



# **PUBLIC-PRIVATE PARTNERSHIP (P<sub>3</sub>) OPPORTUNITIES FOR OHIO SCHOOLS**

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## **ALTERNATIVE MODELS USING P3'S**

- ❖ **Current Laws Governing School's Management of Real Estate**
  - **Sale versus Lease**
  - **May limit ability to "manage" real estate**
  - **Port Authorities create flexibility**
- ❖ **Examples of Alternative P3 Models**
  - **Asset Upgrades/Operations**
  - **Underutilized Assets**
  - **New Construction/Funding**

# LAWS RELATED TO REAL PROPERTY

- ❖ **Sale -O.R.C. 3313.41 – Schools must offer real property as follows:**
  - MUST offer it to A high-performing community schools
  - MAY offer it to a STEM school
  - MUST be offer it to a start-up community school or any college-preparatory boarding school
  - MAY offer it up for sale to community schools with plans to relocate within the school district
  - If none of the foregoing acquire real property, then it MAY be offered to a public entity
  - If the real estate is not a building or not sold to a public entity, then it MUST be offered for sale by public auction
  - If not sold at public auction, then it may be offered by private sale.

# CHALLENGES WITH EXISTING LAWS

## ❖ Leasing

- O.R.C. 3313.37 – Schools may acquire land as a lease-purchase....but not for a period greater than 5 years.
- O.R.C. 3313.375 – Schools may construct new facilities through a lease-purchase but term is limited to one-year renewable periods (not more than 30 years).

## ❖ Lender Insecurity

- Lenders don't like one-year renewable terms under O.R.C 3313.375
- Increases cost of funds due to need for annual appropriation
- Lenders want long term stability

# LAWS RELATED TO PORT AUTHORITIES

## ❖ Use of Port Authority Powers

- O.R.C. 4582.38 – Allows schools to convey or lease to or from, lease with an option to purchase, or exchange with, any port authority ..... without competitive bidding and on mutually agreeable terms.
- O.R.C. 4582.31 – Allows Port Authorities to acquire, construct, maintain, repair, furnish, and equip any real property to which they acquired an interest pursuant to O.R.C. 4582.38.
- These laws create flexibility for schools and allow for greater innovation and stability in the financial markets

# MYTHS ABOUT P<sub>3</sub> PROJECTS

|  |   |
|--|---|
| Does the public agency lose control?   | Under the P <sub>3</sub> Agreement, the public agency can control tolls or user fees, design and construction standards, operating, maintenance and safety standards and other key parameters                 |
| How does the public agency oversee operations, maintenance and capital improvements? | The P <sub>3</sub> Agreement imposes detailed operating, maintenance and safety standards and capital improvement requirements. A P <sub>3</sub> still requires management and oversight by the public agency |
| What if the private partner does not perform?  | After an opportunity to cure the problem, the public agency may reclaim the asset without any payment to the private partner  |
| What is the necessary term to create interest for prospective investors?             | Typical term has been 30+ years to create sufficient return for investors commensurate with the risk undertaken. More short-term deals are being proposed   |

# RENOVATING EXISTING FACILITIES

- ❖ **Traditional Approach:** Renovate through Taxes, Debt or Use Existing Public Improvement Funds
- ❖ **Alternative Approach:** Sale Leaseback Model Through Port Authority
- ❖ **Why?**
  - Allows cash out
  - Allows renovation costs to be amortized
  - Allows “experts” to manage assets
  - Allows use of state of the art technology
  - Allows use of energy conservation practices (reduce costs)

# RENOVATING EXISTING FACILITIES (con't)

## ❖ How?

- School leases facilities to Port
- Port leases facilities to Developer
- Developer constructs renovations and allows “cash out”
- School payment covers cost of renovations and cash out
- Costs are amortized over 30+ years



