

Quick Takes

February 2008

Quick Takes: TAD's- What To Do After the BeltLine Case

The Georgia Supreme Court decided on February 11, 2008 that certain funding for the City of Atlanta's BeltLine Tax Allocation District ("TAD") violates the Georgia Constitution's "Educational Purpose Clause." This is the *Woodham v. City of Atlanta* case.

This case has a direct impact on Atlanta's redevelopment of the BeltLine area, but has the potential to stifle redevelopment statewide. This is the "huge chilling effect" that a leading TAD consultant (see cite to "Bleakly study" below) predicted in a panel discussion would happen if the Supreme Court ruled as it did in the BeltLine case.

There is an exception - TAD bonds that already have a final validation order would not be affected by the case. In fact, the day after the BeltLine case, on just that basis, one of the leading national rating agencies, S&P, affirmed its investment grade (BBB) rating and stable outlook on an \$85.5 million series of outstanding tax allocation district bonds issued by the City of Atlanta to refund a prior issue.

The direct holding of the BeltLine case is that school tax funds could not be applied to benefit the BeltLine project. Why? Although the BeltLine's mixed use development provided "a benefit to all citizens", and might "produce future revenue for the school system", it had "little, if any, nexus to the actual operation of public schools." The planned use of these taxes was "not an explicit expenditure for educational purposes", nor was it "necessary or incidental" to public schools or public education." That being so, the BeltLine Redevelopment Plan's proposed use of school tax funds was unconstitutional because it violated the Educational Purpose Clause (quoted below).

What does this decision mean for economic development and redevelopment in Georgia?

First and foremost, it does not mean that TAD's are illegal *per se*. Redevelopment costs can still be paid, and TAD bonds can still be repaid, out of non-school tax increments and other permitted sources otherwise available. It is even conceivable that a redevelopment plan can be developed that would consist of or include elements that are compliant with the

Educational Purpose Clause such that school tax increments could be used for the benefit of those elements. Examples of such elements might be rehabilitating a public school or constructing a new public school in the TAD.

But now a community must exclude the school tax increment from its redevelopment plan as a source for paying non-educational redevelopment costs, including debt service on TAD bonds issued to finance those costs. The Bleakly study found that school taxes typically amount to 1/2 to 2/3 of all property taxes. Planned expenditures for redevelopment costs, and TAD bonds issued to finance them, will have to be scaled down in proportion to the lost revenue.

As a result of the reduced amount of funds available, communities are having to reconsider their redevelopment plans, or to consider what options or alternatives might be available. In some cases, the redevelopment project will not be economically viable at all.

This could mean smaller TAD-financed projects, if the missing proceeds of school tax increments can't be made up in some other way. Atlanta's Mayor has said that the \$1.8 billion anticipated in public funding for the BeltLine projects would be reduced by approximately \$800 million because of the loss of school tax revenues. Mayor Franklin is looking for contributions from other "partners", which could be federal, state or private, to help make up the deficit. In fact, increased project developer participation might be an option in some cases. In others, without TAD proceeds, many projects will not be able to go forward.

An alternative, if feasible, might be to restructure financings such that they have an increased term that is long enough to offset the reduced revenues available for repayment. (The Redevelopment Powers Law, that governs TAD bonds, allows up to a 30 year maturity.) If financially feasible, this would provide additional funding, but still may not bring the amount of TAD bond proceeds back to the amount that was planned. Or, with multi-project TAD's, a community might drop some projects so that others can obtain full funding.

Alternatively, in some situations perhaps the borders of a TAD can be drawn or re-drawn so as to include a larger area that will produce more non-school revenues. (The addition would have to legally qualify as part of a "redevelopment area", of course.) In such case, property at the periphery of the redevelopment area would help to pay redevelopment costs that primarily benefit other properties in the area. This might be objectionable to some. A contrary argument could be, however, that this larger area is justified by the "halo effect." The Bleakly study alluded to the possibility of "[a]dditional local revenues from future appreciation of property values outside of the respective TADs (or "halo effects") ..." If the adjacent areas in some cases would otherwise get a "free ride" from redevelopment within the redevelopment area, perhaps it is fair in those cases to bring them into the TAD.

