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New TADs

That Can Finance Economic Development

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Tax Increment Financing Isn't Just for "Blight" Anymore

And, it never was! Not under the Constitution, anyway.

Redevelopment has a special status under Georgia's Constitution. Article 9, Sec. 2, Para. 7 of the Constitution authorizes the General Assembly to pass laws so that any city, county or housing authority may carry out community "**redevelopment**." That Constitutional provision doesn't define "redevelopment" and doesn't use the word "**blight**." Instead, it leaves the scope of those redevelopment powers to be defined by the General Assembly.

From 1985 to 2001, in the Redevelopment Powers Law¹, the General Assembly defined such terms as "**redevelopment area**" restrictively, so that it is understandable that a reading of that law would invoke thoughts of "blight."

The results, however, were not what was hoped for. The restrictions limited the use of redevelopment powers to the point that the Redevelopment Powers Law was not generally viewed as a worthwhile program. By 2001, only about 14 communities had obtained passage of the local act of the General Assembly and voter referendum that are prerequisites to the exercise of Redevelopment Powers under the Constitution.

Fortunately, the General Assembly realized in that year that something had to be done. The result was passage of certain key amendments to the Redevelopment Powers Law. These amendments opened redevelopment to *economic development*. As a result, there's a new *bottom line*, when a community is looking for ways to improve conditions within its borders using redevelopment powers and tax allocation districts ("**TADs**").

These new TADs can finance economic development, not just traditional redevelopment.

What's the Bottom Line?

The bottom line for using redevelopment powers is that now, an area that meets any of these criteria is a candidate to be a "redevelopment area:"

- "Any *open area* located within an urbanized or developed area within the corporate limits of a municipality which because of any factor or combination of factors enumerated...*substantially impairs or arrests the sound growth of the community*."
- "Any area located within an urbanized or developed area which is *substantially underutilized* by containing *open lots or parcels of land* or by containing a substantial number of *buildings or structures* which are *40 years old or older*, or by containing structures or buildings of *relatively low value* as compared to the value of the structures or buildings in the vicinity of the area...which the

local legislative body designates as appropriate for community redevelopment or by any combination of the foregoing factors.”

- “*Any geographic area designated within the comprehensive plan of a political subdivision for redevelopment which has previously been developed for commercial, residential, industrial, office, or similar or ancillary uses and which lies within the service delivery area of the political subdivision in which the current condition of the area is less desirable than the redevelopment of the area for new commercial, residential, industrial, office or other uses or a combination of uses, including the provision of open space or pedestrian or transit improvements...which the political subdivision has determined to be impairing or retarding the redevelopment of the area.*”

The text quoted above (emphasis added) is from the Redevelopment Powers Law, O.C.G.A. Sec. 36-44-1 *et seq.*, specifically subsections (C), (E), and (F), respectively, of O.C.G.A. Sec. 36-44-3(7).

Within a redevelopment area, the city or county has important new powers to redevelop the area. A list specifying each type of area that might qualify as a “redevelopment area” is attached as the *Redevelopment Area List* to this White Paper.

What Should I Do?

Regardless of whether it’s a community or a private sector developer asking that question, the answer is: “Form a ‘public/private partnership.’” That’s the best way to succeed with redevelopment.

In that “partnership”, the public sector invests certain revenues from a tax allocation district (“TAD”) within the district in order to leverage even greater investment by the private sector within the district, with attendant job creation, growth in sales and use tax revenues, and other public benefits.

In fact, the Redevelopment Powers Law recognizes that redevelopment won’t work unless communities “form a more effective partnership with private enterprise.”ⁱⁱ

The purpose of this White Paper is to explain how to form such public/private partnerships, and to make them successful. It is written in “question and answer” format. The questions are those that either a communityⁱⁱⁱ or a private sector developer might ask when it is looking at these new redevelopment tools.

What Don’t I Have to Do?

When a city or county obtains redevelopment powers, it gains, among other things, the ability to create tax allocation districts (TADs) and issue tax allocation bonds (“**TAD bonds**”). However, it is not mandatory for a community to either create a TAD or, if it does, to issue TAD bonds.

The decision whether or not to create a TAD or issue TAD bonds is reserved to the city or county, as appropriate, which can determine to proceed, or not, at any time. Meanwhile, the city or county can exercise, for the purpose of adopting and implementing redevelopment plans, all of the other

redevelopment powers it has gained. Among other things, the body exercising redevelopment powers can:

- Enter into *contracts with a term of up to 30 years with private parties* such as developers. This power overrules the general constraint on a mayor and council, or county commission, binding its successors^{iv}.
- Acquire property for redevelopment purposes, and *dispose of property at a public or private sale*. This power overrules the general constraint on a city or county disposing of publicly-owned property without going through the “auction” procedure that is generally mandated^v.
- *Borrow money from financial institutions*, for a term of up to 25 years, to pay redevelopment costs.^{vi} *No referendum* is required in order to incur this debt, and the debt does not count against the Constitutional limitation^{vii} on the amount of debt that a local government may have outstanding. However, the Redevelopment Powers Law prohibits a city or county from creating a TAD when the total current taxable value of property subject to ad valorem property taxes within the proposed district plus the total current taxable value of property subject to ad valorem property taxes within all its existing tax allocation districts exceeds 10% of the total current taxable value of all taxable property located within the area of operation of the city or county.^{viii}

The *Redevelopment Powers List* attached to this White Paper contains a list of the redevelopment powers that a community can obtain under the Redevelopment Powers Law.

Why Do It?

Redevelopment powers are, obviously, all about redevelopment. In other words, to want redevelopment powers, is to want to carry out redevelopment. So, why would a community want to do that?

Here are just a few of the reasons for a community to be concerned about redevelopment:

- The traditional focus- the need to relieve conditions in blighted areas.
- To achieve success in economic development.
 - To create sites that are competitive for investment and job creation projects out of an area that otherwise would be a “non-starter” in terms of site selection.
 - To attract a commercial, industrial or office prospect, by being able to offer these benefits:
 - Already-installed transportation and other infrastructure. Grant money that might otherwise have to be invested in public infrastructure might instead be made available for incentives on the project level.
 - Proximity to a work force and amenities.

- Payment by the community of capital expenditures in the prospect's capital budget for the project that qualify as redevelopment costs.

Redevelopment has its own special challenges, however. Redevelopment costs can be higher than the costs of a "green field" project. Often, older structures have to be demolished in the course of carrying out a development plan. Environmental issues can impede redevelopment or add to costs. Redevelopment is more intensive than new development in terms of government involvement, policies and procedures.

There is a lot that a community or private sector developer should consider before it gets started.

What Do I Need to Know Before I Get Started?

The "*lessons learned*" below have been extracted (and quoted, where indicated, with emphasis added) from a study entitled "Survey and Analysis of Tax Allocation Districts in Georgia- A Look at the First Eight Years", prepared by the Bleakly Advisory Group ("**BAG**") for the Livable Communities Coalition, dated October 4, 2007 (the "**Bleakly Study**").^{ix}

- Most TADs have been initiated by a city or county, rather than by a private sector developer.
- "[C]ommunities with redevelopment objectives and needs should act. They should not expect to succeed by waiting for property owners or developers to propose, finance and create TADs within their jurisdictions...."
- "There are generally *two types of TADS*,
 - those created for specific purposes or projects and
 - those created to implement broader revitalization strategies...."
 - "Project-specific TADs are more likely to involve a single project or developer."
- "As the number of "greenfield" sites in the metro Atlanta area dwindles, it will become increasingly necessary to focus on redevelopment sites to support the region's future economic growth. *TADs can become an important tool to stimulate job-creating developments....*"
- "Most redevelopment plans program a significant portion of future TAD proceeds for infrastructure improvements, amenities and other public purposes that are not directly associated with payments to developers."
- "[C]ommunities that are starting TADs for the first time and need to attract multiple investments to support a bond issue must consider whether they want to enact policies and application procedures to enable developers to request and qualify for TAD financing prior to commencing construction even if no funding source is available at the time the application is filed. Without such *advance procedures in place*, it can be extremely difficult to coordinate the timing of projects in a manner that will attract private investment, satisfy bond issuers and avoid the need to consider projects retroactively...."

