

**IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA**

**MAXINE HULL SUZMAN, LYNN
BARKSDALE, JEFFREY ALLEN
CARPER, LI YU LO, JEANNETTE A.
GREESON and BRYAN BAER,**

Plaintiffs

v.

**BOBBY JONES GOLF COURSE
FOUNDATION, INC.**

Defendant.

**CIVIL ACTION FILE
NO. _____**

VERIFIED COMPLAINT

Plaintiffs Maxine Hull Suzman, Lynn Barksdale, Jeffrey Allen Carper, Li Yu Lo, Jeannette A. Greeson and Bryan Baer file this complaint for declaratory and injunctive relief against Defendant Bobby Jones Golf Course Foundation, Inc.

PARTIES AND JURISDICTION

1.

Plaintiff Maxine Hull Suzman owns and lives in a home with her husband at 2246 Northside Drive in the City of Atlanta. Ms. Suzman's property is located at the southwest corner of Northside Drive and Longwood Drive immediately across Northside Drive from the golf course property. Ms. Suzman's property is a certified Audubon habitat. Ms. Suzman and her husband historically enjoyed a view and the quieting,

cooling, and other natural benefits of the former golf course property and its park-like features which included substantial mature tree cover in portions of the golf course property adjacent to Ms. Suzman's property. In the course of Defendant's pending golf course redevelopment, the area of the former golf course property adjacent to her property has been stripped of numerous trees and completely regraded to the harm of her full enjoyment of her property and the natural benefits of the former golf course property. Ms. Suzman's home is across Northside Drive from the planned maintenance facility, cell tower, and additional tree removal on the golf course property discussed below.

2.

Plaintiff Lynn Barksdale owns and lives in a home at 2190 Northside Drive in the City of Atlanta. Ms. Barksdale's property is located at the northwest corner of Wilson-McKinley Road and Northside Drive immediately across Northside Drive from what was formerly a City of Atlanta public park containing the Bobby Jones Golf Course (the "golf course property"). Ms. Barksdale historically enjoyed a view and the quieting, cooling, and other natural benefits of the former golf course and its park-like features which included substantial mature tree cover in portions of the course adjacent to Ms. Barksdale's property. In the course of Defendant's pending golf course redevelopment project, the area of the former golf course property adjacent to her property has been stripped of numerous trees and completely regraded to the harm of her full enjoyment of her property and the natural benefits of the former golf course property. Ms. Barksdale's home is across Northside Drive from the planned maintenance facility, cell tower, and additional tree removal on the golf course property discussed below.

3.

Plaintiffs Jeffrey Carper and Li Yu Lo own and live with their two young children in a home at 2210 Northside Drive. Mr. Carper and Ms. Lo's home is immediately across Northside Drive from the golf course property. They historically enjoyed a view and the quieting, cooling, and other natural benefits of the former golf course and its park-like features which included substantial mature tree cover in portions of the golf course property adjacent to their property. In the course of Defendant's pending golf course redevelopment, the area of the former golf course property adjacent to their property has been stripped of numerous trees and completely regraded to the harm of their full enjoyment of their property and the natural benefits of the former golf course property. Their home is across Northside Drive from the planned maintenance facility, cell tower, and additional tree removal on the golf course property discussed below.

4.

Plaintiff Jeannette Greeson owns and lives with her husband in a home at 2185 McKinley Road in the City of Atlanta. Ms. Greeson's property is located at the southwest corner Wilson-McKinley Road and Northside Drive immediately across Northside Drive from the golf course property. Ms. Greeson historically enjoyed a view and the quieting, cooling, and other natural benefits of the former golf course and its park-like features which included substantial mature tree cover in portions of the golf course property adjacent to Ms. Greeson's property. In the course of Defendant's pending golf course redevelopment, the area of the former golf course property adjacent to her property has been stripped of numerous trees and completely regraded to the harm of her full enjoyment of her property and the natural benefits of the former golf

course property. Ms. Greeson's home is across Northside Drive from the planned maintenance facility, cell tower, and additional tree removal on the golf course property discussed below.

5.

