

IN THE MUNICIPAL COURT OF ROSWELL, GEORGIA

STATE OF GEORGIA

CITY OF ROSWELL, GEORGIA,
A MUNICIPAL CORPORATION,

Petitioner

v.

.335 Alpine Drive, Roswell, Georgia,
more particularly described as: All
that tract or parcel of land lying and
being in Land Lot 449, 1st District,
2nd Section, Fulton County, Georgia,
Being Lot 6 and part of Lot 7, Block C,
Unit Two, Hilton Hills Subdivision,
as per plat recorded in Plat Book 83,
page 119, Fulton County records and
an unsubdivided tract to rear; caption
also being part of survey of a division
of Lots 6 and 7 and part of Lot 8,
Block C, Unit Two, Hilton Hills
Subdivision for Roswell Investment
Company, Inc., as per plat recorded in
Plat Book 91, page 102, Fulton County
records, and being more particularly
described as follows:
BEGINNING at a point on the southerly
side of Alpine Drive, five hundred
ninety-one and eight tenths (591.8) feet
southeasterly from the intersection
formed by the southerly side of Alpine
Drive with the west line of Land Lot 449,
as measured along the southwesterly
side of Alpine Drive; running thence
easterly and northeasterly along the
southerly and southeasterly side of Alpine
Drive, two hundred sixteen and eight
tenths (216.8)) feet to a point (said point
also being eight hundred sixty nine and
sixty-six one hundredths (869.66) feet
southwesterly from an eighty (80) foot
right-of-way on U.S. Highway 19

Case No. 2011-4001-

FILED
Roswell Municipal Court
Date: 5 126 12011

(now known as Georgia Highway 9);)
running thence south Eleven (11))
degrees Twenty Nine (29) minutes west)
along the northwesterly side of Lot 5,)
Unit One, eighty-one and six-tenths (81.6))
feet to a point;)
running thence south Sixteen (16) degrees)
Ten (10) minutes west along the)
northwesterly side of Lot Five (5), Unit)
One (1), seventy (70) feet to a point;)
running thence south Thirty Four (34))
degrees Two (02) minutes east along the)
southwesterly side of Lot Five (5),)
Unit One (1), seventy seven and ninety-six)
hundredths (77.96) feet to the center)
line of Hog Waller Creek; running thence)
south Sixty Eight (68) degrees Twenty)
Four) (24) minutes west along the center)
line of said creek, two hundred two and)
three-tenths (202.3) feet to an iron pin;)
running thence north Six (6) degrees)
Twenty Seven (27) minutes west two)
Hundred sixteen and three tenths (216.3))
feet to the southerly side of Alpine Drive)
and the point of beginning.)

Respondent)

PETITION *IN REM* FOR NUISANCE ABATEMENT
PURSUANT TO CITY OF ROSWELL CHARTER SECTION 7.80 (2) (a) AND CITY OF
ROSWELL CODE OF ORDINANCES SECTIONS 8.8.1, 8.8.2 AND 8.8.3

COMES NOW the City of Roswell, Georgia (hereinafter "Roswell") and files this
Petition *in rem* for Nuisance Abatement pursuant to City of Roswell Charter Section 7.80 (2) (a)
and City of Roswell Code of Ordinances Sections 8.8.1, 8.8.2 and 8.8.3, as well as O.C.G.A. §
41-2-5 and shows the Court as follows:

1.

This is a nuisance action *in rem* brought against a tract of real property within the corporate limits of the City of Roswell, Georgia. Jurisdiction and venue are proper in this Court pursuant to City of Roswell Charter Section 7.80 (2) (a) and City of Roswell Code of Ordinances Sections 8.8.1, 8.8.2 and 8.8.3 (certified copies attached hereto as Exhibit "A" to this petition), as well as O.C.G.A. § 41-2-5.

2.

The tract of real property at issue is commonly known as 335 Alpine Drive, Roswell, GA 30075, having an official ad valorem tax map reference number of 12-1994-0449-040-6 (hereinafter the "Property"). The Property is more particularly described as:

All that tract or parcel of land lying and being in Land Lot 449, 1st District, 2nd Section, Fulton County, Georgia, Being Lot 6 and part of Lot 7, Block C, Unit Two, Hilton Hills Subdivision, as per plat recorded in Plat Book 83, page 119, Fulton County records and an unsubdivided tract to rear; caption also being part of survey of a division of Lots 6 and 7 and part of Lot 8, Block C, Unit Two, Hilton Hills Subdivision for Roswell Investment Company, Inc., as per plat recorded in Plat Book 91, page 102, Fulton County records, and being more particularly described as follows:

BEGINNING at a point on the southerly side of Alpine Drive, five hundred ninety-one and eight tenths (591.8) feet southeasterly from the intersection formed by the southerly side of Alpine Drive with the west line of Land Lot 449, as measured along the southwesterly side of Alpine Drive; running thence easterly and northeasterly along the southerly and southeasterly side of Alpine Drive, two hundred sixteen and eight tenths (216.8) feet to a point (said point also being eight hundred sixty nine and sixty-six one hundredths (869.66) feet southwesterly from an eighty (80) foot right-of-way on U.S. Highway 19 (now known as Georgia Highway 9); running thence south Eleven (11) degrees Twenty Nine (29) minutes west along the northwesterly side of Lot 5, Unit One, eighty-one and six-tenths (81.6) feet to a point; running thence south Sixteen (16) degrees Ten (10) minutes west along the northwesterly side of Lot Five (5), Unit One (1), seventy (70) feet to a point; running thence south Thirty Four (34) degrees Two (02) minutes east along the southwesterly side of Lot Five (5), Unit One (1), seventy seven and ninety-six hundredths (77.96) feet to the center line of Hog Waller Creek; running thence south Sixty Eight (68) degrees Twenty Four (24) minutes west along the center line of said creek, two hundred two and three-tenths (202.3) feet to an iron pin; running thence north Six (6) degrees Twenty Seven (27) minutes west two Hundred sixteen and three tenths (216.3) feet to the southerly side of Alpine Drive and the point of beginning.

3.

The Property's record owner is Andrew S. Wordes. Wordes may be served at 335 Alpine Drive, Roswell, GA 30075.

4.

Dora M. (Wallace) Hardeman is the holder of an undivided interest in a Promissory Note and a Deed To Secure Debt given by Andrew S. Wordes on October 14, 2004, which Deed To Secure Debt is recorded in the Fulton County records in Deed Book 38700, Page 649. Therefore, Dora M. (Wallace) Hardeman has an interest in the Property at issue in this Petition and may be served at 1150 Mountain Ivy Drive, Roswell, GA 30075.

5.

The William C. Hardeman Testamentary Trust Having James W. Moore and Ted H. Stewart as Co-Trustees Pursuant To Item VII of The Last Will And Testament Of William C. Hardeman, Deceased is the holder of an undivided interest in a Promissory Note and a Deed To Secure Debt given by Andrew S. Wordes to W. C. Hardeman and Dora Hardeman dated October 14, 2004, which Deed To Secure Debt is recorded in the Fulton County records in Deed Book 38700, Page 649. This interest is recorded as "Transfer and Assignment and Assent of Executor To Devise" recorded in Deed Book 47827, page 699, Fulton County records. The William C. Hardeman Testamentary Trust Having James W. Moore and Ted H. Stewart as Co-Trustees Pursuant To Item VII of The Last Will And Testament Of William C. Hardeman, Deceased may be served as allowed by law.

6.

Arthur Ferdinand, Fulton County Tax Commissioner, 141 Pryor Street, Atlanta, GA 30303, may also have an interest in the Property related to unpaid taxes. He may be served at the address stated.

7.

The City of Roswell, Georgia may have an interest in the Property related to unpaid taxes. The City of Roswell, Georgia may be served with a copy of this petition by leaving a copy with its mayor, Jere Wood, at 38 Hill Street, Roswell, GA 30075.

8.

The condition of the Property at issue in this Petition is a nuisance as defined in Roswell Code of Ordinances Section 8.8.2 (7) in that the Property is not kept clean and sanitary and free from all accumulations of offensive matter, including dead organic matter, rubbish, junk, animal intestinal waste and urine; in Roswell Code of Ordinances Section 8.8.2 (9) in that the Property is likely to or does harbor rats and attracts other predator animals, such as owls and coyotes; and in Roswell Code of Ordinances Section 8.8.2 (10) in that the Property, as kept, substantially detracts from the aesthetic and economic values of neighboring properties. Each of these conditions makes the Property blighted as defined in Roswell Code of Ordinances Section 8.8.2.

9.

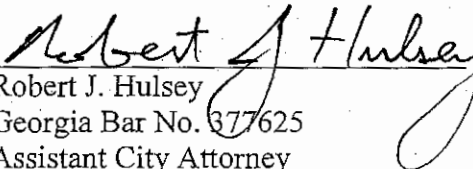
Attached to this Petition as Exhibits "B" and "C" are the affidavits of neighbors of the Property at issue describing the problems each of these citizens has experienced as a result of the conditions that exist on the Property. These affidavits are: (B) Affidavit of Keith Badalamente and (C) Affidavit of Jolene Smith. Each of these affidavits is incorporated into this Petition and made a part hereof as though fully set out herein.

Attached to this Petition is Exhibit "D," the affidavit of Code Enforcement Officer Steve Johnson, further documenting the blighted nature of the Property. This affidavit is incorporated into this Petition and made a part hereof as though fully set out herein.

WHEREFORE, the City of Roswell prays:

- (a) that a hearing be scheduled in this matter pursuant to O.C.G.A. § 41-2-9 (a) (3) no less than fifteen (15) nor more than forty-five (45) days after the filing date of this Petition;
- (b) that upon conducting said hearing, the Court issue an Order finding that the subject Property constitutes a nuisance and ordering the abatement thereof by the owner within a time certain and also ordering the owner to maintain the Property in a manner to prevent future nuisance;
- (c) that, in the event the owner fails to abate the nuisance within the time ordered, the City of Roswell shall be authorized to enter the Property through its employees or agents to abate the nuisance;
- (d) that, should the City be required to abate the nuisance, the City will have a lien against the Property for all costs associated with the abatement and that such lien may be enforced as provided by law; and
- (e) that the City have any other and further relief that this Court deems just or proper.

