

**Report to the Mayor and Council of the
City of Dunwoody, Georgia**

Wilson, Morton & Downs, LLC
ATTORNEYS AT LAW

**Investigative Findings Regarding the
Improper Release of Confidential Information
from Executive Sessions of the
Mayor and Council**

**Investigators:
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May 17, 2012

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May 17, 2012

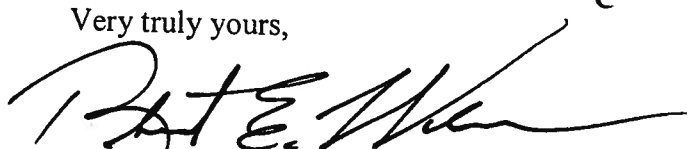
Mayor Mike Davis
Members of the City Council
City of Dunwoody
41 Perimeter Center East
Dunwoody, GA 30346

Dear Mayor Davis and Members of the City Council:

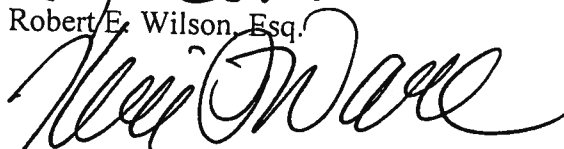
On February 13, 2012, we were retained by you to inquire into the possible release of confidential information from the Council's Executive Sessions. We have determined that the confidentiality of Executive Sessions was breached and by whom. Our investigative report and findings are attached hereto.

We appreciate the opportunity to be of service to you and the citizens of Dunwoody. If you need further information please do not hesitate to contact us.

Very truly yours,



Robert E. Wilson, Esq.



Keri P. Ware, Esq.

MAYOR and CITY COUNCIL

Mike Davis, Mayor

Denis Shortal, Mayor Pro Tem

City Council Post 1 (District 1 Local)

Adrian Bonser

City Council Post 2 (District 2 Local)

Douglas R. Thompson

City Council Post 3 (District 3 Local)

Terry Nall

City Council Post 4 (District 1 At Large)

Lynn Deutsch

City Council Post 5 (District 2 At Large)

John Heneghan

City Council Post 6 (District 3 At Large)

REPORT LIMITATIONS

This report is an overview of the evidence and our findings. It is not intended to include every detail or fact developed during this investigation. Nor does it include every relevant document. Should the Council have questions or need further details, we will make ourselves available to address the same.

INVESTIGATIVE REPORT TO CITY COUNCIL

Introduction

On February 13, 2012, the Dunwoody City Council voted to appoint the undersigned law firm to investigate what it thought to be the improper release (i.e. leak) of confidential information from its February 3, 2012, Executive Session. The February 3, 2012, meeting was specially called to discuss a proposed complex real estate transaction. This single real estate transaction involved the City's efforts to purchase a 19 acre parcel of land, which purchase would be funded by the sale of a 16 acre parcel of land, or a portion thereof, already owned by the City (known as the PVC Farm). In the end, some acreage from each parcel (totaling 16 acres) would remain with the City and some would be owned by a private entity.

Questions Presented

1. Was confidential information from an Executive Session of the City Council, held on February 3, 2012, improperly released (i.e. leaked)?

Short Answer: Yes.

2. If confidential information was improperly released, who was responsible for the same?

Short Answer: City Attorney Brian Anderson and City Council Member Adrian Bonser.

Following are these Investigators' Findings and Conclusions based upon a review of numerous documents, and interviews of Council members, City of Dunwoody staff, and various other relevant individuals.

Findings & Conclusions

1) We conclude that City Attorney Brian Anderson improperly disclosed information about the Dunwoody City Council's Executive Session(s) to Dick Williams, reporter for the *Dunwoody Crier*. We base this conclusion on the following findings and evidence:

- On January 23, 2012, and February 3, 2012, the Dunwoody City Council went into closed, confidential Executive Session for the purpose of discussing the City revitalization plan known as the "Georgetown project." This project included a complex transaction jointly involving the sale of portions of the 16 acre PVC Farm in order to purchase a 19 acre parcel of property in Georgetown. In the end, certain portions of each parcel would be owned by the City and certain portions owned by a private entity. Brian Anderson advised the Council that the sale and acquisition, as part of a single transaction, were proper subjects for discussion at these closed meetings. Brian Anderson did not object to or raise concerns about these discussions at the time of the Executive Sessions. After this Investigation

was underway, however, he claimed, for the first time, that the sale should not have been discussed in Executive Session.

- Following the January 23rd Executive Session but before the February 3rd Executive Session, Brian Anderson went to see Dick Williams to discuss the meeting agenda items, as he frequently does. According to Anderson, during that meeting Anderson asked Dick Williams “So, do you know what Warren [Hutmacher] is up to?” Anderson admits he was fishing to see if Williams knew about the sale of the PVC Farm. Although Anderson states that he did not disclose any details to Williams, he said Williams already knew about it and thereafter they discussed the matter.
- Anderson now states that he does not believe he breached any confidentiality to Williams because the sale of the PVC farm was not exempted from public discussion. But Anderson cannot have it both ways. He cannot, on the one hand, agree that the discussion of the sale is appropriate for Executive Session (because it is intertwined with the purchase of the 19 acres), but then when he is talking to the media claim that the same information is not confidential.
- Anderson also told these Investigators that he did not breach any confidentiality because he believed that the sale of the PVC farm had already been disclosed to Williams by Council Member Terry Nall, and

therefore, any privilege had been waived. This belated explanation is dubious for two reasons. First, at the time Anderson initiated the conversation with Williams by asking, “So, do you know what Warren Hutmacher is up to,” he was not yet aware that Nall had allegedly already disclosed the information to Williams. Thus, he could not have believed at the time that the privilege had been waived.

