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# **Open Records/Open Meetings, Prospect Confidentiality, Competitiveness and Government Transparency**

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- Sunshine Law – Government Transparency
  - Competitiveness – Site Location Drivers

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# OVERVIEW OF GEORGIA'S SUNSHINE LAWS FOR ECONOMIC DEVELOPMENT PROFESSIONALS

The Open Meetings Act and the Open Records Act (collectively referred to as the “Sunshine Laws”) attempt to codify the generally-recognized notion that citizens have a right to information about what their elected officials are doing.

# Open Meetings Act

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- The Open Meetings Act applies to “meetings” of the governing body of an “agency” or its committees. Such meetings are required to be open to the public and the media, within certain procedural requisites and exceptions.
- **Agency.** The term “agency” is defined to include virtually any State, city, county, regional or other authority established pursuant to the laws of the State of Georgia.
  - Development authorities, downtown development authorities and the State Department of Economic Development are deemed “agencies” under, and are covered by, the Open Meetings Act.
- **Meeting.** A “meeting” required to be open is defined in the Open Meetings Act as follows:
  - “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 a 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.”

# Open Meetings Act (Cont.)

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- **All meetings subject to the Open Meetings Act must be open to the public, and all votes at any meeting shall be taken in public after due notice of the meeting and compliance with the posting and agenda requirements of the Open Meetings Act.**
- Specifically, the General Assembly has imposed numerous procedural requirements related to the Open Meetings Act, involving:
  - (1) notice of a meeting.
  - (2) preparation and posting of an agenda prior to the meeting.
  - (3) preparation of a summary regarding the topics subjects acted upon and members attending an open meeting.
  - (4) the recording of minutes memorializing a meeting.
  - (5) public accessibility to an open meeting.

# Open Meetings Act (Cont.)

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- ***Matters Excluded from the Open Meetings Act:***
  - (1) Staff Meetings held for investigative purposes.
  - (2) Meetings to discuss real estate acquisitions and dispositions.
  - (3) Meetings to discuss personnel matters.
  - (4) Meetings to discuss lawsuits, administrative proceedings and legal advice.
  - (5) Meetings to discuss mediation proceedings.
  - (6) Meetings to discuss Exempt Records (as described in the Open Records Act).

# Open Records Act

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- The Georgia Open Records Act (O.C.G.A. §§ 50-18-70 et seq.) begins with the following declaration:

“The General Assembly finds and declares that the strong public policy of this state is in favor of open government, that open government is essential to a free, open and democratic society; and that public access to public records should be encouraged to foster confidence in government and so that the public can evaluate the expenditure of public funds and the efficient and proper functioning of its institutions. The General Assembly further finds and declares that there is a strong presumption that **public records** should be made available for public inspection without delay.”

# Open Records Act (Cont.)

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- **Public Record.** “Public record” is defined to include “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.”
- **Agency.** The Open Records Act incorporates the same definition of “agency” as is used in the Open Meetings Act but adds “any association, corporation or similar organization that has a membership or ownership body composed primarily of counties, municipal corporations, or school districts of this state, their officers, or any combination and derives more than 33 1/3 percent of its general operating budget from payments from such political entities.
- Therefore, all records of a development authority, downtown development authority or the State Department of Economic Development will be subject to the Open Records Act unless otherwise exempt.



# Open Records Act (Cont.)

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- *Procedural and operational requirements for public records subject to disclosure.*
  - (1) Right of Public Inspection and Copying.
  - (2) Access to Electronic Records and Data.
  - (3) Responding to Requests; Time Deadlines.
  - (4) Making Copies of Records.
  - (5) Reimbursement for Document Production.

