

**IN THE SUPERIOR COURT OF DEKALB COUNTY
STATE OF GEORGIA**

JOSEPH GARGIULO

Case No.:

22CV1400

Plaintiff

VS

GEORGIA DEPARTMENT OF TRANSPORTATION

Defendant

SUMMONS

TO THE ABOVE NAMED DEFENDANT(S):

You are hereby summoned and required to file electronically with the Clerk of said court at <https://efilega.tylerhost.net/ofswab> and serve upon the Plaintiff's attorney, whose name, address and email is:

Ann R. Schildhammer
Taylor English Duma, LLP
1600 Parkwood Circle, Suite 200
Atlanta, Georgia 30339
aschildhammer@taylorenghish.com

An answer to the complaint which is herewith served upon you, within 30 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

This 19 day of January, 2022.

Honorable Debra DeBerry
Clerk of Superior Court
/s/ Russell Jackson

By _____
Deputy Clerk

E-Filing and E-Service

Pursuant to the Superior Court of DeKalb County's E-File Order, dated December 27, 2016, and available at www.dksuperiorclerk.com/civil, the parties must file all documents electronically through eFileGA unless expressly exempted under the Rule. All orders and notices from the Court will be electronically filed and served through eFileGA. The parties must register for an eFileGA account, link their service contact information with the case and the party represent, and take whatever steps are necessary to ensure that correspondence from eFileGA reaches the parties' inboxes. To access eFileGA, please go to <http://www.odyssevefilega.com/>

**IN THE SUPERIOR COURT OF DEKALB COUNTY
STATE OF GEORGIA**

JOSEPH GARGIULO,)	
)	
Plaintiff,)	
)	
vs.)	CIVIL ACTION
)	22CV1400
GEORGIA DEPARTMENT OF)	FILE NO. _____
TRANSPORTATION,)	
)	
Defendant.)	

COMPLAINT

Plaintiff Joseph Gargiulo (“Plaintiff”) hereby files this Complaint against the Georgia Department of Transportation (hereinafter, “Defendant” and/or “GDOT”), showing the Court as follows:

PARTIES

1. Plaintiff owns real property located within the City of Avondale Estates, DeKalb County, Georgia.
2. Specifically, Plaintiff is the fee simple owner of property located at 2711 East College Avenue, 2741 East College Avenue, and 2774 East College Avenue, all of which are in the City of Avondale Estates, DeKalb County, Georgia 30030 (all such properties are hereinafter collectively referred to as the “Property”).
3. Defendant GDOT is the organization in charge of developing and maintaining all state and federal roadways in the state of Georgia. Defendant GDOT may be served through its Commissioner, Russell R. McMurry, at his usual office address located at One Georgia Center, 600 West Peachtree N.W., Atlanta, Georgia 30308 and/or by serving Wade Damron, Director of the Risk Management Division of the Georgia Department of Administrative Services, at his usual

office address located at Georgia Department of Administrative Services, Suite 1220, West Tower, 200 Piedmont Avenue, S.W., Atlanta, Georgia 30334-9010.

JURISDICTION AND VENUE

4. This Court has jurisdiction over Defendant GDOT because, *inter alia*, GDOT transacts business in DeKalb County, Georgia, has entered into contracts in DeKalb County, Georgia, and/or has taken or is taking action that has/will cause damages to real property located in DeKalb County, Georgia.

5. Venue is proper in this Court because the acts/omissions alleged in this Complaint either occurred or are occurring in DeKalb County, Georgia.

FACTS

6. The City of Avondale Estates (the “City of Avondale”) initiated a plan (the “Plan”) in 2014 to reduce/shrink U.S. Highway 278, the five-lane highway that currently serves as the main thoroughfare connecting multiple cities throughout DeKalb County (including Stone Mountain, Avondale Estates, Decatur, East Lake, Druid Hills, and Scottdale) to the City of Atlanta.

7. U.S. Highway 278 is a part of the United States Numbered Highway System, a nationwide grid of federally recognized highways.

8. The purpose of the United States Numbered Highway System is to facilitate travel on the main interstate lines, over the shortest routes and the best roads.

9. U.S. Highway 278 is recognized by the Department of Transportation as a Highway. It is not recognized as a By-Pass, Relief Route, or Alternate Route.

10. U.S. Highway 278 is concurrently recognized by the by the State of Georgia as State Route 10. The State of Georgia does not recognize the State Route as a By-Pass, Relief Route, or Alternate Route.

