

Entered - 10-9-09 sb  
CL 09L0753- GWENDOLYN BURNS

10- R -0094

**CLAIM OF: CLARA FUNDERBURG  
THROUGH HER ATTORNEY  
THELMA WYATT CUMMINGS MOORE**  
3915 Cascade Road, Suite 235  
Atlanta, Georgia 30331

For property damages alleged to have been sustained due to a  
sanitary sewer rehabilitation project from 2007 to present at  
2990 Stone Hogan Road.

THIS ADVERSED REPORT IS APPROVED

BY:   
JERRY L. DELOACH  
DEPUTY CITY ATTORNEY

JAN 19 2010

**CERTIFIED**  
JAN 29 2010  
*Rachel Dunlap Johnson*  
MUNICIPAL CLERK

**ADVERSE REPORT**

PUBLIC SAFETY &  
LEGAL ADMINISTRATION COMMITTEE

DATE: 1/12/10

CHAIR: \_\_\_\_\_

*[Signature]*

*[Signature]*

*[Signature]*

*[Signature]*

*[Signature]*

JAN 19 2010

ADVERSE REPORT  
CITY CLERK

CITY COUNCIL  
ATLANTA, GEORGIA

January 29, 2010

Thelma Wyatt Cummings Moore, Esquire  
3915 Cascade Road, Suite 235  
Atlanta, Georgia 30331

**10-R-0094**

**RE: Clara Funderburg**

Dear Dear Ms. Moore

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 January 19, 2010. 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, CMC  
Municipal Clerk

**cc: Claims Division/Law Department**

DEPARTMENT OF LAW - CLAIM INVESTIGATION SUMMARY

Claim No. 09L0753

Date: November 30, 2009

Claimant /Victim CLARA FUNDERBURG
BY: (Atty) (Ins. Co.) THELMA WYATT CUMMINGS MOORE
Address: 3915 Cascade Road, Suite 235, Atlanta, Georgia 30331
Subrogation: Claim for Property damage \$ unspecified Bodily Injury \$
Date of Notice: 10/8/09 Method: Written, Proper X Improper
Conforms to Notice: O.C.G.A. §36-33-5 X Ante Litem (6 Mo.) X
Date of Occurrence 2007 - present Place: 2990 Stone Hogan Road
Department WATERSHED MANAGEMENT Bureau: Waste Water Treatment & Collections Office:
Employee involved Disciplinary Action:

NATURE OF CLAIM: Claimant alleges that she sustained damages to her property due to the construction involved in a sanitary sewer rehabilitation project. However, an investigation has determined that a City contractor was responsible for the construction project. The claimant has been advised and the claim has been forwarded to the contractor for resolution.

INVESTIGATION:

Statements: City employee Claimant Others Written Oral
Pictures Diagrams Reports: Police Dept Report X Other X
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,

G. Burns
INVESTIGATOR - GWENDOLYN BURNS

RECOMMENDATION:

Pay \$ Adverse X Account charged: General Fund Water & Sewer Aviation
Claims Manager: Concur/date 12/2/09
Committee Action: Council Action



Moore Law

**Thelma Wyatt Cummings Moore**

Retired Judge

Served 31 Years as  
Municipal, City, State,  
and Superior Court Judge

ENTERED - 10-9-09 - SB  
09L0753 - G. BURNS

September 30, 2009

Shirley Franklin, MAYOR, City of Atlanta

Lisa Borders, President of the Atlanta City Council

Members of the Atlanta City Council

Clerk of the Atlanta City Council

City Attorney

Re: Damages Occasioned to Property of Clara Funderburg  
2990 Stone Hogan Road  
Atlanta, Fulton County, Georgia

To the Honorable Governing Body of the City of Atlanta:

This is to advise you that I represent Mrs. Clara Funderburg with respect to damages to her property located at 2990 Stone Hogan Road, Atlanta, Fulton County, Georgia. Pursuant to O.C.G.A. §36-33-5, I give you notice of our intent to file suit against the City of Atlanta for such damages. This notice is addressed to the governing authority of the City of Atlanta for adjustment.

As to time, damages have occurred from 2007 through and including the present day, with construction of the sewer easement having continued through and including August 25, 2009 with further construction and entry upon Mrs. Funderburg's property expected to occur through and including late September 2009. Mrs. Funderburg has also received notice that the City of Atlanta is still developing plans for the subject property; therefore, the harm is continuing in nature.

As to place, the damages have occurred on the property of Mrs. Clara Funderburg, located at 2990 Stone Hogan Road, Atlanta, Fulton County, Georgia.

As to extent of injury, we cite the following:

1. Failure of the City of Atlanta to pay just and adequate compensation for the taking of land for the public purpose of the sewer;
2. Destruction of mature trees upon the property by the City of Atlanta for which just and adequate compensation must be provided;
3. Destruction of the character of the land as a farm within the city limits;
4. Diminution in value of the property;

BURNS  
10/08/09

3915 Cascade Road, Suite 235  
Atlanta, Georgia 30331

Office: 404.699.6001  
Fax: 404.699.6088  
Fax: 866.257.5052  
Cell: 678.472.1372

thelmawattmoore@aol.com

Page 2

Letter to City of Atlanta

September 30, 2009

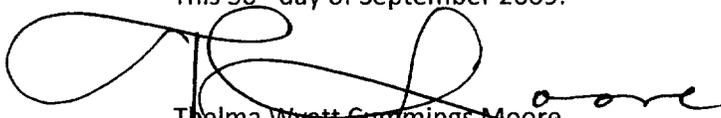
5. Failure by the City of Atlanta to properly restore the soil, leaving it in such rough condition that it can no longer be maintained;
6. Disruption of capacity to board horses on the premises, which provided a source of income to Mrs. Funderburg;
7. Creation of sinkholes and ditches which prevent natural drainage of the property and which cause surface water to pool;
8. Destruction of the property's natural secluded borders to the surrounding areas, resulting in numerous thefts, vandalism and a negative alteration to the character of the property;
9. Attorneys' fees, costs and expenses of litigation, which Mrs. Funderburg has been required to incur to prosecute these claims and which will be pursued pursuant to all applicable Georgia statutes, including O.C.G.A. §13-6-11 and O.C.G.A. §9-15-14.

Prior notice has been given to the City of Atlanta of these violations of Mrs. Funderburg's property rights.

As to negligence and intentional acts, the City of Atlanta has acted and has failed to act in the pursuit of its sewer construction to the detriment of Mrs. Funderburg and her property.

Please proceed to make proper adjustments to provide just and adequate compensation, to compensate property damage and to compensate for attorneys' fees and expenses.

This 30<sup>th</sup> day of September 2009.



Thelma Wyatt Cummings Moore  
Attorney for Mrs. Clara Funderburg

RCS# 17  
1/19/10  
1:54 PM

Atlanta City Council

REGULAR SESSION

CONSENT I

10-R-0145

ADOPT EXCEPT

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

Y Smith	Y Archibong	Y Moore	Y Bond
Y Hall	Y Wan	Y Martin	Y Watson
Y Young	Y Shook	Y Bottoms	Y Willis
B Winslow	Y Adrean	Y Sheperd	NV Mitchell

CONSENT I