

March, 2007

A Pedestrian Transit Mall on Peachtree? How History, Policy, and Legislation Can Recreate A Proud Town

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Project Paper

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I. Introduction

Atlanta, once a city confined by how far one could walk or go by horse and buggy, experienced a drastic change in its footprint during the 20th century. The former urban core of homes and businesses is now a region spread out over more than ten counties. What caused such a shift in the way Atlanta grew? The automobile is the answer. Although the automobile gave a new sense of independence to the average American, auto-oriented development destroyed the densely developed communities that offered residents everything necessary for daily life. In turn, auto-oriented development spread out those amenities over distances that one could only traverse by car. Unfortunately, popular opinion also promoted the destruction of streetcar lines that served Atlanta's urban area. By tracing the rise and fall of the streetcar in Atlanta's history, perhaps city officials all over can avoid again making the mistakes that create an environment hostile to pedestrians and mass transit.

Along with the re-awakening of city centers over the nation, many planners, businessmen, and general citizens alike are trying to recreate the close-knit lives people once lived. Part of this effort includes a resurgence in dedicated-lane street transit systems and development along these lines that encourages people to live in close-proximity to their jobs and retail needs. Denver, Colorado's 16th Street Mall is one example of the way a city can refocus its energy to assist pedestrians and city residents alike. By shutting down a city street to all but pedestrian and transit traffic, the metropolis reinvigorated popular interest in real urban living and spurred billions of dollars in new development inside the city's core.

This paper will show how Atlanta's past identity as a streetcar town can reemerge in the 21st century to sustain the lives urban residents used to lead. Atlanta can utilize a new development pattern to lessen its dependency on the private automobile, and to enhance the efficiency of its current road systems. Simply put, by no longer making cars a necessity in a densely developed part of the city, those who are non-resident car drivers will compete less for space on the city's roads. By comparing the methods for financing, construction, and maintenance of a transit-only retail corridor in Denver with the prospects for a similar development in Atlanta, this paper attempts to foster discussion among urban representatives in

broadening Atlanta's Peachtree Streetcar plan to include an area of transit-only retail and residential development.

II. The Beginning

In 1837, Atlanta was known as Terminus. It came into being because the Georgia State legislature chartered the Western & Atlantic Railroad to join the Tennessee and Chattahoochee Rivers. Since surveyors could not locate an appropriate plot of land on the banks of the Chattahoochee, they extended the new railroad's southern point to the southwest, where the tracks between the Spring Street viaduct and the Magnolia Street bridge currently exist.¹

Atlanta was never intended to blossom into the capital of the South. That honor was to remain for one of the port cities, like Charleston, Savannah, Wilmington, or the quasi-Southern New Orleans. But, what Atlanta had going for it was the convergance of many railroad lines that snaked over the humid terrain. It was at this meeting point that merchants decided where to send their goods. Status-wise, the upper class and landed gentry never considered Atlanta as refined as the above-mentioned coastal towns. Some saw it as downright dirty.

As a city dependent on the railway, and not a body of water, Atlanta's identity was intertwined with and scuffed by the transients it hosted. However, after the Civil War altered

¹ O.E. CARSON, THE TROLLEY TITANS 1 (Interurban Press 1981).

the way of life to which most gentry were accustomed, people had to look to other means of living. Time has proven that Atlanta was lucky to be dependant on retail and trade in contrast to other agrarian societies that scrambled to deal with the abolition of slavery.

In 1843, the city's first name, Terminus, gave way to Marthasville, named for the daughter of ex-Governor Wilson Lumpkin, who had been a supporter of the Western & Atlantic Railroad's creation. In 1845, Marthasville officially became Atlanta, the feminized version of Atlantic², harkening back to the town's lifeblood railroad.

In 1871, Atlanta, the railroad town, initiated its first trolley system. Richard Peters and George W. Adair, real estate developers, created the Atlanta Street Railway Co., which was the city's first animal-powered street railway line. The line ran from the intersection of Mitchell and Forsyth [currently downtown] to the McPherson Barracks [currently the entrance to Spelman College].³ Carrying riders from their grandiose homes or humble tenements to the dry goods store, local saloon or church, the trolley expanded the city dweller's options beyond what they could reach by foot. By 1881, fingers of the trolley system reached two miles in the northeast to Ponce De Leon Avenue and

² *Id.*

³ *Id.* at 2-3.

two miles in the southwest to Gordon Street, and on April 11, 1891, a rail line began servicing Decatur, five miles to the east.⁴

In the early years of the street railway, the lines were operated by animal or steam engine. However, by 1894, the entirety of Atlanta's system had converted to electricity.⁵ Converting to electricity and the further electrification of homes and businesses gave publicly traded utility companies the incentive to operate and consolidate various rail and electric services. However, competition among these companies came before consolidation. "Between 1866 through 1889, the number of known companies [running electric rail lines in Atlanta] (including name changes), before the final merger in 1902, would total 36."⁶ By the United States Census of 1890, Atlanta's total trackage for the city center and suburbs was around 100 miles.⁷

Robert Carson, economist and expert on the public regulation of American railroads, writes, "In most American cities the street railroad era lasted between eighty and a hundred years, although the declining last decades of competition with bus, taxi and private auto were less than

⁴ *Id.* at 4, 10 & 11 [map].

⁵ *Id.* at 11.

⁶ *Id.* at 21.

⁷ *Id.* at 36-7.

illustrious.”⁸ Before the advent of the automobile, the streetcars and horse-drawn carriages were the only viable alternatives to traveling by foot. Looking at Atlanta when it functioned by rail, one can see that it was a city in the truest of terms: houses, apartment buildings, offices, and retail fronts coexisted much in the same way modern metropolises such as New York City, Chicago, and San Fransisco do today.

III. The Heyday

By 1902, the Georgia Railway & Electric Co. (“GR&E”) had acquired the Atlanta Railway & Power Co., the Atlanta Rapid Transit Co., the Georgia Electric Light Co., and the Atlanta Steam Co. All existing city railways were combined into one system that provided better light and power service, free transfers from one streetcar to another, fare stabilization, and renewed effort to extend transit into underserved areas of the city.⁹ What had been an ongoing feud between Atlanta’s streetcar giants, Joel Hurt and Henry Atkinson, now became the impetus for the city’s flowering into a model of streetcar transit.¹⁰

⁸ ROBERT B. CARSON, WHAT EVER HAPPENED TO THE TROLLEY? 1 (1978 University Press of America).

