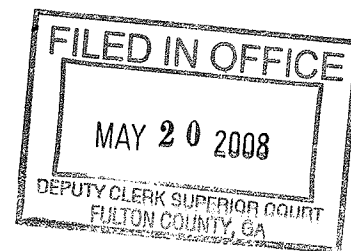


IN THE SUPERIOR COURT OF FULTON COUNTY  
STATE OF GEORGIA



FRIENDS OF PIEDMONT PARK, INC., and )  
DOUGLAS L. ABRAMSON, )  
 )  
Plaintiffs, )  
 )  
v. )  
 )  
ATLANTA BOTANICAL GARDEN, INC., )  
THE CITY OF ATLANTA, AND PIEDMONT )  
PARK CONSERVANCY, INC., )  
 )  
Defendants. )

CIVIL ACTION NO.:  
2007CV128242

**BRIEF OF AMICI CURIAE  
IN OPPOSITION TO ATLANTA BOTANICAL GARDEN'S MOTION  
FOR AWARD OF ATTORNEYS' FEES AND EXPENSES OF LITIGATION**

Amici Curiae The Atlanta Journal-Constitution, the Georgia First Amendment Foundation and the American Civil Liberties Union Foundation of Georgia respectfully submit this brief to the Court in opposition to the Atlanta Botanical Garden's Motion for the Award of Attorney's Fees and Expenses of Litigation.

**INTRODUCTION**

The undisputed record makes clear that there is substantial evidence that the Atlanta Botanical Garden performs a public function:

- It is located on public land for which it pays the citizens of Atlanta nothing.
- It has contractually agreed that the Garden is "for the benefit of all of the citizens of the City."
- It is forbidden to make any meaningful changes to its operations without the approval of the Mayor and City Council.

**COPY**

- It undertook the construction of a parking deck that the City approved with the understanding that half of the deck would be devoted to servicing Atlanta's largest public park, Piedmont Park.

Despite all of these indicia that it carries out a public function in partnership with City of Atlanta, particularly with respect to the parking deck at issue in this case, ABG contends by its present motion that Plaintiffs should be sanctioned merely for asking this Court to decide whether ABG should be bound by various laws that apply to public bodies.

ABG's motion should plainly be denied forthwith.

Georgia has a long tradition of recognizing the importance of allowing citizens to raise legal questions in our court system about matters of public concern. Our state constitution protects the right to "apply by petition" to "those vested with the powers of government for redress of grievances." Ga. Const. Art. I, Para. IX. The Georgia legislature has specifically sought to protect this important right by ensuring that efforts to petition the government for redress of grievance, including civil lawsuits on matters of public concern, "should not be chilled through abuse of the judicial process." O.C.G.A. § 9-11-11.1.

ABG's motion runs directly counter to these core principles by attempting to punish citizens who have done nothing more than bring their concerns regarding a public matter to this Court for resolution. Not surprisingly, the motion falls woefully short of establishing a basis for the recovery of attorneys' fees under O.C.G.A. § 9-15-14.

The parking deck at issue in this case was and is a matter of legitimate public concern. Citizens such as the Plaintiffs should not be threatened with financial disaster simply for asking this Court to examine whether the deck's planning and construction complied with Georgia law. ABG's internally contradictory position – that Plaintiffs' claims were both frivolous and yet

required hundreds of hours of legal work by experienced attorneys – is strikingly in conflict with basic principles in our system of justice, including the presumption that each party must “pay its own way.” The pending motion is nothing more than a belated effort to intimidate citizens who properly exercised their constitutional right to bring their grievances to this Court.

### **INTEREST OF AMICI CURIAE**

A number of Amici previously filed a brief on September 11, 2007 and appeared at the hearing in this action on September 12, 2007. Amici are institutions that are committed to making sure the public has access to information on issues of public concern and that citizens are not intimidated out of exercising their rights with respect to such issues. The Atlanta Journal-Constitution is a daily newspaper of general circulation in the Atlanta Metropolitan Region that reports on matters of legitimate public interest. The Georgia First Amendment Foundation is a non-profit organization that seeks to advance the cause of open government and monitors freedom of information issues throughout this state. The American Civil Liberties Union Foundation of Georgia’s mission is to advance the cause of civil liberties in Georgia, with emphasis on the rights of free speech, free assembly, freedom of religion, and due process of law.

### **ARGUMENT**

#### **I. Plaintiffs Brought A Substantial Body of Evidence to the Court Demonstrating that ABG Carries Out a Public Function, Including in Connection with the Parking Deck.**

ABG defended this action by arguing that it is merely a run-of-the-mill private charitable organization with no greater connection to government agencies than any other such charity.

In response to this claim, Plaintiffs put before the Court a substantial body of evidence documenting that ABG is, in fact, a public-private partnership involving significant public resources, public oversight and public responsibilities.

First and foremost, there is no dispute that ABG has been provided with an extraordinary piece of land owned by the City of Atlanta on which to operate the Garden. For this land, ABG pays nothing. ABG has repeatedly claimed its agreement with the City of Atlanta is simply a typical commercial leasehold arrangement. As Plaintiffs demonstrated, that is incorrect for many reasons, the most important being that there is no monetary payment whatsoever exchanged under the agreement.

In addition, Plaintiffs demonstrated that at the time of its formation, ABG agreed to provisions in its lease with the City that gave City Officials extraordinary control over the Garden. City officials must approve every detail of the Garden's "Master Plan" and ABG is forbidden to even raise its entrance fee without the City's agreement. No typical leaseholder is subject to similar restrictions. Indeed, with respect to the parking deck at issue in this action, ABG's plan had to undergo an extensive approval process with the City that took months and involved numerous City agencies and public bodies. This was not a routine permitting process; it was an extensive public review consistent with the fact that Atlanta citizens have a vested legal interest in the Garden.

In addition to these visible demonstrations of the ABG's reliance on and connection to public bodies, Plaintiffs also identified remarkably clear contractual language to which ABG consented at the time of its formation. See, e.g., 1980 Lease at ¶ 5.4.1 ("The Lessee agrees the Garden will be maintained for the benefit of all the citizens of the City."); 1977 Lease at p. 1 ("The Lessee wishes to plan the establishment of a Botanical Garden and Arboretum on the Site

for the benefit of all citizens of the City.”). By its plain terms, the language in these leases establishes that ABG operation of the Garden would be regarded by the parties as a public function.