Respectfully submitted this 26th day of May 2011.

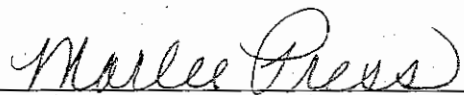

Robert J. Hulsey
Georgia Bar No. 377625
Assistant City Attorney
City of Roswell

38 Hill Street
Suite 110
Roswell, GA 30075
(770) 594-6185

CERTIFICATE

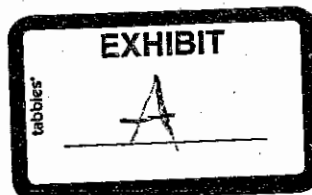
I, Marlee Press, City Clerk and Custodian of Records for the City of Roswell, certify that the attached are true and correct copies of City of Roswell Charter Section 7.80 (2)(a) and City of Roswell Code of Ordinances Sections 8.8.1, 8.8.2 and 8.8.3.

This 4th day of April 2011.



Marlee Press
City Clerk
City of Roswell

(Seal)



Section Ch.7.80- Jurisdiction and Powers.

- (1) The municipal court shall try and shall punish violations of this Charter, all city ordinances, and such other violations as provided by law.
- (2) The municipal court shall have the jurisdiction and powers throughout the entire area of the City of Roswell including but not limited to:
 - (a) The abatement of nuisances;
 - (b) The prosecution of traffic offenses as set forth in Title 40 of the O.C.G.A.;
 - (c) The prosecution of offenses relating to marijuana possession as set forth in Code Section 36-32-6 of the O.C.G.A.;
 - (d) The prosecution of offenses relating to operating a motor vehicle without effective insurance as set forth in Code Section 36-32-7 of the O.C.G.A.;
 - (e) The prosecution of offenses relating to operating a motor vehicle without a certificate of emission inspection as set forth in Code Section 36-32-8 of the O.C.G.A.;
 - (f) The prosecution of offenses relating to shoplifting as set forth in Code Section 36-32-9 of the O.C.G.A.;
 - (g) The prosecution of offenses relating to alcoholic beverages and persons under twenty-one (21) years of age as set forth in Code Section 36-32-10 of the O.C.G.A.;
 - (h) The same powers and authorities as magistrates in the matter of and pertaining to criminal cases of whatever nature; and
 - (i) Any additional power, authority, or jurisdiction granted to municipal courts pursuant to general laws of the state.
- (3) The municipal court shall have the authority to hold courts of inquiry and to bind prisoners over to the appropriate court when it appears by probable cause that a state law has been violated.
- (4) The municipal court shall have the authority to hear applications for and issue arrest and search warrants for violations of state law.
- (5) The municipal court shall have the same authority as superior courts to compel the production of evidence in the possession of any party; to enforce obedience to its orders, judgments, and sentences; and to administer such oaths as are necessary.
- (6) The municipal court may compel the presence of all parties necessary to a proper disposal of each case by the issuance of summonses, subpoenas, and warrants which may be served as executed by any officer and as authorized by this Charter or by general state law. All judges of the municipal court are authorized to issue search warrants and warrants for the arrest of persons charged with offenses against any ordinances of the city.
- (7) The municipal court shall have authority to establish a schedule of fees to defray the cost of operation and shall be entitled to reimbursement of the cost of meals, transportation, and caretaking of prisoners bound over to the appropriate court for violations of state law.
- (8) The municipal court shall have authority to establish bail and recognizances to ensure the presence of those charged with violations before said court and shall have discretionary authority to accept cash or personal or real property as surety for the appearance of persons charged with violations. Whenever a person shall give bail for his appearance and shall fail to appear at the time fixed for trial, then, his bond shall be forfeited by the judge presiding at the time and an execution shall be issued thereon by serving the defendant and his sureties with a rule nisi at least two (2) days before a hearing on the rule nisi. In the event that personal or real property is accepted in lieu of a cash bond for security for the appearance of a defendant at trial, and if such defendant fails to appear at the time and place fixed for trial, the city shall have a lien against such property for the value of the bond so forfeited, which lien shall be enforceable in the same manner and to the same extent as liens for delinquent taxes are enforced.
- (9) The municipal court may fix as punishment for offenses within its jurisdiction a fine not exceeding the maximum allowed by state law or imprisonment for up to one hundred eighty (180) days, or both, or in lieu of imprisonment, it may sentence an offender, upon conviction, to community service for a period not exceeding one hundred eighty (180) days. The municipal court may punish those in its presence for contempt, provided such punishment shall not exceed \$200.00 or ten (10) days imprisonment, or both. In those cases where the municipal court has jurisdiction to try cases involving the violation of state law, the court may impose those penalties set forth for the violation of such law.

Section 8.8.1- Purpose.

The purpose of this chapter is to exercise the police power in relation to public nuisances and abatement of such nuisances, to protect the public health, safety and welfare, and to promote the economic development of the city. It is also the purpose of this chapter to prevent and prohibit those conditions which reduce the value of private property, interfere with enjoyment of public and private property, create and constitute fire and other safety and health hazards, and generally create a menace to the health and welfare of the public and contribute to the degradation of the character of neighborhoods and depreciation of property values. It is necessary for the public health, safety and welfare to regulate, prevent and prohibit conditions which may constitute disorderly, disturbing, unsafe, unsanitary, fly-producing, rat-harboring and/or disease-causing places, conditions or objects. It is also necessary for the public social and economic welfare to regulate, prevent and prohibit conditions that degrade the city's scenic attractiveness and livability and its economic development.

State law reference—Municipal courts and magistrate courts have jurisdiction to order the abatement of nuisances, O.C.G.A. § 41-2-5.

Section 8.8.2- Definitions.

The words and phrases used in this chapter, unless the context otherwise indicates, shall have the following meanings:

Abate means to repair, replace, remove, destroy or otherwise remedy the condition in question by such means and in such a manner and to such an extent as the enforcement officer, in his/her judgment, determines is necessary in the interest of the general health, safety and welfare of the community.

Blighted property means any property on which there exists any one (1) or more of the following conditions or activities:

- (1) A building or structure that is not occupied, inhabited, used, or secured. For purposes of this chapter, a building or structure is unsecured when it is unlocked or the public can gain entry without the consent of the owner.
- (2) Any partially constructed, reconstructed or demolished building or structure upon which work is abandoned. Work is deemed abandoned when there is no valid and current building or demolition permit or when there has not been any substantial work on the project for six (6) months.
- (3) Property which is in an unsecured state so as to potentially constitute an attraction to children, a harbor for vagrants, criminals, or other unauthorized persons, or so as to enable persons to resort thereto for the purpose of committing a nuisance or unlawful act.
- (4) Any building or other structure which by reason of rot, weakened joints, walls, floors, underpinning, roof, ceilings, or insecure foundation, or other cause has become dilapidated or deteriorated.
- (5) Any building or other structure with exterior walls and/or roof coverings that have become so deteriorated as to not provide adequate weather protection and be likely to, or have resulted in, termite infestation or dryrot.
- (6) Buildings or structures including, but not limited to, walls, windows, fences, signs, retaining walls, driveways, or walkways which are obsolete, broken, deteriorated, or substantially defaced to the extent that the disrepair visually impacts on neighboring property or presents a risk to public safety. For purposes of this chapter "defaced" includes, but is not limited to, writings, inscriptions, figures, scratches, or other markings commonly referred to as "graffiti" and peeling, flaking, blistering, or otherwise deteriorated paint.
- (7) Property which is not kept clean and sanitary and free from all accumulations of offensive matter or odor including, but not limited to, dead or decayed trees, tree limbs, weeds or other vegetation that is not maintained in a manner consistent with the neighborhood and does not exceed a maximum of ten (10) inches, or grass in excess of ten (10) inches, dead organic matter, rubbish, junk, garbage, animal intestinal waste and urine, and toxic or otherwise hazardous liquids and substances.
- (8) Property which constitutes a fire hazard or a condition considered dangerous to the public health, safety, and general welfare.
- (9) Property which is likely to or does harbor rats or other vermin, feral pets, or other non-domesticated animal nuisances.
- (10) Property which substantially detracts from the aesthetic and economic values of neighboring properties including, but not limited to, personal property and wares and foodstuffs, premises garbage and refuse receptacles, and commercial and industrial business activities which are inadequately buffered from any street, sidewalk, or other publicly trafficked area or such buffering which is inadequately maintained.
- (11) Landscaping which is inadequately maintained or which is not installed as required by city codes of any permit issued in accordance with such codes provided landscaping may include approved areas such as undisturbed buffers, natural islands and/or stream corridors that are left in a natural state.
- (12) Matter including, but not limited to, smoke, odors, dust, dirt, debris, fumes, and sprays which is permitted to be transported by wind or otherwise upon any street, course, alley, sidewalk, yard, park, or other public or private property and which is determined to be a violation of federal, state, regional, or local air quality regulations.
- (13) Property including, but not limited to, building facade, window, doorway, driveway, walkway, fence, wall, landscaped planter or area, sidewalk, curb and gutter, and edge of street pavement on which dirt, litter, vegetation, garbage, refuse, debris, flyers, or circulars have accumulated.
- (14) Property on which a swimming pool, pond, stream, or other body of water which is abandoned, unattended, unfiltered, or not otherwise maintained, resulting in the water becoming polluted. "Polluted water" is defined for the purpose of this chapter, as water which contains bacterial growth, remains of garbage, refuse, debris, papers and any other foreign matter or material which constitutes an unhealthy or unsafe condition.

- Junk* means and includes the storage of all old appliances, equipment or parts thereof, all old iron or other scrap metal, all inoperable vehicles or parts thereof, including tires, all vehicle hulks, cardboard, all lumber, old wood and mattresses, which items are not being used for their intended purpose, and does not include orderly stacked firewood.

Premises means any building, lot, parcel, real estate, land or portion of land whether improved or unimproved, including adjacent sidewalks and parking strips.

Responsible person means any agent, lessee, owner or other person occupying or having charge or control of any premises.

