector developers

Sugar Hill Town Center Program Overview


- ▶ 4-story structure with 200 luxury millennial housing units
- ▶ 22 high-end town homes
- ▶ Multi-level parking structure to serve site and city
- ▶ 96 Independent Living Units
- ▶ Joint use greenspace with public art and water features
- ▶ 20,000 square feet of retail/grocery/office/restaurant space
- ▶ 686 structured and surface parking spaces
- ▶ Total project will sit on about 7.5 acres of city-owned land

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REDEVELOPMENT



- DUBLIN "SKYSCRAPER"



"The restoration of the seven-story building known as Dublin's skyscraper is a partnership with the Dublin Downtown Development Authority, Walters Management Co. and Georgia Military College. It has been called the tallest building between Macon and Savannah. The downtown development authority began preparing the building for development in 2013, which included getting an option to purchase, gaining approval for state and federal historic tax credits and securing a developer and tenants." Source: press release

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THE DYNAMIC DDA CONCLUSION

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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!

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QUESTIONS?

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FOR MORE INFORMATION

- THIS PRESENTATION AND MY WHITE PAPERS ON ECONOMIC DEVELOPMENT AND OTHER TOPICS CAN BE DOWNLOADED at <http://danmcrae.com/whitepapers>

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SCOPE

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.)

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Downtown Development Authority Member & Staff Training

Open Meetings, Open Records

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- II. Liability Issues
- III. Open Meetings Act – With sweeping changes by HB 397
- IV. Open Records Act – With moderate changes by HB 397

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I. ETHICAL ISSUES

- Notwithstanding any provisions of law to the contrary, each member of all boards, commissions, and authorities created by general statute shall:

- (1) Uphold the Constitution, laws, and regulations of the United States, the State of Georgia, and all governments therein and never be a party to their evasion;
- (2) Never discriminate by the dispensing of special favors or privileges to anyone, whether or not for remuneration;
- (3) Not engage in any business with the government, either directly or indirectly, which is inconsistent with the conscientious performance of his governmental duties;
- (4) Never use any information coming to him confidentially in the performance of governmental duties as a means for making private profit;
- (5) Expose corruption wherever discovered;

I. ETHICAL ISSUES (cont.)

- (6) Never solicit, accept, or agree to accept gifts, loans, gratuities, discounts, favors, hospitality, or services from any person, association, or corporation under circumstances from which it could reasonably be inferred that a major purpose of the donor is to influence the performance of the member's official duties;
- (7) Never accept any economic opportunity under circumstances where he knows or should know that there is a substantial possibility that the opportunity is being afforded him with intent to influence his conduct in the performance of his official duties;
- (8) Never engage in other conduct which is unbecoming to a member or which constitutes a breach of public trust; and
- (9) **Never take any official action with regard to any matter under circumstances in which he knows or should know that he has a direct or indirect monetary interest in the subject matter of such matter or in the outcome of such official action.**

O.C.G.A. § 45-10-3 (emphasis added)

I. ETHICAL ISSUES (cont.)

- The provisions of paragraph (9) of Code Section 45-10-3 and of paragraph (1) of this subsection shall be deemed to have been complied with and any such authority may purchase from, sell to, borrow from, loan to, contract with, or otherwise deal with any director or member or any organization or person with which any director or member of said authority is in any way interested or involved, provided (1) that any interest or involvement by such director or member is disclosed in advance to the directors or members of the authority and is recorded in the minutes of the authority, **(2) that any interest or involvement by such director with a value in excess of \$200.00 per calendar quarter is published by the authority one time in the legal organ in which notices of sheriffs' sales are published in each county affected by such interest, at least 30 days in advance of consummating such transaction,** (3) that no director having a substantial interest or involvement may be present at that portion of an authority meeting during which discussion of any matter is conducted involving any such organization or person, and (4) that no director having a substantial interest or involvement may participate in any decision of the authority relating to any matter involving such organization or person. As used in this subsection, a 'substantial interest or involvement' means any interest or involvement which reasonably may be expected to result in a direct financial benefit to such director or member as determined by the authority, which determination shall be final and not subject to review.
- O.C.G.A. 36-62A-1(a)(2); Virtually Identical to O.C.G.A. § 36-62-5(e) **(emphasis added for new language effective July 1, 2010 pursuant to Senate Bill 456.)**

I. ETHICAL ISSUES (cont.)

- The provisions of paragraph (9) of Code Section 45-10-3 . . . shall be deemed to have been complied with and any such authority may purchase from, sell to, borrow from, loan to, contract with, or otherwise deal with any director or member or any organization or person with which any director or member of said authority is in any way interested or involved, provided:
 - (1) [Under the same numbered subpart, there are two requirements]:
 - that any interest or involvement by such director or member is disclosed in advance to the directors or members of the authority
 - that any interest or involvement is recorded in the minutes of the authority,
 - (2) **that any interest or involvement by such director with a value in excess of \$200.00 per calendar quarter is published by the authority one time in the legal organ in which notices of sheriffs' sales are published in each county affected by such interest, at least 30 days in advance of consummating such transaction,**
 - (3) that no director having a substantial interest or involvement may be present at that portion of an authority meeting during which discussion of any matter is conducted involving any such organization or person, and
 - (4) that no director having a substantial interest or involvement may participate in any decision of the authority relating to any matter involving such organization or person.
- O.C.G.A. 36-62A-1(a)(2); Virtually Identical to O.C.G.A. § 36-62-5(e)(1)(B) **(emphasis added for new language effective July 1, 2010 pursuant to Senate Bill 456.)**

I. ETHICAL ISSUES (cont.)

- As used in the subject conflict of interest statutes, a “substantial interest or involvement” means:
 - any interest or involvement which reasonably may be expected to result in a direct financial benefit to such director or member as determined by the authority, which determination shall be final and not subject to review.

O.C.G.A. §§ 36-62A-1(a)(2) and 36-62-5(e)(1)(B)

- As a practical matter, however, with the additional language added in 2010, if the monetary amount of the transaction which raises the conflict has a value of \$200 or more for any calendar quarter, there is effectively a “substantial interest or involvement” which triggers the conflicts procedures.

I. ETHICAL ISSUES (cont.)

- **ASK THE QUESTION!**
 - BEFORE the subject matter, resolution, or action is to be discussed, ask whether any member has reason to believe that he or she may have a conflict of interest.
 - Who should ask?
 - Counsel to the Authority;
 - Executive Director or staff; or
 - Chairman, Vice-chair or other members.
 - What question to ask?
 - Counsel and staff need to know enough about the authority’s members and project to be able to assist.
 - “Code names” may make ascertaining conflict more difficult; try to give members sufficient information about a prospect so that they can identify possible conflicts.

I. ETHICAL ISSUES (cont.)

- The penalties are set forth in O.C.G.A. § 45-10-4.
- A complaint or formal charge of the violation must be made to the Governor's Office to set review and possibility of penalty into motion.
- Review and hearing of actions of member and authority as a whole.
- Upon a hearing, if the member who participated in the transaction with the authority is found to have had a conflict of interest and the scheme has NOT been followed, that member may be removed from the board at the discretion of the Governor.
- Possible civil actions and loss of immunity; see Section II, below.
- If the actions are egregious enough, criminal liability and civil fines may also follow.

II. LIABILITY ISSUES

- Official Immunity for authority members is premised upon O.C.G.A. §51-1-20, which reads in pertinent part:
 - A person serving with or without compensation as a member, director, or trustee, or as an officer of the board without compensation, . . . of any local governmental agency, board, authority, or entity shall be immune from civil liability for any act or any omission to act arising out of such service if such person was acting in good faith within the scope of his or her official actions and duties and unless the damage or injury was caused by the willful or wanton misconduct of such person.
- O.C.G.A. § 51-1-20(a)

II. LIABILITY ISSUES (cont.)

- Official Immunity has been interpreted under this Code section to provide immunity from suit and damages so long as the alleged actions were taken in good faith and were not wanton and willful in nature. See Atlanta Airmotive, Inc. v. Royal, 214 Ga. App. 760, 449 S.E.2d 315 (1994).
- Official Immunity can be lost, however; one of the main ways that this type of immunity can be lost is through the existence of a conflict of interest that was not revealed and sanctified by the various procedures outlined above.
- Official Immunity cannot be lost for failure to follow the Georgia Open Meetings Act. See Atlanta Airmotive, Inc. v. Royal, 214 Ga. App. 760, 449 S.E.2d 315 (1994). (However, there are other penalties for such a failure. In this regard, see section III, below.)
- Official Immunity cannot be lost because a member negligently performs his/her duties on an authority. See Dyches v. McCorkle, 212 Ga. App. 209, 441 S.E.2d 518 (1994).

II. LIABILITY ISSUES (cont.)



- What Types of Liability Situations Can Authorities Expect to Encounter?
 - Bonded Debt or Revenue Bonds.
 - General Liability for Personal Injury, Wrongful Death, or Damage to Property.
 - Legal Compliance with State Laws (such as Open Meetings violations)
 - Condemnation of Property.
 - Many Other Types of Liability Yet to Be Dreamed up by Innovative Lawyers.

II. LIABILITY ISSUES (cont'd)

- What Do Authorities Need to Do to Protect Themselves from Liability?
 - Obtain Commercial General Liability ("CGL") Insurance. This type of insurance protects against damages to person and property that may occur in the course of the authority carrying out of its business.
 - Obtain Automobile Liability Insurance. Typically, CGL policies exclude damages that arise out of the operation, use, or collision involving the use of an automobile. Therefore, either the authority should maintain a rider to its CGL policy adding automobile liability insurance or require that employees carry adequate insurance to cover any liability that may arise; this is true even if employees typically use authority vehicles.

II. LIABILITY ISSUES (cont'd)



- What Do Authorities Need to Do to Protect Themselves from Liability? (continued)
 - Obtain Public Officials/Directors Liability Insurance.
 - Protects and insulates members AND staff from having to pay damages as a result of their actions on behalf of the authority.
 - Most D&O policies EXCLUDE and DO NOT COVER actions of members or staff that violate any law, including the conflicts of interests provisions of O.C.G.A. §§ 45-10-3 and 50-8-60 et seq., Open Meetings or Open Records statutes, as well as other general and or criminal statutes.
 - D&O insurance provides one very important protection above Official Immunity: The insurer will provide and/or pay for attorney representation of the authority, staff and/or board member in connection with any alleged liability.
 - Many insurers require that the agency also maintain a CGL policy.

III. OPEN MEETINGS ACT

- A “meeting” is defined as:
 - the gathering of a quorum of the members of the governing body of an agency at which any official business policy, or public matter of the agency is formulated, presented, discussed or voted upon; or
 - the gathering of quorum of any committee of the members of the governing body of an agency or a quorum of any committee created by the governing body at which any official business, policy, or public matter of the committee is formulated, presented, discussed or voted upon.
- O.C.G.A. § 50-14-1(a)(3)(A)(i) & (ii) (as signed by Governor on April 17, 2012)

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III. OPEN MEETINGS ACT

- The definition of a “meeting” does NOT include:
 - (i) the gathering of a quorum of the members of the governing body or committee for the purpose of making inspections of physical facilities or property under the jurisdiction of such agency at which no other official business of the agency is to be discussed or official action is to be taken; or
 - (ii) the gathering of a quorum of the members of a governing body or committee for the purpose of attending state-wide, multijurisdictional, or regional meetings to participate in seminars or courses of training on matters related to the purpose of the agency or to receive or discuss information on matters related to the purpose of the agency at which no official action is to be taken by the members;
 - (iii) the gathering of a quorum of the members of a governing body or committee for the purpose of meeting with officials of the legislative or executive branches of the state or federal government at state or federal offices and at which no official action is to be taken by the members;
- O.C.G.A. § 50-14-1(a)(3)(B)(i), (ii) & (iii) (as signed by Governor on April 17, 2012)



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III. OPEN MEETINGS ACT

- The definition of a “meeting” does NOT include (continued):
 - (iv) the gathering of a quorum of the members of a governing body of an agency for the purpose of traveling to a meeting or gathering as otherwise authorized by this subsection so long as no official business, policy, or public matter is formulated, presented, discussed, or voted upon by the quorum; or
 - (v) the gathering of a quorum of the members of a governing body of an agency at social, ceremonial, civic, or religious events so long as no official business, policy, or public matter is formulated, presented, discussed, or voted upon by the quorum.
 - BUT... these listed exclusions from the definition of the term 'meeting' do not apply if it is shown that the primary purpose of the gathering or gatherings is to evade or avoid the requirements for conducting a meeting while discussing or conducting official business.
- O.C.G.A. § 50-14-1(a)(3)(B)(iv) & (v) (as signed by Governor on April 17, 2012)

III. OPEN MEETINGS ACT (Cont.)



- An “agency” under the OMA is defined to include “every city, county, regional, or other authority established pursuant to the laws of this state” O.C.G.A. § 50-14-1(a)(1)(D).
 - There are numerous other entities included in the definition of covered agencies, including a “nonprofit organization to which there is a direct allocation of tax funds made by the governing body of any agency as defined in this paragraph which constitutes more than 33 1/3 percent of the funds from all sources of such organization.” O.C.G.A. § 50-14-1(a)(E).
 - Some authorities throughout the state contract with and utilize the services of non-profit entities, such as chambers of commerce, or other local non-profits to assist in their activities. Those authorities and non-profit entities should be aware of the possible inclusion of the non-profit entities under the OMA and assess whether the criteria are met as defined above.

