

Smart Growth and Transit Oriented Development

Does it Exist in Georgia?

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Chapter 1

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Smart Growth and Transit Oriented Development:

Does it exist in Georgia?

One might look at the state of the sprawling suburbs of the Atlanta region and emphatically conclude that Smart Growth is nowhere to be found in Georgia. It is certainly not immediately evident. However, a scratch below the surface reveals that there are indeed a good number of initiatives and efforts underway to both promote and create smarter growth in our region. While these initiatives are imperfect, they are certainly steps in the right direction. We shall endeavor to inform you about the various organizations and developments currently incorporating Smart Growth principles, as well as providing our opinions about how the efforts might be more effective through changes in zoning, a focus on Transit Oriented developments, and through region-wide initiatives.

Background: What is Smart Growth?

The term has become ubiquitous in planning discussion over the last decade and a half, yet there seems to be only a hazy understanding of what exactly Smart Growth is. A natural first reaction might be to say: Not dumb growth. It's clearly more complex than that. In fact, the Smart Growth Network has defined ten principles that provide a framework for how development and growth can be executed in a superior way to the status quo.¹

These principles are:

- 1. Mix Land Uses** – This is viewed as a vital component in the creation of vital, sustainable communities where transit options beyond the automobile are possible due to the proximity of a variety of day-to-day living needs.

¹ Retrieved from <http://www.smartgrowth.org/library/prinlist.asp?res=1280> on April 18, 2008.

- 2. Take Advantage of Compact Building Design** – This principle permits more open space to be preserved, and promotes the design of buildings that can be constructed to make more efficient use of land and resources
- 3. Create a Range of Housing Choices** - communities can mitigate the environmental costs of auto-dependent development, use their infrastructure resources more efficiently, ensure a better jobs-housing balance, and generate a strong foundation of support for neighborhood transit stops, commercial centers, and other services.
- 4. Create Walkable Neighborhoods** - walkable communities make pedestrian activity possible, thus expanding transportation options, and creating a streetscape that better serves a range of users
- 5. Foster Distinctive, Attractive Communities** - create interesting, unique communities that reflect the values and cultures of the people who reside there.
- 6. Preserve Open Space, Farmland, Beauty and Critical Environmental Areas** - Open space preservation supports smart growth goals by bolstering local economies, preserving critical environmental areas, improving our communities quality of life, and guiding new growth into existing communities.
- 7. Strengthen and Direct Development to Existing Communities** – develop in or near communities already served by infrastructure, and seek to utilize the resources that existing neighborhoods offer; conserve open space and irreplaceable natural resources on the urban fringe.
- 8. Provide a Variety of Transportation Choices** – Congestion has worsened over the last two decades and there is little indication that current growth patterns can alleviate it. Providing a variety of transportation options removes cars from the road and reduces the strain on an overburdened system.
- 9. Make Development Decisions Fair, Consistent and Predictable** – developers need to know what to expect from Smart Growth endeavors, so making it easy for such projects to occur is vital to the actual development of Smart Growth. Thus, zoning should be in place that encourages Smart Growth principles.
- 10. Encourage Community and Stakeholder Collaboration** - The needs of every community (and the programs to address them) are best defined by the people who live and work in the community.

How Are These Principles Promoted in Georgia?

There are a variety of organizations either 100%, or largely dedicated to the promotion of Smart Growth in our state. Some of the organizations have a national presence like The Smart Growth Network, Smart Growth America, and the Congress for the New Urbanism. Others are purely local, Georgia groups. For the purpose of brevity, we will confine our discussion to those organizations that are working more directly on local problems.

The Atlanta Regional Commission's (ARC) Livable Centers Initiative is a program with the mission of supporting and encouraging local municipalities in planning and implementing Smart Growth principles.² The 2007 LCI Implementation report cited 86 completed LCI areas. The latest addition of 4 study areas brings the total to 90 communities that have received \$140 million dollars in grants.³ A recent survey of those areas conducted by the ARC returned 68 responses. Of those 68 respondents, it is interesting to note that 39 of them either had no response (9) or said that no zoning had been changed or implemented since the LCI study (30). Most responses indicated that they either strongly or agreed or agreed that the LCI had improved their community.

The Livable Communities Coalition is a coalition of 40 organizations ranging from public entities like MARTA to private developers like John Weiland, all of whom want to promote Smart Growth in Georgia, and aid communities in the implementation of Smart Growth principles. Recently, the Coalition developed a scorecard system that helps guide in the analysis of new and proposed developments.

² Retrieved from <http://www.atlantaregional.com/html/308.aspx> on April 18, 2008.

³ Retrieved from http://www.atlantaregional.com/documents/LCI_Studies_2008_press_release.pdf on April 18, 2008.

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The Georgia Conservancy is a non-profit organization established in 1967 with the goal of serving as a catalyst for maintenance and stewardship of Georgia's natural environment. As such, the Conservancy has a vested interest in the promotion of Smart Growth principles, especially those that pertain to green field preservation, and infill development. The Conservancy also runs the educational and technical assistance program, Blueprints for Successful Communities. This program has aided 16 Georgia communities in development and planning with these points in mind:

1. Maintain and enhance quality of life for residents of the community
2. Employ regional strategies for transportation, land use, and economic growth
3. Consider the effect of the built environment on the natural environment as well as history and culture
4. Employ efficient land uses

The Results:

The ARC regional Snapshot for November of 2007 reveals that regional land conversion has declined over the 4 year period of 2003-2007. The two-year period from 2003-2005 saw the conversion of forested lands reach 112,000 acres, whereas the 2005-2007 figures declined dramatically to 31,000 acres, or a decline of 70%.⁴ This might be explained in several ways, but it certainly seems evident that sprawling, Greenfield development is on the decline.

There are of course instances where communities fail to adopt plans recommended in the studies funded by LCI grant money, but on the whole, the numbers indicate that over 50% of LCI communities have modified zoning, and many more have realized Smart Growth changes without changing the zoning codes. There is clear evidence that the rate of

⁴ Retrieved from http://www.atlantaregional.com/html/81_3673.aspx on April 18, 2008.

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development has responded positively to the advancement of Smart Growth principles. Now the question is 'could it be better?'

Transit Oriented Development

Many of the current LCI areas have shortcomings in light of the 10 principles of Smart Growth. One of the main problems for these developments is that many of them do not actively incorporate a mix of transit options. Having Smart Growth spread in areas not served by transit may be only marginally better than the status quo. We believe that the focus of future development should be on key areas of the region as represented by MARTA rail stations. Building a comprehensive TOD development plan that focuses on these MARTA stations would allow us to utilize the infrastructure already in place to create vibrant, attractive communities within Atlanta that can be accessed by MARTA for the purposes of true living, working and playing.

