

CAUSE NO. _____

STATE OF TEXAS,
Plaintiff,

v.

PHILLIP C. AND JEANINE
WATROUS, INDIVIDUALLY,
AND AS TRUSTEES UNDER
THE WATROUS FAMILY
LIVING TRUST,
Defendants.

§
§
§
§
§
§
§
§
§
§
§

IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

_____ JUDICIAL DISTRICT

**PLAINTIFF'S ORIGINAL PETITION
AND APPLICATION FOR PERMANENT INJUNCTION**

TO THE HONORABLE JUDGE OF THIS COURT:

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

1. DISCOVERY CONTROL PLAN

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

2. PARTIES AND SERVICE

2.1 Plaintiff, the State of Texas (the State), is authorized to bring this suit through its Attorney General pursuant to Texas Local Gov't Code § 232.037 and Texas Water Code §§ 16.353, 16.354.

2.2 Defendants, Phillip C. Watrous and Jeanine Watrous, individually, and as trustees under the Watrous family living trust, may be served with process at 14 Mission Trace, New Braunfels, Texas 78130-6620, or wherever they 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 and 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 seeks to enjoin certain unlawful acts of the Defendants 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. Tex. Civ. Prac. & Rem. Code § 6.001.

4.3 Texas Local Government 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. Tex. Local Gov't Code § 232.022(a), (b), and (c).

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

4.5 Texas Local Government Code Section 232.023(a) requires that a subdivider of Subchapter B land must have a plat of the subdivision prepared. A subdivider is "an individual, 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. Local Gov't Code § 232.021(12).

4.6 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. Tex. Local Gov't Code § 232.023(a).

4.7 A subdivider or 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 Subchapter B. Tex. Loc. Gov't Code § 232.035(a).

4.8 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 county commissioners court in accordance with Subchapter B. Tex. Loc. Gov't Code § 232.031(a).

4.9 Unless a person has completed the installation of all water and sewer service facilities required by Subchapter B on the date that person applies for final approval of a plat filed under Subchapter B, 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. Tex. Loc. Gov't Code § 232.027. The bond must be conditioned on the construction or installation of water and sewer service facilities that will be in compliance with the Model Subdivision Rules. *Id.*

4.10 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 a rule adopted by the commissioners court under Subchapter B; recover civil or criminal penalties, attorney's fees, litigation costs, and investigation costs; and require platting or replatting under Subchapter B. Tex. Loc. Gov't Code § 232.037(a).

5. BACKGROUND

5.1 The land that is the subject of this lawsuit is a residential subdivision located at 47433 State Hwy 100, Laguna Heights, Texas in Cameron County which is located within 50 miles of the border dividing the United States and Mexico. The land is outside the corporate limits of any municipality.

5.2 The land is described as Lots Ten (10) and Eleven (11), Block One (1) Rutherford-Harding Addition to the City of Port Isabel in Cameron County, Texas, according to map or plat thereof duly recorded in Volume 9, Page 16, of the Map Records of Cameron County, Texas to the Trustees under the Watrous Family Living Trust. This petition will refer to the land as “Lots 10 and 11” or “the Lots.”

5.3 The Defendants are the owners of the Lots. The Defendants subdivided and leased Lots 10 and 11 into 13 lots for residential use without applying to obtain plat approval from the Cameron County commissioner’s court. The residences are 9 mobile homes and four efficiency apartments.

6. VIOLATIONS OF SUBCHAPTER B

6.1 Land that has been subdivided for residential use as described above must have a plat prepared and submitted for approval by the county commissioner’s court before it can be sold or leased. Tex. Local Gov’t Code §§ 232.023, 232.024, and 232.031(a).

6.2 The Defendants violated this provision by failing to plat Lots 10 and 11 and by failing to meet the minimum state standards for water, sewer, and electrical connections. Specifically, the Lots have inadequate water services. There are an insufficient number of water meters and multiple connections to existing sewer and electrical lines.