III. OPEN MEETINGS ACT (Cont.)

- General Rules:
 - All Meetings of a Downtown Development Authority Must be Open to the Public.
 - All meetings must have pre-posted agendas.
 - Minutes of Meetings Must Be Maintained.
 - NEW- all votes at any meeting must be taken in public AND minutes must record the names of persons voting against a proposal or abstaining when a vote is taken by roll-call and not unanimous. See Cardinale v. City of Atlanta, A11A0217 (March 22, 2012).
- O.C.G.A. § 50-14-1(b)(1) (as signed by Governor on April 17, 2012)



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III. OPEN MEETINGS ACT (Cont.)

- For the first time, we now have a statutory definition of what the ORA used to refer to as a "Closed Meeting," but what is now referred to as an "Executive Session":
 - "Executive session" means a portion of a meeting lawfully closed to the public.
 - In order for an authority to enter into and have an executive session, the subject matter of the item(s) to be discussed must be solely within one of the statutory exceptions provided.
- O.C.G.A. § 50- 14-1(a)(2) (as signed by Governor on April 17, 2012)

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III. OPEN MEETINGS ACT (Cont.)

- For Downtown Development Authorities, the most common statutory exceptions to the requirement that all meeting be open to the public are:
 - Matters encompassed by the attorney-client privilege
 - Matters involving of Real Estate (big change from previous law)
 - Deliberations Regarding Employees, Agents, or Members
 - Incidental conversation unrelated to the business of the agency
 - E-mail communication among the members of an agency, provided that such emails must be disclosed under the Open Records Act.

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III. OPEN MEETINGS ACT (Cont.)

- Matters encompassed by the attorney-client privilege
 - Portions of a meeting during which the Authority is to “consult and meet with legal counsel pertaining to pending or potential litigation, settlement, claims, administrative proceedings, or other judicial actions brought or to be brought by or against the agency or any officer or employee or in which the agency or any officer or employee may be directly involved,” may be closed to the public. O.C.G.A. § 50-14-2(1).

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III. OPEN MEETINGS ACT (Cont.)

- Matters encompassed by the attorney-client privilege
 - A meeting cannot be closed to discuss whether or not to close a meeting, even when an attorney is being consulted. O.C.G.A. § 50-14-2(1).
 - The attorney must be the authority's attorney, retained to represent the authority, and not the attorney of a prospect or other entity; otherwise, the attorney-client privilege does not exist and the meeting cannot be closed.
 - NEW – previously, the law did not require minutes to be kept during an executive session of an authority to consult with counsel under this exception; now, however, the law has been changed to require minutes be kept during attorney-client privileged executive sessions:
 - In the case of executive sessions where matters subject to the attorney-client privilege are discussed, the fact that an attorney-client discussion occurred and its subject shall be identified, but the substance of the discussion need not be recorded and shall not be identified in the minutes. O.C.G.A. § 50-14-1(e)(1)(C).
 - Our courts have previously allowed voting during a closed session on recommendations of counsel with regard to pending or potential litigation. See *Schoen v. Cherokee County*, 242 Ga. App. 501, 530 S.E.2d 226 (2000). However, **NOW**, based on the current statute, ALL votes must be made in open meeting. O.C.G.A. § 50-14-1(b)(1) (as signed by Governor on April 17, 2012)



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III. OPEN MEETINGS ACT (Cont.)

- Matters encompassed by the attorney-client privilege
 - A meeting may not be closed to discuss potential litigation under the attorney-client privilege UNLESS the authority can show a realistic and tangible threat of legal action against it or its officer or employee (i.e., a threat that goes beyond a mere fear or suspicion of being sued. A realistic and tangible threat of litigation is one that can be characterized with reference to objective factors that may include, but are not limited to, the following:
 - a formal demand letter or some comparable writing that presents the party's claim and manifests a solemn intent to sue;
 - previous or pre-existing litigation between the parties or proof of ongoing litigation concerning similar claims; or
 - proof that a party has both retained counsel with respect to the claim at issue and has expressed an intent to sue.

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III. OPEN MEETINGS ACT (Cont.)

- **Matters involving Real Estate**
 - Previously under the OMA, only matters related to the ACQUISITION of real estate were allowed to be discussed in executive session.
 - **NOW**, meetings may be closed under the OMA relating to real estate if they are:
 - Meetings when any agency is discussing or voting to:
 - (A) Authorize the settlement of any matter which may be properly discussed in executive session under the attorney-client exception;
 - (B) Authorize negotiations to purchase, dispose of, or lease property;
 - (C) Authorize the ordering of an appraisal related to the acquisition or disposal of real estate;
 - (D) Enter into a contract to purchase, dispose of, or lease property subject to approval in a subsequent public vote; or
 - (E) Enter into an option to purchase, dispose of, or lease real estate subject to approval in subsequent public vote.

O.C.G.A. § 50-14-3(b)(1) (as signed by Governor on April 17, 2012)

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III. OPEN MEETINGS ACT (Cont.)

- **Matters Relating to Real Estate – New requirement.**
 - HB 397 requires a strange twist with regard to voting on matters relating to real estate. The new statute states:
 - No vote in executive session to acquire, dispose of, or lease real estate, or to settle litigation, claims, or administrative proceedings, shall be binding on an agency until subsequent vote is taken in an open meeting where the identity of the property and the terms of the acquisition, disposal, or lease are disclosed before the vote or where the parties and principal settlement terms are disclosed before the vote. O.C.G.A. § 50-14-3(b)(1) (as signed by Governor on April 17, 2012)
 - This is in contravention to a recent court ruling that an agency can vote in closed session on matters encompassed within the real estate exception. See Johnson v. Board of Commissioners of Bibb County, A1 0A0398, (2010).
 - When is the “subsequent vote” required to be made? Before entering into a contract? Closing? After Closing? Will others parties to contracts for real estate conveyance be comfortable to close unless the governmental agency has voted in open session to approved the details of the deal?

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III. OPEN MEETINGS ACT (Cont.)

- **Deliberations Regarding Employees, Agents, or Members**



- Meetings may be closed under the OMA if they are:
 - Meetings when discussing or deliberating upon the appointment, employment, compensation, hiring, or periodic evaluation or rating of a public officer or employee or interviewing applicants for the position of the executive head of an agency.
 - This exception does not apply to the receipt of evidence or when hearing argument on personnel matters, including whether to impose disciplinary action or dismiss a public officer or employee or when considering or discussing matters of policy regarding the employment or hiring practices of the agency. (Significant change from pre- HB 397 rule)
 - As with all matters discussed in executive sessions under HB 397, the vote on any matter covered by this paragraph must be taken in public and minutes of the meeting as provided in this chapter shall be made available. Meetings by an agency to discuss or take action on the filling of a vacancy in the membership of the agency itself must at all times be open to the public.

O.C.G.A. § 50-14-3(b)(1) (as signed by Governor on April 17, 2012)

III. OPEN MEETINGS ACT (Cont.)

How to Comply with the OMA When an Agency Intends to Enter into Executive Session Pursuant to a Relevant Exception.

- The Authority must discuss in open session whether the meeting is to be closed to the public and the reason for the closure. It is acceptable to have the authority's counsel state the reason and give an opinion that closure is appropriate for each session.
- The meeting may then enter executive session; minutes must be taken of the executive session.
- The meeting must be reopened after discussions are over in order for a vote to be taken on the issue.
- After reopening the meeting, a vote may be taken on the matter discussed in executive session, the motion containing sufficient information to place the public on notice of the nature of action, even if identifying information is left out.
- After the meeting is concluded the chairman or other member of the authority presiding over the meeting (or all members, if the Authority so decides by policy) must execute an affidavit regarding the reasons for the executive session and certifying that only those matters within the stated exception were discussed during the executive session. O.C.G.A. § 50-14-4(b)(1). The affidavit must be filed with the official minutes. See O.C.G.A. § 50-14-4(b).

III. OPEN MEETINGS ACT (Cont.)

How to Comply with the OMA When an Agency Intends to Enter into Executive Session Pursuant to a Relevant Exception (continued).

- **NEW GUIDANCE:** “In the event that one or more persons in an executive session initiates a discussion that is not authorized pursuant to Code Section 50-14-3, the presiding officer shall immediately rule the discussion out of order and all present shall cease the questioned conversation. If one or more persons continue or attempt to continue the discussion after being ruled out of order, the presiding officer shall immediately adjourn the executive session. The meeting may then enter executive session; minutes must be taken of the executive session.”

O.C.G.A. § 50-14-4(b)(2) (as signed by Governor on April 17, 2012)

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FORM OF EXECUTIVE SESSION AFFIDAVIT

[NAME OF GOVERNMENT AGENCY]
RECORD OF AND AFFIDAVIT FOR EXECUTIVE SESSION

Date: _____

Type of Meeting (choose one): Full Board / Committee (_____)

Reason for Executive Session (Please check one, or more, as appropriate):

☐ Consultation with legal counsel pertaining to: 1) potential or pending litigation, settlement, claims, administrative proceedings or judicial proceedings to be brought by or against the [agency] or any officer or employee of the [agency], or 2) any of the above-described proceedings in which the [agency] or any officer or employee may be directly involved. [O.C.G.A. § 50-14-2.]

☐ Discussions regarding of real estate by the [agency]. [O.C.G.A. § 50-14-3(b)(1)]

☐ Discussions/deliberations regarding public officer, employee, or agent. [O.C.G.A. § 50-14-3(b)(2)]

☐ New hire or appointment ☐ Disciplinary action/dismissal ☐ Job performance

☐ Other _____ legal citation: _____

Signatures of members present at meeting and Members' votes regarding entering into executive session and the matters discussed therein (by signing below, each member is in agreement with and subscribes to the certification below):

Yea/Nay/Abstain	Yea/Nay/Abstain
1 _____ / _____	2 _____ / _____
3 _____ / _____	4 _____ / _____
5 _____ / _____	6 _____ / _____
7 _____ / _____	

COUNTY, STATE OF GEORGIA

I and each of the above signed members hereby certify and state under oath that the subject matter of the executive session was devoted to matters within the exception(s) provided by law as identified above and that no other matter except as described above was discussed during the closed session.

CHAIRPERSON / VICE-CHAIRPERSON _____

Each signature above sworn and subscribed before me
this _____ day of _____, 20____.

Notary Public _____

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III. OPEN MEETINGS ACT (Cont.)

- **Notice to the Public of Meetings of the Authority**
 - Every agency subject to this chapter shall prescribe the time, place, and dates of regular meetings of the agency. Such information shall be available to the general public and a notice containing such information shall be posted at least one week in advance and maintained in a conspicuous place available to the public at the regular place of an agency or committee meeting subject to this chapter as well as on the agency's website, if any. Meetings shall be held in accordance with a regular schedule, but nothing in this subsection shall preclude an agency from canceling or postponing any regularly scheduled meeting.
 - For any meeting, other than a regularly scheduled meeting of the agency for which notice has already been provided pursuant to this chapter, written or oral notice shall be given at least 24 hours in advance of the meeting to the legal organ in which notices of sheriff's sales are published in the county where regular meetings are held or at the option of the agency to a newspaper having a general circulation in such county at least equal to that of the legal organ; provided, however, that in counties where the legal organ is published less often than four times weekly, sufficient notice shall be the posting of a written notice for at least 24 hours at the place of regular meetings and, upon written request from any local broadcast or print media outlet whose place of business and physical facilities are located in the county, notice by telephone, facsimile, or email to that requesting media outlet at least 24 hours in advance of the called meeting.

