

COBB COUNTY, GA  
FILED IN OFFICE  
2015 APR 16 PM 3:45

IN THE SUPERIOR COURT FOR THE COUNTY OF COBB

STATE OF GEORGIA

WYLENE S. TRITT and §  
ISAKSON LIVING COMMUNITIES, LLC, §  
§  
Plaintiffs, §

CIVIL ACTION

*Opheya Keaton*  
COBB SUPERIOR COURT CLERK

-vs- §

FILE NUMBER: 15-1-2908-  
53

COBB COUNTY, GEORGIA; §  
TIMOTHY D. LEE, Chairman of the §  
Cobb County Board of Commissioners; §  
BOB WEATHERFORD; LISA N. CUPID; §  
JOANN BIRRELL; and ROBERT J. OTT, §  
in their official capacities as Members of §  
the Cobb County Board of Commissioners, §  
§  
Defendants. §

**COMPLAINT**

COME NOW, Plaintiffs, WYLENE S. TRITT and ISAKSON LIVING COMMUNITIES, LLC (hereinafter collectively referred to as "Plaintiffs"), by and through their undersigned counsel of record, and file this Complaint against the named Defendants, and respectfully show this Honorable Court the following in support thereof:

**PARTIES AND JURISDICTION**

1.

Plaintiff WYLENE S. TRITT is the owner of certain real property located in Cobb County, Georgia ("Plaintiff TRITT").

2.

Plaintiff ISAKSON LIVING COMMUNITIES, LLC (hereinafter referred to as "Plaintiff ISAKSON") is a Georgia limited liability company duly authorized to transact

MOORE INGRAM  
JOHNSON & STEELE  
limited Liability Partnership  
Emerson Overlook  
326 Roswell Street  
Marietta, GA 30080  
(770) 429-1499  
FAX (770) 429-8631

business in the State of Georgia and has executed a valid and binding contract with Plaintiff TRITT for the purchase of the property which is the subject of this action. Therefore, Plaintiff ISAKSON has a substantial interest in the outcome of this action.

3.

Defendant COBB COUNTY, GEORGIA, is a political subdivision of the State of Georgia and is subject to the jurisdiction and venue of this Court.

4.

Defendants TIMOTHY D. LEE; BOB WEATHERFORD; LISA N. CUPID; JOANN BIRRELL; and ROBERT J. OTT are members of the Cobb County Board of Commissioners, and will be hereinafter collectively referred to as "COMMISSIONERS." Each of said Defendants is subject to the jurisdiction and venue of this Court by virtue of being residents of Cobb County, Georgia.

#### **FACTUAL ALLEGATIONS COMMON TO EACH COUNT**

5.

Plaintiffs reallege and hereby incorporate by reference each and every fact and allegation contained in the foregoing portions of this Complaint with the same force and effect as if pleaded separately herein.

6.

Plaintiff TRITT is the owner of approximately 53.7 acres of real property lying and being in Land Lots 965 and 966, 16th District, 2<sup>nd</sup> Section, Cobb County, Georgia, and being more particularly described in the legal description attached hereto as Exhibit "A" and incorporated herein by reference (hereinafter referred to as the "Property" or the "Subject Property").

7.

On or about December 26, 1972, the COMMISSIONERS adopted the "Zoning and Planning Ordinance of Cobb County," and adopted the "Official Cobb County Zoning Map," as amended, both of which shall be hereinafter referred to as the "Zoning Ordinance." Plaintiffs further show that said Zoning Ordinance is the present official zoning ordinance of COBB COUNTY, GEORGIA, as amended. Pursuant to said Zoning Ordinance, Plaintiff TRITT'S real property is limited and restricted to the zoning classification of R-20 (single-family residential, minimum 20,000-square-foot lot size, averaging 1.75 dwelling units per acre).

8.

