

CAUSE NO. 2010 23446

**HELEN AND NORMAN MYERS,
THOMAS AND CAROLE MCCARLEY,
HELENE AND JOHN BURRIS, NANCY
AND IRV GRAYSON, JIM AND KATHY
STEVENS, AND SUE AND BOB
DURRETT**

Plaintiffs,

V.

**CYPRESS FOREST PUBLIC UTILITY
DISTRICT, THOMAS J. PETRICK,
LINN JENSEN SMYTH, FRED P.
JONES, GREGORY DICIOCCIO, AND
MICHAEL J. LYNCH, JR.**

Defendants.

IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

295 **JUDICIAL DISTRICT**

**PLAINTIFFS' ORIGINAL PETITION, APPLICATION FOR TEMPORARY
RESTRAINING ORDER, APPLICATION FOR TEMPORARY INJUNCTION,
AND JURY DEMAND**

NOW COME Helen and Norm Myers, Tom and Carole McCarley, Helene and John Burris, Nancy and Irv Grayson, Jim and Kathy Stevens, and Sue and Bob Durrett ("Champion Forest Homeowners"), complaining of Cypress Forest Public Utility District, Thomas J. Petrick, Linn Jensen Smyth, Fred P. Jones, Gregory DiCioccio, and Michael J. Lynch, Jr. ("PUD Board"), and for cause of action would respectfully show as follows:

DISCOVERY CONTROL PLAN

1. Pursuant to Texas Rule of Civil Procedure 190, Plaintiffs intend for discovery to be conducted under Level 2.

FILED
Loren Jackson
District Clerk

APR 14 2010

Time: _____
Harris County, Texas
By _____
Deputy

PARTIES

2. Plaintiffs Helen and Norm Myers, individual residents of Harris County, Texas, are currently residing at 1606 Champions Drive, Spring, Texas 77379. They may be served with process through their attorney of record, Robert W. Painter, Painter Law Firm PLLC, 12750 Champion Forest Drive, Houston, Texas 77066.

3. Plaintiffs Thomas and Carole McCarley, individual residents of Harris County, Texas, are currently residing at 9711 Windrush Drive, Spring, Texas 77379. They may be served with process through their attorney of record, Robert W. Painter, Painter Law Firm PLLC, 12750 Champion Forest Drive, Houston, Texas 77066.

4. Plaintiffs Helene and John Burris, individual residents of Harris County, Texas, are currently residing at 8614 Ashridge Park Drive, Spring, Texas 77379. They may be served with process through their attorney of record, Robert W. Painter, Painter Law Firm PLLC, 12750 Champion Forest Drive, Houston, Texas 77066.

5. Plaintiffs Nancy and Irv Grayson, individual residents of Harris County, Texas, are currently residing at 8823 Kennet Valley Road, Spring, Texas 77379. They may be served with process through their attorney of record, Robert W. Painter, Painter Law Firm PLLC, 12750 Champion Forest Drive, Houston, Texas 77066.

6. Plaintiffs Jim and Kathy Stevens, individual residents of Harris County, Texas, are currently residing at 8818 Ashridge Park Drive, Spring, Texas 77379. They may be served with process through their attorney of record, Robert W. Painter, Painter Law Firm PLLC, 12750 Champion Forest Drive, Houston, Texas 77066.

7. Plaintiffs Sue and Bob Durrett, individual residents of Harris County, Texas, are currently residing at 16027 Champion Drive, Spring, Texas 77379. They may be served with

process through their attorney of record, Robert W. Painter, Painter Law Firm PLLC, 12750 Champion Forest Drive, Houston, Texas 77066.

8. Defendant Cypress Forest Public Utility District is a "District" as defined in Texas Local Government Code Section 43.0751(a)(1), created or operated under Texas Water Code Chapter 51 or 54, and may be properly served with process through its President, Thomas J. Petrick, at his residence, 9615 Enstone Circle, Spring, Texas 77379, or wherever he may be found.

9. Defendant Thomas J. Petrick, an individual resident of Harris County, Texas, is a board member of Cypress Forest Public Utility District, and may be served with process at his place of residence, 9615 Enstone Circle, Spring, Texas 77379, or wherever he may be found.

