

3.
Jurisdiction and Venue

3.1. This Court has jurisdiction and venue over this suit pursuant to Texas Local Government Code § 232.037(a), (d) and Texas Water Code § 16.3545(3).

4.
Residential Subdivision Regulation

4.1. Texas Local Government Code, Chapter 232, Subchapter B (“Subchapter B”) regulates the subdivision and sale of residential land in the Texas-Mexico border counties. More specifically, 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 any municipality. § 232.022.¹

4.2. Under Subchapter B, residential lots created and sold in these counties must have water and wastewater facilities that meet minimum state standards. These facilities must either be installed or their installation must be financially guaranteed. §§ 232.023, 232.027.

4.3. The minimum state standards for water and wastewater facilities are established by the Texas Water Development Board pursuant to Texas Water Code § 16.343.

¹Unless otherwise indicated, statutory references are to the Texas Local Government Code, Chapter 232, Subchapter B.

4.3.1. For water supply, minimum state standards require that the lots be provided with piped water from a centralized water system or with individual water wells meeting certain standards. 31 Texas Administrative Code § 364.32.

4.3.2. For wastewater disposal, minimum state standards require that the lots be provided with piped sewer service from an organized sewerage facility or with an individual on-site sewage facility (a septic system, for example). 31 Texas Administrative Code § 364.33.

4.4. If a subdivision lot lacks the minimum state standard water and wastewater services, it may not be sold unless and until the lot is platted or replatted to provide such services. § 232.040(b).² A purpose of this prohibition is to restrict the marketing of substandard residential lots.

5.

Defendants' Violations of Subchapter B.

5.1. Defendants Adolfo and Patricia Ramirez own and sell lots in a residential subdivision known as "Sierra Blanca Land Development - Phase One" ("the Subdivision"). A plat of the Subdivision is filed in the records of the Hudspeth County Clerk at Cabinet A, Slide #194.³ The lots in the Subdivision are subject to Subchapter B regulation.

² Excepted from this sales prohibition is a seller, other than a subdivider or the subdivider's agent, who resides on the lot. § 232.040(c).

³From the face of the plat, it was originally filed at Book 4, Page 12 of the clerk's records.

5.1.1. The Subdivision is in Hudspeth County, Texas, a county located within 50 miles of the international border dividing the United States and Mexico. § 232.022(a).

5.1.2. The Subdivision is on the outskirts of Sierra Blanca, the unincorporated county seat of Hudspeth County. Accordingly, the lots in the Subdivision are outside the corporate limits of any municipality in Hudspeth County. §§ 232.022(b),(c).

5.1.3. The Subdivision, actually consisting of several hundred lots, is divided into two or more lots. § 232.022(b).

5.1.4. The Subdivision lots are intended primarily for residential use. Each lot at issue in this lawsuit is less than 5 acres in size and is thereby presumed by statute to be for residential use. § 232.022(b). Moreover, a number of residences have been established on various lots in the Subdivision.

5.2. Defendants sold lots in the Subdivision as follows:

<u>Lot</u>	<u>Buyer(s)</u>	<u>Date</u>
Block 215, Lot 7	Graciela Avila	03-01-05
Block 215, Lot 8	Graciela Avila	03-01-05
Block 132, Lot 8	JHL Sierra Blanca, L.P.	03-29-05
Block 132, Lot 9	JHL Sierra Blanca, L.P.	03-29-05
Block 132, Lot 10	JHL Sierra Blanca, L.P.	03-29-05
Block 132, Lot 11	JHL Sierra Blanca, L.P.	03-29-05
Block 132, Lot 13	JHL Sierra Blanca, L.P.	03-29-05
Block 243, Lot 6	Lorenzo Ramirez & Raquel Ramirez	05-27-05
Block 243, Lot 7	Lorenzo Ramirez & Raquel Ramirez	05-27-05
Block 215, Lot 1	Teresa Ibarra Palacios	03-08-05
Block 215, Lot 2	Teresa Ibarra Palacios	03-08-05
Block 215, Lot 3	Santiago Escobedo & Teresa Ibarra Palacios	03-17-05
Block 215, Lot 4	Santiago Escobedo & Teresa Ibarra Palacios	03-17-05
Block 215, Lot 5	Santiago Escobedo & Teresa Ibarra Palacios	03-17-05
Block 215, Lot 6	Santiago Escobedo & Teresa Ibarra Palacios	03-17-05
Block 215, Lot 9	Julieta Curiel & Alicia Valles	05-22-06

5.3. When the defendants sold these lots, the lots lacked minimum state standard water and wastewater facilities and the defendants failed to replat the lots to install such services or to provide the financial assurance to install such services. Accordingly, each of these lot sales violated § 232.040(b).

5.4. Defendants still have not met the Subchapter B requirements with regard to these sold lots. Moreover, Defendants currently own additional unsold lots in the Subdivision that also lack minimum state standard water and wastewater facilities.

5.5. Defendant Adolfo Ramierz is an employee of the Hudspeth County Appraisal District. Upon investigation, the State believes that Defendants purchased these lots at low cost at Hudspeth County tax sales and then sold them at a substantially higher price, without making the necessary water and wastewater improvements.

6.

Injunction

6.1. Pursuant to § 232.037 and Texas Water Code §§ 16.353, 16.354, the State seeks against Defendants appropriate injunctive orders to prevent new or threatened violations of § 232.040(b) and to require appropriate corrective actions for past violations.

6.2. More specifically, the State requests this Court to order appropriate injunctive relief against Defendants that includes but is not limited to:

(1) orders requiring that Defendants stop selling lots in the Subdivision unless such lots are provided with the minimum required water and wastewater services or until the lots are properly replatted to install such facilities or to financially guarantee such installation;

(2) orders requiring that Defendants replat or otherwise provide water and wastewater services to lots already sold in violation of § 232.040(b) or, in the alternative, that Defendants provide full refunds to their lot buyers; and

(3) any further appropriate injunctive relief that the facts may warrant.

7.

Attorney's Fees and Costs

7.1. The State requests attorney's fees, litigation costs, and investigation costs as authorized by § 232.037(a)(3).

8.

Request for Disclosure

8.1. 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, attorney's fees, litigation and court costs, investigation costs, post-judgment interest at the highest legal rate, and all other relief to which the State is entitled.

Respectfully submitted,

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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.

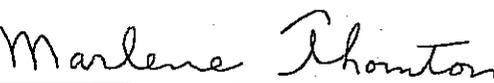
I personally investigated the underlying facts of this lawsuit. I have carefully reviewed the factual allegations in Part 5 of the attached *State of Texas’s Original Petition and Request for Disclosure*. The factual allegations are true and correct.”



AUDON GUTIERREZ

SWORN TO and SUBSCRIBED before me by Audon Gutierrez on the 24th day of January, 2008.

.....
 MARLENE THORNTON
Notary Public, State of Texas
My Commission Expires
MARCH 08, 2008
.....
Notary without Bond



Notary Public in and for the State of Texas
My commission expires: _____