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For Immediate Release

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Lawsuit Filed to Prevent Removal of Graves from Mt. Olive Cemetery in Buckhead

On September 3, 2009, the law firm of Constangy, Brooks & Smith, LLC filed suit in Fulton County Superior Court on behalf of Elon Butts Osby seeking to enjoin developer Brandon Marshall from removing Mt. Olive Cemetery. Ms. Osby is the granddaughter of William Bagley and Ida Bagley and the niece of John Bagley, all of whom are buried at Mt. Olive.

Mt. Olive Cemetery is the last vestige of the African American community of Macedonia Park. In the mid 1900s, Fulton County acquired all of the homes in Macedonia Park through coercive negotiation or eminent domain and subsequently razed the homes to make way for a public park. The park was originally called Bagley Park after Ms. Osby's grandfather but the name was later changed to Frankie Allen Park. Frankie Allen is the home to Buckhead Baseball.

The lawsuit seeks an injunction against Mr. Marshall to prohibit him from proceeding with his Application for a Burial Ground Disturbance Permit from the City of Atlanta. Mr. Marshall acquired the cemetery property after Fulton County improperly assessed property taxes against the Cemetery, which is tax exempt. When the taxes were not paid, Fulton County placed a tax lien on the property and sold it at auction.

The lawsuit also seeks declaratory judgment finding that the City of Atlanta Ordinance under which Mr. Marshall seeks the permit and the corresponding state statute do not apply to public cemeteries. As written, the current laws do not distinguish between private cemeteries, which can be moved upon the satisfaction of certain criteria, and public cemeteries, which cannot be disturbed under any circumstances.

An injunctive relief hearing will take place in Courtroom 4C at the Fulton County Courthouse before the Honorable Kimberly Esmond Adams on Tuesday, September 8th at 4:00 p.m.