Even since the entry of the orders in this action, ABG has participated in further activity that reinforces the public nature of this enterprise. In order to finance the parking deck and other improvements, ABG obtained \$45 million of public financing through the Atlanta Development Authority. Thus, tax exempt debt issued for the parking deck is now, in effect, made possible as a direct result of the involvement of City of Atlanta. See generally Atlanta Dev. Auth. 2007 Annual Report ([www.atlantada.com/pressRoom/2007ADAAnnualReport.pdf](http://www.atlantada.com/pressRoom/2007ADAAnnualReport.pdf)) (copy attached as Exhibit 1). Compare Annual Report at 11 (“ADA issued tax exempt bonds for . . . an expansion of the Atlanta Botanical Gardens, financing a new visitor’s center, parking garage and garden improvements amounting to \$45 million”) with ABG Memorandum in Support of Motion for Attorney’s Fees at 7 (claiming that Plaintiffs should have known that “ABG would not expend any public funds” in constructing the parking deck).

While Plaintiffs were ultimately unsuccessful with respect to their claims against ABG, the record of the case makes clear that Plaintiffs gathered and presented to the Court powerful evidence of ABG’s involvement in a public function.

**II. Given Plaintiffs’ Evidence, Plaintiffs’ Legal Positions Were Clearly Legitimate and Firmly Grounded In Law.**

By their motion, ABG asserts, in effect, that because it is nominally “private,” it is beyond the reach of all of the laws raised by Plaintiffs in their Complaint and it was frivolous for Plaintiff’s to argue otherwise. ABG Memorandum in Support of Motion for Attorney’s Fees at 7.

In fact, as the Court has already recognized, the law is not dictated by labels. The fact that an organization labels itself “private” does not and should not control the reach of laws that are intended to make sure organizations carry out public functions in a responsible manner.

There is no area of the law where this rule is more clearly established than with respect to Georgia’s Open Records Act. Georgia courts have repeatedly interpreted the Open Records Act to embrace not just records of traditional government agencies, but also records of organizations that are performing a public function or service regardless of whether they are labeled private or public.

Almost twenty years ago, the Georgia Supreme Court required the “private” Athletic Association of the University of Georgia to comply with the Open Records Act. See Macon Tele. Publishing Co. v. Board of Regents, 256 Ga. 443 (1986) (records showing the assets, liabilities, income and expenses of the private University of Georgia Athletic Association are public records). Since then, the Georgia appellate courts have repeatedly required compliance by nominally private corporations performing public functions, including those functioning in connection with public hospitals, see Northwest Ga. Health Sys. v. Times-Journal, 218 Ga. App. 336 (1995); housing developments, see Jersawitz v. Fortson, 213 Ga. App. 796 (1994); and school busing, see Hackworth v. Board of Educ., 214 Ga. App. 17 (1994). Most recently, the Georgia Court of Appeals squarely rejected efforts by private organizations to resist disclosing records related to the bidding for the 2009 Super Bowl and the NASCAR Hall of Fame. Central Atlanta Progress, Inc. v. Baker, 278 Ga. App. 733 (2006).

Although both the Super Bowl and NASCAR bids started as ideas by private citizens, not by government officials, in both cases government institutions and public resources eventually become involved in the bid process, thereby triggering legal obligations under the Open Records

Act. This is, of course, exactly the same progression that took place with the Botanical Garden. Although it started as a private endeavor, the Botanical Garden now sits on public land, provided at no cost to ABG, and the Garden is subject to significant public oversight to ensure that it is operated “for the benefit of” the citizens of Atlanta. Cf. Central Atlanta Progress, 278 Ga. App. at 737 (“Given the significant involvement of public officials and resources in the matter, we will not give the [Open Records] Act the narrow interpretation Defendant seeks.”).

Plaintiffs’ legal position that ABG should be subject to the Open Records Act and other Georgia laws that regulate public functions sits squarely on a legitimate legal foundation. Indeed, ABG’s contention that Plaintiffs’ arguments were frivolous is belied by decades of decisions from our courts recognizing that our laws must adapt to the fact that “increasingly the distinctions between governmental and private sectors are blurred . . . In many situations, policy determinations which traditionally were channeled through formal political institutions are now originated and implemented through a complex array of boards, committees, commissions, corporations, and associations, some only loosely connected with the Government.” See, e.g., Curtis Publishing Co. v. Butts, 388 U.S. 130, 163-64 (1967) (Warren, C.J., concurring) (extending First Amendment protection for speech about public officials to public figures).

### **III. ABG’s Motion for Attorneys’ Fees Is Meritless for Numerous Reasons.**

Given the substantial body of evidence and law identified by Plaintiff in support of their claims, ABG’s contention that it is entitled to an award of attorney’s fees is plainly without merit.

Under the governing statute, a court is required to award fees where a party has asserted:

a claim . . . or other position with respect to which there existed such a complete absence of any justiciable issue of law or fact that it could not be reasonably believed that a court would accept the asserted claim.

O.C.G.A. § 9-15-14 (a).

Similarly, a court may award fees if it finds that:

[the] action, or any part thereof . . . lacked substantial justification or . . . was interposed for delay or harassment or if it finds that an attorney or party unnecessarily expanded the proceeding by other improper conduct . . . .”

O.C.G.A. § 9-15-14 (b).

Separately, the Georgia Open Records Act authorizes the award of fees where a party acts “without substantial justification” in instituting an action. O.C.G.A. § 50-18-73.

There is simply no basis for ABG to make a valid claim under any of these provisions.

As the record compellingly demonstrates, ABG prevailed in this case by the slimmest of margins. Piedmont Park Conservancy – an organization that operates in a very similar fashion to ABG – was ultimately held by the Court to be subject to various obligations under the Georgia Open Records Act as Plaintiffs alleged. See October 23, 2007 Order (granting Plaintiffs’ motion for summary judgment as to Piedmont Park Conservancy (“PPC”)). Thus, Plaintiffs substantially prevailed against PPC, and PPC did not appeal the Court’s order.