⁹ O.E. CARSON, *supra* note 1, at 53.

¹⁰ *Id.* at 43 (Interurban Press, 1981):

Unlike the past skirmishes fought by Hurt to protect the growing operational realm of the Atlanta Consolidated against the incursions of his enterprising competitors, the “Second Battle” was literally and economically a struggle for power in which every light switch and socket became a lucrative target. Its long-range objective was the ultimate control of Atlanta’s burgeoning electric industry which, even then, showed signs of spreading across Georgia and beyond. But in this “war of watts” (as it was also called), the street railroads still

From 1902 through 1911, the Atlanta streetcar system saw an unprecedented increase in ridership and public goodwill. Under the direction of Preston Arkwright, originator of GR&E's slogan "A Citizen Wherever We Serve,"¹¹ the number of yearly revenue passengers served rose from 23,417,000 (1903) to 46,000,000 (1908). Arkwright's strategy to appeal to public sentiment and his focus on ensuring passenger safety had paid off.¹²

By 1913, GR&E, now known as Georgia Railway & Power Co. ("GR&P"), had extended an interurban railway from the South Decatur line to Stone Mountain. Atlanta could boast 195 miles of streetcar lines.¹³

IV. The Decline

A. The Jitney

The jitney, otherwise known as the unregulated taxi, provided the most immediate threat to the survival of the Atlanta streetcar system. These nickel-fare autos appeared in Atlanta in 1915 and plagued the GR&P until 1925 when the Atlanta City Council finally legislated them out of existence. While transit companies were saddled with fare taxes and assessments

played their crucial role; they were the immediate means of attaining the long-range objective since, by a quirk of Georgia law at the time, street railroads still played their crucial role; they were the immediate means of attaining the long-range objective since, by a quirk of Georgia law at the time, street railroad companies were permitted to own and operate power plants for commercial purposes beyond their own needs while electric light companies were barred from the operation of streetcar lines.

¹¹ *Id.* at 58.

¹² *Id.* at 61.

¹³ *Id.* at 67.

to pave and maintain the city's streets, the jitneys poached the system's most traveled rail lines and left the less-traveled ones to be the streetcar's responsibility.¹⁴ O.E. Carson writes, "[I]t was estimated that in the early 1920s the jitneys "stole" from the streetcars at a rate fluctuating from \$1,500 to \$2,000 per day."¹⁵ Unfortunately, the jitney would only be a precursor to the ultimate effect the automobile industry would have on Atlanta and America's streetcar systems.

In Los Angeles, where the "jitney craze" had begun, the Los Angeles Railway was forced to lay off a hundred workers in its shops, cancel an ambitious car reconstruction program, halt all track extensions, and cancel its new carbuilding program. In 1915, the Railway's losses due to jitney poaching totaled around half a million dollars.¹⁶

B. Government Inaction

In addition to the jitney problem, the Atlanta City Council and Mayoral office were reluctant to assist GR&P and its streetcar system. The Council had passed a jitney ordinance that on its face meant to regulate the proliferation of their kind, but this law really didn't have an effect on helping GR&P to regain its lost ridership. The ordinance set minimal safety standards, prescribed routes, and established one-time vehicle

¹⁴ *Id.*

¹⁵ *Id.* at 77.

¹⁶ WILLIAM D. MIDDLETON, *THE TIME OF THE TROLLEY* 383 (Kalmbach Books 1975).

fees of \$75, \$100, and \$150 per vehicle for operation. Adding insult to injury, the Council "permitted jitneys to operate on any city street and increase their fares to 10 cents."¹⁷ Thus, the ordinance enabled the jitney craze more than regulated it. In 1919, after a year-long court battle with the City Council, GR&P was allowed to raise its intra-city fares by one penny to six cents.¹⁸ Atlanta's political powers were loathe to do anything that would be unpopular with their constituents, even if that meant the slow death of something everybody relied upon.

Although public sentiment may have been hostile to transit-electric utilities since many of them became monopolies, the inaction Atlanta government displayed had a much greater effect than frustrating the Company heads. What began to occur with the advent of the automobile was the decline of downtowns across the nation. By allowing the automobile to reign supreme on city streets, urban society began to change from public, bustling centers to insular, one-sided venues: places of business, but not places of living. Fighting against this change, other railways, such as the Eastern Massachusetts Street Railway, threatened to completely halt service in those cities where the government allowed the automobile (jitney) to operate unregulated.¹⁹

¹⁷ O.E. CARSON, *supra* note 1, at 73-4.

¹⁸ *Id.*

¹⁹ WILLIAM D. MIDDLETON, *supra* note 16, at 383.

In Atlanta, though, the GR&P had to compete alongside the unregulated jitneys for nearly ten years before the City Council abolished their operations in 1925. First, the GR&P had to show the Council that in 1922, the street railway had failed to reach its 8% return on investment by more than \$500,000, that the rate of return continued to fall into 1923, and that the company would no longer be able to maintain its current service. In addition, the John A. Beeler organization, at GR&P's expense, conducted a survey of Atlanta's transit utility that vindicated the Company's position on eliminating the jitney. In no uncertain terms, John A. Beeler informed the city that "it was obvious that the city's tardiness in evolving a definite city plan, coupled with the rapid and noteworthy growth in all phases of its life, was the underlying cause of the present acute situation."²⁰

Ultimately, litigation involving GR&P's ability to abandon money-losing rail lines forced the issue of competing jitney and bus services. In *Morris v. Atlanta Northern Railway Co.*,²¹ a gentleman who owned businesses in Marietta sued the Atlanta Northern Railway to stop the discontinuation of inter-urban railway service between Marietta and Atlanta. In the lower court, Atlanta Northern had shown that the line, in its 20 year

²⁰ O.E. CARSON, *supra* note 1, at 86.