7. INJUNCTIVE RELIEF

7.1 The State requests that, upon final trial on the merits, the Defendants be permanently enjoined from subdividing, advertising, leasing, and selling property in violation of Texas Local Government Code, Chapter 232, Subchapter B.

7.2 The State further requests the following relief:

(a) No later than ninety (90) days after the effective date of the injunction, the Defendants shall submit a subdivision plat to the Cameron County Engineering Division for approval of Lots 10 and 11. The plat shall include all properties the Defendants have leased in Lots 10 and 11. The plat shall be prepared in accordance with Texas Local Government Code, Subchapter B. Defendants shall diligently pursue approval of the plat and take any further action requested by Cameron County to secure final approval of the plat. Defendants shall obtain final approval of the plat no later than one hundred twenty (120) days after the effective date of the injunction.

7.3 No later than thirty (30) days from the date the plat is approved by the commissioners court, water, sewer, and electrical facilities must be constructed or installed to service the lot and must be fully operable.

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

8. CIVIL PENALTIES

8.1 A subdivider 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. Tex. Loc. Gov't Code § 232.035(d).

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

8.3 The State requests that this Court assess a civil penalty within the statutory range for each lot sold and leased in violation of the law.

9. ATTORNEY'S FEES AND COSTS

9.1 The State requests recovery of its attorney's fees expended in the prosecution of this case from Defendants as authorized by Tex. Local Gov't Code §§ 232.035(c)-(d); 232.037(a)(3); Tex. Water Code § 16.354(6); and Tex. Gov't Code § 402.006(c).

9.2 The State requests recovery of its costs of investigation and court costs expended in the prosecution of this case from Defendants as authorized by Tex. Local Gov't Code §§ 232.035(c)-(d); 232.037(a)(3); Tex. Water Code § 16.354(6); and Tex. Gov't Code § 402.006(c).

PRAYER

ACCORDINGLY, the State respectfully requests:

1. That permanent injunctive relief be granted as requested in this petition;
2. That the State recover civil penalties as requested in this petition;
3. That the State recover its attorney's fees, costs of investigation, and court costs in this case;
4. That the State recover post-judgment interest at the legal rate on all monetary relief requested above; and
5. That the State be granted all other relief to which it is entitled.

Respectfully submitted,

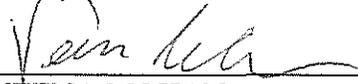
GREG ABBOTT
Attorney General of Texas

DANIEL T. HODGE
First Assistant Attorney General

BILL COBB
Deputy Attorney General for Civil
Litigation

BARBARA B. DEANE
Chief, Environmental Protection and
Administrative Law Division

DAVID PREISTER
Chief, Environmental Protection Section



VEENA MOHAN
State Bar No. 24013765
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548
Tel: (512) 936-0535
Fax:(512) 320-0167

ATTORNEYS FOR THE STATE OF TEXAS

VERIFICATION

STATE OF TEXAS

§
§
§
§

CAMERON COUNTY

BEFORE ME, the undersigned authority, on this day personally appeared Linda Stockwell, who swore on oath the following:

“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 the statements herein are true and correct.

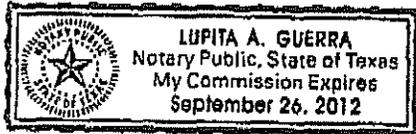
I am an investigator for the Environmental Protection and Administrative Law Division of the Office of the Attorney General of Texas. My duties include investigating compliance with state and county residential subdivision requirements. In this capacity, I personally investigated the residential subdivision and the activities of the Defendant that is the subject of the attached *Plaintiff's Original Petition and Application for Permanent Injunction*.

I have carefully reviewed the factual allegations in paragraphs 5.1 to 5.3 and 6.2 of the attached original petition. Based on my personal observations and my review of publically available information, the factual allegations contained in paragraphs 5.1 to 5.3 and 6.2 are true and correct.”

Linda Stockwell
Linda Stockwell

SWORN TO AND SUBSCRIBED before me on the 27th day of

May, 2011.



[Signature]
Notary Public in and for the State of Texas