The COBB COUNTY BOARD OF COMMISSIONERS, said body being comprised of the COMMISSIONERS named in this suit, is the governing authority of COBB COUNTY, GEORGIA, and is therefore vested with the zoning authority for COBB COUNTY pursuant to Art. IX, § II, ¶ 4 of the 1983 Constitution of the State of Georgia, and by applicable Cobb County Ordinances.

9.

The Subject Property lies undeveloped and is located on the south side of Roswell Road, at its signalized intersection of Providence Road and west of Robinson Road.

10.

The Subject Property has extensive road frontage on Roswell Road of over 1,700 feet. Pursuant to the Cobb County Department of Transportation method for classification of roads, Roswell Road is classified as an arterial road, having over 36,000 average daily vehicular trips per day.

11.

The Subject Property is located adjacent to, and directly across Roswell Road, from properties zoned RA-4 (single-family attached/detached residential, allowing up to 4 dwelling units per acre); R-15 (single-family residential, minimum 15,000-square-foot lot size, and averaging approximately 2.1 dwelling units per acre); R-20; and Low Rise Office (“LRO”), which have existing houses, daycare, office condominiums, and medical offices.

12.

Moreover, WellStar Health System developed and located a “Health Park” facility directly across Roswell Road from the Property, which facility consists of an expansive medical office building of more than 160,000 square feet. The full use of the WellStar Health Park development, and anticipated traffic impact resulted in the installation of yet another traffic signal on Roswell Road, just east of the Property.

13.

The Subject Property is delineated under the Cobb County Comprehensive Plan (hereinafter “Land Use Plan”) as being within a Low Density Residential (“LDR”) land use category which encourages single-family, detached residential development at densities ranging up to 2.5 units per acre. However, all properties adjoining the Subject Property, except for County parkland, and likewise having frontage on Roswell Road enjoy a more intensive future land use designation of either Medium Density Residential (encouraging residential development of up to 5 dwelling units per acre) or Neighborhood Activity Center (encouraging retail, commercial, and office development commonly found in a neighborhood).

14.

Further, it is without dispute the Roswell Road corridor has been developed in a highly intensive manner with virtually no development occurring within the last thirty years under the R-20 zoning classification. Residential development along Roswell Road has been approved by Cobb County and developed with residential densities ranging upwards to 5 dwelling units per acre; but none approved nor developed at residential densities, which approach the restrictions placed upon the Subject Property as a result of its R-20 classification.

15.

Within close proximity to the Subject Property and along Roswell Road can be found major commercial centers, including, but not limited to, the Merchant's Walk Shopping Center; and major retail "power" or "big box" centers such as Home Depot and Target.

16.

Additionally, and also along the Roswell Road corridor, and within close proximity to the Subject Property can be found numerous office developments, many of which exceed two stories in height. In fact, Defendants have approved intensive zonings and uses within the immediate vicinity of the Subject Property, and also along Roswell Road, for three and four story office buildings and self-storage facilities.

17.

Given the intensity of the uses of properties in the immediate and surrounding area, on or about November 5, 2013, Plaintiffs applied for rezoning of the Subject Property from its existing R-20 category to the Continuing Care Retirement Community ("CCRC") category for purposes of developing a senior living community consisting of independent living, assisted living, and skilled nursing care (the "Application for Rezoning").

18.

The CCRC zoning category was adopted by the COBB COUNTY BOARD OF COMMISSIONERS for the express purpose of providing a specific zoning designation for the development of communities to provide multistage living and care for senior citizens; and without question, the Application for Rezoning met all requirements of the CCRC category.

19.

During the pendency of the Application for Rezoning, Plaintiffs attended multiple meetings with area residents in order to receive comments and consideration of the subject Application for Rezoning.

20.

As a result of these meetings, the Plaintiffs voluntarily submitted a letter of agreeable stipulations and conditions of zoning dated February 25, 2015. This letter of stipulations included multiple conditions of rezoning designed to lessen any perceived impact of the proposed development on nearby residential properties; including, but not limited to, stipulations designed to enhance landscaping, buffers, operations, environmental issues, and aesthetics.

21.