²¹ 160 Ga. 775 (1925).

existence, had operated at a loss. Due to the advent of the jitney and bus services on a newly constructed road paralleling the interurban line, Atlanta Northern's losses were increasing at an alarming rate. The Georgia Supreme Court affirmed the lower court's denial of the plaintiff's application for a temporary injunction and prayer for the appointment of a receiver. It noted, quoting two United States Supreme Court cases:

The company, although devoting its property to the use of the public, does not do so irrevocably or absolutely, but on condition that the public shall supply sufficient traffic on a reasonable rate basis to yield a fair return. And if at any time it develops with reasonable certainty that future operation must be at a loss, the company may discontinue operation and get what it can out of the property by dismantling the road. To compel it to go on at a loss or to give up the salvage value would be to take its property without the just compensation which is a part of due process of law.²²

Not wanting to lose a mode of transit still valuable to the public, Marietta passed a protective municipal ordinance limiting the running of jitneys and buses along the parallel road.²³

On a national level, though, the crippling blow to the transit industry materialized: in 1935, Congress passed the Wheeler-Rayburn Act,²⁴ which made utilities break up into smaller

²² *Id.* at 781.

²³ O.E. CARSON, *supra* note 1, at 87.

²⁴ 15 U.S.C. §79k (b) (2006) Limitations on operations of holding company systems:

companies and shed themselves of all businesses that did not

It shall be the duty of the Commission, as soon as practicable after January 1, 1938:

(1) To require by order, after notice and opportunity for hearing, that each registered holding company, and each subsidiary company thereof, shall take such action as the Commission shall find necessary to limit the operations of the holding-company system of which such company is a part to a single integrated public-utility system, and to such other businesses as are reasonably incidental, or economically necessary or appropriate to the operations of such integrated public-utility system: Provided, however, That the Commission shall permit a registered holding company to continue to control one or more additional integrated public-utility systems, if, after notice and opportunity for hearing, it finds that—

(A) Each of such additional systems cannot be operated as an independent system without the loss of substantial economies which can be secured by the retention of control by such holding company of such system;

(B) All of such additional systems are located in one State, or in adjoining States, or in a contiguous foreign country; and

(C) The continued combination of such systems under the control of such holding company is not so large (considering the state of the art and the area or region affected) as to impair the advantages of localized management, efficient operation, or the effectiveness of regulation.

The Commission may permit as reasonably incidental, or economically necessary or appropriate to the operations of one or more integrated public-utility systems the retention of an interest in any business (other than the business of a public-utility company as such) which the Commission shall find necessary or appropriate in the public interest or for the protection of investors or consumers and not detrimental to the proper functioning of such system or systems.

(2) To require by order, after notice and opportunity for hearing, that each registered holding company, and each subsidiary company thereof, shall take such steps as the Commission shall find necessary to ensure that the corporate structure or continued existence of any company in the holding-company system does not unduly or unnecessarily complicate the structure, or unfairly or inequitably distribute voting power among security holders, of such holding-company system. In carrying out the provisions of this paragraph the Commission shall require each registered holding company (and any company in the same holding-company system with such holding company) to take such action as the Commission shall find necessary in order that such holding company shall cease to be a holding company with respect to each of its subsidiary companies which itself has a subsidiary company which is a holding company. Except for the purpose of fairly and equitably distributing voting power among the security holders of such company, nothing in this paragraph shall authorize the Commission to require any change in the corporate structure or existence of any company which is not a holding company, or of any company whose principal business is that of a public-utility company. The Commission may by order revoke or modify any order previously made under this subsection, if, after notice and opportunity for hearing, it finds that the conditions upon which the order was predicated do not exist. Any order made under this subsection shall be subject to judicial review as provided in section 79x of this title.

provide electric service.²⁵ Unfortunately, the trust-busting of electric-transit companies left the transit operation portions in financial ruins. For years, the public utility companies had supported the streetcar lines' financial health, filling in when ledgers were heading for red. Although it did not happen in Atlanta, a great number of streetcar lines were bought up by American auto manufacturers for pennies on the dollar. In return for buying up the lines, the auto-backed transit companies insisted on ripping out all existing streetcar rail and beginning bus service in their stead.²⁶

Although GR&P bought and incorporated a competing jitney bus operation in 1925,²⁷ it was not the usual victim of the automotive industry. Atlanta's transit system took a unique detour into the trackless trolley system before making the ultimate switch to diesel-powered buses. From 1937, when the East Point-College Park line was converted to trackless trolley (so that the state highway department could turn the streetcar private right-of-way into a public road) through 1949, Atlanta removed its steel tracks and replaced them with rubber-wheeled trolleys using renewed overhead electrical lines to quietly move along the streets.²⁸ The trackless trolleys, though, lived a

²⁵ STEPHEN B. GODDARD, *GETTING THERE: THE EPIC STRUGGLE BETWEEN ROAD AND RAIL IN THE AMERICAN CENTURY* 129 (University of Chicago Press 1996).

²⁶ STEPHEN B. GODDARD, *supra* note 25, at 129-132.

²⁷ O.E. CARSON, *supra* note 1, at 97.

²⁸ *Id.* at 101.

short life on Atlanta's streets. By 1963, Atlanta Transit (the next reincarnation of GR&P) was bowing down to public pressure to 'modernize.' O.E. Carson notes:

The one-way street was being touted (along with new expressways) as the latest solution to traffic congestion. This meant the expense of restringing quite a bit of overhead wire. The wire was considered ugly and incompatible with modern urban esthetics. Diesel buses emitted carbon monoxide, but the fumes escaped criticism...The nonpolluting wire, on the other hand, was painfully visible to those who mistook change for progress.²⁹

It is no wonder that the trolley never had a fighting chance against the encroaching automobile industry. By the mid-1960s Americans were spending nearly \$30 billion per year on new cars, and the federal government was spending \$8-10 billion on roads. The total amount spent on all mass transit during this same time was \$4.5 billion, with "almost nothing going to urban mass transit."³⁰

One little known fact is that the nation's road systems do not pay for themselves through automobile registration fees and gas taxes. In fact, these monies cover 60 percent of the \$53.3 billion that federal, state, and local governments spend on an annual basis for road construction and maintenance. As a result, drivers and nondrivers alike make up the remaining \$21.3 billion

²⁹ O.E. CARSON, *supra* note 1, at 154.

³⁰ ROBERT B. CARSON, *supra* note 8, at 2.

shortfall through state and local government taxes.³¹ One could say that the government is equally to blame as the automobile for the demise of mass transit because it has not clearly demonstrated the high cost of automobile-focused transportation. In addition, governments, such as Atlanta, failed to consider that they were reshaping the way society lives into a manner that polarizes and isolates individuals, rather than encourages them to participate in a community. Hopefully, newer generations of public-minded individuals will realize the mistakes their predecessors had made. That, some did. Denver, Colorado's citizenry is such an example.

