

Cause No. D-1-GN-15-001410

STATE OF TEXAS	§	IN THE DISTRICT COURT OF
	§	
Plaintiff	§	
	§	
v.	§	
	§	TRAVIS COUNTY, TEXAS
JOSE CUEVAS, SR., JOSE CUEVAS, JR., and MARIA TRINIDAD CUEVAS	§	
	§	
Defendants	§	53RD _____ JUDICIAL DISTRICT

STATE OF TEXAS'S ORIGINAL PETITION

The State of Texas files this original petition and application for temporary and permanent injunctions, and for cause of action would show the following:

I. DISCOVERY AND RELIEF REQUESTED

1.1 Discovery will follow a Level 2 Discovery Control Plan. Tex. R. Civ. P. 190.

1.2 This case is not subject to the restrictions of expedited discovery under Tex. R. Civ. P. 169 because (a) the State seeks non-monetary injunctive relief and (b) the State's combined monetary relief could potentially exceed \$100,000.

2. PARTIES AND SERVICE

2.1 Plaintiff, the State of Texas, is authorized to bring this suit through its Attorney General.

2.2 Defendant, Jose Cuevas, Sr., is a resident of Cameron County, Texas, and may be served at 128 East Carolyn St., South Padre Island, Texas, or wherever he may be found.

2.3 Defendant, Maria Trinidad Cuevas, is a resident of Cameron County, Texas, and may be served at 128 East Carolyn St., South Padre Island, Texas, or wherever she may be found.

2.4 Defendant, Jose Cuevas, Jr., is a resident of Cameron County, Texas, and may be served at 725 West Shore Drive, Port Isabel, Texas, or wherever he may be found.

3. JURISDICTION AND VENUE

3.1 This Court has jurisdiction over this suit. Tex. Const. art. V, § 8; Tex. Loc. Gov't Code § 232.037; and Tex. Water Code §§ 16.353, 16.354.

3.2 Venue is proper in Travis County. Tex. Loc. Gov't Code § 232.035(f) and Tex. Water Code § 16.3545(3).

4. AUTHORITY

4.1 This suit is brought under Texas Local Government Code, Chapter 232, Subchapter B to enforce state-law requirements for residential developments in the unincorporated areas of counties near the Texas-Mexico border.

4.2 Subchapter B applies to land that is subdivided into two or more lots that are intended primarily for residential use in the jurisdiction of a county located within 50 miles of an international border. Tex. Loc. Gov't Code § 232.022(a)(1) and (b).

4.3 Land is considered to be in the jurisdiction of a county if the land is located in the county and outside the corporate limits of municipalities. Tex. Loc. Gov't

Code § 232.022(c). A lot is presumed to be intended for residential use if the lot is five acres or less. Tex. Loc. Gov't Code § 232.022(b).

4.4 A “subdivider” is “an individual, firm, corporation, or other legal entity that directly or indirectly subdivides land into lots for sale or lease as part of a common promotional plan in the ordinary course of business.” Tex. Loc. Gov't Code § 232.021(12).

4.5 Subchapter B requires subdividers to obtain approval of a subdivision plat from the county commissioners' court for any division of residential property into two or more lots. Tex. Loc. Gov't Code §§ 232.023(a) and 232.031(a). The plat required under Subchapter B ensures that subdivided property is served with proper drinking-water and waste-water services, electric utility distribution, roadways, and drainage. Tex. Loc. Gov't Code § 232.023(b).

4.6 Subchapter B incorporates specific platting requirements from the Model Subdivision Rules promulgated by the Texas Water Development Board. Tex. Loc. Gov't Code § 232.023(b)(7). Each Subchapter B county must adopt the Board's Model Rules, as well as general subdivision rules. Tex. Loc. Gov't Code § 232.030(a) and (c).

4.7 Cameron County's subdivision rules impose a limit on the maximum number of dwellings within a mobile home subdivision served by a sanitary sewer. Each lot within such subdivision must be at least 4,000 square feet. Cameron County Subdivision Rules, Chapter 5, § 1.5(C)(6)(b). Cameron County rules further provide that

all roads within a subdivision must be paved. Cameron County Subdivision Rules, Chapter 5, § 1.4(A)(8).

