

4. Maryland Manor Associates, Inc. is a corporation with its principal place of business in Texas. It may be served with process at 2536-F Amherst St., Houston, TX 77005-3207.

5. 1717 Bissonnet, LLC is a Delaware corporation with its principal place of business in Texas. It may be served with process through its registered agent, 1717 Bissonnet Manager, Ltd., 2536-F Amherst St., Houston, TX 77005-3207.

III. Jurisdiction and Venue

6. Jurisdiction is proper in this Court, as the amount in controversy exceeds the minimal jurisdictional requirements of this Court.

7. Pursuant to Tex. Civ. Prac. & Rem. Code § 15.002, venue is proper in this Court because all or substantially all of the events or omissions giving rise to the claims set forth in this action occurred in Harris County.

IV. Background

8. Defendants Buckhead Investment Partners, Inc., Maryland Manor Associates, Inc., and 1717 Bissonnet, LLC (together, the “Developers”), are real estate development entities that own a 1.7 acre tract of property in a residential neighborhood located at the intersection of Bissonnet Street and Ashby Street in Houston, Texas (the “Property”). On information and belief, all three entities are owned and controlled by two principal investors, Kevin M. Kirton and Matthew J. Morgan. The Developers currently plan to construct a massive, 21-story High Rise apartment complex on the Property (the “Ashby High Rise” or “High Rise”).

9. The proposed High Rise is vastly oversized for its proposed location and incongruous with the surrounding community. The project site is in the middle a residential community, immediately adjacent to the Boulevard Oaks Historic District. At 21 stories tall, the High Rise would dwarf every structure in the surrounding area and would dramatically alter the

character of the neighborhood.

10. Due to the detrimental impact the High Rise inevitably will have on the surrounding community, each of the last two City of Houston mayoral administrations and numerous City Council members have strongly opposed the project. Shortly after the Developers' general intention to erect a high rise apartment building on the Property became public in 2007, Mayor Bill White announced his opposition to the High Rise as violative of the City Code of Ordinances and inappropriate to its surroundings. Mayor Annise Parker has likewise opposed the High Rise as "the wrong project in the wrong place."

11. In 2009, the City denied the Developers' application for a building permit because the High Rise did not comply with the requirements of Section 40-86 of the City Code of Ordinances, which bars the construction of a driveway that would create an extraordinary traffic hazard. Both the City of Houston General Appeals Board and the City Council rejected the Developers' subsequent appeals, affirming the City's denial of the permit.

12. Following the City Council's denial of their appeal, the Developers filed a lawsuit in federal court seeking to compel the City to issue the necessary permit. After bearing the costs of the litigation for more than a year, the City succumbed and settled the case with the Developers. As part of that settlement, the City agreed to approve a revised plan and issue the permit.

13. Following the settlement, Mayor Annise Parker reiterated that she remained opposed to the High Rise:

"[B]ack in 2007, . . . I said it was the wrong project in the wrong place, and that I would do everything I could to stop the project. . . . We have delayed this project we have I think improved this project, but you can go ahead and say it: Lipstick on a pig, it's still a pig."

14. Although the settlement effectively ended the City's formal opposition to the

High Rise, it did nothing to limit or diminish the private rights of the citizens who will be adversely affected by the High Rise. Plaintiffs' common law rights do not depend on the existence or enforcement of City ordinances.

15. Plaintiffs are residents of the neighborhood where the Developers plan to construct the Ashby High Rise. Each Plaintiff lives in proximity to the Project and will be impacted by its development. If erected, the High Rise will cause harm to Plaintiffs and their property in a variety of ways.

16. Plaintiffs and several of their neighbors have repeatedly attempted to acquire information from the Developers and the City about the High Rise design and construction plans, but the Developers have rebuffed their attempts at every opportunity. For example, the residents made several requests under the Texas Public Information Act for the detailed plans, including foundation and structural design documents, the Developers were required to submit to the City as part of the permitting process. Although these documents should have been public records, the Developers improperly characterized almost all of the plan documents as confidential information in order to prevent the residents from accessing them.

17. The Developers have previously made much of the existence of the "Construction Issues Committee" ("CIC") established as part of their settlement of the prior litigation with the City. The CIC, which is composed of a City Council member and other public officials, is supposed to meet monthly before and during construction in order to facilitate communication between the residents and the Developers on issues and concerns raised throughout the course of the High Rise. But these meetings have been fruitless because the Developers have never supplied sufficient information to allow for a meaningful exchange. The indisputable fact is that the Developers have never shared any of the plans that apply to the construction process, making it impossible for the CIC meetings to serve their purpose of addressing and resolving problems

that may be created by the construction.