- “In most TAD debates, the impact of taking no action is assumed to be revenue neutral, or zero, when in fact the *fiscal consequences of existing conditions* may be far costlier to taxing jurisdictions than financing redevelopment....”
- “TADs that seem to serve *narrowly defined opportunities* rather than *broad economic development objectives* tend to be more controversial. TADs have tended to be more controversial when perceived as a subsidy to an individual developer or project rather than as part of an overall, strategic revitalization plan....”
- “*Counties in particular have been slow* to use TADs to address the broader economic development issues outlined in their comprehensive plans or to help finance implementation of integrated redevelopment strategies. In 24 of 27 cases to date, counties have been reacting to requests sponsored by municipalities rather than pursuing their own redevelopment initiatives....”

Both the public sector and the private sector can apply these “lessons learned” at the planning stage, even before the community is legally authorized to exercise redevelopment powers.

Who Does What?

In Georgia, a community can’t just decide to move forward with redevelopment. A number of prerequisites must be satisfied, and a number of bodies are involved.

The General Assembly and the Voters

Two bodies or groups outside of the control of the city or county must act before it can gain access to redevelopment powers. These ^x are:

1. *The General Assembly*, which needs to pass a local act of the General Assembly authorizing the city or county, to exercise these powers. The local act would be prepared by the community’s delegation to the General Assembly, and introduced and passed in accordance with the rules pertaining to “local legislation.”^{xi}
2. The *voters* within the city or the unincorporated county, as appropriate, who need to approve the exercise of redevelopment powers. The local act must be, according to the Constitution^{xii} and the Redevelopment Powers Law, contingent upon such voter approval. The local act would contain provisions for the related referendum, which would be held in conformity with the general requirements for special elections^{xiii}.

The City or County

Once the local act has been enacted and approved by referendum, the city or county has the right to exercise, for the purpose of adopting and implementing redevelopment plans, all powers permitted by the Redevelopment Powers Law (assuming the local act does not restrict the exercise by the city or county of any powers provided for in the Redevelopment Powers Law^{xiv}).

The city or county itself must exercise these powers; *i.e.*, they are *nondelegable*:

- Approval of the redevelopment plan.
- Describing the boundaries of the redevelopment area.
- Creating a TAD.
- Issuing TAD bonds.
- Exercising eminent domain.^{xv}

The Redevelopment Powers Law contemplates^{xvi} that the city or county, will take these two actions as the first steps towards exercise of these new redevelopment powers:

1. Describe the boundaries of one or more *redevelopment areas* within its area of operation.
2. Cause a *redevelopment plan* for each redevelopment area to be prepared, and approved by it.

Within each redevelopment area the city or county can create one or more^{xvii} tax allocation districts, or “TADs”. However, the city or county does not have to create a TAD, then or ever. Instead, it can define a portion of a redevelopment area (or use the entire redevelopment area) for the implementation of redevelopment plans other than plans calling for the creation of tax allocation districts.^{xviii}

If the city or county does create a TAD, it can issue tax allocation bonds (“TAD bonds”). But it does not have to issue TAD bonds, then or ever.

The Redevelopment Powers Law contemplates that the delegable^{xix} redevelopment powers will be exercised by a redevelopment agency.

The Redevelopment Agency

Either the city or county designates itself as its own redevelopment agency^{xx}, or delegates some or all of these delegable redevelopment powers to a redevelopment agency created or designated by it. The delegation is by resolution of the city or county, and the city or county may at any time amend, modify or repeal the resolution^{xxi}.

The Redevelopment Powers Law provides that a city or county can select among these choices for its redevelopment agency:

- A newly created public body; i.e., a “**New Redevelopment Agency**” for the city or county.
- An “Urban Redevelopment Agency”. (This choice^{xxii} is available only if the city or county has activated a public corporation as its “urban redevelopment agency” or designated a housing authority as its “urban redevelopment agency” pursuant to O.C.G.A. Secs. 36-61-17 and 36-61-18 of the “Urban Redevelopment Law”).
- A downtown development authority. This choice is available only for a city and only for redevelopment within its downtown area.

A smaller city or county, or even a larger one that is in the early stages of exercising its redevelopment powers, is more likely to act as its own redevelopment agency. If so, it can choose later to select one of the other possibilities as its redevelopment agency, if it wishes to do so.

When the city or county is ready to consider creating by resolution a new public body as its New Redevelopment Agency, there are a number of other decisions it has to make.

A threshold decision is which of the delegable redevelopment powers the city or county should in fact delegate to its New Redevelopment Agency. As noted above, the city or county can at any time amend, modify or repeal its resolution conferring the delegated powers on the New Redevelopment Agency.

The city or county then has to answer a number of other questions about the New Redevelopment Agency, including these, among others:

- What are the number of members of the board of directors to be appointed by the city or county?
- What are the qualifications and their terms of office for the directors?
- Who will be appointed as the initial directors and the term of each?
- Who will be the officers of the New Redevelopment Agency? Will the officers serve at the pleasure of the governing body of the city or county, or will they have fixed terms?
- Will there be an Executive Director or any other staff personnel? Will staff of the city or county have additional duties with, or be loaned to, the New Redevelopment Agency? If the New Redevelopment Agency has its own employees, would they be provided the same benefits as city or county employees? What liability insurance will cover the New Redevelopment Agency's directors, officers and employees?
- Will the New Redevelopment Agency have its own offices? Will the offices be furnished by the city or county?
- Will the city or county pay the operating expenses of the New Redevelopment Agency directly, or will the city or county appropriate funds to the New Redevelopment Agency from which the New Redevelopment Agency is to pay its own operating expenses? How will the budget process work?

Other Political Subdivisions

A city and county can each only exercise redevelopment powers within its “area of operations.”^{xxiii} This term means “in the case of a municipality or its redevelopment agency, the territory lying within the corporate limits of such municipality; in the case of a county or its redevelopment agency, the territory lying within the unincorporated area of the county; and, in the case of a consolidated government or its redevelopment agency, the area lying within the territorial boundaries of the consolidated government. ‘Area of operation’ may also mean the combined areas of operation of political subdivisions which

participate in the creation of a common redevelopment agency to serve such participating political subdivisions as provided in subsection (d) of Code Section 36-44-4.” O.C.G.A. Sec. 36-44-3(2).

If a city wants to use a county’s tax increment to pay redevelopment costs, it must obtain the county’s consent. (The tax increment used for a county TAD is based on “all county *ad valorem* property taxes levied for county governmental purposes.”^{xxiv}) The Redevelopment Powers Law provides for a board of education (or other board setting educational millage) to also have the right to consent to include the educational millage increment as a source for the payment of redevelopment costs. However, a recent Georgia Supreme Court decision has invalidated that right to include educational millage.^{xxv}

It is not uncommon for a political subdivision granting such a consent to condition it, or “attach strings”, related to a public policy that is important to the consenting political subdivision.

What’s In It For Me?

According to the Bleakly Study, a city or county typically has one of three purposes in mind when it creates a TAD. These purposes are to:

- “Encourage commercial development in largely undeveloped or under-developed commercial corridors where high infrastructure costs had inhibited quality development.”
- “Build new town centers, redevelop downtowns, or revitalize other areas.”
- “Achieve multiple objectives, including the replacement of existing, lower valued development with mixed-use projects and other appropriate development. Typical targeted redevelopment sites are vacant shopping centers, obsolete public housing, substandard apartment complexes and other under-valued commercial and residential properties.”