## RENOVATING EXISTING FACILITIES (con't)

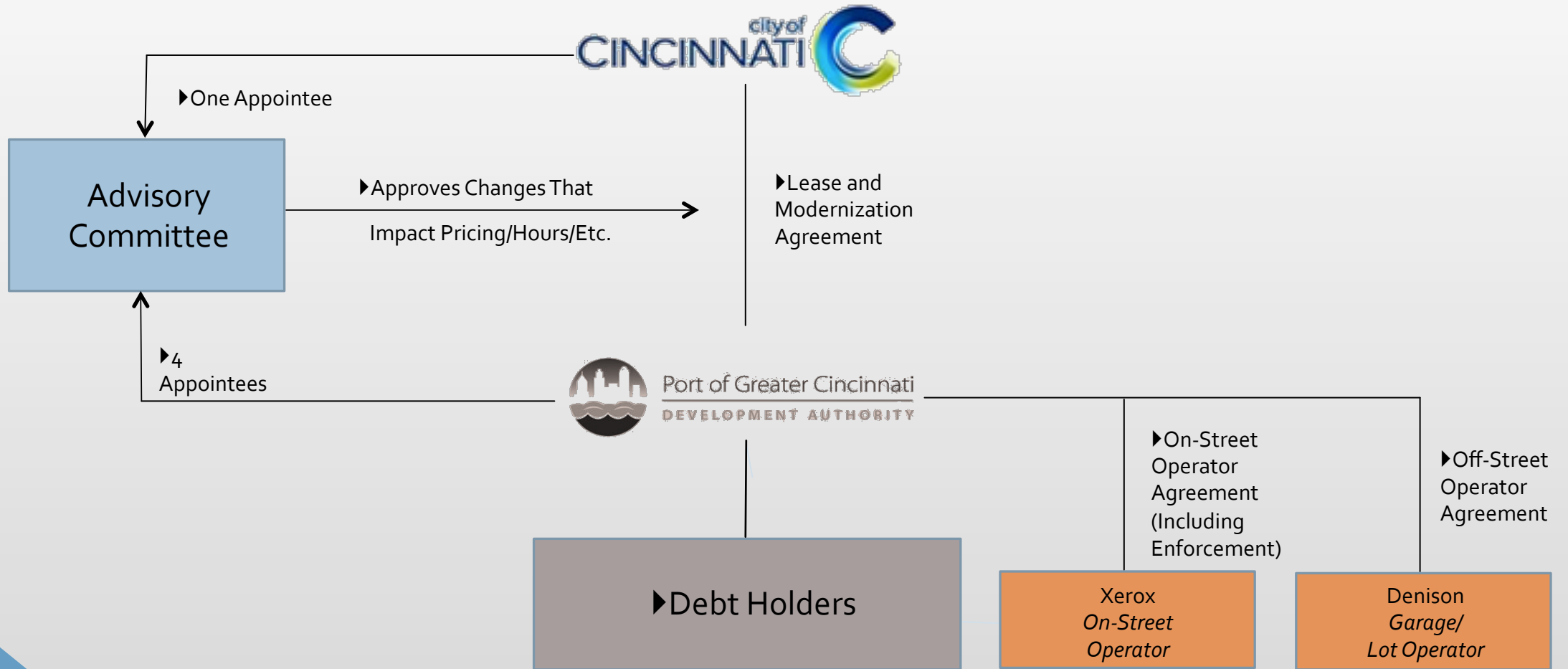
### ❖ EXAMPLE: CITY OF CINCINNATI PARKING LEASE

- Lease of garages, lots and meters
- Lease structured with \$85 million\* upfront payment
- Lease provides for additional \$105 million\* from subordinate cash flow over term of lease
- Tax-exempt bond eligible because it's a "sale" of system to the Port Authority for federal tax purposes
- At lease expiration, the parking system reverts to City

*\*Estimated*

# RENOVATING EXISTING FACILITIES (con't)

## ❖ Who has control?



## RENOVATING EXISTING FACILITIES (con't)

### ❖ What's in it for the City?

- \$85\* million upfront payment from tax-exempt bond proceeds
- Developer assumes future obligations for upgrades
- Ensures sufficient \$\$\$ are available for future improvements
- Allows state of the art technology upgrades - attracts "tech" crowd
- City receives parking back at the end of lease

## **RENOVATING EXISTING FACILITIES (con't)**

### **❖ What is Port Authority's Role**

- To operate and manage garages, lots and meters
- To construct upgrades to existing facilities
- To construct new parking garages as needed
- Increases utilization of parking meters through technology
  - reduce rates for underutilized meters (Red's games)
  - increase utilization results in improved business districts
  - overall increased revenue back to City

## **NEW CONSTRUCTION**

- ❖ **Traditional Approach:** Construct Improvements Through Taxes, Debt or Use Existing Public Improvement Funds
- ❖ **Alternative Approach:** Sale Leaseback Model
- ❖ **Why?**
  - Allows construction using private developer \$\$\$
  - Allows construction costs to be amortized over life of lease
  - Allows assumption of facility maintenance obligations
  - Allows “experts” to construct and manage assets
  - Allows use of state of the art technology
  - Allows use of energy conservation practices (reduces costs)

## **NEW CONSTRUCTION (con't)**

### **❖ How?**

- School leases land to Port Authority
- Developer leases land from Port Authority
- Developer constructs facilities
- Lease payment covers cost of construction and cash out
- Costs are amortized over 30+ years

## **NEW CONSTRUCTION (con't)**

### **❖ When Maintenance Is Included**

- Developer manages entire facility
- Developer assumes full responsibility for:
  - janitorial
  - on-site maintenance long term capital improvements
  - parties may “true” up lease payment every XX years if there are excess \$\$\$ in reserve fund (reduction) or an “unknown” event requires additional cash outlay (increase)

## **NEW CONSTRUCTION (con't)**

### **❖ EXAMPLE: COMMUNITY STE(A)M CENTERS**

- STE(A)M combines Science, Technology, Engineering, and Mathematics (STEM) instruction with an “A” for the Arts
- Develop collaborative partnerships
- Developer finances and builds facilities
- Leases to private businesses and vocational schools
- Buildings include conference facilities, labs, auditoriums
- Encourage the integration of business and education at the same location