- Secondly, even if Williams had previously obtained the information from Nall, Anderson, as the City Attorney, should have known that a single council member cannot waive the Council’s privilege. Only the Council by majority vote can waive the confidentiality of Executive Sessions.
- By raising the question with Williams, Anderson initiated a discussion about a confidential Executive Session matter. Regardless of whether he agreed with the Georgetown project (and he obviously did not), those who participate in Executive Sessions are bound by the law to maintain the confidentiality of the session. If Anderson did not believe the part of the transaction related to the sale of the PVC farm was confidential, he should have so advised the Council at the time of the January 23rd and February 3rd Executive Sessions. Instead, he took the position at that time that the sale, as part of a complex transaction, was an appropriate topic for Executive Session. His belated claim that the discussion of the sale is not confidential,

which he raised only after the Mayor and Council initiated this Investigation, poses serious questions about his credibility.

- Contrary to Anderson's accusation against Nall, both a source close to the *Crier* and Terry Nall strongly deny that Nall gave any information to Williams from the Executive Session. Additionally, that claim is in direct contradiction with the story in the *Crier*. Anderson never mentioned Terry Nall as the leak during his first discussion with these Investigators. In fact, when asked who he thought the leak might be, he stated that the general consensus among Council was that it was Council Member Adrian Bonser. Upon learning about the investigation into a possible leak, Anderson told City Manager Warren Hutmacher, "They will have Adrian nailed in a couple of days. People in Dunwoody talk."
- After the information was leaked to the public and these Investigators were appointed, Dunwoody received an Open Records Act request seeking documents discussed during the February 3, 2012, Executive Session. At that time, Anderson suddenly took a different position and claimed that the sale of the PVC Farm was not confidential or exempt from public disclosure, even though it was inextricably intertwined with the acquisition of real estate. Anderson began pushing the City Clerk and City Manager to immediately release, in redacted form, the documents discussed during the

Executive Session. Anderson had never before pushed to release documents before the due date. It is these Investigators' belief that Anderson was attempting to publicize the documents in hopes that his disclosure of information to Dick Williams would become moot.

2) We conclude that Anderson's conversations with Dick Williams were, at a minimum, a violation of his duty of confidentiality to his client and demonstrate Anderson's failure to understand the limitations of his role as City Attorney. Because of Anderson's failure to recognize the restrictions placed upon him as the City Attorney, he did not see the problems that could (and did) arise from speaking to the press without his client's authorization to do so. This conclusion is based upon the following findings and evidence:

- As City Attorney, Anderson also had an additional duty to maintain the confidentiality of information that he learned through communications with his client, the Council. By initiating the conversation with Dick Williams, he was breaching that duty to the Council, regardless of whether anyone else had already disclosed the information to Williams.
- Anderson also disclosed confidential communications to a member of the media regarding another matter. Specifically, Anderson told Williams about an issue that Council Member Nall had discussed with Anderson and about which Nall sought legal advice from him.

- Anderson acted at times as a de facto Council member, offering his personal opinion to the Council rather than limiting himself to legal advice as the Council’s attorney. The role of City Attorney is to advise and counsel the elected governing body and administration as to legal matters and to perform those legal functions related thereto, but a City Attorney is not a member of the elected governing body and is to refrain from inserting himself into the province of its authority.

3) We conclude that circumstantial evidence indicates that Adrian Bonser improperly disclosed information to a non-Council member concerning the Georgetown project. This conclusion is based on the following evidence:

- A blogger, Bob Lundsten, told Terry Nall that the information came to him from someone who “got it from a female council member who was not new to the Council.” Lundsten later specifically named Adrian Bonser. Lundsten confirmed to these Investigators that he had in fact told Nall this information, and verified its accuracy. Lundsten would not reveal the person to whom Bonser disclosed the information who ultimately relayed it to him.
- Council Member Bonser was not truthful in her responses to these Investigators. Specifically, she insisted that she was “warming up” to the project at the February 3rd meeting and went on to claim that she declared in

the meeting that she “liked it.” However, her words and actions following the February 3rd Executive Session contradict her claims. The interviews of her fellow council members, her telephone conversation with Council Member Nall, and her email to two of her constituents paint a picture of someone who was very angry about the direction the project was heading.

- Bonser insisted to these Investigators that following the February 3rd Executive Session she did not speak to or communicate in any way with anyone about the meeting. Yet when later confronted, she admitted she had spoken to Council Member Nall and emailed her constituents.
- These contradictions suggest to these Investigators that Bonser is attempting to create the false impression that she favored the project and therefore would not have had a motive to leak information about it.

Background

Discussions about the Georgetown revitalization project began at the time that Dunwoody became incorporated as a city. The City purchased the 16 acre parcel known as the PVC Farm in the fall of 2011. The general idea was that it might eventually be used for a park, and possibly green space. The Council then began discussing the purchase of a 19 acre parcel, the old Shallowford Hospital site, which could be connected to Brook Run Park and offered better potential for use as a ball field than the PVC Farm. The Council intended to use funds secured

from the November 2011 parks bond referendum to purchase this property. However, when the parks bond initiative failed, the City needed to explore other alternatives to pay for the 19 acres or risk losing the option to purchase it.

At the Monday, January 23, 2012 Executive Session, City Manager Warren Hutmacher presented to the Council the idea of a developer, John Wieland Homes, purchasing all or part of the PVC Farm, which would fund the purchase of the 19 acres. The developer would then purchase portions of the 19 acres from the City for development of single family homes. After the transaction was complete, Dunwoody would be left with 16 acres of land to be used for park land and/or possibly a City Hall. It is clear that from the time the bond referendum failed, the effort to purchase the 19 acres was a work in progress which went through a number of iterations before the Council reached an agreement.

On February 3, 2012, the Council again met in Executive Session to hear about revisions to the proposal and discuss the plan.¹ The meeting on February 3, 2012, was the culmination of months of discussions about what the redevelopment of Georgetown would look like with parks, new homes, possibly a City Hall, and possibly an athletic center. In the final analysis, a portion of each parcel would be owned by the City with the remaining portions owned by a private developer. To further complicate the transaction, the purchase and sale of the parcels resembled a

¹ Council Member John Heneghan was not present at this meeting, as he was out of the City on business until late that afternoon.

trade of land, such that when the matter was completed, the City would end up owning the same amount of land it had at the beginning of the process. Because of the way the deal with any developer would be structured, the sale of the 16 acres was inextricably intertwined with the purchase of the 19 acres, such that it was impossible to talk about one without also discussing the other.

