

IN THE SUPERIOR COURT OF COBB COUNTY

STATE OF GEORGIA Court Rule: www.cobbssuperiorcourtcclerk.com

Rebecca Keaton
Rebecca Keaton
Clerk of Superior Court Cobb County

WYLENE S. TRITT and
ISAKSON LIVING COMMUNITIES, LLC,

Plaintiffs,

v.

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.

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* CIVIL ACTION FILE NO.
* 15-1-2908-53
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DEFENDANTS' VERIFIED ANSWER AND AFFIRMATIVE DEFENSES

COME NOW, 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, JR., in their official
capacities as Members of the Cobb County Board of Commissioners; collectively,
"Defendants" in the above-styled action, and respectfully submit this
DEFENDANTS' VERIFIED ANSWER AND AFFIRMATIVE DEFENSES as
follows:

AFFIRMATIVE DEFENSES

First Defense

Plaintiffs' Complaint ("Complaint") fails, is barred, and should be dismissed in that Plaintiffs have failed to state a claim upon which relief can be granted.

Second Defense

Defendant Cobb County, Georgia asserts the defenses of sovereign and governmental immunity. Defendants Timothy D. Lee, Bob Weatherford, Lisa N. Cupid, Joann Birrell and Robert J. Ott, assert the defenses of qualified official and legislative immunity.

Third Defense

The action taken by the Cobb County Board of Commissioners ("BOC") on March 17, 2015 with respect to the subject property for rezoning was not arbitrary, capricious, or without a rationale basis and was not rendered in such a manner as to constitute an abuse of discretion to Plaintiffs' detriment.

Fourth Defense

Defendants' enforcement of the Cobb County Zoning Ordinance is performed in a reasonable and nondiscriminatory manner, and Defendants' decision as to Plaintiff's Rezoning Application is in full compliance with the Fair Housing Act and the Housing for Older Persons Act of 1995.

Fifth Defense

The action taken by the BOC on March 17, 2015, with respect to the subject property for rezoning was a legislative decision, rendered after proper hearing, and is a decision which is substantially related to the advancement of the public health, safety, common morality and general welfare of the public.

Sixth Defense

Plaintiffs have not sought any other zoning classification except CCRC; therefore, it is not clear whether the BOC would deny approval for all uses that would enable the Plaintiffs to derive economic benefit from the property.

Seventh Defense

Plaintiffs have failed to demonstrate that they were “similarly situated” in all relevant aspects to any other applicant and, therefore, Plaintiffs’ discrimination claim fails.

Eighth Defense

Plaintiffs’ Complaint should be denied in view of the fact that the Plaintiffs cannot demonstrate that Defendants acted illegally or outside the scope of their authority while in the regular course of discharging their duties of office.

Ninth Defense

The Complaint should be dismissed because the Defendants’ decision regarding the rezoning proposal is in conformity with the policy and intent of Cobb

County's Comprehensive Land Use Plan and Cobb County's Future Land Use Map which delineate the subject property to be within a Low Density Residential ("LDR") district with densities ranging from 1 – 2.5 units per acre, with the subject proposal having a density of 8.95 units per acre.

Tenth Defense

Without waiving any of the above-styled special defenses and specifically reserving the right to amend the above-styled defenses and to add additional special defenses, Defendants hereby respond to the individually numbered paragraphs in the Plaintiffs' Complaint by showing the Court as follows:

1.

Defendants possess insufficient knowledge to admit or deny the allegations contained in Paragraph One (1) of the Complaint. To the extent that an answer is required, Defendants deny the allegations.

2.

Defendants admit that Isakson Living Communities, LLC is a Georgia limited liability company. As to any remaining allegations contained in Paragraph Two (2) of the Complaint, Defendants possess insufficient knowledge to either admit or deny the allegations. To the extent that an answer is required, Defendants deny the allegations.

3.

Defendants admit the allegations contained in Paragraph Three (3) of the Complaint.

4.

Defendants admit the allegations contained in Paragraph Four (4) of the Complaint, but, qualify this admission in as much as the individual board members are only subject to the jurisdiction of the court in their official capacities as members of the Cobb County Board of Commissioners.

FACTUAL ALLEGATIONS COMMON TO EACH COUNT

5.

Answers to Paragraphs One (1) through Four (4) are hereby incorporated by reference as if rewritten in their entirety.

6.

