

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION

FILED
U.S. DISTRICT COURT
SAVANNAH DIV.

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SO. DIST. OF GA.

DELLA STEELE, GEORGIA BENTON,
CHARLES ROBERTS, JUDY ROBERTS,
WILBERT HURST, AND GLENN STEELE,
on behalf of themselves and all others similarly
situated; and the NORTH PORT WENTWORTH
CITIZENS COUNCIL, INC.,

Plaintiffs,

v.

CITY OF PORT WENTWORTH, GEORGIA

Defendant.

CV403-211

Case No. _____

COMPLAINT – CLASS ACTION

PRELIMINARY STATEMENT

1. This is a class action against the City of Port Wentworth (the “City” or “Defendant”) brought by its African-American residents seeking a declaratory judgment, injunctive relief, compensatory damages, attorneys’ fees, and costs for on-going violations of the Fair Housing Act, 42 U.S.C. §§ 3601, *et seq.*; the Thirteenth and Fourteenth Amendments to the U.S. Constitution and 42 U.S.C. §§ 1982, 1983; the Georgia Fair Housing Act, GA. CODE ANN. § 8-3-200, *et seq.*, and its implementing regulations, GA. COMP. R. & REGS. 186-2-.02; and Article I, § I, Paragraph II of the Constitution of the State of Georgia.

2. The City, through its discriminatory conduct, has harmed and continues to harm its African-American residents by refusing to provide them with the same basic services, such as water and sewer service, that it provides to its white communities. The City also refuses to properly maintain rainwater drainage canals and roadside ditches in its African-American

communities, while maintaining such canals and ditches in its predominately white neighborhoods. As set forth below, these actions are a part of a pattern of municipal behavior, culminating in the City's municipal planning decisions, which seeks to exclude and eliminate African-American communities from the City. The City's actions further subject its African-American residents to different terms and conditions related to housing on the basis of race.

3. The City's discriminatory and unequal conduct has harmed, and continues to harm, individual Plaintiffs and class members. Among other things, the individual Plaintiffs, the class members, and their communities have been stigmatized because they have been deprived of valuable municipal services, their property values have been substantially eroded, and they have been deprived of the full use and enjoyment of their homes and property.

4. Della Steele, Georgia Benton, Charles Roberts, Judy Roberts, Wilbert Hurst, and Glenn Steele (collectively, the "Class Representatives") and the North Port Wentworth Citizens Council, Inc., (collectively, along with the Class Representatives, referred to as "Plaintiffs"), bring this action as a class action on behalf of themselves and all others similarly situated for declaratory and injunctive relief and for monetary damages incidental thereto.

PARTIES

5. Class Representatives are African-Americans, who are current or former homeowners, property owners, and/or residents in Defendant's Berrien/Saussy Roads and Monteith neighborhoods, which are both almost exclusively African-American.

6. The North Port Wentworth Citizens Council, Inc. ("NPWCC") is a Georgia nonprofit organization that seeks to promote the general welfare of its members and the residents of the African-American communities of Port Wentworth. Among other things, NPWCC advocates for the civil rights of the African-American residents of Port Wentworth and seeks to

combat discrimination against Defendant's African-American communities in city planning, zoning, and the provision of municipal services. As a result of the City's discriminatory conduct, NPWCC's resources have been diverted and its mission has been frustrated. NPWCC is a membership organization, whose members include all of the Class Representatives, who each have standing to bring this lawsuit in their own right.

7. Defendant City of Port Wentworth is a municipal corporation in Chatham County, Georgia, incorporated under the laws of the State of Georgia. Plaintiffs have given notice to the City of Port Wentworth for the claims set forth herein as required by O.C.G.A. §36-33-5.

JURISDICTION AND VENUE

8. This Court has jurisdiction pursuant to (a) 42 U.S.C. § 3613, for violations of the Fair Housing Act, as amended, 42 U.S.C. §§ 3601, *et seq.*; (b) 42 U.S.C. § 1331(c), because this action arises under the Constitution and laws of the United States,; and (c) 28 U.S.C. § 1343(a)(3), for deprivation of Plaintiffs' constitutional rights under color of state law.