The Plaintiffs' Application for Rezoning was supported by the recommendations of the Cobb County Planning and Zoning staff which were issued prior to consideration by the Cobb County Planning Commission and the COBB COUNTY BOARD OF COMMISSIONERS (hereinafter the "Staff Recommendations").

22.

The Staff Recommendations stated that the Cobb County Planning and Zoning staff recommended approval of Plaintiffs' Application for Rezoning, finding that "[i]t is

Staff's opinion that the applicant's rezoning proposal is in conformity with the policy and intent of the *Cobb County Comprehensive Plan*, which delineates this property to be within the Low Density Residential (LDR) land use category . . . the CCRC zoning category is an allowable zoning in LDR, given a number of guidelines to follow."

23.

On or about March 3, 2015, the Cobb County Planning Commission held a public hearing to consider the Application for Rezoning. The Planning Commission voted unanimously to recommend approval of the Application for Rezoning, subject to certain conditions.

24.

Thereafter, on or about March 17, 2015, a public hearing was held before the COBB COUNTY BOARD OF COMMISSIONERS as to the referenced Application for Rezoning. At this hearing, the COBB COUNTY BOARD OF COMMISSIONERS voted to deny the subject Application, thus leaving the Property zoned as R-20.

25.

The COBB COUNTY BOARD OF COMMISSIONERS' decision to deny the Application for Rezoning stands in direct conflict with the Land Use Plan; as well as, the purpose and intent of the Land Use Plan as applied to adjoining and surrounding properties, and thus the policies, terms, and intent of the Land Use Plan cannot be relied upon by COBB COUNTY to justify the subject rezoning decision.

26.

As a result of the Defendants' actions, the Plaintiffs have suffered and will continue to suffer a substantial detriment.

27.

There is no existing use or demand for the Property under the existing classification; and the Property is substantially and unreasonably diminished in value due to the continuation of such existing zoning restrictions.

28.

Plaintiffs have a substantial interest in the use and development of the Property, and Plaintiffs are entitled to a fair and reasonable economic return on their investment in the Property.

29.

Furthermore, the existing classification, as applied to the Property, bears an insubstantial relation to the protection or promotion of the health, safety, welfare, or morals of the County.

30.

There would be no adverse impact to surrounding properties from the rezoning and development of the Property as proposed by the Plaintiffs.

31.

There is no gain or benefit to the public from the restriction of the Property to the existing classification that approaches the resulting detriment suffered by the Plaintiffs.

32.

Any relative gain to the public as a result of the current classification of the Property is substantially outweighed by the hardship imposed upon the Plaintiffs.

33.

Until the Zoning Ordinance is amended or rescinded as applied to the Property, the Defendants will refuse to issue to the Plaintiffs, or their successors in title, the necessary



certificates of zoning compliance and building and development permits required by the Cobb County Code and the rules and regulations for construction or development of the Property in any manner other than as permitted by the existing zoning classification.

34.

The Zoning Ordinance subjects the Plaintiffs to both civil and criminal actions for any use of the Property that is inconsistent with the present zoning classifications.

35.

In refusing to approve Plaintiffs' Application for Rezoning, the Defendants did not follow the guidelines outlined by the Supreme Court of the State of Georgia and the Georgia legislature for the consideration of the constitutionality of a zoning ordinance as applied to real property and gave no weight to those guidelines in their deliberations on the request for rezoning of the Property.

36.

The Defendants have failed and refused to work with the Plaintiffs in an effort to establish zoning uses and conditions that would permit economic development of the Property and breached their duty to consider ways in which the County's objections to Plaintiffs' proposed development can be eased by County action.

37.

The Application for Rezoning seeking the rezoning of the Property was filed and pursued by the Plaintiffs in accordance with the applicable statutory proceedings established by COBB COUNTY, GEORGIA.

38.

The Plaintiffs timely challenged the constitutionality of the Zoning Ordinance as applied to the Property.

39.