V. 16th Street Mall in Denver Colorado

Physically, the 16th Street Mall spans 16 blocks, or 1-1/4 miles. With dedicated bus lanes in both directions, the center of the thoroughfare is filled with plantings, benches, and public art. The sidewalk areas are broad, clean and lined with attractive retail and restaurant options. Transit stations anchor both ends of the Mall, with Union Station and Civic Center Station on the northern and southern ends, respectively. The 16th Street Mall functions as the nerve center of the entire metro-Denver transit system. The Regional Transportation District ("RTD") is the regional transit authority that constructs and operates this transit system in the 6-county

³¹ STEPHEN B. GODDARD, *supra* note 25, at 251.

metropolitan Denver area. Cal Marsella, General Manager of RTD, notes, "The really neat part is we've built the entire transit system around that investment...So the rail system, Denver Union Station and all of our bus operations all integrate perfectly with the mall shuttle [MallRide]. So it's really coalesced as a well-coordinated system."³²

Richard Rost, project manager with RTD, joined the organization shortly after the city and County of Denver entered into an operating agreement with RTD to build and run the bus-only transit-way for the length of 16-blocks on 16th street in downtown Denver. The official name of the bus-only transit-way is the MallRide system. According to Mr. Rost, over the past twenty years, he has seen an enormous shift in the way Denver residents and developers view living in a metropolitan area. "The place [16th Street] is just going nuts with condo construction right now."³³

By signing the operating agreement with RTD, Denver benefited from RTD's experience in applying for federal funds for transportation projects. In this particular case, RTD received a grant from the Federal Transit Administration ("FTA") to support the pedestrian and transit-only mall; it built

³² Fred Jandt, *A Transportation Enterprise: Denver mass transportation isn't just a public service; it's a business*, MASS TRANSIT, 6/27/2006, available at <<http://www.masstransitmag.com/publication/article.jsp?pubId=1&id=915> (last visited 7/01/2006).

³³ Phone interview with Richard Rost, Project Manager with Denver Regional Transportation District (June 30, 2006).

compressed natural gas/electric hybrid buses with fiberglass bodies, and in October 1982 RTD instituted service on the thoroughfare which now garners an average daily ridership of 65,000 to 70,000 people.³⁴

According to Rost, implementing the plan was simpler than one would assume. Since 16th street is a city-owned street, the local government did not have to seek state permission to change the function of the road to a dedicated transitway. The intergovernmental agreement between the city of Denver and RTD specified that if RTD was to provide the bus service, the city would provide specialized police who patrol the area on horseback or bicycle.³⁵

Financially, the force supporting the everyday maintenance and cleaning of the 16th Street Mall is the Downtown Business Improvement District ("BID"), an organization consisting of commercial property owners lining and fanning out from 16th street, considered the spine of downtown Denver. In combination with RTD's delivery of transit service, the BID provides sidewalk sweeping, trash removal, graffiti removal, flower planting, landscaping, tree maintenance, snow removal and other services to keep the pedestrian-oriented developments attractive

³⁴ Fred Jandt, *supra* note 31.

³⁵ Phone interview with Richard Rost, *supra* note 32.

to tourists and residents alike.³⁶ Over 300 million riders have utilized the MallRide shuttle service since it began operation in 1982,³⁷ and according to a 2004 survey, the 16th Street Mall is the number one tourist destination in the metropolitan Denver area.³⁸

The crowning detail that makes the MallRide transit system so attractive is that it is free. Riders who come to downtown Denver and plan to spend their afternoon on the 16th Street Mall do not have to worry about constantly spending money to get from one end of the street to the other. In addition, since the MallRide buses run very frequently, up to every 70 seconds during peak periods, passengers who have used transit to get to the Mall do not have to wait for their "transfer" onto MallRide.³⁹ The switch is almost instantaneous.

In terms of pedestrian traffic, the 16th Street Mall outperforms the other nearby streets on a daily basis. According to the 2005 Pedestrian Count Map compiled by the Downtown Denver Partnership, the average number of pedestrians walking by static points in the 16th Street Mall was nearly twice the count of

³⁶ DOWNTOWN DENVER PARTNERSHIP, INC., *Business Improvement District*, at <
<http://www.downtowndenver.com/BID/BID.htm> (last visited July 1, 2006).

³⁷ THE REGIONAL TRANSPORTATION DISTRICT, *Free MallRide Shuttle Service*, at <
http://www.rtd-denver.com/Projects/Fact_Sheets/MallRide_Facts.pdf (last visited July 1, 2006).

³⁸ DOWNTOWN DENVER PARTNERSHIP, INC., *16th Street Mall*, at <
<http://www.downtowndenver.com/BID/BID16thStreetMall.htm> (last visited July 18, 2006).

³⁹ Fred Jandt, *supra* note 31.

those points measured off of 16th Street.⁴⁰ In addition, 16th street played no small part in spurring “over \$6 billion in investment with over \$2 billion in public investment” that has occurred in Downtown since 1990.⁴¹

As a functioning transit agency, Denver RTD is gaining a reputation for providing efficient and cost-effective service to the metro Denver area. As a result, in November 2004, the voters of the five-county area approved a referendum for an ambitious transit capital program, totaling 119 miles of new light rail and commuter rail, 18 miles of bus rapid transit, 21,000 new parking spaces and bus and rail stations, and expanded bus service in all areas.⁴² All of this transit development will tie into the 16th Street Mall.

Marsella attributes part of RTD’s success to the privatization of 48% of its transit fleet. “If you look at our costs per hour and compare it to the other transit properties, we’re very low because we’ve been able to get cheaper costs through the contractors, but also because we contain our internal costs. So I do think that we distinguish ourselves by having the best business model of most transit properties around

⁴⁰ See DOWNTOWN DENVER PARTNERSHIP, INC. *2005 Pedestrian Counts*, available at < <http://www.downtowndenver.com/pdfs/PedestrianCountMaps2005.pdf> (last visited July 18, 2006).

⁴¹ See DOWNTOWN DENVER PARTNERSHIP, INC. *Comprehensive Retail Prospect Package*, available at < http://www.downtowndenver.com/pdfs/Retail_Package06.pdf (last visited July 18, 2006).

