

DEKALB COUNTY

ITEM NO.:

BOARD OF COMMISSIONERS

HEARING TYPE:
PUBLIC HEARING

BUSINESS AGENDA / MINUTES

ACTION TYPE:
Resolution

MEETING DATE: September 26, 2006

SUBJECT: Resolution, Order and Declaration of Taking – 2176 Willivee Place, Donald Kent Moore

DEPARTMENT: Public Works, Transportation

PUBLIC HEARING: YES NO

ATTACHMENT: YES NO
PAGES:

INFORMATION CONTACT: Ted Rhinehart
John Gurbal

PURPOSE:

To consider the attached Resolution, Order and Declaration of Taking for property owned by Donald Kent Moore required for completion of South Peachtree Creek Multi-Use Trail.

NEED/IMPACT:

The condemnation will enable the County to complete acquisition of the South Peachtree Creek Multi-use Trail and allow construction to begin. The property is valued at \$56,000.00 and a certified letter **has** been sent to the property owner.

The County Attorney has reviewed the attached documents **and** approves **as** to form.

RECOMMENDATIONS:

Adopt the attached Resolution, Order and Declaration of taking of the following property.

<u>Tax Key</u>	<u>Owner</u>	<u>Parcel</u>
18-102-02-028	Donald Kent Moore	20A

To authorize the Chief Executive Officer to execute all necessary documents.

FOR USE BY COMMISSION OFFICE/CLERK ONLY

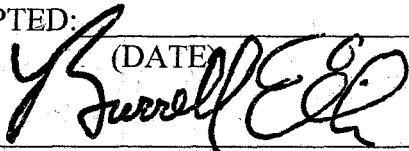
ACTION: H6

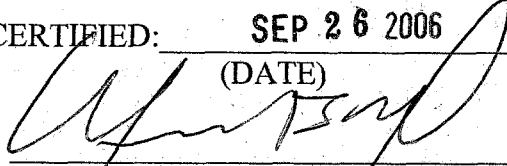
MOTION was made by Commissioner Walldorff, seconded by Commissioner Gannon and passed 6-0-1-0, to adopt the attached Resolution, Order and Declaration of taking of the following property.

<u>Tax Key</u>	<u>Owner</u>	<u>Parcel</u>
18-102-02-028	Donald Kent Moore	20A

To authorize the Chief Executive Officer to execute all necessary documents.
Commissioner Stokes abstained.

SEP 26 2006


ADOPTED: _____
(DATE) 

CERTIFIED: SEP 26 2006
(DATE) 

PRESIDING OFFICER
DEKALB COUNTY BOARD OF COMMISSIONERS

CLERK,
DEKALB COUNTY BOARD
OF COMMISSIONERS

FOR USE BY CHIEF EXECUTIVE OFFICER ONLY

APPROVED: OCT 06 2006


VETOED: _____
CHIEF EXECUTIVE OFFICER
DEKALB COUNTY

VETO STATEMENT ATTACHED: _____

MINUTES:

Dan Magee, 2644 Larrel Ridge Drive, Decatur, Ga. 30033, Ed McBrayer, P. O. Box 14327, Bryan Flint, 2026 Mason Mill Road, Decatur, Ga. 30033, spoke in support of the application.

Janathan Weintraub, 125 Clairemont Avenue, Suite 520, Decatur, Ga. 30030 and Melinda Yantch, 2164 Heritage Bluff, Decatur, GA. 30033, spoke in opposition of the application.

Mr. Weintraub submitted some documents for the record.