11. The Plan calls for the reduction of U.S. Highway 278 from 5 lanes to 3 lanes in the area between the cross-roads known as Sams Crossing and Ashton Place (the “Road Diet Project”).

12. Defendant GDOT initially rejected the plans submitted by the City of Avondale for the Road Diet Project because the City of Avondale’s traffic studies were not feasible and, upon information and belief, in anticipation of the resulting economic damages that would unquestionably flow to property owners and businesses as a result of the Road Diet Project including, in relevant part, Joseph Gargiulo (Plaintiff in this action).

13. Upon information and belief, Defendant GDOT has now approved the City of Avondale’s Road Diet Project, to commence at North Avondale Road, which will reduce U.S. Highway 278 from 5 lanes to just 3 along the corridor where U.S. Highway 278 passes through the main part of the City of Avondale (from North Clarendon Avenue through Sams Crossing).

14. The City of Avondale already maintains/utilizes South Avondale Road, a two-way street that runs parallel with U.S. Highway 278. South Avondale Road connects the center of Avondale Estates to the Western Gateway of Avondale Estates, running exactly parallel with the Plan.

15. Upon information and belief, the City of Avondale intends to *donate* four sections of city right-of-way property to Defendant GDOT in order to effectuate and complete the Road Diet Project.

16. Upon information and belief, Defendant GDOT intends to exercise its power of eminent domain to effectuate and complete the Road Diet Project, contending that taking and/or otherwise adversely affecting private property located in the City of Avondale, as intended by the Road Diet Project, is in the best interest and good of the public.

17. The Road Diet Project will require Defendant GDOT to exercise its power of eminent domain over portions of Plaintiff’s Property.

18. The City of Avondale and Defendant GDOT contend that the Road Diet Project will benefit the City, DeKalb County, and its citizens; however, the benefits proffered by the Road Diet Project either already exist or do not outweigh the damage that will be caused to private property owners, including Plaintiff, and/or the safety of the public generally.

19. The Road Diet Project will result in fewer curb-cuts on U.S. Highway 278, such that there will be fewer opportunities for vehicles to safely turn off of U.S. Highway 278 to access residential and commercial parking lots/spaces where homes and businesses are located.

20. The Road Diet Project will result in additional medians that will further restrict access to homes and local businesses and also challenge safe entry to same from either side of U.S. Highway 278.

21. The Road Diet Project will cause substantial harm to the property values of the residences and businesses located along U.S. Highway 278.

22. The Road Diet Project will deter persons from patronizing businesses along U.S. Highway 278 as they will not have direct safe access to such businesses once the Road Diet Project is complete.

23. The Road Diet Project will decrease the lanes of traffic on U.S. Highway 278 by forty percent (40%), despite the fact that the City of Avondale's population continues to grow, both residentially and commercially.

24. The Road Diet Project will eliminate the existing turn lane on U.S. Highway 278, despite the fact that statistics demonstrate that roads with a turn lane are safer for the public.

25. The Road Diet Project will expand the width of the sidewalks along U.S. Highway 278 from 3-8 feet to 10 feet; however, the 3-8 feet wide existing sidewalks along U.S. Highway 278 are more than adequate to continue to safely handle all pedestrian foot traffic.

26. The City of Avondale's plans expressly provide that the Road Diet Project will increase emergency response times by 20 to 50% for police, fire, and other critical first responders – this is a detriment to public safety, not a benefit.

27. The Road Diet Project will deter *through traffic* access to Memorial Drive which is an important transportation and business artery for the economic health of the residences and businesses located on and near U.S. Highway 278.

28. The Road Diet Project will decrease the number of curb-cuts on East College Avenue, another primary transportation artery for businesses and residences in the City of Avondale.

29. The Road Diet Project will reduce the curb-cuts serving Plaintiff's Property from 4 to only 1.

30. In order to utilize its power of eminent domain, Defendant GDOT must demonstrate that the intended taking of private property as contemplated by the Road Diet Project serves a public purpose or is a public necessity.

31. In order to utilize its power of eminent domain, Defendant GDOT must demonstrate that the intended taking of Plaintiff's Property as contemplated by the Road Diet Project serves a public purpose of is a public necessity.

