

NO. _____

STATE OF TEXAS,
Plaintiff,

v.

JOHN R. DAVES and
LEONOR S. DAVES,
Defendants.

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IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

_____ JUDICIAL DISTRICT

PLAINTIFF'S ORIGINAL PETITION,
APPLICATION FOR INJUNCTION,
AND REQUEST FOR DISCLOSURE

The State of Texas, plaintiff, complains as follows against John R. Daves and Leonor S. Daves, defendants. In general, this lawsuit seeks redress for unlawful activities regarding the sale of subdivided land, including injunctive relief, civil penalties, attorney's fees, and costs of court.

1.

Discovery Control Plan

1.1. Pursuant to Rule 190 of the Texas Rules of Civil Procedure, Plaintiff intends that discovery in this case be conducted under Level 2.

2.

Parties and Service

2.1. Plaintiff, State of Texas, is authorized to bring this suit through its Attorney General pursuant to Texas Local Government Code §§ 232.037, 232.040(d).*

2.2. Defendants John R. Daves and Leonor S. Daves are natural persons residing in Webb County, and may be served with process at 1804 Musser, Laredo, Texas 78043, or wherever they may be found.

*Unless otherwise indicated, statutory references are to the Texas Local Government Code.

3.

Jurisdiction and Venue

3.1. This Court has jurisdiction over this suit pursuant to § 232.037 and the Texas Constitution, Article. V, § 8.

3.2. Venue is proper in Travis County pursuant to § 232.035(f).

4.

Background of Defendants' Violative Conduct

4.1. Defendants John R. Daves and Leonor S. Daves sell lots that they own in a residential subdivision situated in Webb County, Texas, generally east of the City of Laredo. The subdivision is located southeast of the intersection of Dasaw Road and State Highway 359 and is named "D-5 Acres." John R. Daves filed a subdivision plat of D-5 Acres on February 24, 1986, with the Webb County Clerk at Volume 4, Page 89 of the Webb County Plat Records. D-5 Acres consists of forty-two lots.

4.2. This lawsuit complains of defendants' sales of lots in the southern portion of D-5 Acres, *i.e.*, lots that lie on or south of the street known as "Los Nietos." These lots lie, in whole or in part, outside the corporate limits of any municipality in Webb County.

4.3. These lots are subject to laws enacted to prevent the proliferation of unsanitary residential areas commonly called "colonias."

5.

Defendants' Violations of Statutory Subdivision Requirements

5.1. 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. § 232.022.

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

5.1.2. The D-5 Acres lots situated on or south of the street known as “Los Nietos” are wholly or partially outside the corporate limits of any municipality in Webb County. §§ 232.022(b), (c).

5.1.3. D-5 Acres is divided into two or more lots. § 232.022(b). The subdivision contains 42 individual lots.

5.1.4. The D-5 Acres lots are intended primarily for residential use. The lots subject to this suit are 5 acres in size or less, and are thereby presumed by statute to be for residential use. § 232.022(b). Further, several residences have been established in D-5 Acres.

5.2. Section 232.040(b) provides that a lot in a subdivision may not be sold if the lot lacks water and sewer services as required by Subchapter B unless and until the lot is platted or replatted to provide such services. Such water and sewer services must meet certain minimum state standards for drinking water supply and wastewater disposal. §§ 232.023(b)(6),(7),(12); Texas Water Code § 16.343.

5.2.1. Minimum state standards with regard to water supply require that the lots be provided with piped water from a centralized water system or with individual water wells meeting certain standards. Section 2.2, Model Subdivision Rules Adopted by Webb County, April 10, 2000, Amended February 27, 2006.

5.2.2. Minimum state standards with regard to wastewater disposal require that the lots be provided with piped sewer service from an organized sewerage facility or with an individual on-site sewage facility (septic system). Section 2.3, Model Subdivision Rules Adopted by Webb County, April 10, 2000, Amended February 27, 2006.

5.3. Defendants sold the following lots in D-5 Acres in violation of § 232.040(b):

- On May 23, 2005, defendants sold lot number 30 to Jose Tomas and Maria Del Carmen Ramirez for \$29,300.
- On June 18, 2005, defendants sold lot number 17 to Antonio and Maria De La Luz Guzman for \$34,000.
- On June 18, 2005, defendants sold lot number 41 to Adalberto and Elnorah J. Martinez for \$27,000 and after buyer defaulted on the sale defendants re-sold lot 41 on January 25, 2007 to Jose Luis Rodriguez for \$26,675.

5.4. When the defendants sold these lots, the lots lacked minimum state standard water supply and wastewater disposal and the defendants failed to replat the lots to provide for such services. The defendants still have not met these statutory requirements.

5.5. Accordingly, each of these lot sales has violated § 232.040(b).

6.

Permanent Injunction

6.1. Pursuant to §§ 232.037, 232.040(d), the State seeks appropriate permanent injunctive orders to prevent violations or threatened violations of the sales prohibition and replat requirements of § 232.040(b) and to secure appropriate corrective actions.

6.2. More specifically, the plaintiff requests this Court to order appropriate permanent injunctive relief that includes, but is not limited to, orders requiring:

(1) that defendants cease and refrain from the further selling of land in D-5 Acres on or south of the street “Los Nietos” until such time as such land is provided with the minimum required water and wastewater services or until the land is properly replatted to provide such facilities;

(2) that defendants replat or otherwise provide water and wastewater services to lots sold in violation of § 232.040(b), provide refunds to lot buyers, or accomplish additional or alternative corrective actions as determined appropriate by this Court;

(3) that defendants cease and refrain from selling or subdividing any land in Webb County contrary to the requirements and restrictions of Subchapter B; and

(4) such additional injunctive relief as warranted by the facts.

7.

Civil Penalties

7.1. Section 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.

8.

Attorney’s Fees and Costs

8.1. The State requests recovery of attorney’s fees, investigation costs, and court costs expended in the prosecution of this case from defendants as authorized by § 232.035(c), (d), § 232.037(a)(3), and Texas Government Code § 402.006(c).

9.

Request for Disclosure

9.1. Pursuant to Rule 194 of the Texas Rules of Civil Procedure, defendants are requested to disclose to the State, within 50 days of service of this request, the information and material described in Rule 194.2(a), (b), (c), (e), (f), and (i), and in Rule 194.4.

Prayer for Relief

ACCORDINGLY, the State of Texas respectfully requests injunctive relief, civil penalties, attorney's fees, costs of investigation, court costs, and all other relief to which it is entitled.

Respectfully submitted,

GREG ABBOTT
Attorney General of Texas

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ATTORNEYS FOR PLAINTIFF
STATE OF TEXAS

AFFIDAVIT

STATE OF TEXAS }
 }
COUNTY OF TRAVIS }

BEFORE ME, the undersigned authority, on this day personally appeared Audon Gutierrez, a person whose identity is known to me. After I administered an oath to him, upon his oath, he said:

“My name is Audon Gutierrez. 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 State of Texas. My duties include reviewing subdivision plat applications and investigating violations of state and county residential subdivision requirements.

I personally investigated the underlying facts of this lawsuit. I have carefully reviewed the factual allegations in Parts 4 and 5 of the attached *Plaintiff’s Original Petition, Application for Injunction, and Request for Disclosure*. The factual allegations are true and correct.”

AUDON GUTIERREZ

SWORN TO and SUBSCRIBED before me by Audon Gutierrez on the _____ day of January, 2008.

Notary Public in and for the State of Texas

My commission expires:_____