



Charlotte City Council  
Housing and Neighborhood Development Committee  
Summary  
October 29, 2014

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**COMMITTEE AGENDA TOPICS**

I. **Gentrification Referral**

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**COMMITTEE INFORMATION**

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**Council Members Present:** Patsy Kinsey, John Autry, Ed Driggs, LaWana Mayfield

**Staff Resources:** Ann Wall, Assistant City Manager  
Pamela Wideman, Neighborhood & Business Services  
Pat Mumford, Neighborhood & Business Services

**Guest:** Tyler Mulligan, University of North Carolina-Chapel Hill School of Government

**Meeting Duration:** 12:00 PM – 1:30 PM

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**ATTACHMENTS**

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1. Agenda Packet – October 29, 2014
2. Presentation – Addressing Gentrification
3. Additional Handouts

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**DISCUSSION HIGHLIGHTS**

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**Kinsey:** Called the meeting to order and introductions of attendees.

**Wideman:** Our guest presenter today is Tyler Mulligan, Associate Professor of Public Law and Government at UNC Chapel Hill School of Government. Tyler's area of expertise includes community development, affordable housing and economic development. He is aware of our study around gentrification and will spend the bulk of his time today talking about potential policy options for us to consider.

Mulligan: I will talk about three policy options from the City Council referral to examine gentrification issues. This is a mid-level approach with the first half talking about the regulator and shared equity approach and the last half on the value capture approach. The School of Government takes a neutral approach. I do not expect you will want to do every option, but I want to offer you the options. It is all within the statutory and legal authority, however, it is aggressive. I am showing you how you can put that authority into practice if you so desire.

Presentation: Gentrification Working Definition

Presentation: Likely effect of new transit (LMI = low and moderate-income rentals)

Presentation: Impacts of less "well-located" affordable housing in Asheville

Driggs: Have any studies been done that show the salary rates for people in different communities, on a lateral comparison basis? Is there any evidence that the higher cost of the commute is reflected in pay levels?

Tyler: Presentation: Gentrification Referral 2014-06-10  
The two items bolded are the ones I will focus on. I took away those already being done in Charlotte. The City has no authority to offer tax abatement independently. The North Carolina Constitution requires that taxation occur in the form of due process. Taxation exceptions or abatements must be made applicable across the state. The General Assembly has enacted a tax abatement that does apply statewide for low income homeowners. I will not discuss that today because you have no control over it. Limited equity housing cooperatives have been mostly private endeavors having not typically involved government action.

Autry: Are these two complicated or facilitated at all by our housing locational policy?

Wideman: I will answer that after Tyler goes through his presentation. I have spoken to Tyler that it is the Council's goal to geographically disperse affordable housing throughout the city.

Driggs: Some of the things you have taken off because we are doing them might be a matter of degree, rather than that we have figured it out. I am trying to think of it from a cost benefit perspective. There is a lot of information I could use. Is there more information we ought to have about some of the things we are already doing?

Wideman: There is more information. Once we get to the end of the process we will bring you back tools, specifically around gentrification. I know we do some of this, but I would suggest that we could do a more intentional effort. This would include bringing you back some cost-benefit analysis.

Mulligan: I want to make it clear that just because I have taken them off the list does not mean you should not continue to consider them and keep them in your mix of activities.

Presentation: Addressing Gentrification: Agenda

Value capture is essentially acting like a private developer/business. I look at many of these problems from a business or real estate developer lense. I am going to put that

lense on this issue of gentrification and offer you an aggressive tool that can show you where the statutes allow you to act like a private developer if you so wish.

Presentation: Legal Foundations

Anything that a city does, they must have statutory authority to do. The state decides the activities that a local government is allowed to do. A city can use all the powers of a housing authority through General Statute 160A-456, which says that local government can simply exercise the powers of a housing authority regardless of whether one already exists in the city.

Mayfield: Have we ever utilized GS160A-456?

Mulligan: You may have used it and have not thought of it because it is very broad.

Schluenes: Rental subsidies.

Mulligan: The state constitution imposes some limitations to prevent acting entirely like private entities. Exclusive emoluments mean you cannot give gifts of public property. You must get some public purpose in return. Expenditures for affordable housing have long been considered a proper public purpose. You cannot guarantee the debts or loan of any other entity. The Law of the Land says that the US Constitution is incorporated in North Carolina and provides equal protection and due process.

Presentation: Regulatory Approach: Set Asides

Wideman: We do not have the enabling legislation to do Mandatory Inclusionary Zoning.

Mulligan: Presentation: Inclusionary Zoning - Mandatory  
Mandatory is when you tell the developer what you want. This is happening in Davidson and is currently being challenged.

Driggs: Has anyone tried to make the argument that mandatory zoning like that constitutes an unfunded mandate?

Mulligan: I am sure folks have tried to make that argument. I have done financial analysis for developers. It does not have to be an unfunded mandate. Unrestricted market rate units tend to be more expensive and the mandatory affordable units tend to stay at the affordable level.

Driggs: As an economist, I would say if it is mandatory, you are imposing something on someone that they would not have done themselves. There are costs associated with that and it may be the costs are borne by those paying higher rents or it may be partly that it changes how the land is utilized. From a purely economic standpoint, legally imposing that behavior which is not what the developer would have done of his own accord is recognized as an unfunded mandate.

Mulligan: The argument on the other side of that, by displacing that affordable housing somewhere else, they are creating costs elsewhere and they do not include those costs when they develop their housing at a higher market level.

The second one is a little less risky; it is conditional inclusionary zoning. Mandatory is most legally risky, and most productive. Voluntary is the least legally risky.

Presentation: Mandatory

Presentation: Conditional

The Conditional Zoning District comes at the request of a developer or owner and is not without controversy. Chapel Hill used this zoning for a decade and Chatham County did it for a specific development.

Mayfield: Have you prepared in this packet any potential downfalls when using these in a community?

Mulligan: Chapel Hill moved from conditional to mandate for various reasons: it did not bring enough units; it may take longer; there are no set standards; and developers have to face some uncertainty.

Presentation: Voluntary

Autry: In a voluntary situation, do we experience units being built, but the people who actually need that housing do not get those units?

Mulligan: The issue is the number of units being built.

Driggs: I would like to clarify the distinction between voluntary and conditional. In voluntary, you say either you can have this density without affordable housing or you can have higher density as long as you include affordable housing. On conditional, do we say they must develop with a certain percentage of affordable housing otherwise your application is denied?

Mulligan: They are very similar. With voluntary, it is laid out in the zoning ordinance exactly how to take advantage of the additional density bonus. It is not like conditional where there is a rezoning required for the conditional use application.

Presentation: Issues to Consider for Set Asides

You look at the Housing Needs Study to determine if the market can handle it. It is more challenging when land prices are high. The set aside might not get you all the affordable units you need.

Presentation: Many Policy Options

Presentation: Reported Market Effects of Inclusionary Zoning

Addressing your questions on the effects, the research shows that housing starts do not change, but the price of housing does change. The higher priced housing tends to go

up in order to compensate for the lower income housing. The size of the housing tends to shrink and more multi-family is created.

Presentation: Shared Equity Approach

For Community Land Trust, usually a nonprofit purchases land, builds houses on that land and then takes the land price out. The non-profit owns land and leases (or sells) only the housing unit. There is subsidy required.

Driggs: How is the non-profit funded? Is it publicly funded?

Mulligan: Yes. It can be from any number of sources because there is a subsidy required in this model. Using your housing authority powers, you are entitled to purchase land, construct affordable housing, and sell affordable housing at private sale. The question is whether it is better to have a nonprofit run that program and you provide a subsidy, or is it better for the City to have a department that markets and runs the program.

Presentation: Asset-building/Affordability Continuum

This is a philosophy issue. You can say you want low-income home buyers to get some equity. Our largest housing program in the United States is the mortgage interest deduction. The best long-term affordability program is the affordable rental, but it builds no equity.

Presentation: Considerations for Charlotte

Presentation: Value Capture Approach

Driggs: Are you are buying this property after all your plans related to transit are public? If you have knowledge about what is going to happen there and you intend to profit from that knowledge, the securities law does not allow that.

Mulligan: There is no equity distribution, so it does not fall into the securities law.

Autry: Are there municipalities that are exercising the capture value model or some aspects of it currently?

Mulligan: Yes, this is being done anywhere there is a special assessment district, tax increment financing district, or anywhere they are trying to capture the increase value from their actions or actions of private actors in the community.

Driggs: As part of our legislative agenda, one of asks of the state legislature is that they extend the special value district. I think the concept of aligning the costs with the benefits and leveraging makes sense.

Mulligan: Presentation: How capture value?

Driggs: Does the Tax Increment Finance (TIF) concept assume that a lot of the new investment is going to be induced by the thing that you are financing?

Mulligan: Correct.

Presentation: How capture value?

Mayfield: This is a question for Ms. Wideman and our attorney. Are you planning to bring us an update that shows what we are currently doing versus what we have the ability to do?

Wideman: We can do that. You are correct that there are some things we already do.

Autry: How do we determine how relevant that Small Area Plan is based on how old the plan is?

Mulligan: If you have an old Small Area Plan and you are concerned about relevance that creates a political issue for you, I would refer that question to my colleague, David Owens.

