

# Fulton County Taxpayers Foundation

Non-Profit Advocate Of Lower Property Taxes In Atlanta/Fulton County

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January 2009

## Atlanta/Fulton County Tax Dollars Subsidize The Most Luxurious Private Developments in Atlanta!



**St. Regis  
Buckhead**



**Terminus  
Buckhead**



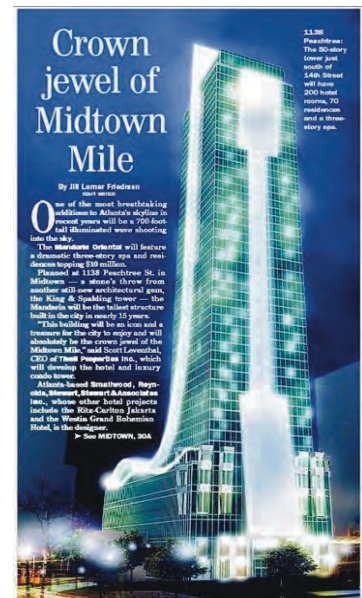
**Intercontinental  
Buckhead**



**3344 Peachtree  
Buckhead**



**The Mansion  
Buckhead**



**Mandarin Oriental Hotel  
Midtown**

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# City / County Taxpayers Subsidizing The Most Luxurious Private Developments In Atlanta!

## The Problem

Research reveals that City/County taxpayers are subsidizing the most luxurious private developments in Buckhead, Midtown and Downtown with extraordinary financing and tax concessions. These developments include The St. Regis Buckhead, The InterContinental Buckhead, The Mansion Buckhead, 3344 Peachtree Buckhead, Terminus Buckhead, The Mandarin Oriental Midtown, 55 Allen Plaza, Downtown, and many, many more super-deluxe projects.

According to a member of the Board of the Development Authority of Fulton County: "The more tax breaks the Board approves, the greater the tax burden on Fulton County's businesses and homeowners." The records show the Development Authority of Fulton County together with the City of Atlanta Development Authority approved of over \$5 billion in bond deals during the past three years alone for the most luxurious buildings in this City.

## How Is This Done?

The developers convey title to their sites to the Development Authorities and the Authorities, in turn, issue bonds and apply for the property tax concessions. The developers lease back their sites and many developers use the bonds as collateral for financing the projects. The tax concessions include a ten year tax relief plan, half the normal property tax for the first year, then 5% more each year until the end of year ten. The financing and tax concessions are subsidized by the taxpayers of Atlanta and Fulton County. Yet, the bond raising and tax incentives – with exceptions - are in accordance with State Law (OCGA 36-62-3).

Many of the so-called bond transactions taking place in Fulton County are not real financing transactions at all. In these cases, the developer, who is the lessee under the sale-leaseback transaction with the Development Authority, is also the buyer of the bonds. There is not a real third-party financing transaction involved. For this reason, these transactions are commonly referred to as "Phantom Bond" transactions. The sole purpose of "Phantom Bond" transactions is to give a property tax exemption to the developer. According to a member of the Development Authority, the developer has the right to repurchase the fee interest from the Development Authority at any time for a very nominal price, such as \$1.00!

## What Is The Background Of These Subsidies?

The initial program was passed by the State Legislature in 1963 to encourage development of blighted areas and to attract new industries and jobs. As far back as July 13, 2007, the Atlanta Business Chronicle – in an article by Ryan Mahoney - warned of a serious problem: "The Development Board attorneys who vet the deals are paid by the companies that petition for financing, not by the Board itself – and cannot collect their fee unless a deal is approved. That offers little incentive to weed out bad deals. The Development Authority of Fulton County is poorly managed and approves nearly every deal its attorneys recommend."

According to the records, since 2007, the City & County Development Authorities have issued more bonds and tax concessions – for luxury properties – than in all previous years.

