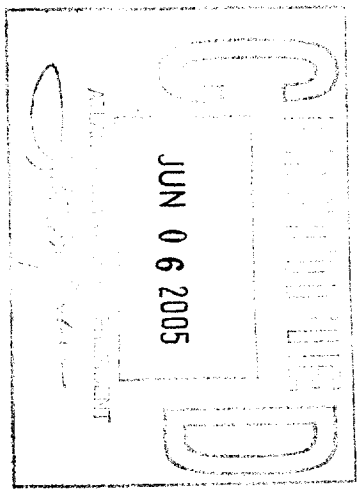
Entered – 03/28/05 – sb
CL05L0241 – DIANNE C. MITCHELL

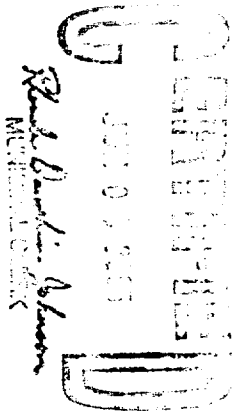
05 -R - 0798



CLAIM OF: **M. TIMOTHY ELDER,**
through his attorney,
John W. Harbin
One Atlantic Center, Fourteenth Floor
1201 West Peachtree Street, NW
Atlanta, Georgia 30309-3488

For damages alleged to have been sustained as a result of flooding on September 16 & 17, 2004 at 745 Woodward Way, NW.

THIS ADVERSED REPORT IS APPROVED



BY: _____
JERRY L. DELOACH
DEPUTY CITY ATTORNEY

JUN 0 6 2005

ADVERSE REPORT

PUBLIC SAFTEY &
LEGAL ADMINISTRATION COMMITTEE
DATE: 5/10/05 Hold 5/31/05
CHAIR: Clela Winslow
C. T. Martin
Joyce M. Sloper
Carla Smith
Howard Shook

ADVERSED BY
CITY COUNCIL

JUN 0 6 2005

CITY OF ATLANTA
OFFICE OF MUNICIPAL CLERK

June 13, 2005

RHONDA DAUPHIN JOHNSON, CMC
MUNICIPAL CLERK

55 TRINITY AVENUE, S.W.
SECOND FLOOR, EAST
SUITE 2700
ATLANTA, GEORGIA 30335
(404) 330-6033
FAX (404) 658-6103

05-R-0798

John W.Harbin
Attorney at Law
One Atlantic Center 14th Floor
1201 West Peachtree Street, NW
Atlanta, GA 30309-3488

RE: M. Timothy Elder

Dear Attorney Harbin:

I sincerely regret that your client has been adversely affected by the circumstances raised in his/her claim for damages against the City of Atlanta. Your time and patience in this matter has been greatly appreciated.

However, I must notify you that the Atlanta City Council Adopted an Adverse Report on your client's claim at its regular meeting on June 06, 2005. In consultation with the City's Law Department, who conducted an investigation of the situation, the Council has determined that the City cannot accept responsibility for this matter and therefore cannot pay this claim.

If you desire any further information, please contact the **City Attorney's Office/Claims Division at (404) 330-6400**.

Yours very truly,

Rhonda Dauphin Johnson

Rhonda Dauphin Johnson, CMC
Municipal Clerk

cc: Claims Division/Law Department

DEPARTMENT OF LAW - CLAIM INVESTIGATION SUMMARY

Claim No. **05L0241** Date: April 18, 2005

Claimant /Victim **M. TIMOTHY ELDER**
BY: (Atty) John W. Harbin
Address: One Atlantic Center, 14th Floor, 1201 West Peachtree Street, NW, Atlanta, GA 30309
Subrogation: _____ Claim for Property damage $ **Not Stated** Bodily Injury $ _____
Date of Notice: 03/10/05 Method: Written, proper X Improper _____
Conforms to Notice: O.C.G.A. §36-33-5 X Ante Litem (6 Mo.) X
Date of Occurrence 09/16&17/04 Place: 745 Woodward Way, NW
Department **Watershed Management** Bureau: **Waste Water Treatment & Collections**
Employee involved _____ Disciplinary Action: _____

NATURE OF CLAIM: The claimant alleges his property was damaged due to flooding. The investigation determined that the cause of the flooding was due to heavy rainfall causing Peachtree Creek to flood and that the claimant's property lies in a flood plane. The City had no notice of any problems with the storm water system in this area prior to this event. Furthermore, the City is not responsible for the maintenance of Peachtree Creek as it is a State waterway. The City is immune from liability as set forth in O.C.G.A.§36-33-1.

