



# DeKalb County Government

Manuel J. Maloof Center  
1300 Commerce Drive  
Decatur, Georgia 30030

## Agenda Item

File ID: 2017-0721

Substitute

8/1/2017

Public Hearing: YES  NO

Department: Chief Executive Office

### SUBJECT:

Commission District(s): All Commission Districts

DeKalb County's Objection to the annexation of approximately 744 acres of land in unincorporated DeKalb County into the City of Atlanta pursuant to annexation petitions filed by Emory University and others.

Information Contact: Zachary Williams, Chief Operating Officer

Phone Number: 404-371-2174

### PURPOSE:

State law allows counties to object to annexations under certain circumstances. The County Attorney and relevant County staff have been investigating the grounds for an objection to the annexation of approximately 744 acres into the City of Atlanta. On June 30, 2017, and as amended on July 20, 2017, the City of Atlanta sent notice to DeKalb County of its intent to act on annexation petitions via the one hundred percent (100% method) received from Emory University, Children's Healthcare of Atlanta, Georgia Power Company, Villa International, Synod of South Atlantic & Presbyterian Church (USA), Inc. and the Centers for Disease Control ("Petitioners").

An authorizing resolution and a close to final draft of the Objection are attached to this item.

### NEED/IMPACT:

This item will protect the health, safety and welfare interests of the County and its taxpayers.

### FISCAL IMPACT:

Not known at this time

### RECOMMENDATION:

Vote to object to the annexation of 744 acres into the City of Atlanta pursuant to annexation petitions filed by Petitioners; adopt the attached resolution and authorize the chief executive officer to execute all necessary documents.

July 31, 2017

**RESOLUTION**

**A RESOLUTION BY THE GOVERNING AUTHORITY OF DEKALB COUNTY TO OBJECT TO THE ANNEXATION OF APPROXIMATELY 744 ACRES OF LAND IN UNINCORPORATED DEKALB COUNTY INTO THE CITY OF ATLANTA PURSUANT TO PETITIONS FILED BY EMORY UNIVERSITY AND OTHERS, AND FOR OTHER PURPOSES**

**WHEREAS**, on June 30, 2017, and as amended on July 20, 2017, the City of Atlanta sent notice to DeKalb County of its intent to consider annexation petitions ("annexation petitions") that would annex approximately 744 acres of land in unincorporated DeKalb County into the City of Atlanta;

**WHEREAS**, the Petitioners seeking annexation via the one hundred percent (100%) method are Emory University, Children's Healthcare of Atlanta, Georgia Power Company, Villa International, Synod of South Atlantic & Presbyterian Church (USA), Inc. and the Centers for Disease Control;

**WHEREAS**, the County Attorney and the administration's staff have carefully reviewed the annexation petitions, correspondence from the City of Atlanta, and the applicable state law governing annexations;

**WHEREAS**, O.C.G.A. § 36-36-113 allows counties to object to annexation petitions in certain circumstances;

**WHEREAS**, DeKalb County has determined that an objection to the annexation petitions is necessary and warranted; and

**WHEREAS**, a draft of the actual Objection is attached hereto as Exhibit A and is incorporated herein by reference;

**NOW, THEREFORE, BE IT RESOLVED**, by the Governing Authority:

1. The County Attorney is directed to file DeKalb County's Objection to the annexation petitions in a form substantially similar to Exhibit A;
2. The County Attorney is further directed to pursue arbitration of this issue in the manner provided by law and to provide periodic reports to the members of the Governing Authority on the matter; and
3. The Chief Executive Officer is authorized to execute all necessary documents.