	FOR	AGAINST	ABSTAIN	ABSENT
DISTRICT 1 - ELAINE BOYER	_____ X _____	_____	_____	_____
DISTRICT 2 - GALE WALLDORFF	_____ X _____	_____	_____	_____
DISTRICT 3 - LARRY JOHNSON	_____ X _____	_____	_____	_____
DISTRICT 4 - BURRELL ELLIS	_____ X _____	_____	_____	_____
DISTRICT 5 - LEE MAY	_____ X _____	_____	_____	_____
DISTRICT 6 - KATHIE GANNON	_____ X _____	_____	_____	_____
DISTRICT 7 - CONNIE STOKES	_____	_____	_____ X _____	_____

RESOLUTION

A RESOLUTION BY THE BOARD OF COMMISSIONERS OF DEKALB COUNTY, GEORGIA, AUTHORIZING THE ACQUISITION OF A CERTAIN PARCEL OF LAND LOCATED IN LAND LOT 102 OF THE 18th DISTRICT OF DEKALB COUNTY, GEORGIA FOR TRANSPORTATION IMPROVEMENTS, EASEMENT AND ACCESS RIGHTS TO CONTRUCT AND IMPROVE AREA FOR FUTURE USE.

WHEREAS, the Board of Commissioners of DeKalb County, Georgia, possesses the power of eminent domain **as** provided in 1973 Ga. Laws, p. 947, **as** amended, O.C.G.A. § 32-3-6 et seq., and O.C.G.A. § 22-2-100; and

WHEREAS, the Board of Commissioners of DeKalb County **has** determined that it is in the public benefit to construct, install, alter, and connect a system of sidewalks, crosswalks, ADA compliant ramps, slopes and landscaping along a multi-use trail through the County; and

WHEREAS, in order to construct said sidewalks, crosswalks, ADA compliant ramps, slopes and landscaping along a multi-use trail for the public benefit, it is necessary that portions of real property within the County be acquired **as** necessary right of way; and

WHEREAS, the Board of Commissioners of DeKalb County, Georgia hereby declares that the property **as** more fully described herein is to be acquired for a specific public purpose or use, which in this case is acquisition of right of way necessary for public transportation improvements; and

WHEREAS, the Board of Commissioners of DeKalb County desires to improve pedestrian transportation on an area commonly known and designated **as** 2176 Willivee Place in Land Lot 102 of the 18th District of DeKalb County, **as** described in the legal description, maps and drawings attached hereto as Exhibit "1-A" and incorporated herein by reference; and

WHEREAS, in order to maintain the project schedule for construction in DeKalb County, Georgia, it is necessary that the right-of-way,

EXHIBIT "1"

described herein and other **rights**, if any, for the construction of said project be acquired Without delay; and

WHEREAS, it will be necessary to institute condemnation proceedings in DeKalb County Superior Court to acquire the property in Exhibit "1-A" as the owners are unwilling to sell their property through negotiation at the appraised value; and

WHEREAS, the property to be acquired is owned by Donald Kent Moore; however, there may be other parties, known or unknown, who have an interest in the property; and

WHEREAS, an appraiser familiar with real estate values in DeKalb County, Georgia was employed to appraise the parcel at issue and has made a sworn statement attached hereto as Exhibit "**1-B**" and incorporated herein by reference, that the estimated just and adequate compensation for said parcel and for any consequential damages or benefits considered, is Fifty ~~Six~~ Thousand dollars (\$56,000.00); and

WHEREAS, the owners of the parcel referenced herein have been given written notice of the County's offer of payment and the County's intention to consider this Resolution as reflected in the correspondence attached hereto as Exhibit "1-C" and incorporated herein by reference; and

NOW, THEREFORE, BE IT RESOLVED, by the DeKalb ~~County~~ Board of Commissioners as follows:

1. that the public necessity for immediately acquiring all of the property described in Exhibit "**1-A**" for the above stated purposes is hereby declared; and further, a finding is hereby made that the circumstances are such that it is necessary to proceed with condemnation proceedings by use of a declaration of taking as the method of condemnation, as authorized by O.C.G.A. **§32-3-1, et seq.** and use of that method is hereby authorized for the acquisition of property described in Exhibit "**1-A**";
2. that the County Attorney is authorized and directed by this Resolution to institute Condemnation proceedings in the name of DeKalb County for the quick and effective condemnation of property described in Exhibit "1-A" and of every interest therein, for the public uses above set forth, as provided by the Constitution of the State of Georgia and to use the declaration of taking method as provided in the above referenced laws; and

3. that the Director of Finance is hereby authorized and directed to expend all necessary **and** proper payments, the expenses incurred in carrying out the acquisition and condemnation of this property upon receipt of a requisition therefore from the County Attorney and to make all necessary and proper payments in connection with such acquisition including but not limited to title searches, appraisals, surveys, specialty reports, expert fees, closings and/or any other costs associated with any condemnation actions authorized by this Resolution.