INVESTIGATION:

Statements: City employee _____ Claimant _____ Others _____ Written _____ Oral _____
Pictures _____ Diagrams _____ Reports: Police _____ Dept Report _____ Other _____
Traffic citations issued: City Driver _____ Claimant Driver _____
Citation disposition: City Driver _____ Claimant Driver _____

BASIS OF RECOMMENDATION:

Function: Governmental X Ministerial _____
Improper Notice _____ More than Six Months _____ Other X Damages reasonable _____
City not involved _____ Offer rejected _____ Compromise settlement _____
Repair/replacement by Ins. Co. _____ Repair/replacement by City Forces _____
Claimant Negligent _____ City Negligent _____ Joint _____ Claim Abandoned _____

Respectfully submitted,

INVESTIGATOR - DIANNE C. MITCHELL

RECOMMENDATION:

Pay $ _____ Adverse X Account charged: 1A01 ____ 2J01 ____ 2H01 ____ 2P01 ____
Claims Manager: _____ Concur/date 04/27/05
Committee Action: _____ Council Action _____

FORM 23-61

RCS# 6714
6/06/05
2:56 PM

Atlanta City Council

Regular Session

CONSENT I

CONSENT I PG(S) 3-18 EXCEPT:05-O-0893
05-R-1006 05-R-1001
ADOPT

YEAS:	14
NAYS:	0
ABSTENTIONS:	0
NOT VOTING:	1
EXCUSED:	0
ABSENT	1

Y Smith	Y Archibong	Y Moore	Y Mitchell
Y Starnes	Y Fauver	Y Martin	Y Norwood
Y Young	Y Shook	Y Maddox	Y Willis
Y Winslow	Y Muller	B Sheperd	NV Borders

			06-06-05 Council Meeting
ITEMS ADOPTED ON CONSENT	**ITEMS ADOPTED ON CONSENT**	**ITEMS ADVERSED ON CONSENT**	**ITEMS ADVERSED ON CONSENT**
1. 05-O-0891	31. 05-R-0963	49. 05-R-0794	80. 05-R-0947
2. 05-O-0890	32. 05-R-0964	50. 05-R-0796	81. 05-R-0948
3. 05-O-0894	33. 05-R-0966	51. 05-R-0797	82. 05-R-0949
4. 05-O-0668	34. 05-R-0967	52. 05-R-0798	83. 05-R-0950
5. 05-O-0667	35. 05-R-0918	53. 05-R-0802	84. 05-R-0951
6. 05-O-0899	36. 05-R-0919	54. 05-R-0803	85. 05-R-0952
7. 05-O-0816	37. 05-R-0920	55. 05-R-0804	86. 05-R-0953
8. 05-O-0817	38. 05-R-0921	56. 05-R-0808	87. 05-R-0958
9. 05-R-0983	39. 05-R-0922	57. 05-R-0809	
10. 05-R-0984	40. 05-R-0923	58. 05-R-0811	
11. 05-R-0985	41. 05-R-0924	59. 05-R-0813	
12. 05-R-0986	42. 05-R-0925	60. 05-R-0815	
13. 05-R-0987	43. 05-R-0926	61. 05-R-0928	
14. 05-R-0959	44. 05-R-0927	62. 05-R-0929	
15. 05-R-0994	45. 05-R-0954	63. 05-R-0930	
16. 05-R-0995	46. 05-R-0955	64. 05-R-0931	
17. 05-R-0996	47. 05-R-0956	65. 05-R-0932	
18. 05-R-0997	48. 05-R-0957	66. 05-R-0933	
19. 05-R-0998		67. 05-R-0934	
20. 05-R-0989		68. 05-R-0935	
21. 05-R-0974		69. 05-R-0936	
22. 05-R-0975		70. 05-R-0937	
23. 05-R-0973		71. 05-R-0938	
24. 05-R-0898		72. 05-R-0939	
25. 05-R-0977		73. 05-R-0940	
26. 05-R-0978		74. 05-R-0941	
27. 05-R-0979		75. 05-R-0942	
28. 05-R-0980		76. 05-R-0943	
29. 05-R-1000		77. 05-R-0944	
30. 05-R-0962		78. 05-R-0945	
		79. 05-R-0946	