O.C.G.A. § 50-14-1(d)(1) (as signed by Governor on April 17, 2012)

III. OPEN MEETINGS ACT (Cont.)

- **Notice to the Public of Meetings of the Authority**
 - When special circumstances occur and are so declared by an agency, that agency may hold a meeting with less than 24 hours' notice upon giving such notice of the meeting and subjects expected to be considered at the meeting as is reasonable under the circumstances including notice to such county legal organ or a newspaper having a general circulation in the county at least equal to that of the legal organ, in which event the reason for holding the meeting within 24 hours and the nature of the notice shall be recorded in the minutes.

O.C.G.A. § 50-14-1(d)(3)

III. OPEN MEETINGS ACT (Cont.)

- **Telephonic Participation of Members in Meetings of the Authority**
 - Previously, the law only allowed such telephonic participation only for state-wide authorities with no exception for Downtown Development Authorities.
 - Under HB 397, under special conditions, members of an Authority can participate by telephone:
 - Under circumstances necessitated by emergency conditions involving public safety or the preservation of property or public services, agencies or committees thereof not otherwise permitted ... to conduct meetings by teleconference may meet by means of teleconference so long as the notice required ... is provided and means are afforded for the public to have simultaneous access to the teleconference meeting. On any other occasion of the meeting of an agency or committee thereof, and so long as a quorum is present in person, a member may participate by teleconference if necessary due to reasons of health or absence from the jurisdiction so long as the other requirements of this chapter are met. Absent emergency conditions or the written opinion of a physician or other health professional that reasons of health prevent a member's physical presence, no member shall participate by teleconference pursuant to this subsection more than twice in one calendar year.

O.C.G.A. § 50-14-1(g) (as signed by Governor on April 17, 2012)

III. OPEN MEETINGS ACT (Cont.)

- **Penalties for Violations of the OMA**
 - The action taken may be voided or nullified.
 - Both members and the authority may be subject to civil suit and civil fines (\$1,000 for initial violations; \$2,500 for additional violations) as well as actions filed by the Attorney General to enforce the OMA. See O.C.G.A. § 50-14-5(a).
 - Attorney's fees of the party bringing the action to show or rectify the violation of the OMA may be assessed against the authority if the court finds the authority's actions in not complying with the OMA were without "substantial justification." O.C.G.A. § 50-14-5(b).
 - If the affidavit required by O.C.G.A. is falsified and the falsification is more than an oversight or mistake, but is intentional and egregious, the person signing the affidavit may be prosecuted for the crime of "false swearing," which is a felony punishable by imprisonment for not less than one or more than five years or a fine of not more than \$5,000.00. O.C.G.A. § 16-10-71.

IV. OPEN RECORDS ACT

- “Records” are defined as:
 - (2) 'Public record' means 'public record' shall mean all documents, papers, letters, maps, books, tapes, photographs, computer based or generated information, data, data fields, or similar material prepared and maintained or received by an agency or by a private person or entity in the performance of a service or function for or on behalf of an agency or when such documents have been transferred to a private person or entity by an agency for storage or future governmental use.

O.C.G.A. § 50-18-70(a)(2)

IV. OPEN RECORDS ACT (cont.)

- What Must an Authority Do in Response to an Open Records Request?
 - Provide for review and reproduction by the requesting entity all records in the possession of the authority or its agents (including its attorneys) and not subject to an exception from provision.
 - A request is NOT required to be made in writing, and a request must be complied with, even if it is only an oral request, so long as the request does not contain unreasonable requirements (i.e., provision of voluminous records in a very limited time, immediately, at no cost). See Howard v. Sumter Free Press, Inc., 272 Ga. 521, 531 S.E.2d 698 (2000).
 - Oral requests are specifically not enforceable under the HB 397 revisions.
 - An authority is NOT required to sift through its records involving a specific subject in order to locate the information sought by the requesting entity. “[A] thorough reading of the ORA makes it clear that the legislature did not intend for a custodian of public records to comb through his files in search of documents sought by a public citizen. To the contrary, all that is required of a public records custodian is that he provide reasonable access to the files that are sought.” Felker v. Lukemire, 267 Ga. 296, 299, 477 S.E.2d 23 (1996). See also O.C.G.A. § 50-18-70(d).
 - Under HB 397, an agency may designate one person or position to receive all request by running a legal ad to that extent – requests not sent specifically to that person will not begin the running of time to respond until properly sent by the requestor.

IV. OPEN RECORDS ACT (cont.)

- What Must an Authority Do in Response to an Open Records Request?
 - Provide the requested records for inspection within a reasonable period of time following the request, said period of time not to exceed three (3) business days. O.C.G.A. § 50-18-70(f).
 - If the records are not subject to an exception and the request asks for the records in electronic form, the records must be provided in electronic form if available in that format. O.C.G.A. § 50-18-70(g). However, an authority is never required to type in, scan, or otherwise convert records in electronic format pursuant to a request in order to comply with the ORA.
 - The records must be provided for the requesting entity to copy or reproduce; the authority and its staff is not required to actually make the copies, but merely must provide the requested records.

IV. OPEN RECORDS ACT (Cont.)

- Records Relevant to Statutory and Constitutional Development Authorities That Are Excepted from Provision to the Public under the ORA.
 - “Real estate appraisals, engineering or feasibility estimates, or other records made for or by the state or a local agency relative to the acquisition of real property until such time as the property has been acquired or the proposed transaction has been terminated or abandoned” O.C.G.A. § 50-18-72(a)(10).
 - Records subject to the attorney-client privilege or produced by the authority’s attorney or his/her agents and considered to be work product. O.C.G.A. § 50-18-72(e). This would include correspondence with counsel, memos, and other information generated by the authority’s attorney, whether or not involving pending or potential litigation, which is a broader exception than found in the OMA.

IV. OPEN RECORDS ACT (Cont.)

- Records Relevant to Statutory and Constitutional Development
Authorities That Are Excepted from Provision to the Public under the ORA.
 - “Records that consist of confidential evaluations submitted to, or examinations prepared by, a governmental agency and prepared in connection with the appointment or hiring of a public officer or employee; and records consisting of material obtained in investigations related to the suspension, firing, or investigation of complaints against public officers or employees until ten days after the same has been presented to the agency or an officer for action or the investigation is otherwise concluded or terminated, provided that this paragraph shall not be interpreted to make such investigatory records privileged” O.C.G.A. § 50-18-72(a)(7) (8).
 - “Pending, rejected, or deferred sealed bids or sealed proposals and detailed cost estimates related thereto until such time as the final award of the contract is made, the project is terminated or abandoned, or the agency in possession of the records takes a public vote regarding the sealed bid or sealed proposal, whichever comes first.” O.C.G.A. § 50-18-72(a)(10).

IV. OPEN RECORDS ACT (Cont.)

- Special Procedures and Rules under the Personnel Exception When Interviewing and Hiring Applicants for the Head of the Agency or Authority.
 - “Records which identify persons applying for or under consideration for employment or appointment as executive head of an agency . . . [are exempt from disclosure]”; provided, however, that at least 14 calendar days prior to the meeting at which final action or vote is to be taken on the position of executive head of an agency . . . , all documents concerning as many as three persons under consideration whom the agency has determined to be the best qualified for the position shall be subject to inspection and copying. Prior to the release of these documents, an agency may allow such a person to decline being considered further for the position rather than have documents pertaining to such person released. In that event, the agency shall release the documents of the next most qualified person under consideration who does not decline the position. If an agency has conducted its hiring or appointment process without conducting interviews or discussing or deliberating in executive session in a manner otherwise consistent with [the OMA], it shall not be required to delay final action on the position. The agency shall not be required to release such records of other applicants or persons under consideration, except at the request of any such person. Upon request, the hiring agency shall furnish the number of applicants and the composition of the list by such factors as race and sex. The agency shall not be allowed to avoid the provisions of this paragraph by the employment of a private person or agency to assist with the search or application process.” O.C.G.A. § 50-18-72(a)(11).

IV. OPEN RECORDS ACT (cont.)

- What Must an Authority Do in Response to an Open Records Request?

- In all cases where an interested member of the public has a right to inspect or take extracts or make copies from any public records, instruments, or documents, any such person shall have the right of access to the records, documents, or instruments for the purpose of making photographs or reproductions of the same while in the possession, custody, and control of the lawful custodian thereof, or his authorized deputy. Such work shall be done under the supervision of the lawful custodian of the records, who shall have the right to adopt and enforce reasonable rules governing the work. The work shall be done in the room where the records, documents, or instruments are kept by law. While the work is in progress, the custodian may charge the person making the photographs or reproductions of the records, documents, or instruments at a rate of compensation to be agreed upon by the person making the photographs and the custodian for his services or the services of a deputy in supervising the work.

O.C.G.A. § 50-18-71

IV. OPEN RECORDS ACT (cont.)

- What Must an Authority Do in Response to an Open Records Request?

- Where fees for certified copies or other copies or records are specifically authorized or otherwise prescribed by law, such specific fee shall apply.
- Where no fee is otherwise provided by law, the agency may charge and collect a uniform copying fee not to exceed 10 cents per page.
- Under HB 397, an agency can insist on prepayment if amount to comply exceeds \$500.00, and refuse to comply with future requests from an entity that fails to pay a prior properly billed invoice relating to a previous request.
- In addition, a reasonable charge may be collected for search, retrieval, and other direct administrative costs for complying with a request under this Code section. The hourly charge shall not exceed the salary of the lowest paid full-time employee who, in the discretion of the custodian of the records, has the necessary skill and training to perform the request; provided, however, that no charge shall be made for the first quarter hour.
- An agency shall utilize the most economical means available for providing copies of public records.

O.C.G.A. § 50-18-71

IV. OPEN RECORDS ACT (cont.)

- Penalties for Violations of the ORA
 - Both members and the authority may be subject to civil suit and civil fines as well as actions filed by the Attorney General to enforce the ORA. See O.C.G.A. § 50-18-73 & 74.
 - Attorney's fees and expenses of litigation of the party bringing the action to rectify the violation of the ORA may be assessed against the authority if the court finds the authority's actions in not complying with the ORA were without "substantial justification." O.C.G.A. § 50-18-73. *See also Howard v. Sumter Free Press, Inc.*, 272 Ga. 521, 531 S.E.2d 698 (2000) (where the trial court awarded attorney's fees to the requesting newspaper).
 - If tried and found guilty, the person or persons responsible for wrongfully or willfully violating the ORA may be found guilty of a misdemeanor and punished by being fined not more than \$1000.00 first violation, \$2,500.00 thereafter.