Driggs: Ms. Wideman, it would be helpful to see what we do now with the Charlotte-Mecklenburg Housing Partnership, Charlotte Housing Authority, Habitat for Humanity and the various programs that exist. How would we characterize them in the terms used here?

Autry: Ms. Wideman, would you like to address my earlier question on the Housing Locational Policy?

Wideman: Back to the below market rate ordinances, the set aside, and establishing a community land trust; how would those be facilitated or hampered by the Housing Locational Policy? Areas where there is already 15% or more of affordable housing are non-permissible as defined by our current Housing Locational Policy. A developer can ask for a waiver. The set aside is more for developments where there was 60% or below. It is mixed income, but a lower mixed income. Mr. Mulligan presented where you would infuse a percentage in a market rate development. That market rate developer, if in an area where there is already 15%, can ask for a waiver.

Autry: We have had previous discussions on quality of stock in certain areas of the city that are restricted by the Housing Locational Policy.

Wideman: In the case of the market rate developer, they would want a third party to manage those affordable or workforce units. The difference is when you have a tax credit development because those are heavily monitored by the state. You could make an argument that those are better managed because of the financing tools used. The Community Land Trust would depend on where the land is bought and the affordable units are built.

Mulligan: The School of Government encourages calls and we want to serve as a resource.

Mayfield: It would be helpful that when Ms. Wideman brings the report back to us, that it includes some information around job creation, public transportation, affordable housing and how we are connecting the community to jobs. In addition, an impact study on what transit can do or examples of what it has done for those in that mixed income. If we could also look at the impact where transit has gone in, gentrification has happened, and then what was the financial impact.

Wall: The next meeting is scheduled for November 12, 2014 where we will review the Neighborhood Leadership Awards event and follow up to the gentrification conversation.

Meeting adjourned.

# City Council

## Housing and Neighborhood Development Committee

Wednesday, October 29, 2014

3:30 p.m.

Charlotte-Mecklenburg Government Center

Room – CH-14

**Committee Members:** Patsy Kinsey, Chair  
Alvin “Al” Austin, Vice Chair  
John Autry  
Ed Driggs  
LaWana Mayfield

**Staff Resource:** Ann Wall, Assistant City Manager  
Pamela Wideman, Deputy Director, Neighborhood & Business Services

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### AGENDA

#### I. Gentrification Referral (No Action Required)

In April 2014, City Council referred the issue of gentrification to the Housing & Neighborhood Development Committee for additional study. The Housing & Neighborhood Development Committee will continue their discussion on this topic and has invited Tyler Mulligan, from University of North Carolina-Chapel Hill’s School of Government to share potential gentrification strategies applicable in North Carolina.

Mr. Mulligan’s areas of expertise include community development, affordable housing, and economic development. At the School of Government, Mr. Mulligan counsels state and local government officials and their partner organizations regarding community economic development, revitalization efforts and development finance.

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#### **Distribution:**

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Anna Schleunes- City Attorney’s Office  
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Steve Allen  
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Pamela Wideman  
Tom Warshauer

# Addressing Gentrification

Legal Authority and Policy Options

Tyler Mulligan  
Associate Professor of Public Law & Government

Charlotte Housing & Neighborhood Development  
Committee  
October 29, 2014



[www.sog.unc.edu](http://www.sog.unc.edu)

## Agenda

- Context
- Policy Options
  - Regulatory Approach
  - Shared Equity Approach
  - Value Capture Approach
- SOG neutral approach



## Gentrification Working Definition (Committee Mtg 2014-9-10)

- The process by which higher income households displace lower income households of a neighborhood, changing the essential character and flavor of the neighborhood.
- Gentrification occurs when:
  - Original residents are displaced
  - Neighborhood character is changed
  - Neighborhood is physically upgraded

## Likely effect of new transit

- Neighborhood change after transit tends to match change in metro as a whole, however....
- More pronounced change in areas dominated by LMI rentals
  - Higher rents and home values
  - Neighborhood residents wealthier
  - Vehicle ownership more common
  - Ridership problem: transit utilization lags other areas
- Does not necessarily lead to change in racial composition

## Impacts of less “well-located” affordable housing (Asheville)

- Negative impacts of longer commutes for “teachers, nurses, and police”
  - income lost “for gas and car maintenance”
  - less time for family and civic engagements
  - “increase tailpipe emissions which contribute both to local health problems and to global climate change”
  - “contribute to traffic congestion, which reduces the quality of life for all area residents”
  - “make it more difficult and costly for local businesses, nonprofits, and government agencies to hire and retain workers”

Rohe et al., *A Long Way from Home* (UNC 2010)

## Gentrification Referral 2014-6-10

- The following practices have been proposed by City Council:
  - Tax abatement to assist homeowners
  - Build more affordable housing
  - Link development to affordability commitments
  - Stabilize housing for existing renters
  - Use city owned land for infill development and incent affordable housing development with land contributions
  - **Below market rate ordinances (set asides)**
  - Limited equity housing cooperatives
  - **Establish a community land trust**

## Addressing Gentrification: Agenda

- **Regulatory Approach**
  - Below market rate ordinances (set asides)
- **Shared Equity Approach**
  - Establish a community land trust
- **Value Capture Approach**
  - Acquisition strategy
  - Utilize value capture mechanisms
    - MSD, TIF/ Synthetic TIF, Special Assessment District
  - Construct public affordable units
  - Engage policies that lead to construction of private affordable units

## Legal Foundations

- **Statutory authority required**
  - G.S. Chapter 157
  - G.S. 160A-456
- **State constitutional limitations**
  - Exclusive Emoluments
  - Public Purpose/Use
  - No loan of credit
  - Law of the Land Clause
- **U.S. Constitution**



# Regulatory Approach



## Regulatory Approach: Set Asides

- Housing needs identified by income
- Planning tool that encourages developers to construct future housing developments with an appropriate mix of affordability to accommodate identified need
- No government ownership required or desired



## aka: Inclusionary Zoning (sorted by risk level)

- Mandatory
- Conditional
- Voluntary



## Mandatory



- Ordinance sets forth:
  - percentage of affordable housing to be included in each development
  - how many market rate homes trigger the set-aside requirement
- Usually offers flexibility in meeting set-aside
- Montgomery County, MD: Over 12,000 units

## Conditional



- Triggered by application for rezoning
- Establish conditional district at request of owner (G.S. 160A-382)
- Must conform with comprehensive plan and address impacts generated by the development
- Chapel Hill: 300 units in first decade
- Chatham County: ad hoc conditional to deal with large developments

## Voluntary

- Density bonuses and other incentives inserted into local zoning ordinance (often as an overlay district)
- Specifies incentives granted in relation to percentage of affordable housing
- Several examples in NC – some have obtained authority from General Assembly
- Low or no production

## Issues to consider for set asides

- Can existing demand be met by market-rate developers profitably?
- What incentives are most meaningful to developers?
- How will rental or sale of affordable units be managed?
- How ensure long-term affordability?
- Is a set aside program sufficient on its own? (probably not)



## Many Policy Options

- Production provisions
- Incentives
- Flexibility
- Developer compliance
- Occupancy and transfer controls



(see Mulligan and Joyce, *Inclusionary Zoning: A Guide to Ordinances and the Law*)

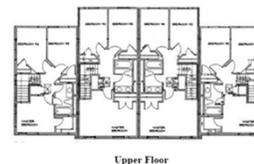
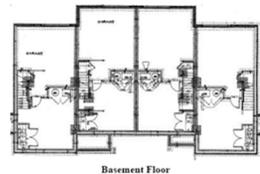
## Reported Market Effects of IZ

- Number of housing starts
- Price of housing
- Type of housing produced
  - Size
  - Single vs. multifamily



## When set asides are most productive

- Strong population growth
- High demand for housing
- Ample available, developable land
  - What about TOD?



## Shared Equity Approach (subsidy paid back ... plus some appreciation captured)

## Community Land Trust

- Nonprofit purchases and retains ownership of land
- Housing units constructed on land and subject to long-term (e.g. 99-year) lease
- Housing units are affordable through subsidy
  - Land lease is below market (e.g. \$25 per year)
  - Some subsidy goes into the housing unit
- Homeowners purchase (or lease) housing units subject to lease/ resale requirements
  - Agree to “pay it forward” by passing subsidy on to next owner
- Upon resale, lease restricts selling price using a shared equity formula (e.g., based on changes in area median income)

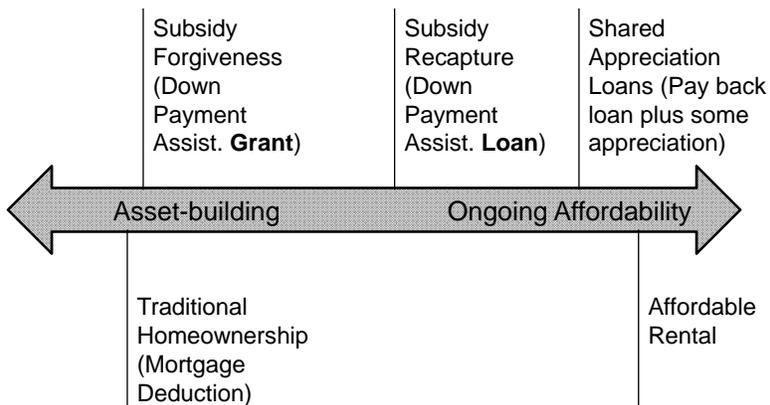


**Land Trust  
Townhomes**

## How it works: Resale



## Asset-building/Affordability Continuum



Source: Jacobus, Shared Equity, Transformative Wealth, 2007

## Considerations for CLT

- Capacity of CLT partner to screen tenants and serve as property manager
- Lender participation with long-term lease
- Stewardship of units (repair reserve)
- Additional repairs/subsidy may be required at each resale (CDBG/HOME)

## Value Capture Approach (Act Like a Private Developer) (School of Govt DFI Model)

## Value capture concept

- Government should capture some or all of the value it bestows on owners through its decision to **invest in transit (no owner contribution) and upzone TOD.**
  - Placing government transit in area of high concentration of renters confers unearned benefits on non-resident property owners, not TOD neighborhood residents.
  - Neighborhoods with high concentrations of renters typically have experienced lower levels of public investment in the past, subsidizing other residents
  - Other ways that neighborhoods with high concentrations of low-income residents and renters subsidize other areas?