Yet, the ABG’s operations are identical in many respects to the factors that influenced the Court with respect to PPC. In its Order, the Court recognized that the fact that the PPC was “a private non-profit corporation” was not dispositive. October 23, 2007 Order on PPC at 3. “The issue turns on whether the PPC carries out a public service or function.” Id. The Court concluded that PPC’s “Memorandum of Understanding” with City of Atlanta regarding development of Piedmont Park made clear that it was performing such a function, so that it was subject to the Open Records Act in connection with that function. Id. at 3-5

However, with respect to ABG, the Court interpreted ABG’s contractual agreement with the City of Atlanta in a different fashion. Although ABG’s agreement to use the City’s land for

free imposes rigorous government oversight of the “Master Plan” for the Garden, and allows government officials to control such operating details as the price of admission to the Garden – provisions that are similar to PPC’s agreement – the Court held that the ABG agreement did not establish that ABG was performing a public function. October 23, 2007 Order on ABG at 3. Most importantly, the Court took the extraordinary step of relying on “parole evidence” to interpret the plain terms of ABG’s agreement with the City. Despite the fact that the agreement specifically says ABG “agrees that the Garden will be maintained for the benefit of all the citizens of the City” – a clear indication that operation of the Garden is, at least in part, a public function – the Court interpreted this provision to diminish its importance.

Based on a conclusory affidavit introduced by ABG, see Affidavit of Bernard Green at ¶¶ 11-12 (introduced as Exhibit F to ABG’s June 25, 2007 Memorandum of Law), the Court decided that this provision meant only that ABG would have to function in a non-discriminatory fashion and “would remain open to all members of the public, regardless of race, gender, or income (or even city citizenship).” October 23, 2007 Order on ABG at 2 (finding “[t]he record establishes that this was done because of sensitivity existing at the time regarding racial and ethnic inclusion). The Court reached this interpretation despite the fact that the agreement has an explicit non-discrimination provision separate from the statement that the Garden is “for the benefit of” all Atlanta citizens. See also 1980 Lease at p. 1 (“[w]hereas, Lessee has begun to develop said botanical garden . . . as a public botanical garden”).

Putting aside whether the Court’s determination was correct and its use of “parole evidence” was authorized, it is clear the Court’s resolution of this issue was a fact-specific determination based on affidavits that were not even introduced until shortly before the hearing in this action. There is simply no basis to contend this record supports the entry of an award of

attorneys' fees. This conclusion is underscored by the fact that even the Attorney General's Office – a public agency with significant experience in issues involving the Open Records Act and other state laws – regarded this as an issue that was appropriate for judicial resolution. ABG's motion for attorneys' fees should be denied.

**IV. The Absurd Amount of the Requested Fee Award Is Plainly Calculated to Intimidate Plaintiffs.**

Amici cannot let pass the inappropriate amount of the request made in this action. ABG contends that this case was frivolous from the outset, but then, incredibly, claims it needed to devote hundred of hours of partner-level attorneys to litigating it. ABG seeks hundreds of thousands of dollars of legal fees in a case in which not even a single deposition was taken.

ABG's claim for fees appears to have one purpose: intimidation. It is appears to be calculated to "chill" Friends of Piedmont Park from even considering further efforts to investigate or protest the actions of ABG in connection with its stewardship of a significant portion of land within Piedmont Park and operation of the parking deck.

Such efforts to chill citizens from exercising their legal rights and voicing their opinion about a public park that they hold dear is antithetical to our system of justice. Requests for attorneys' fees for alleged frivolous litigation should not be imposed where, as here, they would "chill innovative theories and vigorous advocacy." Donaldson v. Clark, 819 F.2d 1551, 1561 (11<sup>th</sup> Cir. 1987). They are not appropriate if "used to deter controversial or unpopular suits." Id.

The parties have "paid their own way" in this case and that is how it should remain.

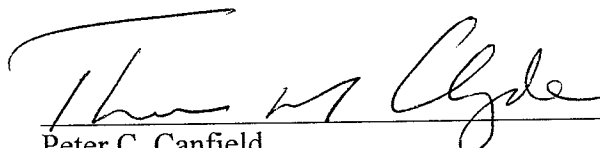
**CONCLUSION**

For the reasons stated, Amici Curiae The Atlanta Journal-Constitution, the Georgia First Amendment Foundation and the American Civil Liberties Union Foundation of Georgia respectfully request that the Court deny the Atlanta Botanical Garden's Motion for Attorney's Fees.

DATED this the 20th day of May, 2008.

Respectfully submitted,

FOR: DOW LOHNES PLLC



Peter C. Canfield

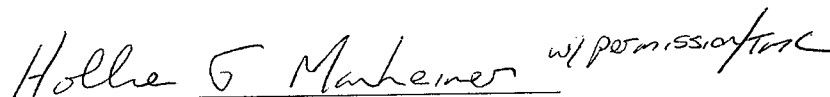
Georgia State Bar No. 107748

Thomas M. Clyde

Georgia State Bar No. 170955

Attorneys for The Atlanta Journal-Constitution

Suite 1800  
Six Concourse Parkway  
Atlanta, Georgia 30328-6117  
(770) 901-8800

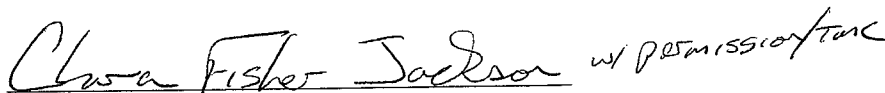


Hollie G. Manheimer

Georgia State Bar No. 468880

Attorney for the Georgia First Amendment Foundation

150 East Ponce de Leon Avenue, Suite 230  
Decatur, GA 30030  
(404) 525-3646



Chara Fisher Jackson

Georgia State Bar No. 386101

Attorney for American Civil Liberties Union Foundation of  
Georgia

75 Piedmont Avenue, Suite 514  
Atlanta, GA 30303-2507  
(404) 523-6201

**EXHIBIT 1**

# Atlanta Development Authority

## ANNUAL REPORT 2007

### TABLE OF CONTENTS

Message from the Chair	2
Message from the President	4
New Century Economic Development Plan	6
Affordable In-town Housing	7
Tax Allocation Districts	8
Entrepreneurship and Global Commerce	10
Real Estate Activity	12
Marketing and Promotion	13

## Message from the *Chair*



*Mayor Shirley Franklin*

**The Atlanta Development Authority** had a banner year in 2007. As the official economic development agent of the City of Atlanta, ADA works with more than 55 economic development partners to advance the City's New Century Economic Development Plan (EDP), adopted in 2004. The ambitious goals we set forth represent our vision of raising Atlanta to the status of a world class city.