9. This Court has supplemental jurisdiction over Plaintiffs' state law claims pursuant to 28 U.S.C. § 1367(a), because this action involves claims under the Georgia Fair Housing Act, GA. CODE ANN. § 8-3-200, *et seq.*, its implementing regulations, GA. COMP. R. & REGS. 186-2-.02, and the Constitution of the State of Georgia, which are so related to the federal claims as to form part of the same case or controversy.

10. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) because (a) Defendant is a municipality located in this jurisdiction and (b) the events giving rise to this complaint occurred in this jurisdiction.

CLASS ACTION ALLEGATIONS

11. The Class Representatives bring this action as a class action pursuant to Rule 23(b)(2) and/or Rule 23(b)(3) of the Federal Rules of Civil Procedure on their own behalf and on behalf of a class consisting of all former, current, and future residents of Defendant's African-American communities who were, are, or will be subjected to Defendant's continuing discriminatory treatment ("the Class").

12. The members of the Class are so numerous that joinder of all members is impractical. *See* Fed. R. Civ. P. 23(a)(1). Although the exact number of Class members is unknown at this time and may be ascertained through appropriate discovery, Plaintiffs believe that there are at least 100 individuals who were or continue to be subjected to the discriminatory practices alleged herein. Moreover, the number of future Class members cannot be discerned with any precision.

13. There are questions of law and fact common to the Class, consistent with Rule 23(a)(2) of the Federal Rules of Civil Procedure. The common questions include whether the City's conduct as alleged herein violates the Class's rights under (a) the Fair Housing Act, as amended, 42 U.S.C. §§ 3601, *et seq.*; (b) the Thirteenth and Fourteenth Amendments to the U.S. Constitution and 42 U.S.C. §§ 1982, 1983; (c) the Georgia Fair Housing Act, GA. CODE. ANN. § 8-3-200, *et seq.*, and its implementing regulations, GA. COMP. R. & REGS. 186-2-.02; and (d) Article I, § I, Paragraph II of the Constitution of the State of Georgia.

14. The claims of the Class Representatives are typical of the claims of the other members of the Class, as specified under Rule 23(a)(3) of the Federal Rules of Civil Procedure. In addition, injuries sustained by the Class Representatives are typical of the injuries sustained by all members of the Class arising out of the City's wrongful conduct complained of herein.

15. The Class Representatives will fairly and adequately protect the interests of the members of the Class, as provided by Rule 23(a)(4) of the Federal Rules of Civil Procedure, and are represented by counsel who are qualified, experienced, and able to vigorously prosecute this action.

16. This class action is maintainable under Rule 23(b)(2) of the Federal Rules of Civil Procedure because the City has acted or refused to act on grounds generally applicable to the Class by pursuing racially discriminatory patterns or practices in the provision of municipal services that treat its African-American residents of the Berrien/Saussy Roads and Monteith neighborhoods less favorably than its white residents, and by pursuing actions that have an adverse impact on its African-American residents, thereby making appropriate final injunctive relief and corresponding declaratory relief appropriate with respect to the Class as a whole.

17. In the alternative, this class action is maintainable under Rule 23(b)(3) of the Federal Rules of Civil Procedure because questions of law and fact common to Class members predominate over questions affecting only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy. For example, one predominant question is whether, as alleged, the City is liable for pursuing racially discriminatory patterns or practices in the provision of municipal services that treat its African-American residents of the Berrien/Saussy Roads and Monteith neighborhoods less favorably than its white residents.