## How capture value? Step 1.

- Do not upzone
- Conduct planning process to include findings on need for affordable housing
- Acquire property
  - Purchase for public purpose
    - affordable housing (G.S. 157-9)
    - redevelopment (G.S. 160A-456, -457)
    - economic development (G.S. 158-7.1)
  - Code enforcement and tax lien foreclosure (G.S. 105-376, G.S. 160A-426, -439, -443)
  - Eminent domain option (G.S. 157-9, -11, -28, -50)



## How capture value? Step 2.

- Establish TOD MSD w/in ¼ mile of rail stop (G.S. 160A-536(c1))
  - Same authority as a BID for downtown revitalization: make improvements and promote development
  - Provide “any other service or facility, whether public or public-private ... including retail, residential, and commercial facilities.”
  - City can augment MSD funds (G.S. 160A-542)
- Enact set aside program
- Coordinate CLT partners



## How capture value? Step 3.

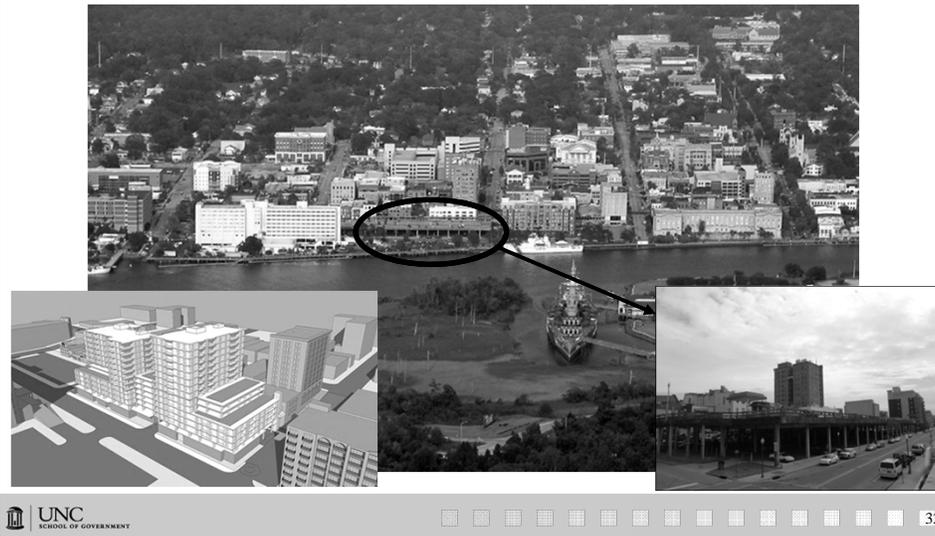
- Begin transit construction
- Construct public affordable units
  - P3 (G.S. Ch. 157, 143A-148.1C)
  - Funding options
    - TOD MSD
    - TIF/ Synthetic TIF
    - Special assessment district (sunset)
    - General fund
- Cause construction of private affordable units
  - Convey property to private redeveloper on condition that private affordable units will be built
  - Upzone upon request in conditional zoning districts with requirement that private affordable units be provided (conditional set asides)



Authority by Statute	Complete Extinguish Easement	Private Use of Public Property	Private Sale of Public Property	Acceptable Conditions	Notes
Economic Development G.S. 160A-536	✓	✓	✓	✓	G.S. 160A-536(c) requires that the private developer provide a certain number of affordable units in a certain area.
Urban Redevelopment Law G.S. 160A-536	✓	✓	✓	✓	Urban Redevelopment Law requires that the private developer provide a certain number of affordable units in a certain area.
Options for Redevelopment by Private Developer G.S. 160A-536	✓	✓	✓	✓	Options for Redevelopment by Private Developer requires that the private developer provide a certain number of affordable units in a certain area.
Urban Redevelopment Law G.S. 160A-536	✓	✓	✓	✓	Urban Redevelopment Law requires that the private developer provide a certain number of affordable units in a certain area.
Options for Redevelopment by Private Developer G.S. 160A-536	✓	✓	✓	✓	Options for Redevelopment by Private Developer requires that the private developer provide a certain number of affordable units in a certain area.
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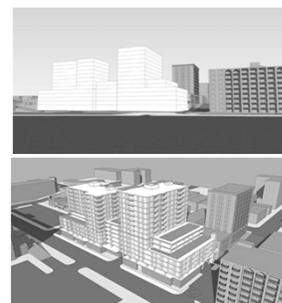
## P3 example: Wilmington, NC

### *Water Street Parking Deck Redevelopment*



## City needs public parking deck, also wants private investment

- Goal:
  - Secure public interests with minimum public investment
  - Prove profitability of development concept with public interests
- DFI performed predevelopment and feasibility analysis for City
  - Market study
  - Site assessment
  - Identification of public interests
  - Financial feasibility



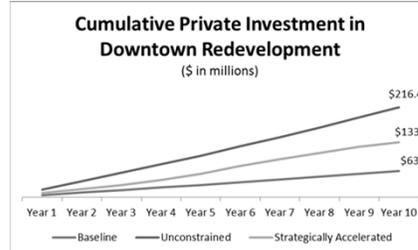
# Market Study (sample elements)

- Determine supply, demand, and absorption for potential private uses, including residential, office, retail, hotel, and parking.

Figure 4.3: HSAD Expected Annual Growth (Baseline Scenario)

	Annual Growth (SF)	Annual Growth %
Residential	250	1.4%
Office	-170	(0.4%)
Retail	5,000	1.4%
<b>Total Annual Growth</b>	<b>5,080</b>	<b>1.2%</b>

Supportable Square Feet	River Arts		'South Slope'		
	Capture	40%	60%	40%	60%
Furniture & Home Furnishings	1,818	2,727	3,436	5,154	
Electronics & Appliance	24	36	0	0	0
Food & Beverage	3,273	4,909	5,608	8,411	
Health & Personal Care	976	1,464	1,861	2,791	
Clothing & Clothing Accessories	35,446	53,169	57,661	86,491	
Sporting Goods, Hobby, Book & Music		2,258	3,387	4,101	6,151
General Merchandise	2,665	3,997	4,415	6,622	
Miscellaneous	0	0	5,052	7,579	
Food Services & Drinking Places	24,636	36,953	43,427	65,141	
<b>Total Supportable Sq. Ft.</b>		<b>71,096</b>	<b>106,643</b>	<b>125,560</b>	<b>188,340</b>



Forecast Scenarios	Residential Development by 2020 (Total Additional Housing Units)
Low	18
Mid	359
High	700



# Feasibility (Pro Forma Financials)

<b>Property</b> Number of Units 10 Leasable SF 24,840 Build SF 30,641 81%	<b>Income &amp; Expenses</b> <b>Income Side</b> Blended Rent/SP per Month \$ 12 Blended First Year Vacancy 33% Blended Ongoing Vacancy 14% Recalator (mt) 1.0% Interest Rate/mt 1.0% <b>Expense Side</b> Escalator Cost 2.00% Property Tax per \$100 of Assessed Value \$ 1,2540 School/MSD Taxes \$ 0.2229 Proposed Building TAX \$ 2,148.00 Management Fee 5.0% <b>Financing</b> Construction Loan Origination Fee 1.00% Construction Loan Interest 5.00% Bridge Loan Interest 10.00% Amount of Def Dev Fee 100% HTV Pref 1.00% HTV Pst (Federal Only) 5.00% Federal HTV Price \$ 0.83 State HTV Price \$ 0.23 <b>Potential Public Involvement</b> Eminent Grant \$ - Annual Tax Related Grants (4 of Years) 80% Annual Tax Related Grants (% of Increment) 80% Land Mark Status (1 = Yes, 0 = No) 0% Land Mark Decrease in Property Taxes 0% Mezz Debt Loan Amount \$ - Interest Rate 0% Amortization (yrs) - Annual Payments \$ -	<b>Loan Financing Assumptions</b> Interest Rate 4.00% Amortization (yrs) 20 Desired DSCR 1.10 Cap Rate (in CF analysis) 7.50% Actual LTV 75% Actual LTC 44% Loan Amount \$ 1,611,051 Annual Debt Service \$ 117,452 <b>Stabilized NOI Method</b> Stabilized NOI (Yr. 2) \$ 161,105 Annual DS \$ 128,884 Monthly DS \$ 10,740 Implied Loan Size \$ 1,779,391 <b>LTV Method</b> Stabilized NOI Valuation (Yr. 2) \$ 2,148,000 LTV 75% Implied Loan Size \$ 1,611,051 <b>LTC Method</b> Total Cost \$ 3,613,903 LTC 70% Implied Loan Size \$ 2,529,685 <b>Disposition Assumptions</b> Year of Disposition 4 Cost of Sale 3.00%	<b>Letters</b> Equity IRR 10% Equity Multiple 1.7x NPV @ 6% \$96,522
<b>Development Period Sources</b> Cash 15% \$ 643,399 Deferred Dev Fee 14% \$ 578,130 HTV Equity 9% \$ 362,488 Bridge Loan 24% \$ 1,014,965 Construction Loan 38% \$ 1,611,051 <b>Total Dev. Period Costs \$ 4,210,033</b>	<b>Permanent Sources</b> Development Equity 15% \$ 643,399 Deferred Dev Fee 14% \$ 578,130 HTV Equity (excluding last installment) 33% \$ 1,377,453 Public Investment 0% \$ - Mortgage 38% \$ 1,611,051 <b>Total Permanent Sources \$ 4,210,033</b>	<b>Uses</b> Acquisition 5% \$ 200,000 Hard Costs 67% \$ 2,814,965 Soft Costs 13% \$ 567,268 Other Costs 15% \$ 620,200 <b>Total Development Uses \$ 4,210,033</b> Development Period Uses \$ 4,210,033 Less- Deferred Dev Fee (\$78,130) <b>Total Development Period Uses \$ 3,611,903</b>	