10. Defendant Linn Jensen Smyth, an individual resident of Harris County, Texas, is a board member of Cypress Forest Public Utility District, and may be served with process at her place of residence, 9303 Windrush Drive, Spring, Texas 77379, or wherever she may be found.

11. Defendant Fred P. Jones, an individual resident of Harris County, Texas, is a board member of Cypress Forest Public Utility District, and may be served with process at his place of residence, 9402 Cypresswood Drive, Spring, Texas 77379, or wherever he may be found.

12. Defendant Gregory DiCioccio, an individual resident of Harris County, Texas, is a board member of Cypress Forest Public Utility District, and may be served with process at his place of residence, 9110 Taidswood Drive, Spring, Texas 77379, or wherever he may be found.

13. Defendant Michael J. Lynch, Jr., an individual resident of Harris County, Texas, is a board member of Cypress Forest Public Utility District, and may be served with process at

his place of residence, 16215 Champion Drive, Spring, Texas 77379, or wherever he may be found.

JURISDICTION AND VENUE

14. Venue and jurisdiction are appropriate in this Court in Harris County, Texas because all Defendants are either a governmental entity, "District," or "District" board members, pursuant to the Texas Local Government Code, within Harris County, and all or part of the conduct of the Defendants giving rise to this action occurred in Harris County. Jurisdiction and venue are also proper pursuant to Texas Civil Practice & Remedies Code Section 101.0215.

SOURCES OF EVIDENCE

- Exhibit A Raveneaux Redevelopment Agreement Between Cypress Forest Public Utility District and JP/Raveneaux Partners LP and Kera Development, L.P.
- Exhibit B Cypress Forest PUD News 2008 Fall Edition
- Exhibit C Third Amendment to Raveneaux Redevelopment Agreement Between Cypress Forest Public Utility District and JP/Raveneaux Partners LP and Kera Development, L.P.
- Exhibit D Sixth Amendment to Raveneaux Redevelopment Agreement Between Cypress Forest Public Utility District and JP/Raveneaux Partners LP and Kera Development, L.P.
- Exhibit E Eighth Amendment to Raveneaux Redevelopment Agreement Between Cypress Forest Public Utility District and JP/Raveneaux Partners LP and Kera Development, L.P.
- Exhibit F Ninth Amendment to Raveneaux Redevelopment Agreement Between Cypress Forest Public Utility District and JP/Raveneaux Partners LP and Kera Development, L.P.
- Exhibit G Affidavit of Nancy Grayson

BACKGROUND

15. Comprising approximately 285 acres, Raveneaux Country Club ("Club") has been a fixture in the Northwest Harris County community of Champion Forest for more than 30 years. The Club runs along Cypresswood Drive, facing some of the most beautiful homes in the area.

16. In 2005, JP Raveneaux Partners LP and Kera Development, L.P. ("Developer") acquired the Club for approximately \$11.5 million, with the intent of developing the property for other uses, including residential applications. Following their acquisition of the Club, the Developer learned that the Club lacked adequate water and sewage services for a large-scale residential property.

17. With such a significant investment in the Club property, the Developer approached the Cypress Forest Public Utility District ("PUD"), which services the area, about providing water and sewage services. This proposition created a firestorm in the community because property owners in the neighboring Champion Forest subdivision had grave concerns that such a comprehensive modification of the Club real estate would dramatically lower their property values.

18. After a number of open public meetings, the PUD signed a contract with the Developer on September 5, 2008. *See* Exhibit A. The contract contained the following agreements, *inter alia*:

- The PUD agreed to provide adequate water and sewage service to the entire Club property. *See id.* at ¶ 1.01.
- The Developer agreed to land use restrictions that would be filed as deed restrictions in the Harris County property records. *See id.* at ¶ 1.03.
- The Developer agreed that the property may only contain high-end condominiums, high-rise or mid-rise buildings, two-, three-, or four-story townhouses, single family residential dwellings, and

reconstruction of the country club clubhouse including hotel space, a spa, and limited retail commercial property. *See id.*