The Defendants were given an opportunity to rezone the Property after being placed on notice of the unconstitutionality of the Zoning Ordinance as applied to the Property and further after receiving notice of facts and circumstances that make the application of the Zoning Ordinance to the Property unconstitutional, but the Defendants failed and refused to rezone the Property to allow the use proposed by Plaintiffs.

40.

The decision of the Defendants to deny any use other than those uses currently permitted is final, and there are no administrative remedies or procedures to review such decision of the Defendants before any body empowered to act to reverse, modify, or alter such decision. Therefore, all statutorily provided administrative action is final, and the procedure available for redress is remedial only.

41.

Within thirty (30) days of the date of the denial of its Application for Rezoning, Plaintiffs bring this suit seeking redress for the deprivation of its constitutional rights by the Defendants.

## COUNT I

### REFUSAL TO GRANT ZONING APPLICATION

42.

Plaintiffs reallege and hereby incorporate by reference each and every fact and allegation contained in the foregoing portions of this Complaint with the same force and effect as if pleaded separately herein.

43.

The refusal by the Defendants to change the zoning classification applicable to the Property as requested by the Plaintiffs so as to permit a reasonable and appropriate use of the Property was unconstitutional and null and void in that said refusal was arbitrary, capricious, without rational basis, and constitutes an abuse of discretion and constitutes a violation of Art. I, § I, ¶ I of the 1983 Constitution of the State of Georgia and the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

44.

The arbitrary and capricious nature of Defendants' actions and decision to deny Plaintiffs' Application for Rezoning is demonstrated by contrasting said denial with current zoning and uses of property in the surrounding area of the Subject Property and with previous actions by Defendants rezoning comparable property in the immediate vicinity of the Subject Property.

45.

The refusal of the Defendants to change the zoning classification has deprived the Plaintiffs of constitutionally guaranteed property rights without just and adequate compensation and constitutes a violation of the rights and privileges secured to the Plaintiffs by Art. I, § III, ¶ I of the 1983 Constitution of the State of Georgia.

46.

As a direct and proximate result of the Defendants' arbitrary and unreasonable refusal to grant Plaintiffs' Application for Rezoning, Plaintiffs have incurred and will continue to incur significant economic loss and deprivation of constitutional rights.

47.

As a result of Defendants' actions in denying Plaintiffs' Application, Defendants have discriminated against those class of persons designated and defined as "senior citizens" in violation of the Fair Housing Act. (42 U.S.C. § 3607, *et seq.*, and the Housing for Older Persons Act of 1995 as contained therein, collectively herein referenced to as "the Act").

48.

Defendants' actions in violation of the Act include, but are not limited to, denying an equal opportunity for access to housing options for senior citizens in a discriminatory manner.

49.

Such discrimination is evidenced by, among other things, denial of Plaintiffs' Application resulting in a complete absence in the County of appropriate and affordable rental housing options designed and intended for senior citizens desiring to live in a continuing care retirement community.

## COUNT II

### EXISTING CLASSIFICATION

50.

Plaintiffs reallege and hereby incorporate by reference each and every fact and allegation contained in the foregoing portions of this Complaint with the same force and effect as if pleaded separately herein.

51.

The classification by the Defendants of Plaintiffs' Property as R-20 constitutes an arbitrary and unreasonable use of the zoning power by Defendants in that said zoning classification does not bear a substantial relation to the public health, safety, common morality, or general welfare of the public and is, therefore, unconstitutional, null and void, and constitutes an abuse of discretion and a violation of Art. I, § I, ¶ I of the 1983 Constitution of the State of Georgia and the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

52.

The arbitrary and capricious nature of Defendants' zoning classification of Plaintiffs' Property is demonstrated by contrasting said classifications with current zoning and uses of property in the immediate vicinity of the Subject Property; with previous actions by Defendants rezoning comparable property in the immediate vicinity of the Subject Property; especially given the intensive nature of existing uses of property and prior approvals by Defendants.

53.