- What IRR will attract private investment?
  - Grants for affordable housing (G.S. Ch. 157, G.S. 160A-456)



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## For more information

To learn more about community  
and economic development at  
the School of Government, visit  
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# Community and Economic Development

The Community and Economic Development program at the School of Government provides public officials with training, research, and assistance that support local efforts to create jobs and wealth, expand the tax base, and maintain vibrant communities. We deploy the resources of the university to support the development goals of communities in North Carolina.

## What training does the Community and Economic Development program offer?

The following courses are held annually. Visit the indicated course pages for more information or to register.

### SPRING

#### **Community Development Academy** (6 days)

**Who should attend:** Community development practitioners

**Location:** School of Government, UNC-Chapel Hill

**Topics:** Revitalizing distressed communities and assisting low-income populations; the concepts, methods, and strategies of community economic development

**For more information:** Visit [www.sog.unc.edu/node/1175](http://www.sog.unc.edu/node/1175)

### SUMMER

#### **Basic Economic Development** (4 days)

**Who should attend:** Economic development professionals employed by public, civic, or private development agencies; individuals new to the field; and experienced professionals seeking to update their skills

**Location:** School of Government, UNC-Chapel Hill

**Topics:** Business development, job creation, and increasing the tax base

**For more information:** Visit [www.sog.unc.edu/node/880](http://www.sog.unc.edu/node/880)

#### **Essentials of Economic Development** (1 day)

**Who should attend:** Local, regional, and state officials, including mayors, city council members, and county commissioners

**Location:** Various locations across North Carolina

**Topics:** Business development, job creation, and increasing the tax base

**For more information:** Visit [www.sog.unc.edu/node/1197](http://www.sog.unc.edu/node/1197)

### FALL

#### **Development Finance Toolbox** (2 days)

**Who should attend:** Local elected officials; city and county managers, assistant managers, and clerks; and community and economic development professionals

**Location:** School of Government, UNC-Chapel Hill

**Topics:** Local government financing options for community and economic development

**For more information:** Visit [www.sog.unc.edu/node/1184](http://www.sog.unc.edu/node/1184)

### ON-DEMAND WEBINARS

For a complete list of community and economic development webinars available on demand, visit [ced.sog.unc.edu](http://ced.sog.unc.edu).

## What publications are available?

Community and Economic Development faculty members have written books on a range of relevant topics, from a basic economic development handbook to publications on rural asset building, housing codes, property inspections, and small town development. For a complete list, visit [ced.sog.unc.edu](http://ced.sog.unc.edu).



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### For more information

To learn more about DFI and other community and economic development programs, visit [www.sog.unc.edu/node/1240](http://www.sog.unc.edu/node/1240).

The Development Finance Initiative has been made possible by a generous grant from Local Government Federal Credit Union.

The Development Finance Initiative (DFI) at the School of Government partners with local governments in North Carolina to attract private investment for transformative projects by providing specialized finance and development expertise. DFI partners with communities on projects including the following:

- Building reuse
- Community development
- Downtown revitalization
- Economic development
- Neighborhood redevelopment
- Small business finance

### What services are available from DFI?

DFI services support implementation of local community and economic development priorities that require private investment. DFI can be thought of as an extension of a local government's planning, finance, and economic and community development departments. DFI services include the following:

- Real estate finance and structuring, including identification of investors, lenders, tax credit equity sources, and other partners
- Advising on public-private partnerships and development incentives
- Assessment of distressed properties
- Creation of Requests for Proposals (RFPs) to attract private development into underserved areas
- Development of small business finance programs
- Assistance with pre-development including program design, market assessment and valuation, cost assumptions, and pro forma creation
- Evaluation of development proposals, agreements, and contracts
- Assessment and review of development team experience and capacity

### What development finance tools can DFI help our community to implement?

The DFI team's experience touches on a range of development finance tools that are designed to attract private investment into local community and economic development projects, including the following:

- Targeted financing and incentives such as Tax Increment Financing (TIF) and Business Improvement Districts (BIDs)
- Tax credit financing (historic preservation, new markets, brownfields, low-income housing)
- Loan funds (revolving loan funds, microenterprise loans, and innovative debt and equity hybrid products)
- Secondary market and securitization programs (loan loss reserve funds)
- Equity (individual investors, foundations, community development venture capital)
- Federal grant programs (CDBG, HUD, EDA)

### How can I get DFI engaged in our community?

DFI is a fee-based service offered by the School of Government at UNC-Chapel Hill. Costs for smaller towns and economically distressed communities may be subsidized by third-party partners. Assistance is available on an ongoing or project-by-project basis depending on the needs of the community. For more information, contact Michael Lemanski at 919.962.0942 or [lemanski@sog.unc.edu](mailto:lemanski@sog.unc.edu). Initial contact may be followed by a site visit and a letter of agreement for DFI services.

# **INCLUSIONARY ZONING**

A GUIDE TO ORDINANCES AND THE LAW

**C. Tyler Mulligan and James L. Joyce**



The School of Government at the University of North Carolina at Chapel Hill works to improve the lives of North Carolinians by engaging in practical scholarship that helps public officials and citizens understand and improve state and local government. Established in 1931 as the Institute of Government, the School provides educational, advisory, and research services for state and local governments. The School of Government is also home to a nationally ranked graduate program in public administration and specialized centers focused on information technology, environmental finance, and civic education for youth.

As the largest university-based local government training, advisory, and research organization in the United States, the School of Government offers up to 200 courses, seminars, and specialized conferences for more than 12,000 public officials each year. In addition, faculty members annually publish approximately fifty books, book chapters, bulletins, and other reference works related to state and local government. Each day that the General Assembly is in session, the School produces the *Daily Bulletin*, which reports on the day's activities for members of the legislature and others who need to follow the course of legislation.

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## CED in NC Blog: A Guide to Business Improvement Districts in North Carolina

By Kara Millonzi

Article: <http://ced.sog.unc.edu/?p=956>

This entry was posted on March 30, 2010 and is filed under Built Assets & Housing, Community Development, Downtown & Main Street, Economic Development, Financing Development

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*Kara Millonzi is a School of Government faculty member.*

A city's governing board wishes to support and promote its downtown area. It wants to install sidewalks and street lighting. It wants to renovate the storefronts that line its main street. It wants to hire personnel to provide additional security in the area. It wants to invest in downtown art initiatives and other beautification projects. It wants to sponsor a series of festivals and markets in the city center. Finally, it wants to aggressively market its downtown area and local merchants. But how can the city pay for it all?

The city could use its property tax proceeds or other unrestricted revenue sources to fund most, if not all, of these activities in its downtown area. The city also could accept voluntary donations from the commercial entities located in its downtown area to support these expenditures. But, can the city compel the commercial and other entities located within the downtown area to fund all of these activities? The answer to this question is yes. And the mechanism for doing so is to establish a special taxing district.

**G.S. Ch. 160A, Art. 23** (Municipal Service District Act), authorizes North Carolina municipalities to establish special taxing districts to fund, among other services or functions, *downtown revitalization projects*. Specifically, the Municipal Service District Act implements **Section 2(4) of Article 5 of the North Carolina Constitution**, which allows a local government to define special areas (districts) in order to assess additional *ad valorem* property taxes on properties located within the districts to fund projects and services in the districts. (Note that counties have **similar authority** to establish special taxing districts to fund certain services or functions, but that authority does not include downtown revitalization projects.) When a city establishes a special taxing district for the purpose of financing downtown revitalization projects, it is commonly referred to as a Business Improvement District or BID.

The following are answers to frequently asked questions about setting up, financing, and providing services within a BID.