ADOPTED by the DeKalb County Board of Commissioners, this _____ day of _____, 2006.

BURRELL ELLIS
Presiding Officer
Board of Commissioners
DeKalb County, Georgia

APPROVED by the Chief Executive Officer of DeKalb County, this _____ day of _____, 2006.

VERNON JONES
Chief Executive Officer
DeKalb County, Georgia

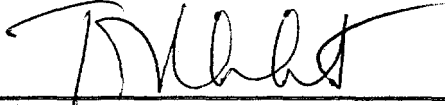
ATTEST:

MICHAEL J. BELL
Ex-Officio Clerk
Board of Commissioners and
Chief Executive Officer
DeKalb County, Georgia

APPROVED AS TO FORM:

WILLIAM J. LINKOUS
County Attorney
DeKalb County, Georgia

APPROVED AS TO SUBSTANCE:



WILLIAM E. RHINEHART
Director of Public Works
DeKalb County, Georgia

**ORDER OF THE DEKALB COUNTY BOARD OF COMMISSIONERS TO
CONDEMN PROPERTY FOR THE PURPOSES OF CONSTRUCTING AND
IMPROVING THE WATER TREATMENT SYSTEM**

WHEREAS, the Board of Commissioners of DeKalb County has laid out and determined to construct improvements to the public road system for DeKalb County known as 2176 Willivee Place and being more fully shown on a map and drawing attached as Exhibit "1-A"; and

WHEREAS, the tract of property and other rights as herein described and as listed below shown of record as owned by the person named herein, all as described and shown in Exhibit "1-A" to this order incorporated herein by reference and made a part of this Order are essential for the construction of said project:

Required Right of Way:	9,591 Square Feet
Owners:	Donald Kent Moore 2176 Willivee Place Decatur, GA 30033-4114

NOW THEREFORE, it is found by the Board of Commissioners of DeKalb County that the circumstances are such that it is necessary that the property as described in Exhibit "1-A" to this order be acquired by condemnation under the provisions of O.C.G.A §§32-3-4 through 32-3-19; and

IT IS ORDERED that DeKalb County proceed to acquire the title, estate or interest in the lands hereinafter described in Exhibit "1-A" to this order by condemnation under the provisions of said Code, and the County Attorney is authorized and directed to file condemnation proceedings, including a Declaration of Taking, to acquire said title, estate or interest in said lands to deposit in the Court the sum estimated as just compensation all in accordance with the provisions of said law.

ORDERED by the DeKalb County Board of Commissioners, this _____ day of _____, **2006**.

BURRELL ELLIS
Presiding Officer
Board of Commissioners
DeKalb County, Georgia

APPROVED by the Chief Executive Officer of DeKalb County, this _____ day of _____, **2006**.

VERNON JONES
Chief Executive Officer
DeKalb County, Georgia

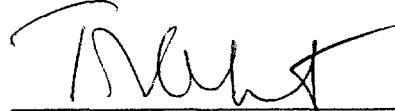
ATTEST:

MICHAEL J. BELL
Ex-Officio Clerk
Board of Commissioners **and**
Chief Executive Officer
DeKalb County, Georgia

APPROVED AS TO FORM:

WILLIAM J. LINKOUS
County Attorney
DeKalb County, Georgia

APPROVED AS TO SUBSTANCE:



WILLIAM E. RHINEHART
Director of Public Works
DeKalb County, Georgia

DECLARATION OF TAKING
PURSUANT TO O.C.G.A. §32-3-1 et seq.

