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Update on Tax Allocation Districts (TADS) and the Beltline Project

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Atlanta's Beltline Plan, a 25-year and \$2.8 billion project intending to combine greenspace, walking trails, public transportation, and new development along a 22-mile corridor encircling Atlanta, was dealt a setback in February 2008 with the Georgia Supreme Court's decision in Woodham v. City of Atlanta, et al., 283 Ga. 95 (2008). In Woodham, the court held that the use of the public school system's portion of ad valorem taxes to fund the Beltline project violated Article VIII, Section VI, Paragraph I of the Georgia Constitution (commonly known as the "Educational Purpose Clause"), which states that educational ad valorem taxes may only be used for the support and maintenance of public schools, public education, and activities necessary or incidental thereto.

In late 2005, the Atlanta City Council, Fulton County Board of Commissioners, and the Atlanta Public School Board of Education approved the Beltline Redevelopment Plan and the creation of the Beltline Tax Allocation District (TAD). The Beltline TAD, lying entirely within Fulton County and encompassing only 8% of the City's entire land area, is intended to serve as the primary funding source for the project, generating approximately \$1.7 billion of the project's estimated price tag. By approving the creation of the Beltline TAD, the City, County and School System agreed to continue to accept tax revenue generated from the Beltline TAD for the next 25 years at the same level as that generated in 2005. The additional revenue derived from the Beltline TAD would be used to pay the principal and interest on bonds issued by the City to fund the development of the Beltline. Such bonds are used, in particular, for land acquisition, the development of infrastructure, and for specific capital improvements, as well as to provide incentives for private developers. The theory behind the Beltline TAD is that as the areas within the TAD are developed, they are expected to increase the level of ad valorem tax revenue significantly from that generated in 2005. This is expected to hold particularly true in many areas in the Beltline TAD which are underdeveloped or impoverished. The development of blighted areas within the Beltline TAD likely would

increase substantially the property values in those areas for purposes of ad valorem taxes. Many argue that without TAD-based incentives to act as catalysts for developers, many of these areas would be left to languish.

The constitutional issue which arose in Woodham involved the allocation of additional tax revenue generated by the TAD which would traditionally be allocated to the Atlanta Public School System. The School System pledged its share of tax



Shown at the Real Estate and Environmental & Toxic Tort Sections' jointly sponsored Beltline Tour and Happy Hour on October 16, 2008, are Environmental & Toxic Tort Section Chair **Robert D. Schmitter**, *Law Firm of Robert D. Schmitter LLC*, Environmental & Toxic Tort Section Immediate Past Chair **Robert C. Newcomer**, *The Lang Legal Group LLC*, and Real Estate Section Member-at-Large **M. Jason Cox**, *Attorney at Law*.

revenue derived from the educational ad valorem property taxes collected from the Beltline TAD to the payment of the bonds or as security for the bonds issued to develop the Beltline project. The plaintiff in Woodham challenged the School System's authority to pledge its share of ad valorem taxes based on the requirement of the Educational Purpose Clause that the funds be used for a purpose directly supporting or at least "necessary or incidental" to the operation of the public education system in Georgia. In 1994, in a case involving DeKalb County, DeKalb County Sch. Dist. v. DeKalb County, 263 Ga. 879 (1994), the Georgia Supreme Court struck down the use of educational ad valorem taxes for improvements to a county public road adjacent to a public school, holding that such improvements were not necessary or incidental to public education. The court found that the use of tax revenues for such a purpose would "stray too far from the [School] District's principal task of educating

young people in favor of providing a benefit to all citizens that the County generally has the duty to provide." *Id.* In Woodham, the Supreme Court applied the same rationale. The Woodham Court stated that if the use of school taxes for improvements to a road providing access to a school was impermissible, then certainly the use of school taxes to fund the development of the Beltline was impermissible as well. Although the Woodham Court did not dispute that the Beltline TAD could potentially produce substantial tax revenue in the future for the School System, it found that the Beltline project had little connection to the operation of the School System in Atlanta. Moreover, the court determined that any potential benefit derived from the Beltline TAD did not override the lack of constitutional authority for the expenditure of tax revenue in such a manner.

Woodham does not affect those TADs that have had their bonds validated by a Superior Court judge and that surpassed the 30-day appeal period for such validation. Bonds that have already been issued and validated without appeal are not subject to challenge, and all property taxes held in trust for payment and security of such bonds may be used to do so. The only solution for TADs which have not been validated is to sidestep the ruling in Woodham through an amendment to the Georgia Constitution providing for an exception to the Educational Purpose Clause allowing educational ad valorem taxes to be used to support TADs in Georgia. A referendum approved by

the voters in a general election is required to amend the Georgia Constitution. In April, the General Assembly passed a resolution for a referendum allowing Georgia voters to vote in November 2008 on whether such tax generated revenue can indeed be used to support TADs.

Statewide there are approximately 40 TADs, and most communities with TADs have yet to have their bonds validated. In the City of Atlanta, there are ten TADs for which approximately \$400 million in bonds have been issued, \$120 million of which had been validated as of May 2008, a serious shortfall of the estimated \$1.7 billion in TAD financing necessary for the completion of the Beltline. It is also estimated that 50% of TAD revenues in Atlanta are derived from educational ad valorem taxes, meaning that if a constitutional amendment is unsuccessful in the fall, the fate of projects, like the Beltline, across the City and throughout Georgia, could see their future in jeopardy. ■