- The Developer agreed that the property could have no centralized rental office or system for rental of residential condominium units. *See id.*
- The Developer agreed that condominium units on the property would have a minimum size of 1,200 square feet, except five percent could have a minimum size of 900 square feet. *See id.*
- The Developer agreed to convey to the PUD, within 30 days of execution of the contract, an easement conveying a 40-foot strip of land along the Cypresswood Drive right-of-way line for the purpose of creating a jogging trail. *See id.* at ¶ 3.01.
- The PUD agreed to purchase all 285 acres of the Club property, except some specific (and significant) carve-outs for the Developer, for \$5,500,000. The PUD agreed to hold a park bond election in November 2008 to generate these funds. *See id.* at ¶ 3.04.

19. After PUD and Developer signed the contract, the PUD represented to its voters

that:

Two years ago, the fate of the Raveneaux property -- a centerpiece in our community -- was uncertain. This lush, gently rolling landscape tucked into the heart of the neighborhood came to symbolize different things to different people -- each with their own concept of its value. On one thing we all agreed, however; in negotiating the ultimate disposition of this critical acreage, we had to assign the top priority to maintaining our prime property values; preserving the greenbelt along Cypresswood Drive; and minimizing the possibility of flooding while protecting the Cypress Creek corridor as it flows eastward at the southern edge of the property. One of the best, most efficient ways to accomplish all these goals is to incorporate a linear park into our plans...so that is just what we have done.

* * *

In order to generate the necessary funds CFPUD must hold an election to get voters within the District to approve spending the money to fulfill the terms of the contract and to create the landscaped Walking Trails.

Exhibit B at pp. 1-2 (emphasis added).

20. As promised in the contract, Cypress Forest Public Utility District held a park bond election in November 2008. Based on representations that the PUD and Developer would follow the terms of the contract that had been executed, a huge voter turnout overwhelmingly approved the park bond proposal.

21. Subsequently, the Kleinwood Municipal Utility District filed federal and state court lawsuits, both of which were eventually dismissed. The PUD and Developer modified certain deadlines contained in the original contract, based on delays caused by the Kleinwood Municipal Utility District litigation.

22. Beginning in September 2009, the Developer initiated a series of proposed amendments to the original contract with the PUD, which substantially altered the original contract—and what the voters had approved in the park bond election.

- The Third Amendment, dated October 30, 2009, proposed to allow additional development on a 10 acre tract. *See Exhibit C.* This was not approved by the PUD Board.
- The Sixth Amendment, dated December 17, 2009, proposed to allow additional development on a 10 acre tract. *See Exhibit D.* This was not approved by the PUD Board.
- The Eighth Amendment, dated February 15, 2010, proposed to decrease by two acres the amount of “Park Property” acquired by the PUD, and modify the terms of the trail easement. *See Exhibit E.* This was not approved by the PUD Board.

23. The Developer apparently lacks appreciation for the fact that the elected PUD Board is limited in its decision-making authority to the scope of the park bond approved by the voters. Up through the proposed Eighth Amendment, the PUD Board has appropriately declined to approve the Developer’s proposed amendments that would materially alter the terms of the contractual terms.

24. Nevertheless, the Developer has proposed yet another set of amendments, the Ninth Amendment, *see Exhibit F*, dated March 15, 2010, which would:

- Decrease by two acres the amount of "Park Property" acquired by the PUD. *See id.* at § 3.
- Modify the terms of the trail easement. *See id.* at § 4.
- Modify the land use restrictions. *See id.* at § 9. This amendment would allow a senior residential living facility with most units having a minimum of 650 square feet, but with 10 percent having less than 650 square feet.
- Modify the land use restrictions to allow rentals. *See id.* at § 9.

25. The PUD Board is schedule to meet on Wednesday, April 14, 2010, at 12:00 p.m., to consider the Ninth Amendment. Upon information and belief, Plaintiffs understand that the PUD Board intends to approve the Ninth Amendment at its meeting.