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MORE INFORMATION


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DEPARTMENT OF NATURAL RESOURCES
HISTORIC PRESERVATION DIVISION

Georgia Historic Preservation Division:
Our Programs & Support for Your Downtown



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Mission Statement

Our mission is to promote the preservation and use of historic places for a better Georgia



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Who We Are

- A Division of the Georgia Department of Natural Resources, we are the Georgia State Historic Preservation Office, known as HPD
- 25+ dedicated staff with academic backgrounds and professional expertise in Archaeology, Architecture, History, Historic Preservation, Planning, Education, Geography and other related academic fields
- Federally funded by the National Park Service, through revenue generated by off-shore oil leases
- Matching budget appropriations from the Georgia State Legislature

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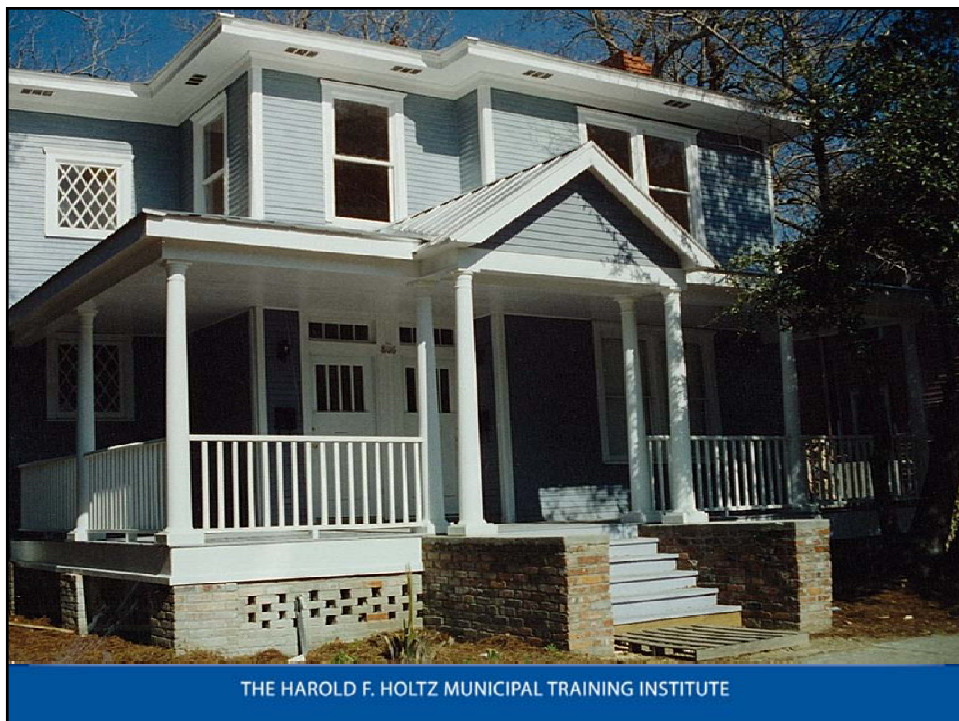


What We Do



- Carry out all federal and state mandated historic preservation activities
- Provide preservation education, training, and local technical assistance, and statewide support
- The home of the State Archaeology program and the State Archaeologist

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Heritage Tourism

History can and should be used as a selling point for a community. The recognition of an area's historic resources can bring about neighborhood revitalization, increased and sustainable tourism, economic development through private investment, and citizenship building.



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Heritage Tourism

- Heritage Tourism is a growing and increasing industry in Georgia
- Georgia's second largest industry statewide is tourism
- HPD partnered with the Georgia Department of Economic Development through a federal Preserve America grant to produce ***Heritage Tourism Handbook: A How-To-Guide for Georgia***, available on our website



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Economic Impact of Preservation



- Through federal and state **tax incentive programs**, HPD helped contribute to the generation of **10,168 jobs** and **\$420,046,800 in income** to Georgia workers.
- Nationally for every business that closes, 1.1-1.2 businesses open. National data available from 2004 to 2008 shows that Georgia's historic downtowns generated **2.8 - 4.6 business openings** for every business that closed.

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HPD Program Focus

National Register



Tax Incentives



Certified Local Government



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The National Register of Historic Places

Listing in the National Register DOES:

- Helps preserve historic properties
- Provides for a national standard
- Archive of America's built environment
- Recognizes a property or district's architectural, historical, or archaeological significance



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The National Register of Historic Places

- Identifies historic resources for planning purposes
- Local governments and nonprofit agencies can apply for federal and state grants
- Insures historic resources are taken into account in federal and state assisted projects
- Federal and state tax incentives for rehabilitation



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National Register = Potential for Rehabilitation Tax Projects

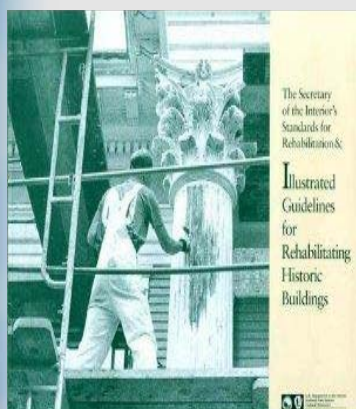


- The National Register currently includes **more than 2,100** listings in Georgia
- We receive **hundreds of applications** each year
- More than **80,000 historic properties** are potentially eligible for the historic rehabilitation tax incentive program

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Tax Incentive Program Requirements




- Projects must meet some financial requirements to participate, such as meeting the “substantial rehabilitation test”
- Must execute the work in accordance with ***Secretary of the Interior Standards for Rehabilitation*** and Georgia Historic Preservation Division
- Only “certified historic structures-” meaning those listed in the National Register of Historic Places- are eligible

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Tax Incentives


Federal Rehabilitation Investment Tax Credit

State Income Tax Credit for Rehabilitated Historic Property


State Preferential Property Tax Assessment for Rehabilitated Historic Property



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Federal Rehabilitation Investment Tax Credit

- Only “income producing” or commercial properties may be eligible
- Building must be used for income-producing purpose for at least 5 years after rehabilitation
- Valued at 20% of rehabilitation expenditures
- This is a credit, not a deduction: \$=\$ match in credit

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Federal Before & After Rehabilitation



Delaney Hotel, Covington


One million in rehabilitation expenses=
16 jobs and \$558,000 in Georgia tax revenue

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Georgia Income Tax Credit for Rehabilitated Historic Property

- The credit was increased in SFY 2008 to **25%** of the qualifying rehabilitation expenses to be taken as a credit off state income tax, capped at:
 - **\$100,000** for a *primary residence*
 - **\$300,000** for an *income-producing property*; soon to be \$5 million
- This is a credit, not a deduction: \$=\$ match in credit


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A.L. Miller High and Junior High School, Macon

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Georgia Preferential Property Tax Assessment for Rehabilitated Historic Property

- Both income producing and residential properties may be eligible
- Freezes property tax assessments for 8.5 years
- Assessment of rehabilitated property based on rehabilitated structure, the property on which the structure is located, and not more than 2 acres of real property surrounding the structure
- Requires action by both HPD and appropriate local county tax commission

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Georgia Preferential Property Tax Assessment for Rehabilitated Historic Property



1721 Habersham Street, Savannah

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Want to Know More?



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Tax Incentives & Grants
Program Manager
(770) 389-7846


Rachel.rice@dnr.ga.gov

Stephanie Cherry-Farmer


Survey and National Register Program
Manager
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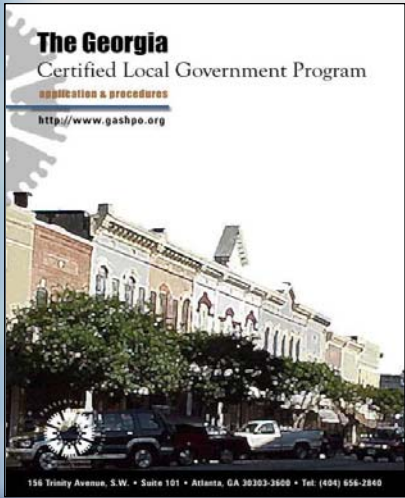


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Certified Local Government Program



The Georgia
Certified Local Government Program
application & procedures
<http://www.gashpo.org>

156 Trinity Avenue, S.W. • Suite 101 • Atlanta, GA 30303-3500 • Tel: (404) 656-2840

Partnership program between the local government, HPD, and the National Park Service

Opportunities for technical assistance in historic preservation are available in the form of training sessions, information material, statewide meetings, workshops and conferences

Certified Local Governments are eligible for **preservation grants from HPD**

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The Georgia
Certified Local Government Program
application & procedures
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Georgia has **95 CLG Communities**

McDonough (Henry County) was most recently certified in May 2016

Georgia ranks **second nationally** in the highest number of CLG Communities

Other communities certified recently:
Villa Rica (Carroll County) and
Euharlee (Bartow County)

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Certified Local Government Program



Program Requirements:

- Establish Historic Preservation Commission
- Enforce State and Local Legislation for Designation and Protection of Historic Properties
- Maintain a System for Survey and Inventory
- Provide for Public Participation

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Certified Local Government Program Grants



A local government is **eligible to apply for HPF/CLG federal historic preservation grant funds** that are available only to communities certified as CLGs.

In SFY2016, **more than \$91,000 in federal funds** were awarded to CLG's across Georgia

The HPF/CLG grants are **60/40 percent matching grant** and some of the 40 percent can be "in kind" match

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Certified Local Government Program Grants



City of Albany Dougherty County

\$16,200

Update a historic resources
survey of the Summerville
National Register Historic
District, Phase 1

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Certified Local Government Program Grants



Cobb County

\$10,000

Foundation repair and
stabilization of the historic
Pace House



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Certified Local Government Program Grants

**City of Harlem
Columbia County**
\$1,100
Downtown historic
district walking and
audio tour with
brochure



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Certified Local Government Program Grants

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Please Stay In Touch





Preservation Posts

The online journal of the Historic Preservation Division
of the Georgia Department of Natural Resources



Jeff Harrison
Public Affairs Coordinator
Historic Preservation Division, Georgia Department of Natural Resources
Phone: 770-389-7869


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Ways to Find HPD

www.georgiashpo.org


www.gadnr.org




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@GeorgiaSHPO



Georgia Historic Preservation Division



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2017 State Historic Preservation Conference

SAVE THE DATE

Georgia Statewide Historic Preservation Conference

Madison, Georgia
May 18th - 20th, 2017

The Georgia Historic Preservation Division, the Georgia Trust for Historic Preservation, the Georgia Alliance of Preservation Commissions, and the City of Madison invite you to Madison for the 2017 Statewide Historic Preservation Conference. The conference will bring together preservationists and professionals for two days of informative presentations, interactive site visits, and unique networking opportunities.

For more information about the 2017 Statewide Historic Preservation Conference please visit <http://www.georgiashpo.org/conferences>

For more information about Madison please visit <http://www.visitmadsonga.com>








For more, see georgiashpo.org/conferences

Sessions will highlight current Georgia preservation, history, architectural history, archeology, cultural landscapes, middle Georgia regional history, landscape architecture, preservation law, or other closely related topics.

Please submit your proposal to Sarah Love (sarah.love@dnr.ga.gov), Archaeology Outreach Coordinator at Ga. HPD, by February 13th.

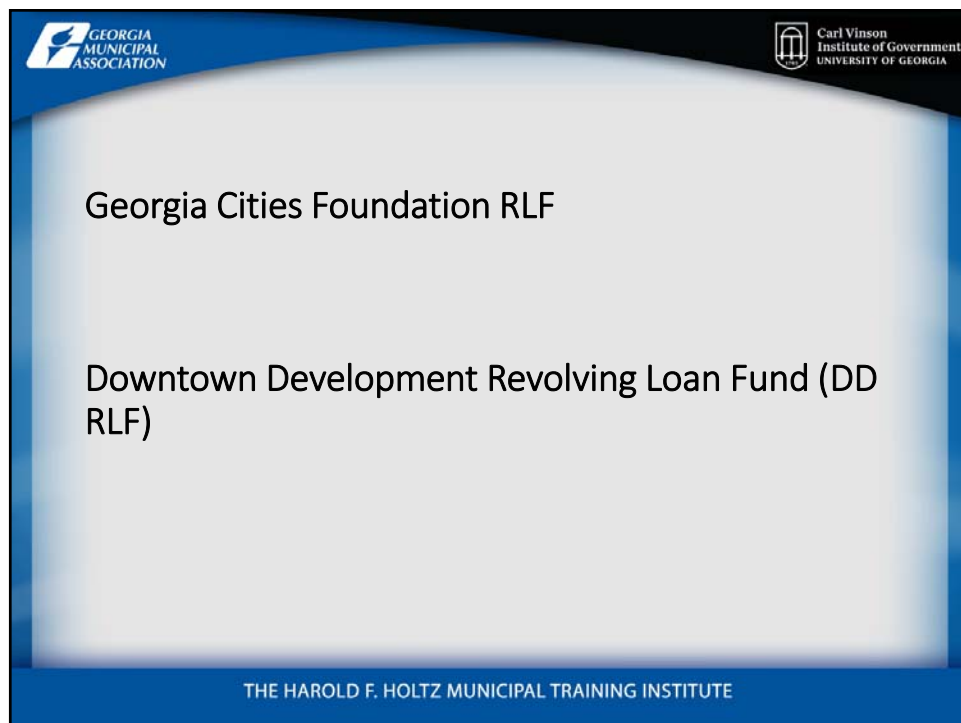
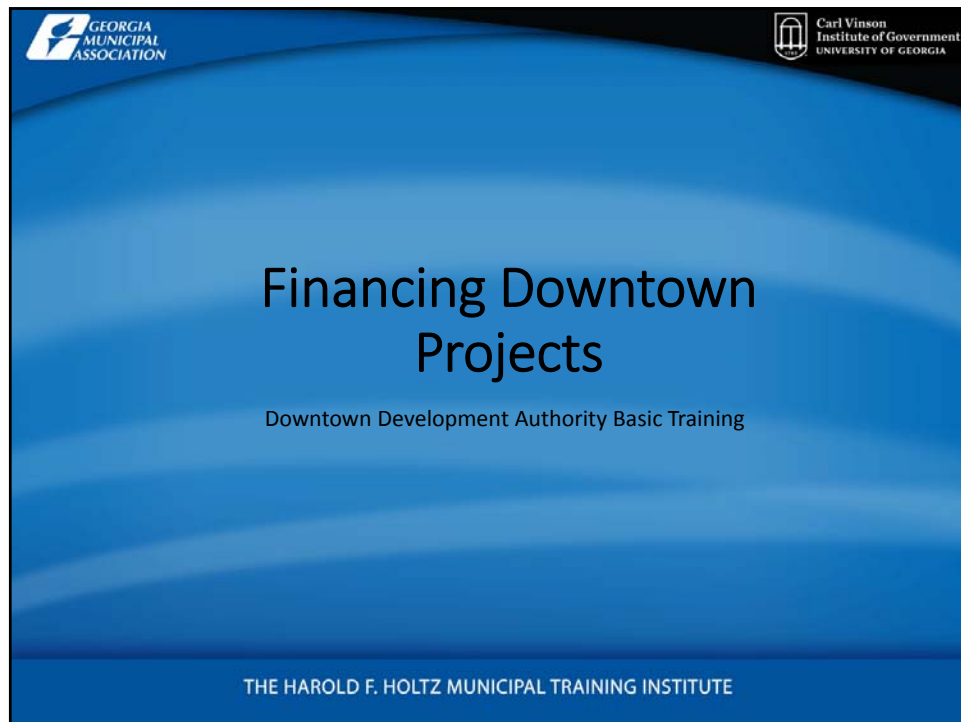
You are welcome to submit multiple proposals, but please limit one session proposal per submission. Applicants will be notified by email in early March.