4.8 A subdivider may not sell or lease land in a subdivision first created after July 1, 1995, unless the county commissioners' court has approved a plat of the subdivision. Tex. Loc. Gov't Code § 232.031(a).

4.9 The Attorney General is authorized to file a civil suit for civil penalties and injunctive relief to enjoin a violation of Subchapter B. Tex. Water Code § 16.354(3); Tex. Loc. Gov't Code § 232.037(a)(1)-(3).

5. BACKGROUND

5.1 The property at issue in this lawsuit includes lots 1, 2, 3, 4, 5, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, and 30 in Block 14 of the Amended Rutherford-Harding Addition to the City of Port Isabel, Cameron County, Texas ("Property"). The Property is located between Monroe Avenue and Madison Street on State Highway 100 in an unincorporated area of Cameron County known as Laguna Heights. The Property is more fully described in the warranty deeds attached to this petition as Exhibits 1 and 2, which are incorporated herein by reference.

5.2 Cameron County is located within 50 miles of United States border with Mexico.

5.3 On November 20, 1990, Jose Cuevas, Sr., and Maria Trinidad Cuevas acquired lots on the east half of Block 14, including lots 15, 16, 17, 18, 19, 20, 21, 22, and

23 (“East Property”). On September 10, 1993, Jose Cuevas, Sr., Maria Trinidad Cuevas, and Jose Cuevas, Jr., acquired lots on the west half of the Property, including lots 1, 2, 3, 4, 5, 24, 25, 26, 27, 28, 29, and 30 (“West Property”).

5.4 The twelve lots that comprise the West Property are combined approximately 58,125 square feet, or just over one acre. The nine lots that comprise the East Property are combined approximately 28,125 square feet, which is approximately two thirds of an acre.

5.5 Historical aerial photographs of the Property maintained by Cameron County show that Defendants subdivided the Property as a mobile home community, beginning on or before June 9, 2006. Defendants created new lots at the Property by placing mobile homes across the existing platted lot lines, and by adding mobile homes in excess of the number of recorded lots for the Property. Defendants have re-subdivided the Property multiple times since June 9, 2006, by adding, removing, and/or reconfiguring the layout of mobile homes at the Property. The most recent aerial photograph maintained by Cameron County, reproduced below, shows the Property as it appeared on February 19, 2013, with the platted lot lines indicated in red.



5.6 Defendants have not obtained approval of a residential subdivision plat for the Property, and the Property does not meet Cameron County’s minimum subdivision standards. Specifically, the West Property contains more than twice the number of mobile homes allowed under Cameron County’s minimum lot size requirement. Cameron County documented a release of sewage onto the ground from the inadequate sewage disposal system at the subdivision, and the subdivision also lacks paved roads.

5.7 Defendants' subdividing and crowding the Property with residential units without platting frustrates the orderly development of residential subdivisions, and creates a public health risk.

5.8 On October 28, 2013, the Cameron County Department of Health investigated the Property in response to a complaint of sewage discharges from the mobile homes at the Property. Cameron County inspectors documented a discharge of sewage onto the ground at the Property and required Defendants to install a new sewer collection system at the Property.

5.9 On September 10, 2014, an investigator for the Texas Attorney General inspected the Property and found 33 mobile home units at the West Property and five mobile homes at the East Property. The investigator also observed a dirt road running throughout the subdivision.

5.10 The investigator interviewed six residents at the Property and determined that each was using their mobile home as their residence. The residents lease the mobile home and/or mobile home lots from Defendants under month-to-month, oral leases.

5.11 On March 11, 2015, the investigator for the Texas Attorney General returned to the Property and found 32 mobile home units at the West Property and five mobile home units on the East Property.

6. VIOLATIONS OF SUBCHAPTER B

6.1 The Property is subject to the requirements of Subchapter B because it is located outside of any municipality in Cameron County, Texas.