Plaintiff Bryan Baer owns and lives in a home with his wife and two children at their at 615 Longwood Drive in the City of Atlanta. Mr. Baer's property is located at the northwest corner of Northside Drive and Longwood Drive immediately across Northside Drive from the golf course property. Mr. Baer and his family historically enjoyed a view and the quieting, cooling, and other natural benefits of the former golf course property and its park-like features which included substantial mature tree cover in portions of the golf course property adjacent to his property. In the course of Defendant's pending golf course redevelopment, the area of the former golf course property adjacent to his property has been stripped of numerous trees and completely regraded to the harm of his full enjoyment of his property and the natural benefits of the former golf course property. Ms. Baer's home is across Northside Drive from the planned maintenance facility, cell tower, and additional tree removal on the golf course property discussed below.

6.

Defendant Bobby Jones Golf Course Foundation, Inc. ("Defendant or "Developer") is a Georgia corporation with its principal place of business in Fulton County, Georgia

7.

This Court has personal jurisdiction over the Defendant, and venue in this Court is proper.

FACTS

8.

Plaintiffs acquired their homes with a strong appreciation for the peaceful, wooded, cooling, park-like natural qualities of the former golf course to their properties.

9.

On or about November 1, 2016, the City of Atlanta conveyed the golf course property to the Georgia Building Authority.

10.

On or about November 15, 2016, the Georgia Building Authority as lessor entered a 50 year ground lease (“Lease”) of the Bobby Jones Golf Course property with Defendant Bobby Jones Golf Course Foundation, Inc., a private Georgia corporation, as lessee (hereafter “Developer”).

11.

Acting as lessee and real estate developer under the Lease, Developer has closed the former golf course operation, prohibited public access to much of the former golf course property, conducted massive grading activities on the former golf course property, and conducted massive removal of over 500 mature trees from that property in the course of the pending construction of a new “reversible” nine hole golf course, a new driving range, a new 6 hole short course, multiple planned practice putting greens and other practice facilities, and a 298 space parking deck.

12.

Developer's future plans include construction of (i) a 50' x 150' metal-sided/metal-roofed equipment storage, maintenance, and office building and an adjacent 100' x 150' asphalt maintenance area which would be equipped with one or more trash dumpsters, material storage bins, an above-ground fuel tank, truck turnaround area, and 12 additional surface parking spaces (collectively, "maintenance facility"), (ii) a new 180' high cell tower, without camouflaging, (iii) three to five (3-5) new golf cart path bridges over Tanyard Creek; (iv) a large new golf club house, (v) a separate new golf pro shop, (vi) a separate new instructional building, (vii) a new access drive immediately across from the Wilson-McKinley/Northside Drive intersection, which new drive would be in addition to an existing access drive from Northside Drive, and (viii) other features.

13.

Developer has submitted an application to the Georgia Environmental Protection Division (but not the City of Atlanta) which describes a plan to conduct additional grading activities and removal of numerous mature trees along the banks of Tanyard Creek and Peachtree Creek within the golf course property.

14.

The tree removal and other construction activities of Developer have been done and are planned without the Developer having first obtained various City of Atlanta permits that other developers would need to obtain prior to conducting such development activities.

15.

The City ordinances which provide for such permits are for the purpose of protecting the environment of the City of Atlanta and the interests of persons such as Plaintiffs in the environment, the health, welfare, and safety of persons such as Plaintiffs, and the right of full enjoyment of properties by persons such as Plaintiffs.

16.

As a result of Developer's past and planned development activities, Plaintiffs have suffered and are threatened with special harm to their rights and interests, including but not limited to their right to full enjoyment of their properties by reason of, among other things, the loss of the cooling and other benefits of numerous mature trees on the adjacent golf course property, the threatened noise, heat, and visual impact of the planned maintenance facility in its currently-planned location adjacent to their properties, and the threatened visual impact of the planned, uncamouflaged 18 story cell tower adjacent to their properties.

Tree removal

17.

In the course of the ongoing development activities, the Developer has caused the removal of over 500 mature trees (many of them specimen trees) with trunk diameters of 12" and more, together with numerous other trees with trunk diameters of 6-12", and has plans to remove numerous additional mature trees from the golf course property without having first applied for or obtained a tree removal permit under the City of Atlanta Tree Ordinance.

18.

To obtain a tree removal permit, the City of Atlanta Tree Ordinance requires that a developer or other person or entity proposing to remove trees trunks in excess of 6" diameter at breast height ("DBH") (other than those which are dead, diseased, dying within 2 years, or hazardous) must first provide a tree replacement and recompense plan to the City of Atlanta for its approval under the terms of the City Tree Ordinance, which establishes a no net loss tree policy.