The existing classification of Plaintiffs' Property results in relatively little gain or benefit to the public while inflicting significant detriment or loss upon the Plaintiffs and, therefore, is confiscatory and void.

54.

The existing classification by Defendants of Plaintiffs' Property renders the Property unusable and destroys marketability and, thus, constitutes a taking of Plaintiffs' private Property without just compensation and without due process of law in violation of

Art. I, § I, ¶ I and Art. I, § III, ¶ I(a) of the 1983 Constitution of the State of Georgia and the Fourteenth Amendment to the United States Constitution.

55.

As a direct and proximate result of the arbitrary and unreasonable zoning of Plaintiffs' Property by Defendants, Plaintiffs have incurred and will continue to incur significant economic loss and deprivation of constitutional rights.

### COUNT III

#### INTERVENING CLASSIFICATIONS

56.

Plaintiffs reallege and hereby incorporate by reference each and every fact and allegation contained in the foregoing portions of this Complaint with the same force and effect as if pleaded separately herein.

57.

Plaintiffs' Constitutional Challenge asserted before the BOARD OF COMMISSIONERS included a challenge to any intervening classification between the existing R-20 classification and the requested CCRC classification.

58.

Classification by the Defendants of Plaintiffs' Property within one of these intervening classifications constitutes an arbitrary and unreasonable use of the zoning power by Defendants in that these zoning classifications do not bear a substantial relation to the public health, safety, common morality, or general welfare of the public and is, therefore, unconstitutional, null and void, and constitutes an abuse of discretion and a violation of Art. I,

§ I, ¶ I of the 1983 Constitution of the State of Georgia and the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

59.

The arbitrary and capricious nature of Defendants' classification of Plaintiffs' Property within an intervening classification is demonstrated by contrasting said classifications with current zoning and uses of property in the immediate vicinity of the Subject Property and with previous actions by Defendants rezoning comparable property in the immediate vicinity of the Subject Property.

60.

The classification of Plaintiffs' Property within an intervening classification results in relatively little gain or benefit to the public while inflicting significant detriment or loss upon the Plaintiffs and, therefore, is confiscatory and void.

61.

The classification by Defendants of Plaintiffs' Property within an intervening classification renders the Property unusable and destroys marketability and, thus, constitutes a taking of Plaintiffs' private Property without just compensation and without due process of law in violation of Art. I, § I, ¶ I and Art. I, § III, ¶ I(a) of the 1983 Constitution of the State of Georgia and the Fourteenth Amendment to the United States Constitution.

62.

As a direct and proximate result of the arbitrary and unreasonable zoning of Plaintiffs' Property by Defendants, Plaintiffs have incurred and will continue to incur significant economic loss and deprivation of constitutional rights.

**COUNT IV**  
**EQUAL PROTECTION**

63.

Plaintiffs reallege and hereby incorporate by reference each and every fact and allegation contained in the foregoing portions of this Complaint with the same force and effect as if pleaded separately herein.

64.

The refusal of the Defendants to amend the Zoning Ordinance and applicable maps as requested by the Plaintiffs and the refusal to allow uses other than those permitted under the existing classifications discriminates in an arbitrary, unreasonable, capricious, and unconstitutional manner between the Plaintiffs and the owners of similarly situated properties in the vicinity of the Property in violation of Art. I, § I, ¶ II of the 1983 Constitution of the State of Georgia and the Equal Protection Clauses of the Fifth and Fourteenth Amendments to the Constitution of the United States of America.

**COUNT V**  
**ONE-YEAR LIMITATION FOR REAPPLICATION**

65.

Plaintiffs reallege and hereby incorporate by reference each and every fact and allegation contained in the foregoing portions of this Complaint with the same force and effect as if pleaded separately herein.

66.

Section 134-121(e)(1) of the Zoning Ordinance prohibits the Plaintiffs from applying again for a change in the present zoning classification of the Property for a period of



twelve (12) months. That provision of the Zoning Ordinance denies the Plaintiffs due process and amounts to a taking of the Plaintiffs' Property without first paying fair, just, and adequate compensation in violation of Art. I, § III, ¶ I and Art. I, § I, ¶ I of the 1983 Constitution of the State of Georgia.