July 31, 2017

**ADOPTED** by the DeKalb County Board of Commissioners, this \_\_\_ day of \_\_\_\_\_, 2017.

\_\_\_\_\_  
**KATHIE GANNON**  
Presiding Officer  
Board of Commissioners  
DeKalb County, Georgia

**APPROVED** by the Chief Executive Officer of DeKalb County, this \_\_\_ day of \_\_\_\_\_, 2017.

\_\_\_\_\_  
**MICHAEL L. THURMOND**  
Chief Executive Officer  
DeKalb County, Georgia

**ATTEST:**

\_\_\_\_\_  
**BARBARA H. SANDERS-NORWOOD, CCC**  
Clerk to the Board of Commissioners and  
Chief Executive Officer  
DeKalb County, Georgia

**APPROVED AS TO FORM:**

\_\_\_\_\_  
**O.V. BRANTLEY**  
County Attorney  
DeKalb County, Georgia

# EXHIBIT A

Via email and statutory overnight delivery (UPS) to:

The Honorable Kasim Reed, Mayor City of Atlanta  
Members of the Atlanta City Council  
Atlanta City Hall  
55 Trinity Avenue SW, Second Floor  
Atlanta, GA 30303

Re: Applications for annexation by 100% method of Emory University, Children's Healthcare of Atlanta, Georgia Power Company, Villa International, Synod of South Atlantic & Presbyterian Church (USA) Inc., and Centers for Disease Control

Dear Mayor Reed and Council Members:

This letter is written to notify you that the DeKalb County Governing Authority, by majority vote, objects to the annexation of properties owned by the above-referenced Petitioners pursuant to the 100% method. In accordance with O.C.G.A. § 36-36-113, the DeKalb County Governing Authority, by majority vote, adopted and approved a Resolution objecting to the annexation of the parcels included in the above-referenced applications for annexation (hereinafter collectively referred to as the "Emory Parcels").<sup>1</sup> On July 6, 2017, the DeKalb County Board of Commissioners and the Chief Executive Officer received a letter dated June 30, 2017 from Rhonda Dauphin Johnson, the City of Atlanta Municipal Clerk, notifying DeKalb County (hereinafter "DeKalb" or "the County") of the City of Atlanta's (hereinafter, "Atlanta" or "the City") intent to act upon the applications for annexation of the Emory Parcels.<sup>2</sup> The grounds for the County's objections are set forth below:

**A. Land Use and Zoning Objections pursuant to O.C.G.A. 36-36-113 et seq.**

O.C.G.A. § 36-36-113(a) authorizes a county governing authority to object to a proposed annexation due to a material increase in burden upon the county directly related to any one or more of the following: (1) the proposed change in zoning or land use, (2) proposed increase in density, and (3) resulting infrastructure demands.

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<sup>1</sup> A copy of the Resolution adopted and approved by the Governing Authority on August 1, 2017 is attached hereto as Exhibit 1 and incorporated by reference.

<sup>2</sup> On July 24, 2017, the DeKalb County Board of Commissioners and Chief Executive Officer received correspondence from the City advising that the June 30, 2017 list of parcels contained "a few scrivener's errors" related to land use and zoning. As discussed herein, this second correspondence amending land use and zoning for certain parcels entitles DeKalb to an additional thirty (30) days for submission of objections.

Atlanta's proposed annexation of the Emory Parcels currently located in unincorporated DeKalb would cause a direct and material impact in all three regards, namely resulting in (1) zoning and land use changes that allow different and more intense uses, (2) increased density, and (3) ensuing burdens on DeKalb's infrastructure. Further, the proposed annexation is (1) incompatible with the current land use designations of the affected properties under DeKalb's Comprehensive Plan, (2) is incompatible with the current zoning classifications and associated land uses authorized under DeKalb's Zoning Ordinance,<sup>3</sup> and (3) is incompatible with the current land development regulations<sup>4</sup> administered by the County.

The City or the Petitioners may argue that upon annexation, the City intends to adopt certain site specific zoning conditions currently in place for some, but not all of the area, proposed to be annexed. Thus, they may argue that with site specific zoning conditions identical to those currently in place in DeKalb County, there is no incompatible or more intense land development in the proposed annexation area. That argument does not carry the day. First, while site specific zoning conditions may be in place for part of the area to be annexed, upon annexation, those areas would still be subject to rezoning under Atlanta's more intense and incompatible zoning and land development regulations. Second, the portion of the area to be annexed which is not restricted by existing site specific zoning conditions will immediately be available for redevelopment under Atlanta's more intense and incompatible zoning and land development regulations. Finally, DeKalb's site specific zoning conditions have yet to be adopted by the City's elected officials, thus the zoning for such parcels remains speculative. No one can ensure that such site specific zoning conditions will in fact be adopted and approved by the Mayor and Atlanta City Council.