# Open Records Act (Cont.)

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- *Documents and items which are not subject to public disclosure:*
  - (1) Records Prohibited by Law from Disclosure.
  - (2) Federally Protected Documents.
  - (3) Medical Records.
  - (4) Employee Evaluations, Investigations and Disciplinary Actions.
  - (5) Individual Financial Data or Information; Insurance or Medical Information.
  - (6) Applicants for CEO Position.
  - (7) Real Estate Documents.
  - (8) Trade Secrets.
  - (9) Proprietary Information.
  - (10) Attorney-Client Privilege.
  - (11) Confidential Tax Matters.
  - (12) Computer Software and Programs.
  - (13) Records Relating to **Economic Development Projects.**

# Open Records Act (Cont.)

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- ***Records Relating to Economic Development Projects Exemption.***

- In 2012, HB 397 added a limited exemption to the Act's disclosure requirements for “documents maintained by the Department of Economic Development pertaining to an economic development project until the economic development project is secured by binding commitment, provided that any such documents shall be disclosed upon proper request after a binding commitment has been secured or the project has been terminated.”

- Also exempt are “records related to a training program operated under the authority of Article 3 of Chapter 4 of Title 20 [Industry Services Training Program – Quick Start] disclosing an economic development project prior to a binding commitment having been secured, relating to job applicants, or identifying proprietary hiring practices, training, skills, or other business methods and practices of a private entity.”

- The term “economic development project” is defined to mean “a plan or proposal to locate a business, or to expand a business, that would involve an expenditure of more than \$25 million by the business or the hiring of more than 50 employees by the business.”

# Open Records Act (Cont.)

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## Recent Cases

- Olens v. Gravitt, No. 12CV-1205, Order Granting Pl.'s Mot. for Summ. J. and Den. Defs.' Mot. to Dismiss (Super. Ct. of Forsyth Cnty. Ga. Aug. 21, 2014) - the trial court held that the Mayor of the City of Cumming, Georgia and the City of Cumming, Georgia were each liable for \$6,000 in civil penalties in connection with three separate violations of the Open Meetings Act. The defendants had prevented the recording of a City Council meeting.
- Deal v. Coleman, 294 Ga. 170, 751 S.E.2d 337 (2013) - the Georgia Supreme Court interpreted O.C.G.A. §50-18-72(a)(47) to provide that Quick Start records disclosing an economic development project are excepted only to the extent that no binding commitment has been secured, but the exception for Quick Start records relating to job applicants or identifying proprietary hiring practices, training, skills, or other business methods and practices of a private entity is not so limited.

# Open Records Act (Cont.)

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Q&A

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- Sunshine Law – Government Transparency
  - Competitiveness – Site Location Drivers

# Top Drivers that Decide the Location

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➤ Skilled Workforce

➤ Incentives

➤ Real Estate

➤ Infrastructure

(Utility and Transportation Availability and Costs)

➤ Quality of Life

Source: a Ga. Dept. of Econ. Dev. Project Manager; Area Dev. 2013 Site Consultant Survey