Discussions concerning the acquisition of real estate is one exemption from the Open Meetings Act, which requires that government meetings be conducted in public. The sale of real estate is not exempt from public discussion. But when they are so tightly interwoven as part of the same transaction, as they were in this matter, it is impossible for them to be discussed separately. For this reason, the Council went into closed Executive Session to discuss the entire potential transaction, although nothing had been decided or finalized, as the matter remained a work in progress. At both the January 23, and February 3, 2012 Executive Sessions, the City Attorney, Brian Anderson, determined that discussing the entire transaction in a closed session was appropriate.

The Executive Session of Friday, February 3, 2012 occurred at 10:00 a.m. On Monday, February 6, 2012, a blogger, Bob Lundsten, published some of the details of the real estate transaction being discussed in Executive Session in his blog. Specifically, Lundsten discussed the possible sale of the PVC Farm, John Wieland's involvement, and the price range of the homes that were to be built. He

did not mention the purchase of the 19 acres. (See Lundsten blog dated February 6, 2012 attached as Exhibit “1”). Then, on Wednesday, February 8, 2012, Dick Williams published an article in the *Dunwoody Crier* (“The *Crier*”) about the same subject matter. (See *In Brief*, DUNWOODY CRIER, February 8, 2012, at 1, attached as Exhibit “2”).

Because this information had only been discussed in Executive Session, it became clear that someone had leaked it. Mayor Mike Davis and the Council voted unanimously to investigate the source of the leak.² Several previous leaks or perceived leaks had occurred and Mayor Davis was particularly concerned about the failure to comply with the law and that continual leaks would seriously damage the Council’s ability to work together and to effectively govern³

Open Meetings and Open Records Law in Georgia

Public policy in Georgia, as reflected in its statutes and judicial decisions, is one of open government. With limited exceptions, all government meetings must be open to the public. O.C.G.A. § 50-14-1(b). Certain subject matters are exempt from the open meetings requirement. The three exceptions applicable to local city councils are meetings that deal with: 1) acquisition of real estate;⁴ 2) personnel

² Council Member Bonser was not present for this meeting, as she was out of the country. She did attend the Friday, February 3rd Executive Session and left the country on Saturday, February 4, 2012.

³ The “previous leaks or perceived leaks” had occurred prior to Mayor Mike Davis, and Council Members Lynn Duetsch and Terry Nall taking office in January 2012.

⁴ O.C.G.A. § 36-37-6(c) allows a municipality to trade or exchange real property belonging to the municipality for other real property where the property to be acquired is of equal or greater value than the property previously

matters; and 3) attorney-client communications for the purpose of obtaining legal advice. O.C.G.A. §§ 50-14-2 and 50-14-3.

Georgia law likewise provides that any public records of a government agency shall be open for inspection upon request by any citizen of the State. O.C.G.A. § 50-18-70. Certain documents are exempt from public disclosure, as designated by statute. Among those are “real estate appraisals, engineering or feasibility estimates or other records made for or by the state or local agency relative to the acquisition of real property” O.C.G.A. § 50-18-72(a)(6)(A). The Open Records Act is narrowly interpreted to exclude from disclosure only those portions of the record to which an exclusion applies.

The January 23, and February 3, 2012, Executive Sessions were held in whole or in part, for the purpose of discussing a real estate transaction involving the acquisition of real estate. That transaction also included the sale of certain portions of the PVC farm as part of the financing for the purchase of the 19 acres. Because it was a single transaction, the purchase could not be discussed without also discussing the sale. Therefore, they were both proper subjects for the Executive Session. Additionally, the PowerPoint presentation, which was created by the City Manager and related to the acquisition of real estate, was also exempt from disclosure to the public, even though it also referenced the sale of the PVC

belonging to the city. Presumably, this discussion, which would necessarily involve acquisition of real estate, would also fall under this exemption from the Open Meetings Act. However, within six weeks preceding the closing of any such exchange, notice must be given to the public.

farm. Without question, the PowerPoint was a record made by a local agency which was “relative to the acquisition of real property.” Because the purchase and sale were so inextricably interwoven, to redact all references to the purchase of the 19 acres from the PowerPoint and release the remaining portions would have misled and presented a false picture to the public about the transaction.

February 3, 2012 Executive Session

Every single witness interviewed agreed that at the time of the January 23, and February 3, 2012, meetings no one objected to the Executive Sessions or the subject matter to be discussed. The City Attorney, Brian Anderson, agreed that the subject matter of the meetings was appropriate for Executive Sessions and has reaffirmed that position to these Investigators.

According to every witness, save one, which will be discussed later in this report, there was nothing acrimonious or hostile about the meetings. Although the various Council members held different opinions about what the Georgetown redevelopment project should include, the meetings proceeded smoothly. It was at the February 3, 2012 Executive Session that City Manager, Warren Hutmacher, gave the PowerPoint presentation previously mentioned to the Council. This was done to help explain the complex real estate transaction involved in the potential sale of parts of the 16 acre PVC Farm in exchange for purchase of the 19 acres with some of the acreage from each parcel remaining with the City and some

ultimately in private ownership. The plan presented to the Council that day was essentially the same plan that was later presented to the public at the March 8, 2012 press conference, except that it was decided to put out an Invitation for Proposal (IFP) on the project.

As of the day of the February 3rd meeting, the Council members appeared to be divided in their positions on the project, with four members appearing to be in favor of the project as presented and three against. Bonser was against the project. She was unhappy with the proposal and about the idea of using a developer without putting it out for public bid, even though there were legal options being reviewed for a single developer approach. According to several attendees at the meeting, Bonser also believed there should be more commercial development and fewer homes.