It appears that three of our seven EDP goals will be accomplished by 2009: increasing airport jobs, property values and high school graduation rates. Hartsfield-Jackson Atlanta International Airport continues to connect Atlanta with the world and be the largest economic development engine in our metro region and the Southeast region. Over the past three years, \$16 billion in property value was added to the City's tax digest. Our employment centers in Downtown, Midtown and Buckhead are thriving in complementary and distinct ways, affording new residents many choices of where to live and work. We are thrilled with the accomplishments of Atlanta Public Schools (APS) under the stewardship of Dr. Beverly Hall and we salute APS for its continued focus on excellence and results in graduation rates. We all recognize that education is a key driver in economic development, and if we want to attract more jobs, we must have an excellent K-12 educational system.

We continue to push hard to achieve our goals to reduce crime, promote job growth in the City and increase our inventory of workforce housing and parks and greenspace. Over the past three years, the City has added an average of 5,800 jobs each year – but our growth rate trails that of the region and the State. We are lacking in incentives both at state and local levels. We have got to do a better job retaining our existing businesses while making the case to relocation prospects that being in the City is their best option. If businesses want access to a highly educated, creative and diverse resident base, then the City of Atlanta is not *a* choice, but *the* choice.

Crime has sharply declined in Atlanta. In 2004, the City's crime rate was 10,500 crimes per 100,000 residents – our goal is to cut the crime rate in half by 2009. Through 2006 (the most recent official FBI statistics) we had achieved a good part of the goal, reducing crime to 8,188 per 100,000 residents – a decrease of nearly 25%. Moreover, Atlanta has dropped out of the ranks of America's cities with the highest crime rates. For much of the 1980s and 1990s we occupied one of the top five spots in the FBI rankings, but in 2006 we dropped to #30 – a terrific achievement for Chief Pennington and his team at the Atlanta Police Department. While our unofficial numbers have seen a bump up in the crime rate in 2007 (similar to a national trend), it will be difficult to achieve our five-year goal. We remain focused on providing a safe city for our residents and visitors, and we will spare no resources in this effort. I fully expect to see us back on track in 2008.

Workforce housing continues to be at the top of my administration's agenda. In 2007, City Council made history by approving \$75 million in Housing Opportunity Bonds to support affordable housing initiatives. We fully expect the next two years to be much better. It's important that singles, retirees, students and families be able to live near jobs, restaurants, schools and hospitals.

The City of Atlanta has successfully added 425 acres of new parks and greenspace over the past three years, moving us toward our ambitious goal of adding 1,900 acres. During 2007 we assembled the first BeltLine park at Boulevard Crossing, acquired three blocks toward the vision of a green corridor connecting the Capitol and Historic Oakland Cemetery and expanded a major nature preserve in north Buckhead. Atlanta BeltLine, Inc. (ABI) and its partners also acquired the 4.5-mile Northeast BeltLine Corridor. ABI continues to advance land acquisitions with the Trust for Public Land and BeltLine Partnership as funds are available through the ongoing \$60 million BeltLine Capital Campaign. We anticipate their work will continue to drive the growth of parks along the BeltLine in 2008.

ADA's mission is critical. I would like to recognize our 2007 Board of Directors and thank them for their commitment to economic development in the City of Atlanta. My fellow board members are:

- Barney Simms, Atlanta Housing Authority (Vice Chair)
- Alex Wan, Optima, Inc. (Treasurer)
- Joe Brown, Centerline Capital Group (Secretary)
- LaChandra Butler Burks, APS Board Member
- Emma Darnell, Fulton County Commissioner
- Carlton Eccles, retired
- Tracy Hankin, *WebMD*
- Jim Maddox, Atlanta City Council Member
- 

With 24 months remaining in my tenure as Mayor of Atlanta and Chair of ADA, it is my personal goal to provide the kind of leadership that will allow ADA to fulfill its mission and leave a legacy of which we can all be proud.

## Message from the *President*



*Peggy McCormick*

**It is an honor** to serve as president of ADA. I am lucky to work every day with 50 passionate and talented employees. This year we had some exciting firsts:

- The creation of the HOME Atlanta program, our first single-family mortgage program in seven years
- Approval of five new redevelopment projects to be financed in the Perry-Bolton TAD
- Winning a \$60 million allocation of New Markets Tax Credits with our partners at Central Atlanta Progress on our first try
- Wipro Technologies choosing the City of Atlanta as the location of its first North American development center, bringing an estimated 1,000 jobs
- Our first business development trip to Europe
- Completing the construction of the first parking deck in downtown Atlanta's Government Center

HOME Atlanta is funded through our issuance of tax exempt bonds. These first mortgage dollars, combined with down payment assistance, funded by the City's Opportunity Bond program, have enabled more than 100 working class families to become home owners. We are reaching our target population of teachers, police officers, healthcare workers and government workers and making it possible for them to live near their jobs in the City. Real estate brokers and lenders tell us that HOME Atlanta has made a positive impact on the Atlanta real estate market by increasing demand for homes during this turbulent period.

In November, ADA approved five projects expected to spur significant, long awaited development in the Perry-Bolton Tax Allocation District in Northwest Atlanta. Created in 2002, Perry-Bolton did not move forward, pending legislative issues. In 2007, all parties came together with an impressive, unified community effort. The five approved projects represent over \$500 million in new development including more than 2,000 residential units (30% affordable) plus more than 185,000 square feet of much anticipated retail anchored by a first-class grocery store. The resolution of the BeltLine TAD litigation will allow us to seek City Council approval of this bond issue in 2008.

Earlier this year, ADA filed our initial application for the U.S. Treasury Department's five-year-old New Markets Tax Credits Program, competing with financial institutions, developers, cities, counties and states. We partnered with Central Atlanta Progress and focused on future projects downtown. With a 10% chance of success, ADA and CAP were very pleased with our award of \$60 million in tax credits. These credits bring more capital for projects downtown that can be layered with conventional financing, tax allocation districts and historic tax credits. We also believe this award is a note of confidence in developments in downtown Atlanta.