19.

Developer has failed to submit a tree replacement and recompense plan and obtain a tree removal permit under the terms of the City Tree Ordinance.

Special Use Permit

20.

Developer has engaged in golf course development activities without first having applied for or obtained a special use permit under the provisions of the City of Atlanta Code of Ordinances.

21.

Although golf course development is a generally permitted use of the golf course property under the City's zoning ordinance, the City Code requires that a special use permit be obtained before such golf course development can proceed.

22.

The purpose of the special use permit process is to provide for the placement of reasonable conditions on developments such as the Developer's golf course to protect the interests of surrounding property owners such as Plaintiffs. Among the conditions

that could be placed on this golf course development are conditions on the maintenance facility location and operation, the height and camouflaging of the cell tower, lighting of various facilities, and operating hours.

Encroachment Within 75' Protected Stream Buffer

23.

Peachtree Creek and Tanyard Creek run through the golf course property. Developer has engaged in grading and tree removal and plans to engage in additional grading and tree removal activities within the 75' legally-protected buffer of Peachtree Creek and Tanyard Creek without first applying for and obtaining a variance from the stream buffer protection requirements of the City of Atlanta Stream Buffer Protection Ordinance.

24.

The City Stream Buffer Protection Ordinance is based upon the model stream buffer protection ordinance adopted by the Metropolitan North Georgia Water Planning District as authorized by the Georgia General Assembly. The purpose of the City Stream Buffer Protection Ordinance is to protect the environment and the interests of persons such as Plaintiffs in the environmental benefits of streams and their vegetated buffers such as Peachtree Creek and Tanyard Creek.

City Building Code

25.

Under the City of Atlanta Building Code, a building permit must be obtained by a developer prior to the construction of any structure.

26.

Developer has failed to make application for and obtain a building permit from the City of Atlanta for its past and future construction activities.

27.

The City of Atlanta Building Code and its permitting process serve to protect the health, safety, and welfare of persons such as Plaintiffs, and Developer's failure to apply for and obtain a building permit from the City for various structures, including but not limited to the planned maintenance facility and cell tower, threatens Plaintiff's rights and interests.

City Noise Ordinance

28.

Developer's construction activities have generated substantial noise which has been audible outside of the former golf course property and has disturbed one or more of Plaintiffs, including but not limited to noise generated from construction activities in the wee hours of the morning prior to 7 am in violation of the terms of the City Noise Ordinance.

29.

Developer's future construction and operational activities threaten additional violations of the City Noise Ordinance to the detriment of Plaintiffs.

Maintenance Facility

30.

Developer's current plan is to locate a new maintenance facility adjacent to Northside Drive, the Northside Drive PATH, and Plaintiff's properties instead of a

previously-planned location more interior to the golf course property. The prior maintenance facility that served the former golf course was substantially smaller than the presently-planned maintenance facility, and the prior maintenance facility was located in a similar interior location to the previously-planned location of the new maintenance facility.

31.

Developer's construction and operation of its planned new maintenance facility at its currently-planned location would have adverse heat generating, noise-generating, and visual impacts on Plaintiffs.

32.

These adverse impacts would be avoided by locating the planned new maintenance facility to its originally-planned location.

33.

The City's special use permit and building permit process should result in the placement of conditions on the location, construction, and operation of a new maintenance facility that would be protective of Plaintiff's rights and interests.

New Cell Tower

34.

Developer plans to construct a new 18 foot cell tower (as tall as an 18 story building), without any camouflage, on the golf course property in the line-of-sight of Plaintiffs' properties. Constructing the new cell phone tower of this height without camouflage would have an adverse impact on Plaintiffs' full enjoyment of their

properties as a new, uncamouflaged cell tower of such height would substantially impair the view from their properties.

35.

Under applicable City ordinances, Developer must apply for and obtain a special use permit and building permit before a new cell tower can be constructed. Such permits should include conditions for camouflaging a new cell tower and could include a condition to lower its height so as to mitigate its adverse visual impacts on Plaintiffs.

Applicability of City Ordinances to Developer

36.

Developer contends that its development activities are completely exempt from the above-referenced ordinance and all other City ordinances.

37.

Plaintiffs disagree with Developer's contention and aver that Developer is subject to those and any other City ordinances applicable to the Developer's project just as any other developer would be subject to such ordinances for a development project on property within the City of Atlanta.

