

# **Bond Case Briefs**

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## **BOND VALIDATION - GEORGIA**

### **Franzen v. Downtown Development Authority of Atlanta**

**Supreme Court of Georgia - June 29, 2020 - S.E.2d - 2020 WL 3580156**

On July 14, 2010, the City of Atlanta designated a 150-acre parcel know as “The Gulch” as an Urban Redevelopment Area pursuant to the Urban Redevelopment Law. The City further designated The Gulch redevelopment area to be an “enterprise zone” under the Enterprise Zone Employment Act. The City intended to convert The Gulch into a live/work development.

The financing structure put in place to finance the redevelopment was summarized by the court as follows:

“To summarize in the simplest manner: (1) the Development Authority will issue revenue bonds in incremental amounts tied to progress in redevelopment of The Gulch enterprise zone; (2) the revenue bonds will be available only to the Developer, who will earn the bonds with development and construction work completed within The Gulch using the Developer’s own money; (3) the debt service for the bonds will be funded exclusively by infrastructure fees; (4) the City will collect these infrastructure fees from businesses within The Gulch and pass them along to the Development Authority for payment of the bonds; and (5) the Developer has certain strictly limited rights to enforce the transfer of collected infrastructure fees, but has no right whatsoever to any other funds of the public entities involved in The Gulch project.”

A bond validation hearing was set for December 10, 2018. On the morning of the hearing, Intervenor moved to intervene and filed an answer to the Development Authority’s petition for validation. The Intervenor’s filing contained nine objections.

(a) Citing OCGA § 36-82-77 (a), the Intervenor contend that the trial court erred by failing to hold a wholly separate hearing for the purpose of considering their nine timely objections to the bond validation petition.

The court held that, pursuant to OCGA § 36-82-77 (a), a thorough hearing was conducted in which Intervenor participated and presented evidence. There exists no right to an separate, independent hearing.

(b) The Intervenor next argue that the trial court erred in its determination that additional objections to the bond validation filed by them after the first full day of hearings on December 10, were untimely.

The court found that, because the Intervenor were allowed to intervene at the first bond validation hearing on December 10, the Intervenor could only amend their pleadings after that date to add objections if granted leave to do so by the trial court. The trial court found that the Intervenor’s amendments were untimely, and did not allow them to be filed. This was not an abuse of the trial

court's broad discretion.

(c) The Intervenor next contend that the trial court failed to make legally adequate findings of fact and conclusions of law as to whether the bond proposal and its corresponding security provided by infrastructure fees are sound, feasible, and reasonable.

"To the contrary, even in the trial court's isolated conclusion cited above, the court expressly explained that it relied on "evidence adduced at the hearing, including the fact that the bonds will be issued only upon proof of work completed and expenditures made[.]" And, during the three days of hearings, extensive evidence was, in fact, presented regarding the mechanics of the bond financing structure, which is included in the record and discussed in the trial court's lengthy orders. Therefore, contrary to the Intervenor's contentions, there is a clear statement of the trial court's reasoning, and there is a sufficient basis on which this Court can assess that conclusion."

(d) Citing Article IX, Section II, Paragraph VII (c) of the Georgia Constitution of 1983,<sup>22</sup> the Intervenor maintain that the trial court incorrectly held that the intergovernmental agreement between the City and the Development Authority is lawful. Specifically, the Intervenor contend that the City lacks the authority to perform its obligations under the IGA.

"To qualify as a valid intergovernmental contract, an agreement must: (1) be a contract between political subdivisions of the state; (2) not last for more than 50 years; (3) be "for joint services, for the provision of services, or for the joint or separate use of facilities or equipment;" and (4) "deal with activities, services, or facilities which the contracting parties are authorized by law to undertake or provide." Intervenor contend that requirement (4) has not been met, contending that the City is not authorized to assess infrastructure fees and provide them as payment for the Bonds.

The court disagreed, citing OCGA § 36-88-6 (g) (4) which explicitly provides:

"By resolution or ordinance, the local governing body designating and creating an enterprise zone under this subsection may assess and collect annual enterprise zone infrastructure fees from each retailer operating within the boundaries of the project in an amount not to exceed, in aggregate, the amount of sales and use tax on transactions of such retailer exempted under paragraph (2) of this subsection, which fees may be pledged by such local governing body, directly or indirectly, as security for revenue bonds issued for development or infrastructure within the enterprise zone."

(e) The Intervenor contend that the imposition of infrastructure fees under the Enterprise Zone Employment Act violated Article IX, Section II, Paragraph VII (c)<sup>30</sup> of the Georgia Constitution, the "Community Redevelopment Provision." The Intervenor maintained that a municipality may be authorized to levy infrastructure fees only pursuant to that provision, which authorizes the General Assembly to enact general laws allowing the creation of enterprise zones and tax exemptions therein for certain qualifying businesses.

The trial court rejected this argument, finding that the Community Redevelopment Provision was not an exclusive grant of legislative authority. To the contrary, the trial court recognized that the General Assembly has the power to authorize municipalities to levy fees under Article III, Section VI, Paragraph I, which gives the legislature "the power to make all laws not inconsistent with this Constitution ... which it shall deem necessary and proper for the welfare of the state." The trial court further held that nothing in the Community Redevelopment Provision in any way prohibits, precludes, or limits the exercise of such powers. Thus, the Intervenor failed to show a "clear and palpable" conflict between the statute and the Constitution, as would be required to overcome the presumption that there was a proper exercise of plenary legislative power

(f) The Intervenor next contended that the 2017 Enterprise Zone Amendment is unconstitutional because it allows an “area-wide tax exemption” that exceeds the authority granted in the Community Redevelopment Provision. Essentially, the Intervenor appeared to be arguing that the 2017 Amendment completely omits the requirement that exemptions be tied to qualifying businesses and service enterprises.

The court held that the Community Redevelopment Provision, Article IX, Section II, Paragraph VII (c) of the 1983 Georgia Constitution, authorizes the General Assembly to provide for the creation of enterprise zones allowing for “exemptions, credits, or reductions of any tax or taxes levied in such zones by state, a county, or a municipality.” These exemptions may be given to “such persons, firms, or corporations which create job opportunities within the enterprise zone for unemployed, low, and moderate income persons in accordance with the standards set forth in such general law.”

(f) [sic] The Intervenor argued that the bond issuance is not sound, feasible, and reasonable because projected infrastructure fee revenues are inadequate to secure Bonds in an amount of \$1.25 billion.

This argument, however, does not account for the incremental nature of the financing scheme, and therefore lacks merit. To validate the bond proposal in this case, the trial court was not required to find that \$633 million of infrastructure fees over a 30-year period, as conservatively projected by the Development Authority’s experts, would service bonds in the possible principal amount of \$1.25 billion. The Bonds are “draw-down” bonds that will be issued only if sufficient infrastructure fees are projected to service the bonds. So, if only \$633 million of infrastructure fees are projected to be generated by The Gulch, only an amount of Bonds that may be adequately serviced by that amount of fees will be issued.