

**IN THE SUPERIOR COURT OF DEKALB COUNTY
STATE OF GEORGIA**

**THE CITY OF DUNWOODY, INC., CARL
FRANKLIN, DON CONVERSE, and RENATA
HAROD,**

Plaintiffs,

vs.

**DEKALB COUNTY; BURRELL ELLIS, In His
Capacity As Chief Executive Officer of DeKalb
County; JOEL GOTTLIEB, In His Capacity As
Interim DeKalb County Finance Director; ELAINE
BOYER, JEFF RADER, LARRY JOHNSON,
SHARON BARNES SUTTON, LEE MAY,
KATHIE GANNON, and CONNIE STOKES, In
Their Capacities As Members of the DeKalb County
Board of Commissioners; and ROY E. WILSON In
His Capacity As DeKalb County Parks and
Recreation Director;**

Defendants.

Civil Action No.

10CV14069-6

FILED
2009 DEC 27 P 4:27
CLERK OF THE SUPERIOR COURT
DEKALB COUNTY GEORGIA

**COMPLAINT FOR DECLARATORY JUDGMENT, PETITION FOR A WRIT OF
MANDAMUS AND COMPLAINT FOR EXPENSES OF LITIGATION BY THE CITY
OF DUNWOODY, ET AL., AGAINST DEKALB COUNT, ET AL.**

This is, in sum, an action to compel DeKalb County to remit to The City of Dunwoody over \$7 million of the \$11 million promised the citizens in the County's 2005 bond referendum for the development of Brook Run Park.

This suit is not being brought without a careful, thoughtful, and discerning examination of all sides of the issues involved. For any government to be a legitimate one, it must heed the will of the people. And in a democracy it is through the all-important ballot box that the people express their will. Any government that ignores the people, be it local, state or federal, dishonors the democratic form of government, which is the cornerstone of all government in the United States.

It is with these principles in mind that the undersigned Plaintiffs, THE CITY OF DUNWOODY, INC., CARL FRANKLIN, DON CONVERSE, and RENATA HAROD, file this Complaint for Declaratory Judgment, Petition for Mandamus and Complaint for Expenses of Litigation against Defendants DEKALB COUNTY, its agents, servants, representatives, and employees; BURRELL ELLIS, individually and in his official as Chief Executive Officer of DeKalb County; JOEL GOTTLIEB, individually and in his official capacity as Interim DeKalb County Finance Director; ELAINE BOYER, JEFF RADER, LARRY JOHNSON, SHARON BARNES SUTTON, LEE MAY, KATHIE GANNON, and CONNIE STOKES, individually and in their official capacities as members of the DeKalb County Board of Commissioners; and ROY E. WILSON individually and in his official capacity as DeKalb County Parks and Recreation Director.

In an effort to restore the voice and will of the people, the Plaintiffs seek (1) a declaration that the City of Dunwoody has a vested property right and is entitled to receive the remaining bond proceeds specifically designated for the improvement and beautification of Brook Run Park in an amount that is consistent with the amount that was represented to the public in order to garner voter support; (2) a Writ of Mandamus requiring Defendants to perform their necessary duties to effect the timely transfer to the City of Dunwoody the remaining portion of the bond proceeds that DeKalb County appropriated for Brook Run Park at the time of the Bond Referendum; and (3) an award of reasonable expenses of litigation, including but not limited to attorney's fees, pursuant to O.C.G.A. § 13-6-11.

Plaintiffs show this Court as follows:

Parties, Jurisdiction and Venue

1.

THE CITY OF DUNWOODY, INC. (“Dunwoody” or “City”) is a municipal corporation of the State of Georgia, located in DeKalb County.

2.

CARL FRANKLIN is a citizen of Dunwoody, Georgia, residing at 2179 North Forest Trail, Dunwoody, DeKalb County, Georgia, and has resided in the city of Dunwoody for approximately 14 years.

3.

DON CONVERSE is a citizen of Dunwoody, Georgia, residing at 4905 Trailridge Pass, Dunwoody, DeKalb County, Georgia, and has resided in the city of Dunwoody for approximately 32 years.

4.

RENATA HEROD is a citizen of Dunwoody, Georgia, residing at 2588 Riverglenn Circle, Dunwoody, DeKalb County, Georgia, and has resided in the city of Dunwoody for approximately 14 years.