**COUNT VI**  
**INVERSE CONDEMNATION**

67.

Plaintiffs reallege and hereby incorporate by reference each and every fact and allegation contained in the foregoing portions of this Complaint with the same force and effect as if pleaded separately herein.

68.

The actions of the Defendants constitute an inverse condemnation of the Property for which compensation is required by law.

WHEREFORE, under Counts I through VI, Plaintiffs pray:

- (a) That summons and process issue and that the Defendants be served as required by statute;
- (b) That this Court declare the Cobb County Zoning Ordinance null and void as being unconstitutional and results in a taking of the Plaintiffs' Property without just compensation;
- (c) That this Court declare that the Cobb County Zoning Ordinance is null and void as being unconstitutional as applied to the Property and results in a taking of the Plaintiffs' Property without due process of law, substantive and procedural;

- (d) That this Court declare the Cobb County Zoning Ordinance null and void as being unconstitutional as applied to the Property and violates the Plaintiffs' right to equal protection under the law;
- (e) That this Court declare the actions of the Defendants to have resulted in an inverse condemnation of the Property;
- (f) That this Court order the Defendants to rezone the Subject Property in a manner consistent with Plaintiffs' constitutional rights, and that this Court retain jurisdiction of this matter in order to ensure that such rezoning is accomplished within a reasonable time; and
- (g) That this Court grant such other and further relief as may be deemed to be equitable and just under the circumstances.

**COUNT VII**

**DAMAGE CLAIM**

69.

Plaintiffs reallege and hereby incorporate by reference each and every fact and allegation contained in the foregoing portions of this Complaint with the same force and effect as if pleaded separately herein.

70.

The actions complained of herein were taken by COBB COUNTY and the COMMISSIONERS under color of state and local law, and constitute a deprivation of Plaintiffs' property interests without due process of law and without just compensation in violation of § I of the Fourteenth Amendment to the Constitution of the United States and 42 U.S.C. § 1983.

Plaintiffs have incurred substantial damages as a result of the Defendants' refusal to grant Plaintiffs' Application for Rezoning and Defendants' subsequent arbitrary and unreasonable zoning of the Property and Plaintiffs are continuing to incur additional damages with each day of delay in an amount not yet ascertained.

WHEREFORE, under Count VII, Plaintiffs pray:

- (a) That the Court grant judgment for Plaintiffs and against Defendants, COBB COUNTY and the COMMISSIONERS, for compensatory damages in an amount not yet fully ascertained, but sufficient to compensate Plaintiffs for losses incurred from the unconstitutional, arbitrary, and unreasonable actions undertaken by Defendants, COBB COUNTY and the COMMISSIONERS, under color of state and local law;
- (b) That Plaintiffs recover the expenses of litigation, including reasonable attorneys' fees; and
- (c) That this Court grant such other and further relief as may be deemed equitable and just under the circumstances.

This 16<sup>th</sup> day of April, 2015.

MOORE INGRAM JOHNSON & STEELE, LLP

BY: 

J. KEVIN MOORE  
Georgia Bar No. 519728  
CHRISTOPHER D. TROUTMAN  
Georgia Bar No. 272334

Attorneys for Plaintiffs

LEGAL DESCRIPTION

All that tract or parcel of land lying in Land Lots 965 & 966, 16th District, 2nd Section, Cobb County, Georgia and being more particularly described as follows:

COMMENCING at a 1/2 inch reinforcing rod found at the corner common to Land Lots 966, 967, 978 & 979; Thence running along the southerly line of Land Lot 966, North 87 degrees 34 minutes 18 seconds West, a distance of 338.06 feet to a 3/4 inch open top pipe found; Thence continuing along said land lot line running North 88 degrees 15 minutes 13 seconds West, a distance of 1096.69 feet to a 1/2 inch crimp top pipe found on the corner common to Land Lots 965, 966, 979 & 980; Thence running North 88 degrees 07 minutes 42 seconds West, a distance of 995.66 feet to a point on the centerline of creek; Thence leaving said land lot line and running along centerline of creek the following courses and distances: North 28 degrees 58 minutes 57 seconds West, a distance of 19.22 feet to a point; Thence running North 51 degrees 35 minutes 41 seconds West, a distance of 16.82 feet to a point; Thence running North 45 degrees 35 minutes 23 seconds West, a distance of 28.45 feet to a point; Thence running North 05 degrees 38 minutes 27 seconds East, a distance of 22.22 feet to a point; Thence leaving creek and running South 88 degrees 32 minutes 33 seconds East, a distance of 223.30 to a 3/4 open top pipe found; Thence running North 01 degrees 03 minutes 24 seconds East, a distance of 98.91 feet to a point on the centerline of Sewell Mill Creek (A.K.A. Sope Creek); Thence running along centerline of said creek the following courses and distances: North 83 degrees 39 minutes 36 seconds East, a distance of 14.84 feet to a point; Thence North 78 degrees 20 minutes 45 seconds East, a distance of 52.11 feet to a point; Thence North 59 degrees 48 minutes 00 seconds East, a distance of 45.29 feet to a point; Thence North 52 degrees 20 minutes 39 seconds East, a distance of 92.54 feet to a point; Thence North 78 degrees 17 minutes 01 seconds East, a distance of 39.51 feet to a point; Thence North 80 degrees 21 minutes 24 seconds East, a distance of 56.97 feet to a point; Thence North 72 degrees 59 minutes 01 seconds East, a distance of 60.21 feet to a point; Thence North 58 degrees 02 minutes 55 seconds East, a distance of 48.75 feet to a point; Thence North 65 degrees 45 minutes 14 seconds East, a distance of 59.79 feet to a point; Thence North 57 degrees 47 minutes 36 seconds East, a distance of 76.09 feet to a point; Thence North 46 degrees 13 minutes 30 seconds East, a distance of 45.80 feet to a point; Thence North 33 degrees 46 minutes 25 seconds East, a distance of 56.23 feet to a point; Thence North 16 degrees 05 minutes 57 seconds East, a distance of 34.27 feet to a point; Thence North 26 degrees 00 minutes 43 seconds East, a distance of 49.33 feet to a point; Thence North 22 degrees 19 minutes 55 seconds East, a distance of 35.69 feet to a point; Thence North 14 degrees 06 minutes 24 seconds East, a distance of 50.86 feet to a point; Thence North 20 degrees 28 minutes 01 seconds East, a distance of 45.90 feet to a point; Thence North 19 degrees 35 minutes 26 seconds East, a distance of 47.59 feet to a point; Thence North 03 degrees 23 minutes 15 seconds East, a distance of 50.70 feet to a point; Thence North 17 degrees 13 minutes 55 seconds West, a distance of 46.32 feet to a point; Thence North 09 degrees 40 minutes 57 seconds West, a distance of 51.94 feet to a point; Thence North 02 degrees 18 minutes 43 seconds West, a distance of 60.01 feet to a point; Thence North 02 degrees 45 minutes 57 seconds West, a distance of 56.68 feet to a point; Thence North 02 degrees 53 minutes 20 seconds West, a distance of 45.98 feet to a point; Thence 07 degrees 17 minutes 58 seconds West, a distance of 104.97 feet to a point; Thence North 04 degrees 59 minutes 22 seconds West, a distance of 85.12 feet to a point; Thence North 00 degrees 22 minutes 29 seconds East, a distance of 47.85 feet to a point on the southerly margin of the right-of-way Roswell Road (a.k.a. S.R. 120)(variable width right-of-way); Thence leaving said creek and running along said right-of-way the following courses and distances: South 84 degrees 36 minutes 05 seconds East, a distance of 28.82 feet to a point; Thence South 88 degrees 31 minutes 14 seconds East, a distance of 95.46 feet to a concrete monument found; Thence South 76 degrees 25 minutes 04 seconds East, a distance of 51.41 feet to a concrete monument found; Thence South 88 degrees 17 minutes 47 seconds East, a distance of 24.72 feet to a concrete monument found; Thence North 74 degrees 44 minutes 34 seconds East, a distance of 47.26 feet to a concrete monument found; Thence North 87 degrees 36 minutes 51 seconds East, a distance of 80.02 feet to a concrete monument found; Thence South 88 degrees 31 minutes 14 seconds East, a distance of 460.11 feet to a concrete monument found; Thence North 01 degrees 28 minutes 41 seconds East, a distance of 10.61 feet to a point; Thence running South 88 degrees 27 minutes 04 seconds East, a distance of 360.12 feet to a concrete monument found; Thence South 20 degrees 08 minutes 46 seconds West, a distance of 53.36 feet to a concrete monument found; Thence South 70 degrees 27 minutes 39 seconds East, a distance of 19.90 feet to a concrete monument found; Thence North 20 degrees 08 minutes 29 seconds East, a distance of 59.56 feet to a concrete monument found; Thence South 88 degrees 31 minutes 19 seconds East, a distance of 28.00 feet to a point; Thence South 01 degrees 28 minutes 41 seconds West, a distance of 8.47 feet to a point; Thence South 89 degrees 03 minutes 21 seconds East, a distance of 64.98 feet to a point; Thence North 01 degrees 28 minutes 41 seconds East, a distance of 8.46 feet to a point; Thence South 88 degrees 30 minutes 14 seconds East, a distance of 315.50 feet to an iron pin set; Thence South 01 degrees 28 minutes 41 seconds West, a distance of 16.36 feet to an iron pin set; Thence South 08 degrees 26 minutes 54 seconds East, a distance of 20.30 feet to an iron pin set; Thence North 73 degrees 31 minutes 49 seconds East, a distance of 118.14 feet to an iron pin set on the easterly line of Land Lot 966; Thence leaving said right-of-way an running along said land lot line South 01 degrees 50 minutes 37 seconds West, a distance of 1305.12 feet to a 1/2 inch reinforcing rod found at the corner common to Land Lots 966, 967, 978 & 979 and the TRUE POINT OF BEGINNING;

