

NO. D-1-GV-06-000030

STATE OF TEXAS,	§	THE DISTRICT COURT OF
Plaintiff,	§	
	§	
V.	§	TRAVIS COUNTY, TEXAS
	§	
ERIC SOLIS,	§	
Defendant.	§	250th JUDICIAL DISTRICT

PLAINTIFF'S FIRST AMENDED ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

The State of Texas, by and through its Attorney General, Greg Abbott, on behalf of the people of Texas, files this first amended original petition, and for cause of action would show the following:

Discovery Control Plan

1.1. Pursuant to TEX. R. CIV. P. 190, Plaintiff intends that discovery in this case be conducted under Level 2.

Parties and Service

2.1. Plaintiff, State of Texas, is authorized to bring this suit through its Attorney General pursuant to LOCAL GOV'T CODE § 232.037.

2.2. Defendant Eric Solis is a resident of Cameron County, and has answered herein.

Jurisdiction and Venue

3.1. This Court has jurisdiction over this suit pursuant to TEX. CONST. art. V, § 8, and LOCAL GOV'T CODE § 232.037.

3.2. Venue is proper in Travis County pursuant to LOCAL GOV'T CODE § 232.035(f).

Authority

4.1. This suit seeks to enjoin certain unlawful acts of the Defendant, and seeks the assessment of civil penalties, attorney's fees, costs of investigation, and court costs.

4.2. No filing fee or other security for costs is required of the State. CIV. PRAC. & REM. CODE § 6.001.

4.3. LOCAL GOV'T CODE, Chapter 232, Subchapter B ("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. 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. LOCAL GOV'T CODE § 232.022.

4.4. Cameron County is located within 50 miles of the international border dividing the United States and Mexico.

4.5. LOCAL GOV'T CODE § 232.023(a) provides that a subdivider of rural land in a Subchapter B county must have a plat of the subdivision prepared. A subdivision of a tract includes a subdivision of real property by any method of conveyance, including a contract for deed, oral contract, contract of sale, or other type of executory contract, regardless of whether the subdivision is made by using a metes and bounds description.

4.6. LOCAL GOV'T CODE § 232.037(a) provides that the Attorney General may take any action necessary in a court of competent jurisdiction to:

(1) enjoin the violation or threatened violation of the model rules adopted under Section 16.343, Water Code;

(2) enjoin the violation or threatened violation of a requirement of this subchapter or a rule adopted by the commissioners court under this subchapter;

(3) recover civil or criminal penalties, attorney's fees, litigation costs, and investigation costs; and

(4) require platting or replatting under Section 232.040.

Background on Toribio Estates Subdivision

5.1. The residential subdivision that is the subject of this lawsuit is identified as Toribio Estates. It is located in Cameron County on the northwest corner of the intersection of Toribio Road and Parker Road. It is a subdivision containing the south 5.0 acres of land out of the east 19.63 acres of Block 90 of the Minnesota-Texas Land Irrigation Company Subdivision in the La Feria Grant, Cameron County, Texas, according to the map or plat thereof recorded in Volume 2, Page 38, of the map records of Cameron County, Texas.

5.2. Defendant has subdivided the subject land into four lots, all of which are approximately one acre in size and are intended primarily for residential use. Defendant has applied, but has failed to obtain plat approval for Toribio Estates from the Cameron County Commissioners Court because of deficiencies in his plat application.

5.3. As set out below, Defendant Eric Solis violated Subchapter B of Chapter 232 of the LOCAL GOV'T CODE.

Violation 1 Sale of Lots in a Subdivision Not Legally Platted

6.1. LOCAL GOV'T CODE § 232.035(a) contains the following prohibition:

A subdivider or an agent of a subdivider may not cause, suffer, allow, or permit a lot to be sold in a subdivision if the subdivision has not been platted as required by this subchapter.

6.2. LOCAL GOV'T CODE § 232.031(a) contains the following prohibition:

A subdivider may not sell or lease land in a subdivision first platted or replatted after July 1, 1995, unless the subdivision plat is approved by the commissioners court in accordance with Section 232.024.

6.3. Defendant sold three (3) lots in Toribio Estates prior to approval of the subdivision plat by the Cameron County Commissioners Court, as follows:

Lot 1. Defendant sold Lot 1 to Americo and Paula Torres on or about September 6, 2004, for a purchase price of \$18,000.00, pursuant to a Sale and Purchase Contract signed by the Defendant and the purchasers.

Lot 2. Defendant sold Lot 2 to Artemio Ramirez on or about January 8, 2005, for a purchase price of \$20,000.00, pursuant to a Sale and Purchase Contract signed by the Defendant and the purchasers.

Lot 3. Defendant sold Lot 3 to Romero Rodriguez, Jr. sometime in 2004, for a purchase price of \$29,000.00, pursuant to a Sale and Purchase Contract signed by the Defendant and the purchasers.

6.4. At the time of these lot sales, Toribio Estates was not legally platted as required by LOCAL GOV'T CODE, Chapter 232, Subchapter B. Prior to the sale of each of these lots, Defendant had not obtained subdivision plat approval from Cameron County in violation of LOCAL GOV'T CODE §§ 232.035(a) and 232.031(a).

Violation 2
Failure to Install or Bond Sewer Service Facilities

7.1. LOCAL GOV'T CODE § 232.027 contains the following requirements:

(a) Unless a person has completed the installation of all water and sewer service facilities required by this subchapter on the date that person applies for final plat approval of a plat under Section 232.024, the commissioners court shall

require the subdivider of the tract to execute and maintain in effect a bond or, in the alternative, a person may make a cash deposit in an amount the commissioners court determines will ensure compliance with this subchapter. A person may not meet the requirements of this subsection through the use of a letter of credit unless that letter of credit is irrevocable and issued by an institution guaranteed by the FDIC. The subdivider must comply with the requirement before subdividing the tract.