Defendants possess insufficient knowledge to admit or deny the allegations contained in Paragraph Six (6) of the Complaint. To the extent that an answer is required, Defendants deny the allegations, but admit Exhibit "A" speaks for itself.

7.

Defendants admit that on December 26, 1972, Defendants adopted the "Zoning and Planning Ordinance of Cobb County" and the "Official Cobb County Zoning Map," as amended. Both documents speak for themselves. Defendants

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further agree that the subject property is currently zoned R-20 with a minimum lot size of 20,000-square feet. As stated, Defendants deny all remaining allegations contained in Paragraph Seven (7) of the Complaint.

8.

Defendants admit the allegations contained in Paragraph Eight (8) of the Complaint.

9.

Defendants admit the allegations contained in Paragraph Nine (9) of the Complaint.

10.

Defendants admit that Roswell Road is classified as an arterial road. As to any remaining allegations contained in Paragraph Ten (10) of the Complaint, Defendants possess insufficient knowledge to admit or deny the allegations. To the extent that an answer is required, Defendants deny the allegations.

11.

Defendants admit that some of the surrounding properties are 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 (single family residential, minimum 20,000-square foot lot size, and averaging approximately

1.75 dwelling units per acre); and Low Rise Office (“LRO”). As to any remaining allegations contained in Paragraph Eleven (11) of the Complaint, Defendants possess insufficient knowledge to admit or deny the allegations. To the extent that an answer is required, Defendants deny the allegations.

12.

Defendants deny that the “Health Park” is directly across Roswell Road from the subject property. As to the remaining allegations contained in Paragraph Twelve (12), Defendants possess insufficient knowledge to admit or deny the allegations. To the extent that an answer is required, Defendants deny the allegations.

13.

Defendants admit that 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 that encourages single-family, detached residential development at densities ranging up to 2.5 units per acre. The Cobb County Comprehensive Plan speaks for itself. Defendants deny any remaining allegations contained in Paragraph Thirteen (13) of the Complaint.

14.

Defendants deny the allegations contained in Paragraph Fourteen (14) of the Complaint.

15.

Defendants deny the allegations contained in Paragraph Fifteen (15) of the Complaint.

16.

Defendants deny the allegations contained in Paragraph Sixteen (16) of the Complaint.

17.

Defendants admit that, 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. Defendants possess insufficient knowledge to admit or deny any remaining allegations contained in Paragraph Seventeen (17) of the Complaint. To the extent that an answer is required, Defendants deny the allegations.

18.

Defendants admit that the CCRC zoning category was adopted by the Cobb County Board of Commissioners (“BOC”) with the express purpose of providing multistage living and care for senior citizens. Defendants deny all remaining allegations contained in Paragraph Eighteen (18) of the Complaint.

19.

Defendants possess insufficient knowledge to admit or deny the allegations contained in Paragraph Nineteen (19) of the Complaint. To the extent that an answer is required, Defendants deny the allegations.

20.

Defendants admit that a Letter of Agreeable Stipulation and Conditions, dated February 25, 2015, was received from J. Kevin Moore with Moore Ingram Johnson & Steele on behalf of Isakson Living Communities, LLC. Defendants possess insufficient knowledge to either admit or deny the remaining allegations contained in Paragraph Twenty (20) of the Complaint. To the extent that an answer is required, Defendants deny the allegations.

21.

Defendants admit that Cobb County Planning and Zoning staff recommended approval of the Application for Rezoning, subject to multiple conditions and limitations. By way of further answer, as stated in bold print on the recommendations form: “[t]he recommendations made by the Planning and Zoning Staff are only the opinions of the Planning and Zoning Staff and are by no means the final decision. The Cobb County Board of Commissioners makes the final decisions on all Rezoning and Land Use Permits at an advertised public hearing.”

22.

The Cobb County Planning and Zoning Recommendations speaks for itself. Defendants deny remaining allegations contained in Paragraph Twenty-Two (22) of the Complaint.

23.

Defendants admit the allegations contained in Paragraph Twenty-Three (23) of the Complaint.

24.

Defendants admit the allegations contained in Paragraph Twenty-Four (24) of the Complaint.

25.

Defendants deny the allegations contained in Paragraph Twenty-Five (25) of the Complaint.

26.

Defendants deny the allegations contained in Paragraph Twenty-Six (26) of the Complaint.