Vegetable growth and horticultural growth means and includes but are not limited to trees, plants, shrubs, bushes, flowers, garden vegetables, weeds and grasses and further includes all growth of every kind and character, whether domestic or wild, causing the obstruction or interference or detriment prohibited by this chapter.

Section 8.8.3- Types of Nuisances.

- (a) The growing, maintaining, permitting or allowing of any weed, undergrowth, vegetable or horticultural growth which either:
 - (1) Overhangs, encroaches upon, obstructs or in any manner interferes with the full and free use by the public of any street, sidewalk or sidewalk area upon which such property so owned or occupied abuts;
 - (2) Has grown and died upon any premises owned, occupied or in control of the responsible person or persons and which constitutes the detriment to the public health, safety or welfare, including, but not limited to, a fire hazard; or
- (3) Is so overgrown upon any premises owned, occupied, or in control of the responsible person or persons, as to cause the degradation of the character of the neighborhood as determined by code enforcement. This provision shall not apply to natural areas or landscape areas that are to be retained in a natural state and designated as such on building plans or approved site plans or to natural areas and pastures which have not been previously manicured or developed and are to be retained in a natural state. Natural areas, which are areas growing without human care or cultivated may typically include areas within designated setbacks, undisturbed buffers, stream corridors, landscape islands or corridors within submitted building plans or any area as determined and approved by the city landscape architect. For purposes of this section, pastures shall be a parcel of land of one acre or more in size where plants or grasses are grown in a natural state so as not to constitute a nuisance.
- (b) The presence of debris or other material on sidewalks or the public right-of-way which impedes safe passage or otherwise creates a hazardous condition;
- (c) The existence of any junk, litter or refuse within the city when written complaint from two (2) or more city residents who are impacted by the present or potential effect of the condition on them or their property, has been received by the city unless such materials are kept or stored in an orderly and sightly manner and so as not to create a fire, safety, health or sanitary hazard;

- (d) The depositing, leaving or throwing away of any junk, litter or refuse within the city for an unreasonable length of time beyond what is necessary for proper disposal, except at the city landfill or in covered containers or receptacles acceptable to the enforcement officer of the city;
- (e) The causing or permitting to be discharged, placed or thrown, or the throwing into, or upon any premises or any public street or alley of any nauseous, foul or putrid liquid or substance, or any liquid or substance likely to become nauseous, foul, offensive or putrid;
- (f) The erection, continuance or use of any building, room, property or other place in the city for the exercise of any trade, employment or manufacturer which results in offensive odors or other annoyances being released, and which annoys, injures or is offensive or detrimental to the health of the individuals there employed or residing, or to the public;
- (g) The burning of refuse or other material in such a manner as to cause or permit the smoke, ashes, soot or gases arising from such burning to become discomforting or annoying, or to injure or endanger the health of any person or neighborhood;
- (h) The maintenance or use of any building, house, room or other structure or vehicle for the purpose of lewdness, assignation or prostitution;
- (i) Any pit, basin, hole, well or other excavation which is unguarded and dangerous to life, or has been abandoned, or is no longer used for the purpose for which it was constructed, or is maintained contrary to law;
- (j) All obstructions to streets, rights-of-way or other public ways in the city, and all excavations in or under the same, which are by ordinance prohibited, or which may be made without lawful permission, or which, having been made by lawful permission, are kept and maintained after the purpose thereof has been accomplished, or for an unreasonable length of time;
- (k) All premises, buildings and vehicles whereon or wherein intoxicating liquor is manufactured, sold, bargained, exchanged, given away, furnished, disposed of, consumed or permitted to be consumed, in violation of laws of the state and in ordinances of the city;
- (l) All vacant, unused or unoccupied buildings and structures within the city, which are allowed to become or remain open to entrance by unauthorized persons or the general public, because of broken, missing or open doors, windows or other openings, so that the same may be used by vagrants or other persons in a manner detrimental to the health and welfare of the inhabitants of the city;
- (m) All building, dwellings or property on which one (1) or more of the conditions listed in subsection 8.8.2(b) exist;
- (n) Any refrigerator, ice box or deep freeze locker having a capacity of one and one-half (1½) cubic feet or more or any other container manufactured, custom-made or homemade designed for storage which is discarded, abandoned or left in any place accessible to children and which has not had the door latching mechanism removed to prevent the latching or locking of the door;
- (o) Any sign, poster or other advertising matter of any nature placed upon a telephone, utility or other poles, trees, sidewalks, streets, signs, traffic signs or other traffic control devices or other structures or places within streets, alleys or other public places or rights-of-way;
- (p) All buildings or parts thereof, vehicles, or other structures, wherein any gambling may be found, and any gambling device may be found, except as licensed and within the scope of the requirement of the license required under state law and this municipal code;
- (q) The depositing or allowing of irrigation or other water to run by any street, alley or other public place, in such manner as to cause settling or damage to the street, alley or other public place, or to cause annoyance, damage or hazard to any user of the street, alley or other public place;
- (r) Animals which satisfy the conditions in section 8.1.13;
- (s) Noise: creating unnecessary noise.
Excessive and disturbing sound is a serious hazard to the public health and welfare, safety, and the quality of life. A substantial body of science and technology exists by which excessive and disturbing sound may be substantially abated. People have a right to and should be ensured an environment free from excessive and disturbing sound that may jeopardize their health, safety, or welfare or degrade the quality of life.

In order to ensure attractive residential and commercial areas, it is necessary that an audibly satisfying environment be maintained. The City of Roswell is more likely to attract permanent residents and commercial enterprises if it controls and maintains appropriate noise quality and the residents will ultimately gain financial improvements and protection in their quality of life as a result of these regulations.

- (1) *Definitions.* All terminology used in this article, not defined below, shall be in conformance with applicable publications of the American National Standards Institute (ANSI) or its successor body. The following words and terms, when used in this Article, shall have the following meanings:
A-weighting is the electronic filtering in sound level meters that models human hearing frequency sensitivity.
Background sound level is the total sound pressure level in the area of interest excluding the noise source of interest.
Boom box means any self-contained, portable, hand-held music or sound amplification or reproduction equipment capable of emitting sound.
Boom car means any vehicle with loudspeakers, amplifiers, radio receiving sets, musical instruments, phonographs or other equipment capable of producing, reproducing or emitting noise which is cast upon public property or private property.
Commercial or business property category is all property which is used primarily for the sale of merchandise or goods, or for the performances of service, or for office or clerical work.
Construction is any site preparation, assembly, erection, repair, alteration or similar action, or demolition of buildings or structures.
Decibel (dB) is the unit of measurement for sound pressure level at a specified location.
dBA is the A-weighted unit of sound pressure level.
Emergency is any occurrence or set of circumstances involving actual or imminent physical trauma or property damage which demands immediate action.

Emergency work is any work or action performed for the purpose of preventing or alleviating the physical trauma or property damage threatened or caused by an emergency.

Impulsive sound is a sound having duration of less than one (1) second with an abrupt onset and rapid decay.

Industrial or manufacturing property category is any property which is used primarily for manufacturing or processing.

Institutional property category is any property which is used primarily for public purposes such as city hall or a city park.

Legal holidays recognized by Roswell include New Years Day, Martin Luther King Jr. Day, President's Day, Memorial Day, Independence Day, Labor Day, Veteran's Day, Thanksgiving Day, Day after Thanksgiving, and Christmas Day.

Muffler is a sound-dissipative device or system for attenuating the sound of escaping gases of an internal combustion engine where such a device is part of the normal configuration of the equipment.

Multi-family dwelling is any multi-family structure, multi-family building, or other facility promised and/or leased to a residential tenant or tenants for use as a home, residence, or sleeping unit. This definition includes, but not limited to, multi-family dwellings, multi-family apartment units, boarding houses, rooming houses, group homes and flats.

Noise is any sound which annoys or disturbs humans or causes or tends to cause an adverse psychological or physiological effect on humans or violates this ordinance.

Noise disturbance is any sound that (a) endangers the safety or health of any person, (b) disturbs a reasonable person of normal sensitivities, or (c) endangers personal or real property or violates this ordinance.

Noise nuisance is the making, continuing or causing to be made or continued acts which are done or accomplished or carried on in such a manner, or with such volume, intensity, or with continued duration so as to annoy, to distress, or to disturb the quiet, comfort, or repose of any person of reasonable nervous sensibilities within the vicinity or hearing thereof, or so as to endanger or injure the safety or health of humans or animals, or so as to interfere with the physical well being of humans or animals, or so as to endanger or injure personal or real property except in the case of alerting persons to an emergency; or the operation of emergency vehicles; or motor vehicles while moving on a public right-of-way, public waterway, airport runway, or railway; or sounds produced by any governmental body in the performance of a governmental function; or sounds generated at a scheduled and permitted function, parade or outdoor celebration, or any violation of this ordinance.

Noise sensitive facility means any facility whose operations may be detrimentally impacted by excessive sound levels. Such facilities include, but are not limited to, schools, hospitals, and places of worship.

Octave band is all the components in a sound spectrum whose frequencies are between two sine wave components separated by an octave.

Public space property category is any real property or structures thereon that is owned, leased, or controlled by a governmental entity.

Real property line is the line, including its vertical extension that separates one parcel of real property from another.

Residential property category is all property on which people legally live.

Sound level meter (SLM) is an instrument used to measure sound pressure levels conforming to Type 1 or Type 2 standards as specified in ANSI Standard S 1.4-1983 or the latest version thereof.

Sound pressure level (SPL) is twenty (20) multiplied by the logarithm, to the base ten, of the A-weighted measured sound pressure divided by the sound pressure associated with the threshold of human hearing, in units of decibels.

Weekday is any day, Monday through Friday that is not a legal holiday.

(2) *Sound level limitations.*

- (a) No person shall cause, suffer, allow, or permit a domestic animal or the operation of any sound source in such a manner as to create a sound level that exceeds the sound level limits set forth in Table 1 when measured at or within the real property line of the receiving property using the slow response setting unless otherwise noted. Such a sound source would constitute a noise disturbance.