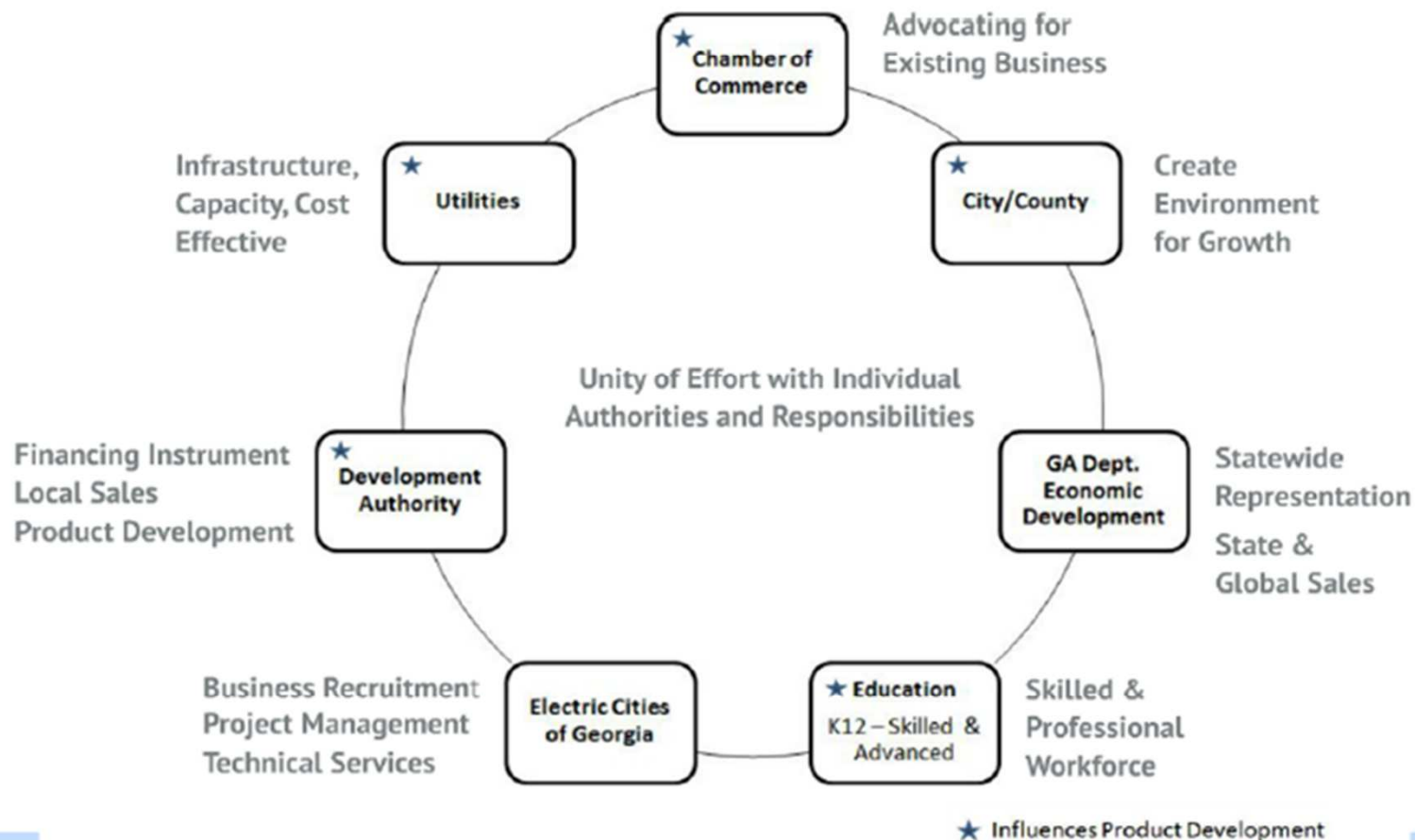
# Development Authority's Perspective

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- Development Authorities are created for the purpose of promoting and furthering the development of trade, commerce, industry and employment opportunities for its jurisdiction.
- The economic development team for a local jurisdiction – typically the chair of the local development authority, the economic development director and the chamber of commerce – is tasked with bringing businesses to their community and creating jobs.
- There are several factors that the economic development team consider is providing tax incentives to a company, but the most important factors are (1) total number of jobs, (2) quality of jobs and (3) total capital investment.
- PILOT Bonds, MOUs and other factors regarding incentive packages that may be offered.



# Team Roles & Responsibilities



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➤ Real Estate

➤ Infrastructure

- (Utility and Transportation Availability and Costs)

➤ Joint Action

# Stanton Springs Industrial Park



# Stanton Springs Industrial Park

Stanton Springs is a comprehensive master-planned community that marries the best of Georgia's small-town southern charm with a relaxed corporate environment that attracts the best class of businesses and people.

Modeled on TPA Realty Services' highly successful Johns Creek development, Stanton Springs is ideal for businesses requiring build-to-suit opportunities, large corporate campuses, data centers, biopharmaceutical facilities or distribution/light-industrial centers.

The gently rolling site features woodlands, open spaces, creeks and tributaries of the Little River. A beautifully landscaped four-lane parkway links clusters of development to ensure easy access throughout the project.

Stanton Springs is a private-public partnership between TPA Realty Services, LLC and the Joint Development Authority of Jasper, Morgan, Newton and Walton Counties.