Presentations to communities on the benefits of TADs usually stress these points:

- Local government revenues from the existing tax base will continue unaffected by the TAD. In other words, the general fund of the city or county is not at risk because redevelopment costs are only paid out of the “special fund” (discussed below) related to the positive tax increments (but see caveat below).
- Upon termination of the TAD, revenues from the tax increment associated with the new growth will be added to these existing revenues, creating a “windfall” for the local governments
- Meanwhile, other, non-property tax revenues to the local governments (SPLOST, EPLOST, business license fees, etc) will be enhanced by the new growth
- The local governments get the increased and enhanced revenues without having to raise taxes
- TAD bonds do not count against the G.O. bond limits for the city or county

- The city or county's credit rating would not be affected by TAD bond financing, if it is used with discretion
- Property values will increase within the TAD, and also nearby, due to the "halo" effect
- Employment opportunities are created

Caveat- A community should realize that, in addition to the district's positive tax increment from property taxes, a redevelopment plan can provide for the use of *general funds*, "but only if those general funds are derived from a designated tax allocation district and used for payment or security for payment of tax allocation bonds issued or incurred under [the Redevelopment Powers Law] for redevelopment of that district and only to the extent that positive tax increments or lease or other contract payments in that district's special fund are insufficient at any time to pay principal and interest due on such bonds." O.C.G.A. Sec. 36-44-20(a). See O.C.G.A. Sec. 36-44-9(f). The city or county can protect its general fund simply by limiting the sources for payment of redevelopment costs (including debt service on TAD bonds) to the positive tax increment from the TAD.

Use of a carefully balanced redevelopment plan can result in a "win/win" result for both the community and its private sector "partner." The following is an extract from an actual redevelopment plan for a city:

The following benefits to the City and County will result from the completion of projects envisioned in this redevelopment plan. This plan will:

- Promote high quality, high value commercial and residential development along the key commercial entryways into the City and County;
- Encourage redevelopment within the City's Central Business District consistent with the City's Comprehensive Plan;
- Assist in financing needed sewer infrastructure improvements at a cost that is affordable to existing ratepayers;
- Provide an expanded job base in construction, retail, service and professional, industries;
- Create new living, working, shopping, dining and entertainment opportunities for the City and County that will serve local residents, retain retail spending within the County and attract shoppers from outside the County;
- Generate new private capital investment in long-neglected property in the City's Central Business District that will revitalize residential neighborhoods and expand available commercial services within the historic center of the City; and,
- Generate substantial new annual revenues from sales taxes and business licenses.

The private developer's interest in a TAD will be focused on using it as a tool to attain its goals. These goals might involve solving infrastructure problems that prevent its project from going forward. Or perhaps there are costs on the developer's development pro forma that qualify for payment as redevelopment costs out of TAD proceeds.

The interests of the public sector and the private sector coincide at the "show me the money" stage.

Where Does the Money Come From?

When considering redevelopment, communities and developers are often most concerned with TAD bonds. This type of financing is known in many other states as "**TIF**", or tax increment financing. In Georgia, the term "**tax allocation bonds**," or TAD bonds, means bonds, notes or other obligations issued by the city or county to finance redevelopment costs within the tax allocation district. TAD bonds are issued on the basis of pledging to the repayment of the bonds the projected increase in *ad valorem* tax revenues resulting from the proposed redevelopment of property with the district; *i.e.*, the "**tax allocation increment**" (see below.)

"**Pay as you go**" is an alternative to "**bonding**" or "**Forward Funding**" the tax revenues from the increment.

The Bleakly Study found that: "To mitigate risk, the common practice among the few Georgia communities that have issued TAD bonds is to *disburse bond proceeds as redevelopment projects are completed* when the resulting tax increment is in place to repay debt service. In Atlanta and Marietta, TAD payments to developers are handled as reimbursements, distributed in installments as projects are completed. Where developers have requested *up-front TAD payments for infrastructure costs*, such as in East Point and Acworth, the developer was responsible for securing financing and identifying investors who would agree to assume the added risk..." (emphasis added).

Using TAD Bonds to Finance Redevelopment

The proceeds of TAD bonds are used to pay the costs of redevelopment in the district. TAD bonds do not constitute "**debt**" within the meaning of Article IX, Section V of the Constitution. A referendum is not required for the issuance of TAD bonds. These rules enable a city or county to more freely use TAD bonds than general obligation bonds.

TAD bonds may be issued by resolution of the city or county for the sole purpose of paying redevelopment costs within the district. They may not be issued in an amount exceeding the estimated aggregate redevelopment costs. Both current and advance refunding bonds may be issued. TAD bonds may have a maturity of not more than 30 years and may bear interest at a fixed or variable rate. TAD bonds must be validated under the Revenue Bond Law.

TAD bonds are payable from (i) real or personal property acquired pursuant to the redevelopment plan which is pledged to the payment of debt service, (ii) the pledged tax allocation increment and (iii) any

other source from which redevelopment costs may be paid that is pledged to the payment of debt service. The city or county must deposit revenues from these sources in a “**Special Fund.**” Amounts in the special fund may be used only to pay redevelopment costs of the district or to satisfy claims of holders of the TAD bonds.

TAD bonds are not general obligations of the city or county that issues them. In fact, the Redevelopment Powers Law requires each bond to state that it is payable only from the pledged sources and does not otherwise constitute an indebtedness or charge against the general taxing powers of the city or county or of any consenting body. To increase the security for and marketability of the tax allocation bonds or notes, the governing body of the city or county may create a lien upon any public improvements or public works financed thereby or the revenues therefrom.

Tax Allocation Increment

The Redevelopment Powers Law provides a formula to determine the “**tax allocation increment**” which is the basic source for repayment of TAD bonds. A tax allocation increment is “**positive**” in a particular year if the tax allocation increment base is less than that year’s taxable value of all taxable property within the district. For purposes of this determination, “**ad valorem property taxes**” includes all *ad valorem* property taxes levied by each body consenting to the inclusion of its property taxes as being applicable to a tax allocation district, except: (i) taxes levied to repay bonded indebtedness, (ii) unless otherwise provided in the resolution creating such district, taxes levied on personal property or on motor vehicles, and (iii) unless otherwise provided in the resolution creating such district, taxes levied on property owned by public utilities and railroad companies.

For the purpose of fixing the tax millage rate to fund the annual budget of each public body having the power to levy taxes or set ad valorem tax millage rates on property located within a tax allocation district, which has consented to the inclusion of its ad valorem property taxes for the computation of tax allocation increments, the taxable value of property subject to ad valorem property taxes within a tax allocation district shall not exceed the tax allocation increment base of the district until the district is terminated. However, the Redevelopment Powers Law does not freeze the ad valorem tax millage rate of any such public body, and any such rate may be increased or decreased at any time after the creation of a tax allocation district in the same manner and under the same authority that such rate has been previously fixed by such public body. See O.C.G.A. Sec. 36-44-15.