⁴² THE REGIONAL TRANSPORTATION DISTRICT, *FasTracks Plans: Overview*, at <<http://www.rtd-denver.com/fastracks/> (last visited July 1, 2006).

the country.”⁴³ Marsella believes that RTD has been smart to divide this privatization over three fixed-route contractors and five paratransit contractors. The average cost difference between the privatized fleet (\$63.55 per hour) and the unionized fleet (\$85.00 per hour) is \$22.00 per hour, multiplied over the total number of buses run by a privatized fleet. In addition, these numbers do not include the cost of taxes (fuel, property and sales) and vehicle fees the private companies cover.⁴⁴ The diversification of RTD’s labor force proved itself essential in continuing basic transit service for the metro Denver area when the unionized RTD labor went on strike: RTD’s privatized forces were redeployed to keep 43 percent of the essential bus routes functioning during the strike.⁴⁵

RTD has set itself apart from other transit agencies by providing Denver with free and frequent transit service along the spine of its operations and diversifying its workforce so that no single entity can shut down operations. The city and metropolitan region of Atlanta could benefit from this business-like creativity.

V. A FreeRide and a Peachtree Mall: A synergy

A. The idea

⁴³ Fred Jandt, *supra* note 31.

⁴⁴ *Id.*

⁴⁵ *Id.*

Looking at Denver's 16th Street Mall operation, could Atlanta support a similar concept on its Peachtree Street thoroughfare? Where would this retail district go, and how would people move around on it? Would the state or a future regional transit authority⁴⁶ be interested in teaming up with the City to create an economic spine for the metro Atlanta region? Would the future regional transit district support Peachtree Street as the nerve center for a future complex of commuter rail, bus rapid transit ("BRT"), and lightrail spanning a 10-county region?

Although many other states (New York and Massachusetts) support the transit systems of their large metropolitan areas, the Georgia legislature has declined to lend any substantial financial assistance to local transit authorities, such as the Metropolitan Atlanta Regional Transit Authority ("MARTA"). In addition, the traffic congestion solutions proposed by the Georgia Regional Transportation Authority ("GRTA") are redundant and uncreative: add lanes and BRT lines.⁴⁷ According to GRTA's

⁴⁶ See 2005 MARTOC REPORT TO THE GENERAL ASSEMBLY, AS SUBMITTED BY JILL CHAMBERS, MARTOC CHAIRMAN, ON DECEMBER 29, 2005 available at <
<http://www.itsmarta.com/about/MARTOC/martoc%20report%202005.rtf> (last viewed July 8, 2006) ("Transit options in metro Atlanta are poised to grow. The Atlanta Regional Commission (ARC) invited Chairman Chambers to serve on their Transit Analysis Committee this year. Together with the metro counties and city of Atlanta, we formed a Transit Services Board that will work to combine all mass transit entities under one single agency. This Board will be able to apply for new federal funding to bring additional commuter buses and future rail expansion into the metro region. This is the first time in over 30 years that all of these parties worked together on transit planning.").

⁴⁷ See www.grta.org to explore what this organization may be up to. A word of caution: a large number of the announcements are out of date.

2003 Draft Concept Plan⁴⁸, which is the current blueprint for Metro Atlanta transit development, the authority refuses to advocate any rail-based transit solutions or extend current rail systems within the region. Unfortunately, the arterial road BRT projects that GRTA sees as “less costly and less intensive” may meet the same fate as Houston’s: the metro area has converted some of its BRT lanes to high occupancy vehicle lanes, which allow cars with two or more occupants; thus, commuters who pay to ride regional bus lines end up stuck in the same traffic they were trying to avoid in the first place.⁴⁹

Because Georgia’s Constitution ensures that the state government will have tight control over counties and municipalities,⁵⁰ local governments have limited means to improve or change the way people move from one location to another. That being said, how can Atlanta recreate its past, a time when people could live their lives without having to use a car? It must first create a model as an example. Looking back to *Morris*

⁴⁸ See GEORGIA REGIONAL TRANSPORTATION AUTHORITY, *Regional Transit Action Plan*, available at < http://www.grta.org/rtap/pdf_files/Executive_summary.pdf (last visited July 21, 2006).

⁴⁹ See UNITED STATES GENERAL ACCOUNTING OFFICE REPORT TO CONGRESSIONAL REQUESTERS, *Mass Transit: Bus Rapid Transit Shows Promise*, p. 5, at <<http://www.gao.gov/new.items/d01984.pdf> (last visited July 2, 2006). (“Los Angeles and Houston originally built part of their systems as exclusive busways and later converted them to HOV facilities.”)

⁵⁰ See GA. CONST. art. IX, §2. (Paragraph 1(c) explicitly limits counties and municipalities in adopting any new forms of taxation or eminent domain).

*v. Atlanta Northern Railway Co.*⁵¹, Atlanta may need to give transit a fighting chance.

B. The Model: Peachtree Mall: A Transit-Only Corridor from 14th Street to Trinity Street.

Upon inspection, Denver's 16th Street and Atlanta's Peachtree Street share some striking similarities. Both are famous streets in their regions. Both are typically four lanes wide. Both streets contain a large number of buildings with retail shop fronts located conveniently close to the sidewalk. In addition, developable land and minor structures along the stipulated portions of Peachtree Street are ripe for dense retail and residential growth. Denver's 16th Street was in the same condition ten years ago, but now it is nearing the point of being built out. One noticeable difference, though, is that Peachtree Street is a state route, whereas 16th Street belongs to the City of Denver.

Transit-wise, where 16th Street is 'book ended' by Union Station and Civic Center Station, Peachtree Street is serviced by the Arts Center MARTA Station on the northern end and the Five Points MARTA Station on the southern end. In addition, the city of Atlanta has off-and-on plans to construct a multi-modal

⁵¹ *Morris, supra* note 21. The Georgia Supreme Court ruled that the Atlanta Northern Railroad Company did not have to operate its rail line between Atlanta and Marietta at a loss. As a result, the Marietta City Council limited the competing bus and jitney service paralleling the Atlanta Northern's interurban line. City governments today may still institute similar solutions to drive people out of their cars and into transit.

passenger terminal (MMPT) conveniently close to Peachtree Street. Much in the same way Cal Marsella, RTD's General Manager, was derided for buying the Union Station property in Denver,⁵² many Atlanta officials have fought against Georgia state politicians and agencies to get the project off of the ground.