5.

Defendant DEKALB COUNTY (“County”) is a political subdivision of the State of Georgia, subject to the jurisdiction and venue of this Court, and may be served with legal process on County Chief Legal Officer LISA CHANG at 1300 Commerce Drive, 5th Floor, Decatur, DeKalb County, Georgia 30030.

6.

Defendant BURRELL ELLIS, as DeKalb County Chief Executive Officer, is subject to the jurisdiction and venue of this Court, and can be served with legal process on County Chief Legal Officer LISA CHANG at 1300 Commerce Drive, 5th Floor, Decatur, DeKalb County, Georgia 30030.

7.

Defendant JOEL GOTTLIEB, as Interim DeKalb County Finance Director, is subject to the jurisdiction and venue of this Court, and can be served with legal process on County Chief Legal

Officer LISA CHANG at 1300 Commerce Drive, 5th Floor, Decatur, DeKalb County, Georgia 30030.

8.

Defendants ELAINE BOYER, JEFF RADER, LARRY JOHNSON, SHARON BARNES SUTTON, LEE MAY, KATHIE GANNON, and CONNIE STOKES, as members of the DeKalb County Board of Commissioners (collectively “Commissioners”), are subject to the jurisdiction and venue of this Court, and can be served with legal process on County Chief Legal Officer LISA CHANG at 1300 Commerce Drive, 5th Floor, Decatur, DeKalb County, Georgia 30030.

9.

Defendant ROY E. WILSON, as DeKalb County Parks and Recreation Director is subject to the jurisdiction and venue of this Court, and can be served with legal process on County Chief Legal Officer LISA CHANG at 1300 Commerce Drive, 5th Floor, Decatur, DeKalb County, Georgia 30030.

10.

Jurisdiction and venue are proper in this Court.

Facts Applicable to All Counts

11.

In 2004, the DeKalb Future Funding Commission (DFFC) was established by then Chief Executive Officer of the County, Vernon Jones, to review and propose various parks and greenspace projects, among other things. Notably, the DFFC’s report listed “Major Parks Development Projects” as the number one priority for parks and greenspace funds, of which Brook Run Park in Dunwoody was included.

12.

Brook Run Park (“Park) is located at 4770 North Peachtree Road, Dunwoody, DeKalb County, Georgia.

13.

Brook Run Park is a major community park that is enjoyed by all residents of DeKalb County, including those who reside in the City of Dunwoody, for recreational purposes, community activities, and civic affairs. It has been a source of great pride for the residents of Dunwoody.

14.

In 2005, the DeKalb County Administration determined that it was in the best interest of the citizens of DeKalb County to acquire, construct, renovate and equip certain parks and recreation projects, and that there existed an immediate and urgent need for such projects.

15.

On or about July 25, 2005, Chief Executive Officer Vernon Jones delivered a letter to the Commissioners identifying and supporting the conclusions and recommendations of the DFFC. A total of \$11,500,000 was recommended for the cost of improvement and development of Brook Run Park.

16.

On or about August 23, 2005, at the request of then-Commissioner BURRELL ELLIS, the Commissioners considered and unanimously passed a resolution to call an election to determine the issuance or non-issuance of an aggregate principal amount of \$235,000,000 DeKalb County General Obligations Bonds. The Resolution was approved by CEO Vernon Jones on or about September 1, 2005.

17.

On or about August 30, 2005, in furtherance of the bond deal, the Commissioners also adopted a resolution to incur bond debt and to create a special tax district consisting of the geographical boundaries of the unincorporated portion of DeKalb County, and excluding all incorporated areas within the County.

18.

As a result, a bond referendum was scheduled to be presented to DeKalb County voters with three questions constituting three separate uses of the bond proceeds. Among the three presented questions included the question of whether “[t]o finance certain parks and greenspace projects, including but not limited to, acquiring land for additional parks and natural areas, preserving greenspace, protecting clean water, improving existing parks, dams, arts and cultural centers and athletic complexes, in the amount of \$96,460,000.”

19.

No less than thirty days prior to the Bond Referendum election, materials related to the bonds, including but not limited to, brochures, listings, articles and other advertisements were published to DeKalb County voters; these materials were statements of intention by the Commissioners concerning the use of the bond funds.