City Attorney Brian Anderson recalls that meeting quite differently from other witnesses. It is clear that Anderson raised questions as to the legality of pursuing the project with a single developer versus offering the project for public bid. According to him, when he voiced opposition to the single developer approach, Warren Hutmacher used “vitriolic words against him,” and staff members Kimberly Greer and Michael Starling began “yelling” at him because he

would not agree that the redevelopment plan, as proposed, was legal.⁵ No other witness ever mentioned or could recall any such vitriolic words or yelling by anyone. In spite of the fact that Anderson is not a member of the Council, he repeatedly expressed his personal opposition to the plan. He went so far as to state he believed it should be used for a charter school.

The Leak

Within hours of the February 3rd Executive Session, Bob Lundsten, a Dunwoody blogger, and Dick Williams at the *Dunwoody Crier* already knew about the subject matter of the meeting. They knew enough details that it was apparent that the information could only have come from someone inside the meeting. By mid-day on February 3, 2012, Mayor Davis began getting calls about the subject matter of the meeting. Chamber of Commerce member and the Mayor's former campaign manager, Hayward Westcott, contacted the Mayor and asked if it was true that the City was planning to sell the PVC Farm without a bid. Westcott told the Mayor that he had heard this information from Mr. Williams at the Chamber of Commerce meeting earlier that day.

Council Member Terry Nall knew that there was a problem with a leak because when he went to see Dick Williams on Thursday night before the Friday

⁵ Anderson told these Investigators that he informed the Council that he thought the project could be done through a single developer using an Urban Redevelopment Authority.

(February 3rd) meeting, Williams asked Nall about the sale of the PVC Farm and the involvement of John Wieland Homes in the redevelopment.

Nall knew that Brian Anderson had spoken with Dick Williams earlier because Williams knew about a confidential legal matter that Nall had only discussed with Brian Anderson. Nall sought legal advice as a council member on a matter that directly affected his legal and ethical duties as a council member. Nall did not discuss this issue with anyone else. Yet on the night of February 2nd, Dick Williams already knew about it. Nall asked Williams how he knew about it, and Williams said Brian Anderson told him. When confronted with these facts, Brian Anderson stated that he did not believe he told Williams, but that it was “theoretically possible” that he did.

The evening of February 3, 2012, after the “Taste of Dunwoody” Dinner, Bob Lundsten called Nall and explicitly told him they (the Council) had a leak. Lundsten made it clear to Nall that he had talked with someone who got the information directly from a Council member. Lundsten told Nall the Council member was “female” and “not someone who just came on” the Council. In a subsequent conversation with Lundsten about the leak, Lundsten actually mentioned Adrian Bonser’s name.

Lundsten confirmed to these Investigators that he had in fact provided this information to Nall and verified its accuracy. Although Lundsten would not

disclose his source to these Investigators, he stated that the source of his information got it from Bonser.

Also the night of February 3, 2012, at the “Taste of Dunwoody,” Lundsten called Council Member Heneghan on his cell phone. Lundsten told Heneghan that he knew about the sale of the 16 acres and Wieland’s involvement. Heneghan told Lundsten that he could not comment, but that he had not been at the meeting that morning anyway.

Interviews of Bob Lundsten and A Representative From The Crier

During the course of this Investigation, these Investigators met with both Bob Lundsten and a representative from the *Crier*. They both maintained the confidentiality of their sources. However, as stated above, Lundsten confirmed what he had already told Council Member Nall: his source got the information about the Executive Session from Adrian Bonser.

Interviews of Council Members

Every council member, when interviewed, denied disclosing any information from the February 3rd Executive Session. All but two people interviewed provided straightforward and consistent answers to the questions asked of them and were fully cooperative with the Investigation. In contrast, Brian Anderson and Council Member Adrian Bonser were defensive in their responses, at times argumentative and uncooperative, and their stories evolved with each

subsequent interview. In fact, these Investigators interviewed these two individuals on multiple occasions because their answers and statements were both internally inconsistent, as well as inconsistent with the information received from other witnesses.

For example, contrary to the statements of virtually every other council member, Bonser told this Investigator that at the February 3, 2012 Executive Session, she was “warming up” to the Georgetown redevelopment plan as presented by the City Manager. She stated she told the Council that she “liked it.”

Bonser repeatedly stated that she did not speak to or communicate in any way with anyone about the meeting. However, according to Terry Nall, he called Bonser just hours after that meeting, around 5:30 p.m. on February 3, 2012, to wish her a good trip, since she was leaving town the next morning. She immediately “lit into” him about his position on the Georgetown project. Nall described her as “livid and very defensive” and she reiterated to him her opposition to the project. Specifically, Bonser expressed anger about the Council doing a deal with a predetermined bidder. She had expressed her same concerns in the meeting that morning. Bonser initially denied talking to or communicating in any way with anyone about the meeting, council or non-council member. But at a later interview, when confronted with the information about Terry Nall’s phone call, she admitted that she had spoken with Nall. However, she stated that her conflict with

Nall had been about his refusal to see other people's view point and had nothing to do with his position on the Georgetown project.

Also inconsistent with her statement to these Investigators that she was "warming up" to the Georgetown idea, on February 12, 2012, while in New Zealand, Bonser responded to an e-mail from two of her constituents who were asking questions about the sale of the PVC farm. Bonser's response was anything but "warm." Rather, she told her constituent that: she was "livid about the way 'the Guys' are treating the PVC farm. There is nothing going on with the sale or trading of this land that could not be discussed in public. . . . There is no need for executive session discussions. I'm the Council member who worked to buy the property. My wishes and those of my constituents are being completely ignored." (See e-mail to Romeos dated February 12, 2012 attached as Exhibit "3").

On February 18, 2012, Bonser called Council Member Lynn Deutsch from the cruise ship in New Zealand. According to Deutsch, during this conversation, the topic of the leak and the investigation came up. Bonser said, "Well, it shouldn't have been in Executive Session anyway." Bonser now states she does not recall whether she and Deutsch discussed the leak or not. But Bonser reiterated this sentiment to Deutsch saying, "It is not legal to have an Executive Session about a land sale."