Here is the comment of an Atlanta attorney familiar with the Development Authorities Law:

“Even more alarming is the fact that many of the recently-approved bonds are not actually authorized under the State Statute governing most local Development Authorities, that State Law being known as the Development Authorities Law (OCGA 36-62-1 et seq.). For example, under the Development Authorities Law, most office developments are not authorized ‘projects’ except where the developer is the prime tenant of the building (such as a corporate headquarters). Even with those relatively few authorized office ‘projects’, the tax exemption incentive is made expressly unavailable by the language of the statute. Moreover, in accordance with OCGA 36-62-2(H)(vi), a hotel facility is not an authorized ‘project’ unless the hotel is connected to a convention, sports or trade show facility.”

## **What Is The “Justification” For These Subsidies?**

In 2008, to attract new industries and jobs, the State Legislature renewed previous legislation (OCGA 36-62-1, et seq.) to grant Development Authorities unusual powers:

“Each authority created by this chapter is created for non-profit and public purposes, and the creation of each authority is in all respects for the benefit of the people of this State. For such reasons, the State covenants with the holders of the bonds issued under this chapter that such authority shall be required to pay no taxes or assessments imposed by the State or any of its counties, municipal corporations or taxing districts upon any property acquired by the authority.”

In 1981, the Georgia Supreme Court ruled (Citation 245GA277, The Harris Case) that sale leaseback tax concessions were legal provided the leaseholds were assessed fairly and reasonably. The Supreme Court ruling requires that the sites be legally transferred to the local Development Authority. The Development Authority, in turn, approves issuing bonds and the developers lease back the sites, selling the bonds or using them as collateral for financing. In addition, the Supreme Court ruling allows for property tax concessions to leaseholder developers in accordance with OCGA 36-62-3.

The Fulton County Taxpayers Foundation is strongly in favor of assisting development in depressed areas of the State, sites which would not get built upon otherwise. However, the Taxpayers Foundation questions the use of taxpayer dollars to subsidize super-luxury projects.

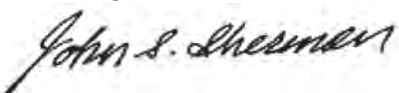
## **What Could Be Done To Correct This Situation?**

In fairness to the taxpayers of Atlanta, Fulton County and the State of Georgia, the Fulton County Taxpayers Foundation urges the General Assembly to amend the Development Authorities Law to include the following:

1. The deletion of OCGA Section 36-62-2(6)(N) in its entirety. This simple amendment would rectify a substantial portion of the existing and ongoing abuses of the Development Authorities Law.
2. Provide independent, professional oversight of the Development Authorities.
3. Require that each Development Authority employ its own attorney whose primary client should be the taxpayers.
4. Allow for public scrutiny.
5. Order a State investigation of the Development Authority of Fulton County and the City of Atlanta Development Authority.

**Taxpayers should not be subsidizing super-luxury projects – particularly during the worst financial crisis since the Great Depression of 1929. In the best interests of the taxpayers in Atlanta, Fulton County and the State of Georgia, email or phone these Senate & House leaders TODAY!**

Kind regards,



John S. Sherman

**The Fulton County Taxpayers Foundation plans to publish the response of the Development Authority in our next Newsletter**

**CONTACT THESE LEGISLATIVE LEADERS URGING CHANGES IN THE LAW**

With the next session of the General Assembly convening in January 2009, this is the perfect moment to email or phone the Senate and House leaders.

**Senate Leaders:**

Lt. Gov. Casey Cagle,  
President of the Senate,  
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(404) 656-5030

Senator Eric Johnson,  
President Pro Tempore,  
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Senator Tommie Williams,  
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Senator Dan Moody,  
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**House Leaders:**

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Representative Mark Burkhalter,  
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Representative Jerry Keen,  
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Representative Jay Roberts,  
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Representative Austin Scott,  
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Representative Earl Ehrhart,  
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to Atlanta and Fulton County***

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In addition, I enclose a tax-deductible contribution of: \$100 \_\_\_\_\_ \$500 \_\_\_\_\_ Other \_\_\_\_\_

If you prefer, you can charge you membership or donation online at [www.fctf.org](http://www.fctf.org)

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