6.2 The lots within the Property are presumed to be used for residential purposes because the lots Defendants created are each less than one acre in size.

Claim 1: Jose Cuevas, Sr., Maria Trinidad Cuevas, and Jose Cuevas, Jr., Subdivided the West Property in Violation of Subchapter B.

6.3 Jose Cuevas, Sr., Maria Trinidad Cuevas, and Jose Cuevas, Jr., own the West Property. The recorded plat for the West Property contains twelve lots.

6.4 The aerial photographs maintained by Cameron County show that Defendants created a subdivision of the West Property on or before June 9, 2006, by changing the configuration and number of mobile home lots. On September 10, 2014, and March 11, 2015, an investigator for the Texas Attorney General inspected the West Property and found over 30 mobile homes. The investigator also found that Defendants are leasing these mobile homes to tenants. Neither Jose Cuevas, Sr., Maria Trinidad Cuevas, nor Jose Cuevas, Jr., have obtained approval from Cameron County for a plat of their subdivision of the West Property.

6.5 Therefore, from at least June 9, 2006, until March 11, 2015, Jose Cuevas, Sr., Maria Trinidad Cuevas, and Jose Cuevas, Jr., have been in continuing violation of Tex. Loc. Gov't Code §§ 232.023(a) and 232.031(a), for a total of 3,198 days, and every additional day that lots are leased without an approved plat.

Claim 2: Jose Cuevas, Sr., and Maria Trinidad Cuevas Subdivided the East Property in Violation of Subchapter B.

6.6 Jose Cuevas, Sr., and Maria Trinidad Cuevas own the East Property. The recorded plat for the East Property contains nine lots.

6.7 The aerial photographs maintained by Cameron County show that Defendants created a subdivision of the East Property on or before June 9, 2006, by changing the configuration and number of mobile home lots. On September 10, 2014, and March 11, 2015, an investigator for the Texas Attorney General inspected the East Property and found five mobile homes. The investigator also found that Defendants are leasing these mobile homes to tenants. Neither Jose Cuevas, Sr., nor Maria Trinidad Cuevas have obtained approval from Cameron County for a plat of their subdivision of the East Property.

6.8 Therefore, from at least June 9, 2006, until March 11, 2015, Jose Cuevas, Sr., and Maria Trinidad Cuevas have been in continuing violation of Tex. Loc. Gov't Code §§ 232.023(a) and 232.031(a), for a total of 3,198 days, and every additional day that lots are leased without an approved plat.

7. INJUNCTIVE RELIEF

7.1 The Attorney General may take any action necessary in a court of competent jurisdiction to enjoin the violation or threatened violation of a requirement of Subchapter B or the Model Subdivision Rules adopted by a county. Tex. Loc. Gov't Code § 232.037(a)(1)-(2).

7.2 By failing to obtain plat approval for the subdivisions within the Property, Defendants have been in continuing violation of Subchapter B, and unless restrained by the Court, they will continue to violate Subchapter B. Therefore, the State requests the Court to grant temporary and permanent injunctive relief against Defendants as follows:

7.3 Immediately upon the Effective Date of this injunction, Jose Cuevas, Sr., Jose Cuevas, Jr., and Maria Trinidad Cuevas must not execute any leases for mobile home units, mobile home lots, or any other type of sale or lease in the Property until the Commissioners' Court of Cameron County has approved a plat for the subdivision within the Property.

7.4 Within one hundred and eighty (180) days after the Effective Date of this injunction, Jose Cuevas, Sr., Jose Cuevas, Jr., and Maria Trinidad Cuevas must either remove all mobile homes from the Property or obtain an approved plat from the Commissioners' Court of Cameron County for the their subdivision within the Property.

7.5 The State requests additional injunctive relief as warranted by the facts.

8. CIVIL PENALTIES

8.1 A subdivider who violates Subchapter B is liable for a civil penalty of not less than \$500 or more than \$1,000 for each day of a continuing violation. Tex. Loc. Gov't Code § 232.035(c).

