

# ORIGINAL

IN THE SUPERIOR COURT OF ELBERT COUNTY

~~FILED & RECORDED~~

STATE OF GEORGIA

2010 FEB 12 PM 2:37

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ELBERT SUPERIOR COURT

SWEET CITY LANDFILL, LLC, a  
Georgia Limited Liability Company,  
RUSTY ADAMS, and JACK STOVALL,  
JR.,

Plaintiffs,

v.

ELBERT COUNTY, GEORGIA; THE  
BOARD OF COMMISSIONERS OF  
ELBERT COUNTY, GEORGIA;  
RUSSELL T. ("TOMMY") LYON, W. D.  
ALBERTSON, FRANK EAVES,  
HORACE HARPER, JERRY HEWELL,  
and JOHN HUBBARD, in their official  
capacities as members of the Board of  
Commissioners of Elbert County, Georgia,  
and GREENFIRST, LLC, a Georgia  
Limited Liability Company,

Defendants.

CIVIL ACTION

FILE NO. 09CV940M

**AMENDMENT TO COMPLAINT  
FOR THE INVALIDATION OF A LAND USE DECISION  
AND/OR FOR  
ALTERNATIVE DECLARATORY AND INJUNCTIVE RELIEF**

COME NOW PLAINTIFFS, SWEET CITY LANDFILL, LLC, a Georgia  
Limited Liability Company, RUSTY ADAMS, and JACK STOVALL, JR. ("hereinafter

collectively, Plaintiffs”), by and through their counsel of record, and hereby amend the original Complaint filed in this matter on December 16, 2009 (“Complaint”) to (i) add certain new allegations to the Section IV of the Complaint entitled **OPERATIVE FACTS AND APPLICABLE LAW**, being new ¶¶ 61A through 61E, (ii) add a new **COUNT EIGHT**, and (iii) add a new subsection j. to their Prayers for Relief.

**ADDITIONS TO THE “OPERATIVE FACTS”**

The **OPERATIVE FACTS AND APPLICABLE LAW** section of the Complaint is hereby amended to include the following new paragraphs immediately after ¶61 and before **COUNT ONE**:

61A.

On November 16, 2006, when the Board of Commissioners purported to adopt the Solid Waste Amendment, which fundamentally changed the terms of the preexisting Solid Waste Disposal Ordinance—so as, not only to exempt previously-covered “incinerator” projects, but also to provide that the owner of any such incinerator would be privileged to co-locate any associated co-owned landfill without seeking a special use permit under the Solid Waste Disposal Ordinance—it did so with minimal or no substantive discussion of the merits of this extraordinary change to the public policy and to the Code of Ordinances for Elbert County, Georgia.

61B.

That is because the Solid Waste Amendment was the product of extensive behind-the-scene discussions between representatives of GreenFirst and Elbert County concerning the proposal by GreenFirst to build its W2E Facility and associated bottom and fly ash landfill in Elbert County and to negotiate a so-called Host Agreement to reward Elbert County for its support of the GreenFirst project.

61C.

In other words, by the time that the Solid Waste Amendment came before the Board of Commissioners for a vote on November 16, its adoption by the BOC was a foregone conclusion—and was the product of a “done deal” between GreenFirst and Elbert County, whose essential terms had already been agreed upon behind closed doors. Otherwise, the Board of Commissioners would not have effectively surrendered on November 16, 2009, its police power authority to regulate the GreenFirst project with its extraordinary environmental, traffic, and “solid waste” implications.

61D.

As part of the internal Elbert County deliberations and the bilateral negotiations with GreenFirst leading up to the critical Solid Waste Amendment, a quorum of County Commissioners, *i.e.*, Horace Harper, Jerry Hewell, and John Hubbard, traveled together to Huntsville, Alabama,

from Elberton and met with representatives of GreenFirst for purposes of discussing the GreenFirst project and touring an “incinerator” facility owned by Covanta Energy, which GreenFirst indicated would be the eventual owner/operator of its proposed Elbert County facility. That coordinated trip was taken and the associated meetings held in violation of the Georgia Open Meetings Law, O.C.G.A. §§50-14-1 *et seq.*, which is designed to protect the public from the closed-door meetings and backroom politics that engender a distrust of those clothed with power to act in the people’s name and from potential abuse and misuse of power that such politics entail.

61E.

Upon information and belief, a quorum of the members of the Board of Commissioners and/or a committee of its members gathered and met on multiple occasions by prearrangement prior to November 16 to discuss facilitation of the GreenFirst project in violation of the Open Meetings Act—leading directly to the adoption of the Solid Waste Amendment on November 16, 2009.

#### **ADDITIONAL COUNT**

An additional **COUNT EIGHT** is hereby added to the Complaint as follows:

**COUNT EIGHT**

**Open Meetings Act Violations**

1.

Plaintiffs hereby incorporate by reference Paragraphs 1 through 61E above as if each of said paragraphs was restated and realleged in its entirety.

2.

The purported Solid Waste Amendment by the BOC is null and void because it was the product of multiple violations of the Georgia Open Meetings Act.

**ADDITION TO THE PRAYER FOR RELIEF**

A new subsection j. is hereby added to the Prayer for Relief, to read as follows:

j. That Plaintiffs be awarded their reasonable attorney's fees and expenses in connection with their Open Meetings Act claim pursuant to O.C.G.A. §50-14-5(b).

Respectfully submitted this 12<sup>th</sup> day of February, 2010.

A handwritten signature in black ink, appearing to read "G. E. Butler II", with a horizontal line underneath.

GEORGE E. BUTLER II  
Georgia Bar No. 099575

132 Hawkins Street  
Dahlonega, GA 30533  
706-864-3200  
404-873-2544

**ATTORNEY FOR PLAINTIFFS**


**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a copy of the foregoing AMENDMENT TO COMPLAINT FOR THE INVALIDATION OF A LAND USE DECISION AND/OR FOR ALTERNATIVE DECLARATORY AND INJUNCTIVE RELIEF upon counsel of record for Defendants, by depositing a true copy of the same in the United States Mail, postage prepaid, addressed as follows:

Bill Daughtry, Esq.  
Attorney at Law, LLC  
P. O. Box 6267  
Elberton, GA 30635

Robert C. Norman, Jr.  
P. O. Box 6437  
Macon, GA 31207-6437

This 12th day of February, 2010.

  
\_\_\_\_\_  
George E. Butler II