(b) The bond must be conditioned on the construction or installation of water and sewer service facilities that will be in compliance with the model rules adopted under Section 16.343, Water Code.

7.2. Sections 3.4 and 3.5 of the Model Rules (codified at 31 Texas Administrative Code §§ 364.54 and 364.55) set out detailed requirements for financial guarantees applicable to water and wastewater facilities.

7.3. LOCAL GOV'T CODE § 232.040(b) provides that a lot in a subdivision may not be sold if the lot lacks water and sewer services required by Subchapter B.

7.4. Prior to the sale of lots described above, Defendant failed to install sewer service facilities in Toribio Estates, and failed to comply with the legal requirements of LOCAL GOV'T CODE § 232.027, pertaining to the posting of a bond or other financial guarantee to ensure installation of sewer service facilities. Defendant's sale of lots in Toribio Estates without complying with the "build it or bond it" sewer service requirements violated § 232.027 and § 232.040(b).

Violation 3 Failure to Install or Bond Water Service Facilities

8.1. LOCAL GOV'T CODE § 232.027 requires that water service facilities serving each lot be installed at the time of final plat approval, or in the alternative, a bond or other approved financial guarantee be posted to ensure the installation of water service facilities.

8.2. Prior to the sale of lots described above, Defendant failed to install water service facilities in Toribio Estates, and failed to comply with the legal requirements of LOCAL GOV'T CODE § 232.027, pertaining to the posting of a bond or other financial guarantee to ensure water service to each lot.

8.3. Defendant's sale of lots in Toribio Estates without complying with the "build it or bond it" water service requirements violated § 232.027 and § 232.040(b).

Injunctive Relief

9.1 The State requests that, upon final trial on the merits, Defendant be enjoined from violating of the law and ordered to bring Toribio Estates into compliance with the law, as follows:

Defendant Eric Solis, his officers, agents, employees, and those in active concert or participation with him, be enjoined from engaging in acts and practices contrary to the requirements of Texas Local Government Code, Chapter 232, Subchapter B, as that statute is presently worded or as it may be amended, in the subdivision, development, marketing, advertising and sale of land for residential purposes.

Defendant Eric Solis be ordered to proceed promptly to correct deficiencies with the Toribio Estates Subdivision plat application that have been identified by the Cameron County Engineering Department. By no later than thirty (30) days from the date of the Court's injunction, Defendant shall submit to the Cameron County Engineering Department the requested information, including financial assurance for unconstructed water and wastewater facilities. If, after submission of the information, the Cameron County Engineering Department informs the Defendant of continued deficiencies, the Defendant shall rectify the deficiencies with due diligence and to the reasonable satisfaction of the Cameron County Engineering Department.

That it be further ordered by the Court that if the Cameron County Commissioners Court finds that the financial assurance for unconstructed water and sewer facilities is inadequate to cover the estimated cost, the Defendant shall within ten (10) days of notification from the County file new financial assurance in the amount determined by the Commissioners Court.

Civil Penalties

10.1. LOCAL GOV'T CODE § 232.035(d) provides that a subdivider or agent who sells a lot in a subdivision that has not been legally platted “is subject to a civil penalty of not less than \$10,000 or more than \$15,000 for each lot conveyed.” The State hereby requests that this Court assess a civil penalty within the statutory range against Defendant for each of the three (3) unlawful lot sales described in this petition.

Attorney's Fees and Costs

11.1. The State requests recovery of its attorney's fees expended in the prosecution of this case from Defendant as authorized by LOCAL GOV'T CODE § 232.035(c), (d), and § 232.037(a)(3), and GOVT. CODE § 402.006(c).

11.2. The State requests recovery of its costs of investigation and court costs expended in the prosecution of this case from Defendant as authorized by LOCAL GOV'T CODE § 232.035(c), (d), and § 232.037(a)(3), and GOVT. CODE § 402.006(c).

Prayer for Relief

ACCORDINGLY, the State respectfully requests:

1. That permanent injunctive relief be granted as requested in this petition;
2. That civil penalties be assessed as requested in this petition;
3. That the State recover its attorney's fees, costs of investigation, and court costs in this case; and
4. That the State be granted all other relief to which it is entitled.

Respectfully submitted,

GREG ABBOTT
Attorney General of Texas

BARRY R. McBEE
First Assistant Attorney General

EDWARD D. BURBACH
Deputy Attorney General for Litigation

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ATTORNEYS FOR PLAINTIFF
STATE OF TEXAS

CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of May, 2006, the foregoing instrument was served on Defendant's attorney of record, Richard S. Hoffman, 500 West 16th Street, Suite 103, Austin, Texas 78701, by hand-delivery.

DAVID PREISTER
Assistant Attorney General

AFFIDAVIT

STATE OF TEXAS }
 }
COUNTY OF CAMERON }

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

“My name is Paolina Vega. 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 the statements herein are true and correct.

I am Subdivision Coordinator for the Cameron County Department of Transportation, Engineering Division. My duties include reviewing subdivision plat applications and investigating compliance with state and county residential subdivision requirements.

I have carefully reviewed the factual allegations in Sections 5.1 through 8.3 of the attached *Plaintiff’s First Amended Original Petition*. The factual allegations contained therein are true and correct.”

PAOLINA VEGA

SWORN TO and SUBSCRIBED before me by Paolina Vega on the _____ day of May, 2006.

Notary Public in and for the State of Texas

My commission expires: _____