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THANK YOU!

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Revolving Loan Fund Programs

Georgia Cities Foundation RLF (GCF):

-Robert W. Woodruff Foundation

- \$9.0 million received from Woodruff Foundation, based on State appropriations to DCA (for DD RLF)

-Other Foundations, Corporations, & Individuals

- To date, more than \$12.5 million received from other sources (including loan repayments)

Downtown Development RLF (DD RLF):

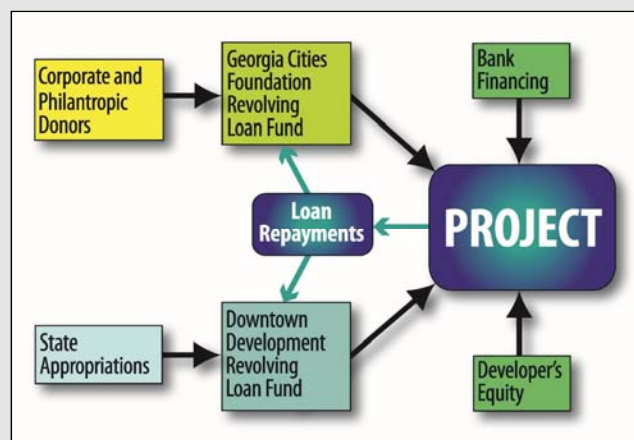
-State Appropriations

-Loan Repayments

Available funding for programs is currently limited

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The GCF / DD RLF Partnership at Work



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DD RLF and GCF RLF Programs

Loan Terms:

- Maximum Loan Amount = \$250,000
- Interest Rate: Below Market Rate (currently 2% - 3%)
- Repayment Period: 10-year term with 15-year amortization

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DD RLF and GCF RLF Programs

50-40-10 Financing Structure

Example:	\$1,000,000 Project Cost
	Acquisition:
\$350,000	
	Rehabilitation:
\$650,000	
Conventional Financing (Bank):	\$500,000
Low-Interest Loan (GCF/DD RLF):	\$400,000
Owner/Developer's Equity:	\$100,000

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DD RLF and GCF RLF Programs

Loan Structure

- Loan to a DDA
- Loan to a DDA with a simultaneous loan to:
 - Private Business
 - Developer

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DD RLF and GCF RLF Programs

Eligible Activities:

- Land acquisition
- Rehabilitation of existing building
- New construction
- Combinations

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DD RLF and GCF RLF Programs

Ineligible Activities:

- Operating expenses
- Local revolving loan funds
- Refinancing of Permanent Loans
- Streetscape and façade projects

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DD RLF and GCF RLF Programs

Eligibility Considerations:

- Consistency with community's plans for downtown development
- Realistic project budget & time frame for completion
- Public Benefits / Project Impacts
- Underwriting review
 - Historical financial information/Business Plan

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DD RLF and GCF RLF Programs

Loan Security:

Collateral: Project Property

- 2nd lien position behind bank
- Personal guaranties are normally required

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Redevelopment Fund

- Annual set-aside of CDBG
- \$500,000 Maximum grant (up to 6% for Admin)
- Projects must alleviate a “slum or blighted” condition
- Eligible applicants: Non-entitlement local governments
- Eligible Activities:
 - Public infrastructure, public facilities
 - Loans to acquire and alleviate blighted buildings/facilities
 - Loan/lease payments may be capitalized into a local RLF

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Opportunity Zone Designation

Areas that are within or adjacent to a census block group with 15% or greater poverty where an enterprise zone or urban redevelopment plan exists.

Incentives



- New or existing businesses which create two or more jobs become eligible for maximum state job tax credit of \$3,500 per job.
- Credits can be taken against the business's income tax liability and state payroll withholding.


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**For More Information on
DCA Programs
(DD RLF, Redevelopment Fund & Opportunity Zones):**
www.dca.ga.gov
(404) 679-4940

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GCF Energy Rebate Program

Program Summary

- Rebate for 25% of cost of eligible energy improvements.
- Rebate capped at \$50,000 per project.
- Costs for energy audits resulting in installed energy improvements will be eligible for a 25% rebate up to \$2,500.
- All work must be performed by a licensed contractor.
- Rebate applications must be approved prior to work being performed.
- Applicants must provide projected energy savings to GCF.

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Project Profiles

Blue Ridge – Oyster Bamboo

Fayetteville – Travis House

Decatur – Cakes & Ale

Milledgeville – The Baldwin


Covington – Mystic Grill








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City of Blue Ridge *Oyster Bamboo Project*



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City of Blue Ridge *Oyster Bamboo Project*

- **Began as home-based business, then as a retail space in downtown Blue Ridge**
- **Due to business growth, owners constructed in-fill building on an abandoned lot during 2012**





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City of Blue Ridge *Oyster Bamboo Project*


- **Project Cost: \$597,500**
- **Bank/Private Lender Loans: \$340,000**
- **GCF Loan: \$160,000**
- **Retail, Classroom / Workshop, Lodging (The Cast & Blast Inn)**




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City of Fayetteville *Travis House Project*



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City of Fayetteville *Travis House Project*

- Built in 1839
- Vacant for 3 decades
- Project Cost: \$1,130,000
- GCF Amount: \$225,000
- DD RLF Amount: \$225,000
- Professional Offices



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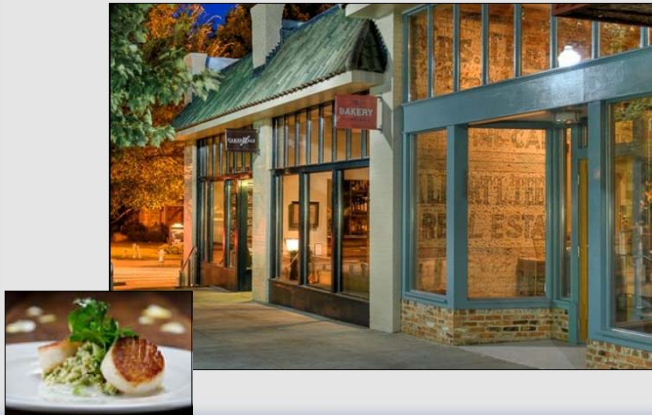
City of Fayetteville *Travis House – Before & After*



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City of Decatur *Cakes & Ale Project*



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City of Decatur *Cakes & Ale Project*



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City of Decatur *Cakes & Ale Project*


Before




After



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City of Decatur *Cakes & Ale Project*

- **Project Cost:** \$920,000
- **Bank Loan:** \$460,000
- **GCF Loan:** \$184,000
- **DCA Loan:** \$184,000



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City of Milledgeville *The Baldwin Project*



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City of Milledgeville *The Baldwin Project*

- **Constructed in 1903**
- **Formerly housed a Belk Matthews store**
- **Mixed-use loft development project completed in 2012**
- **15 apartments & 2 commercial spaces**




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City of Milledgeville *The Baldwin Project*

Financing Structure

• Bank Loan:	\$1,277,500
• Redevelopment Fund:	\$500,000
• GCF Loan:	\$250,000
• DCA Loan:	\$250,000
• GCF2 Loan:	\$150,000
• Tax Credits:	\$759,448
• <u>Developer:</u>	<u>\$ 358,965</u>
Total:	\$3,545,953



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City of Covington *Mystic Grill Project*



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City of Covington *Mystic Grill Project*

Financing Structure

- Bank Loan: \$845,000
- GCF Loan: \$250,000
- DCA Loan: \$250,000
- Developer: \$450,000
- Total: \$1,795,000




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City of Covington *The Mystic Grill Project*



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Considerations for New Business Start-Ups

Seven Pitfalls of Business Failure

1. Starting the business for the wrong reasons
2. Poor Management
3. Insufficient Capital
4. Location, Location, Location
5. Lack of Planning
6. Overexpansion
7. No Company Website

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Available Resources

The Georgia Small Business Development Center (www.georgiasbdc.org) can help with:

- Developing and updating business plans
- Identifying sources of capital
- Setting up record-keeping systems and analyzing financial records
- Conducting specialized research geared to specific needs of the business-owner
- Creating marketing strategies and advertising campaigns
- Analyzing statistical and demographic data

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The slide features a blue header and footer. The header contains the Georgia Municipal Association logo on the left and the Carl Vinson Institute of Government logo on the right. The main content area is white with a blue border. The text is centered and includes contact information for Chris Higdon and Perry Hiott, along with a website URL. The footer contains the name of the training institute.

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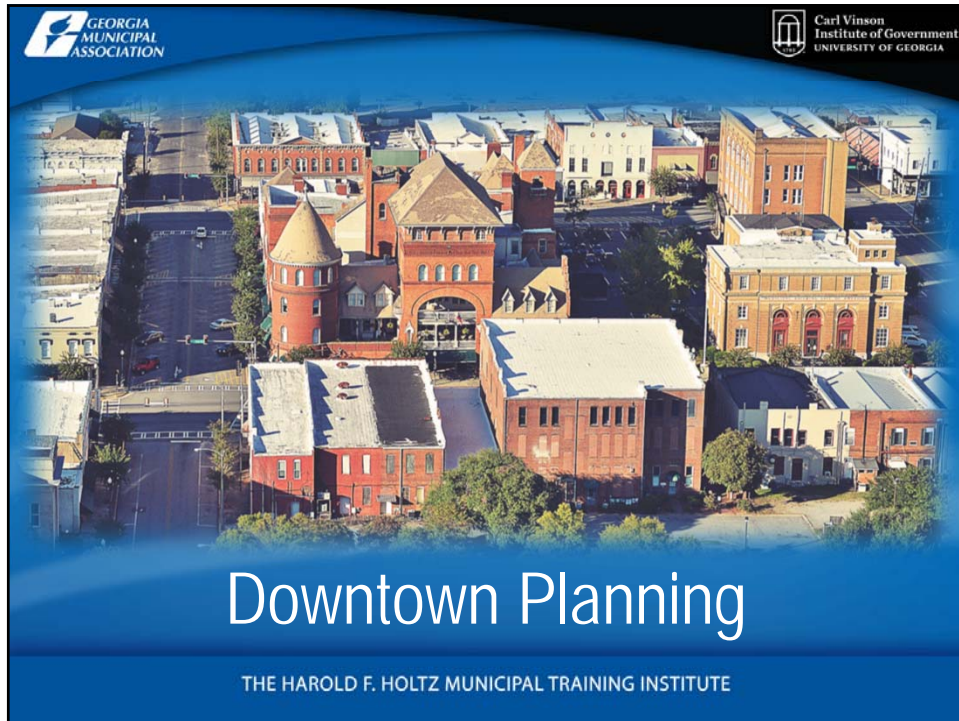
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For More Information
Contact:

Chris Higdon: (678) 651-1018
Perry Hiott: (678) 686-6207
or visit:

www.georgiacitiesfoundation.org

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2013-2016 PARTNERSHIPS

SUMMER FELLOWSHIPS: CHAMBLEE, CHATSWORTH, FITZGERALD GAINESVILLE, HAPEVILLE, JESUP, MILLEDGEVILLE, MONROE, NEWNAN, PORTERDALE, STATESBORO, TOCCOA

URBAN DESIGN STUDIO: COLLEGE PARK, COMMERCE, CONYERS, FLOWERY BRANCH, FORSYTH, GLENNVILLE, GRIFFIN, MILLEDGEVILLE, MILTON, WASHINGTON, ROSSVILLE, BLUE RIDGE, CAMILLA, DUBLIN, GMA HEADQUARTERS



RSVP'S: AMERICUS, BAINBRIDGE, BRUNSWICK, CAIRO, CEDARTOWN, CHICKAMAUGA, CLARKESVILLE, CORDELE, DAWSONVILLE, GAINESVILLE, JEFFERSON, PERRY, ST. MARYS, VILLA RICA




Why Invest Downtown?