APPLICATION FOR TEMPORARY RESTRAINING ORDER

26. Paragraphs 1-25, *supra*, are incorporated herein by reference.
27. Plaintiffs would show that unless Defendants are immediately restrained from the commission of the acts hereinafter prohibited, Plaintiffs will suffer immediate and irreparable loss, injury or damage. Plaintiffs are property owners and voters in the area served by Cypress Forest Public Utility District ("PUD"), but are not parties to the contract between the PUD and the developer, referenced above. *See Exhibit A*. Thus, if this application for a temporary restraining order is denied and the PUD Board of Directors approves the Ninth Amendment to the Raveneaux Redevelopment Agreement, *see Exhibit F*, then Plaintiffs have no adequate remedy at law. As such, Plaintiffs request that a temporary restraining order be entered with Regard to Defendants, their agents, employees and attorneys, prohibiting them from performing the following:

- (1) Agreement to or execution of the Ninth Amendment to Raveneaux Redevelopment Agreement Between Cypress Forest Public Utility District and JP/Raveneaux Partners LP and Kera Development, L.P.
- (2) Agreement to or execution of any amendment to the Raveneaux Redevelopment Agreement Between Cypress Forest Public Utility District and JP/Raveneaux Partners LP and Kera Development, L.P. that involves conveying acreage to JP/Raveneaux Partners LP and Kera Development, L.P. not defined in the original contract that was executed on September 5, 2008.
- (3) Agreement to or execution of any amendment to the Raveneaux Redevelopment Agreement Between Cypress Forest Public Utility District and JP/Raveneaux Partners LP and Kera Development, L.P. that involves modification of the land-use restrictions contained and defined in the original contract that was executed on September 5, 2008.

28. It is probable that Plaintiffs will recover from Defendant after a trial on the merits because of the specifics enumerated in the statement of facts and claims for relief set forth below.

29. This motion is filed *ex parte* because there is an immediate, identifiable risk that Defendants will approve and execute the Ninth Amendment to Raveneaux Redevelopment Agreement Between Cypress Forest Public Utility District and JP/Raveneaux Partners LP and Kera Development, L.P., irreparably damaging Plaintiffs in an actual, substantial, and permanent manner, and leaving Plaintiffs without an adequate remedy by law. As such, there not enough time to serve notice on the Defendants and hold a hearing.

30. Plaintiffs are willing to post a bond in accordance with Texas Rule of Civil procedure 684.

TEMPORARY INJUNCTION

31. Paragraphs 1-30, *supra*, are incorporated herein by reference.

32. In order to preserve the status quo and the property rights of Plaintiffs during the pendency of this lawsuit, and to protect the interests of Plaintiffs, Defendants should be cited to appear and show cause why it should not be temporarily restrained during the pendency of this action from:

- (1) Agreement to or execution of the Ninth Amendment to Raveneaux Redevelopment Agreement Between Cypress Forest Public Utility District and JP/Raveneaux Partners LP and Kera Development, L.P.
- (2) Agreement to or execution of any amendment to the Raveneaux Redevelopment Agreement Between Cypress Forest Public Utility District and JP/Raveneaux Partners LP and Kera Development, L.P. that involves conveying acreage to JP/Raveneaux Partners LP and Kera Development, L.P. not defined in the original contract that was executed on September 5, 2008.
- (3) Agreement to or execution of any amendment to the Raveneaux Redevelopment Agreement Between Cypress Forest Public Utility District and JP/Raveneaux Partners LP and Kera Development, L.P. that involves modification of the land-use restrictions contained and defined in the original contract that was executed on September 5, 2008.

33. Plaintiffs' application for a temporary injunction is authorized by Texas Civil Practice & Remedies Code Section 65.011(5).

34. It is probable that Plaintiffs will recover from Defendant after a trial on the merits because of the specifics enumerated in the statement of facts and claims for relief set forth below. See ¶¶ 37-42, *infra*.

35. If Plaintiffs' application is not granted, Plaintiffs would show that they will suffer immediate and irreparable loss, injury or damage. The nature of the damages is actual, substantial, and permanent, leaving Plaintiffs without an adequate remedy by law.