Tax-Exempt versus “Taxable” TAD Bonds

TAD bonds issued to finance property to be owned and operated by the city or county (such as public streets) can be issued as federally tax-exempt “**governmental purpose**” bonds. Under the federal income tax rules, in order to enjoy this status, the TAD bonds must not be “**private activity bonds.**” Private activities bonds are bonds of an issue that either (i) meet both a “**private business use**” test and a “**private security or payment**” test, or (ii) meet a “**private loan financing test.**” Generally, if 10% or more of the bond-financed property is used for private business use, the private business use test will be

met. If 10% or more of the revenues from that property are derived from private sources, then the private security or payment test will be met. If a developer guarantees that its property in the TAD will generate a specified level of taxes, such guaranteed amount of taxes will be treated as private payments for purposes of this test. If the lesser of 5% or more of the proceeds of the TAD bond issue or \$5,000,000 of the proceeds are used, directly or indirectly, to make or finance loans (with an exception for special assessment bonds) to persons other than governmental units, the bonds will meet the private loan financing test. If a developer guarantees a series of TAD bonds, the guaranty will be treated as a private security for purposes of the private security or payment test. The same would be true if the guarantee were in the form of a letter of credit and the developer were obligated to reimburse the letter of credit bank for draws thereunder. In one TAD bond financing, there was such a letter of credit, but drawings thereunder were limited by a formula designed to prevent the private security from exceeding the 10% limit on private security or payments. In such guarantee situations, one should take care not to cause transaction to be, in substance, a loan of bond proceeds to the developer for purposes of the private loan financing test. These tax rules are quite technical and require a careful analysis of the facts in their application.

If, because of the involvement of a developer or other private entities, the TAD bonds are “**private activity bonds**” they generally may be issued only as federally taxable bonds. However, private activity bonds which are “**qualified redevelopment bonds**” may be issued as tax-exempt bonds. Such qualified redevelopment bonds may finance land and improvements (but not buildings) which are to be sold to developers or other private business users.

Tax-exempt governmental purpose bonds, tax-exempt qualified redevelopment bonds, and taxable private activity bonds can be authorized as separate series by the same bond resolution adopted by the city or county and validated in a single validation action to finance different components of the redevelopment program.

Thus, if needed for a particular redevelopment plan, the costs of public infrastructure and land relating thereto could be issued as governmental purpose bonds, the land costs and development costs attributable to acquiring land to be sold to developers (i.e., building lots) could be issued as qualified redevelopment bonds, and the cost of any land and buildings to be sold or leased to private business users could be issued as taxable private activity bonds. The bonds would be a single issue for state law purposes, but are treated as separate “**issues**” for federal tax purposes, in accordance with Income Tax Regulations Section 1.150-1(c)(2) and (3). All three series would be payable from the tax allocation increments. The private activity bonds could also be payable from the proceeds from the sale or leasing of land and buildings to private business users, and the qualified redevelopment bonds could also be payable from proceeds of sale of building lots.

How Can I Get Someone to Buy These TAD Bonds?

Bond purchasers and investment bankers are usually not optimistic enough to say: “TAD it, and they will come!” In other words, since bonds are just a way to borrow money, the financial markets demand to know *how* bondholders will be repaid, and demand to know that they *will* be repaid, before TAD bonds can be sold.

The success of the TAD, rather than the general obligation of the city or county, is basically what stands behind TAD bonds. This success translates into there being a sufficient positive tax increment. However, with a new project, this presupposes property tax revenues from property that hasn’t even been built yet.

One way to characterize the financing situation that results from this is to divide TAD bonds into “**rated**” bonds on the one hand, and “**unrated**” bonds on the other. A rated bond is one for which one or more of the national rating agencies (e.g., S&P) has assigned an investment grade rating, ideally at least “A.” An unrated bond is one that does not have a rating, usually because any rating that it did get would be below investment grade.

Without some form of credit enhancement, it is unrealistic to think that a new TAD’s bonds would receive an investment grade rating. A developer guaranty or a letter of credit provided by a developer might provide the necessary credit enhancement (see above, for what this implies regarding the bonds’ tax status). In a large TAD financing, an arrangement involving an intergovernmental contract was used to provide credit enhancement through, in effect, a millage pledge.

Alternatively, the TAD bonds would become more creditworthy if the city or county pledged other allowable sources of repayment, such as general funds derived from the district, in addition to the positive tax increment from property taxes, to the repayment of the TAD bonds. An example of these other sources would be local sales and use taxes from the district. There are practical problems in doing this due to the difficulty in tracing a city or county’s local sales and use tax revenues back to this district. In a recent TAD bond financing, a pledge involving an agreed sales and use tax division formula was used to resolve this difficulty.

These rating and credit enhancement issues affect both the ability to get TAD bonds sold so they can be used for financing, as well as the interest rate and other features of the financing (such as debt service reserve funds) that affect the net proceeds available for the project.

The size of the market for the TAD bonds is also a factor affecting these matters.

For reasons relating to securities registration requirements, generally only rated TAD bonds that are tax-exempt and “taxable” TAD bonds that are secured by a bank letter of credit, would be sold in a public offering. Unrated TAD bonds that are tax-exempt and therefore are “exempt securities”(i.e., do not need to rely on the “exempt transaction” exemption from SEC registration), are nonetheless normally sold (for practical reasons relating to disclosure matters) only in limited offerings or private placements. Unless

they are secured by a bank letter of credit or otherwise qualify as “exempt securities,”^{xxvi} taxable TAD bonds that are private activity bonds, can be sold only sold in a transaction that is an “exempt transaction” under the federal securities laws.

As noted, disclosure requirements under the securities laws also affect how TAD bonds are offered and sold. Some TAD bond issues will be subject to the requirements of SEC’s Rule 15c2-12 and, in such cases, the bonds will be sold with an Official Statement and the continuing disclose requirements of that rule will apply. For other offerings, in which that rule does not technically apply, TAD bonds may nonetheless be sold using a “Limited Offering Memorandum” (which is similar in content to an Official Statement), based on a contractual obligation to provide continuing disclosure.

In many cases, the private sector developer sponsoring the project will itself be a purchaser of the TAD bonds being issued to finance the project’s redevelopment costs. In the hands of the developer, the interest on the bonds will be tax-exempt (assuming compliance with other tax rules) either (a) if the TAD bonds are not private activity bonds, or (b) if they are private activity bonds and if the developer is not a “substantial user”^{xxvii} of the bond-financed property.

“Building” TAD Bonds

Clearly, in order to offer TAD bonds that would be attractive to prospective purchasers, the features of these bonds have to reflect certain economic, financial and legal realities. The process of defining them can be referred to as “**building a bond.**”

According to one investment banker, here are some of the factors which have to be considered for that purpose.

Basic Characteristics

TAD bonds (particularly unrated TAD bonds) usually share most or all of these features:

- “Sized based on projected revenue
- Capitalized interest is typically required construction period and usually limited to three years.
- Typically have a period of debt service growth and then level debt service
- MADS [maximum annual debt service] is usually not reached until project stabilization
- Has a DSRF [debt service reserve fund] or a DSRF Facility such as an LOC [letter of credit] or [insurance company] Surety
- All proceeds delivered at closing.
- Usually callable after 10 years”

How Much Money can Be Borrowed?

TAD bonds (again, this applies mostly to unrated bonds) will have a principal amount, or “**size**”, driven by most or all of these factors:

- “TAD bonds are revenue bonds and their security is the tax increment revenue generated in a tax increment district.
- TAD bonds are typically sized off of stabilized revenues in the third or fourth year after issuance.
- TAD bonds typically have level debt service once stabilization is reached.
- TAD bond annual debt service is always sized with a built-in coverage factor, usually no less than 1.25x revenues to debt service.”

Credit Factors

The creditworthiness of the TAD project and any credit enhancement affects financeability. Here are some of the important credit factors:

- “*Construction Risk* – Will the project be completed on time ensuring the timely flow of tax increment revenue? What is the developer’s track record with similar projects? How much equity does the developer have in the deal?
- *Real Estate Market Risk* – Is there demand for the product being built? Is there significant competition coming out of the ground or planned in the near term?
- *Diversity of Property Tax Base* – Will the Bonds be supported by multiple owners or will a single entity be responsible for all the taxes?
- *Projected Coverage on the Bonds* – What will be the coverage ratio? What could impact that ratio?
- *Recourse in the Event of Default* – What avenues can the investor pursue in the event of default?
- *Level of Reserves* – Do the Bonds have a debt service reserve fund? Does it have a supplemental DSRF?
- *Flow funds* – The flow of property taxes to tax increment, and on to the Trustee and eventually Bondholders.
- *Use of Funds* – What will the proceeds of the Bonds be used for?”