- Downtowns are visible indicators of community pride and economic health.
- Downtowns are either an asset or a liability in the effort to retain or recruit new residents, new businesses and industries, retirees and tourists.
- Downtowns are the visual representation of your communities' heritage.

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- Downtowns in Georgia collectively create as many jobs as one Kia Plant does per year
- Downtown Development in Georgia from 2000 to 2010 created:
 - 5,100 Net New Businesses
 - 23,000 Net New Jobs
- Downtown Development in Georgia: 1980-Today
 - 12,000 Net New Businesses
 - 56,000 Net New Jobs

Data provide by the Georgia Department of Community Affairs

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A Vibrant Downtown



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The Goal is
Heart & Soul

The image shows the album cover for Huey Lewis & The News' "Heart and Soul". It features a portrait of Huey Lewis in a white shirt and tie, holding a microphone. The title "HEART AND SOUL" is written in red cursive across the bottom of the portrait. The text "HUEY LEWIS & THE NEWS" is at the top in a red, blocky font. The entire image is framed within a blue border.

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The image is a still from a movie, showing a group of people in a social setting. In the foreground, a woman with blonde, curly hair is seen from the back, wearing a light-colored, possibly sequined, dress. To her left, a man with dark hair is looking towards the right. Another person with reddish hair is partially visible on the far left. The background is slightly blurred, suggesting an indoor event or party.

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- Released: 1983
- Nominated for best Rock performance Group
- #8 on Billboard Hot 100
- Sold over 10 million copies in the U.S. alone.

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A Master Plan is needed to guide the policies and ordinances, infrastructure and open space improvements, and financing options crucial to the orderly development and economic viability of a vibrant downtown.

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Our 3-Step Process




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1.

WHERE ARE WE NOW?

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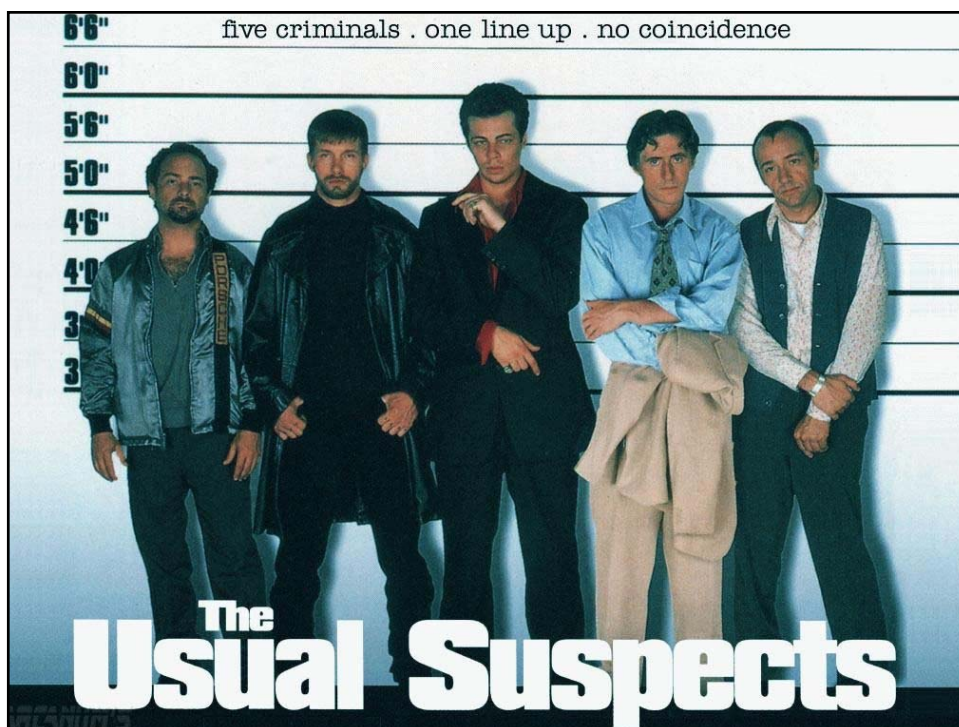
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Listen




Communities have the solutions to their problems. It is about guiding a process that asks the right questions to get to the solutions.

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- Released: 1995
- Stars: Stephen Baldwin, Gabriel Byrne, Benicio del toro, Kevin Pollack, Chazz Palminteri, Pete Postlethwaite and Kevin Spacey
- Budget: \$5.5 million, Made: \$35 million
- McQuarrie won an Academy Award for Best Original Screenplay
- Spacey won the Academy Award for Best Supporting Actor
- ***It is now remembered for having one of the most definitive and popular plot twists in cinematic history.***

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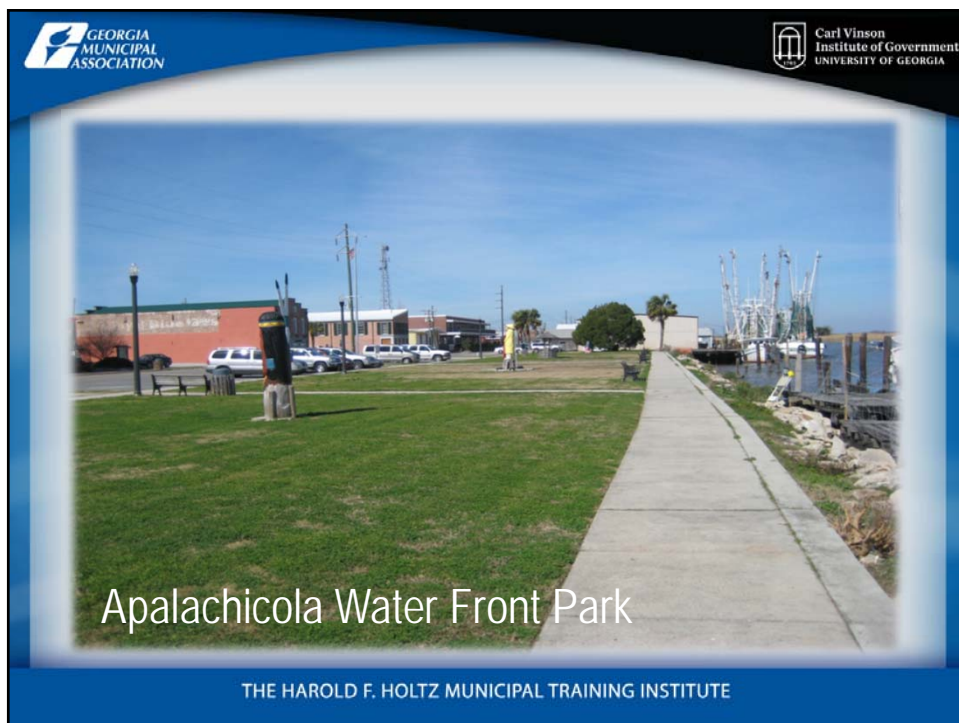
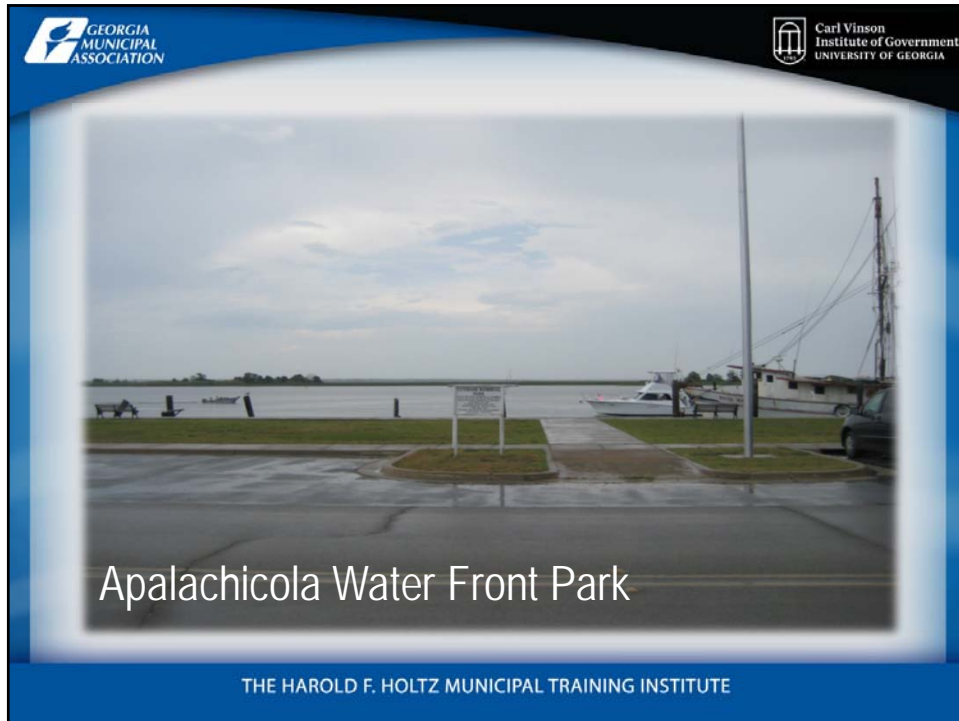
- Arts Council
- Banks
- City Departments
- County Departments
- Development Authority
- Downtown Merchants
- Downtown Property Owners
- Downtown Residential
- Downtown Faith-based Organizations
- Newspaper
- Chamber of Commerce
- Health Systems
- Real Estate Firms
- Redevelopment Authority
- Schools