DeKalb County, Georgia issues this declaration of taking to O.C.G.A. §32-3-1 et seq. and shows the following:

1.

DeKalb County, Georgia, hereinafter referred to as Condemnor, is a political subdivision of the State of Georgia.

2.

The names and residences of the persons whose property or rights are to be taken or otherwise effected, so far known, and the interest of each person so far as known are as follows: Donald Kent Moore

3.

Condemnor is given the power to acquire these lands for public road purposes through the use of eminent domain by 1973 Ga. Laws. P. 947, as amended, and O.C.G.A. §32-3-6.

4.

Condemnor has determined that it is in the public benefit to construct sidewalks, crosswalks, pedestrian refuge islands, lighting, ADA compliant ramps, and slopes along the multi-use trail known as 2176 Willivee Place through DeKalb County and in order to construct said trail improvements for the public benefit it is necessary that portions of real property within DeKalb County be acquired as right of way.

5.

In order to maintain the schedule for the trail construction in DeKalb County, Georgia, it is necessary to acquire without delay the title, estate or interest in lands described herein and other rights, if any, for such trail improvements. The property to be condemned for multi-use trail purposes is located in Land Lot 102 of the 18th District of DeKalb County, and is described and shown in Exhibit "1-A" incorporated herein by reference and being more fully shown on a map and drawing attached as Exhibit "1-A"; and

The right of way will remain in place until completion of final acceptance of the project by the DeKalb County Department of Public Works Transportation Division.

6.

By resolution, Condemnor **has** set forth the public purpose and/or use for this taking and has found that the circumstances in this case are such that it is necessary to proceed with condemnation under the provisions of O.C.G.A. **§32-3-1** et seq. Said Resolution also specifically authorizes **this** declaration. (See Exhibit "1", a certified copy of the Resolution of the Board of Commissioners of DeKalb County, Georgia, attached hereto and incorporated herein by reference).

7.

The sum of Fifty Six Thousand dollars (\$56,000.00) is estimated by Condemnor to be just and adequate compensation for the land taken, including consequential damages to land not taken. (See Exhibit "1-B", a sworn statement of the appraiser justifying the sum offered, attached hereto and incorporated herein by reference).

8.

As required by O.C.G.A **§32-3-6**, a plat showing the lands to be taken is attached hereto **as** Exhibit "1-A" and incorporated herein by reference.

9.

The **tax** collecting authority to be served is the **Tax** Commissioner for DeKalb County, Georgia, who may be served at **4380** Memorial Drive, Suite 100, Decatur, Georgia **30032**.

WHEREFORE, Condemnor hereby declares that the above described lands are hereby taken for the use of Condemnor for public road purposes, subject to order of the Court **as** provided by law, and with the filing of this Declaration, Condemnor hereby deposits into the Superior Court of DeKalb County, Georgia, the sum of **\$56,000.00** just compensation for the right of way described above.

ADOPTED by the DeKalb County Board of Commissioners, this _____ day of _____, **2006**.

BURRELL ELLIS
Presiding Officer
Board of Commissioners
DeKalb County, Georgia

APPROVED by the Chief Executive Officer of DeKalb County, this _____ day of _____, **2006**.

VERNON JONES
Chief Executive Officer
DeKalb County, Georgia

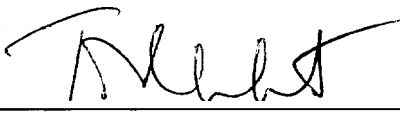
ATTEST:

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Ex-Officio Clerk
Board of Commissioners and
Chief Executive Officer
DeKalb County, Georgia

APPROVED AS TO FORM:

WILLIAM J. LINKOUS
County Attorney
DeKalb County, Georgia

APPROVED AS TO SUBSTANCE:



WILLIAM E. RHINEHART
Director of Public Works
DeKalb County, Georgia

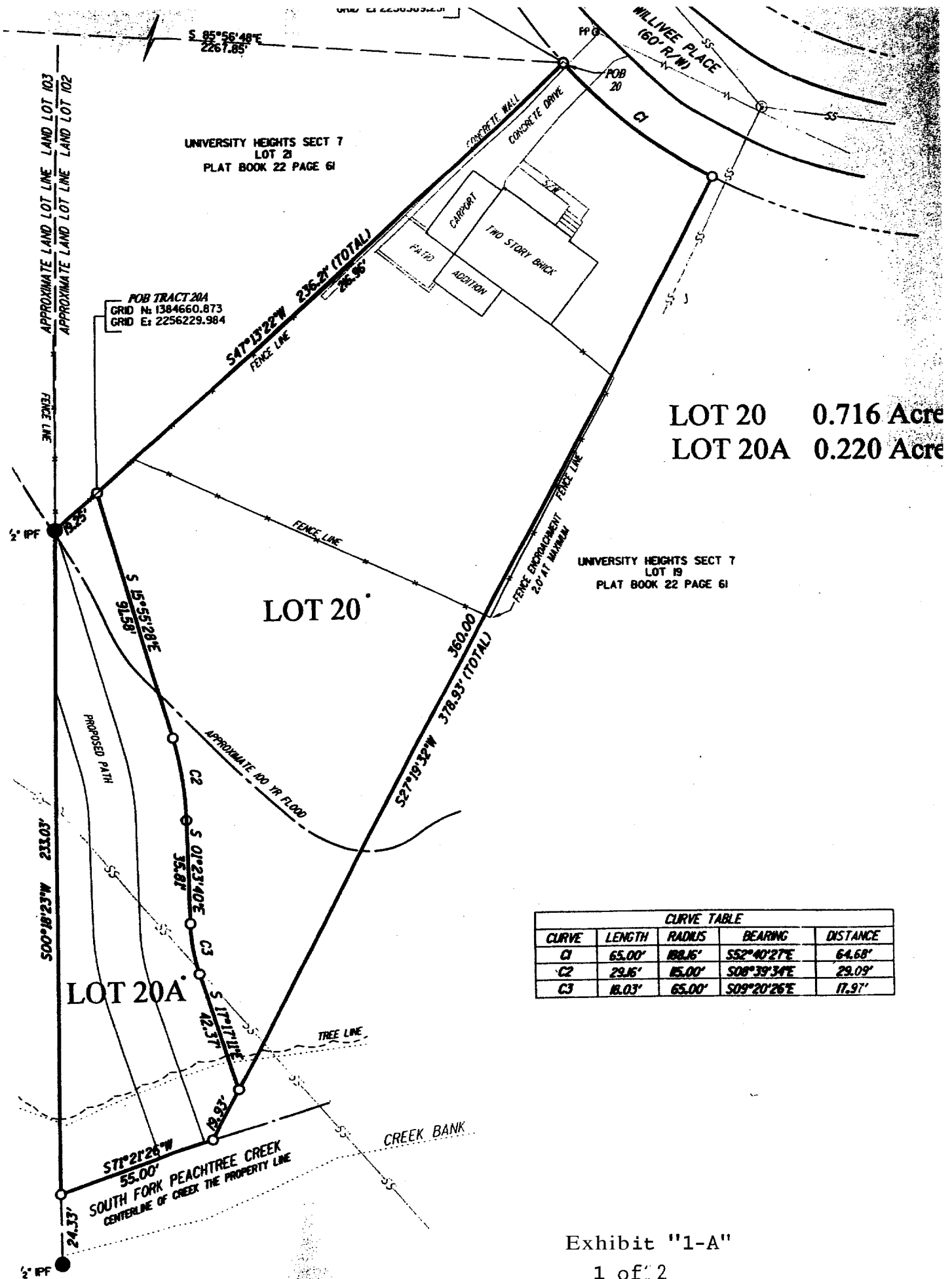
GEORGIA, **DEKALB** COUNTY

I, MICHAEL BELL, do hereby certify that I ~~am~~ Ex-Officio Clerk to the Chief Executive Officer and Board of Commissioners of DeKalb County.