20.

On or about November 8, 2005, the Bond Referendum was held by DeKalb County and approved by the voters. Consequently, the bonds were authorized and a bond resolution setting forth the specific terms of the bonds was adopted by the Commissioners on or about January 24, 2006 (the “Bond Resolution”). The bonds were issued and sold publicly to various investors, and the proceeds were deposited into three separate and segregated accounts for the three purposes.

21.

According to the DeKalb County Parks Bond Funding – Development Budget, the Commissioners allocated and budgeted \$11,500,000 of the Bond Proceeds for the development and improvement of Brook Run Park.

22.

To date, only \$4,484,927.77 has been spent for development of Brook Run Park, and \$7,015,072.23 remains outstanding. No further bond proceeds have been used for the development or improvement of the Park. At the present time, improvements to and further development of Brook Run Park remain unfinished.

23.

Furthermore, improvement and development to Brook Run Park is necessary, practicable and feasible.

24.

Despite DeKalb County public officials' public disapproval of, and intense lobbying efforts against, Dunwoody's efforts to incorporate, the Georgia General Assembly passed Senate Bill 82. The City of Dunwoody became a municipal corporation on December 1, 2008.

25.

On or about May 7, 2010, OCGA § 36-82-1.1 was enacted to amend Title 36 of the Georgia Code, providing that a municipality incorporated after January 1, 2008, may take control of and hold title to parks as a trustee or agent for the public. The new law had particular application to the City of Dunwoody and to DeKalb County. The law also provided that in the event residents of a municipality are required to continue to pay taxes for debt created by the issuance of bonds by the County on behalf of the special district for the purpose of improving parks, and the municipality elects to purchase any such park pursuant to the Code section, the County must timely transfer to the municipality the portion of the bond proceeds that the County planned to expend on such park(s) at the time of the referendum on the bonds, based upon any statements of intention or representations concerning use of the bond proceeds by the governing authority of the County.

26.

On or about May 18, 2010, the City of Dunwoody sent DeKalb County written confirmation of its intent to purchase Brook Run Park pursuant to O.C.G.A. § 36-31-11.1, and on or about June 21, 2010, the City delivered to the County full payment in the amount of \$10,288.00 and purchased the Park. Said check was tendered and accepted by DeKalb County on or about August 3, 2010.

27.

On or about September 9, 2010, the City of Dunwoody delivered a letter to Defendant ELLIS, demanding the timely transfer of the remaining bond proceed funds to the City, to no avail. To date, Defendant ELLIS has ignored Plaintiffs' continuous, reasonable, and legally justified request.

28.

Defendants have, without reason or justification, violated the Bond Resolution and Georgia law by failing to perform their necessary duties to effect the timely transfer to the City of Dunwoody the remaining portion of the bond proceeds that DeKalb County appropriated for Brook Run Park at the time of the Bond Referendum, consistent with the amount that was represented to the public in order to garner voter support. Therefore, Defendants have failed to perform their duties to the citizens of DeKalb County.

29.

DeKalb County assessed and collected, and continues to do so, the special district tax from the DeKalb County taxpayers residing in the City of Dunwoody, but have failed to provide the benefit of those taxes to said residents.

30.

DeKalb County has also retained and continues to retain the unlawful benefits of the special district taxes and bond proceeds, to which they are not entitled.

Georgia Law Governing Bond Proceeds for Special Tax Districts

31.

On or about April 21, 2010, O.C.G.A. § 36-31-11.1 was enacted to amend O.C.G.A. § 36-31-11 by providing that a municipality incorporated after January 1, 2008 may take control of and hold title to parks as a trustee or agent for the public. The new law also provides that in the event residents of a municipality are required to continue to pay taxes for debt created by the issuance of bonds by the County on behalf of the special district for the purpose of improving parks, and the municipality elects to purchase any such park pursuant to the Code section, the County must timely transfer to the municipality the portion of the bond proceeds that the County planned to expend on such park(s) at the time of the referendum on the bonds, based upon any statements of intention or representations concerning use of the bond proceeds by the governing authority of the County.

32.