TABLE 1 Sound Level Limits by Receiving Property

Receiving Property Category	Time	Sound Level Limit (dBA)
Residential, public space, institutional, or noise sensitive facility	7:00 a.m. to 11:00 p.m.	70
	11:00 p.m. to 7:00 a.m.	60
Office, Commercial or business	7:00 a.m. to 11:00 p.m.	70
	11:00 p.m. to 7:00 a.m.	65
Industrial or manufacturing	At all times	70

- (b) If the noise is an impulsive sound, the fast response setting shall be used and the daytime (7:00 a.m. to 11:00 p.m.) limits of Table 1 shall be increased by ten (10) dBA.

(3) *Exemptions.*

- (a) Noise generated from municipally sponsored or approved celebrations or events shall be exempt from these provisions.
- (b) The following are exempt from the sound level limits:
- (1) Sound by public safety vehicles, emergency signaling devices, or authorized public safety personnel for the purpose of alerting persons to the existence of an emergency;
 - (2) Noise from an exterior burglar alarm of any building, provided such burglar alarm shall terminate its operation within five (5) minutes of its activation if the sound is not intermittent or ten (10) minutes if intermittent;
 - (3) Noise from any automobile alarm, provided such alarm shall terminate its operation within five (5) continuous minutes of its activation if the sound is not intermittent or ten (10) continuous minutes if the sound is intermittent;
 - (4) The generation of sound in situations within the jurisdiction of the Federal Occupational Safety and Health

- Administration;
 - (5) Noise resulting from any practice or performance sponsored by or associated with the educational process administered by a recognized institution of learning, including, but not limited to band, choir, and orchestral performances;
 - (6) Noise that results from the activities of an organized band or sports league between the hours of 7:00 a.m. and 12:00 a.m.;
 - (7) Carillons, chimes or unamplified bells while being used in conjunction with religious services between the hours of 7:00 a.m. and 10:00 p.m.;
 - (8) Emergency work approved by the director of transportation or the director of public works or the chief building inspector of the city;
 - (9) Surface carriers engaged in commerce by railroad;
 - (10) Events with amplified or un-amplified sound that are operating within the parameters set forth in an approved special events permit as defined in Article 14.3 of the Code of Ordinances of the City of Roswell, Georgia;
 - (11) Organized sports league activity sponsored by a school or the City of Roswell that is otherwise in compliance with the Code of Ordinances of the City of Roswell, Georgia;
 - (12) Noise that results from landscaping and lawn maintenance between the hours of 7:00 a.m. and 7:00 p.m.;
 - (13) Noise that results from construction both private and commercial between the hours of 7:00 a.m. and 7:00 p.m.
- (4) *Restricted Uses and Activities.* Notwithstanding the provisions of subsection (2) and the exceptions above, the following standards shall apply to the activities or sources of sound set forth below:
- (a) Non-commercial or non-industrial power tools used for landscaping and yard maintenance shall not be operated between the hours of 10:00 p.m. and 7:00 a.m., unless such activities can meet the applicable limits set forth in subsection (2). At all other times, the limits set forth in subsection (2) do not apply to non-commercial or non-industrial power tools and landscaping and yard maintenance equipment, provided that all motorized equipment is operated with a functioning muffler.
 - (b) Commercial or industrial power tools used for landscaping and yard maintenance shall be operated with a muffler. All motorized equipment used in these activities shall not be operated on a residential property or within two hundred fifty (250) feet of a residential property line, between the hours of 10:00 p.m. and 7:00 a.m. on weekdays, or between the hours of 10:00 p.m. and 9:00 a.m. on weekends, unless:
 - (1) Such activities are deemed emergency work, or
 - (2) Such activities meet the limits set forth in subsection (2).
 At all other times, the limits set forth in subsection (2) do not apply to commercial or industrial power tools and landscaping and yard maintenance equipment.
 - (c) Owners and the agents of owners of domesticated animals shall not permit any vocalizations (including barking, baying, howling, crying, or making any other noise) for more than ten (10) continuous minutes without interruption or more than thirty (30) minutes if intermittent. Each occurrence will result in a separate offense.
 - (d) Personal or commercial vehicular music amplification or reproduction equipment, including, but not limited to boom cars, shall not be operated in such a manner as to be plainly audible at a distance of fifty (50) feet in any direction from the equipment between the hours of 8:00 p.m. and 10:00 a.m. Between the hours of 10:00 p.m. and 8:00 a.m. such equipment shall not be operated in such a manner that it is plainly audible at a distance of twenty-five (25) feet in any direction.
 - (e) Boom boxes, or any similar device, shall not be operated in a public place or public right-of-way in such a manner as to be plainly audible at a distance of fifty (50) feet in any direction from the operator between the hours of 8:00 a.m. and 10:00 p.m. Between the hours of 10:00 p.m. and 8:00 a.m., such equipment shall not be operated in such a manner that it is plainly audible at a distance of twenty-five (25) feet in any direction.
- (5) *Code Enforcement Officers.*
- (a) Where the provisions of this ordinance require the measurement of sound with the use of a sound level meter, code enforcement officers or police officers of the city shall make such measurement.
 - (b) Upon occurrence of a violation of this article, officers or police officers having jurisdiction in the area where the violation takes place, may issue a citation/summons for the violation returnable to the Municipal Court of Roswell. Penalties for violations of this article will be governed by subsection (8).
- (6) *Procedures for the Determination of Sound Levels.*
- (a) Insofar as practicable, sound will be measured while the source under investigation is operating at normal, routine conditions and, as necessary, at other conditions, including but not limited to, design, maximum and fluctuating rates. All noise measurements shall be made at or within the property line of the impacted site, unless otherwise directed in this ordinance. When instrumentation cannot be placed at or within the property line, the measurement shall be made as close thereto as is reasonable. For the purposes of this ordinance, noise measurements are measured on the A-weighted sound scale, as applicable, of a sound level meter of standard design and quality having characteristics established by ANSI.
 - (b) The sound level meter and calibrator must be recertified annually at a laboratory approved by the chief of police or designee. A field check of meter calibration and batteries must be conducted before and after every set of measurements, and at least every hour as necessary.
 - (c) Total and neighborhood residual sound level measurements shall be taken in accordance with procedures established and approved by the chief of police or designee. Calculation of source sound levels shall conform with accepted practice established by ANSI.
- (7) *Requests for Temporary Relief or Stay.*
- (a) Any person requesting temporary relief or a stay from the enforcement of this ordinance shall apply to the zoning

administrator or designee for a special administrative permit for a period of time not to exceed thirty (30) days. The zoning administrator or designee has discretion to consider and grant or deny the special administrative permit (with such conditions as may be warranted), if strict enforcement of this ordinance will result in exceptional and undue hardship to the applicant. Under no circumstances shall the zoning administrator or designee grant a stay of enforcement of this ordinance for more than thirty (30) days within any six-month period.

- (b) Applications for special administrative permits shall be on a form prescribed by the zoning administrator or designee which shall, among other matters, address the nature of the noise, attenuation measures, and the hardships to the applicant and others if the permit is not granted.
 - (c) A special administrative permit may be revoked and the issuance of future permits withheld, if there is a:
 - (1) Violation of any conditions of the permit;
 - (2) Material misrepresentation of fact in the permit application; or,
 - (3) Material change in any of the circumstances relied upon by the zoning administrator or designee in granting the permit.
 - (d) No special administrative permit shall be granted for amplified sound.
 - (e) No special administrative permit shall be authorized to delete, modify, or change in any manner any requirement imposed as a condition of zoning or as a condition of a special or conditional land use permit imposed by the city council.
 - (f) Appeals of any special administrative permit decision made by the zoning administrator or designee shall be to the city council.
- (8) *Enforcement Procedures.*
- (a) The city may prosecute noise related violations by issuance of a city ordinance citation. If an ordinance violation citation is issued to the owner and it is determined by the municipal court that this chapter has been violated, the person may be punished by a fine not to exceed \$1,000.00 and/or incarceration up to six (6) months. Penalties for the first violation of this code section shall be a minimum fine of \$100.00. Subsequent violations of the same provisions of the code sections by the same owner or agent shall be the determination of the prosecutor.
 - (b) In addition to issuing a fine as provided, or in lieu thereof, the municipal court judge may issue an order requiring immediate abatement of any sound source alleged to be in violation of this section. Failure to abate such noise results in contempt of court.
 - (c) No provision of this section shall be construed to impair any common law or statutory cause of action, or legal remedy therefor, of any person for injury or damage arising from any violation of this section or from other law.

(Ord. No. 2008-08-09, § 2, 08/04/2008; 2006-09-19, Amended, 09/11/2006; 2005-03-02, Amended, 03/07/2005, Amended subsection (s); 2001-04-03, Amended, 04/16/2001)

IN THE MUNICIPAL COURT OF ROSWELL, GEORGIA

STATE OF GEORGIA

CITY OF ROSWELL, GEORGIA,)
A MUNICIPAL CORPORATION,)

Petitioner)

v.)

335 Alpine Drive, Roswell, Georgia,)
more particularly described as All)
that tract or parcel of land lying and)
being in Land Lot 449, 1st District,)
2nd Section, Fulton County, Georgia,)
Being Lot 6 and part of Lot 7, Block C,)
Unit Two, Hilton Hills Subdivision,)
as per plat recorded in Plat Book 83,)
page 119, Fulton County records and)
an unsubdivided tract to rear; caption)
also being part of survey of a division)
of Lots 6 and 7 and part of Lot 8,)
Block C, Unit Two, Hilton Hills)
Subdivision for Roswell Investment)
Company, Inc., as per plat recorded in)
Plat Book 91, page 102, Fulton County)
records, and being more particularly)
described as follows:)

BEGINNING at a point on the southerly)
side of Alpine Drive, five hundred)
ninety-one and eight tenths (591.8) feet)
southeasterly from the intersection)
formed by the southerly side of Alpine)
Drive with the west line of Land Lot 449,)
as measured along the southwesterly)
side of Alpine Drive; running thence)
easterly and northeasterly along the)
southerly and southeasterly side of Alpine)
Drive, two hundred sixteen and eight)
tenths (216.8)) feet to a point (said point)
also being eight hundred sixty nine and)
sixty-six one hundredths (869.66) feet)
southwesterly from an eighty (80) foot)
right-of-way on U.S. Highway 19)

Case No. 2011-CV01

EXHIBIT

B

(now known as Georgia Highway 9);)
running thence south Eleven (11))
degrees Twenty Nine (29) minutes west)
along the northwesterly side of Lot 5,)
Unit One, eighty-one and six-tenths (81.6))
feet to a point;)
running thence south Sixteen (16) degrees)
Ten (10) minutes west along the)
northwesterly side of Lot Five (5), Unit)
One (1), seventy (70) feet to a point;)
running thence south Thirty Four (34))
degrees Two (02) minutes east along the)
southwesterly side of Lot Five (5),)
Unit One (1), seventy seven and ninety-six)
hundredths (77.96) feet to the center)
line of Hog Waller Creek; running thence)
south Sixty Eight (68) degrees Twenty)
Four) (24) minutes west along the center)
line of said creek, two hundred two and)
three-tenths (202.3) feet to an iron pin;)
running thence north Six (6) degrees)
Twenty Seven (27) minutes west two)
Hundred sixteen and three tenths (216.3))
feet to the southerly side of Alpine Drive)
and the point of beginning.)