We wish to welcome Wipro Technologies to the City. Known as the #1 global IT service provider, Wipro's values – intensity to win, action with sensitivity and unyielding integrity – align with the spirit of Atlanta. Wipro considered a number of locations in the U.S. and in the metro Atlanta area. They chose the City because of ready access to talent, transit options and global markets. The company recognized our welcoming team of business leaders and economic development agencies – we thank the Metro Atlanta Chamber of Commerce and the Georgia Department of Economic Development for their great teamwork on this project.

At ADA, we recognize the mounting importance of foreign direct investment and building cross-border relationships to the City's economic vitality. This fall, ADA participated in our first business development trip to Europe. We met with life science companies and international economic development offices to build relationships, seek new opportunities and expand our emerging life science cluster. The delegation met with European business leaders and entrepreneurs in Brussels, Amsterdam, London and Manchester. The 10-day trip, led by the Metro Atlanta Chamber of Commerce, has resulted in ten active projects interested in some level of investment in Atlanta.

The new 850-space Government Center parking deck on Central Avenue opened in December 2007 to serve the needs of downtown government workers and the surrounding community. This project, dormant on the drawing board for 30 years, was completed on schedule and under budget. ADA managed the \$23 million project.

The senior team at ADA has focused this year on building an effective and talented team, developing systems and processes to support our employees, building our financial infrastructure and executing with excellence. I would like to recognize our senior team and thank them for their leadership and commitment to our mission:

- Ernestine Garey, Managing Director of Housing Finance
- Larry Gerlach, Chief Financial Officer
- Veronica Jones, General Counsel
- Sonya Moste, Director of Marketing and Public Relations
- Cheryl Strickland, Managing Director of Tax Allocation Districts
- Charles Whatley, Director of Commerce and Entrepreneurship

Together, we have accomplished a lot. We thank our employees for their focus every day on achieving our city's economic development goals. We would also like to thank the Atlanta City Council for their continued support.

ADA recognizes the importance of the relationships with our economic development partners, more than 50 organizations. We thank our partners for their collaboration and commitment to achieving the vision and goals of the City's Economic Development Plan.

In 2004, the Economic Development Plan's direction was set by the Mayor's vision that Atlanta be:

- *the thriving core of the metropolitan area*
- *the most successful city in the Southeast*
- *a competitive city, nationally and internationally*

The results of 2007 and the pipeline of projects for 2008 prove that Atlanta is a city on the move.

# New Century Economic Development Plan

## 2007 Results

Adopted in 2004, the New Century Economic Development Plan's goals and achievements are monitored on an annual basis. More than 50 economic development partners work together toward achieving these milestones.

EDP Goals	Base *	Best in Class Goals	Results				% of Goal
			2005	2006	2007	Cumulative	
APS High School Graduation Rate <sup>1</sup>	57%	<b>72%</b>	72%	69%	68%	<b>68%</b>	<b>94%</b>
Airport Jobs <sup>2</sup>	105,000	<b>add 24,000</b>	13,340	available in 08	available in 08	<b>13,340</b>	<b>56%</b>
Property values <sup>3</sup>	\$42B	<b>add \$26B</b>	\$3B	\$5B	\$8B	<b>\$16B</b>	<b>62%</b>
Crime per 100,000 residents <sup>4</sup>	10,800	<b>reduce to 5,600</b>	8,965	8,188	available in 08	<b>2,612</b>	<b>47%</b>
Jobs Growth <sup>5</sup>	406,000	<b>add 60,000</b>	5,058	9,735	9,965	<b>24,758</b>	<b>41%</b>
Workforce housing units created with City incentives <sup>6</sup>	1,300/yr	<b>add 10,000</b>	1,632	804	1,085	<b>3,521</b>	<b>35%</b>
Acres of Parks & Greenspace <sup>7</sup>	3,400	<b>add 1,900</b>	92	226	107	<b>425</b>	<b>22%</b>

<sup>1</sup> Georgia Department of Education -- Source: <http://public.doe.k12.ga.us/ReportingFW.aspx?PageReq=102&CountyId=761&PID=0&PTID=0&FY=2007>  
[Note: Graduation rate does not include alternative schools such as adult education centers or correctional facilities.]

<sup>2</sup> H-JAIA Economic Impact Report 2005

<sup>3</sup> Georgia Department of Revenue - Tax Digest Consolidated Summary -- Source: <http://www.etax.dor.ga.gov/PTD/cds/csheets/menu.aspx>

<sup>4</sup> FBI - Crime in the United States 2006 -- Source: <http://www.fbi.gov/ucr/cius2006/index.html>

<sup>5</sup> U.S. Census Bureau, QWI Online, accessed December 11, 2007 -- Source: <http://lehd.did.census.gov/led/datatools/qwiapp.html>

<sup>6</sup> Workforce Housing Plan Production Database, City of Atlanta Bureau of Housing and ADA

<sup>7</sup> City of Atlanta departments - Watershed and Parks

\* Baseline Years: Jobs(2004), Airport Jobs (2003), Property Value (2003), Workforce Housing (2004), Crime (2003), HS Graduation Rate (2002), Parks (2004)

In an historic move, the City funded a Housing Opportunity Fund and approved \$75 million in Housing Opportunity Bonds, designating ADA as the program administrator. Of the initial 2007 Opportunity Bond offering of \$35 million, more than \$7 million has been expended, with another \$5 million committed to projects.

We launched the HOME Atlanta Program in May 2007 and have helped more than 100 people become homeowners with over \$12 million in first mortgages. These homeowners are employed as school teachers, public safety officers, government workers, corporate employees, healthcare professionals and workers in Atlanta's retail and service industries. The average HOME Atlanta buyer:

- Purchases a home with an average sales price of \$176,000
- Has an average annual household income of \$47,000
- Has an average family size of 1.5

ADA's HOME Atlanta initiative is being recognized nationally as an innovative model in providing workforce homeownership opportunities. By offering an attractive fixed-rate first mortgage program that can be layered with other incentives, we are making homeownership a reality for working class residents who have chosen to live, work and play in our beautiful city.

Partnering with some of our economic development partners, home buyers can access assistance from ADA with HOME Atlanta grants, Opportunity Bond programs and our Atlanta Affordable Homeownership Assistance. Other partners providing assistance include the City of Atlanta with a mortgage assistance program, the Atlanta Housing Authority with its Capitol Gateway Homeownership Assistance, and the United Way with Individual Development Account grants.