Or, another avenue entirely might work. Depending on the circumstances, one alternative

to TAD bonds could be PILOT bonds, which are development authority-issued revenue bonds repayable through Payments in Lieu of Taxes. PILOT bonds would be issued in connection with a properly structured property tax “abatement” program. In January of this year, I closed a PILOT bonds transaction that paid for the infrastructure for an industrial park.

The BeltLine decision has no effect on properly structured property tax “abatement” programs, which are based on property valuation or taxability techniques. Further, where a community does not permit even a properly structured “abatement” for property within a TAD, this is a matter of policy, only.

But what is the best way to optimize the use of TAD’s after the BeltLine case? The most obvious option is the most compelling option- amend the Constitution so as to restore the ability of a board of education (or other board setting school taxes) to “opt in” to TAD’s if it decides to do so. After all, school tax increments were never automatically included in TAD revenues. It has always been the choice of these boards to participate or not to participate. So if the question is put to a Constitutional referendum, it will be the voters who decide whether to give that choice back to them. The state Senate has already formed a working group, the purpose of which, according to Lt. Governor Cagle, is “to develop a reasonable and responsible fix to this issue.”

You can expect a burst of TAD activity in the General Assembly very shortly. Meanwhile, communities, economic developers, and project developers, are all trying to keep their TAD projects alive.

One way to do so might be to explore proceeding with obtaining board of education consent to include the school tax increment in a planned TAD financing, contingent upon the Constitution being amended to permit this.

It is clear, however, that redevelopment is much harder today than it was before the BeltLine decision. Now more than ever, perseverance is the key!

More information is below. If you have questions or comments on these issues, please let me know.

Dan McRae

THE “EDUCATIONAL PURPOSE CLAUSE”-
Art. VIII, Sec. VI, Par. I of the 1983 Georgia Constitution provides in part that:

“(b) School tax funds shall be expended only for the support and maintenance of public schools, public vocational-technical schools, public education, and activities necessary or incidental thereto, including school lunch purposes.”

Please take a look at these pages on my website, danmcræe.info, for some more information on these issues.

Go to the “*White Papers*” page, for more on-

Property tax “abatement”; see the “Bonds for Title” White Paper.

Go to the “*What’s New*” page, for more on-

Tax Allocation Districts, or TAD’s; see the copy of the Georgia Supreme Court’s decision in the BeltLine case. The “Bleakly study” mentioned above is “Survey and Analysis of Tax Allocation Districts in Georgia- A Look at the First Eight Years”, prepared by the Bleakly Advisory Group for the Livable Communities Coalition, dated October 4, 2007. For a copy, go to http://www.livablecommunitiescoalition.org/uploads/100012_bodycontentfiles/100578.pdf.

The “Current Bond Rates” page at danmcræe.info is updated weekly. This week’s version is what you see below.

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General note: This issue of *Quick Takes* is a quick-reference guide for economic developers, participants in the real estate and financial industries, company executives and managers, and their advisors. The information in this issue is general in nature. Various points that 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.)

CURRENT BOND RATES	
EFFECTIVE FEBRUARY 15, 2008	
Interest Rates:	
tax-exempt-	floating: 1.29%
	fixed: 3.53%
taxable-	floating: 3.16%
	fixed: 4.62%
General notes:	
1. Rates are posted weekly. These rates are for the effective date indicated above, or as otherwise indicated. For intra-week rates, <u>Contact Dan.</u>	
2. These are interest rates on revenue bonds that are variable rate demand bonds; i.e., floating. These can be synthetically fixed via interest rate swaps, as noted below.	
3. Tax-exempt rates are for industrial development revenue bonds (IDB's") that are subject to the AMT and are 7 day general market quotes.	
4. Taxable rates are for taxable IDB's or for taxable "corporate bonds".	
5. Fixed rates are for 10 year terms via swaps.	
6. All rates are market extracted and approximations, and are not guaranteed.	
7. These rates do not reflect all-in costs; e.g., annual letter of credit fees are not included.	

Visit Dan McRae's website, danmcræ.info, for: White Papers; *Quick Takes* newsletters; Current Bond Rates; Bond Cost of Issuance Estimates; "What's New" blog; and Workshops and Training.

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