Investor Considerations

Investors in TAD bonds usually have additional considerations in mind, such as these:

- “*Liquidity* – Will there be a secondary market for the bonds?”
- *Call Protection* – Will the initial investor get to keep the bonds for a set amount of time?
- *Continuing Disclosure* – What systems are in place to keep the investor informed?
- *Issuer’s History with TAD* – Has [city or county] issued TAD debt before and if so, how has it performed?”

The quoted material above is from a November 7, 2007 presentation by DEPFA First Albany Securities LLC entitled “Inside TIF Bond Issuance and Structures”. References to “TIF” have been changed to “TAD” in the text above. The presentation is available at: <http://www.cdfa.net/cdfa/cdfaweb.nsf/search-articles?SearchView&query=99999&SearchOrder=3&SearchMax=0&SearchWv=1&SearchFuzzy=0>

How Do I Get the Money?

A developer that wants access to TAD proceeds to pay redevelopment costs will promptly find out what it means to have the word “public” in the phrase “public/private partnership.” The process is intensive in terms of procedures, documentation and policy.

Steps in Funding Process

Each community will establish its own rules that apply to the process, but below are the typical steps that a developer must go through in order to get to funding, in the case of a new redevelopment plan and new TAD.

- The city or county would establish an application process for participation by a developer in the redevelopment plan.
 - The application process would likely require the developer to describe its project, submit a budget of estimated project costs, itemize the sources of funding, describe the experience of the developer, identify the development team (architect, engineer, general contractor, accountant, legal counsel, etc.), estimate the tax increment that the project will generate, and estimate the number of jobs to be created by the proposed redevelopment.
- The staff of the city or county or its redevelopment agency would review the application and supporting material, and if the staff decides to proceed with the creation of the TAD, it would negotiate a development agreement between the developer and the city or county or its redevelopment agency.
- The redevelopment agency would submit a formal redevelopment plan for the proposed redevelopment area to the city or county.
- Within 60 days after the plan is submitted, the city or county must hold at least one public hearing on the redevelopment plan and publish, at least 5 days prior to the hearing, a notice of such hearing in one or more newspapers of general circulation in the city or county.

- Within 45 days after completing these public hearing(s), the city or county schedules a meeting to vote on the plan and publishes, at least 5 days prior to the meeting, a notice of such meeting at least once in one or more newspapers of general circulation in the city or county.
- At the meeting referred to above, the redevelopment plan may be approved as submitted, amended and approved, or rejected and returned to the redevelopment agency; in the latter case, if the redevelopment agency submits a new or modified plan, the preceding three steps would be repeated.
- If a redevelopment plan for a TAD that is adopted by a city contemplates that the county tax increment from any property in the TAD or any general county funds derived from within the TAD are to be used in the redevelopment plan for the TAD, then the county must approve the plan in order for its tax increment and general funds to be so used. A certified copy of the resolution granting any such consent must be submitted to the city prior to the inclusion of such other tax increment revenues or other general funds in the calculation of the tax allocation increment. (Similar rules for approvals by a board of education are provided by the Redevelopment Powers Law, but are not now applicable in light of the recent Supreme Court decision discussed elsewhere in this White Paper).
- No later than the effective date of the creation of the TAD, the redevelopment agency must apply in writing to the state revenue commissioner for a determination of the tax allocation increment base of the TAD, and within a reasonable time, not to exceed 60 days the state revenue commissioner shall certify such tax allocation increment base.
- The amount of the tax allocation increment base and projection as to increases in value of property in the TAD would then be used to estimate the annual tax increment that would be available in future years to pay TAD bonds, and to determine the feasibility of issuing TAD bonds.
- If TAD bonds are to be issued, an underwriter, bond counsel and other persons on the finance team would be selected (if not previously selected). The details of the TAD bond issue would be established and a TAD bond resolution and supporting documents would be submitted for approval to the legislative body of political subdivision that created the TAD.
- The TAD bond resolution would be approved and judicial validation of the TAD bonds would commence, with a hearing date in about 20 days; notices would be published in the legal organ of the bond issuer at least once each week for the two calendar weeks prior to the week of the hearing. The hearing would be held. After the TAD bonds are validated, they would then be sold and issued.

The Development Agreement

The Redevelopment Powers law does not expressly require the city or county, or its redevelopment agency to enter into a formal written “**Development Agreement**” with the developer, but this requirement is typical. The Development Agreement represents the “bargain” struck between the public sector and the

private sector. It must justify^{xxviii} the use of public money to support the payment of redevelopment costs that benefit the developer, as well as the general public.

The developer typically needs assistance with funding a “gap”, which is a funding shortfall related to project costs in its development pro forma or the provision of indispensable public infrastructure. Sometimes the public policy of the community is the cause of the gap, as when it imposes requirements that impact the feasibility or profitability of the project.

The Development Agreement is a contract that is binding on both parties. It details what will be built and who will build it, as well as the sources and uses of funds, at least those related to TAD proceeds. Provisions regarding public policy demands that the developer has agreed to and is responsible for are evidenced in this document.

Financing-related matters are addressed, such as whether the city or county will make funds available on a reimbursement or up-front basis. If TAD Bonds are being issued, the Development Agreement must also address such matters as whether a developer guaranty or letter of credit will be required, the escrowing of funds for release when certain ratios or projections are attained, etc.

Other provisions of the Development Agreement might relate to compliance with on-going administrative requirements, payment and performance bonds, insurance, remedies, etc.

Although the city or county may view many of the provisions of the Development Agreement as being mandatory, there are still many other aspects of it which are negotiable. This is a key document for the developer, and should receive its serious front-end attention.

What Can I Spend the Money On?

Simply put, redevelopment costs are expenditures on redevelopment^{xxix}. The scope of “**redevelopment**” includes “any activity, project or service necessary or incidental to achieving the development or revitalization of a redevelopment area or portion thereof.” See O.C.G.A. Sec. 36-44-3(5).

When cash is available as the proceeds of collections from a TAD’s tax increment, or as the proceeds of TAD bonds, that cash can be spent on costs deemed eligible by the Redevelopment Powers Law. The city or county can pay redevelopment costs directly, or can use the cash to reimburse a developer for reimbursement costs that the developer has paid. In the latter case, a proper documentation and structure is required, part of which is the Development Agreement between the city or county and the developer.

Expenditures on these *asset classes* potentially qualify as redevelopment costs that can be paid or reimbursed:

- building construction

- rehabilitation of any existing building or other facility
- public or private housing
- public works or other public facilities
- historic buildings or sites (includes identification, preservation, or renovation)
- open spaces or green spaces
- structures, equipment, and facilities for mass transit
- telecommunication infrastructure (includes development, construction, or renovation)
- facilities for the improvement of pedestrian access and safety
- improving or increasing the value of property
- property already owned by a political subdivision or any agency or instrumentality thereof (includes acquisition and retention or acquisition and disposition of property for redevelopment purposes or the use for redevelopment purposes)

Types of redevelopment *cost classes* that are eligible for payment or reimbursement include:

- capital costs
- financing costs (includes payment of interest during the estimated period of construction of any project and for a period not to exceed 42 months after completion of any such construction)
- professional service costs (includes architectural, planning, engineering, financial, marketing, and legal advice and services)
- imputed administrative costs (includes reasonable charges for the time spent by public employees in connection with the implementation of a redevelopment plan)
- relocation costs (includes relocation payments made following condemnation under Chapter 4 of Title 22, "The Georgia Relocation Assistance and Land Acquisition Policy Act")
- organizational costs (includes the costs of conducting environmental impact and other studies, and the costs of informing the public with respect to the creation and implementation of redevelopment plans)
- payments to a political subdivision or board of education in lieu of taxes to compensate for any loss of tax revenues or for any capital costs incurred because of redevelopment activity (any such payments to a political subdivision or board of education may not exceed in any year the amount of the contribution to the tax allocation increment in that year by such political subdivision or board of education)
- real property assembly costs

In all cases, however, in order to be eligible to be paid as redevelopment costs, payment of the costs must be provided for in the redevelopment plan.