It is important to note that when repeatedly asked whether she had any conversations or communications of any kind with anyone about the February 3rd Executive Session, Bonser denied it. She never mentioned her conversation with Terry Nall or her e-mail to her constituents. However, when confronted with each of these communications, Bonser conveniently recalled them and offered the explanations set forth above.

Because of the inconsistencies in Bonser's statements, these Investigators asked if she would be willing to take a polygraph. She initially agreed, but when notified of the date to appear, she refused, citing health concerns.

Open Records Act Request

On February 15, 2012, following the blog and the *Crier* article regarding the sale of the PVC Farm, the City of Dunwoody received an Open Records Act request seeking any documents discussed in the Executive Session. City Attorney Brian Anderson had previously advised the Council that the entire transaction, including both the purchase and sale of the land, was an appropriate topic for the Executive Session. But upon receiving the Open Records request, Anderson immediately decided that the PowerPoint presentation used by Warren Hutmacher during the meeting should be released to the extent it dealt with the sale and that any mention of the acquisition of real estate should be redacted. After receiving the Open Records Act request, Anderson apparently concluded, for the first time,

that the discussion about the sale of the PVC Farm was not confidential and that it should be released.

Anderson began pushing the City Clerk to produce the documents immediately. According to the City Clerk, Anderson's apparent rush to produce the documents was unusual and inconsistent with his typical pattern in responding to Open Records Act requests. When the City Clerk and the City Manager did not agree with Anderson's position to produce the documents, Anderson called the undersigned Investigative Attorney Wilson on Wednesday afternoon February 15, 2012. By that time, Wilson had been retained to investigate a leak of the very information that Anderson was trying to release to the public. Anderson told Wilson he had spoken to Stefan Ritter at the Attorney General's office and to Georgia Municipal Association (GMA) and that they told him to release the documents.

Interview of City Attorney Brian Anderson

These Investigators met with Brian Anderson on four separate occasions, three of which included lengthy interviews. With each subsequent interview, Anderson's story either completely changed on several key issues, or additional details emerged, which details a reasonable person would have disclosed at the first opportunity. These issues were: 1) his initial indication that Bonser was the leak, but subsequently accused only Nall; 2) his discussions with Dick Williams about

the PVC Farm; and, 3) his concurrence that the discussion of the sale of the PVC farm was proper for Executive Session in light of the complexity of the transaction, but after this Investigation into the leak was underway, claimed it was not confidential. The evolution of Anderson's story raised questions with these Investigators as to the credibility of his statements.

The first meeting with Anderson occurred on February 21, 2012. These Investigators met with Anderson in person at his request. During the meeting, Anderson reiterated his belief that the documents from the February 3rd Executive Session should be released with redactions. He again stated that he spoke with the Attorney General's Office about it, but when asked directly if he had spoken with Ritter, he admitted he had only spoken with a paralegal.⁶ This is different than what he had told Wilson just days before.

During the February 21, 2012 meeting, Anderson said he advised the City Council that although the sale of real estate is not technically exempt from the Open Meetings Act, because the sale of the PVC farm was part of a single transaction involving the acquisition of real estate, it could be discussed in an Executive Session. As to the document request, however, Anderson's position was that the Open Records Act is much narrower and required production of documents, but any information about the acquisition of the 19 acres should be

⁶ Ritter did send Anderson an e-mail in response to a written inquiry Anderson made to the AG's office after speaking with the paralegal.

redacted. He showed these Investigators a hard copy of a PowerPoint presentation that the City Manager had used at the Executive Session, which contained information about both the potential sale of the 16 acre PVC farm, the purchase of the 19 acre parcel, and the trade-offs that would leave the City with the same acreage spread between the two parcels. Substantial portions of the document that Anderson showed the undersigned had been redacted. These Investigators inquired how the PowerPoint document could be released in its redacted form without misleading the public and giving them such an incomplete picture that they would be receiving false information. Anderson concurred it would be misleading but offered no explanation except that he was required to follow the law.⁷

Also during the meeting, these Investigators asked Anderson whether he had any idea who the leak might be. He responded that the general consensus seemed to be that it was Adrian Bonser, clearly indicating that he shared that opinion. He made no mention of any other Council member either generally or specifically. And at no point did he tell these Investigators that he disagreed with the general consensus for any reason. This statement was consistent with what he told the City Manager when the City voted to investigate the leak. At that time, Anderson

⁷ Anderson stated that he believed it was his decision whether or not to release the document on behalf of the City. Wilson explained that it was not clear to him that the document could be released given that in its redacted form it would mislead the public. Wilson also told him that he did not think it was Anderson's decision whether to release it. Anderson again called the Attorney General's office, this time actually speaking with Stefan Ritter. Mr. Ritter said the appropriate person to release the documents would depend on the City's charter and how the government was structured but did not confirm that the City Attorney had such authority.

stated: “They will have Adrian nailed in about two days. People talk in Dunwoody.”

However, on March 15, 2012, Anderson was again interviewed as part of this investigation. During that interview, he stated he had initially believed the leak was Council Member Denny Shortal because it contained what Anderson described as “positive” facts about the deal (i.e., it mentioned John Wieland Homes and the home prices). But Anderson stated that subsequently Dick Williams told him that Council Member Nall had provided the information to him. Anderson made no mention of Bonser during his second interview.

Anderson acknowledged that he met with Williams on a regular basis and had done so for years. He said he would stop by Williams’ office to talk about what was going on in the City. Anderson said Williams liked to talk generally about matters on the agenda. According to the City Clerk, Anderson would sometimes pick up the phone and call Dick Williams about city business, saying, “I have to call Dick so that he can do a story on this.” Anderson explained that he met with Dick Williams sometime between the January 23rd and February 3rd Executive Sessions, and that is when Williams allegedly said that Terry Nall told him about the sale of the PVC farm.