27.

Defendants deny the allegations contained in Paragraph Twenty-Seven (27) of the Complaint.

28.

Defendants possess insufficient knowledge to either admit or deny the allegations contained in Paragraph Twenty-Eight (28) of the Complaint. To the extent that an answer is required, Defendants deny the allegations.

29.

Defendants deny the allegations contained in Paragraph Twenty-Nine (29) of the Complaint.

30.

Defendants deny the allegations contained in Paragraph Thirty (30) of the Complaint.

31.

Defendants deny the allegations contained in Paragraph Thirty-One (31) of the Complaint.

32.

Defendants deny the allegations contained in Paragraph Thirty-Two (32) of the Complaint.

33.

As stated, Defendants deny the allegations contained in Paragraph Thirty-Three (33) of the Complaint.

34.

The Zoning Ordinance speaks for itself. Any remaining allegations contained in Paragraph Thirty-Four (34) of the Complaint are denied.

35.

Defendants deny the allegations contained in Paragraph Thirty-Five (35) of the Complaint.

36.

Defendants deny the allegations contained in Paragraph Thirty-Six (36) of the Complaint.

37.

Defendants admit the allegations contained in Paragraph Thirty-Seven (37) of the Complaint.

38.

Defendants admit that a document entitled Constitutional Challenge Attachment Application for Rezoning was filed with the Plaintiffs' Rezoning Application. Said document speaks for itself. Any remaining allegations contained in Paragraph Thirty-Eight (38) of the Complaint are denied.

39.

As stated, Defendants deny the allegations contained in Paragraph Thirty-Nine (39) of the Complaint.

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40.

As stated, Defendants deny the allegations contained in Paragraph Forty (40) of the Complaint.

41.

As stated, Defendants deny the allegations contained in Paragraph Forty-One (41) of the Complaint.

COUNT I

REFUSAL TO GRANT ZONING APPLICATION

42.

Answers to Paragraphs One (1) through Forty-One (41) are hereby incorporated by reference as if rewritten in their entirety.

43.

Defendants deny the allegations contained in Paragraph Forty-Three (43) of the Complaint.

44.

Defendants deny the allegations contained in Paragraph Forty-Four (44) of the Complaint.

45.

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Defendants deny the allegations contained in Paragraph Forty-Five (45) of the Complaint.

46.

Defendants deny the allegations contained in Paragraph Forty-Six (46) of the Complaint.

47.

Defendants deny the allegations contained in Paragraph Forty-Seven (47) of the Complaint.

48.

Defendants deny the allegations contained in Paragraph Forty-Eight (48) of the Complaint.

49.

Defendants deny the allegations contained in Paragraph Forty-Nine (49) of the Complaint.

COUNT II

EXISTING CLASSIFICATION

50.

Answers to Paragraphs One (1) through Forty-Nine (49) are hereby incorporated by reference as if rewritten in their entirety.

51.

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Defendants deny the allegations contained in Paragraph Fifty-One (51) of the Complaint.

52.

Defendants deny the allegations contained in Paragraph Fifty-Two (52) of the Complaint.

53.

Defendants deny the allegations contained in Paragraph Fifty-Three (53) of the Complaint.

54.

Defendants deny the allegations contained in Paragraph Fifty-Four (54) of the Complaint.

55.

Defendants deny the allegations contained in Paragraph Fifty-Five (55) of the Complaint.

COUNT III

INTERVENING CLASSIFICATIONS

56.

Answers to Paragraphs One (1) through Fifty-Five (55) are hereby incorporated by reference as if rewritten in their entirety.

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57.

Defendants admit that a document entitled Constitutional Challenge Attachment Application for Rezoning was filed with the Plaintiffs' Rezoning Application. Said document speaks for itself. Any remaining allegations contained in Paragraph Fifty-Seven (57) of the Complaint are denied.

58.

Defendants deny the allegations contained in Paragraph Fifty-Eight (58) of the Complaint.

59.

Defendants deny the allegations contained in Paragraph Fifty-Nine (59) of the Complaint.

60.

Defendants deny the allegations contained in Paragraph Sixty (60) of the Complaint.

61.

Defendants deny the allegations contained in Paragraph Sixty-One (61) of the Complaint.

62.

Defendants deny the allegations contained in Paragraph Sixty-Two (62) of the Complaint.

COUNT IV

EQUAL PROTECTION

63.