### **Multifamily Rental Housing**

ADA issued more than \$34 million in tax exempt bonds for two residential projects – Alta Coventry Apartments and Lillie R. Campbell Apartments, both new construction – in Southwest Atlanta. This will add 418 units, with 34% of units available at affordable rental rates.

### **Homeless Opportunity Fund**

The Homeless Opportunity Fund was established in 2006 through a \$22 million Opportunity Bond offering.

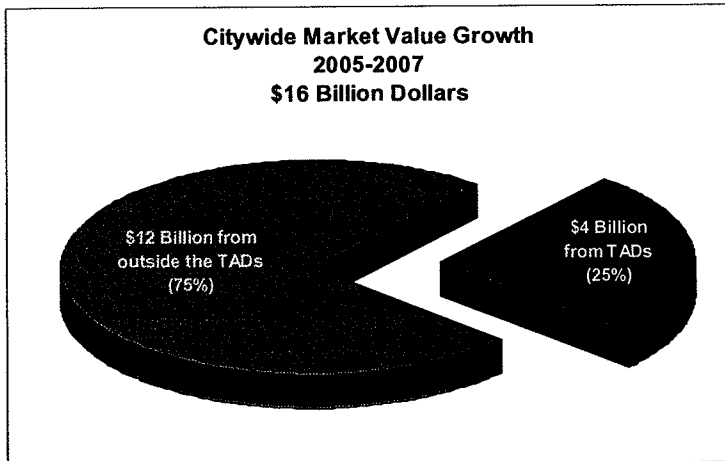
In 2007, ADA:

- Committed more than 77% from the fund, leveraging an additional \$92 million in private/philanthropic resources
- Approved 15 projects that will add 435 supportive housing units
- Partnered with social service agencies, including Mary Hall Freedom House, Georgia Rehabilitation Outreach, Making a Way Treatment, Achor Center, Caring Works, Hope through Divine Intervention, Community Friendship, St. Jude's Recovery Services and the Positive Outlook Foundation, to provide supportive services.

## Tax Allocation Districts

### Spurring Commercial and Residential Redevelopment and Property Values

TADs are the City's #1 revitalization tool. Within the City of Atlanta there are currently ten TADs: five operated by ADA, one operated by Atlanta BeltLine, Inc. and four that have been recently created but are not yet operational (these are pending APS participation, expected in early 2008, and would also be operated by ADA). The City's ten TADs comprise more than 15,000 acres of geography and about \$7.3 billion in property value. The participation of Atlanta Public Schools and Fulton County, in the form of tax increments, has been integral to the success of the TADs.



Citywide, property values increased 8% annually, based on a 3-year average. Of the \$16 billion in growth in property value in the City, 25%, or about \$4 billion, has occurred within the first six TADs.

Each TAD was formerly a slow or no-growth area. Given that they represent 10% of the City's tax base, the fact that they generated 25% of the City's growth over the past three years is a testament to their economic development effectiveness.

#### Featured 2007 Project

We celebrated numerous openings of TAD funded projects in 2007. The opening of one of downtown's longest anticipated redevelopments is highlighted below:

The Ellis, at 176 Peachtree Street (in the Westside TAD), opened its doors to guests in early October. The property was vacant for more than 30 years, having originally opened as the Winecoff Hotel in 1913 – the site of a tragic 1946 fire that prompted the establishment and enforcement of U.S. safety and fire codes. The recent \$23 million renovation included \$3 million in TAD funds that restored the building to its former grandeur as an upscale boutique hotel.

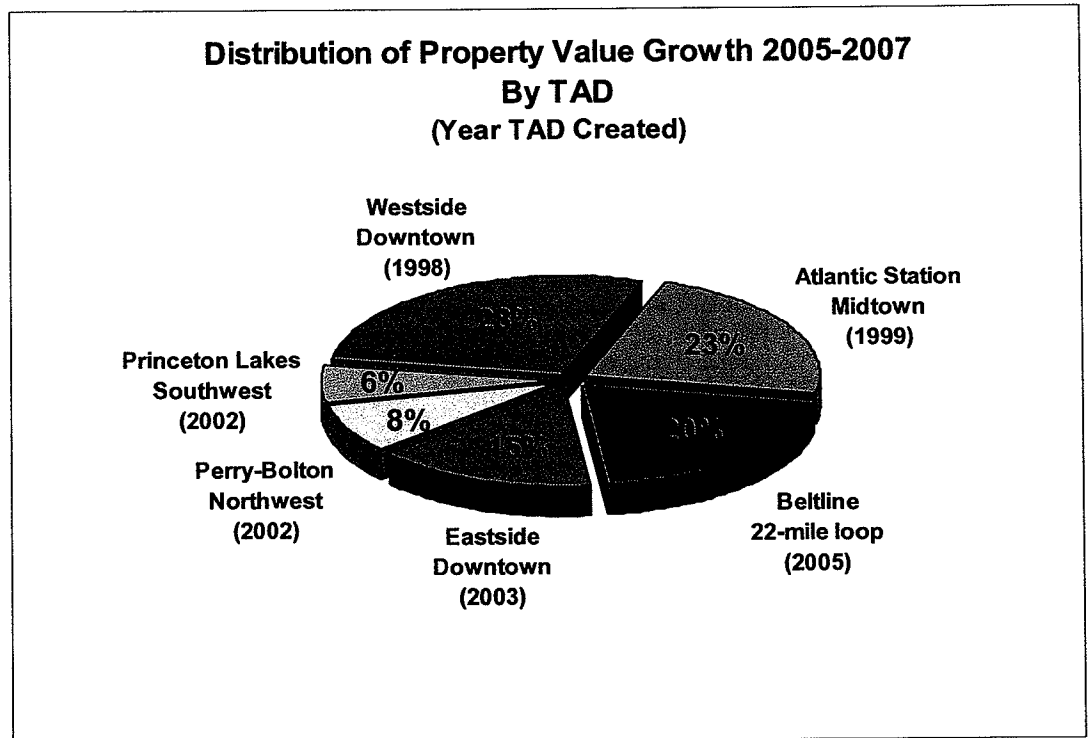
#### Two publications released in 2007 reported Atlanta's effectiveness in implementing the TADs:

- "Tax Increment Financing Best Practices Reference Guide", jointly released in November by International Council of Shopping Centers and the Council for Development Finance Agencies. ADA was a significant contributor to the development of this publication, distributed nationally.
- Livable Communities Coalition Report: "Survey and Analysis of Tax Allocation Districts (TADs) in Georgia - The First 8 Years". An independent third-party evaluation of the financial performance of TADs and their effectiveness as a redevelopment tool. Cited Atlanta as having performed well and issued 92% of all TAD bonds in the state.