Atlanta must be prepared to deal with a state political bureaucracy that holds an overwhelming amount of power to slow down the progress of transit.⁵³ Most recently, a proposed Lovejoy-Atlanta commuter rail project (which would end at the MMPT) was placed in construction purgatory by Representative Ben Harbin's (R-Evans) last-minute addition to an unrelated state bill: this addition requires the Georgia Assembly to approve any expenditures on rail-based transit before the Georgia Department of Transportation can begin construction. Although Harbin claims that the legislation does not effect rail projects that have

⁵² Fred Jandt, *supra* note 31.

⁵³ See Paul Donsky, *Auditor to Review Rail Plans: Representative Asks Where Money Went*, ATLANTA J. CONST., Metro Section, July 14, 2006, available at < <http://www.ajc.com/metro/content/metro/stories/0714railaudit.html> (last visited 07/18/2006). (More recently, Representative Harbin, as Chairman of the House Appropriations Committee, has called for a performance review of the Georgia Rail Planning division under the Georgia Department of Transportation, questioning whether the organization has wisely spent the money it has received from state taxpayers. According to the article, "Harbin says the State Department of Transportation's rail division has been working for many years to start commuter rail service in Georgia, with no results." However, Representative Harbin does not ask whether the General Assembly ever funded the DOT's intermodal division enough to accomplish its purpose, nor does he ask whether officials within the DOT have systematically thwarted the division's attempts to execute the rail plans.)

already received funding agreements⁵⁴, the Georgia Department of Transportation has yet to take further action in beginning work on the long-awaited Atlanta-Lovejoy rail line. Atlanta must persevere in its discussions with state officials to use their vision of how the metropolitan Atlanta transit system should function in the future.

If anything, Atlanta's public and private sector must think outside of the box if they wish to accomplish anything novel that will attract the right balance of economic development and congestion relief on city streets. Accordingly, what sort of city street has no traffic, and what sort of city streetscape is the most pedestrian and transit friendly? Of course, a street without cars.

Beginning at 14th Street and heading southward, Peachtree street is flanked on both sides by parallel, one-way streets that can accommodate a large amount of traffic: Juniper Street (which turns into Courtland Street) heads southward, and West Peachtree Street heads northward. In addition, another one-way street west of West Peachtree, Spring Street, heads southward. With three multiple-lane streets in such close proximity, Atlanta's administration can divert present day traffic from its

⁵⁴ See *Our Opinion: The Atlanta-Lovejoy Line*, ATLANTA J. CONST., Opinion Section, June 15, 2006, available at < <http://www.ajc.com/opinion/content/opinion/stories/0615edlovejoy.html> (last visited July 1, 2006).

signature thoroughfare and transform it into a model of pedestrian and transit harmony.

Currently, Midtown Alliance, the business improvement district for midtown Atlanta, is planning a retail corridor on Peachtree Street bordered by 14th Street on the North and North Avenue on the south.⁵⁵ This paper proposes extending the retail corridor below North Avenue through downtown to Trinity Avenue. The downtown improvement district, known as Central Atlanta Progress, would be in charge of coordinating the retail development below North Avenue. However, the cooperation of Midtown Alliance and Central Atlanta Progress would be crucial in creating Peachtree Mall as a cohesive retail, residential and transit corridor.

Ed Ellis, a Regional Vice-President with Kimley-Horn & Associates (an urban planning and engineering consulting firm) who currently heads the Mobility division of the Mayor-appointed Peachtree Corridor Task Force, notes that Peachtree is currently a state route, and Atlanta could not change the way the street is used unless the state were to give possession of the street to the city. Ellis also revealed that the City has already been in discussions with Harold Linnenkohl, Commissioner of the Georgia Department of Transportation, in taking the street off

⁵⁵ See Midtown Alliance, *Midtown Atlanta Retail Study*, 7, at < http://www.midtownalliance.org/Documents/retail_study.pdf (last visited July 21, 2006).

of the state route list, but he indicated that the state would have to designate another state route to replace Peachtree's function.⁵⁶ Should Atlanta succeed in such a transaction it could rework Peachtree into a corridor that would not have to follow the DOT's design standards, which could prove difficult to follow in such a densely developed area.⁵⁷

If Atlanta is able to develop the Peachtree Mall as a transit-only development, could it receive federal funds through the SAFETEA-LU legislation for construction? According to the Federal Transit Administration's website, "On August 10, 2005, President Bush signed the Safe, Accountable, Flexible, and Efficient Transportation Equity Act - A Legacy for Users (SAFETEA-LU)...including \$52.6 billion for federal transit programs - a 46% increase over transit funding guaranteed in TEA 21."⁵⁸

Within the SAFETEA legislation, Congress carved out a Public-Private Partnership Pilot Program to "demonstrate the

⁵⁶ See O.C.G.A. §§32-4-20 & 32-4-21 (2006). These statutes discuss the process by which additional mileage or existing roads are made part of the state highway system, for purposes of connectivity of urban or regional areas. Although the statutes do not mandate a substitute be implemented if a state road is converted to a municipal road, the State Road and Tollway Authority's standard operating procedures may require another road to be designated a state route in order to preserve connectivity of a state route through the region.

⁵⁷ Interview with Ed Ellis, Regional Vice-President with Kimley-Horn & Associates and Head of Mobility Division of the Mayor's Peachtree Corridor Task Force, at Kimley-Horn & Associates' Midtown Atlanta Office (July 13, 2006).

⁵⁸ FEDERAL TRANSIT ADMINISTRATION, *SAFETEA-LU Implementation*, available at <http://www.fta.dot.gov/17003_ENG_HTML.htm (Last visited July 1, 2006).

advantages and disadvantages of public-private partnerships for certain new fixed guideway capital projects.”⁵⁹ According to the definition of “fixed guideway capital projects” in 49 U.S.C. 5302(a)(1) and (4), in order for the Peachtree Mall to receive federal funding, the proposed Streetcar line may have to run in a transit-only lane. Since the Atlanta Streetcar is planned to run on Peachtree Street from Buckhead (Roxboro Road) to South Atlanta in the neighborhoods of Oakland City and Adair Park⁶⁰ (where it will intersect the future Beltline), those portions of the streetcar line that contain dedicated transit lanes, including the retail corridor, could increase the city’s chances of receiving federal funding.