36. Plaintiffs are willing to willing to post bond.

CAUSES OF ACTION

COUNT ONE: Violation of Private Real Property Rights Preservation Act

37. The threatened action of Defendants to approve and execute the Ninth Amendment to Raveneaux Redevelopment Agreement Between Cypress Forest Public Utility District and JP/Raveneaux Partners LP and Kera Development, L.P., or any amendment or agreement that changes the acreage conveyed to the developer or the land use restrictions imposed by the original contract, will cause a decrease in the value of real property belonging to Plaintiffs of at least 25 percent.

38. The Private Real Property Rights Preservation Act ("Act") defines a "taking" as, *inter alia*, "a governmental action that . . . is the producing cause of a reduction of at least 25 percent in the market value of the affected private real property." TEX. GOV'T CODE § 2007.002(5).

39. Realtor Nancy Grayson testifies that the proposed amendments will reduce the market value of the real estate owned by Plaintiffs by at least 25 percent. *See Exhibit G at ¶ 3.*

40. The Act requires the governmental entity to conduct a Takings Impact Assessment and comply with other procedural protections for the benefit of property owners, like Plaintiffs, which Defendants have failed to do. *See . GOV'T CODE § 2007.043.*

COUNT TWO: Defendants Have Exceeded Lawful Authority

41. Defendants obtained approval of the voters for a park bond issue based on representations that the original contract, *see* Exhibit A, would be followed. By making changes to the acreage conveyed and the land use restrictions, the proposed Ninth Amendment to Raveneaux Redevelopment Agreement Between Cypress Forest Public Utility District and JP/Raveneaux Partners LP and Kera Development, L.P. would substantially modify what the voters approved in the park bond election. Therefore, the Defendants do not have authority from the voters to issue bonds to fund the agreement, if modified.

RELIEF REQUESTED

42. By reason of the wrongful acts of Defendant as set forth above, Plaintiffs have already incurred damages in excess of the minimum jurisdiction of this Court. Further, if Defendant is not restrained from taking its intended actions, Plaintiffs will continue to incur substantial, irreparable damages.

JURY DEMAND

43. Plaintiffs respectfully request a trial by jury, as is their right under the laws and Constitution of the State of Texas.

PRAYER


WHEREFORE, PREMISES CONSIDERED, Plaintiffs pray for judgment against Defendant, as follows:

- (1) For all relief requested above, including a temporary restraining order and a temporary injunction;
- (2) For attorney's fees under applicable laws;
- (3) For all costs of these proceedings;
- (4) For pre-judgment and post-judgment interest; and

(5) For such further relief, at law and equity, to which Plaintiffs may show that they are justly entitled.

Respectfully submitted,

PAINTER LAW FIRM PLLC

By: 

Robert W. Painter

Texas Bar No. 24013284

12750 Champion Forest Drive

Houston, Texas 77066

Telephone: 281-580-8800

Facsimile: 281-580-8802

**ATTORNEYS FOR PLAINTIFFS,
HELEN AND NORMAN MYERS, THOMAS
AND CAROLE MCCARLEY, HELENE AND
JOHN BURRIS, NANCY AND IRV GRAYSON,
JIM AND KATHY STEVENS, AND SUE AND
BOB DURRETT**

VERIFICATION

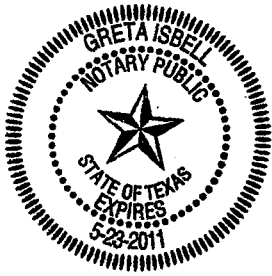
STATE OF TEXAS §
 §
COUNTY OF HARRIS §

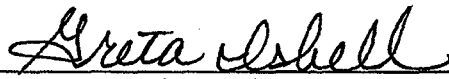
On this day Robert W. Painter personally appeared before me, the undersigned Notary Public, and after being duly sworn stated under oath that he represents the Plaintiffs in this action; that he has read the above Plaintiffs' Original Petition, Application for Temporary Restraining Order, Application for Temporary Injunction, and Jury Demand and that every statement contained therein is within his personal knowledge and is true and correct.



Robert W. Painter

SUBSCRIBED AND SWORN TO BEFORE on the 14th day of April, 2010.





Notary Public In and For the State of Texas