8.2 The State requests judgment for civil penalties against Jose Cuevas, Sr., Jose Cuevas, Jr., and Maria Trinidad Cuevas within the statutory range for each day of violation alleged in section 6 above.

9. ATTORNEY'S FEES AND COSTS

9.1 In a suit brought by the State to enforce Subchapter B, the State is entitled to recover its attorney's fees, litigation costs, and investigation costs. Tex. Loc. Gov't Code § 232.037(a)(3); Tex. Gov't Code § 402.006(c).

9.2 The State requests recovery of its attorney's fees, litigation costs, and investigation costs expended in the prosecution of this case.

PRAYER

ACCORDINGLY, Plaintiff, the State of Texas, prays for judgment against Defendants as follows:

1. That Defendants show cause why a temporary injunction order should not be issued, as requested above;
2. That, upon trial, the Court grant a permanent injunction against Defendants, as requested above;
3. That the Court grant judgment for appropriate civil penalties within the range allowed by law against Defendants;
4. That the Court grant judgment against Defendants for the State's attorney's fees, investigative costs, and all costs of court;
5. That the State be awarded post-judgment interest at the maximum rate allowed by law; and

6. That the State be awarded all such other and further relief, at law and in equity, to which it may show itself justly entitled.

Respectfully submitted,

KEN PAXTON
Attorney General of Texas

CHARLES E. ROY
First Assistant Attorney General

JAMES E. DAVIS
Deputy Attorney General for Civil Litigation

JON NIERMANN
Chief, Environmental Protection Division

A handwritten signature in black ink, appearing to read 'Mark A. Steinbach', is written over a horizontal line.

MARK A. STEINBACH
Assistant Attorney General
State Bar No. 24056653

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Email: mark.steinbach@texasattorneygeneral.gov

COUNSEL FOR THE STATE OF TEXAS

AFFIDAVIT OF LINDA STOCKWELL

STATE OF TEXAS }
}
COUNTY OF CAMERON }

BEFORE ME, the undersigned authority, on this day personally appeared Linda Stockwell, a person whose identity is known to me. After I administer an oath to her, upon her oath, she said:

“1. My name is Linda Stockwell. I am over the age of eighteen years, of sound mind, and capable of making this affidavit. This affidavit is made on my personal knowledge and public records. The statements within it are true and correct.

2. I am employed with the Texas Attorney General as an investigator. My job responsibilities include investigating subdivisions for compliance with platting requirements.

3. In this capacity, I investigated a subdivision located in Block 14 of the Amended Rutherford-Harding Addition to the City of Port Isabel, Cameron County, Texas (“Property”). The Property includes lots 1, 2, 3, 4, 5, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, and 30. The Property is located between Monroe Avenue and Madison Street on State Highway 100 in an unincorporated area of Cameron County known as Laguna Heights. Cameron County is located within 50 miles of United States border with Mexico.

4. Based on my review of public records, I determined that on November 20, 1990, Jose Cuevas, Sr., and Maria Trinidad Cuevas acquired lots on the east half of Block 14, including lots 15, 16, 17, 18, 19, 20, 21, 22, and 23 (“East Property”). On September 10, 1993, Jose Cuevas, Sr., Maria Trinidad Cuevas, and Jose Cuevas, Jr., acquired lots on the west half of the Property, including lots 1, 2, 3, 4, 5, 24, 25, 26, 27, 28, 29, and 30 (“West Property”).

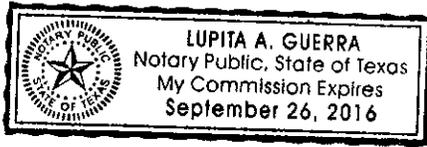
5. On September 10, 2014, I inspected the Property and found 33 mobile home units at the West Property and five mobile homes at the East Property. I also observed a dirt road running throughout the subdivision. I interviewed six residents at the Property and determined that each was using their mobile home as their residence. The residents lease the mobile home and/or mobile home lots from the Cuevas family under month-to-month, oral leases.