O.C.G.A. § 36-81-1, which governs the elections for the issuance of bonds, requires the County to use bond proceeds for the purpose specified in its statement of intention, which includes any legal advertisement, brochure, publications, and listings. Bond proceeds must be expended in the manner in which the bond was advertised in the election notice, as well as additional published materials, and for the purpose stated in the referendum. They cannot be diverted to any other purpose whatsoever.

33.

O.C.G.A. § 36-82-4.2 states that subsequent to the issuance of any bonds, the County may adopt by two-thirds' majority vote a resolution declaring that any portion of the bond project is no longer necessary, practicable or feasible, and they can by resolution expend the remaining portion of the bonds for a purpose substantially similar to the purposes stated in the notice for bonded indebtedness. However, in this case, no such resolution or circumstances exist.

DeKalb County Ordinances

34.

Pursuant to DeKalb County Organizational Acts § 13, the Chief Executive Officer shall carry out, execute and enforce all ordinances, policies, rules and regulations of the Commissioners when such ordinances, policies, rules and regulations become effective. Furthermore, the Chief Executive Officer shall seek to promote and improve the government of the County and encourage the growth of the County and promote and develop the prosperity and well-being of the citizens of the County.

35.

Pursuant to DeKalb County Organizational Acts § 17, the Chief Executive Officer shall submit to the board a proposed budget governing the expenditures of all county funds, including capital outlay and public works projects for each following calendar year. Upon considering the budget and making any necessary amendments thereto, the Commissioners will adopt the final budget and said budget becomes the Commissioners' appropriations of all funds for such year.

36.

Pursuant to DeKalb County Organizational Acts § 9, the Commissioners have the power and authority to exercise any power that is necessarily and properly incident to its function as a policy-making body or which is necessary to compel enforcement of its adopted resolutions or ordinances.

37.

Pursuant to DeKalb County Organizational Acts § 19, the Department of Finance, under the control and supervision of the Director of Finance, is to maintain current control accounts over the collection and deposit of money due the County from taxes and other sources; examine all claims against the County and make recommendation as to payment; maintain budgetary control accounts showing encumbrances for obligations entered in; and plan and prepare for meeting the financial needs of the County, project financial requirements, recommend means of financing

those requirements and advise the Chief Executive Officer and the Commissioners on financial matters.

38.

Furthermore, DeKalb County Code of Ordinances, App. A, Art. I, § 5, provides that the Department of Finance is responsible for auditing the expenditure of County funds, to ensure that they are properly accounted for according to sound practices and have been disbursed in conformity with the budget, established policy of the board and the law.

39.

DeKalb County Code of Ordinances, Ch. 2, Art. III, Div. 2, provides that, by March 1 of each year, the Chief Executive Officer shall specifically delineate in a separate section of the proposed executive annual budget for use in capital outlay projects and in funding services within the defined special district equal to the revenue lost to the homestead exemption, which thereafter may be approved or amended by the Commissioners in accordance with state law and the Code.

40.

Pursuant to DeKalb County Code of Ordinances, App. A, Art. I, § 13, The Department of Parks and Recreation manages and maintains the parks system, and also plans, develops, and coordinates park acquisitions and capital improvement projects.

COUNT I

Declaratory Judgment Is Proper Here and Should be Entered in Favor of the Plaintiffs

41.

Plaintiffs incorporate the allegations set forth in Paragraphs 1 through 30 above into this Paragraph 41 as if the same were fully set forth within.

42.

This action represents an actual controversy in which the ends of justice require a declaration as to the rights of the Parties under the circumstances outlined herein.

43.

Defendants' unlawful refusal to perform their duties to effect the timely transfer to the City of Dunwoody the remaining portion of the bond proceeds that DeKalb County appropriated for Brook Run Park at the time of the Bond Referendum, in an amount that is consistent with the amount that was represented to the public in order to garner voter support has:

A.

Substantially interfered with the land purchase expectations of the Plaintiffs and the taxpayers of DeKalb County who reside within the City of Dunwoody;

B.

Substantially interfered with the property interests and value of the Plaintiffs and the taxpayers of DeKalb County who reside within the City of Dunwoody;

C.

Substantially denied the benefit of taxes to the Plaintiffs and the taxpayers of DeKalb County who reside within the City of Dunwoody.

44.