TODs: A tool for Smart Growth

Defining the phrase:

The term “Transit-oriented design” has become the catch phrase of the planning world. TODs are only one tool that can be used to achieve “Smart Growth” principles, but they have become one of the most popular ones. As a result, “Transit-oriented design,” or TODs have been used to describe a variety initiatives and mixed-use ideas. David Salvesen deployed the clearest and most concise definition of the term in the July 1996 issue of *Urban Land*. He defines TODs as, “Development within a specified geographical area around a transit station with a variety of land used and a multiplicity of landowners.¹” Most people make the mistake of thinking a TOD can be created through the design and development of one project, but in actuality, it usually takes multiple projects working together to create an urban fabric that seamlessly blends the ideals of Smart Growth. A better way of thinking about TODs is as a “transit zone” instead of as a single project. This change in thinking is particularly important for city officials’ responsible for zoning and transportation regulations. Another way to think about TODs is as a tool for achieving three goals: *walkable streets*, *building intensity and concentration*, and the *careful integration of transit*. TODs cannot accomplish these goals alone. *Walkable streets* are important because the places where people take transit are also places where people walk. To achieve walkable streets, there must be some coordination and interplay between TODs and standards for street design, transit-stop design, and other contributing relevant elements of the public realm.² Improving *building intensity and concentration* takes on a entirely different aspect when its done to support transit. The intensity of individual sites and the cumulative activities surrounding the “transit zone” must be configured correctly to allow the various modes of transportation (i.e.: pedestrians, bikers, and cars, and transit) to flourish. The *integration of*

¹ FTA, 5

² APA, 6

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transit into a zone is perhaps the most difficult of the three goals because it must juggle designing for place-making with designing for easy access to transit. These two strategies need to work together for a “transit zone” to live up to its potential.³

Obstacles

The unique nature of TODs is that a large part of their success is predicated on the creation of opportunities around public transit. This reliance on public transportation usually creates the need for public-private partnerships between developers and the local jurisdiction. In many cases, the key to developing a successful TOD is being able to move past the political obstacles. Some of the common obstacles that must be negotiated are *location liability*, the *real estate market cycle*, *non-supportive government policies*, *institutional barriers*, and a *dependence on automobile-oriented design*. These obstacles can manifest themselves as exclusionary zoning policies that limit densities and lot sizes, as cross-jurisdictional struggles because of the inter-jurisdictional nature of transit lines, and as the prioritization of park and ride lots verse passenger-generated land use surrounding a station.⁴ The more aware the planning and zoning bodies are about these potential obstacles before designing Smart Growth-friendly policies, the better chance they have at generating real change.

Types of TODs

Another major considerations that planning agencies need to consider when attempting to create policies that promote Smart Growth and TOD development is the various types of TODs that can be developed. Depending on the context of the site (downtown, suburb, regional center), the ideal form a TOD takes on should differ. TOD types can be categorized as *Urban Downtown*, *Urban Neighborhood*, *Suburban Center*, *Suburban Neighborhood*, or *Commuter Town Center*.

³ APA, 7

⁴ FTA, 10

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Depending on where a TOD is located, its level of connectivity, housing density, and mix of uses will all vary. For example, in an *Urban Downtown* setting, the mix of uses would include office, entertainment, multifamily housing, and retail. The preferred density for this type of TOD is 60-units/ acre and ideally should have a hub-radial system to accommodate a high level of connectivity. On the other hand, a *Suburban Neighborhood* should ideally mix residential, neighborhood retail, and local offices, with a housing density of about 12-units/ acres. This type of TOD would provide access to the *Suburban Centers* and downtown with trains running every 20-30 minutes. See the Attachment 1 for a complete breakdown of TOD types and characteristics.⁵

TOD vs. TJD

TOD ordinances usually cover three main topics: the amount and type of development, the spatial characteristics of the development, and the relational characteristics of the development.⁶ When beginning to think about designing a Smart Growth policy, the first decision that needs to be made is, “What type of Public-Private interaction is desired?” Answering this question will help decide whether a Smart Growth policy of TJD, “Transit-Joint development” policy, or TOD policy is the best plan of action. While the differences between these two are not always clear, the choice between the two will dramatically influence the type of policy that is developed. The main distinguishing difference between the two types of Smart Growth design is scale. TODs usually cover a group of city blocks, and typically represents a neighborhood in size and scale. Conversely, TJDs are usually project specific and tied to a single real estate development within a city block. Another major difference between the two approaches is the level of Public-Private

⁵ APA, 5

⁶ TCRP, 4

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cooperation. A TOD is usually designed and spearheaded by the public agency alone, usually manifesting itself in zoning regulations, while a TJD usually develops as a partnership between public and private interests trying to achieve a win-win situation for both.⁷ TJDs can be separated into two groups: revenue-sharing agreements and cost-sharing agreements. Examples of cost-sharing agreements are incentive programs like density bonuses, the sharing of construction expenses, and the joint use of equipment, like HVAC units. Examples of revenue-sharing agreements include land leases, air-rights development, concession leases, and connection-fee programs.⁸ In many cases multiple types of TJD agreements and a TOD supportive zoning are necessary to create an environment that helps to breed Smart Growth ideals.

Cases

A TOD Example

Metropolitan Gardens is a brownfield redevelopment project that takes on the characteristics of a TOD in Denver. The project will tie into the new light rail system, and when it is built out over 15 years, it is expected to offer 800,000 SF of office space, 500,000 SF of retail, and two hotels, 3,000 apartments, and a cinema. The project is made possible through the creation of a new zoning category in Denver called TMU-30. This zoning category allows for higher FARs and height limits, as well as reduces parking limits by up to 50%.⁹ The goal of the zoning is to create a mixed-use district that will provide substantial ridership for the new light rail and provide economic vitality to a forgotten part of Denver. This is a great example of a TOD, as opposed to a TJD, because Smart Growth ideals are being promoted through zoning instead of collaboration.

⁷ TCRP, 2

⁸ TCRP, 8

⁹ Planning March 2008, 44

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While there will obviously be some public funding opportunities (TIFs) that the private developers will benefit from, there is not sharing of costs or revenues between the two entities. The role of the public sector is to facilitate an easier development process for the private sector, not to partner with them.

TJD Example

A different approach to encouraging “Smart Growth” is through the TJD approach. Portland, Oregon and their planning body, *Metro*, have been able to use transportation improvement funds to purchase land and easement rights around their transit stations. The agency then turns around and resells the land to private developers at reduced rates, rewarding “highest and best use of transit.” The proceeds *Metro* received from the resale of land then were used to fund other projects. To date, 26 projects have been developed through this process, which amount to 2,500 homes and 1.2 million SF of office space. Studies have shown that the program has helped create 3,139 “induced riders per day.” The program cost *Metro* \$6.3 million in transportation funds to date. This is a great example of how a governmental agency can encourage Smart Growth development through a public-private partnership, not just through zoning code.

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Bibliography:

Lowry, S. (2008). *Delivering on TOD*. Planning: The magazine of the American Planning Association. April 2008 (pgs. 18-20).

Moses, V. (2008). *Major Denver TOD Project Breaks Ground*. Planning: The magazine of the American Planning Association. March 2008 (pgs. 44-45).

(APA) Practice Transit Oriented Design. (2004, August). Zoning Practice: American Planning Association. Issue 8.

(TCRP) Transit-Oriented Development and Joint Development in the United States: A Literature Review. (2002, October). Transit Cooperative Research Program, Number 52.

(FTA) Zoning and Real Estate Implication of Transit-Oriented Development. (1999, January). Transit Cooperative Research Program, Number 12

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Attachment 1

QuickTime™ and a
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are needed to see this picture.