DeKalb's specific zoning and land use objections are set forth below.

**1. Atlanta's comprehensive land use designations of MUHD and HDR allow more intense development than currently allowed in DeKalb County.**

First, a significant portion of the property subject to the proposed annexation is currently designated with an underlying land use designation of "TC"<sup>5</sup> under DeKalb's Comprehensive Plan. Under Atlanta's Comprehensive Plan, some of this property would be reclassified to "MUHD"<sup>6</sup> and "HDR."<sup>7</sup> This transition is incompatible, specifically as it relates to the respective maximum building height allowances. Specifically, DeKalb County's "TC" designation contemplates a maximum building height of six (6) stories, while Atlanta's MUHD and HDR both contemplate high-rise buildings in excess of six (6) stories.

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<sup>3</sup> Contained in Chapter 27 of the Code of DeKalb County, as Revised 1988, Georgia ("DeKalb County's Code"). Exhibit \_\_\_\_.

<sup>4</sup> Contained in Chapter 14 of DeKalb County's Code.

<sup>5</sup> Town center.

<sup>6</sup> High density mixed use.

<sup>7</sup> High density residential.

**2. Atlanta's office-institutional (O-I) zoning regulations allow more intense development than allowed in the O-I zoning regulations in DeKalb County.**

Likewise, Atlanta's proposed zoning designations for some of the affected properties are incompatible with the current zoning classifications under DeKalb's zoning regime. A significant portion of the annexed area is currently zoned "O-I"<sup>8</sup> under DeKalb's Zoning Ordinance, and would remain so under Atlanta's version of "O-I"<sup>9</sup> should the annexation go forward. However, under their respective "O-I" zoning districts, the County and the City authorize some very different and impactful uses, and also have some significantly differing development regulations that would likely impact density. For example, Atlanta's "O-I" zoning district regulations authorize (1) single-family dwellings, (2) two-family dwellings, (3) MARTA transit facilities, and (4) athletic/entertainment stadiums.<sup>10</sup> These uses are not authorized in DeKalb's "O-I" zoning districts.<sup>11</sup> All of these additional uses would likely have dramatic impacts on density, traffic, aesthetics, and noise, etc.

Furthermore, in regard to associated development standards, DeKalb's "O-I" zoning districts limit building height to a maximum of five (5) stories or seventy (70) feet,<sup>12</sup> while Atlanta generally has no height limit - except where the subject property adjoins residential property.<sup>13</sup> It goes without saying that non-existent or limited circumstantial height restrictions would inevitably impact density and visual aesthetics. This is especially concerning given the fact that a large portion of "O-I" zoned property is either adjacent to, or in very close proximity to, DeKalb's established Druid Hills Historic District, which would certainly be harmed by the prospect of nearby high-rise buildings overshadowing historic properties.

**3. Atlanta's MRC-3 zoning regulations allow more intense development than allowed by DeKalb's MU-5 zoning regulations.**

Similarly, the proposed annexation would involve the rezoning of property currently zoned "MU-5"<sup>14</sup> under DeKalb's Zoning Ordinance to "MRC-3"<sup>15</sup> in Atlanta. Atlanta's "MRC-3"<sup>16</sup> authorizes such uses as utility power generators<sup>17</sup> and boarding houses,<sup>18</sup> while DeKalb prohibits<sup>19</sup>

<sup>8</sup> Office-Institutional.

<sup>9</sup> Office-Institutional.

<sup>10</sup> See Section 16-10.003 of Atlanta's Code of Ordinances. Exhibit \_\_. The first three are allowed by right in Atlanta, while stadiums require a special land use permit.