Answers to Paragraphs One (1) through Sixty-Two (62) are hereby incorporated by reference as if rewritten in their entirety.

64.

Defendants deny the allegations contained in Paragraph Sixty-Four (64) of the Complaint.

COUNT V

ONE YEAR LIMITATION FOR RE-APPLICATION

65.

Answers to Paragraphs One (1) through Sixty-Four 6(4) are hereby incorporated by reference as if rewritten in their entirety.

66.

Section 134-121(e)(1) of the Zoning Ordinance speaks for itself. Defendants deny all remaining allegations contained in Paragraph Sixty-Six (66) of the Complaint.

COUNT VI

INVERSE CONDEMNATION

67.

Answers to Paragraphs One (1) through Sixty-Seven (67) are hereby incorporated by reference as if rewritten in their entirety.

68.

Defendants deny the allegations contained in Paragraph Sixty-Eight (68) of the Complaint and deny that Plaintiffs are entitled to any relief or recovery whatsoever.

COUNT VII

DAMAGE CLAIM

69.

Answers to Paragraphs One (1) through Sixty-Eight (68) are hereby incorporated by reference as if rewritten in their entirety.

70.

Defendants deny the allegations contained in Paragraph Seventy (70) of the Complaint.

71.

Defendants deny the allegations contained in Paragraph Seventy-One (71) of the Complaint.

72.

Defendants deny any remaining allegations of the Complaint not expressly admitted and deny that Plaintiffs are entitled to any relief or recovery whatsoever.

WHEREFORE, Defendants pray, that after due proceedings had, that this Honorable Court find that Defendants' Answer be deemed good and sufficient and that judgment be entered in favor of Defendants and against the Plaintiffs, and that attorney fees and expenses of litigation be taxed against Plaintiffs, and for other good and equitable relief as the justice of the case requires.

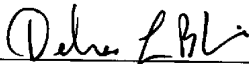
This 15th day of May, 2015.

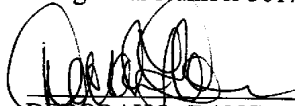
BENTLEY, BENTLEY & BENTLEY
Attorneys for Defendants

Fred D. Bentley Jr. with express
FRED D. BENTLEY, JR. *permission*
Georgia Bar Number 052850

241 Washington Avenue
Marietta, Georgia 30060
(770) 433-2300 Telephone
(770) 424-5820 Facsimile
fred.bentley@bbandblaw.com

COBB COUNTY ATTORNEY'S OFFICE
Attorneys for Defendants

By: 
DEBRA L. BLAIR
Associate County Attorney
Georgia Bar Number 361728


By: DEBORAH L. DANCE
County Attorney
State Bar No. 203765

100 Cherokee Street
Marietta, Georgia 30090
(770) 528-4000 Telephone
(770) 528-4010 Facsimile
debra.blair@cobbcounty.org

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VERIFICATION

Personally appeared before the undersigned, an officer duly authorized by law to administer oaths, came, John P. Pederson, Zoning Division Manager, who, after being duly sworn, states that the facts set forth in the foregoing Defendants' Verified Answer and Affirmative Defenses are true and correct.

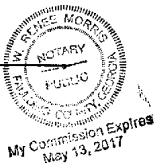
COBB COUNTY, GEORGIA

J.P. Pederson

By: John P. Pederson
Title: Zoning Division Manager

Sworn to and subscribed before me
this 14 day of May, 2015.

W. Bruce Morris
Notary Public



[Notary Seal]

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CERTIFICATE OF SERVICE

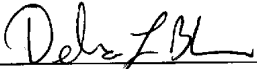
This is to certify that I have this date served a copy of the enclosed
DEFENDANTS' VERIFIED ANSWER AND AFFIRMATIVE DEFENSES on
the following parties by depositing a true and correct copy of such document in the
United States Mail, with adequate postage affixed thereto, addressed as follows:

J. Kevin Moore
Moore Ingram Johnson & Steele, LLP
Emerson Overlook
326 Roswell Street
Marietta, Georgia 30060

This 15th day of May, 2015.

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100 Cherokee Street, Suite 350
Marietta, GA 30090
770-528-4000 (phone)
770-528-4010 (facsimile)
debra.blair@cobbcounty.org

By: 
DEBRA L. BLAIR
Associate County Attorney
State Bar No. 361728