BACKGROUND AND FACTS

The City Discriminates Against Its African-American Communities In The Provision Of Municipal Water And Sewer Services

18. The City has been and continues to be segregated along racial lines.
19. Historically, African-American residents within Port Wentworth were concentrated in the Grange Road neighborhood until they were displaced in the mid-1990s.
20. The historically African-American Berrien/Saussy Roads and Monteith neighborhoods originally were excluded from the boundaries of Port Wentworth.
21. In 1989, the City annexed the Berrien/Saussy Roads and Monteith neighborhoods, which lie north of the Port Wentworth city center, as well as other nearby lands, which were primarily uninhabited, with the stated purpose of extending basic city services, such as water and sewerage, to the residents in those areas.
22. In contravention of that stated purpose, however, the City deliberately annexed those neighborhoods in such a manner as to avoid triggering any state law requirement that it provide those services.
23. From the time of annexation through May, 2001, the City did not offer water or sewer service to the African-American Berrien/Saussy Roads and Monteith neighborhoods.
24. By contrast, during this time the City provided water and sewer service to virtually all of its white residents. In addition, the City continued to extend its water and sewer service to similarly situated white residents, including a virtually all-white neighborhood, Pine Forest, which was located across the street from the Berrien/Saussy Roads neighborhood.
25. Further, the City began to extend its water and sewer service lines to the undeveloped and uninhabited area north of the Berrien/Saussy Roads and Monteith neighborhoods. While not providing water and sewer service to those neighborhoods, the City

ran water and sewer lines through areas immediately adjacent to the African-American neighborhoods.

26. In May, 2001, for the first time, the City made an offer to provide water and sewer services to the Berrien/Saussy Roads neighborhood.

27. The City did not make that offer on the same terms that it provided water and sewer services to its white residents. Instead, the terms the City offered those residents were significantly more onerous than those offered to white residents and insured that they would be rejected.

28. For example, as a condition of its offer, the City demanded that the African-American residents of the Berrien/Saussy Roads communities deed away sixty feet of their properties for a right-of-way for the service lines. The City's proposed right-of-way is more than twice what it has requested in virtually every other recent water and sewer extension the City has provided for white residents. Moreover, the right-of-way would have required some residents to deed away land that would damage their physical residence or come dangerously close to those residences.

29. The City further refused to consider or even respond to reasonable alternative proposals for water and sewer service made in or about June, 2001 on behalf of the Berrien/Saussy Roads neighborhood.

30. Since that time, the City has not offered or extended water and sewer service to the African-American residents of the Berrien/Saussy Roads neighborhood.

31. In or about March, 2003, the City made a similar offer to provide water service to some residents in the Monteith neighborhood. The City did not make that offer on the same terms that it provided water and sewer service to its white residents. Instead, the terms the City

offered those residents were significantly more onerous than those offered to white residents, including significantly higher tap-in fees and right-of-way requirements, which insured that the City's offer would be rejected.

32. The City further refused to consider or even respond to reasonable alternative proposals for water or sewer service made in or about March, 2003 on behalf of the African-American residents of the Monteith neighborhood.

33. Since that time, the City has not offered water and sewer service to these African-American residents.

34. The City's refusal to provide water and sewer service undermines property values in these neighborhoods. Moreover, the City's deprivation of water and sewer services undermines the long-term stability of residences in these neighborhoods, as wells run dry and septic tanks fill. Further, the City's decision to deprive the African-American residents of more convenient modern services, on the basis of their race, further alienates and stigmatizes these residents.

**The City Also Has Discriminated Against Its African-American Communities
In The Provision Of Water Run-Off And Drainage Services**

35. The City also has discriminated against its African-American residents on the basis of race in the maintenance services it provides for its water drainage systems.

36. Virtually every residential street and highway within the city limits of Port Wentworth has a roadside ditch for water drainage. In addition, a number of larger drainage canals run through residential areas in Port Wentworth, conveying water run-off away from residential property.

37. In the white residential areas of Port Wentworth, the City provides ongoing maintenance of both roadside ditches and drainage canals, performing such tasks as clearing debris and removing unwanted vegetation that block drainage.

38. In addition, in those areas, the City also responds to individual requests to clean particular portions of the drainage system.

39. In contrast, the City provides substantially inferior services to the African-American neighborhoods of Berrien/Saussy Roads and Monteith.

