

**APRIL 21, 2009 ZONING HEARING  
"OTHER BUSINESS"  
COMMISSION DISTRICT 2**

**ITEM #1**

**PURPOSE**

To consider a Settlement of Litigation proposal regarding SLUP-5 (ANNOX SELF STORAGE #1, LLC) of March 15, 2005, for a Special Land Use Permit for the purpose of a Climate Controlled Self-Service Storage Facility in Land Lot 842 of the 17th District at the northwest intersection of Paces Ferry Road and Cumberland Parkway.

**BACKGROUND**

The original request for a Special Land Use Permit (SLUP) was denied. The Board of Commissioners decision is attached. The applicant/owner filed a lawsuit challenging the decision and pursuant to a Consent Remand from the Superior Court of Cobb County, which is attached, the application has been remanded back to the Board of Commissioners for reconsideration. The applicants have amended their request from the original proposal. The original request that was last presented to the Board of Commissioners was for a 102,012 square foot building containing approximately 600 storage units with a floor area ratio (FAR) of 2.39 and 24 parking spaces. This proposal is to allow a 92,200 square foot four-story building with one basement level containing approximately 560 storage units with a FAR of 2.261 and 7 parking spaces. The same two setback variances are being requested from 10 feet to 5 feet along the northern property line and from 30 feet to 10 feet along the western property line. Access to the property is via a right-in/right-out curb cut on Cumberland Parkway. The Settlement Proposal is attached that includes the proposed site plan and architectural rendering.

**FUNDING**

N/A

**RECOMMENDATION**

The Board of Commissioners conduct a Public Hearing and consider the Settlement Proposal.

**ATTACHMENTS**

Board of Commissioners Decision  
Cobb County Superior Court Order  
Settlement Proposal

ORIGINAL DATE OF APPLICATION: 03-15-05APPLICANTS NAME: ANNOX SELF STORAGE #1, LLC

THE FOLLOWING REPRESENTS THE FINAL DECISIONS OF THE  
COBB COUNTY BOARD OF COMMISSIONERS

**BOC DECISION OF 02-21-06 ZONING HEARING:**

**ANNOX SELF STORAGE #1, LLC**, (owner) requesting a **Special Land Use Permit** for the purpose of a Climate Controlled Self Service Storage Facility in Land Lot 842 of the 17<sup>th</sup> District. Located at the northwest intersection of Paces Ferry Road and Cumberland Parkway.

The public hearing was opened and Mr. Doug Dillard, Mr. Marion Waters, and Mr. Ron Sifen addressed the Board. Following presentations and discussion, the following motion was made:

MOTION: Motion by Thompson, second by Goreham, to **reject** Special Land Use Permit.

VOTE: **ADOPTED** 4-1, Kesting opposed

*Clerk's Note:* County Attorney's Office was directed to write a letter to Georgia Department of Transportation regarding the decision in this matter, the access issues, and the impact on this Applicant.

IN THE SUPERIOR COURT OF COBB COUNTY  
STATE OF GEORGIA

COBB COUNTY, GA  
FILED IN OFFICE

2009 APR -6 PM 2: 58

ANNOX SELF STORAGE #1, LLC, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
 )  
COBB COUNTY, a political )  
subdivision of the State of )  
Georgia; THE COBB COUNTY BOARD OF )  
COMMISSIONERS; and SAMUEL S. OLENS, )  
HELEN GOREHAM, ANNETTE KESTING, TIM )  
LEE, and JOE L. THOMPSON in their )  
official capacities as Members of )  
the COBB COUNTY BOARD of )  
COMMISSIONERS, )  
 )  
Defendants. )

*Jay C. Stephenson*  
COBB SUPERIOR COURT CLERK

CIVIL ACTION  
FILE NO. 06-1-2334-3440

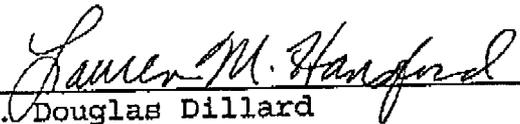
ORDER

The parties having consented hereto, and the Court of Appeals having affirmed the partial grant of summary judgment regarding access in Cobb County v. Annox Self Storage No. 1, LLC, 294 Ga.App. 218 (2008), the above-styled action is remanded to the Board of Commissioners of Cobb County for reconsideration of Plaintiff's application for a self service storage facility within ninety (90) days of the date of this Order. This Court shall retain jurisdiction over this matter until further order of this Court.