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Growth Management: Smart Growth in Atlanta

Introduction

Atlanta drivers each experienced 60 hours of delay in 2005, giving the city the dubious honor of placing second in the Texas A&M University study for metropolitan congestion.¹ Urban sprawl, which makes the automobile a necessity to get about, is what many blame for the continually increasing traffic and time spent in daily commute. The Christian Science Monitor ranked Atlanta fourth among America's cities with the worst sprawl.² In addition, the American Lung Association ranked Atlanta seventh in year round air particle pollution.³ And the Trust for Public Land found that Atlanta only has 4.5% of its total land acreage devoted to parks and greenspace, while the average for other major metropolitan areas was more than twice that amount.⁴ Together, these statistics do not illustrate the quality of life that attracts new residents and industry. However, there are many wonderful things about Atlanta, such as its temperate weather, proximity to the ocean and mountains, beautiful landscape and friendly people that offset many of those unpleasant sounding statistics. In fact, the Atlanta metropolitan area added more people than any other in the country from 2000 to 2006.⁵

Atlanta needs a plan that will accommodate the kind of growth it has experienced, and that will improve the quality of life factors mentioned above. If the city fails to address these issues, the trend will reverse itself; people and business will leave the city and seek new places that offer a better quality of life.

¹ See Texas Transportation Institute Study, http://mobility.tamu.edu/ums/congestion_data/tables/national/table_4.pdf.

² See <http://www.csmonitor.com/2002/1204/p15s01-lihc.html>.

³ See <http://www.lungusa.org/site/pp.asp?c=dvLUK900E&b=50752#graph1>.

⁴ See http://www.tpl.org/content_documents/ccpe_TotalAcres_asPercentofLandArea.pdf.

⁵ See <http://www.census.gov/Press-Release/www/releases/archives/population/009865.html>.

The following sections will provide a general overview of planning and zoning law in Georgia; examine the role transit oriented development can play in addressing Atlanta's problems; describe the Atlanta BeltLine project and how it incorporates transit oriented development; and discuss legal hurdles the BeltLine has faced and how some of these hurdles can be eliminated.

Legal Principles: Overview

Georgia, like the majority of states in the union,⁶ is a home rule state.⁷ This means that local governments have the bulk of the control over their own planning and zoning decisions.

While home rule empowers local governments, the Georgia General Assembly still plays a role in the decisions a local government can make. Certain legislation can have a dramatic affect on the ability of local governments to implement new city planning proposals, especially where revitalization efforts are sought. There are examples of legislation which has enabled local governments by granting them more tools, such as tax increment financing,⁸ and examples that have made it more difficult for comprehensive planning, such as Georgia's recently amended eminent domain law.⁹

Local governments around the state, and particularly in the Atlanta metro area, are taking note of Smart Growth principles. Smart growth planning is different from zoning in the traditional sense. Because Smart growth incorporates work/play/live, or "mixed use" characteristics into the overall schematic, it does not fit a traditional Euclidian zoning design,

⁶ Forty-four states have home rule provisions either incorporated into their State Constitutions or created by statute. For a list, see, <http://www.celdf.org/HomeRule/DoesmyStatehaveHomeRule/tabid/115/Default.aspx>.

⁷ Georgia Constitution, Art. 9, § 2.

⁸ See O.C.G.A. § 36-44-8.

⁹ See O.C.G.A. § 22-1-1, et. seq.

which delineates zones by use. Instead, local governments that have allowed for smart growth have usually done so via enabling statutes or resolutions approving of such development. Legislation such as this indicates to the developer that there will be greater cooperation in moving a project forward because the local government has taken care of getting approval from the residents in the suggested project area. This might be seen as a great advantage to some, and a disadvantage to others in the development community. As greater density tends to increase land values, the authorization of such increased density prior to its purchase by the developer could make it a less profitable investment, as the developer would have to pay more to acquire the land.

How can Smart Growth principles help alleviate some of the issues facing Atlanta? How are Smart Growth projects funded? What are some of the legal issues to be mindful of when planning a Smart Growth project? Through the context of the Atlanta BeltLine project, answers to these questions will be provided *infra*.

Transit Oriented Development

Transit Oriented Development (TOD) is smart growth's solution to controlling the demand side of traffic congestion and urban sprawl.¹⁰ It situates compact, mixed use development around railway and other mass-transit systems, encouraging residents to drive less and ride mass transit more.¹¹ TOD ordinances often feature maximum setbacks rather than minimum setbacks, distinguishing them from conventional zoning regulations.¹² This is designed to generate pedestrian activity and force parking to the back of the buildings. Additionally, frontage and lot

¹⁰ Robert H. Freilich, *The Land Use Implications of Transit-Oriented Development: Controlling the Demand Side of Transportation Congestion & Urban Sprawl*, 30 *Urb.Law.* 547 (1998).

¹¹ Juergensmeyer & Roberts, *Land Use Planning and Development Regulation Law*, 386 (2d Ed. 2007).

¹² Freilich *supra* at 555.

size requirements in TODs are reduced and often coupled with zero lot line provisions to create higher densities.¹³ Sometimes density bonuses are offered to developers or minimum density requirements are imposed.¹⁴ TOD concepts should be consistent with the local government's comprehensive plan to avoid legal stumbling blocks.¹⁵

The Atlanta BeltLine

Perhaps the epitome of TOD is the Atlanta BeltLine.¹⁶ The project will combine greenspace, trails, transit, and new development along 22 miles of historic rail segments that encircle the urban core of Atlanta.¹⁷ The 22 mile loop will host light rail transit that will connect with the existing MARTA system and the proposed Peachtree Streetcar.¹⁸ Multi-use trails will follow the 22 mile loop, and 11 miles of additional trails will extend into surrounding neighborhoods to increase access to the Beltline.¹⁹ The BeltLine also has the goal of creating a more cohesive urban street grid.²⁰ Over 1,200 acres of new greenspace will be part of the trail system of the BeltLine, including a linear park along the trails, the creation of several new parks and the expansion of existing ones. An estimated 5,600 affordable housing units are part of the project.²¹ And, over its 25 year project span, the BeltLine is expected to generate more than \$20 billion of new economic development and create approximately 30,000 new full-time jobs and 48,000 year long construction jobs.²² It is the most ambitious smart growth redevelopment project in the

¹³ *Id.*

¹⁴ Juergensmeyer *supra* at 388.

¹⁵ *Id.*

¹⁶ *See* <http://beltline.org>.

¹⁷ *See* <http://beltline.org/BeltLineBasics/BeltLineBasicsOverview/tabid/1691/Default.aspx>.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

United States, which will create a new urban core of Atlanta with an enhanced quality of life, and will help to change the perception of urban livability that can moderate the pattern of regional sprawl in coming decades.

Legal Road Blocks to the BeltLine Project

The constitutionality of comprehensive zoning was first approved by the U.S. Supreme Court in 1926 in *Village of Euclid v. Amber Realty Co.*²³ In *Euclid*, the Supreme Court held that if all that could be said of the zoning law was that it was “fairly debatable, the legislative judgment must be allowed to control.”²⁴ While zoning has been generally accepted as proper since *Euclid*, there are still some limitations. As TOD requires a rezoning, one potential challenge it may face comes under the theory of spot-zoning. Spot zoning is the reclassification of a small area in a manner inconsistent with the surrounding area, solely to benefit the private interests of the landowner.²⁵ The court determines whether a rezoning is illegal spot zoning by evaluating relevant factors, including the size of the tract being rezoned, whether the rezoning fits with the comprehensive plan, whether the tract is being treated differently from similar surrounding land, and whether the property owner is conferred a special benefit by the rezoning at the detriment of the community as a whole.²⁶

The implementation of a TOD is often times accomplished through a PUD because it releases developers from the rigidity of straight zoning.²⁷ While PUDs involve the

²³ 272 U.S. 365 (1926).