40. For example, the City will mow and manicure the grass embankments surrounding roadside ditches and canals in white-owned residential areas. By contrast, the City does not remove debris or vegetation in drainage canals in the Berrien/Saussy Roads neighborhood, allowing the canal to become clogged and overgrown.

41. The City's refusal properly to maintain drainage canals and ditches in the African-American communities undermines the livability and quality of these neighborhoods by allowing standing water and debris to accumulate. Not only does the City's neglect render these drainage facilities unsightly and smelly, but it attracts nuisances and pests, such as snakes and mosquitoes, to these residential areas. The City's intentional withholding of maintenance services further stigmatizes these neighborhoods, publicly marking them as neglected areas.

**The City Also Has Allowed White Residents To
Close Public Roads Used By Its African-American Residents**

42. Without following the procedures required under Georgia law for the abandoning of public roads, the City has permitted its white residents to close or otherwise restrict the use of public roads used primarily by residents of its African-American communities.

43. For example, the City has purported to abandon Coldbrook Road, a public thoroughfare used by African-American residents of the Berrien/Saussy Roads neighborhood to reach portions of their property.

44. Despite the fact that the road was public at the time the City annexed it in 1989, the City nonetheless has erected a sign designating Coldbrook Road as a private road. In addition, the City has not taken any action to prevent a white property owner from blocking the road with debris and a gate from time to time over the past five years.

45. On information and belief, the white homeowner blocked Coldbrook Road out of animus towards the African-American residents seeking to use it – animus that the City has adopted by refusing to prevent the blockage of that road.

46. Another white property owner similarly has used a gate to block Rice Hope Road, also a public road located in north Port Wentworth, which is used by African-American residents to access their properties.

47. On information and belief, the second white property owner has blocked Rice Hope Road out of animus towards the African-American residents seeking to use it – an animus that the City has adopted by refusing to prevent the blockage of that road.

48. On information and belief, the City has not tolerated or permitted any other closings of public roads within the boundaries of Port Wentworth since at least the 1989 annexation of the affected African-American neighborhoods.

49. The City's discriminatory abandonment of these roads interferes with the ability of African-American homeowners and residents to use and enjoy their property. In particular, Coldbrook Road and Rice Hope Road are the only public access to certain lands owned by these

residents and property owners. When the City permits white property owners to block the road, Class members cannot access and enjoy the very lands they own.

**The City's Discriminatory Intent Is Demonstrated By Its
On-Going Efforts To Eliminate Its African-American Residents.**

50. Over the same period in which it intentionally was denying water and sewer service to the Class, the City was engaged in a decade-long planning process for the expansion northwards of Port Wentworth.

51. This process culminated in April, 2000 when the City made public its "Master Plan for Future Development for the City of Port Wentworth" ("The Master Plan"). The Master Plan created a zoning overlay district/development plan for the area in north Port Wentworth where the City intends to locate the new Port Wentworth city center. The area within the first phase of the Master Plan zoning overlay district is primarily uninhabited – the only inhabited area is the Berrien/Saussy Roads neighborhood, the residents of which are African-Americans.

52. Rather than incorporate the existing homes of the Berrien/Saussy Roads neighborhood into the Master Plan for the area, the City instead developed a plan that would eliminate this African-American community. The April, 2000 version of the Master Plan would eliminate African-American residents' homes and a hundred-year-old African-American church to create frontage and access roads to the proposed new city center and designated other homes for elimination in order to create lagoons, wetlands, and commercial areas.

53. The Master Plan confirms both the City's intention to destroy this African-American community and the discriminatory animus behind the City's longstanding denial of equal municipal services to African-Americans in Port Wentworth.

54. With regard to all of the acts described above, the City intends to, and its conduct has the effect of, discriminating against Class members on the basis of their race by, among other

things, providing inferior municipal services or facilities, eliminating their homes through creation of the new city center, and denying them equal protection of the law.

55. The City's discriminatory actions, which continue through the present, are purposeful and intentional and taken in willful and reckless disregard for the rights of Class members.