The *Redevelopment Costs List* attached to this White Paper contains a complete definition of “redevelopment” and “redevelopment costs.”

What Goes Into the Redevelopment Plan? How Do I Get a TAD Created?

The redevelopment plan can be proposed by the private sector developer or by the redevelopment agency for the city or county. It is important for these parties to realize, however, that the redevelopment plan will have a much broader audience; i.e., the general public.

The redevelopment plan should be a tool that will facilitate obtaining community “buy in.” For that reason, the contents of the redevelopment plan normally discuss such matters as public benefit beyond the bare bones of the statutory requirements applicable to the redevelopment plan.

The statutory elements of the redevelopment plan are prescribed by the Redevelopment Powers Law.^{xxx} In summary, it must contain:

- *the boundaries* of the proposed redevelopment area
- the grounds for a *finding by the local legislative body* that the redevelopment area on the whole has not been subject to growth and development through private enterprise and would not reasonably be anticipated to be developed without the approval of the redevelopment plan or that the redevelopment area includes one or more natural or historical assets which have not been adequately preserved or protected and such asset or assets would not reasonably be anticipated to be adequately preserved or protected without the approval of the redevelopment plan;
- *the proposed uses* after redevelopment of real property within the redevelopment area
- *any redevelopment projects* within the redevelopment area proposed to be authorized by the redevelopment plan (also need an *estimate of the cost* thereof, and an explanation of the *proposed method of financing* such projects)
- a description of any proposed *long-term (more than one year) obligations* of the city or county or the redevelopment agency
- *any relocation payments* proposed to be authorized by the redevelopment plan
- a statement that the proposed redevelopment plan conforms with the local *comprehensive plan, master plan, zoning ordinance, and building codes* of the city or county (or include an explanation of any exceptions thereto)
- an estimate of *redevelopment costs*

- *the last known assessed valuation* of the redevelopment area and the *estimated assessed valuation after redevelopment*
- an agreement to the *restrictions* imposed by the Redevelopment Powers Law regarding property which is either designated as a *historic property* under Article 2 of Chapter 10 of Title 44, the "Georgia Historic Preservation Act," or is listed on or has been determined by any federal agency to be eligible for listing on the National Register of Historic Places
- such *other information* as may be required by resolution of the city or county

If the redevelopment plan contemplates the creation of a TAD, additional information is required (if not, appropriate responses to the following requirements should be made). These *additional TAD-related requirements* are:

- proposed effective date for the creation of the TAD and the proposed termination date
- map specifying the boundaries of the proposed TAD and showing existing uses and conditions of real property in the proposed TAD
- estimated tax allocation increment base of the proposed TAD
- ad valorem property taxes for computing tax allocation increments determined in accordance with the Redevelopment Powers Law (a resolution of the city or county approving the redevelopment plan and creating the TAD is also required as described below)
- amount of any proposed TAD bonds and the term and assumed rate of interest applicable thereto
- estimate of positive tax allocation increments for the period covered by the term of the proposed TAD bonds
- property proposed to be pledged for payment or security for payment of TAD bonds

Most redevelopment plans provide for the creation of TADs. The city or county must by resolution approve both the redevelopment plan and the TAD^{xxxii}. The redevelopment plan normally contains most of the information that the Redevelopment Powers Law requires the resolution to address in approving both the redevelopment plan and the TAD. The Redevelopment Powers Law specifically allows the city or county to incorporate by reference into its resolution that portion of the redevelopment plan that includes this information.^{xxxii}

When both the redevelopment plan and the TAD are being approved at the same time, the resolution of the city or county approving the TAD normally only needs to address these requirements separately from the redevelopment plan:

- Creation of the TAD as of December 31 following the adoption of the resolution or on December 31 of a subsequent year as determined by the city or county

- Naming the TAD (the first district is known as "Tax Allocation District Number 1," followed by the name of the city or county)

In the separate resolution or in the approved redevelopment plan, the city or county must adopt legislative findings that:

- The redevelopment area on the whole has not been subject to growth and development through private enterprise and would not reasonably be anticipated to be developed without the approval of the redevelopment plan or includes one or more natural or historical assets which have not been adequately preserved or protected and such asset or assets would not reasonably be anticipated to be adequately preserved or protected without the approval of the redevelopment plan; and
- The improvement of the area is likely to enhance the value of a substantial portion of the other real property in the district.

A certified copy of any resolution giving another body's consent to the inclusion of its tax increment must be submitted to the governing body that is creating the TAD prior to inclusion of the consenting body's ad valorem property taxes or general funds in calculation of the tax allocation increment.^{xxxiii}

The existence of the TAD terminates when the governing body of the city or county by resolution, dissolves the district. No dissolution is permitted until all redevelopment costs (including debt service on TAD bonds) have been paid.

Conclusion

Thanks to the General Assembly, TADs have become an important tool for economic development, not just for traditional redevelopment. Like any tool, TADs should be wisely. These new redevelopment powers for cities and counties will, most importantly, promote new and better public/private partnerships. That sort of cooperation between the public sector and the private sector bodes well for Georgia.

More Information

This White Paper is a quick-reference guide for company executives and managers, economic developers, community developers, participants in the real estate and financial industries, and their advisors. The information in this White Paper is general in nature. Various points which could be important in a particular case have been condensed or omitted in the interest of readability. Specific professional advice should be obtained before this information is applied to any particular case. Any tax information or written tax advice contained herein (including any attachments) is not intended to be and cannot be used by any taxpayer for the purpose of avoiding tax penalties that may be imposed on the taxpayer. (The foregoing legend has been affixed pursuant to U.S. Treasury Regulations governing tax practice.)

Additional information concerning this topic, as well as White Papers and references on other topics, can be found at <http://danmcrae.info/>.

If you have any specific questions or comments, we would be pleased to provide more information. Please contact:

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Appendix A

REDEVELOPMENT AREA LIST

According to O.C.G.A. Sec. 36-44-3(7)-

"Redevelopment area" means:

(A) Any urbanized or developed area in which the structures, buildings, or improvements, by reason of dilapidation, deterioration, age, or obsolescence, inadequate provision for ventilation, light, air, sanitation, or open spaces, high density of population and overcrowding, or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors, is conducive to ill health, transmission of disease, infant mortality, high unemployment, juvenile delinquency, or crime and is detrimental to the public health, safety, morals, or welfare;

(B) Any urbanized or developed area which by reason of the presence of a predominant number of substandard, slum, deteriorated, or deteriorating structures; the predominance of defective or inadequate street layout, inadequate parking, roadways, bridges, or public transportation facilities incapable of handling the volume of traffic flow into or through the area, either at present or following proposed redevelopment; the faulty lot layout in relation to size, adequacy, accessibility, or usefulness; unsanitary or unsafe conditions; deterioration of site or other improvements; the diversity of ownership, tax, or special assessment delinquency exceeding the fair value of the land; diversity of ownership on defective or unusual conditions of title which prevent or encumber the free alienability of land; or the existence of conditions which endanger life or property by fire and other causes; or any combination of the foregoing, substantially impairs or arrests the sound growth of the community, retards the provision of housing accommodations or employment opportunities; or constitutes an economic or social liability and is a menace to the public health, safety, morals, or welfare in its present condition and use;