²⁴ Juergensmeyer *supra* at 46 (quoting *Euclid*, 272 U.S. at 388).

²⁵ *Mueller v. Hoffmeister Undertaking and Livery Co.*, 121 S.W. 2d 775 (Mo 1939).

²⁶ Annotation, Spot Zoning, 73 A.L.R. 5th 223 (1999).

²⁷ Transit Cooperative Research Program (TCRP), Annotation, The Zoning and Real Estate Implications of Transit-Oriented Development, Legal Research Digest, No. 12, 24 (Jan. 1999).

reclassification of specific parcels of land, courts have routinely rejected challenges that the PUD constitutes “spot zoning,” citing the large size of PUDs²⁸ and the fact that finding spot zoning in such cases would paralyze urban planners.²⁹ Accordingly, TODs should be safe from a spot zoning challenge for the same reasons.

Rezoning Options

There are really two ways to go about accomplishing the necessary rezoning for a TOD project. The land can either be preemptively rezoned by the governing body, or the developer can go through the rezoning or variance process, a multi-step and often time-consuming process involving public notice, administrative review of the rezoning application, public hearing, and legislative action.³⁰ There are advantages and disadvantages to both approaches.

Advantages to Preemptive Rezoning

Preemptive rezoning by the local government could offer several advantages, including time saved by the developer in starting construction; this in turn is a cost savings. If the land is approved and ready to be developed as mixed use, the developer does not have to involve himself in the rezoning process, described *supra*, and can save months of making payments on the land purchase when it would be sitting idle. Additionally, the preemptive rezoning conducted by the local legislative body may encounter fewer legal challenges than the developer initiated rezoning, as the legislative body should represent the views of the people in the

²⁸ See *Kawaoka v. City of Arroyo Grande*, 17 F.3d 1227 (9th Cir. 1994) (finding 17 acre parcel too large to be considered spot zoning).

²⁹ TCRP *supra* at 24.

³⁰ See, e.g., DeKalb County, GA Rezoning Process, <http://www.dekalbzoning.com/process.html>.

community.³¹ The judiciary of most states treat all zoning changes, whether general or site-specific, as legislative acts and accord them a presumption of validity.³² According to the Supreme Court, “if the validity of the legislative classification for zoning purposes be fairly debatable, the legislative judgment must be allowed to control.”³³ Fewer legal challenges means less project delay to the developer and less expense, both legal and delay expense.

The TOD around the Lindbergh MARTA station was collaborated in by MARTA and the City of Atlanta.³⁴ However, there was no preemptive rezoning by the city ahead of the project.³⁵ The rezoning, and later a variance, were applied for after the players were in place to begin working on the project.³⁶ Work was supposed to begin in 1999.³⁷ However, challenges by two different neighborhood groups opposing the project tied up development in legal battles for over two and a half years.³⁸ While the groups could have brought claims to halt the development even if preemptive zoning had taken place, it would have been less likely those attempts would have made, as the deferential “fairly debatable” judicial standard would have made the probability of success more remote.

Disadvantages to Preemptive Rezoning

The primary disadvantage to allowing mixed use through preemptive rezoning by the local legislative body is that the land value increases through this action. As the value increases, it cuts into the profitability of the project, thus dissuading investment and willingness on the part of

³¹ See, e.g., Jeremy Wilhelm, Annotation, Lindbergh City Center (2007) (describing difficulties faced in the development of the Lindbergh TOD) (on file with the author).

³² Jeurgensmeyer *supra* at 145.

³³ Village of Euclid v. Ambler Realty Co., 272 U.S. 365, 388 (1926).

³⁴ Wilhelm *supra*.

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

developers to take on the project. However, as mentioned before, the hidden costs of developer initiated rezoning or obtaining a variance are arguably more than the amount of lost profit from purchasing the land at inflated prices.

Acquiring the Land and Right of Ways

The transit portion of the Beltline project, as with any TOD, will require the acquisition of right of ways.³⁹ The BeltLine seeks to provide Light Rail transit along its 22 mile path in both directions through regularly spaced stops at approximately ten minute intervals.⁴⁰ The Light Rail system would connect to four existing MARTA stops, allowing convenient access to the entire city. Since the entire backbone of the BeltLine TOD is built around the Light Rail component, the most critical step in the plan is to first secure the transit line right of way.⁴¹ This process was once easy enough for governments through the exercise of their eminent domain power. Other methods may have to be employed in Georgia and many other states across the country due to some recent changes to eminent domain laws.

Eminent Domain

As sovereigns, the federal and state governments possess the inherent power to condemn property for public use. Through the home rule provision in many state constitutions, including the Georgia Constitution, this power of eminent domain is delegated to the local governments. The Fifth Amendment of the U.S. Constitution, however, limits the government's power to condemn property by providing, "nor shall private property be taken for public use, without just

³⁹ See <http://beltline.org/BeltLineBasics/TransitTrailsandTransportation/tabid/1738/Default.aspx>.

⁴⁰ See <http://beltline.org/Implementation/TransitandTrails/tabid/1805/Default.aspx>.

⁴¹ *Id.*

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compensation.”⁴² Public use has been broadly construed by the court to include any conceivable public purpose.⁴³ Prior to 2006, local governments commonly utilized eminent domain as a redevelopment tool.⁴⁴ This use was justified through reliance on the Supreme Court’s decisions in both *Berman v. Parker*⁴⁵ and *Hawaii Housing Authority v. Midkiff*,⁴⁶ where in each case it allowed condemnation, even though it resulted in the transfer of property from one private owner to another. However, public tolerance of governments using eminent domain in this way came to an end when the Supreme Court announced its decision to the *Kelo v. City of New London*⁴⁷ case. In a close five to four decision, the court upheld the use of eminent domain by the city to transfer land from one private party to another for the purpose of economic development.⁴⁸ Though this was not a new concept, *Kelo* was somewhat unique because the property being taken was not run-down or “blighted,” it just happened to be prime real estate that the city needed for its project. There was a nation-wide backlash to the decision. The general public and many public officials viewed the decision as an affront to private property rights. State legislatures across the country, including the Georgia General Assembly, went to work recrafting their respective states’ eminent domain law so as to provide greater protection for private property rights. The measures were widely popular in all the states where they were revised. In Georgia, the voters passed overwhelmingly a constitutional amendment, which accompanied the new

⁴² U.S. Const., 5th Am., Cl. 4.

⁴³ *Hawaii Housing Authority v. Midkiff*, 467 U.S. 229, 241 (1984).

⁴⁴ *See, e.g.*, http://en.wikipedia.org/wiki/Stockbridge,_Georgia (City of Stockbridge engaged in highly controversial preemptive use of eminent domain).

⁴⁵ *Berman v. Parker*, 348 U.S. 26 (1954).

⁴⁶ *Hawaii Housing Authority v. Midkiff*, 467 U.S. 229 (1984).