<sup>11</sup> See Table 4.1 in Chapter 27 of DeKalb County's Code.

<sup>12</sup> See Table 2.2 in Chapter 27 of DeKalb County's Code.

<sup>13</sup> See Sections 16-10.008 and 16-10.006 of Atlanta's Code of Ordinances.

<sup>14</sup> Mixed-Use Very High Density.

<sup>15</sup> Mixed Residential Commercial.

<sup>16</sup> See Section 16.34.005 of Atlanta's Code of Ordinances.

<sup>17</sup> By right.

<sup>18</sup> With a special land use permit.

<sup>19</sup> See Table 4.1 in Chapter 27 of DeKalb County's Code.

these relatively intense, and arguably distasteful uses. Perhaps more significant than these land use expansions, the respective building height limits are again quite dramatic when comparing DeKalb's "MU-5" and Atlanta's "MRC-3" districts. While DeKalb's "MU-5" zoning district allows a maximum height between 60 to 100 feet depending on various circumstances,<sup>20</sup> Atlanta's corresponding "MRC-3" zoning district allows buildings a maximum height of two hundred twenty-five (225) feet.<sup>21</sup> Allowing buildings several times the height currently allowed would undoubtedly impact visual aesthetics and density considerations.

**4. Atlanta's MR-4 zoning regulations allow more intense development than allowed by DeKalb's HR-2 zoning regulations.**

The proposed annexation contemplates a transition of some property from DeKalb's current "HR-2"<sup>22</sup> zoning classification to Atlanta's "MR-4"<sup>23</sup> district. Atlanta's "MR-4"<sup>24</sup> district authorizes such uses as MARTA transit facilities,<sup>25</sup> colleges/universities,<sup>26</sup> sports arenas<sup>27</sup> and nursing homes,<sup>28</sup> which are not currently allowed in DeKalb's "HR-2" district.<sup>29</sup> Again, these additional and significant land use changes would almost certainly negatively impact aesthetics, noise, traffic and density. Further, while Emory University already occupies a large portion of the subject area, this would authorize the University's unencumbered expansion within this zoning district, potentially imposing the impacts of "college life" on nearby residential properties, including the Druid Hills Historic District.

**5. Less restrictive stream buffer requirements in Atlanta negatively impact DeKalb County.**

Outside the scope of pure zoning considerations, corresponding land development restrictions<sup>30</sup> would also be negatively impacted by the proposed annexation. For example, DeKalb County requires a seventy-five (75) foot stream buffer from development activity.<sup>31</sup> In comparison, Atlanta only requires the state minimum<sup>32</sup> twenty-five (25) foot buffer.<sup>33</sup> Aside from the harsh difference in protecting the area's waterways and associated vegetation and wildlife, this stream buffer disparity greatly impacts development potential, and therefore density. In other

<sup>20</sup> See Sections 27-2.23.1, 27-2.21.1 and Table 2.9 of Chapter 27 of DeKalb County's Code.

<sup>21</sup> See Section 16-34.028 of Atlanta's Code of Ordinances.

<sup>22</sup> High-Density Residential-2.

<sup>23</sup> Multi-family residential

<sup>24</sup> See Sections 16-35.005 and 16-35.007.

<sup>25</sup> By right.

<sup>26</sup> With a special land use permit.

<sup>27</sup> With a special land use permit.

<sup>28</sup> With a special land use permit.

<sup>29</sup> See Table 4.1 in Chapter 27 of DeKalb County's Code.

<sup>30</sup> Aside from height limits.

<sup>31</sup> See Section 14-44.1(a)(1) of DeKalb's Code. This 75-foot buffer applies to both sides of the waterway, measured from the stream bank, for a total of 150 feet.

<sup>32</sup> See O.C.G.A. § 12-7-6(b)(15)(A).

<sup>33</sup> See Section 74-303 of Atlanta's Code of Ordinances.



words, allowing an additional fifty (50) feet of development activity on both sides of a given waterway dramatically increases the footprint or lot coverage potential.