### 1. What services or projects may be provided within a BID?

**G.S. 160A-536(b)** purports to define *downtown revitalization*. What it actually does is provide a non-exclusive list of projects that can be supported with the special tax revenue. In practice, downtown revitalization projects include a wide variety of activities—including enhanced maintenance of streets, sidewalks, and other public facilities; downtown marketing and promotion; presentation of special downtown events; management of downtown parking; promotion of downtown business location and expansion; and construction of capital improvements.

### 2. How are a BID's boundaries established?

A city's governing board has broad discretion to draw BID boundaries within its downtown area. As a general rule of thumb, however, BIDs should include only properties that will benefit from the additional services provided in the district. There are a series of procedural steps a governing board must follow to establish a BID (**outlined here**), which include certain notice provisions and a public hearing. There is no petition or referendum requirement, though.

### 3. How are BIDs financed?

---

In North Carolina a municipal service district is a property tax district. The city may levy an *ad valorem* (property) tax within the BID in addition to the citywide *ad valorem* property tax, the proceeds of which finance additional services or projects provided in the district.

The BID property tax (BID tax) is levied on the same tax base, within the district, on which the citywide property tax is levied. The property tax base includes real and personal property. The same exemptions apply to assessing a BID property tax as apply to the citywide property tax.

In addition to the BID tax proceeds, a city may allocate to a BID any other unrestricted revenue.

#### **4. May the city levy different BID tax rates within a BID?**

No. The BID tax rate must be uniform throughout a BID. If differential rates are desired for different parts of the downtown, different BIDs must be established.

#### **5. May the city exempt certain property in a BID from the BID tax (for example, residential property)?**

No. Only the General Assembly may exempt or otherwise classify property subject to the *ad valorem* property tax.'

The same exemptions apply to a BID tax as apply to the citywide *ad valorem* property tax. For example, government property and property held for educational, scientific, literary, cultural, charitable, or religious purposes are exempt from the citywide property tax and, therefore, are exempt from a BID tax. Additionally, the personal property of any public service corporation is exempt from a BID tax.

Note that, to the extent possible, many cities draw BID boundary lines so as to exclude residential property because the units may not exempt these properties from a BID tax.

#### **6. Are there any limits on a BID tax rate?**

The BID tax rate, combined with the property tax rate(s) levied citywide, may not exceed \$1.50 per \$100 valuation, unless approved by a majority of the qualified voters residing in the district. (For more information on levying *ad valorem* property taxes, click [here](#).)

#### **7. Once a BID is established and becomes effective, when must services be provided in the district?**

Pursuant to [G.S. 160A-540](#), once a BID becomes effective, the city must "provide, maintain, or let contracts for the services for which the residents of the district are being taxed within a reasonable time, not to exceed one year."

#### **8. May a city create a BID that does not take effect until a future fiscal year?**

Likely yes. [G.S. 160A-537](#) states that "[t]he resolution defining a service district shall take effect at the beginning of a fiscal year commencing after its passage, as determined by the city council . . ." Thus, the governing board likely may specify in the resolution creating the BID that it will take effect in a future fiscal year. The BID must take effect at the beginning of a fiscal year, though.

#### **9. Does the BID have borrowing authority?**

No. A BID is a special taxing district only. It does not have borrowing authority.

A city may issue bonds or financing instruments, the proceeds of which are used solely to finance services within a BID. However, if the city proposes to issue General Obligation bonds to provide services solely within a BID (and the bonds are going to be retired with BID tax revenue), the bond issuance must be approved by the majority of citizens in the city *and* by a majority of the citizens within the existing or proposed BID.

#### **10. May a city contract with a private organization or entity to manage a BID?**

---

Yes. A city may provide services within the BID itself, or it may contract with another governmental agency or a private agency to provide the services.

Contracts with other governmental or private agencies must specify the purposes for which the funds must be used and require an accounting for the expenditure of the funds.

**11. If a city enters into a contract to provide services within a BID that expands more than one fiscal year, are future city councils bound by the contract?**

Yes. [G.S. 159-13\(b\)\(15\)](#) requires the city's governing board to appropriate each fiscal year an amount required to meet its obligations under continuing contracts unless the contract language reserves to the city the right to limit or not make such an appropriation. Of course, a future board may terminate a contract according to the contract's terms or breach the contract and face the penalties imposed under the contract or by general contract law.

**13. May a city appoint a citizen advisory board for a BID?**

Yes. A city may appoint a citizen advisory board for a BID. The city may grant the advisory board some powers; however, the city must maintain final authority over the use of a BID's funds. The city's governing board is not legally bound by an advisory board's recommendations.

**14. Once it is established and becomes effective, may a city's governing board extend the boundaries of a BID to include additional property?**

Yes. The city's governing board may add territory to an existing BID if the area to be added is contiguous to the district and the new area requires the services that are provided in the district. (At least one eighth of the new area's aggregate external boundary must be coincident with the existing boundary of the BID.)

The city's governing board also may extend the boundaries of a BID if it receives a petition signed by 100 percent of the real property owners of the area to be added to the BID.

**15. Once a BID is established and becomes effective, may property be removed from the district?**

Yes. The city's governing board may adopt a resolution to redefine a BID by removing property that no longer needs the services provided in the BID.

**16. Once a BID is established and becomes effective, may it be abolished?**

Yes. The city's governing board may adopt a resolution abolishing a BID if it finds that it is no longer needed.

If a BID is abolished, any unexpended BID tax proceeds must be expended for the purposes for which the BID was established. The BID tax proceeds may not be transferred to the general fund or expended for any other purpose.

**17. What about commercial areas outside a city's downtown area, may a city establish one or more BIDs in these areas to support increased services or special projects?**

Yes, under certain circumstances. [G.S. 160A-536](#) lists all the purposes for which a municipal service district may be established. In addition to downtown revitalization projects, the statute includes *urban area revitalization projects*. *Urban area* is defined to include an area that meets one or more of the following conditions:

- It is the central business district of the city.
- It consists primarily of existing or redeveloping concentrations of industrial, retail, wholesale, office, or significant employment-generating uses, or any combination of these uses.
- It is located in or along a major transportation corridor and does not include any residential parcels that are not, at their closest point, within 150 feet of the major transportation corridor right-of-way or any nonresidentially zoned parcels that are not, at their closest point, within 1,500 feet of the major transportation corridor right-of-way.
- It has as its center and focus a major concentration of public or institutional uses, such as airports, seaports,



colleges or universities, hospitals and health care facilities, or governmental facilities.

If an area within the city meets one or more of these criteria, the city's governing board may establish a municipal service district and provide in the urban area district any service or facility that may be provided in a downtown area as a downtown revitalization project. (Note that the General Assembly expanded this authority to apply to all municipalities in 2009. See [S.L. 2009-385](#).)

---

## **CED in NC Blog: What is a Synthetic Project Development Financing (aka Synthetic TIF)?**

**By Kara Millonzi**

**Article:** <http://ced.sog.unc.edu/?p=4499>

**This entry was posted on April 30,2013 and is filed under Financing Development**

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Merriam-Webster's online dictionary defines "synthetic," among other things, as "devised, arranged, or fabricated for special situations to imitate or replace usual realities." As the definition suggests, a "synthetic project development financing" (more commonly referred to as a "synthetic tax increment financing" or "synthetic TIF") is a local government borrowing scheme that is "fabricated" to "imitate" a real TIF. If that does not totally clear things up for you read on....

### ***What is a Project Development Financing/TIF?***

A project development financing (more commonly known as a tax increment financing or TIF) is a type of debt financing in which a local government establishes a district and borrows monies to fund public infrastructure projects that will benefit (and incentivize) new private development in the district. The unit pledges as security for the loan (and uses as funds to repay the loan) the incremental increase in property tax revenue generated within the district due to the increase in property valuation caused by the new development. For more information on TIFs in North Carolina click [here](#).

### ***How does a Synthetic TIF compare to a TIF?***

A "synthetic TIF" is similar to a TIF in that it is type of debt financing in which a local government borrows money to fund public infrastructure projects that will benefit (and incentivize) new private development in a defined area. A synthetic TIF differs from a TIF, however, in the nature of security pledged for the loan. In a synthetic TIF the unit pledges as security for the loan the asset (or a portion of the asset) that is being financed or, in some cases, the unit's full faith and credit (general taxing power.) The unit expects to repay the loan from the incremental increase in property tax revenue generated within the district due to the increase in property valuation caused by the new development. But the unit does not pledge the incremental revenue as security for the loan.

Thus, as I stated above, a synthetic TIF is a borrowing scheme that is "fabricated" to "imitate" a TIF but that is not a TIF. Instead, a unit of government uses one of its other authorized debt financing mechanisms. (As a reminder, North Carolina local governments have five authorized borrowing methods—general obligation bonds, revenue bonds, installment financings, special obligation bonds, and project development financings/TIFs.) A unit may fabricate a synthetic TIF while issuing debt through general obligation bonds or installment financings. The latter is far more common, though.

### ***What are the procedures for establishing a synthetic TIF?***

There is no legal process for creating a synthetic TIF. A unit must follow all of the procedures for the particular borrowing mechanism that it chooses (installment financing or general obligation bonds). In the case of an installment financing, that means that the unit structures the borrowing transaction according to, and follows the procedures prescribed by, the provisions in [G.S. 160A-20](#). The unit pledges the infrastructure being constructed/improved/purchased (or a portion thereof) as security for the loan. However, the unit anticipates using the incremental property tax revenue generated from the new development that was incentivized by the public infrastructure investment to repay the loan.