## **NEW CONSTRUCTION (con't)**

### **❖ HOW:**

- School leases land to Port Authority
- School still submits Master Plan to OFCC
- School funding through ELPP – not CFAP
- CFAP doesn't allow creative sale – leaseback programs or COPs (Moratorium & OFCC study per Am. Sub. H.B. 64)
- ELPP allows school to fund local share through Lease-Purchase, COPs or other alternative funding sources

## **NEW CONSTRUCTION (con't)**

- Lease-Purchase with Port Authority
- Port Authority – issues lease revenue obligations supported by lease payments from the School subject to appropriation for 30+ one-year renewable terms
- Lease payments – paid from inside millage PI funds, TIF funds and operating funds
- TIF funds may take years before sufficient to cover P & I
- Schools must be prepared to utilize operating or PI funds!!
- Recommend interest reserve from initial funding (3-5 years)!!

## **MANAGING UNDERUTILIZED PROPERTY**

- ❖ **Traditional Approach:** Sale of Property per O.R.C.
- ❖ **Alternative Approach:** Allow Private Development of Property through Developer
- ❖ **Why?**
  - Allows private developer to put real estate to best use
  - Allows School to retain some control over use of land
  - Allows School to retain control for future needs
  - School may need property in 30 years
  - Cheaper to hold ground lease and retain funds rather than buy same land at higher future costs)

## MANAGING UNDERUTILIZED FACILITIES (con't)

### ❖ How?

- School leases property to Port under Development Agreement
- School may impose requirements/restrictions on development
- Developer constructs improvements to generate greatest ROI
- Developer pays school fixed ground lease payment through Port

### ❖ Advantages:

- School may “sell” right to future lease payments
- Allows for more flexibility for future board members
- School receives land back at end of ground lease term
- School determines whether improvements remain or are demolished at end of lease

# MANAGING UNDERUTILIZED FACILITIES (con't)

## ❖ EXAMPLE: BUTLER TECH BIOSCIENCE CENTER

### ➤ Vacant Land

- 1.8 acres of undeveloped land adjacent to Bio Science Center
- Could sell for \$400,000
- Could ground lease for \$40,000/year

### ➤ School wants to retain control of land

- Prevent competitive business from moving next door
- Encourages development to attract bioscience and medical companies
- Companies can work with Butler Tech to develop curriculum specific to company's needs
- Improves student placement percentage at graduation

## MANAGING UNDERUTILIZED FACILITIES (con't)

- ❖ **Land leased to Port Authority who chooses Developer**
  - Term of 30 years
  - Payment calculated at \$40,000/year
  - All improvements revert to school at end of lease term
- ❖ **Developer has full discretion to develop the following:**
  - Portion of building (5,000 sq/ft) must be leased to business compatible with bioscience or medical
  - Building design must be consistent with Butler Tech's
  - Business partner with Butler Tech on developing curriculum for students related to industry
- ❖ **Developer entitled to "make" as much \$\$ as possible**
- ❖ **School receives fixed ground lease payment or percentage of revenue**

# MANAGING UNDERUTILIZED FACILITIES (con't)

## ❖ EXAMPLE: VANDALIA BUTLER

### ❖ Old facility

- Obsolete and requires demolition/remediation
- Location is highly desirable

### ❖ School wants to retain control of land

- Demographics may require new school in future
- Cost to acquire land in similar location may be unfeasible

### ❖ Sale would require remediation and demolition by school

- Value before demolition/remediation - \$800,000
- Value after - \$1,200,000

# MANAGING UNDERUTILIZED FACILITIES (con't)

- ❖ **Land leased to Port Authority who chooses Developer**
  - remediation
  - demolition
  - construction of new early childcare development center at no cost to school
  
- ❖ **Developer has full discretion to develop subject to Development Agreement**
  - term of 30 years
  - payment calculated at \$120,000/year less amortized cost of demolition, remediation and cost of development center
  - all improvements revert to school at end of lease term
  
- ❖ **Developer entitled to “make” as much \$\$ as possible**
- ❖ **Pays school fixed ground lease payment or percentage of revenue**



# QUESTIONS?

# SPEAKER BIO



Kevin is a Member with Frost Brown Todd LLC and focuses his practice in the areas of general corporate/transactional law, real estate law and construction law both in the private and public sectors, including municipalities, townships and school districts.

In his public sector practice, Kevin utilizes his “private” business experience to advise municipalities, townships and schools on a wide range of legal matters which ultimately impact the financial decisions of administrators including acquisition and disposal of real estate, constructing of new facilities, transportation agreements, contract negotiations and dispute resolutions and general administrative matters in addition to ever changing reforms and regulations which impact the public sector including the Ohio Construction Reform Act, the Ohio School Facilities Commission, the Ohio Facilities Construction Commission, public/private partnerships and sale-leaseback and lease-leaseback legislation.

## SPEAKER BIO



David is a member in the Columbus office, is Chair of the Public and Project Finance Team and practices in the Finance and Real Estate practice group. His practice focuses on securitizations, public finance, project finance, trustee representation, healthcare finance, structured finance, public-private partnerships, alternative and advanced energy finance, economic development, securities law, and public debt federal and state tax matters.