I further certify that the foregoing _____ pages constitute a true and correct exact copy of ~~an~~ Order of the Chief Executive Officer of the Board of Commissioners of DeKalb County entered on the _____ day of _____, 2006, ~~as~~ same applies to the tract or parcel of land described in said Order; and the original of said Order is on file at my office, DeKalb County Courthouse, Decatur, Georgia.

Given under my hand ~~and~~ the Seal of DeKalb County, ~~this~~ _____ day of _____, **2006**.

MICHAEL BELL
Ex-Officio Clerk of the
Chief Executive ~~Officer~~ and Board of
Commissioners of ~~DeKalb~~ County, Georgia



LOT 20A

LEGAL DESCRIPTION

All that Tract or Parcel of Land lying and being located in Land Lot **102** of the 18th District of Dekalb **County**, Georgia and more particularly bounded and described as follows:

Commencing at a Brass Disc labeled **D-5064** being a Dekalb **County** Monument having a grid designation of **North 1384968.52** and an **Easting** of **2254127.05**, thence **South 85 Degrees 56 Minutes 48 Seconds East** a distance of **2267.85** feet to a point located on the **Right-of-Way** of Willivee Place being **60** feet in width, thence along the **common** lot line of Lot 21 and Lot 20 of University heights Subdivision Section **7** as recorded in Plat Book **22** Page **31**, **South 47 Degrees 13 Minutes 22 Seconds West** a distance of **216.96** feet to the Point of Beginning.

Thence leaving common line between Lot **20** and Lot **21** of University heights Subdivision Section **7** **South 15 Degrees 55 Minutes 28 Seconds East** a distance of **91.58** feet to a point, thence **along** a curve to the right having an **arc** length of **29.16** feet a radius of **115.00** feet and being subtended by a chord bearing of **South 08 Degrees 39 Minutes 34 Seconds East** a distance of **29.09** feet to a point, thence **South 01 Degrees 23 Minutes 40 Seconds East** a distance of **35.81** feet to a point, thence along a curve to the left having an **arc** length of **18.03** feet a radius of **65.00** feet and being subtended by a chord bearing of **South 09 Degrees 20 Minutes 26 Seconds East** a distance of **17.97** feet to a point, thence **South 17 Degrees 17 Minutes 11 Seconds East** a distance of **42.37** feet to a point being on the common line between Lot **20** and Lot **19** of University Heights Subdivision Section **7**, thence along the said common line between Lot **20** and Lot **19** **South 27 Degrees 19 Minutes 32 Seconds** a distance of **19.93** feet to a point located in the center of South Fork Peachtree Creek being the common line between Lot **20** of University Heights Subdivision Section **7** and Lot **13** University Heights Subdivision Section **6**, thence along centerline of said creek **South 71 Degrees 21 Minutes 26 Seconds West** a distance of **55.00** feet to a point being on the common land lot line between Land Lot **102** and Land Lot **103**, thence **along** common land lot line **North 00 Degrees 18 Minutes 23 Seconds East** a distance of **233.03** feet to a point being the intersection of the **common** line between Land Lot **102** and Land Lot **103** and the **common** line between Lot **20** and Lot **21** of University Heights Subdivision Section **7**, thence leaving the **common** land lot line and following the **common** line between Lot **20** and Lot **21** in said subdivision **North 47 Degrees 13 Minutes 22 Seconds East** a distance of **19.25** feet to the Point of Beginning.

Said **Tract** or Parcel of land **contains 9,591 Sq. Ft.** or **0.220 Acres** more or less and being a **portion of Lot 20 University** Heights Subdivision Section **7** as shown on plat by **Harttrampf, Inc.** dated **03-30-04**.