⁴⁷ 545 U.S. 469 (2005).

⁴⁸ *Id.*

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eminent domain statute.⁴⁹ In all, some thirty-five states have restricted eminent domain since *Kelo*.⁵⁰

Georgia's New Eminent Domain Law

The new Georgia law makes it much more difficult for local governments to condemn private property. It expressly provides that economic development is not a public use.⁵¹ Additionally, the new law requires a finding of blight in order for a property to be eligible for condemnation, and provides a list of six conditions,⁵² two of which are required, in addition to the finding that the property “is conducive to ill health, transmission of disease, infant mortality, or crime in the immediate proximity of the property.”⁵³ With this substantially higher standard in place and the inability to use eminent domain for economic development, the General Assembly has fairly effectively taken this tool away from Georgia's local governments.

Funding

The greatest obstacle for any TOD redevelopment project will be funding. The public transit system portion of the project, at the very least, will manifest from public funds. As public funds are generally scarce and difficult to redirect from previous allocations, a tool employed by local governments is tax increment financing (TIF). The state legislatures of 49 states and the District

⁴⁹ Georgia voters passed the resolution restricting the use of eminent domain 82.7% to 17.3%. To view results from the office of the GA Secretary of State, see, http://sos.georgia.gov/elections/election_results/2006_1107/swqa.htm.

⁵⁰ Jergensmeyer *supra* at 642 (referencing National Conference of State Legislatures, <http://www.ncsl.org/programs/natres/EMINDOMAIN.htm>).

⁵¹ O.C.G.A. § 22-1-1 (9)(B).

⁵² O.C.G.A. § 22-1-1 (1)(A)(i) *et seq.*

⁵³ O.C.G.A. § 22-1-1 (1)(B).

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of Columbia have enacted enabling statutes authorizing the use of TIF as a redevelopment tool.⁵⁴ The use of TIF does not directly impact assessments or the tax rate of the affected area. It works by freezing the base *ad valorem* tax level of the tax allocation district (the affected area) for a specified number of years, or until the project is paid off. Due to the redevelopment, the value of the property increases. The *ad valorem* tax assessed against this increased value (i.e. everything above the base rate) is allocated to the project fund for the redevelopment. This money is used either to finance the direct public costs of the redevelopment or to retire bonds previously issued to raise revenue for the redevelopment.⁵⁵ TIF is an attractive tool because of its independence from local general funds, fee-based methods, and grants. Local governments making assessments about whether or not to utilize the TIF should reasonably be able to find that (1) the desired improvements would not occur absent the implementation of the TIF; and (2) that the redevelopment is the source of stimulus to the tax base. These findings justify the freezing of the assessed values to pay for the project.⁵⁶

Once revenue bonds have been approved by the local governing body through the passage of a resolution, a rather fascinating procedure must take place in the State of Georgia to validate them.⁵⁷ In code sections 36-82-74 through 36-82-83, the steps are laid out as follows: first, the governing body must serve notice to the district attorney; the district attorney must then file petition for the State against the governing body in Superior Court; the judge will give the district attorney an order requiring the governing body to show cause within 20 days from the

⁵⁴ See <http://www.cdfa.net/cdfa/cdfaweb.nsf/pages/tifstatestatutes.html>.

⁵⁵ See generally Juergensmeyer *supra* at 88.

⁵⁶ See generally Arden H. Rathkopf ET AL., Annotation, *Rathkopf's The Law of Zoning and Planning*, RLZPN § 15.59 (2008).

⁵⁷ See O.C.G.A. §§ 36-82-74 through 36-82-83.

filing of the petition; the clerk of the court then shall publish notice of the hearing in the official county organ for two consecutive weeks; any resident of the governing body issuing the bonds may become a party to the proceedings, and if the resident is dissatisfied with the judgment of the court, she can appeal such judgment.⁵⁸ The procedure is a mechanism to ensure all residents have a right to have their objections to a project heard.

The BeltLine Project TIF

These steps were followed for the issuance of TIF revenue bonds for the BeltLine project. In accordance with O.C.G.A. § 36-82-77(a) as described supra, John Woodham, a resident of the City of Atlanta, intervened in the suit filed by the State against the City of Atlanta for the validation of the BeltLine TIF bonds, and filed objections to the issuance of the bonds. After a series of hearings, the Fulton Superior Court overruled Woodham’s objections and validated the bonds. Woodham appealed the decision on Constitutional grounds, which went to the Georgia Supreme Court.⁵⁹ Woodham argued that the allocation of the school portion of the *ad valorem* tax to fund the BeltLine project violates Art. VIII, § VI, Par. I(a) and (b) of the Georgia Constitution because the BeltLine project is a non-educational purpose.⁶⁰ Under Art. VIII, § VI, Par. I(b), the expenditure of school tax funds is limited, as follows:

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.⁶¹

As the BeltLine obviously was not an educational purpose, the court’s only issue was whether or not the BeltLine project was “necessary or incidental” to public schools or public education.⁶²

⁵⁸ *Id.*

⁵⁹ Woodham v. City of Atlanta, 283 Ga. 95 (2008).

⁶⁰ *Id.* at 96.

⁶¹ Georgia Const., Art. VIII, § VI, Par. I(b).

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Following its precedent in *DeKalb County School District v. KeKalb County*,⁶³ the court eventually answered in the negative.⁶⁴

In 1994, the court held in *DeKalb County Sch. Dist.* that the expenditure of school funds to improve a county road adjacent to a DeKalb County school was not necessary or incidental to education, and thus violated the Educational Purpose Clause because it “would stray too far from the District’s principle task of educating young people in favor of providing a benefit to all citizens”⁶⁵ Likewise, the court found that the BeltLine project provided a benefit to all citizens and had little nexus to the actual operation of public schools.⁶⁶ It therefore found the allocation of the school portion of the *ad valorem* tax to the BeltLine project to be unconstitutional.⁶⁷

How does the TIF compare to the Floating Homestead Exemption?

The “floating” homestead exemption has been enacted by 32 counties⁶⁸ in Georgia through the local legislation process.⁶⁹ The practical consequence of these laws is no different than that of the TIF. That is, the floating homestead exemption deprives the county and school district of any increase in property tax due to improved assessment values.⁷⁰ It does this by establishing a base assessment value when home is initially purchased and allowing the homestead exemption to “float” upward in the amount equal to the increase in the assessed value of the property every

⁶² *Woodham*, 283 Ga. at 97.

⁶³ 263 Ga. 879 (1994).

⁶⁴ *Woodham*, 283 Ga. at 97.

⁶⁵ *DeKalb County*, 263 Ga. at 880.

⁶⁶ *Woodham*, 283 Ga. at 97.

⁶⁷ *Id.*

⁶⁸ See <http://www.etax.dor.ga.gov/ptd/adm/taxguide/exempt/homestead.aspx>.

⁶⁹ See, e.g., HB 595, Ga. Laws, 4336 (2006).