**6. More intense land use as allowed by Atlanta will negatively impact DeKalb's storm water utility.**

An increased footprint or lot coverage will cause an increased burden on DeKalb's storm water management system. Also, significantly, owners of property in unincorporated DeKalb pay a storm water fee for maintenance and operation of the County's storm water system. Annually, the County collects approximately \$131,000.00 for this service from the owners of the Emory Parcels for storm water services. Upon annexation, there is a chance that such fee will no longer be collected, but the County will have to continue to provide storm water service to the Emory parcels. Upon annexation, it is unclear if the City will create its own storm water utility fee, and accept and purchase the County's storm water system facilities located within the area to be annexed.

Upon information and belief, the City and the County may be prohibited by a prior court decision from charging City residents in DeKalb a storm water fee even if the City or County is providing storm water services to those residents. If this inability to charge such a fee is accurately stated, then with more intense development under the City's zoning ordinance, more storm water will enter the County's storm water system and DeKalb County will not receive the storm water fee as compensation for the service.

**7. Disproportionate impact of annexation on traffic and roads in unincorporated DeKalb.**

Because the contiguous area for this seven hundred forty-four (744) acre annexation is sixty-five (65) feet wide, this annexation creates a disproportionate impact on traffic and roads in the adjoining unincorporated area of the County. The annexed area is surrounded on all sides by roads and land located in unincorporated DeKalb County. That means when more intense development occurs in this annexed area, the bulk of the traffic and road impact falls on unincorporated DeKalb's roads and residents, rather than on the City's roads and City residents. There are no City roads adjoining the annexed area to Atlanta. The only land that adjoins the city is a sixty-five (65) foot wide parcel of land.

**8. Increased Demands on DeKalb's infrastructure are significant.**

Of course, the proposed annexation and affiliated changes in (1) Comprehensive Plan land use designations, (2) zoning classifications, and (3) resulting density impacts will, by definition, increase the stresses on DeKalb's existing infrastructure, which is designed to serve existing density projections. Specifically, the proposed changes in zoning and land use and increased density will increase the traffic demands on the existing streets, some of which will remain in unincorporated DeKalb, and there will be an increased demand on DeKalb's storm water

management system because of increased density and larger developments, as discussed above. Significantly, the majority of the proposed annexation area is in a priority assessment and rehabilitation area, pursuant to the County's Consent Decree related to sewers.<sup>34</sup> If properties in the annexed area submit applications for new development or different types of development allowed by the City but not by the County, there may be an increased burden on the sewer system that has already been designated as a priority area. If this increased burden leads to sanitary sewer overflows or spills, the County may be subject to fines by the Environmental Protection Agency and the Georgia Environmental Protection Division.

In sum, the proposed annexation will pose significantly harmful direct and material impacts on the area in question by virtue of (1) proposed changes in zoning and land use, (2) proposed increases in density, and (3) resulting infrastructure demands.

**B. Legal Infirmities of Annexation Petitions Requiring Delay of Atlanta's Vote on the Annexation Petitions or Dismissal of the Annexation Petitions.**

DeKalb has set forth above the various statutorily required arguments for objecting to an annexation petition. As suggested by the Georgia Court of Appeals in an annexation case,<sup>35</sup> the County deems it necessary to also include in its objection the various legal infirmities related to the annexation petitions as explained in more detail below.

**Various legal infirmities require Atlanta to delay its vote to annex the Emory Parcels into the City.**

**1. Decisions needed from the two independent school systems.**

In correspondence dated June 30, 2017 from Rhonda Dauphin Johnson, the City of Atlanta Municipal Clerk, Ms. Johnson advises that "[t]he City does not intend to expand the boundaries of the Atlanta Independent School System in connection with this annexation." However, any vote to approve the annexation petitions should be delayed because it is unclear whether the City and the owners of the Emory Parcels have the legal authority to decide the boundaries of an independent school system, which will control where the students in the annexed area will attend school. It appears that decision is within the exclusive purview of the Atlanta Independent School System and the DeKalb County Board of Education.

