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COPY

October 22, 2012

The Honorable Kasim Reed, Mayor
Atlanta City Hall
55 Trinity Ave. S.W.
Atlanta, GA. 30303

By hand delivery

The Honorable Ceasar C. Mitchell, Council President
Atlanta City Hall
55 Trinity Ave., S.W., 2nd floor east
Atlanta, Georgia 30303

By hand delivery

Re: ***Ante litem* notice of claim for attorney's fees and costs of litigation**

Dear Mayor Reed and Council President Mitchell:

I represent Jean Astrop, Laura De Pre, Belle Turner Lynch, Wright Marshall, Brandy Morrison, and Alida Silverman, residents and taxpayers of the City of Atlanta. This letter will serve as notice of my clients' intention to seek recovery from the City of attorneys' fees and expenses of litigation, as authorized by O.C.G.A. §9-15-14. The request will be made in connection with a petition to set aside the *ultra vires* provisions of a Consent Order entered in the case known as Georgia Tech Foundation Real Estate Holding Corp. v. City of Atlanta & City of Atlanta Bd. of Zoning Adjustment, Superior Court of Fulton County, Georgia, Civil Action #2009-cv-167390.

It is well settled that, in Georgia, taxpayers may bring an action to enjoin a municipality's *ultra vires* act. Newsome v. City of Union Point, 249 Ga. 434, 437 (1982). For an act to be considered *ultra vires*, it must be beyond the power or authority of the local government to perform under any circumstances. City of Atlanta v. North by Northwest Civic Ass'n, 262 Ga. 531, 539 (1992). In the present case, the City of Atlanta, through its Law Department, agreed with counsel for the Georgia Tech Foundation to direct the City's Board of Zoning Adjustment (BZA) to issue a Special Administrative Permit, SAP-08-024, for the demolition of the Crum & Forster landmark building. The directive is *ultra vires* because the BZA, a creature of City ordinance, has no authority to issue directives outside of the processes set out in City of Atlanta Code Secs. 6-4028 & 6-4029. Moreover, the fact that the directive to issue SAP-08-024 was packaged in the form of a consent order is immaterial to the illegality of the directive. See City

Ante litem notice

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of Centerville v. City of Warner Robins, 270 Ga. 183, 187 (1998) (a consent order is an agreement of the parties that is sanctioned by a court).

The City also acted *ultra vires* by attempting to confer upon the Superior Court of Fulton County authority that it did not have. In the present case, "the sole function" of the Superior Court "was to determine (1) whether there was any evidence to support the findings of the BZA and (2) whether the BZA had abused its discretion." City of Atlanta Bd. of Zoning Adjustment v. Kelly, 238 Ga. App. 799, 801 (1999). The Superior Court's standard of review is defined by City Code Sec. 16-26.007 and the Law Department is without authority to impose a different standard.

Because the City lacked substantial justification for its *ultra vires* acts, my clients will be entitled to recover their attorneys' fees and expenses of litigation.

If the City wishes to resolve this matter, please have counsel contact me.

Very truly yours,



Mary J. Huber

Cc: Ms. Cathy Hampton, City Attorney (by facsimile)

Mr. Eric Richardson, Deputy City Attorney (by facsimile)

Robert Zoeckler, counsel for Atlanta Preservation Center, Inc.