⁷⁰ See <http://www.etax.dor.ga.gov/ptd/adm/taxguide/exempt/homestead.aspx>.

year thereafter in which the property owner continues to own and live in the home.⁷¹ Although this exemption has the same effect of depriving the county school district of funds in essentially the same way the TIF does, the homestead exemption is presumed to be constitutional,⁷² while the TIF has been found unconstitutional. The difference that might make a difference is in the case of the floating homestead exemption, the property owner is simply saving on his tax bill as the exemption “float” creates what is essentially a freeze in the assessment of his property. Whereas with the TIF, the property owner is actually paying the higher taxes all along, but the amount over the “frozen” assessment is redirected to a project fund. This redirection of funds, while plainly form over substance, could be the element that makes the TIF unconstitutional in contrast to the floating homestead exemption.

Where does the TIF stand after *Woodham*?

The *Woodham* decision is quite a devastating blow to the BeltLine, as well as to smart growth advocates and local governments that had redevelopment plans on the horizon. TIF is still available; however, as the school portion of the *ad valorem* tax makes up on average 50 to 70 percent of the total, the financing power of the TIF is significantly reduced. All future TIFs in Georgia will be affected by the decision. A number of projects that were relying on Tax Allocation Districts⁷³ have been put on hold pending new funding assessments.⁷⁴

Hope has been restored, however, by the Georgia General Assembly. The General Assembly was in session when the *Woodham* decision was announced in February and acted

⁷¹ *Id.*

⁷² There have been no challenges to the constitutionality of the floating homestead exemption to this point, but it is not a new concept, and up until now its validity has never been questioned.

⁷³ In Georgia, TIF is referred to as a Tax Allocation District, or “TAD.”

⁷⁴ See <http://blogs.creativeleafing.com/freshloaf/tag/development/>.

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swiftly to draft Senate Resolution 996, which would amend the Constitution in a way to overrule the *Woodham* decision.⁷⁵ Senator Dan Weber of DeKalb County authored the legislation permitting local school boards to use tax funds for redevelopment purposes.⁷⁶ This amendment proposal will be on the ballot in November for Georgians to either approve or disapprove. All local governments that wish to have this tool available in the future should make an effort to educate their residents as to the importance and value of the provision.

Conclusion

Great metropolitan cities provide high quality of life components. Transit Oriented Development using Smart Growth principles seeks to incorporate the highest quality of life values into a system that maximizes both efficiency and convenience by reducing time spent in transit, and providing outlets to entertainment, employment and retail, all within walking distance of home. Laws that seek to make innovative Smart Growth projects like the BeltLine easier to implement in Georgia will be found to serve the public well and to be emulated by other states across the country.

⁷⁵ For the full text of SR 996, see, http://www.legis.ga.gov/legis/2007_08/fulltext/sr996.htm.

⁷⁶ *Id.*

Lindbergh Transit Oriented Development

Transit Oriented Development (TOD) was implemented across the United States essentially to undo what has become ingrained in the American way of life—areas that are oriented around the automobile. TODs are to encourage more pedestrian access and less reliance on the automobile. Major U.S. cities' transit systems are central to area with businesses, residences, and retail located in close proximity to stations. Atlanta is one of the few cities that have not adopted this measure. Since the city has experienced exponential growth since the 1990s that has led to sprawl and more dependence on the car transit oriented development has become more and more in the forefront when thinking about urban design. In the late 1990's, MARTA started to think about ways in which it could incorporate transit and development while making communities more densely populated while providing pedestrian friendly and alleviating Atlanta's reliance on automobiles.

In 1999, MARTA partnered with BellSouth in developing a transit station that would allow residents the ability to get around with ease, in a built environment in which people could live, work and play. Cooper Carry, Inc. was hired as the lead architecture firm to develop the Lindbergh City Center. The site was strategically located along Piedmont Avenue nestled between the Midtown and Buckhead districts. This also included the Perimeter Center which is a major employment hub.¹ The Lindbergh project was also the first development selected as a pilot for the Federal Transit Administration's (FTA) 1997 Policy on Transit Joint Development. FTA's policy assisted MARTA in the purchase of three acres of land for the Lindbergh project.²

¹ Dumbaugh, Eric. "Overcoming Financial and Institutional Barriers to Transit-Oriented Development." *Journal of Public Transportation* 7(3): 43-69 (2004).

² *Id.*

The Lindbergh City Center's main objective was to develop an urban area in which retail, office space, condominiums, and entertainment were within close proximity. The project responded to the high levels of traffic, and congestion that Atlanta faces on a daily basis. The Lindbergh TOD provided an alternative to using vehicles as the sole mode of transportation. At the time, Lindbergh was the largest multi-use development in the United States. The Lindbergh City Center was built with the Lindbergh station as the focal point. The station is the second busiest station in the MARTA system.³ It is 51-acres of mixed-use development that surrounds Lindbergh's subway and bus stations in Buckhead. The development comprises of 4.8 million square feet of development; 2.7 million square feet of office space, 330,000 square feet of retail space, 566 apartments, 388 condominiums, and a hotel with 190 rooms. The development has the feel of a miniature city with medium- and high-rises and a parking deck centered near the MARTA station.

Before the implementation of the project, the areas surrounding the Lindbergh station were zoned for low-density uses and were littered with parking lots. Much of surrounding areas were run down with pawn shops, fast food restaurants and venues for adult entertainment.⁴ In order to achieve the end result, the zoning around the Lindbergh station had to be changed.

In order to implement these changes the Transit Oriented Ordinance was set in place to encourage development that would help foster MARTA's goal of mixed-use high density development near public transportation. The language in the ordinance altered the zoning code in order to encourage that transit be in walking distance of a station as well as integrate public

³ Georgia Quality Growth Plan. Retrieved April 15, 2008, from <http://www.dca.state.ga.us/toolkit/ToolDetail.asp?GetTool=157>.

⁴ Carrns, Ann. "Transit Agency Brings Rail-Oriented Look to Highway-Crazy Atlanta Land Around Stations will be Leased for Development Shops, Apartments and Offices." *Wall Street Journal*. B13. (1999)

transportation with land uses either within the same development or adjacent to one another.

Another critical dimension to making TODs function well is the need for high density areas near transit stations.⁵

This caused friction between the residents and MARTA and other associated parties. Residents were reluctant to see their neighborhoods be rezoned for high-density mixed-use developments. They feared the increase of transit in their neighborhoods would increase noise pollution and opportunities for crime. The Buckhead Business Association initially suggested that there be height limitations and a reduction of the floor ratio area. They discouraged high-rise office buildings that were highly automobile dependent. It was also suggested that zoning categories be modified to require additional controls, primarily C-1, community business, C-2, commercial service, RG-3, general multi-family residential with a floor area ratio of 0.162, RG-4, general multi-family residential with a floor area ratio of 1.49 and RG-5, general multi-family with a ratio of 3.2. Like most TODs the Buckhead Business Association requested the development of Special Public Interest Districts (SPI) with overlay requirements for urban design, mixed-use and height and density restrictions. Lastly neighborhood residents requested that the impact fees that MARTA received would offset the costs associated with the increase in traffic and not the residents.

Many have praised Lindbergh City Center as a successful transit oriented development project, others disagree. Opponents believe that the Lindbergh City Center is not a transit oriented development at all, that it is in fact a transit adjacent development. According to an article by Tim Halbur, TOD's Evil Twin: Transit Adjacent Development, he stated that one resident felt

⁵ Atlanta Regional Commission. Retrieved April 15, 2008. From <http://www.atlantaregional.com/arc/html/>.

that Lindbergh was nothing more than an office park for BellSouth. It has also been criticized to be segregate retail, residential and commercial uses in separate quadrants of the development. Another criticism of TODs is that their success is tangential to development trends of the area.