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<sup>34</sup> See Exhibit \_\_, a map of the priority basin area included in the proposed annexation area.

<sup>35</sup> *Fayette County v. Steele*, 268 Ga. App. 13, 14 (2004). (In a footnote to its opinion, the Georgia Court of Appeals questioned why Fayette County did not avail itself of the statutory objection process and use the dispute resolution process afforded by that statutory process.) Thus, the County is including these legal infirmities in its statutory objection for discussion during the dispute resolution process. Inclusion of these legal infirmities does not preclude the County from raising additional, or different arguments, at a later date.

**2. Lack of intergovernmental agreements.**

Second, action by the City on the annexation petitions should be delayed because there are no intergovernmental agreements or decisions made concerning the delivery of any governmental services to the property owners within the annexed area. The County is seeking to have a final vote on the annexation be delayed by the City until such time as final decisions or intergovernmental agreements are agreed to or executed for delivery of all services to the annexed area by the County or the City.

**3. July 24, 2017 correspondence amending zoning and land use requires dismissal of the annexation petitions.**

On July 24, 2017, DeKalb received correspondence from the City advising that the June 30, 2017 list of parcels contained "a few scrivener's errors" related to land use and zoning. Because the statutorily recognized objections are based in zoning and land use, the July 24, 2017 correspondence amending zoning and land use for parcels included in the proposed annexation entitles DeKalb to an additional thirty (30) days for submission of objections. Therefore, Petitioner's annexation petitions should be dismissed. Amended petitions can be re-filed with the City and notice provided to the County in accordance with the statutory requirements; thus, allowing the County the full statutory time period to object to the re-filed petitions.

**4. The annexation petitions violate the entire parcel requirement.**

The annexation petitions violate the requirement set forth in O.C.G.A. § 36-36-20(a) that the entire parcel or parcels of real property owned by the person seeking annexation is being annexed. Specifically, Emory University owns Parcels 18 053 03 024 and 18 053 03 023, which are physically located in the proposed annexation area, but not included in the annexation petition presented by Emory University. Additionally, Georgia Power Company owns three parcels, Parcels 18 053 03 015, 18 053 03 016 and 18 053 03 017, which are physically located in the proposed annexation area but not included in the annexation petitions.<sup>36</sup> The omission of these parcels violates the requirements of O.C.G.A. § 36-36-20(a) and would render any annexation null and void.

Additionally, Emory's annexation petition excludes a ten (10) foot strip along parcels identified as 77, 78 and 95 along the east side of Houston Mill Road to northern edge of parcel 95; parcel 77 along north side of Gatewood Road to the eastern corner of Luckie Lane; and parcel 35 along west side of Burlington Road from a Georgia Power substation to the corner of North Decatur. The CDC's annexation petition excludes a ten (10) foot strip along Clifton Road.<sup>37</sup> However, the exclusion violates the law set forth in O.C.G.A. § 36-36-20(a) related to "contiguous area" that requires the entire parcel or parcels of real property owned by the person seeking

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<sup>36</sup> See Exhibit \_\_\_\_.

<sup>37</sup> See Exhibit \_\_\_\_.

annexation be annexed. Furthermore, as the petitions are presented, the exclusion of portions of roadways within the proposed annexation, specifically, Houston Mill Road and Clifton Road, creates confusion for improvement projects, such as signal upgrades, and the carving out of portions of roadways will create infrastructure management confusion over which jurisdiction handles which issues in transportation planning, funding, operations and maintenance. The proposed exception of strips of land is also an improper attempt to avoid the requirement of O.C.G.A. § 36-36-7(c) that a municipality “assume the ownership, control, care, and maintenance” of rights of way where the land on either side of the right of way is being annexed. The exclusion of ten foot strips on the referenced parcels should render any annexation null and void as a matter of law and as a matter of public policy.<sup>38</sup>

**5. The annexation petition are void because the 65 foot strip of alleged statutorily required “contiguous land” is not in fact contiguous to the City.**

