

IN THE COURT OF APPEALS  
STATE OF GEORGIA

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

Appellants,

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,

Appellees,

vs.

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

Appellees.

APPEAL CASE NO.  
A16A0707

SUPERIOR COURT OF  
DEKALB COUNTY  
CIVIL ACTION FILE  
NO. 12-CV-6018-2

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**AMICUS BRIEF OF THE GEORGIA TRUST FOR  
HISTORIC PRESERVATION AND THE GEORGIA CHAPTER  
OF THE AMERICAN PLANNING ASSOCIATION IN SUPPORT  
OF APPELLANTS' MOTION FOR RECONSIDERATION**

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The Georgia Trust for Historic Preservation (“GTHP”) and the Georgia Chapter of the American Planning Association (“GA-APA”) as *amicus curiae* submit the following brief in support of the Appellants’ Motion for Reconsideration.

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.

As this Court is aware, in 1980, the Georgia Legislature passed the Georgia Historic Preservation Act, O.C.G.A. § 44-10-20 et seq. (“GHPA”), 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. § 44-10-20. Further, it was the Georgia Legislature’s express purpose in passing the GHPA 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, 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 reveal the Developer Appellees had previously applied to the DeKalb HPC for COAs for subdividing the property and that the requested COAs had been denied. It is not clear to *amicus curiae* upon what legal basis under the GHPA or the DeKalb Historic Preservation Code (which closely tracks the GHPA), or some other state or local

law that the Planning Commission had authority to approve the Sketch Plat without the DeKalb HPC first reviewing it and issuing a COA. If there was some valid legal basis for the Planning Commission's decision, it would be of 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 Motion for Reconsideration now pending in this appeal.

#### **IDENTITY AND INTEREST OF AMICUS**

The GTHP 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.

GTHP 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 GA-APA 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 GA-APA has been an advocate for good planning and a respected source of training and information since its founding in 1968. The Mission of GA-APA 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 2<sup>nd</sup> day of May, 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 IN SUPPORT OF APPELLANTS' MOTION FOR RECONSIDERATION** 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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