### ***Why call an installment financing (or a general obligation financing) a synthetic TIF?***

Legally there is no difference between a "regular" installment financing (or general obligation financing) and one that is referred to as a synthetic TIF. The use of the term synthetic TIF is simply a marketing strategy. It is a short-hand way to indicate that a unit intends to repay the loan using new revenue generated from increased property values due to new development in the area, rather than from existing revenue or from new revenue generated through increased property tax rates.

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## **CED in NC Blog: Financing Capital Projects—Part II: Special Levies**

**By Kara Millonzi**

**Article:** <http://ced.sog.unc.edu/?p=4406>

**This entry was posted on January 29, 2013 and is filed under Downtown & Main Street, Economic Development, Financing Development**

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Blight City has fallen on hard times. Its population has declined significantly since the 1990s, due in large part to the shuttering of two large manufacturing plants. Emblematic of the city's decline is its central downtown area. Once a vibrant community center, it is now comprised mainly of run-down, vacant buildings. Recently, however, a mid-sized micro-brewed root beer company purchased one of the old manufacturing plants (located just outside the city's downtown) and began operations. It employs 200 people and plans to double its workforce over the next two years. The company wants to capitalize on a recent resurgence in root beer "connoisseurs" by expanding the plant to include a tasting facility. And the company has expressed interest in opening a restaurant and root beer bar in the city's downtown. City leaders want to support the company's efforts. They view the company's investment in the city as a cornerstone for the city's resurgence.

In fact, the root beer company's recent investment in the city has sparked the interest of at least one developer. She has approached city officials about plans to help revitalize downtown. The developer intends to purchase several of the vacant buildings and refurbish them to attract a mix of small commercial entities, restaurants, bars, and residential tenants. Both the root beer company and the developer have requested (among other incentives) that the city invest in some infrastructure improvements and upgrades in the central downtown area to complement the private development. Specifically, the private entities would like the city to make road improvements, widen the sidewalks, install street lights, upgrade water and sewer lines, and demolish a city-owned structure to construct a parking lot.

Assuming that the city councilmembers are willing to make these public infrastructure investments, there are several available funding options, which fall into five general categories: (1) Current Revenues; (2) Savings; (3) Grants/Donations/Partnerships; (4) Special Levies; and (5) Borrowing Money. This is the second in a series of posts discussing these funding options. It focuses on "Special Levies"—describing two potential mechanisms whereby a unit may raise money from the property owners who most directly benefit from the capital project(s) financed with the raised funds.

### **Targeted Revenue Generation**

The largest source of general fund revenue for both counties and municipalities is property tax proceeds. And the hallmark of property taxation is that all property owners (except those whose property is statutorily exempt) pay the tax(es), regardless of whether they directly benefit from the projects or services funded with the tax proceeds. Citizens entrust their local elected leaders to expend the proceeds for the general benefit of the community. Local elected leaders, however, often feel pressure to provide and fund an ever-increasing number of projects and services while, at the same time, maintaining or reducing the property tax levy. Because of this, units have come to rely on revenue generation mechanisms, such as user charges, that are targeted to the citizens or property owners who most directly benefit from specific services or projects. For example, in the past many municipalities funded solid waste services, including disposal facilities, convenience centers, and even curb-side pick-up, with property tax proceeds. Now these units typically assess user charges to cover some or all of the costs associated with these services. Other common user charges levied by counties and municipalities are for water and wastewater utilities services, recreational and cultural activities, health and mental health services, ambulance services, parking, public transportation, stormwater, cemeteries, and airports. Units also rely on fee revenue to fund certain regulatory activities such as inspections and plan reviews. Generally user charges are feasible for any service that directly benefits individual "users," is divisible into service units, and can be collected at a reasonable cost.

What about using user charges to fund capital projects or acquisitions? It is harder to divide most capital projects or assets into divisible units with defined beneficiaries. Most units attempt to apportion some of the capital costs associated with a particular service among the users of that service. The law allows for more targeted revenue generation through special levies—special assessments and service (tax) districts—to fund capital projects or capital assets.

### Special Assessments

A special assessment is levied against property to pay for public improvements that benefit that property. It is neither a user charge nor a tax but it has characteristics of both. Like a user charge, a special assessment is levied in some proportion to the benefit received by the assessed property. However, like a property tax, it is levied against property rather than persons and is a lien on each parcel of real property that is assessed. The lien may be foreclosed in the same manner as the foreclosure of property tax liens.

Local governments currently have two statutorily authorized methods to levy special assessments. The following chart summarizes the major characteristics of each method. For a detailed exposition of the authority, procedures, and limitations of each method click [here](#).

<b>Traditional Special Assessment Method</b>	<b>Newer Special Assessment Method</b>
<b>G.S. 160A, Art. 10; G.S. 153A, Art. 9</b>	<b>G.S. 160A, Art. 10A; G.S. 153A, Art. 9A</b>
<ul style="list-style-type: none"> <li>• Limited statutory purposes</li>   <li>• Generally no petition requirement (except for street and sidewalk projects)</li>   <li>• Amount of assessment must be based on one or more statutory bases</li>   <li>• Unit must follow detailed statutory procedures before levying assessments (including at least 2 public hearings)</li>   <li>• Unit may borrow money to front costs of project but may not pledge assessment revenue as security for loans</li>   <li>• Unit must complete public improvement projects before assessments may be imposed</li>   <li>• Assessments often are paid in up to 10 yearly installments</li> </ul>	<ul style="list-style-type: none"> <li>• Expansive statutory purposes</li>   <li>• Petition requirement for all projects</li>   <li>• Assessment method within discretion of governing board, but must relate to benefit to properties assessed</li>   <li>• Unit must follow detailed statutory procedures before levying assessments (including at least 2 public hearings)</li>   <li>• Unit may borrow money to front costs of project and may pledge assessments as security for loan</li>   <li>• Unit may impose assessments before the projects are complete, based on estimated costs</li>   <li>• Assessments may be paid in up to 30 yearly installments</li> </ul>

- Authority EXPIRES July 2013

### ***Benefits and Limitations of Traditional Assessment Method***

The traditional assessment method provides local units with a potentially important tool for funding capital projects. The ability to recoup some or all of the costs of a particular project from those property owners who most directly benefit from the project makes sense both financially and politically. Levying assessments also allows a local government to collect revenue from property owners who benefit from the capital projects but whose properties are exempt from property taxation. And using special assessments as a part of its revenue mix allows a governing board to direct property tax proceeds and other general fund revenues to services or to capital projects that benefit a broader subset of the unit's citizens.

Special assessments are not widely used by North Carolina local governments, though. This is due to a number of factors. For one, the process for levying assessments is onerous. (Click [here](#) for a detailed description of the assessment process.) Furthermore, the traditional assessment authority is limited to only a few categories of projects. Counties may levy special assessments to finance the following public improvements:

- Water systems
- Sewage collection and disposal
- Beach erosion control and flood and hurricane protection
- Watershed improvement, drainage, and water resources development projects
- Local cost of improvements made by the Department of Transportation to subdivision and residential streets outside municipalities
- Street light maintenance

Municipalities may levy assessments to finance the following public improvements:

- Streets
- Sidewalks
- Water systems
- Sewage collection and disposal systems
- Storm sewer and drainage systems
- Beach erosion control and flood and hurricane protection

Another significant limitation to the traditional method is that local units must front all of the costs of the project(s). Only after a project is complete may a unit levy the assessments, and assessments often are paid in installments over a number of years (up to ten). A unit must use unrestricted general fund revenue or borrowed funds to finance the project. Some local units have set up special assessment revolving funds, using yearly special assessment payments from former projects to fund new projects. It often takes several years to establish a sufficient revolving fund, though.

### ***Benefits and Limitations of Newer Special Assessment Method***

Under the newer special assessment method, a local unit may levy assessments before the capital project is complete (based on estimated costs). And a unit may use the newer method to fund a broader array of capital projects. (Click [here](#) for a list of authorized projects.) The newer method also allows a local unit to pledge the special assessments as security for revenue bonds (special assessment bonds) issued to fund the capital projects. (To date no units have issued special assessment bonds in North Carolina.)

Under the newer method, however, a unit must first receive a petition signed by a majority of the owners of the properties to be assessed, representing at least 66 percent of the aggregate value of the properties. (The traditional method only requires a petition to levy assessments for street and sidewalk improvements.) The General Assembly enacted the newer special assessment method in 2008 as an alternative to impact fees. It effectively allows a local unit to levy assessments on property owned by a developer to fund public improvements that benefit the new development. Because assessments often are paid over a number of years (up to 30 under the newer method) this method allows a developer to shift the

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burden for paying for the public improvements to the eventual property owners.

### ***Basis of Assessment***

Under both assessment methods, the amount of each assessment must bear some relationship to the amount of benefit that accrues to the assessed property. The most common basis of assessment is front footage: each property is assessed on a uniform rate per foot of property that abuts on the project. Other common bases include the size of the area benefitted and the value added to the property because of the improvement. A unit also may set up benefit zones—setting different assessment rates in each zone according to degree of benefit.