Atlantic Station Transit Oriented Development

Though Atlantic Station is deemed a tax allocation district it can also be considered a transit oriented development. Atlantic Station the former Atlantic Steel Manufacturing Site was established as a tax allocation district in 1999. The Atlantic Station, LLC did a joint-venture between Jacoby Development, Inc. and AIG Global Real Estate Investment Corporation.⁶ The years of industrial use of the site had contaminated the land.⁷ Atlantic Station resembled the Lindbergh City Center in many ways. The Atlantic Station TOD was also developed to maximize the use of public transit. The development's main objective was to have retail, living quarters, and businesses in close proximity to each other in order to decrease congestion, improve air quality and connect activity center. Atlantic Station incorporated Smart Growth practices while making the development transit oriented. The development provided 6 million square feet of mid- and high-rise office space and entertainment space; 4,000 residential units, 300 hundred of which are two-story loft apartments that are above retail and restaurants; and 1,150 hotel rooms.

Though the Lindbergh City Center TOD and Atlantic Station are not without flaws, it still offers an environment that is pedestrian friendly and oriented around transit. With gas prices steadily

⁶ Atlanta Regional Commission. Retrieved April 15, 2008. From <http://www.atlantaregional.com/arc/html/>.

⁷ *Id.*

on the rise, increased traffic congestion, substandard air quality, transit oriented development is a useful tool. The City of Atlanta along with the Atlanta Regional Commission have many projects in the pipeline, to get Atlanta to become a city that is less reliant on the automobile and utilizing the infrastructure such as the rails and bus services that it already has in place.

North Line Corridor

MARTA conducted a feasibility study of the North Line (GA 400) Corridor. MARTA would like to encourage high density, mixed-use development in this area as well.⁸ The development would stretch from McGinnis Ferry Road to the North Springs Rail Station. The analysis examined seven clusters: Northridge, Holcomb Bridge, North Point, Old Milton, Windward North and South, and McGinnis Ferry, along the corridor because of their strong potential for growth.⁹ MARTA set up numerous variables to help them choose which site would be the optimal location. The study looked at the areas density, diversity, and future land uses to determine which location would be able to handle new development patterns and complementary transit services.¹⁰ After the feasibility study was run, it was found that the North Point area would best meet MARTA's needs. This cluster would be ideal for potential shops, restaurants, outlets, and residential development that could be easily integrated with sidewalks and trails that could be connected to the transit system.¹¹

⁸ MARTA. Retrieved April 17, 2008. From <http://www.itsmarta.com/newsroom/northline.htm>

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

West End Livable Center Initiatives

Transit oriented development has also been undertaken under the Livable Cities Initiatives. The West End LCI is one of Atlanta's TOD Small Area Plans.¹² The ARC will invest about 5 million over the next four years to conduct smart growth studies around the city. The study for the West End LCI was initiated in 2003. The ARC study will assess the West End's opportunity for transit oriented development. The West End is currently a mixed-use area and MARTA currently has a transit station located in the neighborhood and would make the transition to a transit oriented community virtually seamless.

As gas prices continue to rise and issues of congestion and air quality become ever more pressing the use of mass transit will become more significant to Atlanta residents. TODs will become the norm in an area whose population is steadily increasing and roads become flooded with automobiles. Transit oriented development will be the next phase in Atlanta's history. The benefits to implementing TOD's will have positive external benefits to everyone.

¹² See GQGP supra note 3.

Brookhaven LCI: A Case Study

The Brookhaven-Oglethorpe MARTA station is located immediately north of the Lenox station. Contrary to the Lenox station, Brookhaven is surrounded by a very large expanse of MARTA-owned and operated surface parking. The entire stretch of Peachtree Street along the west side of the MARTA property is in first-generation, low-density use as a strip mall with surface parking, completely disengaging the public realm. To this end, the Brookhaven Marta station and Peachtree corridor provided great opportunity for the rezoning of the surrounding parcels to increase density, create public and private boundaries engaging the public, and encourage alternative modes of transportation, both public transit and pedestrian.¹

The Brookhaven-Oglethorpe MARTA station rezoning began with a planning process, which resulted in the creation and adoption of an overlay district. Such ordinance must then be adopted by the county commission, or governing body, in this case, the DeKalb County Commission. The Brookhaven-Peachtree Overlay District was intended to amend the code of Dekalb County, Georgia, Chapter 27, Article III, to add division 10. The overlay-zoning ordinance was adopted by the board of commissioners, providing for the regulation of land use and zoning in the Brookhaven-Peachtree area, specifically the parcels adjacent to and surrounding the Brookhaven MARTA station. The development of the overlay district was the result of a Livable Centers Initiative (LCI) study and was in accordance with, and actively sought, public input in developing the plans and guidelines². The LCI study was funded through a grant awarded by the Atlanta Regional Commission (ARC).

¹ An Ordinance to Amend the Code of DeKalb County, Georgia

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The Brookhaven Livable Centers Initiative (LCI) plan included the establishment of standards and procedures that will apply to any development that lies, within, or in part within, the Brookhaven-Peachtree Overlay District. The overlay district was based upon the urban design and development guidelines developed as part of the LCI planning process. The purpose was to create a community vision for ensuing development in the area with a focus on more dynamic, mixed-use areas surrounding the Brookhaven-Oglethorpe MARTA station and flanking the Peachtree Corridor north of the station. Section 27-728.15.2. reveals the statement of purpose and intent of the guidelines as follows:

- (a) To implement the policies and objectives of the comprehensive plan and the Zoning Ordinance of DeKalb County within the Overlay District;
- (b) To promote the development of a more dynamic, mixed-use district of appropriate scale and magnitude surrounding the Brookhaven-Oglethorpe University MARTA transit station;
- (c) To ensure that new structures and developments are consistent with the vision and recommendations of the Brookhaven-Peachtree LCI Plan completed in 2005 with significant community involvement and input;
- (d) To provide for a variety of housing types and promote mixed-income residential opportunities;
- (e) To facilitate access to the Brookhaven-Oglethorpe University MARTA transit station and to compatible and neighboring commercial, civic, recreational and institutional uses and residential areas;
- (f) To design and arrange structures, buildings, streets and open spaces to create an inviting, walkable, mid-rise, human-scale environment;
- (g) To provide for the efficient and effective use of land surrounding the Brookhaven-Oglethorpe University MARTA transit station and along Peachtree Road;
- (h) To provide for connectivity of streets and communities and reduce the dependence on automobile use by increasing the ease of movement and

² *Id.*

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opportunities for alternative modes of travel; and

(i) To ensure a proportional relationship of surrounding buildings with respect to the general spacing of structures, building mass and scale, and street frontage by

using techniques to achieve compatibility, such as:

(1) Use of additional façade detail; proportion of façade elements, doorways,

projections and insets; window scale and pattern; and creation of strong

shadow lines as decorative elements;

(2) Use of consistent setbacks from property lines;

(3) Development of consistent sidewalks and a more active, interesting

pedestrian environment;