Respondent)

AFFIDAVIT OF KEITH BADALAMENTE

COMES NOW Keith Badalamente, who after being duly sworn by the undersigned officer authorized to administer oaths, deposes and states the following:

1.

My name is Keith Badalamente. I am over the age of 18, am otherwise competent to give this Affidavit and make this Affidavit upon my personal knowledge.

2.

I make this Affidavit in support of the City of Roswell's Petition *in rem* for Nuisance Abatement regarding the property commonly known as 335 Alpine Drive, Roswell, GA 30075 (hereinafter the "Property").

3.

I live at 355 Alpine Drive, Roswell, GA 30075. My property abuts 335 Alpine Drive, Roswell, GA 30075, the Property at issue in Roswell's petition.

4.

I have lived next to the Property at issue since July 2003. Since March 2009, conditions at 335 Alpine have gotten steadily worse to the point that I cannot use my deck and yard as I would like because of the offensive odors from animal waste and/or slaughter remains that occur at 335 Alpine.

5.

From my deck and yard, I must look at junk strewn all over the yard at 335 Alpine, including push lawnmowers, riding lawnmowers and various parts and engines from or for the various mowers. In February 2011 I noticed a newer looking lawn mower which is the only mower I have seen used. I never have seen any of the riding or older push mowers being operated at 335 Alpine.

6.

In addition to the lawnmowers and parts, various miscellaneous small engines just sit out in the yard. They are not protected from the elements, nor are they concealed in any manner, nor are they stored in any orderly fashion.

7.

A boat sits on the property, visible from the street. I have never seen it moved from the Property at 335 Alpine, nor have I ever seen it covered.

8.

Often the front yard at 335 Alpine contains piles of chopped firewood, lumber, wood chips, shavings and pallets scattered about in a random manner. I have never seen any of the wood or other material in the front yard covered, concealed or stored in any orderly fashion.

9.

Other junk and refuse that I have seen in the yard at 335 Alpine includes trash cans, window screens and window panes, wire baskets, a tarp, a toilet seat, gas cans, plastic pipe, appliances and a refrigerator/freezer sitting on the front porch, scrap metal, broken furniture, various plastic bags and trash. None of these items are stored in any orderly fashion and are simply strewn across the yard, porch or garage, as in a dump.

10.

Because the owner of the Property at 335 Alpine routinely drives across his yard and parks his car and truck in the yard and not in his driveway, there is very little grass or other groundcover in his yard. Along with the refuse and junk, this renders the property at 335 Alpine an eyesore, both from my house, property and the street.

11.

The owner at 335 Alpine keeps great numbers of chickens and roosters on the Property. The owner has failed to adequately fence his yard to restrain the chickens and roosters. Consequently, I regularly have to put up with his chickens and roosters on my property, making noise and interfering with the use of my own property, inside and out, including my deck.

12.

In addition to chickens and roosters, the owner of 335 Alpine keeps pigs at the Property. These pigs are allowed to roam the neighborhood and are not restrained on the Property. I have seen his pigs wandering in the streets and I have seen his pig chasing two women up the street who were out walking.

13.

The waste from the pigs, chickens, and roosters create awful smells that often cover my property. Because of the smells and the unsightly waste visible from my yard, I no longer invite people to my house. As I mentioned before, I cannot use my deck as I would like to do.

14.

The conditions at 335 Alpine have directly affected my use and enjoyment of my property. I cannot enjoy my yard because of the noise and odors coming from 335 Alpine. The unsightly junk, trash, refuse, animal waste and offal on the Property at issue render my property less marketable and desirable.

15.

Between January 1, 2011 and mid-March 2011, I made a series of photographs depicting the conditions I saw on the Property at 335 Alpine Drive. When I took the photographs, I was either standing on my property or I was on the street adjacent to 335 Alpine. I attach copies of these photographs labeled KB 1 through KB 46 to this Affidavit.

Further Affiant says not.

Jean J. Marshall
Sworn to and subscribed before me
this 8th day of April, 2011.

JEAN I. MARSHALL
Notary Public, Fulton County, Georgia
My Commission Expires December 26, 2011

Keith Badalamente
Keith Badalamente



12

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KBI



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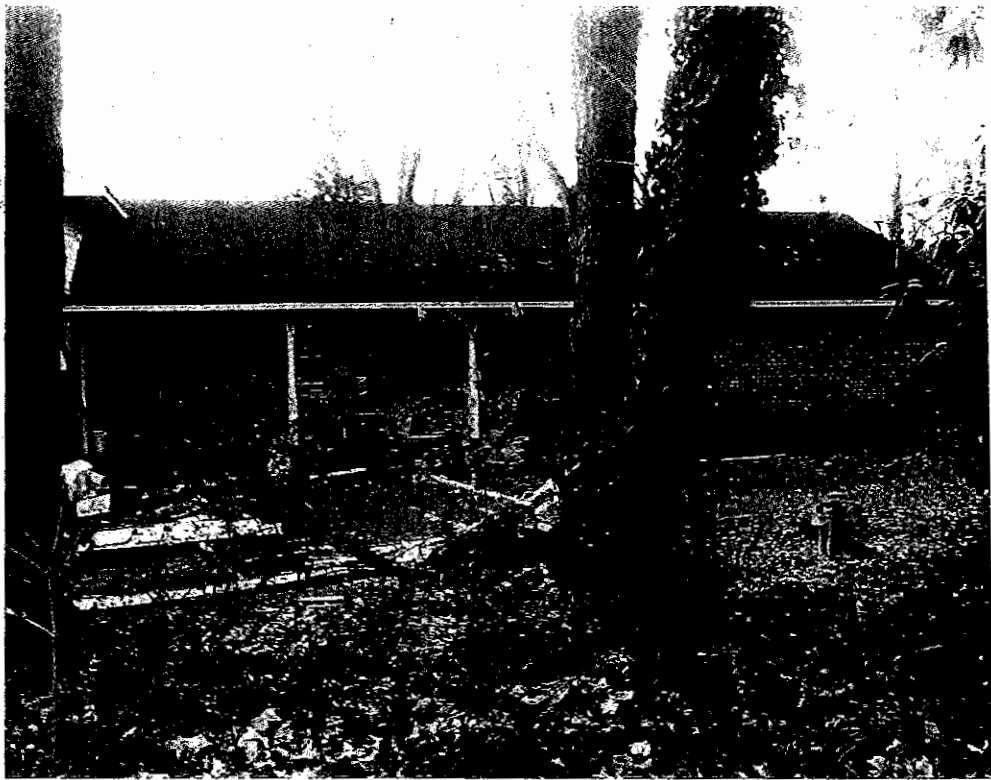


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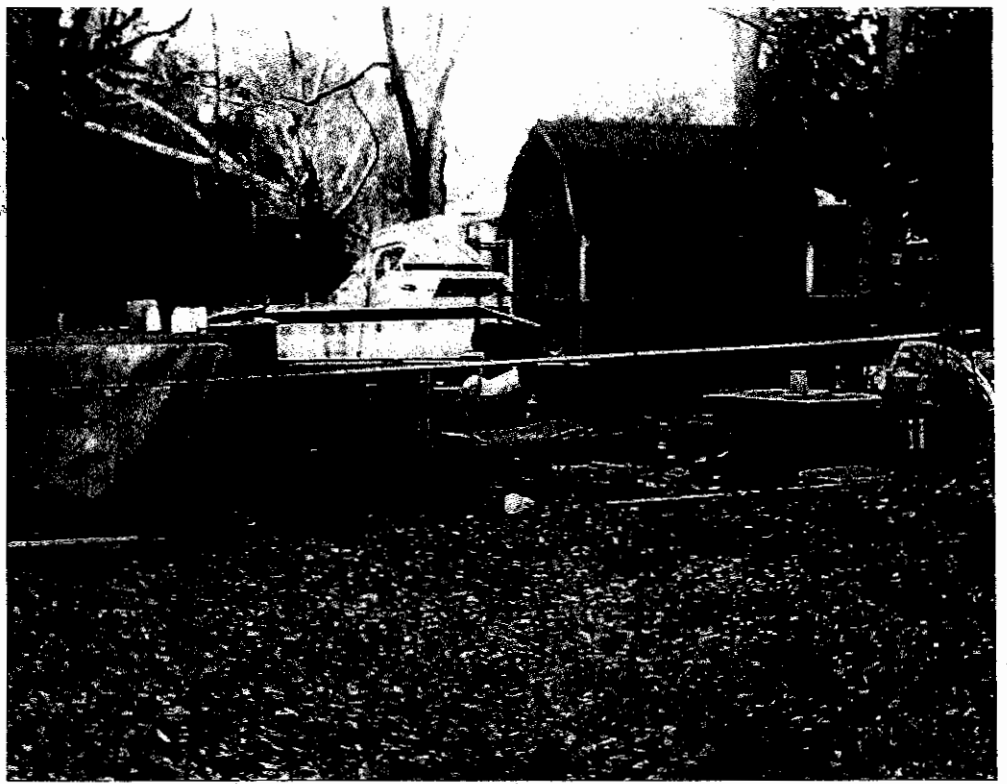