INJURY

56. As a result of the City's discriminatory conduct and unequal services, Class members have suffered and continue to suffer actual damages, including the deprivation of valuable municipal services, erosion of their property values, and diminished ability to use and enjoy their property.

57. In addition, Class members have suffered emotional distress because of the City's conduct in that they have, among other things, been embarrassed, and humiliated by the stigmatization caused by the City's discriminatory conduct and their exclusion from full participation as residents of Port Wentworth.

58. As a result of the City's discriminatory conduct, NPWCC's resources have been diverted and its mission has been frustrated.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

The Fair Housing Act, 42 U.S.C. §§ 3601, *et seq.*

59. Plaintiffs repeat and reallege the allegations in paragraphs 1 - 58 as if set forth fully herein.

60. The City has violated the Fair Housing Act, 42 U.S.C. § 3604(b), by engaging in a pattern of discrimination against Class members on the basis of race in the provision of services

or facilities in connection with their ownership, use and enjoyment of residential property in Port Wentworth, including the provision of inferior services and the closure of certain public roads.

61. The City's actions, practices, and policies intentionally subject Plaintiffs and the Class to discriminatory, unequal and harmful conditions and services based on their race as compared to similarly situated whites in Port Wentworth. In addition, the City's actions, practices, and policies unlawfully have the effect of subjecting Plaintiffs and the Class to discriminatory, unequal and harmful conditions and services based on their race as compared to similarly situated whites in Port Wentworth.

62. As more fully described above, Plaintiffs and the Class have been and continue to be harmed as a result of the City's discriminatory conduct.

SECOND CLAIM FOR RELIEF

The Fourteenth Amendment to the U.S. Constitution and 42 U.S.C. § 1983

63. Plaintiffs repeat and reallege the allegations in paragraphs 1 - 58 as if set forth fully herein.

64. The City has violated the Fourteenth Amendment to the U.S. Constitution and 42 U.S.C. § 1983, by denying equal protection of the laws on the basis of race to Class members by engaging in a pattern of discrimination against Class members on the basis of race in the provision of services or facilities in connection with their ownership, use and enjoyment of residential property in Port Wentworth, including the provision of inferior services and the closure of certain public roads.

65. The City's actions, practices, and policies intentionally subject Plaintiffs and the Class to discriminatory, unequal, and harmful conditions and services based on their race as compared to similarly situated whites in Port Wentworth. In addition, the City's actions,

practices, and policies unlawfully have the effect of subjecting Plaintiffs and the Class to discriminatory, unequal, and harmful conditions and services based on their race as compared to similarly situated whites in Port Wentworth.

66. The City's discriminatory actions were taken under the color of state law.

67. As more fully described above, Plaintiffs and the Class have been and continue to be harmed as a result of the City's discriminatory conduct.

THIRD CLAIM FOR RELIEF

The Thirteenth Amendment to the U.S. Constitution and 42 U.S.C. § 1982

68. Plaintiffs repeat and reallege the allegations in paragraphs 1 – 58 as if set forth fully herein.

69. The City has violated the Thirteenth Amendment to the U.S. Constitution and 42 U.S.C. § 1982, by depriving Class members of the same rights as are enjoyed by its white residents to sell, hold, and otherwise enjoy their real and personal property by engaging in a pattern of discrimination against Class members on the basis of race in the provision of services or facilities in connection with their ownership, use, and enjoyment of residential property in Port Wentworth, including the provision of inferior services and the closures of certain public roads.

70. The City's actions, practices, and policies intentionally subject Plaintiffs and the Class to discriminatory, unequal, and harmful conditions and services based on their races as compared to similarly situated whites in Port Wentworth. In addition, the City's actions, practices, and policies unlawfully have the effect of subjecting Plaintiffs and the Class to discriminatory, unequal and harmful conditions and services based on their race as compared to similarly situated whites in Port Wentworth.

71. As more fully described above, Plaintiffs and the Class have been and continue to be harmed as a result of the City's discriminatory conduct.