Accordingly, the City of Dunwoody is entitled to a declaration that it has a vested property right and is entitled to receive the remaining bond proceeds specifically designated for the improvement and beautification of Brook Run Park, pursuant to the Bond Referendum held by DeKalb County and approved by County voters, in an amount that is consistent with the amount that was represented to the public in order to garner voter support.

COUNT II

The City of Dunwoody Is Entitled to Mandamus Relief Against Defendants

45.

Plaintiffs incorporate the allegations set forth in Paragraphs 1 through 30 above into this Paragraph 45 as if the same were fully set forth within.

46.

Plaintiffs bring this action pursuant to O.C.G.A. § 9-6-20, et seq., by which the Plaintiffs seek a Writ of Mandamus from this Court to compel the Defendants to perform their official duties.

47.

Under the Organizational Act of DeKalb County, Defendant ELLIS, as DeKalb County Chief Executive Officer, has a clear legal duty to supervise, direct and control the administration of the county government. The Chief Executive Officer is required to carry out, execute and enforce all ordinances, policies, rules and regulations of the Commissioners when such ordinances, policies, rules and regulations become effective. Defendant ELLIS further has the clear legal duty to encourage the growth of DeKalb County and promote and develop the prosperity and well-being of the citizens of the County.

48.

Defendant ELLIS breached that duty by failing to 1) comply with O.C.G.A. § 36-31-11.1; and 2) direct the timely transfer to the City of Dunwoody the remaining bond proceeds specifically designated for the improvement and beautification of Brook Run Park, pursuant to the Bond Referendum held by DeKalb County and approved by County voters, in an amount that is consistent with the amount that was represented to the public in order to garner voter support. These failures constitute a dereliction of Defendant Ellis' duties to the citizens of DeKalb County, specifically including the residents of Dunwoody.

49.

Under the Organizational Act of DeKalb County, Defendants BOYER, RADER, JOHNSON, BARNES SUTTON, MAY, GANNON, and STOKES, as members of the DeKalb County Board of Commissioners, have the clear legal duty to do that which is necessary within their authority and power to compel enforcement of the adopted resolutions and ordinances.

50.

Defendants BOYER, RADER, JOHNSON, BARNES SUTTON, MAY, GANNON, and STOKES breached their duty by failing to compel enforcement of the Bond Referendum and Resolution, in direct contradiction of O.C.G.A. § 36-31-11.1. Such failure is a dereliction of their duties to the citizens of DeKalb County, specifically including the residents of Dunwoody.

51.

Under the Organizational Act of DeKalb County, Defendant GOTTLIEB, as Interim DeKalb County Finance Director, has the clear legal duty to 1) administer the fiscal affairs of the County and County controlled funds; 2) oversee the central accounting, investment and disbursement for all funds under the control of the Commissioners; 3) ensure that the expenditure of County funds is properly accounted for according to sound practices; and 4) ensure that County funds are disbursed in conformity with the budget, established policy of the board and the law.

52.

Defendant GOTTLIEB breached those duties by failing to effect the timely transfer to the City of Dunwoody the remaining portion of the bond proceeds that DeKalb County appropriated for Brook Run Park at the time of the Bond Referendum, which is consistent with the amount that was represented to the public in order to garner voter support. Such failure is a dereliction of his duties to the citizens of DeKalb County, specifically including the residents of Dunwoody.

53.

Defendant GOTTLIEB further breached his duties by failing to recommend to the Chief Executive Officer and the Commissioners that they timely transfer to the City of Dunwoody the remaining portion of the bond proceeds that DeKalb County appropriated for Brook Run Park at the time of the Bond Referendum, which is consistent with the amount that was represented to the public in order to garner voter support. Such failure is a dereliction of his duties to the citizens of DeKalb County, specifically including the residents of Dunwoody.

54.

Under the Organization Act of DeKalb County, Defendant WILSON, as DeKalb County Parks and Recreation Director, has the clear legal duty to manage and maintain the parks system, and to plan, develop and coordinate park acquisitions and capital improvement projects.

55.