32. Any benefit arising from "economic development" does not constitute a public use under Georgia law.

33. The Road Diet Project will not serve any legitimate public purpose.

34. The Road Diet Project is not a public necessity.

35. The Road Diet Project will cause irreparable harm to Plaintiff and various other individuals and entities who/that reside or operate businesses along U.S. Highway 278.

36. The Road Diet Project will increase traffic, eliminate and/or limit safe access from U.S. Highway 278 to various and numerous residences and/or businesses, and impair the ability of first responders to meet the ongoing needs of the citizens of the City of Avondale and DeKalb County quickly and safely, including Plaintiff.

CAUSES OF ACTION

COUNT I
DECLARATORY JUDGMENT

37. Plaintiff incorporates by reference each of the foregoing paragraphs as if fully set forth herein.

38. This is a claim for declaratory relief as authorized by O.C.G.A. § 9-4-1 *et seq.*

39. An actual controversy exists between Plaintiff and Defendant GDOT with respect to the Road Diet Project, including, but not limited to, whether Defendant can demonstrate a public purpose or a public necessity as a required pre-requisite for the exercise of Defendant's power of eminent domain as contemplated by the Road Diet Project, generally.

40. An actual controversy exists between Plaintiff and Defendant GDOT as to whether Defendant can demonstrate a public purpose or a public necessity so as to enable a lawful taking of certain portions of Plaintiff's Property as contemplated by the Road Diet Project.

41. Plaintiff is entitled to declaratory relief with respect to this issue, including, but not limited to, a declaration that the Road Diet Project will not serve a public purpose or does not constitute a public necessity.

42. Plaintiff is entitled to a declaration that the harm to Plaintiff and similarly situated homeowners and businesses will outweigh any purported benefit of the Road Diet Project.

43. Plaintiff is entitled to a declaration that since no public purpose or public necessity exists to allow the exercise of eminent domain as contemplated by the Road Diet Project, there exists no legal basis for the intended taking of certain portions of Plaintiff's Property.

44. Commencing and completing the Road Diet Project will result in economic waste and unlawful damage to private property in the City of Avondale, including to Plaintiff's Property, in violation of the Georgia Constitution and other Georgia law, and Plaintiff is entitled to a declaration by this Court to that effect.

COUNT II
INJUNCTIVE RELIEF

45. Plaintiff incorporates by reference each of the foregoing paragraphs as if fully set forth herein.

46. Consistent with the declaratory relief sought in Count I, Plaintiff is entitled to injunctive relief enjoining Defendant GDOT from exercising its power of eminent domain to take any portion of Plaintiff's Property as contemplated by the Road Diet Project.

47. Plaintiff is also entitled to interlocutory and permanent injunctive relief barring Defendant GDOT from interfering with any of Plaintiff's property rights, including, but not limited to, the taking of any portion of Plaintiff's Property, and/or interfering with customer and/or invitee access to, and use of, Plaintiff's Property whether via the existing curb-cuts, parking spaces, associated access to U.S. 278, or otherwise.

COUNT III
RECOVERY OF ATTORNEYS' FEES AND EXPENSES

48. Plaintiff incorporates by reference each of the foregoing paragraphs as if fully set forth herein.

49. Plaintiff is entitled to recover his costs of litigation, including attorney's fees, pursuant to O.C.G.A. § 13-6-11, because Defendant has acted in bad faith, has been stubbornly litigious, and has caused Plaintiff unnecessary trouble and expense.

WHEREFORE, Plaintiff respectfully requests that he be awarded the following relief:

(a) A declaratory judgment in favor of Plaintiff holding that the Road Diet Project is unlawful and improper as it does not serve an adequate public purpose and/or constitute a public necessity;

(b) A declaratory judgment in favor of Plaintiff denying that Defendant GDOT has any right to take any portion of Plaintiff's Property whether under the power of eminent domain or otherwise;

(c) Interlocutory and permanent injunctive relief (as appropriate) to protect and preserve Plaintiff's rights in and to his Property, including, but not limited to, enjoining Defendant GDOT from taking any portion of Plaintiff's Property, and/or interfering with customer and/or invitee access to, and use of, Plaintiff's Property whether via the existing curb-cuts, parking spaces, associated access to U.S. 278, or otherwise;

(d) A recovery from Defendant of the reasonable and necessary attorneys' fees and expenses incurred in connection with this action, as provided by O.C.G.A. § 13-6-11 and/or other applicable law; and

(e) that Plaintiff be awarded any other relief to which he may be entitled.

Respectfully submitted this 18th day of January, 2022.

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