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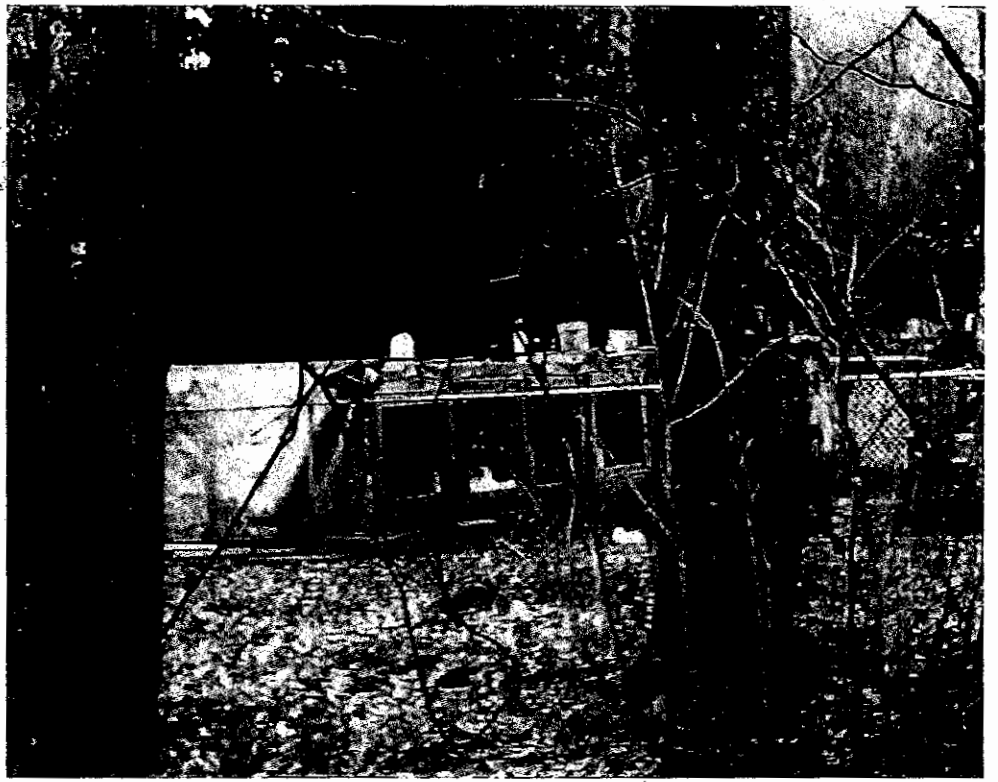


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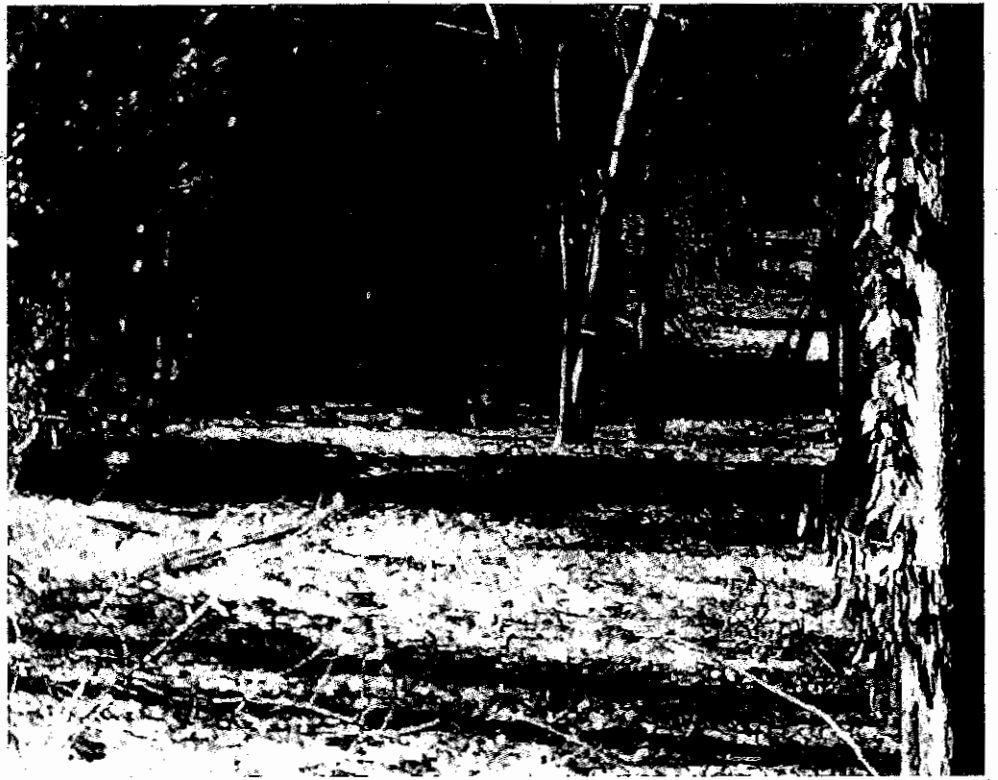


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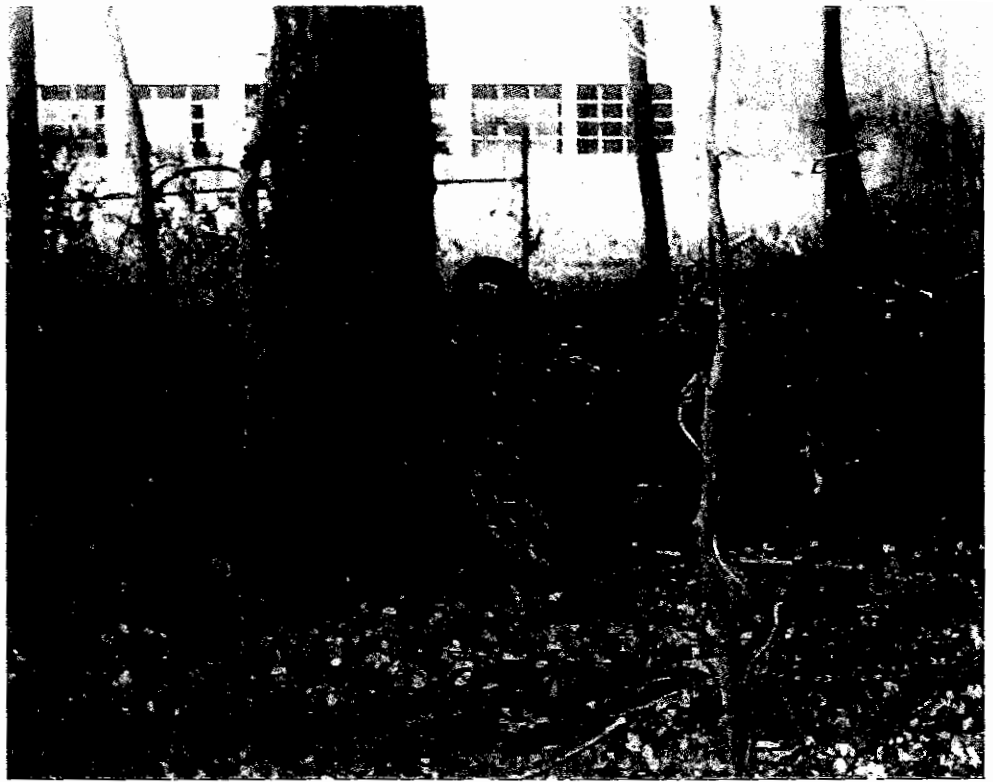


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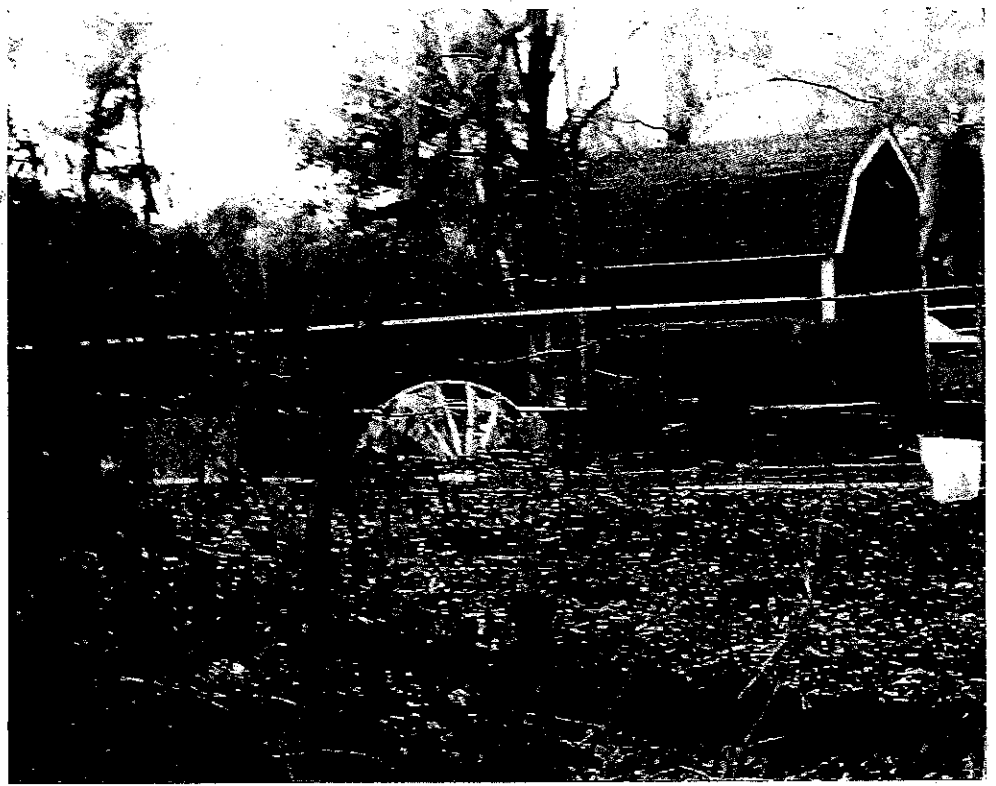