Defendant WILSON breached that duty by failing to coordinate the capital improvement projects of Brook Run Park, and thereby failing to effect the timely transfer to the City of Dunwoody the remaining portion of the bond proceeds that DeKalb County appropriated for Brook Run Park at the time of the Bond Referendum, which is consistent with the amount that was represented to the public in order to garner voter support. Such failure is a dereliction of his duty to the citizens of DeKalb County, specifically including the residents of Dunwoody.

56.

Under Georgia law, persons holding public office are required to perform the continuing duties which their predecessors in office either refused or failed to do. Therefore, Defendants are required to perform their clear legal duties which their predecessors in office refused and failed to perform.

57.

Under Georgia and DeKalb County law, each Defendant has a clear legal duty to effect the timely transfer to the City of Dunwoody the remaining portion of the bond proceeds that DeKalb County appropriated for Brook Run Park at the time of the Bond Referendum, which is consistent with the amount that was represented to the public in order to garner voter support. Such a duty is one where none of the Defendants have any discretion and, therefore, is ministerial in nature.

58.

Alternatively, if the Defendants have any discretion—which they do not—to withhold or delay the transfer of the remaining bond proceeds under any circumstances or for any reason, their actions have constituted a gross abuse of discretion.

59.

Furthermore, Defendants have a clear legal duty to take all ministerial steps necessary to perform their legal duties as required by law.

60.

The CITY OF DUNWOODY possesses a clear legal right to the timely transfer of the remaining bond proceeds specifically designated for the improvement and beautification of Brook Run Park, pursuant to the Bond Referendum held by DeKalb County and approved by County voters, in an amount that is consistent with the amount that was represented to the public in order to garner voter support

61.

Plaintiffs FRANKLIN, CONVERSE and HAROD have an interest in Defendants executing and performing their clear legal duties to effect the timely transfer of the remaining bond proceeds specifically designated for the improvement and beautification of Brook Run Park, pursuant to the Bond Referendum held by DeKalb County and approved by County voters, in an amount that is consistent with the amount that was represented to the public in order to garner voter support.

62.

As such, Plaintiffs FRANKLIN, CONVERSE and HAROD are not required by Georgia law to show any legal or special interest in order for Mandamus relief to be proper, because such relief is one of public right.

63.

Furthermore, all Plaintiffs have the clear legal right to the relief sought, but have no complete remedy other than Mandamus.

64.

Plaintiffs' standing to seek Mandamus relief arises from the absence of an adequate legal remedy that equally is convenient, complete, and beneficial for the irreparable harm and deprivation that Plaintiffs and the residents of Dunwoody have suffered and will continue to suffer if Defendants continue to withhold or delay in transferring the remaining bond proceeds to the City of Dunwoody that are required by law.

65.

Accordingly, Plaintiffs are entitled to a Writ of Mandamus requiring Defendants to comply fully with O.C.G.A. § 36-11-1.1 and to immediately effect the transfer of the remaining bond proceeds specifically designated for the improvement and beautification of Brook Run Park, pursuant to the Bond Referendum held by DeKalb County and approved by County voters, in an amount that is consistent with the amount that was represented to the public in order to garner voter support.

COUNT III

Expenses of Litigation Should Be Awarded

66.

Plaintiffs incorporate the allegations set forth in Paragraphs 1 through 30 above into this Paragraph 66 as if the same were fully set forth within.

67.

The Defendants have operated in bad faith in their willful refusal to perform their lawful duties and recognize the Plaintiffs' statutory rights and vested property interest created by Georgia law. Such conduct justifies the award of the cost of litigation, including attorneys fees, pursuant to O.C.G.A. § 13-6-11.

68.

The Defendants have shown stubborn litigiousness in their willful refusal to perform their lawful duties and recognize the Plaintiffs' statutory rights and vested property interest created by Georgia law. Such conduct justifies the award of the cost of litigation, including attorneys fees, pursuant to O.C.G.A. § 13-6-11.

69.

The Defendants have caused the Plaintiffs unnecessary trouble and expense by their willful refusal to perform their lawful duties and recognize the plaintiffs' statutory rights and vested property interest created Georgia law. Such conduct justifies the award of the cost of litigation, including attorneys fees, pursuant to O.C.G.A. § 13-6-11.

70.

Plaintiffs submitted *ante litem* notice to Defendants on December 1, 2010, giving them the notice required by O.C.G.A. § 36-11-11.1 to claim the cost of litigation, including attorneys fees, and punitive damages.