18. Due to the Developers' refusal to voluntarily provide the information needed to assess the adverse effects of the construction and erection of the High Rise, and the imminence of the commencement of demolition activities, Plaintiff Loughhead instituted a § 202 proceeding for pre-suit discovery and obtained a court order requiring the Mr. Morgan to provide all documents relating to plans and specifications for the High Rise, construction management plans, and all documents describing construction means and methods to be employed in the construction process. The court granted the petition, ordering Mr. Morgan to produce the requested documents. Despite the court's order, however, Developers continue to insist that mere days from demolition and the commencement of construction, no "means and methods" documents or construction management plans yet exist.

19. Compounding the Plaintiffs' concerns, the project recently lost its general contractor. On March 21, 2013, the Houston-based Linbeck Group, the general contractor, withdrew from the project over disagreements concerning the construction process. Leo Linbeck III, the construction company's Executive Chairman and a resident of the surrounding neighborhood, explained his company's withdrawal:

We got engaged because we wanted to minimize construction impact on the neighborhood. Our extensive pre-construction work to-date has been focused on this goal . . . But for us to be successful, it is essential for us to have control during construction. We were not able to reach an agreement . . . that would assure us of our ability to control the construction process.

20. The Developers have stated that they will soon commence work on the High Rise, without Linbeck and despite the purported non-existence of any means and methods documents that impose special constraints or safety standards to adapt the process of erecting a high rise building to the particular challenges posed by a densely populated, residential area.

V. Facts

21. The High Rise would significantly increase traffic through the neighborhood, creating unreasonable delays and negatively impacting the safety of its residential streets. The adjacent portion of Bissonnet is only a two lane road (i.e., one lane traveling in each direction) that cannot reasonably handle the added traffic that would be generated by the more than 220 residential units and two commercial spaces planned for the High Rise.

22. The Developers recognize that the High Rise will generate traffic problems, and at one time even proposed the addition of a left-turn lane to alleviate the backups that would be created for the westbound Bissonnet traffic by those attempting to turn into the High Rise. The City rejected this proposal, concluding that the suggested fix was even worse than the problem. There is simply no way to mitigate the traffic problems that would be generated by putting a high rise apartment complex in the middle of a single-family residential neighborhood.

23. The traffic impact analysis submitted to the City by the Developers is now five years old, and its conclusions are outdated and incomplete. If the Developers were to use actual, current data to assess the impact of their proposed High Rise, the results would indicate that the Bissonnet intersections with Ashby Street and Dunlavy Street would be downgraded to service level “F” under traffic evaluation standards. Level of service “F” is the rating used by the Transportation Research Board of the National Academies of Science to describe the worst, most gridlocked intersections. There is no lower rating. The excessive delays at these intersections will inevitably divert rush-hour traffic onto the small, residential streets that surround the project site.

24. Moreover, the intersection most detrimentally impacted by the project—the southbound lane of Dunlavy at Bissonnet—is part of the emergency vehicle route used by the local fire station to service the homes just south of Bissonnet, including those on Wroxton Court,

further threatening the safety and wellbeing of the neighborhood. Because this intersection would operate at level of service “F” during peak hours, the amount of expected delay for emergency response vehicles during peak hours on any particular day could result in catastrophic harm for the individuals, including Plaintiffs, relying upon those emergency services.

25. The sheer size of the proposed High Rise, which is entirely disproportionate to any of the surrounding homes in the neighborhood, would itself cause significant harm to the Plaintiffs. The building would stand over 260 feet above grade, casting an enormous shadow over dozens of surrounding homes and blocking sun and rain from reaching the yards of neighboring properties. This obstruction of sunlight and rain would inevitably damage Plaintiffs’ grasses and trees and make it impossible for certain of the Plaintiffs to maintain their gardens. During certain months, the High Rise will create a shadow over some of the Plaintiffs’ homes and yards lasting an extended period of time, thereby substantially reducing the use and enjoyment of their homes and yards. Moreover, the height of the High Rise would necessarily destroy the privacy of neighboring homeowners. From the upper floors of the building, scores of windows will have direct views, day and night, into the neighboring yards and homes. In plain view of dozens of potential onlookers, Plaintiffs would no longer feel free to use their yards as they currently do.