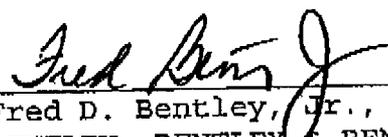
SO ORDERED this the 6<sup>th</sup> day of April 2009.

*Robert E. Flournoy III*  
Robert E. Flournoy, Judge  
Superior Court of Cobb County

Presented by:

  
\_\_\_\_\_  
G. Douglas Dillard  
Andrea Cantrell Jones  
Lauren M. Hansford  
Dillard & Galloway, LLC  
3500 Lenox Road, N.E.  
Suite 760  
Atlanta, Georgia 30326  
Attorneys for Plaintiff

Consented to by:

  
\_\_\_\_\_  
Fred D. Bentley, Jr., Esquire  
BENTLEY, BENTLEY & BENTLEY  
241 Washington Avenue  
Post Office Box 968  
Marietta, Georgia 30060  
Attorney for Defendants

# DILLARD & GALLOWAY, LLC

ATTORNEYS AT LAW

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April 13, 2009

## VIA FACSIMILE AND ELECTRONIC MAIL

Mr. Mark Danneman, Zoning Division Manager  
Cobb County Government Building  
Zoning Division  
100 Cherokee Street  
Marietta, GA 30090

Re: Annox Self Storage #1, LLC v. Cobb County, et al., Superior Court of Cobb County,  
Civil Action File No. 06-1-2334-99

Dear Mark:

Per our conversation earlier today, please accept the following stipulations which are submitted in compromise and settlement of the above-referenced lawsuit. It is our understanding that the Cobb County Board of Commissioners ("Board") will consider, pursuant to a Consent Remand from the Superior Court of Cobb County, our client's request to allow a Climate Controlled Self-Storage Facility at its property located at the intersection of Paces Ferry Road and Cumberland Parkway (the "Property").

As you know, the Property is already zoned to the General Commercial ("GC") zoning classification, which allows Climate Controlled Self-Storage Facilities as a permitted use. Specifically, our client seeks to develop the Property in accordance with the Site Plan, attached hereto as Exhibit "A," which will require (1) an increase in the allowable Floor Area Ratio ("FAR") to 2.261; (2) a rear yard setback reduction from 30 to 10 feet; (3) a side yard setback reduction from 10 to 5 feet; and (4) an increase in allowable height from 2 stories to 4 stories and a basement. It is our understanding that the Board has the authority to approve these site-specific conditions pursuant to Cobb County Zoning Ordinance § 134-124. As you may know, there is precedent in this district for similar requests involving Climate Controlled Self-Storage Facilities, most notably the Cooke Enterprises rezoning on Windy Hill Road that was approved by the Board on September 16, 2008. Provided that the Property is approved for development in accordance with the attached Site Plan, our client will dismiss the above-referenced lawsuit with prejudice, including any claims for damages against the County.

In addition, our client is willing to abide by the following stipulations which shall become conditions of the Board's approval of the attached site plan, and binding upon the Property thereafter:

Mark Danneman, Zoning Division Manager  
April 13, 2009

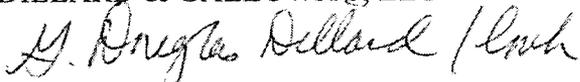
1. The Property shall be developed substantially in accordance with the Site Plan for Dunwoody Self Storage II, prepared by Travis Pruitt & Associates, Inc., attached hereto as Exhibit "A," which reflects a 92,200 square foot Climate Controlled Self-Storage Facility.
2. Right-in/right-out only turning movements with respect to the Property's point of ingress/egress on Cumberland Parkway as shown on Exhibit "A."
3. The architectural style and composition shall be consistent with the rendering prepared by Smallwood, Reynolds, Stewart, Stewart & Associates, attached hereto as Exhibit "B."
4. Use of the Property shall be limited to a Climate Controlled Self-Storage Facility with the exclusion of all other permitted uses under the GC zoning classification.
5. The hours of operation shall be from 9:00 a.m. until 6:00 p.m. Monday through Saturday and 1:00 p.m. until 6:00 p.m. on Sunday.
6. The Applicant shall comply with recommendations from the Stormwater Management Division and provide underground detention on the site.
7. Utilization of low-intensity, environmental-type lighting.
8. The submission of a landscape plan during the Plan Review process subject to the Arborist's review and approval. Additionally, all mechanical equipment and dumpsters shall be screened from view of the adjoining properties and rights-of-way.

As you know, the Property is located within the Cumberland/Galleria Regional Activity Center (RAC) and within a sub-area of the RAC specifically designated for retail services. Moreover, the Property is positioned directly adjacent to major transit corridors and offers a compelling architectural feature at a major signalized intersection, which serves as the gateway to Vinings Village and the Cumberland /Galleria Regional Activity Center.

Please do not hesitate to contact me should you require any additional information prior to consideration of this proposal by the Board of Commissioners.

Regards,

DILLARD & GALLOWAY, LLC

  
G. Douglas Dillard

LMH

cc: Tom Linder



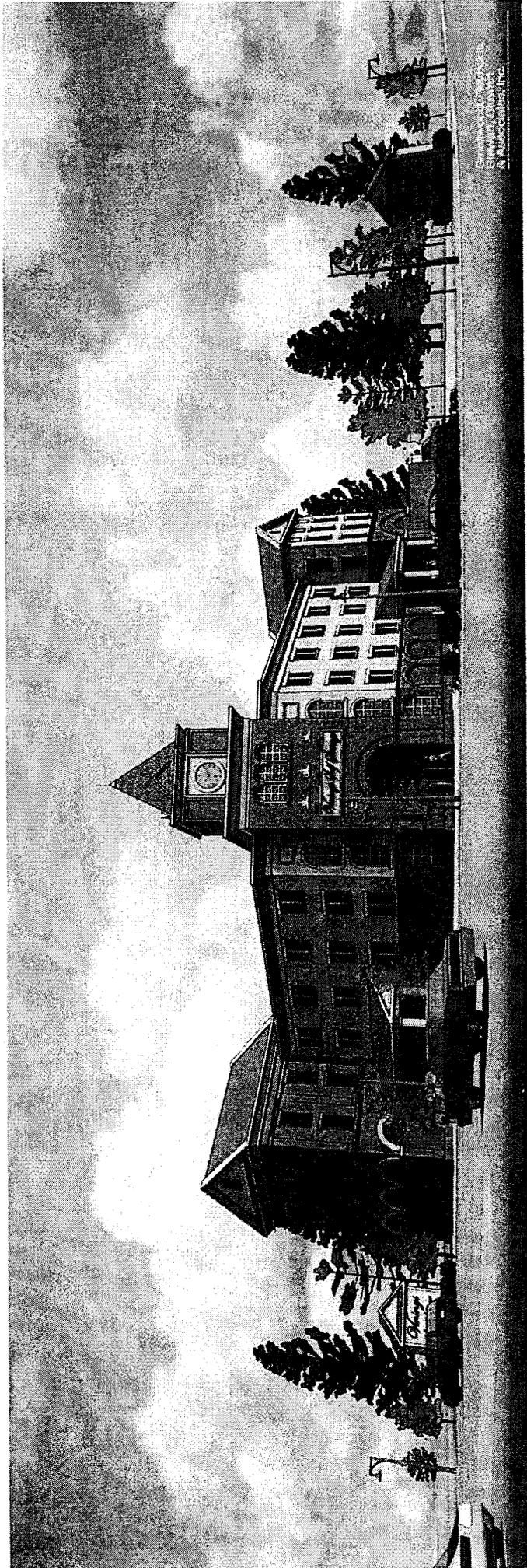


EXHIBIT  
"B"  
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