The authority to annex property by the 100 Percent method is limited to land that is contiguous to the existing corporate limits “at the time the annexation procedures are initiated.”<sup>39</sup> When one parcel abuts the existing city limits, other parcels can be annexed at the same time only if the other parcels adjoin the parcel that abuts the city limits<sup>40</sup> at the time the application for annexation is initiated. In this proposed annexation, the “land bridge” does not adjoin the rest of the property to be annexed. Rather, the land bridge is separated from parcel 47 by Briarcliff Road.<sup>41</sup> The exception in O.C.G.A. § 36-36-20(a)(1) allowing for separation by a street or right of way refers to the separation between the land to be annexed and the city limits. “[A]t the time the annexation procedures are initiated” as proposed in the city’s annexation petition, the “50 feet of the area to be annexed” includes only that residential parcel west of Briarcliff Road which does abut the city limits, but the remaining annexation area on the east side of Briarcliff does not abut the city limits. A street or highway, in this case Briarcliff Rd., may meet the requirement of contiguity but only if it separates Atlanta’s municipal boundary from the area to be annexed at the initiation of the annexation procedures. Briarcliff Road, however, does not abut the city limits and thus contiguity required by O.C.G.A. §36-36-20(a)(1) is not met and the annexation of the area east of Briarcliff Road cannot go forward.

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<sup>38</sup> The remaining ten (10) foot strips that would remain in unincorporated DeKalb violate DeKalb’s Zoning Ordinance inasmuch as the strips are not large enough to create lots meeting the minimum standards for development in DeKalb.

<sup>39</sup> O.C.G.A. § 36-36-21 (“[a]uthority is granted to the governing bodies of the several municipal corporations of this state to annex to the existing corporate limits thereof unincorporated areas contiguous to the existing corporate limits at the time of such annexation, in accordance with the procedures provided in this article and in Article 1 of this chapter, upon the written and signed applications of all of the owners of all of the land...”); see also O.C.G.A. § 36-36-20(a)(1) (“[a]s used in this article, the term “contiguous area” means, at the time the annexation procedures are initiated, any area that meets the following conditions ...”).

<sup>40</sup> *City of Cartersville v. Bartow County School Dist.*, 145 Ga. App. 129, 130 (1978) (annexation statute “allows several adjoining properties to be annexed in one annexation procedure so long as one of them adjoins the city limits.”).

<sup>41</sup> Exhibit \_\_\_\_.

**6. Emory's Petition is void because it contains unincorporated islands, which are not legally allowed.**

The proposed annexation would create at least three unincorporated islands in violation of O.C.G.A. § 36-36-4. One definition of an unincorporated island under that statute is "an unincorporated area with its aggregate external boundaries abutting the annexing municipality..." O.C.G.A. § 36-36-4(a)(1). The petitioners seek to avoid this result as to two of the three unincorporated islands by excepting 10-foot strips of property along Houston Mill Road at parcels 77, 78, 95, and along Burlington Road at parcel 35.<sup>42</sup> However, such an exception does not avoid the creation of unincorporated islands, and it violates the "entire parcel" requirement of O.C.G.A. § 36-36-20(a)(2) since the entire unsubdivided parcels are not annexed under the city's application.<sup>43</sup> Thus the annexation directly violates the applicable annexation statutes and is prohibited by law.

The Petitioners' proposed application creates an unincorporated island surrounded by the CDC parcel, parcel 59 and Clifton Road, which as a matter of law will be owned by the City of Atlanta upon adoption of the proposed annexation.<sup>44</sup> The City of Atlanta is required pursuant to O.C.G.A. § 36-36-7(c) to take over the ownership, control, care, and maintenance of Clifton Road on either side of the island, which will leave the three exempted parcels<sup>45</sup> completely surrounded by city properties.<sup>46</sup> This resulting unincorporated island is prohibited and thus would defeat the annexation as a matter of law.