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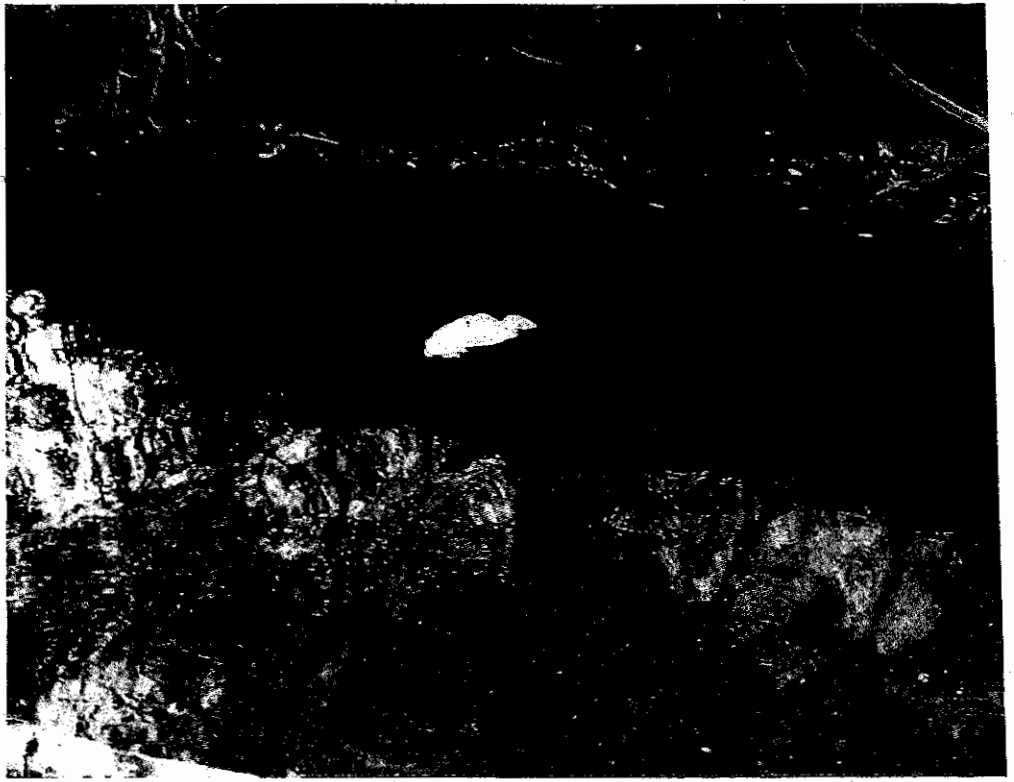
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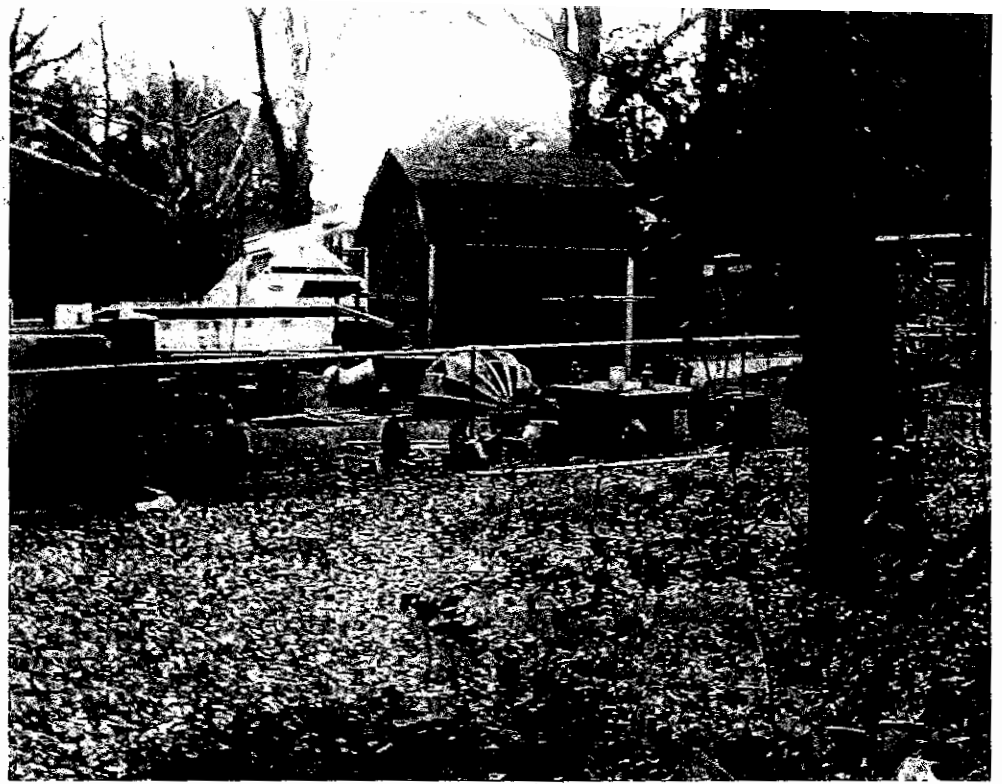
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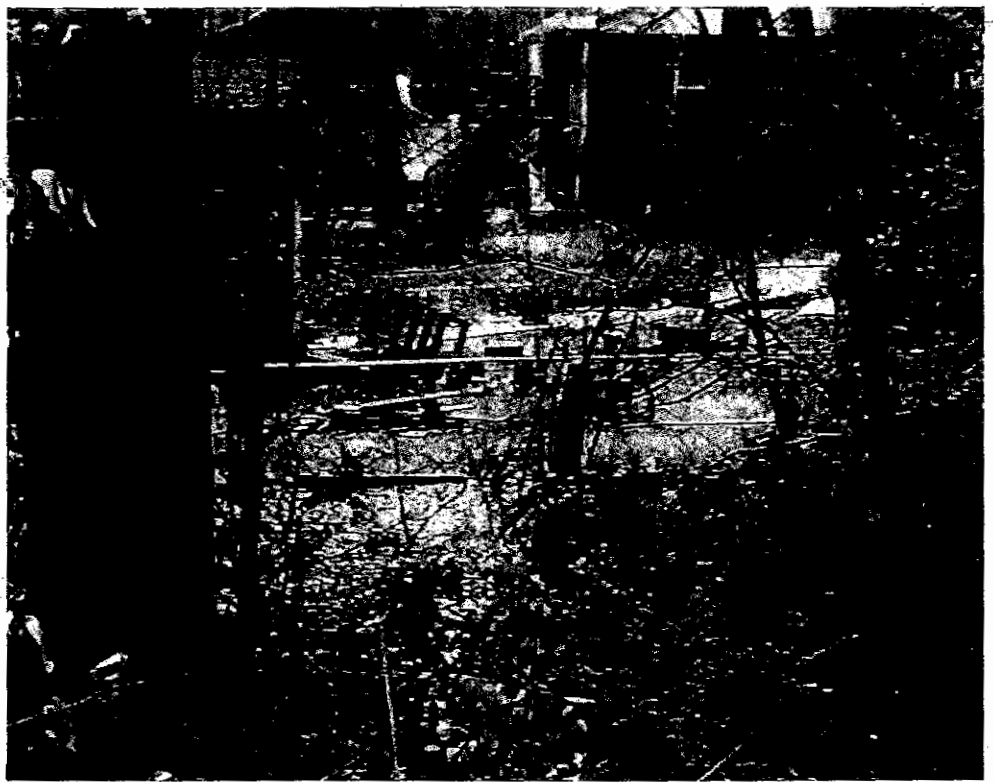


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KB46

IN THE MUNICIPAL COURT OF ROSWELL, GEORGIA

STATE OF GEORGIA

CITY OF ROSWELL, GEORGIA,)
A MUNICIPAL CORPORATION,)

Petitioner)

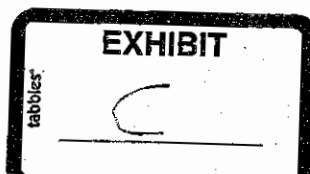
v.)

335 Alpine Drive, Roswell, Georgia,)
more particularly described as All)
that tract or parcel of land lying and)
being in Land Lot 449, 1st District,)
2nd Section, Fulton County, Georgia,)
Being Lot 6 and part of Lot 7, Block C,)
Unit Two, Hilton Hills Subdivision,)
as per plat recorded in Plat Book 83,)
page 119, Fulton County records and)
an unsubdivided tract to rear; caption)
also being part of survey of a division)
of Lots 6 and 7 and part of Lot 8,)
Block C, Unit Two, Hilton Hills)
Subdivision for Roswell Investment)
Company, Inc., as per plat recorded in)
Plat Book 91, page 102, Fulton County)
records, and being more particularly)
described as follows:)

BEGINNING at a point on the southerly)
side of Alpine Drive, five hundred)
ninety-one and eight tenths (591.8) feet)
southeasterly from the intersection)
formed by the southerly side of Alpine)
Drive with the west line of Land Lot 449,)
as measured along the southwesterly)
side of Alpine Drive; running thence)
easterly and northeasterly along the)
southerly and southeasterly side of Alpine)
Drive, two hundred sixteen and eight)
tenths (216.8) feet to a point (said point)
also being eight hundred sixty nine and)
sixty-six one hundredths (869.66) feet)
southwesterly from an eighty (80) foot)
right-of-way on U.S. Highway 19)

Case No. _____

ORIGINAL
SIGNED



(now known as Georgia Highway 9);)
running thence south Eleven (11))
degrees Twenty Nine (29) minutes west)
along the northwesterly side of Lot 5,)
Unit One, eighty-one and six-tenths (81.6))
feet to a point;)
running thence south Sixteen (16) degrees)
Ten (10) minutes west along the)
northwesterly side of Lot Five (5), Unit)
One (1), seventy (70) feet to a point;)
running thence south Thirty Four (34))
degrees Two (02) minutes east along the)
southwesterly side of Lot Five (5),)
Unit One (1), seventy seven and ninety-six)
hundredths (77.96) feet to the center)
line of Hog Waller Creek; running thence)
south Sixty Eight (68) degrees Twenty)
Four) (24) minutes west along the center)
line of said creek, two hundred two and)
three-tenths (202.3)-feet to an iron pin;)
running thence north Six (6) degrees)
Twenty Seven (27) minutes west two)
Hundred sixteen and three tenths (216.3))
feet to the southerly side of Alpine Drive)
and the point of beginning.)