## ■ Key features

- ▶ Zoned – Mixed use business park. Uses include corporate campuses and office operations; research and development facilities, including biomedical and pharmaceutical centers; data centers; and industrial projects, which can include technology related manufacturing, assembly and warehouse/distribution facilities.
- ▶ Accessible via full-diamond interchange at Exit 101 on I-20.
- ▶ Highly visible location with 2 miles of frontage on I-20.
- ▶ Excellent executive housing in surrounding areas anchored by prestigious residential and golf communities on the 19,000-acre Lake Oconee.
- ▶ Additional residential choices offered in the towns of Monticello, Covington, Madison and Social Circle. Covington has been voted one of The 50 Best Small Southern Towns. Madison has been recognized as Best Small Town in America by Travel Holiday magazine.
- ▶ Favorable taxes for residents and businesses.
- ▶ Full utilities available, with fiber optics readily available to the park
- ▶ GRAD Certified (Georgia Ready for Accelerated Development)
- ▶ Situated within two Georgia Work Ready communities (Newton & Walton counties)

# Baxter International

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- Life Sciences
- 1,800 Jobs
- \$1,300,000,000
- 750,000 sf facility
- Jasper, Morgan, Newton and Walton Counties

## **Stanton Springs Industrial Park**

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- Sharing in the investment risks and now rewards through the JDA or other authority is a great example of intergovernmental relationships used effectively.

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## Certain Related Legal Issues

- Determine authorities existing in your area. See the GA. DCA Authority List (<http://www.dca.state.ga.us/development/research/programs/RASearch/RASearch.asp>) and the Ga. Laws (authorities occasionally go defunct or fail to register).
- Determine powers of the authorities you're considering, e.g. whether a development authority is a statutory authority or a constitutional authority with more expansive powers.
- Form a new authority via statute or special legislation.

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## Certain Related Legal Issues

- Joint Development Authorities may be formed under OCGA § 36-62-5.1 by:
  - (1) Any two or more municipal corporations;
  - (2) Any two or more counties;
  - (3) One or more municipal corporations and one or more counties; or
  - (4) Any county in this state and any contiguous county in an adjoining state.
  
- Local governments have the option to financially support their development authorities.
  - County: 1 mill to a county development authority or a joint city/county development authority (O.C.G.A. Sec. 48-5-220 (20))
  - City: 3 mills to a city development authority or a joint city/county development authority (O.C.G.A. Sec. 48-5-350)
  - More: if governmental purpose or if provided in Local Constitutional Amendment



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- Infrastructure and related incentives are two of the keys. You are likely not on the short list without having necessary infrastructure in place or a clear plan to develop as needed.
  - Infrastructure is being developed with a shared risk/reward model, e.g., Covington, Madison and Social Circle joint funding, development, ownership and operating of the Stanton Springs Gas System.
    - Municipal Gas Authority of Georgia being used as an agent to (a) aggregate costs and expenses for the project and bill to the three cities in accordance with their % interest, (b) contract with developer/operator (Covington) and (c) coordinate three city operating committee.
    - This could also have been organized using a three party intergov contract or through a special purpose nonprofit.