Exhibit "1-A"

2 of 2

GEORGIA, DEKALB COUNTY

Personally comes Randall Turner Miller

1. Affiant was employed by the Department of Transportation to appraise the property owned by Donald Kent Moore parcel **20A** Project Number N/A in Dekalb County, Georgia for the Dekalb County Department of Transportation. Affiant makes this **sworn** statement to be used in connection with condemnation proceedings under the official Code of Georgia Annotated Sections 32-3-4 through 32-3-19, for the acquisition of said parcel.

2. Affiant **is** familiar with real estate values in said county and **in** the vicinity where said parcel **is** located. Affiant has personally inspected the property or right condemned and in appraising said parcel affiant took into consideration the fair market value of said parcel, **as well as** any consequential damages to remaining property of the Condemnees by **reason of taking and** use of said parcel and other rights for the construction of said project, and any consequential benefits which may result to such remaining property **by** reason of such **taking and use** (consequential benefits not, however, considered except **as** offsetting consequential damages). After said investigation and research, affiant **has** thus estimated that the just and adequate compensation considered, is in the amount of \$56,000.00.

Sworn to and subscribed
Before me, This 28th day
of July, 2006

Randall Turner Miller
Turner Miller

Georgia Certified Appraiser No. 284505

John White
NOTARY PUBLIC
my commission expires 11-11-07

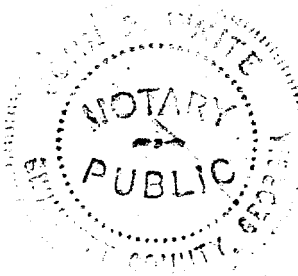
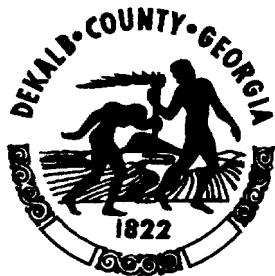


EXHIBIT "1-B"



DeKalb County
Public Works
Transportation Division

1950 W. Exchange Place, 4th Floor
Tucker, Georgia 30084
Phone: 770-492-5206 · Fax: 770-492-520

Certified Receipt: 7005 1820 0003 6686 9058

September 6, 2006

Donald Kent Moore
2176 Wilivee Place
Decatur, GA 30033

Subject: Intent to Condemn
Map Reference # 18-102-02-028

Dear Property Owner:

Under Georgia State Laws, a County is empowered to acquire private property for public use by payment of just and adequate compensation for that property. Based on an appraisal of your property, DeKalb County is offering payment to you in the amount of **\$56,000.00**. Since negotiations have not been resolved, it is being recommended that your property be acquired through condemnation action, which will assure your having opportunity to present evidence of value in a condemnation proceeding and the right of appeal for a **jury** trial.

The DeKalb County Board of Commissioners will consider a resolution to condemn your property at its regularly scheduled meeting to be held Tuesday, September 26, 2006, at 10:00 a.m. at the Manuel J. Maloof Center for DeKalb County Government Administration, 1300 Commerce Drive. While your presence at this meeting is not required, you may attend if you so desire. Should the Board vote to condemn your property, you will be notified.

If you receive a copy of this letter, we may not be condemning your ownership interest in this property; however, we **are** giving all parties who have any ownership **interest** in **this** property notice of this intent to condemn. For your review, we have attached a plat and legal description showing the actual boundaries of the property being considered for condemnation so that you can determine if your ownership interest is affected.

I would like to once **again** point out that even after the initiation of condemnation proceedings, the County will work with you in **an** attempt to reach a mutual agreement.

Page two.. .Donald Kent Moore
Intent to Condemn

In the meantime, should you decide to reconsider the County's offer or if you have any questions, please call John White at (770) 492-5277.

Thank you for your attention to this matter. Please do not hesitate to contact me if you have any question regarding this correspondence.

Sincerely,

John Gurbal
Acting Associate Director
Department of Public
Works/Transportation

Enclosure

cc: **Ted** Rhinehart, PW Director

EXHIBIT "1-C"