### **County and Municipal Service (Tax) Districts**

Another targeted revenue generation mechanism available to a local unit to fund capital projects is to establish one or more service (tax) districts. [G.S. 160A, Art. 23](#); [G.S. 153A, Art. 16](#). With one exception the state constitution requires that a local government's property tax rate(s) be uniform throughout the government. The constitution, however, authorizes the General Assembly to authorize a local government to define a part of the unit as a service district, to levy a property tax in the district additional to the county-wide or municipal-wide property tax(es), and to use the proceeds to provide services or fund capital projects in the district.

### ***Authorized Purposes for which Service District may be Created***

The General Assembly has authorized counties to define a service district for the following functions:

- Beach erosion and flood and hurricane protection
- Fire protection
- Recreation
- Sewage collection and disposal
- Solid waste collection and disposal
- Water supply and distribution
- Ambulance and rescue services
- Watershed improvement, drainage, and water resources development
- Cemeteries

And municipalities may establish a service district for any of the following functions:

- Beach erosion and flood and hurricane protection
- Downtown revitalization projects
- Urban area revitalization projects
- Transit-oriented development projects
- Drainage projects
- Sewage collection and disposal systems
- Off-street parking facilities
- Watershed improvement, drainage, and water resources development projects

### ***Taxing Authority in Service District***

A service district is in no way a separate unit of government. It is simply a geographic designation, a defined part of a county or municipality in which the government levies extra property taxes and provides extra services or undertakes capital projects that more directly benefit the properties within the district. Service district taxes are subject to the same exemptions and exclusions as the general property tax(es). (That is, property that is exempt from property taxes also is exempt from service district taxes.)

A unit's governing board sets the service district tax rate each year in its annual budget ordinance. The rate, combined with the unit's general property tax rate, may not exceed \$1.50 per \$100 assessed valuation of property in the district, unless the unit's voters have approved a higher general property tax rate.

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All of the revenue generated by the service district tax must be used to provide the services or undertake the capital projects in the district. The moneys may not be diverted to other purposes. A unit is free to supplement the district tax revenue with general fund revenues.

### ***Process for Establishing a Service District***

A service district is defined by simple action of the governing board. No petition from district residents or property owners is required. A vote need not be held in the district in order to create it, although the governing board must hold a public hearing. The board, however, must find that the district needs the proposed services or projects “to a demonstrably greater extent” than the rest of the unit. A district generally must become effective at the beginning of a fiscal year, and the unit must “provide, maintain, or let contracts for” the services or projects within a reasonable time, not to exceed one year after the service district tax is levied. More information on service districts is available [here](#).

### **Blight City Hypothetical**

Should Blight City consider using special levies to fund one or more of its public infrastructure projects? Obviously the answer to this question depends on a number of considerations, both legal and practical, but potentially both types of special levies could be used to fund all or a portion of the projects.

### ***Special Assessments***

Funding at least some of these projects with special assessments makes sense if the developers/property owners are willing to ultimately pay for the costs (or a portion of the costs) of the public infrastructure projects but need the government to front the capital. Of course the city would have to be able to front the capital. The city could borrow money to fund the projects. Under the newer special assessment method, the city could pledge the special assessments as security for the loan. And under either method it could do a “synthetic” special assessment financing, whereby it actually entered into an installment contract under [G.S. 160-20](#) to borrow the funds but used the stream of special assessment revenue to make its debt service payments.

### ***Service (Tax) District***

Because the proposed projects are in the city’s downtown, the city also could establish a municipal service district for downtown revitalization. (Units typically refer to these as [Business Improvement Districts or BIDs](#).) The unit could levy an additional property tax within the district to fund all or a portion of the projects. As a practical matter, the unit probably is limited to directly funding the smaller dollar projects (street lighting and maybe sidewalk improvements) with the district tax proceeds. The unit could borrow money to finance the larger projects and then use future years’ district tax collections to make its debt service payments. However, the unit may not want to impose too high a tax on its downtown properties because this may discourage further development.

# STATUTORY AUTHORITY FOR CONVEYING REAL PROPERTY TO PRIVATE ENTITY

North Carolina law requires *real* property be disposed through one of three competitive bidding procedures—  
Sealed Bid (G.S. 160A-268), Upset Bid (G.S. 160A-279), or Public Auction (G.S. 160A-270)—*unless another method of conveyance is specifically authorized.*

Authority for Conveyance	Competitive Bidding Sale	Private Sale for Fair Market Value	Private Sale - Non-Monetary Consideration	Allowable Covenants/ Conditions	Notes
<b>Economic Development</b> G.S. 158-7.1	✓	✓	✓	Construct w/in 5 yrs or reverts to local gov't, plus any other desired conditions	G.S. 158-7.1(d2) allows next 10 years of local government revenue to count as consideration toward purchase provided the purchaser creates "substantial number of jobs" paying above average wage.
<b>Urban Redevelopment Law</b> G.S. 160-514(c) Boards exercise powers directly: G.S. 160A-456, G.S. 153A-376	✓			As Redevelop. Comm'n deems necessary	Within designated redevelopment area, conveyance must comply with Art. 12 competitive bidding procedures.
<b>Disposition for redevelopment by private developer</b> G.S. 160A-457 (cities) G.S. 153A-377 (counties)	✓	✓ (cities only, in CD area only)		Covenants and restrictions allowed for cities only in CD area	Acquire/convey blighted or inappropriately developed property. Cities: private sale only in commun. develop.(CD) areas, price no less than "appraised value."
<b>Housing Authorities Law</b> G.S. 157-9 Boards exercise powers directly: G.S. 160A-456, G.S. 153A-376	✓	✓	✓	Covenants and restrictions to ensure housing serves LMI persons	Exempt from disposition rules, but disposal must fit within statutory authority and serve constitutional public purpose (housing project for low and moderate income (LMI) persons, G.S. 157-3(12)).
<b>Conveyance to Historic Preservation Organizations</b> G.S. 160A-266(b)	✓	✓		Historic covenants, limits on further sale	Historic covenants affect appraised value, but does not allow for conveyance at less than appraised value.
<b>Conveyance to Entities Carrying Out Public Purpose</b> G.S. 160A-279 (cities and counties only)	✓	✓	✓	Ensure <i>recipient</i> puts property to public use, no subsequent sale	City or county must be authorized to appropriate funds to entity.
<b>Downtown Dev Projects (DDP)</b> G.S. 160A-458.3 <b>P3 for construction</b> G.S. 143-128.1C	✓	✓		Any	Public facility part of priv. developmnt. Private sale if pub facility <50% total project cost/financ. P3: Must use RFQ.

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## CED in NC Blog: How a North Carolina Local Government Can Operate a Land Bank for Redevelopment

By Tyler Mulligan

Article: <http://ced.sog.unc.edu/?p=4813>

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*If America's cities and towns are to realize their greatest potential as attractive and welcoming places—and as drivers of the new American economy—they must be able to repurpose their vacant, abandoned and foreclosed properties. Those properties—whether the product of the current foreclosure crisis or the remnants of the old economy—diminish the sense of community among neighbors, erase the value of lifelong investment in a home, and make it nearly impossible for cities and towns to attract and keep the creative, innovative, entrepreneurial citizens who will build the next economy.*

*Dan Kildee, founder of Genesee County Land Bank, in the foreword to [Land Banks and Land Banking](#)*

Dan Kildee's sentiment is shared by local governments across North Carolina, but how can they “repurpose” their vacant and abandoned properties and revitalize distressed communities? The answer in Genesee County, Michigan, was a redevelopment tool called a land bank, which is a public authority created to acquire and redevelop vacant and abandoned properties. In the span of a decade, the Genesee County Land Bank acquired more than 10,000 parcels to hold or redevelop, and during the “great recession,” catalyzed more than \$60 million in new private investment. Land banks continue to spring up across the nation and are playing an increasingly important role in revitalization efforts in places such as Cuyahoga County, Ohio, and Fulton County, Georgia. A complete explanation of land bank policies and approaches across the nation can be found in a downloadable text, [Land Banks and Land Banking](#).

In Michigan, forming a land bank is rather straightforward, because the Michigan state legislature enacted specific enabling authority for the establishment and operation of land banks. No such land bank legislation exists in North Carolina. Nonetheless, local governments in North Carolina can perform the basic functions of a land bank by cobbling together existing statutory authority. In this way, *the local government itself serves as the land bank and performs the major activities of a land bank*:

1. Acquire and hold troubled properties
2. Stabilize properties and eliminate encumbrances
3. Convey properties to a redeveloper

Each activity will be addressed in turn.

### Acquire and Hold Property

As noted in *Land Banks and Land Banking*, the first task of a land bank is to acquire troubled properties and hold them until ready for sale. In North Carolina, there are several statutes upon which a local government may rely for acquiring and holding property for land bank purposes:

1. **Acquisition and disposition of property for redevelopment:** [G.S. 153A-377](#) (counties) & [G.S. 160A-457](#) (cities). Cities and counties are authorized to acquire “by voluntary purchase” real property that is “[b]lighted, deteriorated, deteriorating, undeveloped, or inappropriately developed from the standpoint of sound community development and growth”; “[a]ppropriate for rehabilitation or conservation activities”; ... or “[a]ppropriate for ... the guidance of urban development.” Furthermore, the local government may “retain property so acquired for public purposes....” No particular notice or hearing requirements are prescribed. This acquisition authority may be exercised without “the necessity of compliance with the Urban Redevelopment Law” ([G.S. Chapter 160A, Article 22](#)). This is important because the Urban Redevelopment Law requires the formation of a redevelopment

commission, designation of a redevelopment area, and formal approval of a redevelopment plan as prerequisites for most purchases of property (G.S. 160A-513(c)).