# Certain Related Legal Issues

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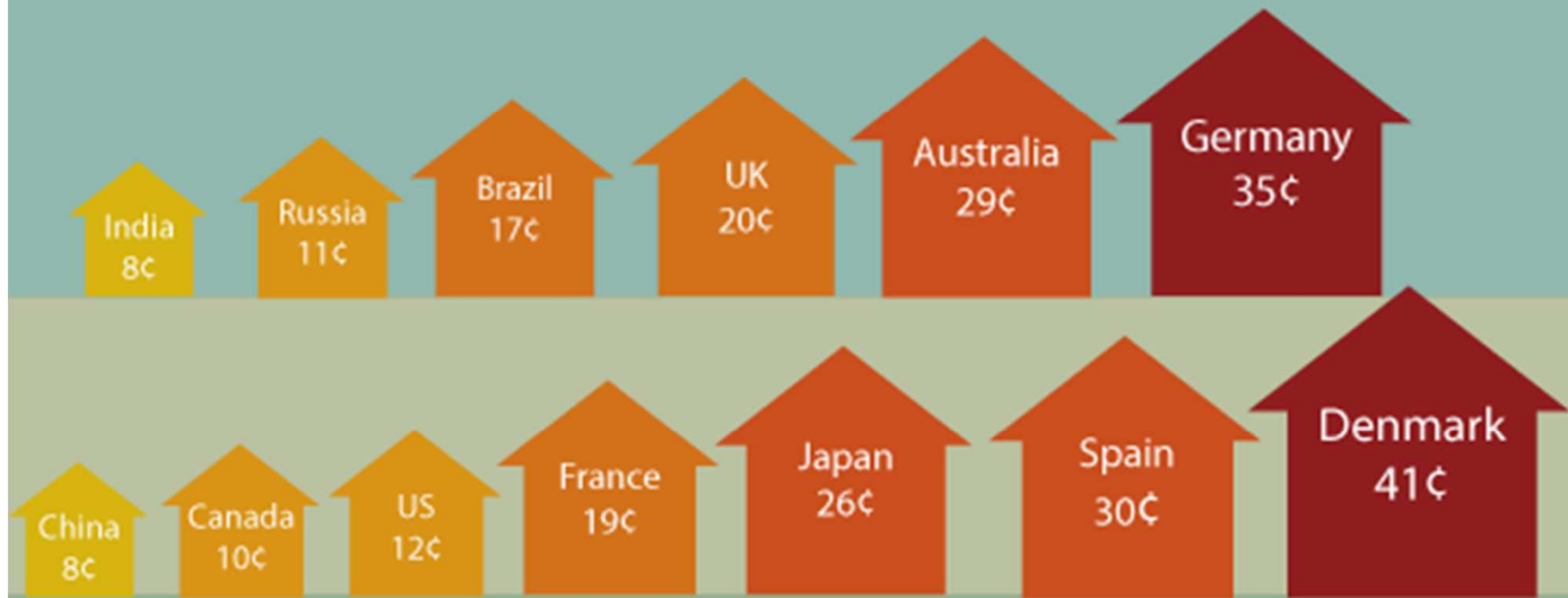
- Intergovernmental contracts clause: GA CONST Art. 9, § 3, ¶ 1 (a)

Most state and local governmental entities “may contract for any period not exceeding 50 years with each other ... for joint services, for the provision of services, or for the joint or separate use of facilities or equipment; but such contracts must deal with activities, services, or facilities which the contracting parties are authorized by law to undertake or provide.”

- Intergover payment obligation may be “full faith and credit”/GO without a referendum. Thus was born, back-door GO authority revenue bonds backed by an intergovernmental agreement (IGA).