Nall denied disclosing the information to Dick Williams. These Investigators doubted that Williams, with his long and distinguished career as a

professional journalist, would have disclosed to Anderson such information. After interviewing both a source close to the *Crier* and Nall, it became clear that Nall had not revealed this information. Contrary to Anderson's claim, when interviewed by these Investigators, a source close to the *Crier* denied that Nall disclosed anything about the Executive Session or the PVC Farm. This statement was consistent with the February 8, 2012, article in the *Crier*, which noted that the information did not come from a Council member. Moreover, the *Crier* only published information about the sale of the PVC farm, which indicates that the source of the information knew that the acquisition of real estate was, without question, privileged.

Even though Anderson knew that the Mayor was conducting a full-blown investigation into the alleged leak, Anderson never mentioned to anyone – not the Mayor nor the City Manager nor any Council member - that Nall had allegedly leaked information to Williams. And he did not raise it with these Investigators until the second interview, even though he admits he was aware of the information at the time of the first interview. When these Investigators asked Anderson why he did not mention the information about Shortal and Nall during the first interview, he stated that he did not think it was appropriate to “throw a council member under the bus.” Yet, without hesitation, he had pointed to Bonser during the first interview.

Regardless of what Anderson claimed Nall told Williams, which these Investigators find to be without merit, Anderson admitted discussing the Executive Session with Williams. According to Anderson, when he went to Williams' office between the January 23rd and February 3rd Executive Sessions, he asked Williams, "So, do you know what Warren is up to?" which he acknowledged was a question about the PVC farm. Anderson admits that when he asked Williams this question he was "fishing" to see what Williams knew about it. He claims Williams said, "Oh you must be referring to the sale of the PVC Farm." Anderson then asked Williams what he thought of the plan. He went on to ask Williams what he believed the public would think. Although Anderson denied disclosing anything from the Executive Session to Williams, he conceded that he initiated the conversation about the PVC Farm, implicitly confirmed that Williams' information was correct, and then discussed the public's likely reaction to the same.

Several days before the completion of this report, the *Crier* published an article claiming that: "Sources with knowledge of the case say Wilson asserts that Anderson shared privileged information with the *Crier*. A *Crier* reporter voluntarily agreed to an interview with Wilson and a co-worker and denied that allegation." (See Dick Williams, *Council Stops Short of Firing City Attorney*, THE CRIER, May 15, 2012, at 1). The article is correct that a *Crier* reporter denied that Anderson disclosed any confidential information, but that is not the entire story.

The *Crier* reporter also qualified that denial each time by stating, “but I thought the sale of property could be discussed.” Interestingly, this statement is virtually identical to the explanation given by Anderson to explain why his discussion with Dick Williams did not breach any confidentiality.

These Investigators questioned Anderson about whether it was appropriate for him, as the City Attorney, to speak with the media about anything discussed in an Executive Session, and whether that was a breach of confidentiality. Anderson stated that he did not believe he had breached any confidentiality because the sale of the PVC farm was not exempted from disclosure under the Open Meetings Act. Anderson also told these Investigators that he did not breach any confidentiality because he believed that the sale of the PVC farm had already been disclosed to Williams by Terry Nall, and therefore, any privilege had been waived.

During the second interview with Anderson, Anderson stated that he did not believe the project could be done legally without a public bid, even though he claimed that at the February 3rd meeting, he told the Council he thought the project could possibly be done with a single developer through a Urban Redevelopment Authority. He further stated that his “plan” was to stop the project through a legal means.

Because of the inconsistencies in Anderson’s statements and his ever-evolving story about the leak, these Investigators inquired whether Anderson

would take a polygraph. Anderson initially agreed, but when notified of the date he should appear, he changed his position and refused, claiming that he would find his own “independent and reputable” polygrapher. He said this without knowing who the polygrapher would be. The polygrapher to be utilized by these Investigators had been an FBI agent for twenty-six years, served as the chief polygrapher with the Federal Bureau of Investigation, Atlanta Division for six years, and now has his own private polygraph company. Even after being advised of these credentials, Anderson still refused the polygraph.

Conclusion

Based upon the above findings and evidence, we conclude the City Attorney Brian Anderson and Council Member Adrian Bonser improperly disclosed information from the Council’s January 23, and February 3, 2012 Executive Sessions.

EXHIBIT 1

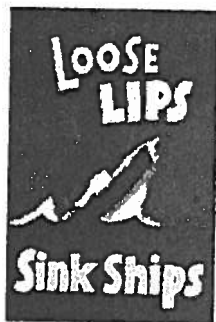
Dunwoody Farmer Bob

From a NJ kid, to sales executive. Homeowners activist, to Chief of Staff for DeKalb County Commission District 1. With a new life direction, I am trying to help as many people as I can through building community, community gardens, feeding the hungry and cutting through the red tape and insanity of local and county governments. Maybe even an occasional commentary now and then.

MONDAY, FEBRUARY 6, 2012

Dunwoody !!! "Loose Lips Sink ships"

There was an expression that became popular during WW II.



"Loose Lips Sink ships"

With German U-Boats off of the east coast, any tidbit of information that someone inadvertently or purposely leak could result in the sinking of American ships crossing the Atlantic. The cost for the inadvertent leak or the passing of confidential information, because it made the leaker feel important with their friends, was very steep. Hundreds of lives could be lost because someone wanted to feel special, important or privileged. Either that or they were purposely looking to sabotage or were just not too bright.

In Dunwoody, the price of such leaks is not so high. The consequences are surely not life threatening, but "Loose lips, sinks ships" may still apply.

I have been a little busy over the past couple weeks helping the Commissioner deal with the 2012 Budget as well as a little detail, the redrawing the County Commission district lines. So it should go without saying that I am paying little attention to last minute "special called meetings" by the City Council. Last Friday there was just such a meeting held in the morning. The sole purpose of this meeting was to go into executive session.

Executive sessions are critical to local government. They allow for the council to discuss legal issues, pending and ongoing litigation and real-estate transactions. They allow open and unrestrained discussions amongst the council out of the glare of the public eye. They are closed meetings. Items discussed in those meetings and information stemming from those meetings are privileged. Now don't get me all tied up in the legalese, but what happens in executing session, stays in executive session.