71.

Since the service of *ante litem* notice, Defendants have not complied with O.C.G.A. § 36-11-1.1 and continue to refuse to perform their clear legal duties under Georgia and DeKalb County law.

72.

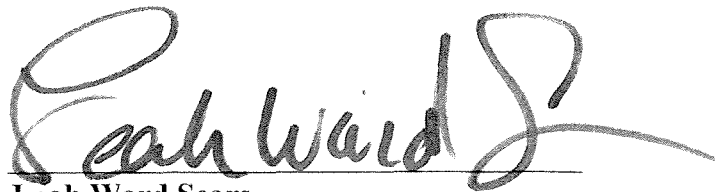
Accordingly, Plaintiffs are entitled to the cost of litigation expenses, including but not limited to attorneys fees, for having to bring this Mandamus action.

WHEREFORE, Plaintiffs pray that:

- a) The Court issues a declaration of the City of Dunwoody's vested property right and entitlement to receive the remaining bond proceeds specifically designated for the improvement and beautification of Brook Run Park, pursuant to the Bond Referendum held by DeKalb County and approved by County voters, in an amount that is consistent with the amount that was represented to the public in order to garner voter support;
- b) The Court issues a Mandamus Nisi to the Defendants requiring them to show cause not less than ten (10) days nor more than thirty (30) days from the date of sanction why a Mandamus should not be issued against them requiring them to fulfill their legal duty to effect the transfer of the remaining bond proceeds specifically designated for the improvement and beautification of Brook Run Park, pursuant to the Bond Referendum held by DeKalb County and approved by County voters, in an amount that is consistent with the amount that was represented to the public in order to garner voter support;
- c) That the Defendants, each of them, be served in accordance with law;
- d) That this Court issue an Absolute Writ of Mandamus requiring Defendants to fully comply with the Bond Referendum and O.C.G.A. § 36-11-1.1, requiring them to immediately effect the transfer of the remaining bond proceeds specifically appropriated for the improvement and beautification of Brook Run Park, pursuant to the Bond Referendum held by DeKalb County and approved by County voters, in an amount that is consistent with the amount that was represented to the public in order to garner voter support, a sum not less than \$7,015,072.23;
- e) Further Order the award to Plaintiffs the cost of litigation expenses, including but not limited to attorneys fees;
- f) All such other and further relief as the Court deems just and proper.

[Signatures on following page]

Date: December 27, 2010

By: 
Leah Ward Sears
Georgia Bar No. 633750

Eric L. Barnum
Georgia Bar No. 039305

Kimberly R. Bourroughs
Georgia Bar No. 231480

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Attorneys for Plaintiffs

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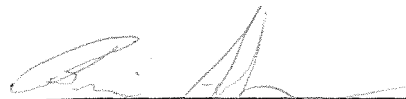
Defendants.

Civil Action No.

VERIFICATION

I, BRIAN ANDERSON, City Attorney for the City of Dunwoody, Inc., declare under penalty of perjury under the laws of the United States of America, that the foregoing Complaint For Declaratory Judgment, Petition For Mandamus and Complaint For Expenses Of Litigation are true and correct.

Executed on this 27th day of December, 2010.



Brian Anderson, City Attorney
The City of Dunwoody, Inc.
41 Perimeter Center East, Suite 250
Dunwoody, Georgia 30346

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Defendants.

Civil Action No.

MANDAMUS NISI

The Petition of the Plaintiffs in the above-entitled cause having been read and considered, the same is hereby sanctioned and ordered filed; and it is further ordered that the Defendants named be and appear before this Court on the ____ day of _____, 2011, at __:__ o'clock a.m./p.m., or so soon thereafter as can be heard, then and there to show cause why a Mandamus Absolute should not be issued against them as prayed for in the petition, and further relief be granted as the facts of the case may warrant.

It is further ordered that in default of such appearance and showing the mandamus prayed for will be made absolute and the Plaintiffs will be accorded such relief as it may show it is entitled to.

It is further ordered that a copy of said Petition and this Order be served upon said Defendants.

Dated and signed, this ____ day of _____, 2011.

Judge, DeKalb County Superior Court
Stone Mountain Judicial District

AT8241644.1