# How much does electricity cost?

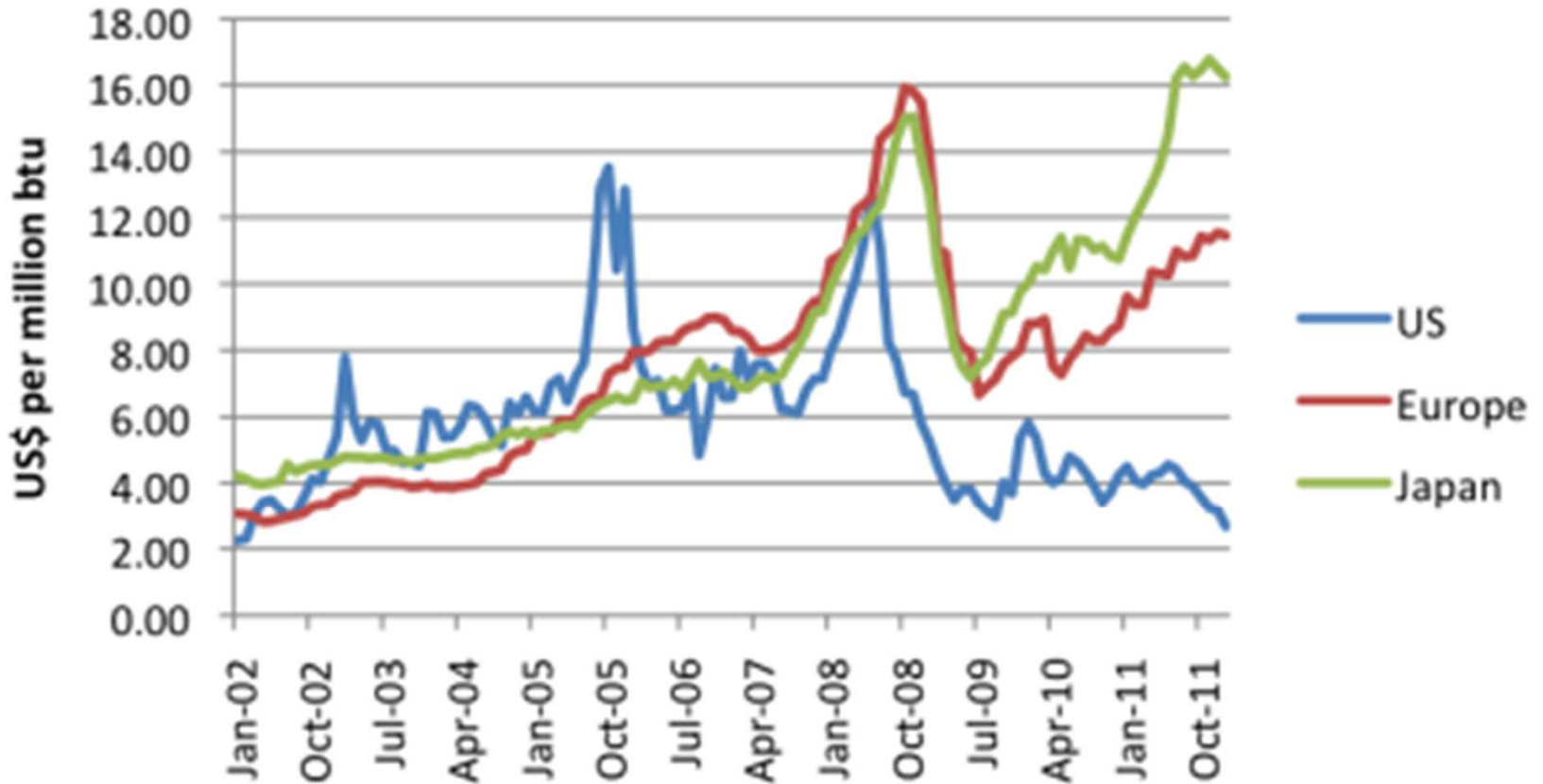
Average national electricity prices in US cents/kWh (2011)



Data: average prices from 2011 converted at mean exchange rate for that year

Sources: IEA, EIA, national electricity boards, OANDA [shrinkthatfootprint.com](http://shrinkthatfootprint.com)

## Natural Gas Prices in US, Europe, Japan



<http://ourfiniteworld.com/2012/03/23/why-us-natural-gas-prices-are-so-low-are-changes-needed>  
World Bank Commodity Price Data (pink sheet)