Respondent)

AFFIDAVIT OF JOLENE SMITH

COMES NOW Jolene Smith, who, after being duly sworn by the undersigned officer
authorized to administer oaths, deposes and states as follows:

1.

My name is Jolene Smith. I am over the age of 18, am otherwise competent to give this
Affidavit and make this Affidavit upon my personal knowledge.

2.

I make this Affidavit in support of the City of Roswell's Petition *in rem* for Nuisance Abatement regarding the property commonly known as 335 Alpine Drive, Roswell, GA 30075 (hereinafter the "Property").

3.

I live at 115 Sunset Court, Roswell, GA 30075, which intersects with Alpine Drive. The fencing provided by the owner at 335 Alpine Drive is inadequate to contain his animals. The chickens, roosters and pigs kept by Mr. Wordes at 335 Alpine often get out and roam around the neighborhood. One time, a neighbor stopped at my house because she was afraid of the pig that was chasing her as she was walking down the street.

4.

The odors coming from the Property at 335 Alpine can be very foul and overwhelming, particularly on a warm, damp day. The odors are worst in the morning and in the evening.

5.

The roosters crow much of the time. The noise from the roosters is very annoying when one is outside in the yard or on the porch.

6.

Junk is all over the yard at the 335 Alpine property. Scrap wood is everywhere in the yard. I have seen large tree trunks hauled to 335 Alpine, dumped on the lawn, and eventually split and cut up.

7.

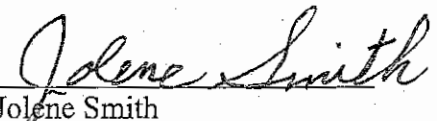
There is an old boat kept at 335 Alpine, which is an eye sore, and which is clearly visible from the street. Often, there are as many as five cars parked at 335 Alpine, usually with one or

two parked on the lawn in the front yard. Parking cars in the front yard has torn up the lawn and left it bare and unsightly.

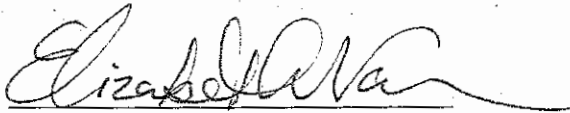
8.

My house on Sunset Court is just two houses away from the intersection of Sunset with Alpine. 335 Alpine is directly adjacent to the intersection of Alpine and Sunset. Every day, I have to see the terrible state of the property at 335 Alpine. It is an embarrassment to the neighborhood, and, in my opinion, negatively affects the value, not only of my property, but also the value of all the surrounding properties.

Further, Affiant says not.


Jolene Smith

Sworn to and subscribed before me
this 13 day of May, 2011.



Notary Public

My seal  ELIZABETH A. VASON
NOTARY PUBLIC, FULTON COUNTY, GEORGIA
MY COMMISSION EXPIRES AUGUST 6, 2011

IN THE MUNICIPAL COURT OF ROSWELL, GEORGIA
STATE OF GEORGIA

CITY OF ROSWELL, GEORGIA,
A MUNICIPAL CORPORATION,

Petitioner

v.

335 Alpine Drive, Roswell, Georgia,
more particularly described as All
that tract or parcel of land lying and
being in Land Lot 449, 1st District,
2nd Section, Fulton County, Georgia,
Being Lot 6 and part of Lot 7, Block C,
Unit Two, Hilton Hills Subdivision,
as per plat recorded in Plat Book 83,
page 119, Fulton County records and
an unsubdivided tract to rear; caption
also being part of survey of a division
of Lots 6 and 7 and part of Lot 8,
Block C, Unit Two, Hilton Hills
Subdivision for Roswell Investment
Company, Inc., as per plat recorded in
Plat Book 91, page 102, Fulton County
records, and being more particularly
described as follows:
BEGINNING at a point on the southerly
side of Alpine Drive, five hundred
ninety-one and eight tenths (591.8) feet
southeasterly from the intersection
formed by the southerly side of Alpine
Drive with the west line of Land Lot 449,
as measured along the southwesterly
side of Alpine Drive; running thence
easterly and northeasterly along the
southerly and southeasterly side of Alpine
Drive, two hundred sixteen and eight
tenths (216.8)) feet to a point (said point
also being eight hundred sixty nine and
sixty-six one hundredths (869.66) feet
southwesterly from an eighty (80) foot
right-of-way on U.S. Highway 19

Case No. _____

EXHIBIT

D

(now known as Georgia Highway 9);)
running thence south Eleven (11))
degrees Twenty Nine (29) minutes west)
along the northwesterly side of Lot 5,)
Unit One, eighty-one and six-tenths (81.6))
feet to a point;)
running thence south Sixteen (16) degrees)
Ten (10) minutes west along the)
northwesterly side of Lot Five (5), Unit)
One (1), seventy (70) feet to a point;)
running thence south Thirty Four (34))
degrees Two (02) minutes east along the)
southwesterly side of Lot Five (5),)
Unit One (1), seventy seven and ninety-six)
hundredths (77.96) feet to the center)
line of Hog Waller Creek; running thence)
south Sixty Eight (68) degrees Twenty)
Four) (24) minutes west along the center)
line of said creek, two hundred two and)
three-tenths (202.3) feet to an iron pin;)
running thence north Six (6) degrees)
Twenty Seven (27) minutes west two)
Hundred sixteen and three tenths (216.3))
feet to the southerly side of Alpine Drive)
and the point of beginning.)

Respondent)

AFFIDAVIT OF STEVE JOHNSON

COMES NOW Steve Johnson, who after being duly sworn by the undersigned officer
authorized to administer oaths, deposes and states the following:

1.

My name is Steve Johnson. I am over the age of 18, am otherwise competent to give this
Affidavit and make this Affidavit upon my personal knowledge. .

2.

I make this Affidavit in support of the City of Roswell's Petition *in rem* for Nuisance Abatement regarding the property commonly known as 335 Alpine Drive, Roswell, GA 30075 (hereinafter the "Property").

3.

I am employed by the City of Roswell as a Code Enforcement Officer. As part of my duties, I was asked to investigate complaints by people living on Alpine Drive and Sunset Court regarding conditions at the Property, which is at issue in this action.

4.

Standing on Alpine Drive, I viewed the Property at 335 Alpine Drive on three separate occasions (December 8, 2010, February 3, 2011 and February 28, 2011) and took photographs that depict what I saw. The photographs that I took are attached to this affidavit as Exhibits SJ1 through SJ 11 and are made a part of this affidavit as though fully set out here.

5.

On December 8, 2010 (incorrectly labeled as "11/8/10" on the bottom of the photo copies attached), I took the photos labeled SJ 6 through SJ 11 attached to this affidavit.

6.

SJ 6 through SJ 9 are photographs I took on December 8, 2010. SJ 6 depicts the junk in the garage and in the driveway visible from the street, as well as the boat in plain view and additional junk stacked near the fence.

7.

SJ 7 depicts the view of the front yard and front porch with junk in the yard and on the porch.

8.

SJ 8 depicts junk piled against the side of the house.

9.

SJ 9 depicts wood and lawnmowers scattered and parked in the yard.

10.

SJ 10 and SJ 11 are photographs I took on February 3, 2011. SJ 10 shows lumber strewn across the front yard, the bare yard next to the porch and wood and junk stacked on the front porch.

11.

SJ 11 is a photograph showing some of the same material depicted in SJ 10, but from a wider angle, with the side of the house also visible.

12.

I took the photographs identified as SJ 1 through SJ 5 on February 28, 2011. SJ 1 depicts junk stacked in the side yard.

13.

SJ 2 depicts the same material shown in SJ 1, but from a closer perspective.

14.

SJ 3, taken February 28, 2011, depicts the same lawnmowers and wood as shown in the photograph identified above as SJ 9, taken on February 3, 2011. The lawnmowers and wood have not moved from the positions they occupied 25 days earlier.

15.

SJ 4 depicts the same conditions that existed on February 3, 2011 as shown in SJ 10 and SJ 11, lumber strewn across the front yard, the bare yard next to the porch and wood and junk stacked on the front porch. Again, the same conditions exist some 25 days after the photographs taken on February 3, 2011. In addition, SJ 4 depicts a car parked on the bare ground in the front yard directly adjacent to the front porch. The car is not parked in the driveway of the house.

16.

SJ 5, taken on February 28, 2011, is the same view as that depicted in SJ 7, taken on February 3, 2011. Again, junk is visible in the garage and driveway, with the boat visible from the street. In addition, SJ 5 shows a pot-bellied pig.

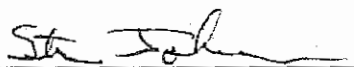
17.

The driveway area depicted in SJ 5 is not fenced, and I watched the pot-bellied pig shown in SJ 5 leave the property at 335 Alpine and wander down the street.

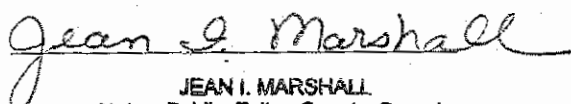
18.

On April 29, 2011, I again stood on the street adjacent to 335 Alpine Drive and looked at the property. Although there had been some minor cleanup, conditions at the property were substantially the same as those I saw on my visits of December 8, 2010, February 3, 2011 and February 28, 2011.

Further Affiant says not.


Steve Johnson

Sworn to and subscribed before me
this 20th day of May, 2011.


JEAN I. MARSHALL
Notary Public, Fulton County, Georgia
My Commission Expires December 26, 2011

Notary Public
My seal expires:

SJ-6



335 Alpine Drive

11/8/10

517



335 Alpine Drive

11/8/10

518



335 Alpine Drive

~~11/8/10~~

S-J-9



335 Alpine Drive

11/8/10

SJ 11



335 Alpine Drive - 2/3/11

SJ 10



335 Alpine Drive - 2/3/11

SJ-1



335 Alpine Drive - 2/28/11

S-J-2



335 Alpine Drive - 2/28/11

SJ-3



335 Alpine Drive - 2/28/11

SJ 4



335 Alpine Drive - 2/28/11

SJ-5



335 Alpine Drive - 2/28/11