Here are a couple of lines from the **Dunwoody, Georgia, Code of Ordinances**;

PART II - CODE OF ORDINANCES; Chapter 2 - ADMINISTRATION; ARTICLE VIII. - ETHICS; DIVISION 1. - GENERALLY

Sec. 2-216 – Duties of a Public Servant

"No public servant or former public servant shall divulge any confidential information to any person who is not authorized to have it nor divulge to any unauthorized person confidential information acquired in the course of holding

his position in advance of the time prescribed by the city council, administrators"

"Intentionally disclosing any confidential information concerning any official or employee, or any other person, or any property or governmental affairs of the city, without prior formal authorization of the city council; "



It seems our city continues to have a problem understanding what "executive session" means. Within hours of the executive session, I received several calls informing what had taken place in that session. I then made several calls to confirm what I had been told (I did not ask any councilmen). Seems I was not the only one who knew what happened Friday morning.

What was the topic of discussion? **The PVC farm is for sale.**

Seems we have a deal or are working on a deal that would sell the PVC land to a builder (John Wieland Homes ?) for the construction of townhouses and single family homes. The City could possibly gain a park from the development. Cost of the homes to be built will be about \$350,000 - \$400,000.

Why am I writing about this secret deal? I am not against the development of this property for townhomes. John Wieland has a fine reputation for building a fine product. This is why:



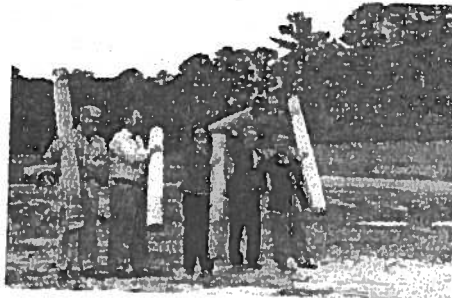
?????

First, it is not much of a secret. If the council wants things to remain protected, they should stop talking to their friends.

Second, I think there would be questions to be answered. If the City bought this land with the intent to flip it (which they apparently have), then is it not public property? If it is public property, can the city cut a deal with a buyer without putting that asset up for bid? Shouldn't we be looking for the highest return on our investment?

Lastly, despite the city saying they always had plans for this piece of property beyond being a park, everyone I know believes this was purchased to be a park.

<http://www.ajc.com/news/dekalb/dunwoody-schedules-park-grand-1214658.html>



The Crier

http://www.thecrier.net/news/image_0b02135e-0a21-11e1-8b57-001cc4c002e0.html

Given that the bond issue to buy park land just a block away was soundly defeated, why now are we still pursuing the sale of this 16 acres when we were told we desperately need parks? Why, if we are seeking economic development for the Georgetown area, are we rushing to build less than a hundred homes in a community with 13,000 already?

Bob Lundsten at 9:40 AM

Share 1

EXHIBIT 2

DUNWOODY CRIER

Serving the community since 1976

February 8, 2012

www.thecrier.net

New Chamblee High due 2014, not 2013



The DeKalb school system's Carlton Parker explains construction delays at Chamblee Charter High School to the Dunwoody Chamblee Parents' Council. Crier photo: Rebecca Chase Williams

By Rebecca Chase Williams For The Crier

The DeKalb County School system has revised its timeline for the \$69 million construction of the new Chamblee Charter High School, saying the main classroom building will be finished by July of 2013 but that the second building that includes the gym, natatorium, auditorium, music and art rooms and playing fields won't be finished until the following year, by May, 2014. DCSS Interim Operations Officer

Carlton Parker gave his construction update at the monthly meeting of the Dunwoody Chamblee Parents' Council last Wednesday, at first saying the entire project would be finished in 2013, but later called The Crier to clarify that the second phase would not be finished until 2014.

"As the construction progresses, students and teachers will be shifted from the trailers to new construction when it is completed," wrote Parker in an email to The Crier. "At no time will the students be without facilities (band, art, music, auditorium or cafeteria) whether it is the existing or the new, there will be working facilities and services."

Parker confirmed that the construction is about a month behind schedule and that the contractor should soon be receiving the necessary permits to demolish the front of the existing school and the neighboring apartments. Turner Construction has the demolition scheduled for February on its updated timeline. Asked how the project will make up time, Parker answered, "The contractor is acutely aware of the time frame. We will do whatever we have to do to get it there."

School board member Nancy Jester said she is concerned about the schedule as it differs from the one originally published by the DCSS that had the school being completed in 2013.

"What I would like to see is a comprehensive timeline document," said Jester. "It is clear there's a lack of communication and updates. We've got to get that

CHAMBLEE, page 18

Brookhaven nears committee vote

By Rebecca Chase Williams For The Crier

The House Governmental Affairs committee was poised to vote yesterday on the bill to provide for a voter referendum to create a new city of Brookhaven. While the sponsors are optimistic that it will pass, the vote is expected to be close on the 16-member committee since there are five Democratic legislators on the committee opposed to it, as well as several Republicans and one independent who are either opposed or undecided.

The committee heard from both opponents and supporters of the bill as several hundred people attended a packed hearing

at the State Capitol last Tuesday. Two prevailing themes emerged from the two-hour hearing. The opponents asked that the bill be delayed until next year so that it can be further studied and discussed. Supporters urged that the legislature give the residents the right to vote on the bill this July.

The bill sponsor, state Rep. Mike Jacobs (R-north DeKalb) reviewed the feasibility study performed by the University of Georgia's Carl Vinson Institute that concluded the city was financially feasible, even generating a \$3 million surplus that Jacobs has promised would be used to roll back taxes three mills. Jacobs said the main goal

BROOKHAVEN, page 19



Eugenie Viener delivers petitions with 500 signatures asking that the legislature delay the Brookhaven bill so it can be further studied. The hearing room was packed with city of Brookhaven supporters wanting the right to vote on the issue this year. Crier photo: Rebecca Chase Williams

Ellis brings town hall to Brookhaven, Dunwoody



DeKalb County's chief executive, Burrell Ellis, kicked off a series of town hall meetings last week in Brookhaven. He will be at Dunwoody Baptist Church Thursday night. Ellis announced his re-election campaign last month. Crier photo: Rebecca Chase Williams

By Rebecca Chase Williams For The Crier

DeKalb County's Chief Executive, Burrell Ellis, is set to hold a town hall meeting this Thursday, Feb. 9 at Dunwoody Baptist Church as part of his series of meetings with citizens after he recently announced his bid to run

for a second term.