A link to both publications is available on ADA's website.

As the City's redevelopment agent, ADA has managed six TAD bond issues totaling \$410 million since 2001. The underlying 24 projects leveraged private direct investment in excess of \$2.8 billion and resulted in:

- 2 million square feet of office space
- 2.2 million square feet of retail and entertainment space
- 8,000 residential units (23% affordable)
- 3,300 estimated construction jobs
- 680 hotel rooms
- Redevelopment of three historic properties
- First new Auburn Avenue development in 30 years
- Redevelopment of former AHA housing project
- Establishing a Public Purpose fund for the Westside TAD



In addition to significant progress at Perry-Bolton, ADA has paved the way for the 2008 Westside TAD bond issue. This offering is expected to provide over \$100 million in incentive gap funding for up to 15 new projects. As a result, downtown Atlanta is primed to add 2,000 housing units, 900 hotel rooms, 700,000 square feet of office space and 250,000 square feet of retail space, representing new investment of more than \$1.2 billion.

For a more in-depth look at TADs in the City of Atlanta, download the TAD Fourth Quarter 2007 report from ADA's website.

## **Entrepreneurship and Global Commerce**

### **Increasing Job Growth**

ADA aggressively works to help existing businesses grow and to attract new employers to the City. The goal in the New Century Economic Development Plan is to increase jobs in the City at an annual rate of 2.7%, on par with the metro region. This goal was aggressive in contrast to the City's average annual job growth of 1% to 1.5% in the 1990s. From 2005 to 2007, the quarterly Census reports that the City's job growth has averaged 2% each year, a welcome improvement. However, during this period, the 28-county metro region has grown faster, at 3.6% each year.

Working closely with our economic development partners at the state, the Metro Atlanta Chamber of Commerce, Georgia Power and Central Atlanta Progress, the City was successful in landing five major company relocations and expansions, creating over 2,000 jobs. The most significant are:

- Wipro Technologies of India, the #1 global IT service provider, which will establish its first North American development center in the City, creating 1,000 jobs
- Quality Tech, which purchased an existing building in the English Avenue neighborhood that was converted to a one-million square foot data center with a value of \$80 million – now one of the largest data centers in the Southeast
- Cousins Properties, a national commercial developer that relocated its headquarters from Cobb County to downtown, bringing 175 jobs into the City
- Invesco, a financial services firm that moved its global headquarters from London to Midtown and will create 150 jobs over the next several years
- Legal Sea Foods, a well known Boston-based restaurant chain, will open its first restaurant in Atlanta, creating 100 jobs

ADA participated in major industry tradeshow and missions such as:

- An international business development trip with our economic development partners at the Metro Atlanta Chamber of Commerce to Amsterdam, London, Manchester and Brussels
- The spring conference of the International Council of Shopping Centers in Las Vegas, the premier retail development and leasing conference that attracts 45,000 retailers and developers
- BIO 2007 in Boston, the largest global conference of researchers, life science companies and venture capitalists
- Inner City Economic Forum in Philadelphia, which attracts financial investors committed to inner cities in the U.S., sponsored by the Initiative for a Competitive Inner City
- CoreNet Global in Atlanta, hosting 1,200 site selection consultants and corporate real estate executives

ADA issued tax exempt bonds for 501(C)(3) entities to finance three economic development projects:

- The first building in the Georgia State University Science Park, a new 215,000 square foot research and teaching facility in downtown, financed for \$91 million
- The \$58 million acquisition by GSU of SunTrust Plaza in downtown, to be converted into university offices and an incubator for life science companies
- An expansion of the Atlanta Botanical Gardens, financing a new visitors' center, parking garage and garden improvements amounting to \$45 million

To support the growth of small businesses in the City, ADA administers four small business loan programs. Working closely with our external credit review committee we more than tripled our loan activity from recent years in 2007, funding approximately \$1.4 million in loans to small businesses across the City. The following businesses opened as a result:

- Dynamic Dish (an organic grocery and restaurant), Edgewood Avenue - Sweet Auburn
- Azul Day Spa, Bill Kennedy Way
- New Deal Services (an automotive company), Metropolitan Avenue
- Like a River Salon & Spa, Highland Avenue
- West Peachtree Bakery, Allen Plaza
- JC Mets (a dental practice), Martin Luther King, Jr. Drive

## **Real Estate Activity** **Supporting Economic Development**

**Downtown Parking:** The new 850-space Government Center parking deck on Central Avenue opened in December 2007 to serve the downtown community. ADA financed the \$23 million project and managed the construction. This project, on the drawing board since 1978, was completed on schedule and under budget.

**Selling of Cascade Parc:** Cascade Parc was started in 2004 as joint venture between ADA's Urban Residential Finance Authority and Sharon McSwain Homes. The 331-unit master-planned community consists of for-sale single family homes and townhomes. As of October 2007, 129 townhomes and 82 single family homes had been sold. Sharon McSwain Homes purchased URFA's share of Cascade Parc in November 2007.

**Park Place South:** An in-town neighborhood across from Lakewood Fairgrounds, Park Place South is a planned community of condominiums, town homes and single-family cluster homes, and 100 senior rental units. Despite a challenging real estate market, ADA was successful in selling 18 condominiums and 10 single family homes in 2007.

**Southside Industrial Park:** ADA is working closely with our economic development partners at Hartsfield-Jackson Atlanta International Airport and the Atlanta Housing Authority to jumpstart industrial job growth and development in and around Southside Industrial Park. In 2007, ADA structured a multi-parcel land sale to a nationally known industrial developer that is scheduled to close in 2008. ADA is focused on selling all its developable land in SIP to industrial developers in 2008, which will lead to the addition of 1,700 new distribution jobs.