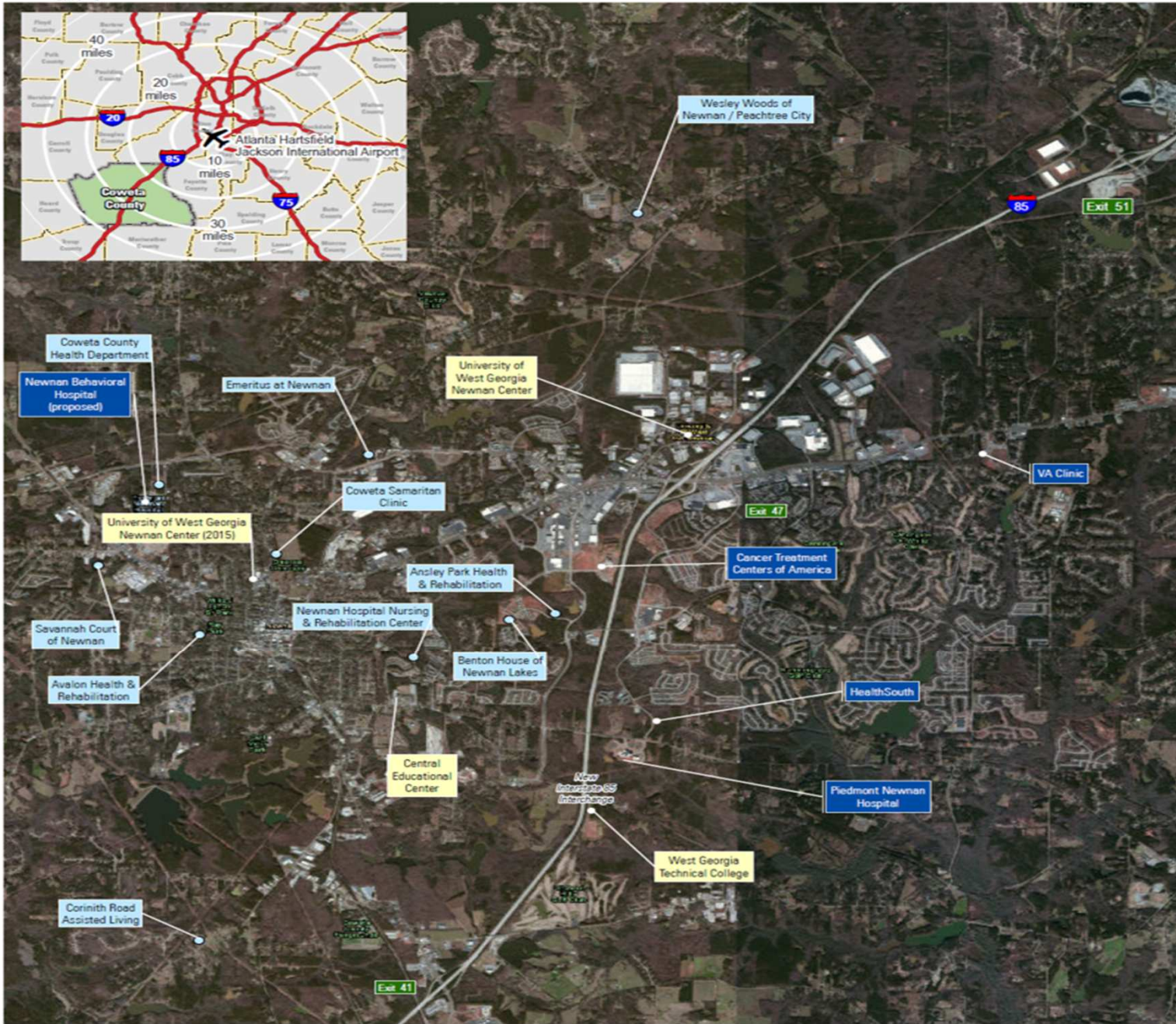
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➤ Place Building

➤ Quality of Life

➤ Work Force Development

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# Place Building – Quality of Life – Work Force Development

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- University of West Georgia-Newnan - 100% growth in undergraduate enrollment over 5 years (589 students in FY08, 1206 students in FY12)
- In an effort to accommodate continued growth, the University of West Georgia began investigating future facility needs
- Reuse of the old Newnan Hospital as an academic facility.
  - \$15 Million Estimated Total Project Cost
    - \$5 Million commitment from the University of West Georgia
    - \$4 Million commitment from Newnan Hospital, Inc., including donated facility/land
    - \$6 Million commitment from local government (City of Newnan)
  - Project - 51,000 SF of usable space; 32,000 SF of warm shell space for future growth
  - Create a more University-like campus in Newnan/Coweta County with close proximity to the historic downtown
  - Upon completion, project title will be transferred to the University System of Georgia