Ellis held one of his first town hall meetings last week at Ashford Park Elementary, in what many consider the kick-off of his re-election campaign, describing how he has brought the county from the brink of disaster, even passing out a 33-page color booklet on his "One DeKalb" efforts

to rebuild the county, improve public safety and balance the budget.

Ellis opened his meeting telling residents, "It's been a tough time over the last three years." He described the \$5 billion loss in the tax base, how he's cut \$130 million in county spending, reduced staff by 1,000, re-organized departments, and cut non-essential services.

"We're getting our fiscal house in order," said Ellis, adding that violent crime was down 30 percent and property crimes down percent.

Ellis described the many projects completed under his first term, mostly paid for with bond money from the 2005 parks and library referendums: "Three new and four renovated libraries, two new recreation centers, a new

TOWN HALL, page 19

Taking the plunge? The diver pops the question

By Fran Memberg For The Crier

With a wink and a nod to "An Affair To Remember," Jon Grant proposed to his girlfriend, Becca Halperin, at the Georgia Aquarium.

In the 1957 romantic cinema classic, the characters played by Cary Grant and Deborah Kerr agree to rendezvous in six months at the top of the Empire State Building because, she said, "It was the nearest thing to heaven." Grant said he chose the aquarium

for his proposal because "Becca's happiest place is by the ocean," and the aquarium is the closest thing Atlanta has to an ocean.

The Sandy Springs couple's October 2011 engagement took place almost four years after they met in April 2008. They first crossed paths, literally, while walking in opposite directions in Lenox Park near Brookhaven. Something about Grant caught Halperin's eye and she smiled and waved at him. He quickly ended a cellphone conversation so he could catch up with

Halperin, but by the time he turned around she was gone.

"I don't know why I smiled and waved. I must've thought he was cute," said Halperin. Grant said the gesture "absolutely" surprised him.

Despite the missed first opportunity to meet, fate intervened a few days later when Grant and Halperin saw each other at a restaurant. She thought she recognized him as a resident in her apartment complex. He immedi-



Becca Halperin and Jon Grant

AQUARIUM, page 19

EXHIBIT 3

To: Tony Miller; Julian Black
Subject: Re: The PVC Park

Tony and Julian,

Yes. Still second class. Lynn Deutsch and I are livid about the way "the Guys" are treating the PVC Farm. There is nothing going on with the sale or trading of this land that could not be discussed in public. After all, it is the CITIZENS of Dunwoody who own this property, not the Council. There is no need for executive session discussions. I'm the Council member who worked to buy the property. My wishes and those of my constituents are being completely ignored.

I'm shocked by the attitude of both Terry Nall and Mike Davis. I think you ought to write to them to let them know your thoughts. I'm very disappointed with them and of course, Denny Shortal who talks about the Georgetown area as if it is a scourge on the City and, "The Ghetto."
I'm in New Zealand right now. It makes it difficult to discuss.

Please make a point to let the Council know your thoughts- including Lynn and me. Lynn and I are a united front and, we both have Georgetown's interest at heart. Get your friends to write as well. The more the better. There is also a City Council meeting on Monday. Get as many folks there as possible to voice their opinions.

Thanks for writing. I believe anything that goes on with the PVC Farm property should be made public so that the folks have an opportunity to chime in. I'm offended by all the secrecy and, you should be too.

Please let me know your thoughts.

Adrian
Sent from my iPhone

On Feb 12, 2012, at 4:24 AM, "Tony Miller" <frosteee@bellsouth.net> wrote:
Hey Guy's

This was on the ABC news the other night. I feel it should be brought up at our ROEMO breakfast on Monday morning with our new Mayor Mike Davis for a better understanding of what the direction our city government is taking. It seems to be contrary to what we heard from the last regime. Are we still the second class tier to the elitist part of Dunwoody on the North side of town ?? I can't see a better place for our future City Hall to be built than this propertythat we already own.
Tony

Dunwoody may sell failed development-turned park

• By Richard Elliot <<http://www.wsbtv.com/staff/richard-elliott/>>

DUNWOODY, Ga. —

The City of Dunwoody may be trying to sell a 16-acre failed development it wanted to turn into park, according to a source close to city government.

The property, commonly known as the "PVC Farm," is wedged between Chamblee-Dunwoody Road and North Shallowford Road. It was intended to be an apartment complex until the housing market crash. PVC pipes stuck out of the ground as weeds grew high on the property.

Dunwoody purchased the property in 2011, cut the pipes and opened it as a park, but voters rejected a parks bond referendum leaving the city with what essentially is a failed subdivision with paved streets that wind around the property.

Dunwoody spokesman Bob Mullen couldn't comment on the sale rumors, saying he couldn't talk about discussions that may or may not be happening during city council executive sessions. A city council can legally use an executive session to talk secretly about certain matters including the potential sale or purchase of real estate.

A source close to city government told Channel 2's Richard Elliot that it would be "a good assumption" that Dunwoody would like to sell that property now that taxpayers rejected that parks bond referendum.

Long-time Dunwoody resident Diane Branch enjoyed the park with her grandchild, Coyote, on Wednesday morning. She doesn't want to see the PVC Farm go back to developers.

"Not really happy about that," said Branch. "I think there's a lot of development around. I like the natural space and I like it just the way it is."

Dunwoody resident Doug Cunnington walked his dog Brody around the park Wednesday. He said he doesn't mind development, as long as it was done the right way.

"I do like the space out here, so it is slightly concerning to me," said Branch. "However, if the right developers got a hold of it, you know, perhaps it could be an improvement."

----- End of Forwarded Message