Said tract or parcel of land containing 53.700 Acres

EXHIBIT "A"

IN THE SUPERIOR COURT FOR THE COUNTY OF COBB  
STATE OF GEORGIA

COBB COUNTY, GA  
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ISAKSON LIVING COMMUNITIES, LLC,  
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-vs-

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LISA N. CUPID; JOANN BIRRELL; and  
ROBERT J. OTT, in their official capacities as  
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Defendants.

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CIVIL ACTION

FILE NUMBER: 15-1-2908-53

COST DEPOSIT: \$ 561.50

*Rebecca Keaton*  
COBB SUPERIOR COURT CLERK

**SUMMONS**

**TO THE ABOVE NAMED DEFENDANTS:**

You are hereby summoned and required to file with the Clerk of said Court and serve upon the Plaintiffs' attorney, whose names and address are:

J. Kevin Moore, Esq.  
Christopher D. Troutman, Esq.  
Moore Ingram Johnson & Steele, LLP  
Emerson Overlook  
326 Roswell Street  
Marietta, Georgia 30060  
(770) 429-1499

an answer to the Complaint which is herewith served upon you, is required within thirty (30) days after service of this Summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the Complaint.

This 16<sup>th</sup> day of April, 2015.

CLERK, SUPERIOR COURT OF COBB COUNTY

*Rebecca Keaton*

Clerk, Cobb Superior Court

**TO THE DEFENDANTS UPON WHOM THIS PETITION IS SERVED:**

This copy of the Complaint and Summons was served upon you on the \_\_\_\_\_ day of \_\_\_\_\_, 2015.

Deputy Sheriff, Cobb County, Georgia