# Place Building – Quality of Life – Work Force Development

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- The academic focus will center around the following disciplines:
  - Health Care Services
    - The University of West Georgia Nursing Program enrollment projections:
      - 1<sup>st</sup> year in new facility – 250 nursing students
      - 10<sup>th</sup> year in new facility – 100% growth in nursing students; 6 additional staff
  - Business Administration
  - Education
  - Expansion of undergraduate core curriculum
  - The University of West Georgia, working with the Coweta County School System, can expand its Dual Enrollment Program – 20-25 students per year



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- West Georgia Center for Business & Economic Research - estimated that the operational activities and students will generate between \$1.4 million and \$3.4 million in economic activity per year within Newnan/Coweta County
  - DDA used to secure financing needed to complete project; backdoor GO with a principal amount of up to \$12.5 million
  - Project completion date – Spring 2014
  - UWG starts class in 2014

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## Certain Related Legal Issues

- Intergovernment payment obligation may be “full faith and credit”/GO without a referendum. Thus was born, back-door GO authority revenue bonds backed by an intergovernmental agreement (IGA).
- OCGA § 36-62-7 provides that “No project ... shall be operated by [a development authority] or any municipal corporation, county, or other governmental subdivision. Such a project shall be leased or sold to, or managed by, one or more persons, firms, or private corporations.
- DDA Act contains no such limitation. However, see *Odom v. Union City DDA*, 251 Ga. 248 (1983).

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## Certain Related Legal Issues

- Odom v. Union City DDA, 251 Ga. 248 (1983).
  - City's attempted application of the DDA Law to finance street improvements and construction and refurbishing of governmental buildings was unauthorized by section of constitution providing that General Assembly may create development authorities to promote and further trade, commerce, industry and employment opportunities or may authorize the creation of such an authority by any county or municipality.
  
- As noted, the City and DDA goal for the transaction wasn't government facility improvements. It is the employment and est. multi-million \$ in economic activity per year.

# Kubota Manufacturing Headquarters Expansion

- Expansion of manufacturing headquarters, announced October 27
  - 650 *new* jobs
  - \$100 million *new* investment
- 180 acres in new Gateway Industrial Centre
- Existing Hall County operations to remain open
- Post-expansion, Kubota will employ more than 2,900 Georgians in two Northeast Georgia counties

# Kubota Headquarters Expansion

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## ➤ Kubota Corporation

- Established 1890
- Osaka, Japan
- Worldwide headquarters; subsidiaries and affiliates in more than 130 countries

## ➤ Kubota Manufacturing of America

- Established 1988 as Kubota's North American manufacturing base
- Gainesville, GA
- Lawn tractors, zero-turn mowers, sub-compact tractors, utility vehicles, loaders, backhoes and implements

## ➤ Other Georgia operations: Kubota Industrial Equipment

- Established in 2004; Jefferson, GA
- New facility in 2013

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# Real Estate Matters

## ➤ Gateway Industrial Centre

- 518 acre industrial park
- \$10MM investment financed by Gainesville-Hall County Development Authority
- Close to I-985
- Amenities and Infrastructure:
  - Rail
  - Water
  - Sewer
  - Gas

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# Infrastructure and Public Investment

## ➤ Community Incentives

- Property tax incentives
- Additional access road within the industrial park
  - Road to be financed with SPLOST
- Cell tower relocation

## ➤ Other Infrastructure

- Sewer service reported to be major expense associated with Gateway Industrial Centre – County spending in excess of \$3MM to extend sewer lines to the park

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## Certain Related Legal Issues

- Industrial park financing, using a one-mill IGA with the county, is fairly run-of-the-mill economic development technique in Georgia.
- More nuanced legal issues occur at the intersection, literally, of the public infrastructure and the private development.
  - When is the County's contribution limited to the one mill levy for economic development?
  - In other words, where does the traditional government purpose end and the economic development purpose begin? A public road that functionally serves only a single manufacturing facility?
  - Is the analysis any different for the use of SPLOST funds?
- Also, consider other sources of funds, e.g., excess revenue from electric, natural gas, water and telecom systems.



# Questions:

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