Atlanta could apply for federal funds to build the FreeRide (which would use the future streetcar line but be able to loop around at the northern and southern ends of the Mall) and Peachtree Mall without dedicated transit lanes, but the city would have very little chance of receiving funding unless it made a substantial commitment to satisfying the other project factors the Federal Transit Administration (“FTA”) reviews for funding eligibility. FTA regulations, which pertain to major capital investment projects (such as New Starts projects under

⁵⁹ 71 Fed. Reg. 55, 14568, (Mar. 22, 2006).

⁶⁰ Paul Donsky, *New Streetcar Plan Extends to S. Atlanta*, ATLANTA J. CONST., Metro, June 15, 2006, available at <
<http://www.ajc.com/metro/content/metro/atlanta/stories/0615metstreetcar.html>
(last visited July 1, 2006).

SAFETEA-LU), define a fixed guideway system as "a mass transportation facility which utilizes and occupies a separate right-of-way, or rail line, for the exclusive use of mass transportation and other high occupancy vehicles, **or uses a fixed catenary [electrical wire] system and a right of way usable by other forms of transportation.**"⁶¹ If the latter part of the definition means that other forms of traffic may use the lanes in which the streetcar may run, then the city's chances of receiving federal aid become dependant on other criteria the FTA specifies in reviewing applications for major transit funding. Such criteria are noted in 49 C.F.R. §611.9 as: mobility improvements, environmental benefits, operating efficiencies, transportation system user benefits (cost-effectiveness), existing land use, transit supportive land use policies, and future patterns, among other factors. Even though the strict terms of the criteria do not require proposed transit projects to run in transit-only lanes, in reality, only those projects that include transit-only fixed guideways win coveted federal funding.

The process in applying for federal funds is long and complex. Atlanta must compare the effectiveness of its project in addressing the above criteria with other "baseline

⁶¹ 49 C.F.R. §611.5 (2006).

alternatives," such as a "no-build"⁶² alternative that includes all other planned improvements on Peachtree Street other than the transit-only Peachtree Mall FreeRide.

Through a public-private partnership, Atlanta or a future Regional Transit Agency⁶³ may be able to make an economic argument for FreeRide. Rather than contracting the service out to MARTA, whose workforce is heavily unionized, Atlanta could partner with a private company to handle the daily operation of the free streetcars, thus consuming less tax dollars than a public agency. As mentioned earlier, the regional transit district in Denver has successfully used this technique to provide cost-effective and reliable service. In addition, if the state government were cooperative, the city could seek state assistance in developing such a public-private operation.

⁶² FEDERAL TRANSIT ADMINISTRATION, *New Starts Baseline Alternative Review and Approval Procedures*, at <http://www.fta.dot.gov/16364_ENG_Printable.htm> (lasts visited July 21, 2006). The FTA defines the no build alternative as: "1. An alternative that incorporates "planned" improvements that are included in the fiscally constrained long-range plan for which need, commitment, financing, and public and political support are identified and are reasonably expected to be implemented. 2. A conservative definition that adds only "committed" improvements - typically those in the annual element of the Transportation Improvement Program or local capital programs - together with minor transit service expansions and/or adjustments that reflect a continuation of existing service policies into newly developed areas."

⁶³ See Ryan Mahoney, *ATLANTA BUSINESS CHRONICLE*, *New Regional Transit Board Approved*, Dec. 15, 2005, available at <<http://atlanta.bizjournals.com/atlanta/stories/2005/12/12/daily42.html>> (last visited July 21, 2006). In December 2005, area transit agencies and political officials endorsed a new Transit Planning Board that will spend the next two years analyzing ten Metro Atlanta counties' current and future transit needs, and how to coordinate serving those needs under one regional transit agency. In addition, the Board will discuss regional transit taxes and other possible funding mechanisms for building future transit capital.

The Georgia Legislature, anticipating the possibility of public-private partnerships in building or operating such a system, enacted O.C.G.A. §32-9-12, which states: "The department will form a pilot program that will provide a state level flow through point for any available federal funding or other forms of financial and development sources and assistance for local, regional, and public-private streetcar projects. Any funding through bonds for such pilot and grant program shall be administered by the State Road and Tollway Authority." A possible drawback, though, is that Atlanta could yet again be subject to the same oversight by a state agency that has bogged down its other transit initiatives.

If a public-private federal or state grant is unavailable, or the project does not receive favorable review for SAFETEA-LU New Starts funding (traditionally, New Starts grants have been awarded to light rail and BRT system construction, not streetcar lines), who will fund the construction and operation of streetcar service in the Peachtree retail corridor? According to a presentation made by Michael Robison, former Chairman of Atlanta Streetcar, Inc., in early 2006, the City would like to fund the construction and operation of the Atlanta Streetcar system with local and state funds.⁶⁴ One method that the Atlanta

⁶⁴ Michael Robison, President of Lanier Holdings and Chairman of Peachtree Streetcar, Inc. (now disbanded) in speech before the Georgia State University Urban Fellows Breakfast, at GSU Urban Life Building (Feb. 20, 2006).

Streetcar Group proposed was to ask members of the Buckhead, Midtown, and Downtown community improvement districts to self-tax themselves to raise the revenue to build the system. In addition, Ed Ellis noted that Robison proposed during the July 13, 2006 Peachtree Corridor Task Force meeting that Atlanta pass a one percent restaurant tax to assist in paying for operating the system.⁶⁵

Even if the money is raised and the system is built, how can the Peachtree Mall fund FreeRide service for those who get on or off at points within Peachtree Mall? Unlike Denver, metro-Atlanta currently does not have a regional transportation agency that can spread the financial burden of providing such a service across a multi-county area, and MARTA is already financially strapped maintaining the level of service it currently provides. Until such a consortium is formed⁶⁶, one immediate method is the parking fee.

A Citywide Parking Fee:

Can Atlanta pass a parking fee to encourage drivers to take transit and help fund the operation of free transit in the Peachtree Mall? Under O.C.G.A. §36-34-2 (7), Atlanta City Council has the power to "grant franchises to or make contracts with railroads, street railways, or urban transportation

⁶⁵ Interview with Ed Ellis, *supra* note 56.