26. There are serious concerns regarding the physical damage the project may cause to surrounding structures. For example, Plaintiff Loughhead’s home is located at 1736 Wroxton Court, which abuts the project site to the south. According to an affidavit filed by Mr. Morgan in the § 202 proceeding, excavation activities for the High Rise would reach to within a mere three feet of Plaintiff Loughhead’s property line. The proposed High Rise would be supported on a foundation consisting of augercast piles, which are formed by injecting grout at high pressures into holes drilled nearly 100 feet into the ground. Some of these piles would be installed only

seven feet from Plaintiff Loughhead's property line.

27. Due to the inherent forces involved in installing 100-foot deep augercast piles, the foundation construction of the High Rise threatens to disrupt the subsurface soils of neighboring properties, causing subsidence of the neighboring homes and damaging their foundations.

28. On information and belief, the Developers plan to destroy all of the trees at the project site during construction of the High Rise, including the decades-old oak trees located in the City's right-of-way, which were purchased and planted by residents of the community and have become an integral part of the neighborhood. Destruction of these trees will further erode the character of the neighborhood and diminish surrounding property values.

29. Plaintiffs are also concerned about how the construction process of the High Rise could directly impact their property, as well as their health and safety. Despite the extensive efforts of Plaintiffs and many of their neighbors described above, the Developers have never provided any documents controlling or describing the means and methods of construction that will be employed during construction of the High Rise. If the Developers' assertion that no such documents exist is to be believed, then evidently the Developers have not taken steps to ensure that the construction will not involve aerial and subsurface trespasses onto neighboring properties, and have not implemented any special constraints or safety standards to adapt the process of erecting a high rise building to the particular challenges posed by a densely populated, residential area. Simply put, the absence of such construction-related documents means both that the Developers are not taking the precautions appropriate to the project and that Plaintiffs have had no opportunity to assess all of the detrimental impacts of the construction process.

30. Adding to Plaintiffs' concerns, as noted above, the Houston-based Linbeck Group recently withdrew as the general contractor for the High Rise. Mr. Linbeck, the construction company's Executive Chairman, is a resident of the surrounding neighborhood and had provided

the community assurances that his company would endeavor to minimize the construction impacts on the neighborhood, but, disturbingly, his company withdrew from the project over disagreements regarding the construction process.

31. The Ashby High Rise is the epitome of being a right thing in the wrong place—the proverbial “pig in the parlor instead of the barnyard.” Plaintiffs do not oppose development, only wrongheaded development, and the High Rise is oversized and inappropriate for its proposed location. Throughout the history of the project, the Developers have touted their property rights, but have shown no regard for the corresponding rights of their neighbors and no appreciation for the maxim that every person must so use his property as not to injure another’s.

32. On information and belief, demolition of the existing improvements on the Property is scheduled to begin on April 29, 2013, with construction of the High Rise to commence thereafter.

VI. Cause of Action

Nuisance

33. Each of the Plaintiffs resides and owns property in the immediate vicinity of the proposed High Rise.

34. If erected, the Ashby High Rise would be abnormal and out of place in its surroundings thereby altering the character of the neighborhood, would substantially decrease the value of Plaintiffs’ homes, and would constitute an intentional and unreasonable invasion of Plaintiffs’ respective interests in real property.

35. If erected, the Ashby High Rise necessarily would substantially interfere with Plaintiffs’ use and enjoyment of their property by providing direct views into Plaintiffs’ backyards and causing gross invasions of privacy, depriving their properties of rain and sunlight thereby damaging their plants and other vegetation, diverting traffic onto their small residential

streets, and causing substantial additional congestion at the intersections they use for ingress and egress. The construction of the High Rise's deep pile foundations also threatens to damage the foundations of Plaintiffs' homes.

VII. Jury Demand & Request for Disclosure

36. Plaintiffs request trial by jury and hereby tender the appropriate fee.

37. Pursuant to Rule 194 of the Texas Rules of Civil Procedure, Plaintiffs request that Defendants disclose the information or material described in Rule 194.2.

VIII. Relief Requested

As a result of the foregoing, Plaintiffs respectfully pray for each of the following, collectively or in the alternative:

- a) That the Court issue a temporary injunction prohibiting the construction of the High Rise at least in its current form at the proposed site;
- b) That, after a trial on the merits, the Court issue a permanent injunction prohibiting the construction of the High Rise at least in its current form at the proposed site;
- c) Actual damages, both direct and consequential including the loss in value of their respective properties if the project goes forward;
- d) Exemplary damages;
- e) Attorneys' fees and costs of court;
- f) Pre-judgment and post-judgment interest;
- g) and any other relief to which they may be entitled.

Respectfully submitted,

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