**Center for Civil and Human Rights (CCHR):** ADA is an active member of the CCHR Partnership, working closely with Central Atlanta Progress and the mayor's office to undertake redevelopment activities pursuant to a late 2008 groundbreaking. The Center will commemorate the important contributions of Atlantans and Georgians to the historic struggle for African-American freedom and equality, and also serve as a place for ongoing dialogue, study and resolution of current human rights issues. With opening targeted for 2010, 2007 activities were focused on organization and infrastructure, economic feasibility and fiscal impact, content development, and archives and article collection.

ADA is focused on marketing and promoting the City of Atlanta. In 2007, we:

- Provided an operating grant to Brand Atlanta, an economic development initiative focused on increasing the number of visitors to Atlanta and driving the economic growth of our hospitality and tourism industry. In 2007, Brand Atlanta refocused its approach from a national branding campaign to a marketing campaign in major U.S. markets. The campaign message will promote Atlanta as one of the nation's capitals of culinary excellence, legendary shopping, award-winning theater, world-class art and fabulous festivals, which can be enjoyed in an environment of southern warmth and hospitality.
- Directly pitched or contributed to 25 positive, nationally published print news stories
- Increased Pulse of Progress circulation from 12,000 to 20,000 with 40% of readers located out of state. Pulse is a monthly newsletter centered on economic development results in the City
- Launched new e-newsletter, *Invest Atlanta*, specifically targeting site selection consultants working on corporate relocations
- Developed [www.AtlantaEmergingMarkets.com](http://www.AtlantaEmergingMarkets.com), designed to promote real estate opportunities in lesser known parts of Atlanta, with a special focus on the City's anticipated four new commercial revitalization TADs – Campbellton Road, the Stadium Area, Metropolitan Parkway and Hollowell Parkway/Martin Luther King Jr. Drive.
- Fielded an estimated 4,800 phone calls about the HOME Atlanta program since it began in May
- Hosted Housing Opportunity Bond Information Days for more than 50 multifamily developers and community housing development organizations
- Gave more than 65 external presentations about ADA programs
- Hosted 200 prospective entrepreneurs at monthly small business information seminars
- Made 35 personal visits to and tours of businesses
- Met with almost 20 international delegations to build economic development relationships
- Completed compliance audits on 45 multifamily bond properties
- Worked with 70 qualified business relocation prospects
- Increased the number of unique web visitors from 19,000 to 30,000 per month



**Atlanta Development Authority**

**86 Pryor Street SW, Suite 300 | Atlanta, GA 30303**

**Phone 404.880.4100**

**Fax 404.880.9333**

**[www.atlantada.com](http://www.atlantada.com)**

IN THE SUPERIOR COURT OF FULTON COUNTY  
STATE OF GEORGIA

FRIENDS OF PIEDMONT PARK, INC., and	)	
DOUGLAS L. ABRAMSON,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	CIVIL ACTION NO.:
	)	2007CV128242
ATLANTA BOTANICAL GARDEN, INC.,	)	
THE CITY OF ATLANTA, AND PIEDMONT	)	
PARK CONSERVANCY, INC.,	)	
	)	
Defendants.	)	

**CERTIFICATE OF SERVICE**

This is to certify that I have this day served the foregoing **BRIEF OF AMICI CURIAE**  
**IN OPPOSITION TO MOTION OF ATLANTA BOTANICAL GARDEN FOR AWARD**  
**OF ATTORNEYS' FEES** upon all parties by First Class United States Mail addressed as  
follows:

Michael V. Coleman  
[mcoleman@lordbissell.com](mailto:mcoleman@lordbissell.com)  
J. David Hopkins  
[dhopkins@lordbissell.com](mailto:dhopkins@lordbissell.com)  
John F. Kane  
[jkane@lordbissell.com](mailto:jkane@lordbissell.com)  
Lord, Bissell & Brook LLP  
1170 Peachtree Street, Suite 1900  
Atlanta, GA 30309

Harry L. Cashin, Jr.  
[hcashin@wbilegal.com](mailto:hcashin@wbilegal.com)  
Wilson Brock & Irby LLC  
Suite 700 Overlook I  
2849 Paces Ferry Road  
Atlanta, GA 30339

Susan M. Garrett  
[susangarrett@mindspring.com](mailto:susangarrett@mindspring.com)  
1439 McLendon Drive, Suite A  
Decatur, GA 30033

William J. Cobb  
[wmcobb@cobbgardner.com](mailto:wmcobb@cobbgardner.com)  
Cobb & Gardner, LLP  
755 Commerce Drive, Suite 800  
Decatur, GA 30030

Laura Broward  
[lbroward@atlantaga.gov](mailto:lbroward@atlantaga.gov)  
City of Atlanta  
City Hall Tower, Suite 4100  
68 Mitchell Street, S.W.  
Atlanta, GA 30303

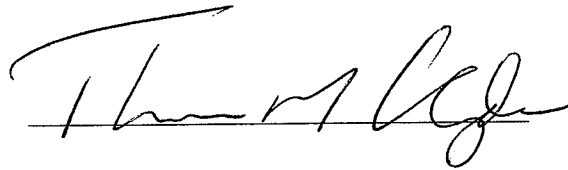
Neal J. Sweeney  
[nsweeney@kilpatrickstockton.com](mailto:nsweeney@kilpatrickstockton.com)  
Kilpatrick Stockton LLP  
1100 Peachtree Street, N.E.  
Suite 2800  
Atlanta, GA 30309-4530

John G. Parker  
[johnparker@paulhastings.com](mailto:johnparker@paulhastings.com)  
Paul, Hastings, Janofsky & Walker LLP  
600 Peachtree Street, N.E., Suite 2400  
Atlanta, GA 30308-2222

Lawrence Ashe  
[lawrenceashe@asherafuse.com](mailto:lawrenceashe@asherafuse.com)  
Ashe, Rafuse & Hill, LLP  
1355 Peachtree Street, N.E.  
Suite 500, South Tower  
Atlanta, GA 30309-3232

Jeffrey O. Bramlett  
[bramlett@bmelaw.com](mailto:bramlett@bmelaw.com)  
Jason J. Carter  
[carter@bmelaw.com](mailto:carter@bmelaw.com)  
Bondurant, Mixson & Elmore  
1201 W. Peachtree Street  
Suite 3900  
Atlanta, Georgia 30309-3417  
(404) 881-4192

DATED this the 20th day of May, 2008.

A handwritten signature in black ink, appearing to read "Lawrence Ashe", written over a horizontal line.