⁶⁶ Ryan Mahoney, *supra* note 62.

companies...and other public utilities for the use and occupancy of the streets of the city..."⁶⁷ However, the state government limits how the city can pay for these services. Like many states, the Georgia Constitution and municipal power statutes follow Dillon's rule, which was a creation of Iowa Supreme Court Judge John Forrest Dillon in his decision in *Clark v. City of Des Moines*.⁶⁸ In *Clark*, Judge Dillon affirmed that "It is a familiar and elementary principle that municipal corporations have and can exercise such powers, and such only, as are expressly granted, and such incidental ones as are necessary to make those powers available and essential to effectuate the purposes of the corporation; and these powers are strictly construed."⁶⁹

As a result of this doctrine, Atlanta's ability to impose user fees to control behavior and generate revenue is extremely limited. O.C.G.A. §36-35-6 specifies that the home rule powers delegated to counties and municipalities, such as Atlanta, shall not encompass "any form of taxation beyond that authorized by law or by the Constitution."⁷⁰

In order to pass a city-wide parking fee that would allow Atlanta to dedicate revenue to public transportation, the City of Atlanta may have to lobby the General Assembly to pass a bill

⁶⁷ O.C.G.A. §36-34-2 (7) (2006)

⁶⁸ See *Clark v. City of Des Moines*, 19 Iowa 199 (1865).

⁶⁹ *Id.* at 212.

⁷⁰ O.C.G.A. §36-35-6 (2006).

allowing the city to hold a referendum election for city residents to vote whether or not they would want to impose a city-wide parking fee. The City used this process in 2004 when the residents of Atlanta voted for the Municipal Option Water and Sewer Sales Tax ('MOST'), a one percent increase in municipal sales tax to assist in funding the \$4 billion sewer system upgrade.⁷¹ The General Assembly passed House Bill 709⁷², and the mayor placed the referendum on the July 2004 ballot for a public vote. In the same way that the legislation for the MOST tax specified that revenue could only be spent to improve Atlanta's water and sewer conditions, so would a city-wide parking fee be earmarked strictly for development and maintenance of free streetcar service on the Peachtree Mall.

However, the city may be able to avoid the public referendum process if the state legislature passed a law allowing Georgia municipalities to impose parking fees to support transit services. Under O.C.G.A. §48-13-50.1, the state legislature created 159 special districts (that follow the county land areas) in which each district could impose an excise tax "on charges to the public for rooms, lodging, and

⁷¹ CLEAN WATER ATLANTA: PUBLIC PRESENTATIONS AND MATERIALS, *Municipal Option Water and Sewer Sales Tax (MOST)*, at <
<http://www.cleanwateratlanta.org/Materials/MOSTpresentFinalDWM.pdf> (last visited July 18, 2006).

⁷² See O.C.G.A. §48-8-202 (2006).

accommodations..."⁷³ Those areas within the special districts occupied by municipalities, such as Atlanta, retain the revenue from the excise tax for their own municipal budgets.⁷⁴ A related statute mandates that the proceeds of this tax be used to promote "tourism, conventions and trade shows."⁷⁵ In the same manner the General Assembly could pass legislation authorizing the creation of parking districts encompassing the same 159 county-wide special districts,⁷⁶ where each county and municipality can expend proceeds from a parking fee to promote the construction and operation of transit, such as the Peachtree Mall FreeRide. Other cities, such as Portland and San Diego, have established parking districts to raise funds for the improvement of the streetscapes through their communities. Using

⁷³ O.C.G.A. §48-13-50.1 (2006).

⁷⁴ *Id.*

⁷⁵ O.C.G.A. §48-13-51 (2006).

⁷⁶ See GA. CONST. art.IX, §2, para. iv. (2006). This paragraph notes:

...[S]pecial districts may be created for the provision of local government services within such districts; and fees...may be levied and collected within such districts to pay, wholly or partially, the cost of providing such services therein and to construct and maintain facilities therefore. Such special districts may be created and fees...may be levied and collected therein by any one or more of the following methods:

(a) By general law which directly creates the districts.

(b) By general law which requires the creation of districts under conditions specified by general law.

(c) By municipal or county ordinance or resolution, except that no such ordinance or resolution may supersede a law enacted by the General Assembly pursuant to subparagraphs (a) or (b) of this Paragraph.

Looking to Dillon's Rule and article IX, §2, para. I of the Georgia Constitution, the power to take "action adopting any form of taxation beyond that authorized by law or by this Constitution," is prohibited, unless specifically enacted by the General Assembly.

a parking district to fund the operation of the FreeRide is a logical extension of this type of reasoning.

How should the FreeRide system be operated economically: privatization of the workforce is one option. A public-private partnership running the streetcars could be the answer to the Atlanta business community's distrust of MARTA operations. In the same way that Cal Marsella was able to realize significant savings by privatizing over 50% of RTD's bus service, so could Atlanta run FreeRide on Peachtree Mall. In addition, current state legislation allows for the state to lend assistance in the initiation of public-private partnerships. In 2005, the Georgia Assembly passed a revised Public Private Initiative legislation that allows for the Georgia Department of Transportation to develop a nontraditional arrangement with a public or private entity, providing for:

A) Acceptance of a private contribution to a transportation system project or service in exchange for a public benefit concerning that project or **service**;

(B) Sharing of resources and the means of providing transportation system projects or **services**; or

(C) Cooperation in researching, developing, and implementing transportation system projects or **services**.⁷⁷

If the city were able to demonstrate to state officials that the economic benefit of developing Peachtree Mall and FreeRide on Peachtree Street would be region-wide, then this legislation may be extremely useful. State officials working in

⁷⁷ O.C.G.A. §§32-2-79 & 32-2-80 (2006).

concert with Atlanta officials to obtain hotly contested federal funding could only increase the city's chances of making the project a reality. But first, Atlanta needs the consensus of its city officials, which may be no small task in itself. Here, vision must win out over preserving the status quo. In addition, without the cooperation of the state and city in creating a public-private service to run FreeRide, the state legislation is useless. If local and state government officials can move beyond their preconceptions and distrust of each other and accomplish such a task, all Georgians will benefit from this synergy.

VI. Conclusion

With the possibility of a regional transportation authority in the future, Atlanta may be able to pursue its vision of the Atlanta Streetcar, and develop the Peachtree Mall/FreeRide system into the transit spine it needs. A parking fee for operation of FreeRide and maintenance of Peachtree Mall could provide the bridge to future regional funding of Atlanta's metropolitan center. Looking at the success that Denver's 16th Street Mall has experienced not only as a tourist destination but as a place where people want to live, perhaps Atlanta and Georgia's leaders can agree to develop a model for transit development in the Southeast. By applying public-private initiative to the operation of FreeRide, the city may garner

enough public and political support to realize such a lofty, yet attainable, status as the city it once was.