6. On March 11, 2015, I returned to the Property and found 32 mobile home units at the West Property and five mobile home units on the East Property. Based on my review of public records maintained by Cameron County, I determined that neither Jose Cuevas, Sr., Maria Trinidad Cuevas, nor Jose Cuevas, Jr., have obtained approval of a residential subdivision plat for the Property."

Linda V. Stockwell

Linda Stockwell

SWORN TO and SUBSCRIBED before me by Linda Stockwell on the 7th of April, 2015.



Maura

Notary Public in and for the State of Texas

CIVIL CASE INFORMATION SHEET

CAUSE NUMBER (FOR CLERK USE ONLY): _____ COURT (FOR CLERK USE ONLY): _____

STYLED State of Texas v. Jose Cuevas, Sr. Jose Cuevas, Jr., and Maria Trinidad Cuevas

(e.g., John Smith v. All American Insurance Co; In re Mary Ann Jones; In the Matter of the Estate of George Jackson)

A civil case information sheet must be completed and submitted when an original petition or application is filed to initiate a new civil, family law, probate, or mental health case or when a post-judgment petition for modification or motion for enforcement is filed in a family law case. The information should be the best available at the time of filing.

1. Contact information for person completing case information sheet:	Names of parties in case:	Person or entity completing sheet is:
Name: <u>Mark Steinbach</u> Email: <u>mark.steinbach@texasattorneygeneral.gov</u> Address: P.O. Box 12548 Telephone: <u>512-463-2012</u> City/State/Zip: Austin, TX 78711 Fax: <u>512-320-0911</u> Signature: <u>/s/</u> State Bar No: <u>24056653</u>	Plaintiff(s)/Petitioner(s): <u>State of Texas</u> Defendant(s)/Respondent(s): <u>Jose Cuevas, Sr., Jose Cuevas, Jr., and Maria Trinidad Cuevas</u>	<input checked="" type="checkbox"/> Attorney for Plaintiff/Petitioner <input type="checkbox"/> Pro Se Plaintiff/Petitioner <input type="checkbox"/> Title IV-D Agency <input type="checkbox"/> Other: _____ Additional Parties in Child Support Case: Custodial Parent: _____ Non-Custodial Parent: _____ Presumed Father: _____
<small>[Attach additional page as necessary to list all parties]</small>		