Even if the proposed annexation did not create unincorporated islands as defined in O.C.G.A. § 36-36-4(a)(1), the annexation would create areas that meet an alternative definition of "unincorporated island" found in subsection (a)(3). The annexation, as proposed, would "result in the creation of... unincorporated area[s] to which the county would have no reasonable means of physical access for the provision of services otherwise provided by the county governing authority solely to the unincorporated area of the county."

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<sup>42</sup> Exhibit \_\_\_\_.

<sup>43</sup> In *Fayette County v. Steele*, 268 Ga. App. 13 (2004), the Court of Appeals upheld the subdivision of a ten-foot strip from property to be annexed to prevent the creation of an unincorporated island. However, in this proposed annexation, no subdivision of the parcels in question has occurred. Subdivision of land in DeKalb County is governed by ordinance, and the subdivision procedure has not occurred with regard to the parcels at issue here. See DeKalb County Code of Ordinances, Sec. 14-60 *et seq.* "Subdivision means any division or redivision of a lot, tract or parcel, regardless of its existing and future use, into two (2) or more lots, tracts or parcels." DeKalb County Code of Ordinances, Article 1, Sec. 14. 1, Definitions.

<sup>44</sup> Exhibit \_\_\_\_.

<sup>45</sup> Tax Parcel Nos. 18-058-03-046, 18-058-03-047 and 18-058-03-048.

<sup>46</sup> See *Calloway v. City of Fayetteville*, 296 Ga. App. 200, 202 (2009) (describing and "unincorporated island" as "an unincorporated area surrounded by city properties").

The Honorable Kassim Reed, Mayor  
Members of the Atlanta City Council  
Objection to Proposed Annexation  
Emory Parcels  
August \_\_, 2017  
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**C. Potential Issue of New MARTA Line in the Proposed Annexation Area**

In public statements, the Petitioners and City officials assume that they will control the MARTA line proposed to be constructed in the annexed area, including ingress and egress from the annexed area. Clearly, the County and its officials will have a role as the placement of significant parts of this MARTA line will be in unincorporated DeKalb County. No substantive discussions with County officials have occurred, and such discussions should have occurred prior to the filing of the annexation petitions.

Furthermore, to the extent the proposed MARTA line to be constructed in the annexed area requires an amendment to the Rapid Transit Contract and Assistance Agreement ("MARTA Agreement") or the Engineering Report referenced therein, which contains the MARTA Authority's plans and recommendations for the acquisition and construction of the MARTA system, said amendment has not been approved by majority vote of the participating local governments. According to Section 5 of the MARTA Agreement, an amendment becomes effective if approved by a majority of the participating local governments.

**D. Conclusion**

For the reasons set forth herein, DeKalb objects to the proposed annexation of the Emory Parcels and requests that an arbitration panel be appointed pursuant to O.C.G.A. §36-36-114. At this juncture, an approximation of the financial impact to the County cannot be determined because of the lack of agreement related to the provision of services (i.e., water and sewer, storm water management and roads).

Thank you for your attention to this matter.

Sincerely,

O.V. Brantley  
County Attorney

cc: Michael L. Thurmond, Chief Executive Officer  
Members, DeKalb County Board of Commissioners  
Jeremy Berry, City Attorney  
Members, Atlanta Board of Education  
Dr. Meria Carstarphen, Superintendent  
Members, DeKalb County Board of Education  
Dr. Stephen Green, Superintendent  
Zachary Williams, Chief Operating Officer  
La'Keitha Carlos, Chief of Staff CEO

**The Honorable Kassim Reed, Mayor  
Members of the Atlanta City Council  
Objection to Proposed Annexation  
Emory Parcels  
August \_\_, 2017  
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**Antwyn Brown, Chief of Staff, BOC  
Ted Rhinehart, Deputy Chief Operating Officer - Infrastructure  
Luz Borrero, Deputy Chief Operating Officer - Development  
Viviane Ernstes, Deputy County Attorney  
Charles Palmer, Esq.  
Paula Kocher, Esq.  
Department of Community Affairs**

**DRAFT**