

**IN THE SUPREME COURT
STATE OF GEORGIA**

DRUID HILLS CIVIC ASSOCIATION,
INC. AND INDIVIDUALS, PAUL M.
PARKER, AND ELISE N. RILEY

Petitioners,

vs.

DEKALB COUNTY PLANNING
COMMISSION, THROUGH ITS
MEMBERS IN THEIR OFFICIAL
CAPACITY: WENDY BUTLER,
MARKUS BUTTS, DEBRA A.
EDELSON, ROBERT GODFREY,
LASONYA D. KIRKLAND, VIVIAN
MOORE AND TESS SNIPES,

Respondents,

vs.

DEKALB COUNTY, GEORGIA;
ROBERT H. BUCKLER; and H.
ANTHONY McCULLAR,

Respondents.

SUPREME COURT OF GEORGIA
CASE NO. **S16C1606**

GEORGIA COURT OF APPEALS
CASE NO. A16A0707

**AMICUS BRIEF OF THE GEORGIA TRUST FOR
HISTORIC PRESERVATION AND THE GEORGIA CHAPTER OF THE
AMERICAN PLANNING ASSOCIATION IN SUPPORT OF
THE PETITION FOR WRIT OF CERTIORARI**

Michael B. Terry
Georgia Bar Number 702582

The Georgia Trust for Historic Preservation and the Georgia Chapter of the American Planning Association submit the following brief as *amicus curiae* in support of the Petition for Writ of Certiorari pending before this Court.

The core substantive issue raised by this appeal is *whether a property within a historic district can be **subdivided** and have a **cul-de-sac** built on it without a Certificate of Appropriateness (“COA”) for the subdivision and cul-de-sac obtained from the local Historic Preservation Commission?* Appellate resolution of this issue is greatly needed for the more than 138 historic districts established throughout the State of Georgia as well as the professional planners and official planners who work with these historic districts. Appellate resolution of this issue has profound implications for all.

In 1980, the Georgia Legislature passed the Georgia Historic Preservation Act [O.C.G.A. § 44-10-20 et seq.], expressly recognizing that “the historical, cultural, and esthetic heritage of this state is among its most valued and important assets and that the preservation of this heritage is essential to the promotion of the health, prosperity, and general welfare of the people.” O.C.G.A. § 44-10-21. Further, it was the Georgia Legislature’s express purpose in passing the Georgia Historic Preservation Act to “establish a **uniform procedure** for use by each **county and municipality in the state** in enacting ordinances providing for the protection, enhancement, perpetuation, and use of places, districts, sites, buildings,

structures, and works of art having a special historical, cultural, or esthetic interest or value.” *Id.* (emphasis added). Under the authority of this enabling legislation, DeKalb County enacted its own Historic Preservation Code (“DeKalb Historic Preservation Code”), which has been in place since 1994.

In the instant matter, the DeKalb County Planning Commission approved a Sketch Plat for (1) the *subdivision* of and (2) *cul-de-sac* on a property within the Druid Hills Historic District without a COA for the subdivision and cul-de-sac issued by the DeKalb County Historic Preservation Commission (“HPC”). Our review of the prior decisions of this Court in this matter reveals the Developer Appellees had previously applied to the HPC for COAs for subdividing the property and that such COAs had been denied. It is not clear to *amicus curiae* upon what legal basis, under the Georgia Historic Preservation Act, the DeKalb Historic Preservation Code (which closely tracks the Georgia Historic Preservation Act), or some other state or local law, that the Planning Commission had authority to approve the Sketch Plat without the HPC first reviewing it and issuing a COA. If there was some valid legal basis for the Planning Commission’s decision, it would be great benefit to our membership and the historic districts throughout this state to have a decision from this Court providing insight and guidance on the same and similar matters going forward. If there was no valid legal basis for the

Planning Commission's decision, an opinion from this Court is also desired to provide insight and guidance going forward.

For the reasons given, namely that resolution of the core substantive issue raised in the instant appeal is of great importance to the historic districts and planning communities throughout Georgia, we respectfully ask that this Court grant the Petition for Writ of Certiorari now pending in this appeal.

IDENTITY AND INTEREST OF AMICUS

The Georgia Trust for Historic Preservation is a statewide nonprofit historic preservation organization. The mission of the Georgia Trust for Historic Preservation is to promote an appreciation of Georgia's diverse historic resources and provide for their protection and use to preserve, enhance and revitalize Georgia's communities. The Georgia Trust for Historic Preservation has played a role in the establishment of Historic Districts and Historic Preservation Commissions throughout Georgia and is concerned with the proper functioning thereof.

The Georgia Chapter of the American Planning Association is a statewide nonprofit organization with over 900 members who are professional planners and planning officials who serve Georgia's communities in many ways, at all levels of government, the private sector, and not-for-profit organizations. The Georgia Chapter of the American Planning Association has been an advocate for good

planning and a respected source of training and information since its founding in 1968. The mission of the Georgia Chapter of the American Planning Association is to encourage, promote and assist physical, economic, and human resource planning within the State of Georgia and to further the purposes of the American Planning Association, including to provide for the exchange of ideas and to disseminate information to public officials and others engaged in or interested in planning and community development and to promote understanding, cooperation, coordination, and support necessary for progressive planning and development throughout the State of Georgia.

Respectfully submitted this 2nd day of August, 2016.

/s/ Michael B. Terry
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CERTIFICATE OF SERVICE

This is to certify that I have this date served a copy of AMICUS BRIEF OF THE GEORGIA TRUST FOR HISTORIC PRESERVATION AND THE GEORGIA CHAPTER OF THE AMERICAN PLANNING ASSOCIATION upon the below listed parties by placing a copy of same in the United States Mail, postage prepaid, addressed as follows:

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Respectfully submitted this 2nd day of August, 2016.

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