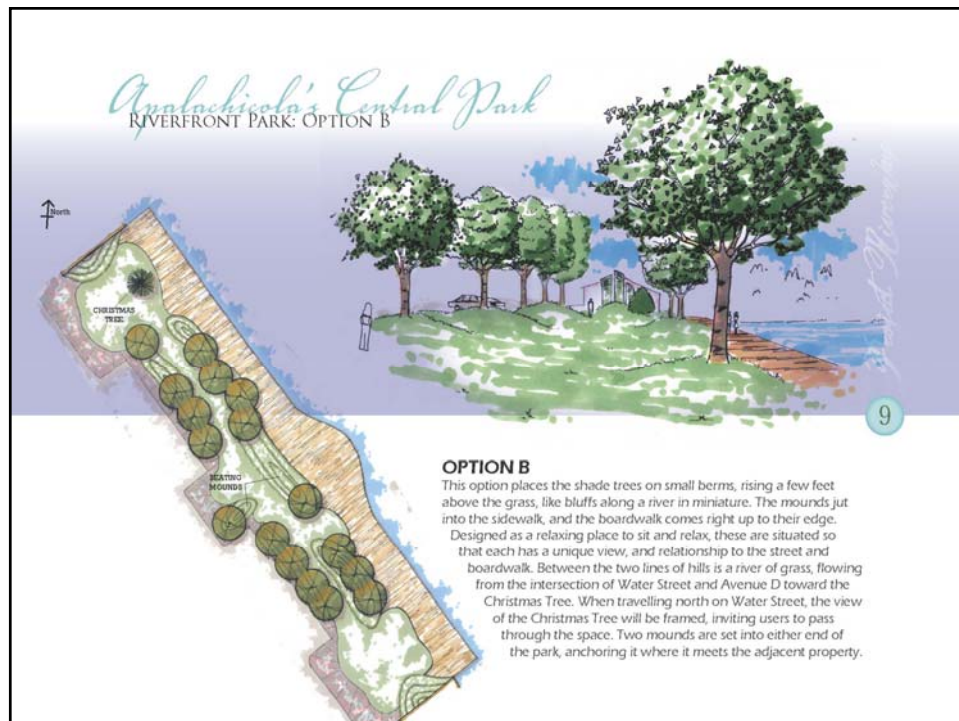
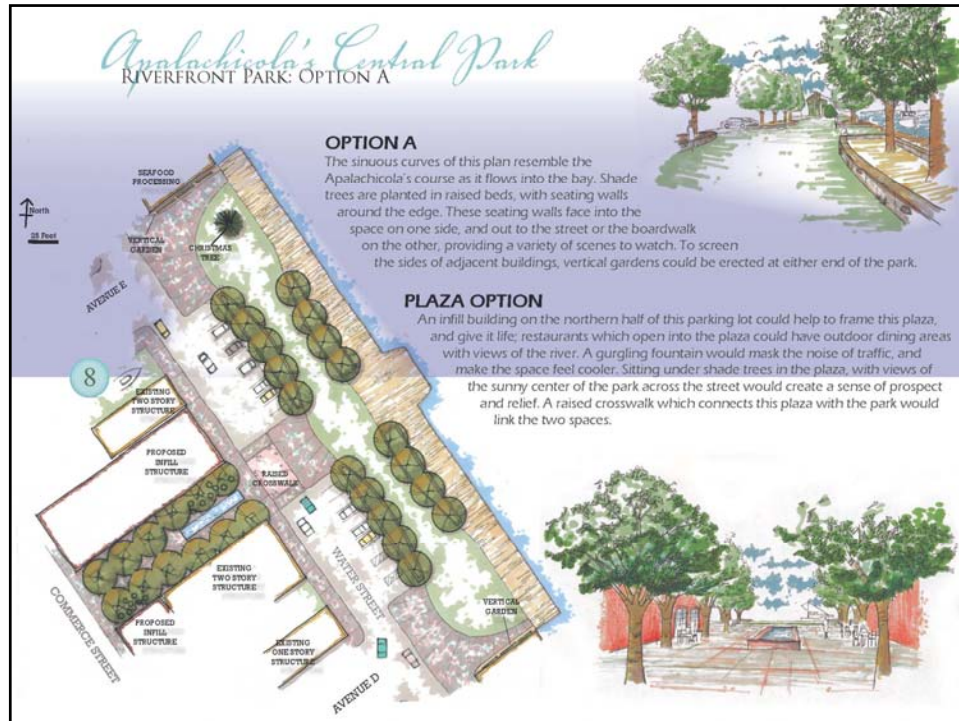
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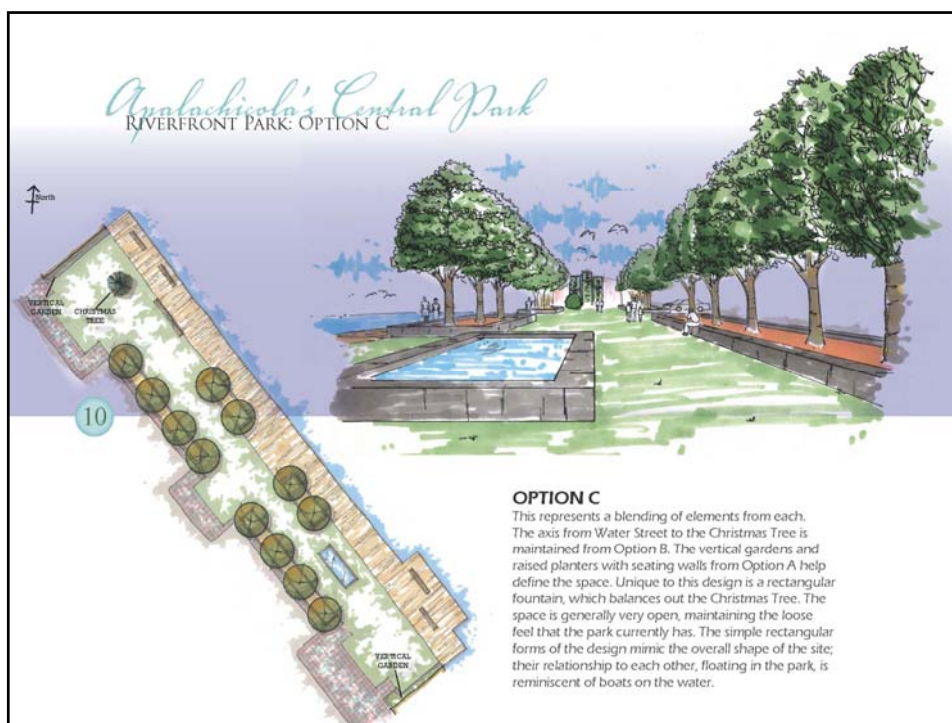
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Community Visioning

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GEORGIA MUNICIPAL ASSOCIATION

**Carl Vinson Institute of Government
UNIVERSITY OF GEORGIA**

Community Feedback Survey

PROCESS

1) Did you meet with the UGA students?
YES
NO (If no, please move to question 8)

2) If so, are you:
Elected Official/City Employee
Business Owner
Resident
Other _____

3) Have you participated in a process like this before?
YES
NO

4) It was important for me to participate in the conversations with students on how my community should grow. (Circle one)
Strongly Disagree Neutral Agree Strongly

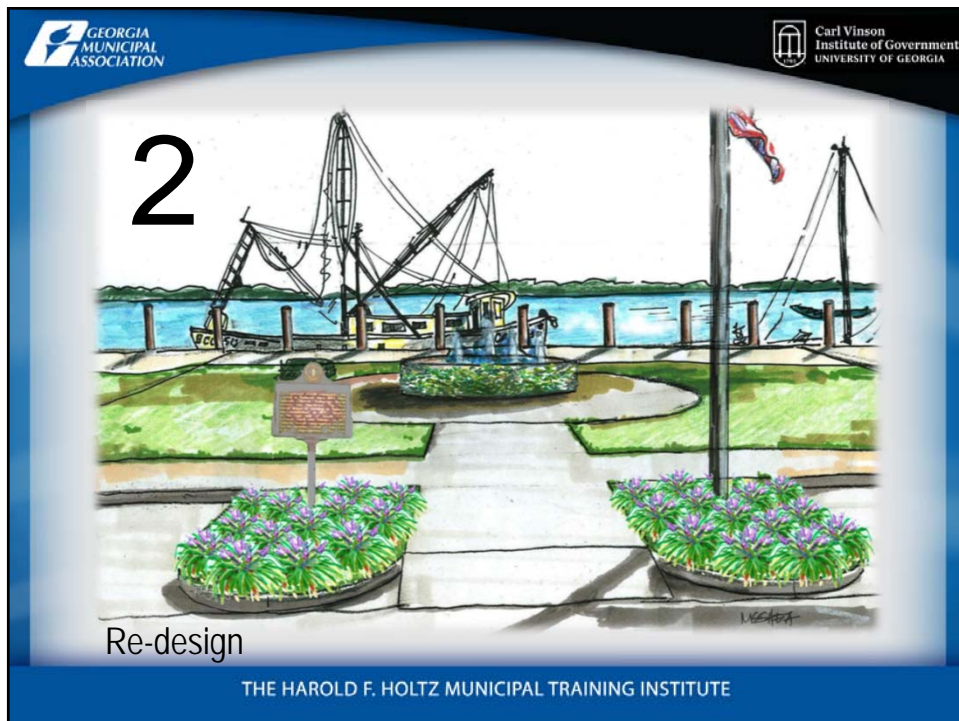
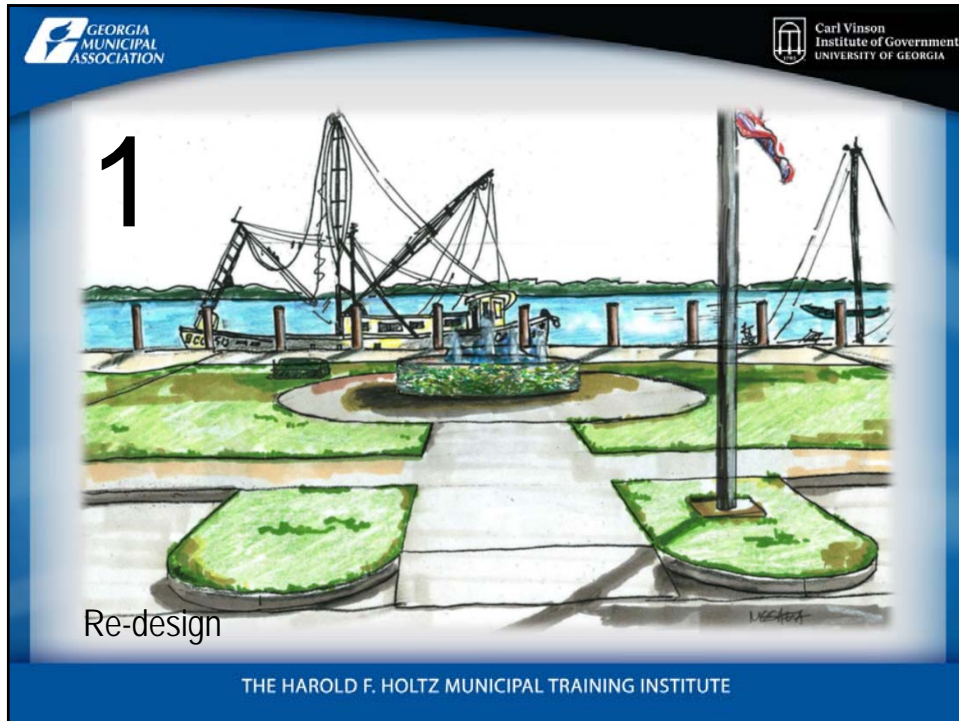
5) Processes that solicit community input in planning for the future are important for building agreement on how to grow. (Circle one)
Strongly Disagree Neutral Agree Strongly