(C) Any open area located within an urbanized or developed area within the corporate limits of a municipality which because of any factor or combination of factors enumerated in subparagraph (A) or (B) of this paragraph substantially impairs or arrests the sound growth of the community;

(D) Any area located within an urbanized or developed area and which, immediately prior to becoming an open area, qualified as a redevelopment area under subparagraph (A) or (B) of this paragraph;

(E) Any area located within an urbanized or developed area which is substantially underutilized by containing open lots or parcels of land or by containing a substantial number of buildings or structures which are 40 years old or older or by containing structures or buildings of relatively low value as compared to the value of structures or buildings in the vicinity of the area or by having development impaired by airport and related transportation noise or by related environmental factors or an area in which there is a shortage of housing that is affordable for persons of low or moderate income which the local legislative body designates as appropriate for community redevelopment or by any combination of the foregoing factors;

(F) Any geographic area designated within the comprehensive plan of a political subdivision for redevelopment which has previously been developed for commercial, residential, industrial, office, or similar or ancillary uses and which lies within the service delivery area of the political subdivision, in which the current condition of the area is less desirable than the redevelopment of the area for new commercial, residential, industrial, office, or other uses, or a combination of uses, including the provision of open space or pedestrian and transit improvements, and any geographic area that is adversely affected by airport or transportation related noise or other environmental degradation, contamination, or other environmental factors which the political subdivision has determined to be impairing or retarding the redevelopment of the area;

(G) Any urbanized or developed area or an area connecting two or more urbanized or developed areas that has been subject to some development but which has inadequate roadways, bridges, or public transportation or transit facilities incapable of handling the volume of traffic or passenger flow in or through the area in a safe and efficient manner either at present or following proposed redevelopment; or

(H) Any area combining any factors specified in subparagraphs (A) through (G) of this paragraph.

REDEVELOPMENT POWERS LIST

O.C.G.A. Sec. 36-44-5 (Redevelopment powers of political subdivisions; exercise of powers) provides as follows:

(a) Subject to the limitation of subsection (b) of this Code section, a political subdivision may exercise any powers necessary or convenient to carry out the purposes of this chapter, including, but not limited to, the power to:

(1) Describe the boundaries of one or more redevelopment areas within its area of operation, but any redevelopment area so described shall conform to the definition of a redevelopment area provided by paragraph (7) of Code Section 36-44-3;

(2) Cause redevelopment plans to be prepared, to approve by resolution the plans, and to implement the provisions and effectuate the purposes of the plans;

(3) Create within redevelopment areas tax allocation districts and define the boundaries thereof or designate an entire redevelopment area as a tax allocation district;

(4) Define the boundaries of portions of a redevelopment area or an entire redevelopment area for the implementation of redevelopment plans other than plans calling for the creation of tax allocation districts;

(5) Issue tax allocation bonds;

(6) Deposit moneys into and disburse moneys from the special fund of any tax allocation district;

(7) Enter into and execute any contracts, leases, mortgages, or other agreements, including agreements with bondholders or lenders, determined by the local legislative body to be necessary or convenient to implement the provisions and effectuate the purposes of redevelopment plans. The contracts or agreements may include conditions, restrictions, or covenants which either run with the land or otherwise regulate the use of land;

(8) Acquire and retain or acquire and dispose of property or interests therein for redevelopment purposes or use or dispose of property or interests therein presently owned by the political subdivision for redevelopment purposes; and any disposition of such property or interests therein may be by public or private sale or lease; and

(9) Exercise, for the purposes of this chapter, any powers conferred upon political subdivisions by Chapter 61 of this title, the "Urban Redevelopment Law."

(a) Subject to the limitation of subsection (b) of this Code section, a political subdivision may exercise any powers necessary or convenient to carry out the purposes of this chapter, including, but not limited to, the power to:...

(b) The powers granted to political subdivisions by subsection (a) of this Code section and by this chapter and any powers delegated to a redevelopment agency pursuant to Code Section 36-44-6 may be exercised only for the purpose of adopting and implementing redevelopment plans, but this limitation shall not be construed to interfere with the exercise of any power now or hereafter possessed by a political subdivision which is granted by any other law.

REDEVELOPMENT COSTS LIST

According to O.C.G.A. Sec. 36-44-3(5) –

"Redevelopment" means any activity, project, or service necessary or incidental to achieving the development or revitalization of a redevelopment area or a portion thereof designated for redevelopment by a redevelopment plan or the preservation or improvement of historical or natural assets within a redevelopment area or a portion thereof designated for redevelopment by a redevelopment plan. Without limiting the generality of the foregoing, redevelopment may include any one or more of the following:

- (A) The construction of any building or other facility for use in any business, commercial, industrial, governmental, educational, charitable, or social activity;
- (B) The renovation, rehabilitation, reconstruction, remodeling, repair, demolition, alteration, or expansion of any existing building or other facility for use in any business, commercial, industrial, governmental, educational, charitable, or social activity;
- (C) The construction, reconstruction, renovation, rehabilitation, remodeling, repair, demolition, alteration, or expansion of public or private housing;
- (D) The construction, reconstruction, renovation, rehabilitation, remodeling, repair, demolition, alteration, or expansion of public works or other public facilities necessary or incidental to the provision of governmental services;
- (E) The identification, preservation, renovation, rehabilitation, reconstruction, remodeling, repair, demolition, alteration, or restoration of buildings or sites which are of historical significance;
- (F) The preservation, protection, renovation, rehabilitation, restoration, alteration, improvement, maintenance, and creation of open spaces or green spaces;
- (G) The development, construction, reconstruction, repair, demolition, alteration, or expansion of structures, equipment, and facilities for mass transit;
- (H) The development, construction, reconstruction, renovation, rehabilitation, repair, demolition, alteration, or expansion of telecommunication infrastructure;
- (I) The development, construction, reconstruction, renovation, rehabilitation, repair, demolition, alteration, or expansion of facilities for the improvement of pedestrian access and safety;
- (J) Improving or increasing the value of property; and
- (K) The acquisition and retention or acquisition and disposition of property for redevelopment purposes or the use for redevelopment purposes of property already owned by a political subdivision or any agency or instrumentality thereof.

(6) "Redevelopment agency" means the local legislative body of a political subdivision or a public body corporate and politic created as the redevelopment agency of the political subdivision or an existing public body corporate and politic designated as the redevelopment agency of the political subdivision pursuant to Code Section 36-44-4.

According to O.C.G.A. Sec. 36-44-3(8) –

"Redevelopment costs" means any expenditures made or estimated to be made or monetary obligations incurred or estimated to be incurred to achieve the redevelopment of a redevelopment area or any portion thereof designated by a redevelopment plan or any expenditures made to carry out or exercise any powers granted by this chapter. Without limiting the generality of the foregoing, redevelopment costs may include any one or more of the following:

- (A) Capital costs, including the costs incurred or estimated to be incurred for the construction of public works or improvements, new buildings, structures, and fixtures; the renovation, rehabilitation,

reconstruction, remodeling, repair, demolition, alteration, or expansion of existing buildings, structures, and fixtures; the acquisition of equipment; and the clearing and grading of land;

(B) Financing costs, including, but not limited to, all necessary and incidental expenses related to the issuance of obligations and which may include payment of interest on any obligations issued under this chapter occurring during the estimated period of construction of any project with respect to which any capital costs within the meaning of subparagraph (A) of this paragraph are financed in whole or in part by such obligations and for a period not to exceed 42 months after completion of any such construction and including reasonable reserves related thereto and all principal and interest paid to holders of evidences of indebtedness issued to pay for other redevelopment costs and any premium paid over the principal amount thereof because of the redemption of such obligations prior to maturity;

(C) Professional service costs, including those costs incurred for architectural, planning, engineering, financial, marketing, and legal advice and services;

(D) Imputed administrative costs, including reasonable charges for the time spent by public employees in connection with the implementation of a redevelopment plan;

(E) Relocation costs as authorized by a redevelopment plan for persons or businesses displaced by the implementation of a redevelopment plan, including but not limited to, those relocation payments made following condemnation under Chapter 4 of Title 22, "The Georgia Relocation Assistance and Land Acquisition Policy Act";

(F) Organizational costs, including the costs of conducting environmental impact and other studies, and the costs of informing the public with respect to the creation and implementation of redevelopment plans;

(G) Payments to a political subdivision or board of education in lieu of taxes to compensate for any loss of tax revenues or for any capital costs incurred because of redevelopment activity; provided, however, that any such payments to a political subdivision or board of education shall not exceed in any year the amount of the contribution to the tax allocation increment in that year by such political subdivision or board of education; and

(H) Real property assembly costs.