2. Indicate case type, or identify the most important issue in the case (select only 1):			
Civil		Family Law	
Contract	Injury or Damage	Real Property	Marriage Relationship
Debt/Contract <input type="checkbox"/> Consumer/DTPA <input type="checkbox"/> Debt/Contract <input type="checkbox"/> Fraud/Misrepresentation <input type="checkbox"/> Other Debt/Contract: _____ Foreclosure <input type="checkbox"/> Home Equity—Expedited <input type="checkbox"/> Other Foreclosure <input type="checkbox"/> Franchise <input type="checkbox"/> Insurance <input type="checkbox"/> Landlord/Tenant <input type="checkbox"/> Non-Competition <input type="checkbox"/> Partnership <input type="checkbox"/> Other Contract: _____	<input type="checkbox"/> Assault/Battery <input type="checkbox"/> Construction <input type="checkbox"/> Defamation Malpractice <input type="checkbox"/> Accounting <input type="checkbox"/> Legal <input type="checkbox"/> Medical <input type="checkbox"/> Other Professional Liability: _____ <input type="checkbox"/> Motor Vehicle Accident <input type="checkbox"/> Premises Product Liability <input type="checkbox"/> Asbestos/Silica <input type="checkbox"/> Other Product Liability List Product: _____ <input type="checkbox"/> Other Injury or Damage: _____	<input type="checkbox"/> Eminent Domain/Condemnation <input type="checkbox"/> Partition <input type="checkbox"/> Quiet Title <input type="checkbox"/> Trespass to Try Title <input type="checkbox"/> Other Property: _____ Related to Criminal Matters <input type="checkbox"/> Expunction <input type="checkbox"/> Judgment Nisi <input type="checkbox"/> Non-Disclosure <input type="checkbox"/> Seizure/Forfeiture <input type="checkbox"/> Writ of Habeas Corpus—Pre-indictment <input type="checkbox"/> Other: _____	<input type="checkbox"/> Annulment <input type="checkbox"/> Declare Marriage Void Divorce <input type="checkbox"/> With Children <input type="checkbox"/> No Children Other Family Law <input type="checkbox"/> Enforce Foreign Judgment <input type="checkbox"/> Habeas Corpus <input type="checkbox"/> Name Change <input type="checkbox"/> Protective Order <input type="checkbox"/> Removal of Disabilities of Minority <input type="checkbox"/> Other: _____
		Title IV-D	Parent-Child Relationship
		<input type="checkbox"/> Enforcement/Modification <input type="checkbox"/> Paternity <input type="checkbox"/> Reciprocals (UIFSA) <input type="checkbox"/> Support Order	<input type="checkbox"/> Adoption/Adoption with Termination <input type="checkbox"/> Child Protection <input type="checkbox"/> Child Support <input type="checkbox"/> Custody or Visitation <input type="checkbox"/> Gestational Parenting <input type="checkbox"/> Grandparent Access <input type="checkbox"/> Parentage/Paternity <input type="checkbox"/> Termination of Parental Rights <input type="checkbox"/> Other Parent-Child: _____
Employment	Other Civil		
<input type="checkbox"/> Discrimination <input type="checkbox"/> Retaliation <input type="checkbox"/> Termination <input type="checkbox"/> Workers' Compensation <input type="checkbox"/> Other Employment: _____	<input type="checkbox"/> Administrative Appeal <input type="checkbox"/> Antitrust/Unfair Competition <input checked="" type="checkbox"/> Code Violations <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Intellectual Property	<input type="checkbox"/> Lawyer Discipline <input type="checkbox"/> Perpetuate Testimony <input type="checkbox"/> Securities/Stock <input type="checkbox"/> Tortious Interference <input type="checkbox"/> Other: _____	
Tax	Probate & Mental Health		
<input type="checkbox"/> Tax Appraisal <input type="checkbox"/> Tax Delinquency <input type="checkbox"/> Other Tax	Probate/Wills/Intestate Administration <input type="checkbox"/> Dependent Administration <input type="checkbox"/> Independent Administration <input type="checkbox"/> Other Estate Proceedings	<input type="checkbox"/> Guardianship—Adult <input type="checkbox"/> Guardianship—Minor <input type="checkbox"/> Mental Health <input type="checkbox"/> Other: _____	

3. Indicate procedure or remedy, if applicable (may select more than 1):		
<input type="checkbox"/> Appeal from Municipal or Justice Court <input type="checkbox"/> Arbitration-related <input type="checkbox"/> Attachment <input type="checkbox"/> Bill of Review <input type="checkbox"/> Certiorari <input type="checkbox"/> Class Action	<input type="checkbox"/> Declaratory Judgment <input type="checkbox"/> Garnishment <input type="checkbox"/> Interpleader <input type="checkbox"/> License <input type="checkbox"/> Mandamus <input type="checkbox"/> Post-judgment	<input type="checkbox"/> Prejudgment Remedy <input type="checkbox"/> Protective Order <input type="checkbox"/> Receiver <input type="checkbox"/> Sequestration <input checked="" type="checkbox"/> Temporary Restraining Order/Injunction <input type="checkbox"/> Turnover

4. Indicate damages sought (do not select if it is a family law case):
<input type="checkbox"/> Less than \$100,000, including damages of any kind, penalties, costs, expenses, pre-judgment interest, and attorney fees <input type="checkbox"/> Less than \$100,000 and non-monetary relief <input type="checkbox"/> Over \$100,000 but not more than \$200,000 <input type="checkbox"/> Over \$200,000 but not more than \$1,000,000 <input type="checkbox"/> Over \$1,000,000