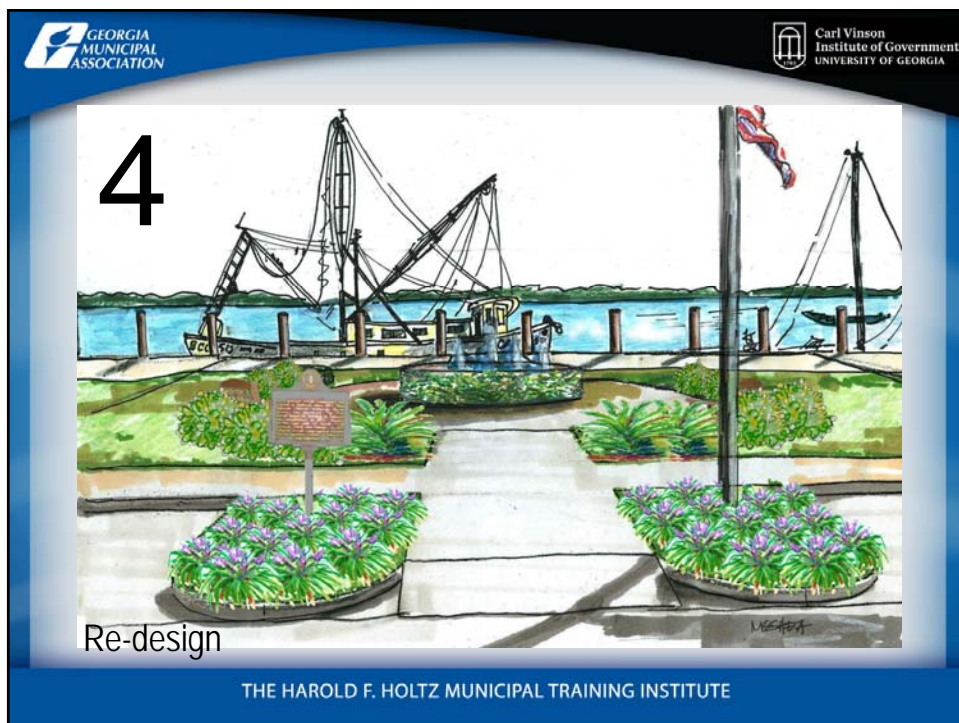
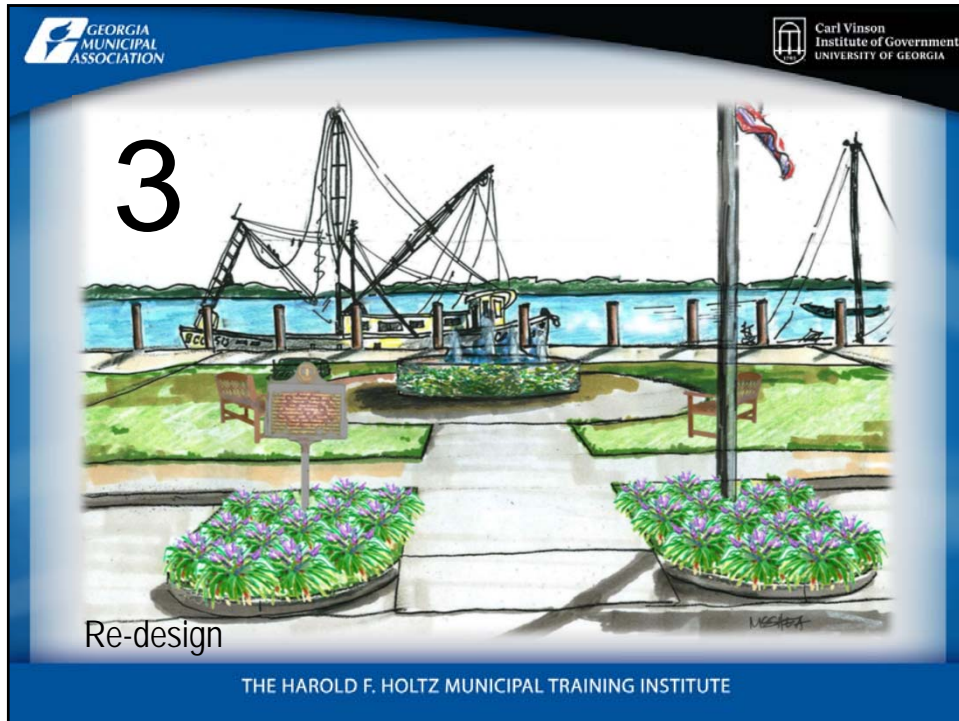
6) Based on my experience, I would participate in a process like this again. (Circle one)
Strongly Disagree Neutral Agree Strongly

7) What could have been done differently to improve the process?

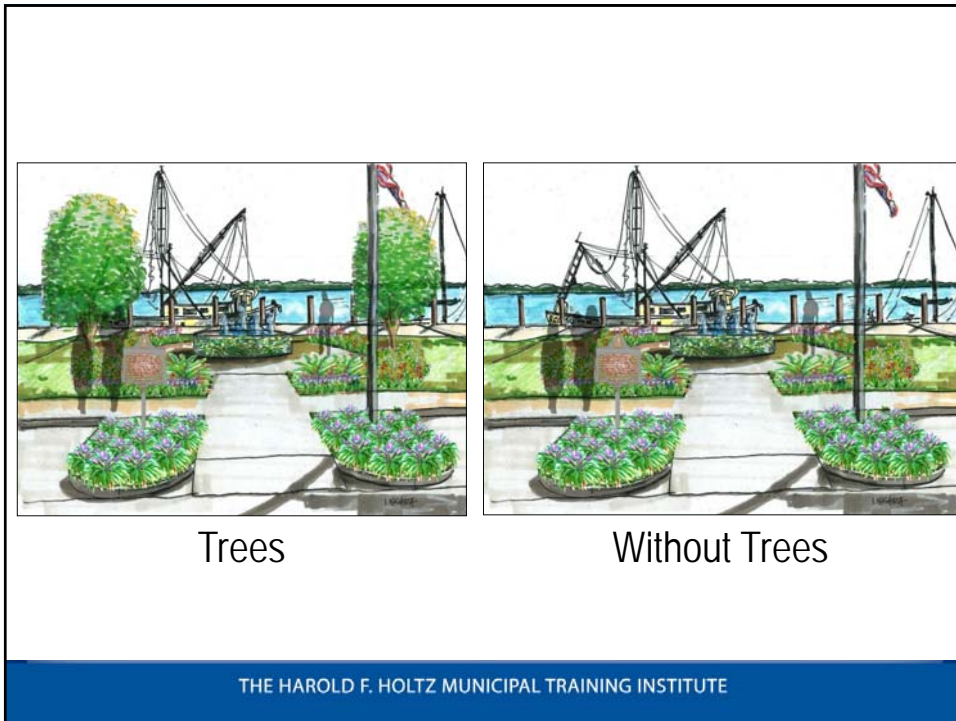
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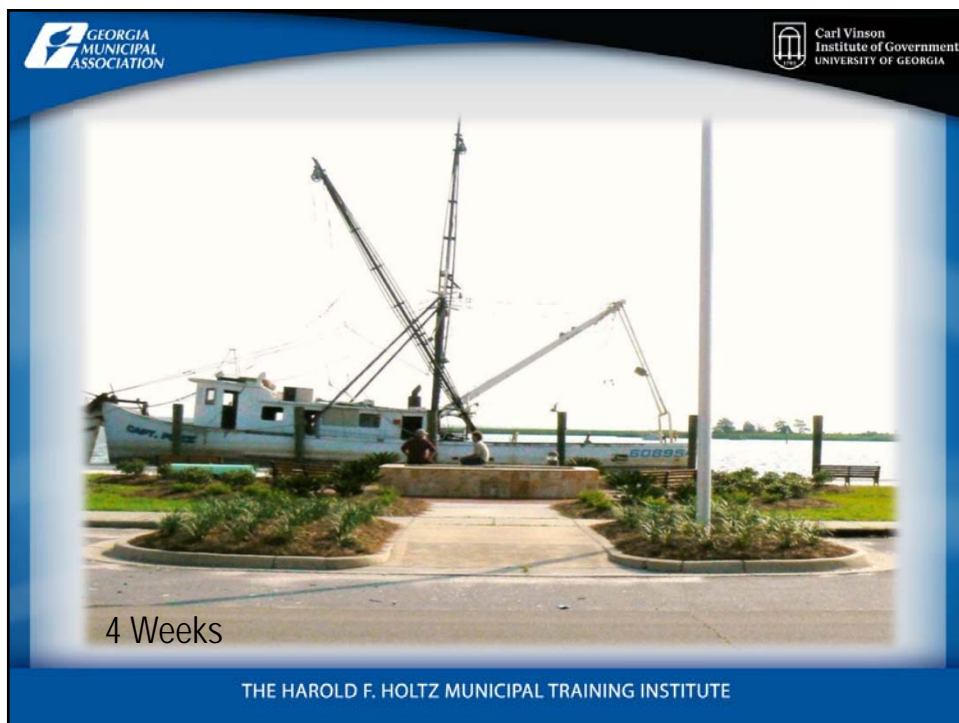














ORGANIZATION

ACTION ITEM: FIRST FRIDAY

LEAD: Jennifer Hulsey

PARTNERS: Gwen Tuck, Amy Orebaugh, Regan Hice, Darice Lewis

TIMELINE: A First Friday event will start in the spring of 2014: March, April, and May

FUNDING: To be determined

OBSTACLES: Coordination

STEPS:

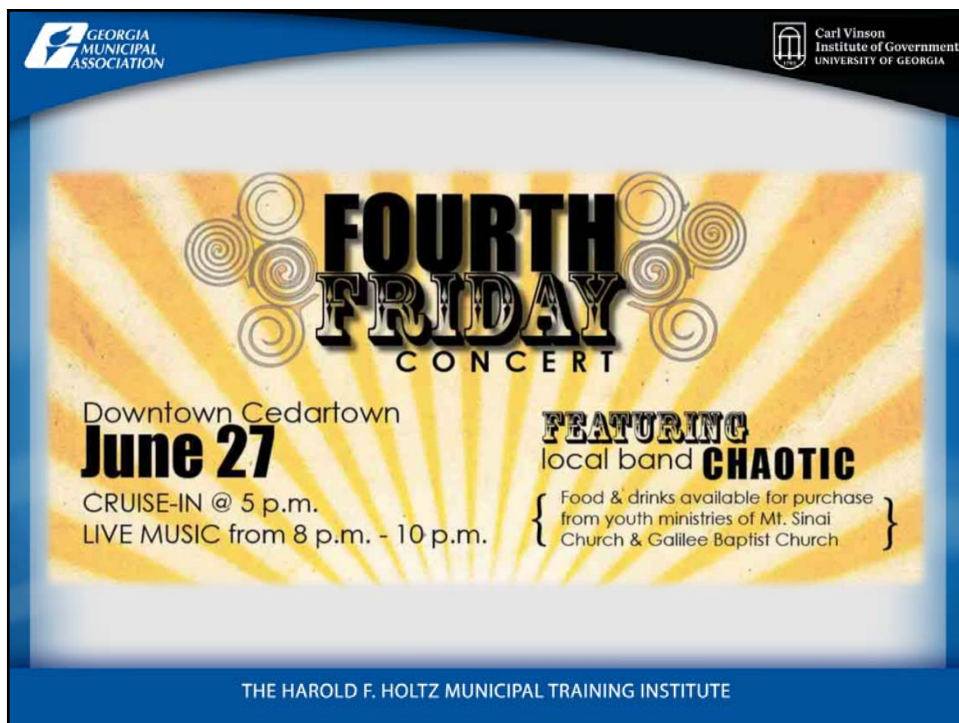
1. Call Anne Arnold (find out Rome's First Friday dates).
2. Schedule a meeting with Anne to ask important questions about coordination and funding for First Friday events.
3. Determine schedule.
4. Talk to business owners about time and commitment.
5. Cost? Where do we go? (Create business?)
6. What kind of entertainment?
7. John Willis, Doug Kelly (sound?)

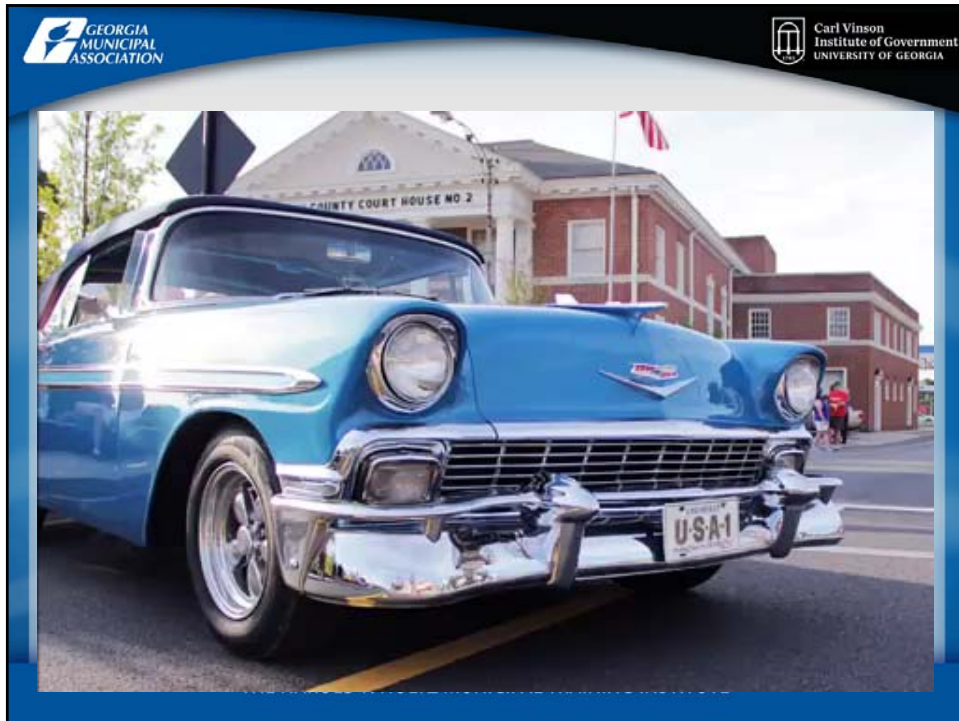
2013 Strategic Vision and Plan



Before

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