FOURTH CLAIM FOR RELIEF
Georgia Fair Housing Act, GA. CODE ANN. § 8-3-200, *et seq.*
GA. COMP. R. & REGS. 186-2-.02

72. Plaintiffs repeat and reallege the allegations in paragraphs 1 – 58 as if set forth fully herein.

73. The City has violated the Georgia Fair Housing Act, GA. CODE ANN. § 8-3-202(a)(2), and its implementing regulations, GA. COMP. R. & REGS. 186-2-.02, by engaging in a pattern of discrimination against Class members on the basis of race in the provision of services or facilities in connection with their ownership, use and enjoyment of residential property in Port Wentworth, including the provision of inferior services and the closure of certain public roads.

74. The City's actions, practices, and policies intentionally subject Plaintiffs and the Class to discriminatory, unequal, and harmful conditions and services based on their race as compared to similarly situated whites in Port Wentworth. In addition, the City's actions, practices, and policies unlawfully have the effect of subjecting Plaintiffs and the Class to discriminatory, unequal, and harmful conditions and services based on their race as compared to similarly situated whites in Port Wentworth.

75. As more fully described above, Plaintiffs and the Class have been and continue to be harmed as a result of the City's discriminatory conduct.

FIFTH CLAIM FOR RELIEF
Article I, § I, Paragraph II of the Constitution of the State of Georgia

76. Plaintiffs repeat and reallege the allegations in paragraphs 1 – 58 as if set forth fully herein.

77. The City has violated Article I, § I, Paragraph II of the Constitution of the State of Georgia, by denying equal protection of the laws on the basis of race to Class members by engaging in a pattern of discrimination against Class members on the basis of race in the provision of services or facilities in connection with their ownership, use and enjoyment of residential property in Port Wentworth, including the provision of inferior services and the closure of certain public roads.

78. The City's actions, practices, and policies intentionally subject Plaintiffs and the Class to discriminatory, unequal, and harmful conditions and services based on their race as compared to similarly situated whites in Port Wentworth. In addition, the City's actions, practices, and policies unlawfully have the effect of subjecting Plaintiffs and the Class to discriminatory, unequal and harmful conditions and services based on their race as compared to similarly situated whites in Port Wentworth.

79. As more fully described above, Plaintiffs and the Class have been and continue to be harmed as a result of the City's discriminatory conduct.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

1. Declare that the discriminatory housing practices of the City, as set forth above, violate the Fair Housing Act, 42 U.S.C. §§ 3601, *et seq.*; the Thirteenth and Fourteenth Amendments to the U.S. Constitution and 42 U.S.C. §§ 1982, 1983; the Georgia Fair Housing Act, GA. CODE ANN. § 8-3-200, *et seq.*, and its implementing regulations, GA. COMP. R. & REGS. 186-2-.02; and Article I, § I, Paragraph II of the Constitution of the State of Georgia.

2. Enjoin the City, its agents, employees, and successors, and all other persons in active concert or participation with them, from discriminating on the basis of race against any

person in any aspect of the provision of municipal services or the enforcement of statutes related to the ownership, use and enjoyment of real property.

3. Order the City to take affirmative steps, supervised by this Court, to overcome the effects of its continuing and past discriminatory practices, including (a) providing equal municipal services to Plaintiffs and all other African-Americans subjected to the City's discriminatory practices; (b) equally enforcing the laws protecting public roads from abandonment by municipalities; and (c) ensuring that the City's zoning and planning practices do not unfairly target for destruction, oppress, or otherwise threaten its African-American communities.

4. Award monetary damages incidental to injunctive and declaratory relief to each member of the Class.

5. Award such damages as will fully compensate Plaintiffs, Class members, and NPWCC for their injuries caused by the City's discriminatory conduct.

6. Award Plaintiffs their reasonable costs, including reasonable attorneys' fees and expenses in bringing this action, together with pre-judgment and post-judgment interest as provided by law.

7. Grant such other, further and different relief as may be just and proper.

DATED: October 22, 2003

Respectfully submitted,



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**pro hac vice* admission to be sought

Counsel for Plaintiffs