38.

The above-referenced ordinances serve the purpose of protecting Plaintiff's rights and interests, and Developer's violation of those ordinances gives rise to a nuisance and negligence per se.

COUNT I
DECLARATORY RELIEF

39.

Plaintiffs incorporate by reference the foregoing allegations of this Complaint.

40.

Substantial uncertainty exists as to whether Developer is wholly exempt from the requirements and protections of the City of Atlanta Code of Ordinances, including but not limited to the tree protection, stream buffer protection, noise protection, special use permit, and building permit provisions of such ordinances.

41.

Plaintiffs are entitled to entry of declaratory judgment in their favor declaring that Developer is subject to the provisions of all City of Atlanta ordinances applicable to development activities such as those being undertaken and planned by the Developer at the golf course property, including but not limited to the above-referenced provisions of the City of Atlanta Code of Ordinances.

COUNT II
INTERLOCUTORY AND PERMANENT INJUNCTION

42.

Plaintiffs incorporate by reference the foregoing allegations of the Complaint.

43.

Plaintiffs are entitled to appropriate injunctive relief to prevent Developer from engaging in further development activities at the former golf course property without first complying with all applicable City of Atlanta ordinances.

44.

In addition, to preserve the status quo pending the final outcome of this litigation, an interlocutory injunction should be entered enjoining Developer from constructing at least the maintenance facility in its currently-planned location adjacent to Northside Drive and Plaintiffs' properties, from constructing a new cell tower, and

from further tree removal and grading or construction activities in the stream buffer on the golf course property, without first complying with all applicable City ordinances.

45.

Plaintiffs reserve the right to seek such other and further injunctive and legal relief as is just and proper.

WHEREFORE, Plaintiffs request that relief be granted in their favor and against Defendant for:

1. Declaratory relief as set forth above;
2. An interlocutory injunction preserving the status quo as requested above;
3. A permanent injunction as set forth above; and,
4. Such other and further relief as may be appropriate.

This 24th day of May, 2018.

/s/Bruce P. Brown
Bruce Perrin Brown
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(404) 881-0700
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Attorney for Plaintiff

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Defendant.

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VERIFICATION

Personally appeared before the undersigned officer duly authorized to administer oaths, Maxine Hull Suzman, a plaintiff in this case, who under oath states that the facts set forth in the foregoing Verified Complaint are true and correct to the best of her personal knowledge and belief.

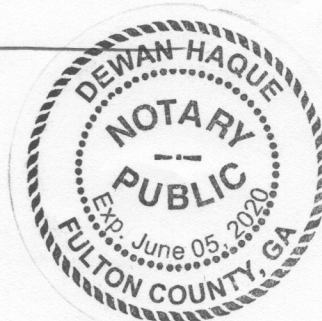
This 23 day of May, 2018.

Maxine Hull Suzman
Maxine Hull Suzman

Sworn to and subscribed
Before me this 23rd day of
May 2018.

Notary Public

My Commission Expires: Jun 05, 2020



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VERIFICATION

Personally appeared before the undersigned officer duly authorized to administer oaths, Lynn Barksdale, a plaintiff in this case, who under oath states that the facts set forth in the foregoing Verified Complaint are true and correct to the best of her personal knowledge and belief.

This 22 day of May, 2018.


Lynn Barksdale

Sworn to and subscribed
Before me this 22 day of
May, 2018.

Notary Public

My Commission Expires: 01/08/2021



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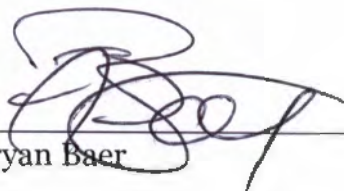
BOBBY JONES GOLF COURSE
FOUNDATION, INC.

Defendant.

VERIFICATION

Personally appeared before the undersigned officer duly authorized to administer oaths, Bryan Baer, a plaintiff in this case, who under oath states that the facts set forth in the foregoing Verified Complaint are true and correct to the best of his personal knowledge and belief.

This 24th day of May, 2018.

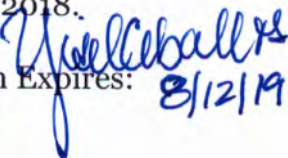

Bryan Baer

Sworn to and subscribed
Before me this 24th day of

may, 2018.

Notary Public

My Commission Expires:


8/12/19