Appendix B- Notes

ⁱ O.C.G.A. Sec. 36-44-1 *et seq.*

ⁱⁱ O.C.G.A. Sec. 36-44-1

ⁱⁱⁱ The Redevelopment Powers Law uses the term “political subdivision”, which includes “any county, municipality or consolidated government of this state.” O.C.G.A. Sec. 36-44-3(4). In the interest of readability, this White Paper commonly refers to “city or county.” Likewise, the Redevelopment Powers Law refers (O.C.G.A. Sec. 36-44-3(3) to “local legislative body” (the official or body in which the legislative powers of a political subdivision are vested), whereas this White Paper simply refers to the city or county. The Redevelopment Powers Law also contains numerous provisions relating to boards of education or schools systems, most of which are ignored in this White Paper in light of the recent Georgia Supreme Court decision relating to the educational tax increment, which is discussed elsewhere in this White Paper.

^{iv} O.C.G.A. Sec. 36-44-16. That same Section also provides: “Such contracts may include, without being limited to, contracts to convey or otherwise obligate real property for redevelopment under this chapter although that property has not yet been acquired at the time of contracting by the county or municipality.” See O.C.G.A. Sec. 36-30-3 (a); *Madden v. Bellew*, 260 Ga. 530, 397 S.E.2d 687 (1990).

^v O.C.G.A. Sec. 36-44-5(a)(8). Regarding the overridden provisions, see O.C.G.A. Sec. 36-37-6 (disposition of municipal property generally); O.C.G.A. Sec. 36-9-3 (sale or disposition of county real property generally, etc.).

^{vi} O.C.G.A. Sec. 36-44-16 provides: “As an additional source for financing redevelopment costs, a political subdivision or its redevelopment agency may borrow funds from financial institutions and, in connection therewith, may pledge or assign lease contracts or revenue received from lease contracts on property owned by the political subdivision or its redevelopment agency within a redevelopment area. A political subdivision or its redevelopment agency is authorized to enter into contracts with financial institutions for the purpose of exercising the authority provided by this Code section, and such contracts may obligate the political subdivision or its redevelopment agency for any number of years not exceeding 25. Contractual obligations incurred by a political subdivision pursuant to this Code section shall not constitute debt within the meaning of Article IX, Section V of the Constitution.”

^{vii} See Georgia Constitution Art. 9, Sec. 5, Para. 1(a).

^{viii} O.C.G.A. Sec. 36-44-17.

^{ix} For a copy of the Bleakly Study, go to

http://www.livablecommunitiescoalition.org/uploads/100012_bodycontentfiles/100578.pdf.

^x See O.C.G.A. Sec. 36-44-22. TADs are authorized by Ga. Const. Art. IX, Sec. II, Para. VII. (b), which provides: “The General Assembly is authorized to grant to counties or municipalities for redevelopment purposes and in connection with redevelopment programs, as such purposes and programs are defined by general law, the power to issue tax allocation bonds, as defined by such law, and the power to incur other obligations, without either such bonds or obligations constituting debt within the meaning of Section V of this article, and the power to enter into contracts for any period not exceeding 30 years with private persons, firms, corporations, and business entities.” This section of the Constitution also requires that, before any municipality or county can exercise the redevelopment powers to be provided by general law, a local act authorizing it to exercise such powers must be enacted and then be approved by referendum of the voters of the municipality or county.

^{xi} See Georgia Constitution Art. 3, Sec. 5, Para. 8, Para. 9; O.C.G.A. Sec. 28-1-14.

^{xii} See Georgia Constitution Art. 9, Sec. 2, Para. 7.

^{xiii} See Title 21 of the Georgia Code.

^{xiv} The local act may limit but not expand the redevelopment powers available under the Redevelopment Powers Law. O.C.G.A. Sec. 36-44-22.

^{xv} The use of eminent domain has been severely curtailed by recent legislation. See Georgia Constitution Art. 9, Sec. 2, Para. 5; Title 22 of the Georgia Code, as amended by H.B. 1313 (the “**Landowner’s Bill of Rights and Private Property Protection Act**”).

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- ^{xvi} See O.C.G.A. Sec. 36-44-5(a)(1),(2).
- ^{xvii} The borders of a TAD can be co-extensive with the borders of the redevelopment area. O.C.G.A. Sec. 36-44-5(a)(3).
- ^{xviii} O.C.G.A. Sec. 36-44-5(a)(4).
- ^{xix} O.C.G.A. Sec. 36-44-6(b)(6) provides one further restriction on delegation: "A local legislative body may not delegate to a redevelopment agency created under subsection (b), (c), (d), or (e) of Code Section 36-44-4 any urban redevelopment project powers except those which may be conferred on an urban redevelopment agency under Code Section 36-61-17 of the "Urban Redevelopment Law"."
- ^{xx} O.C.G.A. Sec. 36-44-4(a).
- ^{xxi} O.C.G.A. Sec. 36-44-6(a).
- ^{xxii} O.C.G.A. Sec. 36-44-4(d), (e) also authorizes a jointly created or designated public corporation with "redevelopment powers" to be used by any county, municipality and consolidated government, or combination thereof.
- ^{xxiii} See, e.g., O.C.G.A. Sec. 36-44-4(a).
- ^{xxiv} O.C.G.A. Sec. 36-44-9(c).
- ^{xxv} See "TAD's- What To Do After the *BeltLine* Case", Quick Takes (February 2008). A Constitutional referendum on restoring that right has been called for November 2008, pursuant to SR 996.
- ^{xxvi} An example of an "otherwise qualifying" taxable TAD bond which is not supported by a bank letter of credit would be a bond issued to finance property to be used by a savings and loan association where the bond is guaranteed by the savings and loan association. Another example would be a bond that finances property that is used by a charitable organization for use in an unrelated trade or business and which is guaranteed by the charity. Obligations of savings and loans and charitable organizations are themselves "exempt securities."
- ^{xxvii} A person or entity will be a "substantial user" if it uses more than 5% of the bond financed property or receives more than 5% of the revenue therefrom.
- ^{xxviii} Ga. Const., Art. III, Sec. VI, Para. VI (a) provides: "Except as otherwise provided in the Constitution, (1) the General Assembly shall not have the power to grant any donation or gratuity or to forgive any debt or obligation owing to the public." This prohibition applies to other public bodies in addition to the General Assembly. 2002 Op. Att'y Gen. U2002-8. The details of structuring and documenting payment of redevelopment costs so as to avoid violation of this prohibition is outside the scope of this White Paper.
- ^{xxix} O.C.G.A. Sec. 36-44-3(8)
- ^{xxx} O.C.G.A. Sec. 36-44-3(9).
- ^{xxxi} O.C.G.A. Sec.s 36-44-7,8.
- ^{xxxii} O.C.G.A. Sec.s 36-44-8(3).
- ^{xxxiii} The Redevelopment Powers Law also makes provision for a board of education to provide such consent, but such provision is not now applicable in light of the recent Georgia Supreme Court decision discussed elsewhere herein.