(4) Use of landscaping, lighting and street furniture to unify district buildings

and define space; and

(5) Use of compatible building materials to promote a design and building

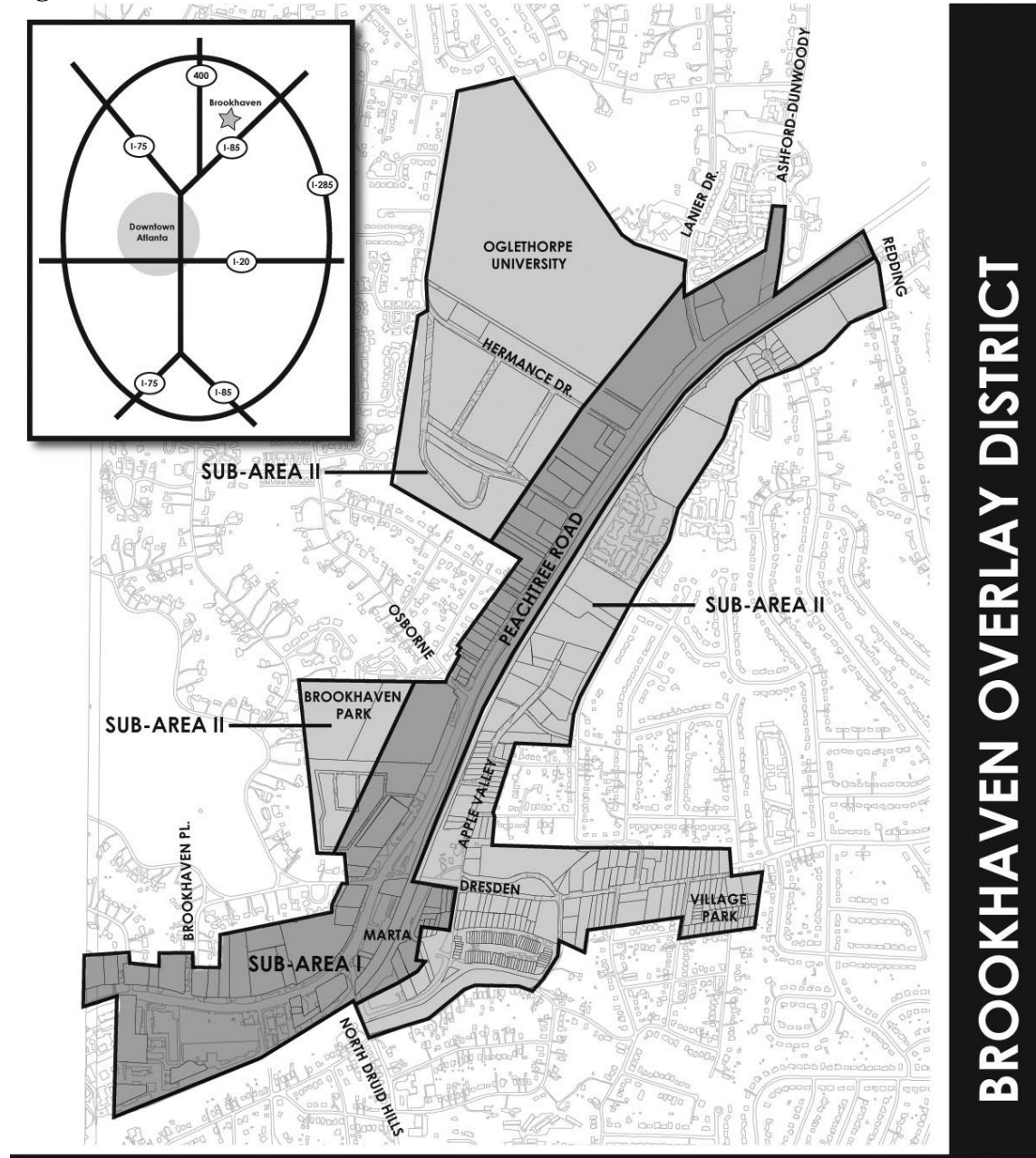
aesthetic compatible with Oglethorpe University and the desired urban

village character³.

The Brookhaven LCI study and eventual adoption of the overlay district (see figure 1) by the DeKalb County Commission is an example of “up-zoning” as opposed to incentive based guidelines, adopted by a county commission or city council, that a developer may or may not choose to utilize in the development of her site. To this end, when said governing body chooses to adopt an overlay district, they are essentially re-zoning the respective property to promote site specific and appropriate development rather than rezoning at the developers request or parcel by parcel. This method of zoning facilitates responsible development and “smart growth”, a type of development inherent in transit-oriented developments (TODs). If the governing body does not choose to adopt an overlay district or “up-zone” property, it may be choosing to encourage growth that is, in fact, not “smart”, resulting in increased dependence on automobiles, a decrease

in air quality, increased congestion, etcetera, just to name a few reasons to encourage development around transit nodes.⁴

Figure 1:⁵



³ *Id*

⁴ personal communication, Liz Drake, March 26, 2008

⁵ *Id* at exhibit A

Recommendations for Other MARTA Stations: A Work Scope

The Brookhaven-Peachtree Overlay district is an example of how property can be re-zoned (“up-zoned”). However, other MARTA stations should be planned for as well, to facilitate the adoption of similar ordinances that promote transit-oriented developments (TODs). MARTA can be involved in the process and development of TOD guidelines for two purposes, which are not mutually exclusive, and are the production of a “MARTA document for use in shaping joint development plans and in commenting, as a stakeholder, in significant station area development proposals by others. This document would be published, and would be based on input by other parties, but would be MARTA-generated and require no other approvals.” This document would function as a multi-jurisdictional document, for use by MARTA, the City of Atlanta, Fulton County, and other MARTA host municipalities. Because this type of document would require much more extensive negotiation, approvals by other jurisdictions, and eventual changes in zoning, it would likely be a future, optional step, following the initial development of a MARTA product⁶.”

This is happening, in fact. MARTA is making considerable efforts to plan for transit oriented development at other MARTA station locations by seeking consultant assistance for the planning process. MARTA’s work scope is detailed and includes a review of best practices that are taking place in other parts of the United States as well as a survey of current conditions surrounding MARTA stations. Additionally, TOD guidelines must be developed and include the typology, density, land-use, and parking of the development areas. These specifics are necessary when considering this type of new construction, infill development and reuse projects relevant to existing MARTA stations.

⁶ MARTA General Planning Consultant Services Contract, March 25, 2008

The strategy most effective in achieving transit-oriented development is the development and planning of an overlay district, similar to that which DeKalb County adopted for the Brookhaven-Peachtree area in 2007. In the planning stages, the development of each overlay district, respectively, does not include the full length or regulatory text of the overlay, but an easily readable draft of such. As before stated, these model overlay district provisions will include TOD guidelines and best practices of jurisdictions that have implemented such ordinances. Of course, the overlay districts are specific to where the MARTA stations fall on the urban transect, e.g. urban, ex-urban, suburban, etc. This is important to note in developing appropriate guidelines for density, parking, and typology.⁷

The final step in the development of a TOD overlay district will be a comprehensive review by MARTA once the overlay has been drafted. These working sessions will be the final step toward compiling guidelines and best practices that can be finalized. Again, the final document may or may not be adopted as an ordinance by the DeKalb or Fulton County Commission as a zoning overlay district.

⁷ *Id*