2. **Urban Redevelopment Law** ([G.S. Chapter 160A, Article 22](#)). North Carolina has long permitted local governments to form redevelopment commissions “to purchase, obtain options upon, acquire by gift, grant, devise, eminent domain or otherwise, any real or personal property or any interest therein” within designated redevelopment areas (G.S. 160A-512(6)). However, as already noted, property may not be acquired until a redevelopment plan has been approved—a rather involved process (G.S. 160A-513(c)). Once property is acquired, a redevelopment commission is authorized to hold the property for resale (G.S. 160A-512(6)). Governing boards may approve a redevelopment plan and directly exercise all of the powers of a redevelopment commission pursuant to [G.S. 160A-456\(b\)](#) (cities) and [G.S. 153A-376\(b\)](#) (counties). The process for approval of a redevelopment plan is outlined in [this blog post](#). Case law related to the Urban Redevelopment Law is mentioned in this [law review article](#).
3. **Local Development Act: G.S. 158-7.1**. Cities and counties are authorized to “acquire, assemble, and hold for resale property that is suitable for industrial or commercial use” pursuant to G.S. 158-7.1(b)(2). Prior to any appropriation or expenditure for this purpose, G.S. 158-7.1(c) requires the governing board to hold a public hearing, properly noticed, as described in blog posts [here](#) and [here](#). For a discussion of case law related to this statute, see [this blog post](#) and this [law review article](#).
4. **Acquisition by purchase at tax foreclosure**. It is not uncommon for owners of distressed or dilapidated properties to be delinquent on property taxes. Additionally, distressed properties are often the subject of code enforcement actions under minimum housing codes (G.S. Chapter 160A, Article 19, Part 6) and nonresidential building codes (G.S. 160A-439), and the costs of local government enforcement of those codes become [a lien on the property that is collected as a special assessment tax lien](#). As blog posts written by my colleague Chris McLaughlin describe, the tax foreclosure process presents an opportunity for local governments to [bid for the property](#) and [obtain ownership in order to redevelop](#) the property.
5. **Acquisition by other means**. Occasionally, a local government will purchase property in anticipation of using it for some other purpose, such as constructing new government facilities, and those plans will fall through. Sometimes property owners will make a gift of property to a local government. Cities and counties that own such property are permitted to change the use of such property and hold it pursuant to [G.S. 160A-265](#).

#### Stabilize property and eliminate encumbrances

The second task of a land bank is to stabilize properties and remove encumbrances that prevent the property from being purchased and redeveloped in the private real estate market. The encumbrances may come in many forms: unpaid liens, aging infrastructure, or environmental contamination, to name only a few. Local governments have ample statutory authority to address encumbrances and prepare property for resale:

1. **Acquisition and disposition of property for redevelopment: G.S. 153A-377** (counties) & [G.S. 160A-457](#) (cities). Cities and counties that acquire property under this statute are authorized to “clear, demolish, remove, or rehabilitate buildings and improvements on land so acquired.”
2. **Urban Redevelopment Law** ([G.S. Chapter 160A, Article 22](#)). A redevelopment commission (or a governing board exercising the powers of a redevelopment commission) may “improve, clear or prepare for redevelopment” any property it has acquired in furtherance of the approved redevelopment plan.
3. **Local Development Act: G.S. 158-7.1**. Counties and cities may develop industrial parks “by installing utilities, drainage facilities, street and transportation facilities, street lighting, and similar facilities; may demolish or rehabilitate existing structures; and may prepare the site for industrial or commercial uses.” Local governments are permitted to “construct, convey, or lease a building suitable for industrial or commercial use” and may engage in site preparation for industrial properties or facilities. Expenditures for these purposes are subject to procedural requirements as described in blog posts [here](#) and [here](#).
4. **Eliminate encumbrances through tax foreclosure**. Some properties are so encumbered with liens and conflicting claims—even among joint owners in the case of [heirs property](#)—that purchase through normal means is difficult or impossible. However, as described in [this blog post](#), a tax foreclosure extinguishes all claims except for tax liens, so the property comes out of the process “free and clear of all interests, rights claims and liens.” ([G.S. 105-374\(k\)](#)).

#### Convey property to a redeveloper

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Although local governments possess ample authority to redevelop property directly themselves, as described above, most land banks seek to place property in private hands for redevelopment. Local governments are always permitted to sell property through competitive bidding procedures (G.S. 160A-268, G.S. 160A-270, or 160A-279), but land banks often seek to place restrictions on property sales to ensure the property is developed in accordance with local priorities. The authority for restricted sales by local governments—either by selecting a specific buyer through “private sale” or by imposing restrictions on how the property is used by the buyer—is very limited under North Carolina law. A comprehensive discussion of property conveyance laws is beyond the scope of this post; Professor David Lawrence devoted an entire book to the topic: [Local Government Property Transactions in North Carolina](#). However, the following are a few key statutes that permit a local government to deviate from competitive bidding procedures in limited circumstances:

1. **Acquisition and disposition of property for redevelopment:** [G.S. 160A-457](#) (cities). Cities—not counties—that acquire property “in a community development project area” pursuant to this statute are authorized to convey property “to any redeveloper at private sale” for the appraised value “in accordance with the community development plan.” The reference to community development signifies that the transaction should be undertaken for the benefit of low- and moderate-income persons—a conservative approach would ensure that the transaction could qualify for a federal Community Development Block Grant. Additionally, the sale may be “subject to such covenants, conditions and restrictions as may be deemed to be in the public interest.” These sales must be preceded by a properly noticed public hearing.
2. **Urban Redevelopment Law** ([G.S. Chapter 160A, Article 22](#)). Procedures for disposal of real property in redevelopment areas are contained in G.S. 160A-514. Conveyance is permitted only for purposes that accord with the redevelopment plan, and the governing body must approve any sale. Competitive bidding procedures must be employed, but the statute authorizes the sale to be subject to covenants and conditions to ensure that any redevelopment complies with the redevelopment plan.
3. **Local Development Act:** [G.S. 158-7.1](#). Counties and cities may convey property “by private negotiation and may subject the property to such covenants, conditions, and restrictions as the county or city deems to be in the public interest....” The consideration “may not be less than” the “fair market value of the interest,” and the sale must be preceded by a properly noticed public hearing (G.S. 158-7.2(d)). The conveyance may be subsidized under limited circumstances as described in [this blog post](#) (G.S. 158-7.2(d2)).
4. **Public-Private Partnerships:** [G.S. 160A-458.3](#) (Downtown development projects) and [G.S. 143-128.1C](#) (Public-private partnership construction contracts). Counties and cities may participate in joint developments with private developers in which public capital facilities are constructed as part of a larger *private* development project. A participating local government may contribute land to the larger project. No subsidy to the developer is permitted through these statutes, and the cost of constructing the public facilities must be reasonable and cannot exceed 50% of the total project costs. The local government and the developer may enter into agreements governing the development project, thereby offering the local government some control over the outcome of the development process.
5. **Other means of conveyance.** Local governments may also convey property for other purposes, such as for historic preservation (no subsidy permitted), for affordable housing, or for entities carrying out a public purpose. See David Lawrence’s book, [Local Government Property Transactions in North Carolina](#), for further treatment of these alternatives.

This post described how North Carolina local governments can perform all of the major functions of a land bank by cobbling together several disparate sources of statutory authority. The next step is to learn how to use that authority to redevelop troubled areas. To that end, this post will be followed by additional posts on the [Community & Economic Development blog](#) featuring case studies of land banks from around the country.

UPDATE: Follow-on case studies have been posted: (1) Genesee County Land Bank Authority, [here](#), (2) Fulton County/City of Atlanta Land Bank Authority, [here](#), (3) Cuyahoga Land Bank, [here](#).

**DEVELOPMENT FINANCE INITIATIVE  
DEVELOPMENT PROCESS FOR PUBLIC-PRIVATE PARTNERSHIPS**

1. Inception
  - a. Identify an unfilled need
  - b. Evaluate organizational capability
    - i. management and professional capacity of lead organization
    - ii. availability and capacity of development partners
    - iii. support of local leadership
  - c. Site analysis
2. Site control
3. Predevelopment and feasibility
  - a. Market study
  - b. Feasibility analysis
  - c. Collect community input
  - d. Conduct public planning process
  - e. Capital availability and financial tool analysis
  - f. Evaluate public-private partnerships
  - g. Create financial model
4. Negotiate with development partners
  - a. Identification of and due diligence on potential development partners, including requests for qualifications and requests for proposals
  - b. Determine the terms and conditions of joint development, including disposition and development agreements and any forms of public participation
  - c. Negotiate the form of any joint ventures
5. Establishment of ownership entity
6. Preconstruction
  - a. Project design
  - b. Arrange government approvals
  - c. Obtain funding for acquisition and/or construction
7. Land acquisition
8. Construction
9. Sale, occupancy, or investment management
  - a. Develop RFP
  - b. Identify potential investors
  - c. Market property to potential investors

*\*At the end of each stage, review progress and determine whether to continue or exit project.*