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April 22, 2014

By E-mail and Hand Delivery
Honorable Randy Wilson
157th Judicial District Court
201 Caroline, 11th Floor
Houston, Texas 77002

Re: Cause No. 2013-26155; *Penelope Loughhead, et al. v. 1717 Bissonnet, LLC*; In the 157th Judicial District Court of Harris County, Texas.

Dear Judge Wilson:

In the past few days you have received an *amicus* brief and letters from certain special interest groups within the development community urging you not to enter an injunction. Plaintiffs submit this short letter in response.

- None of those groups, including the City, attended trial or heard the evidence about Defendant misleading the City during the permitting process, non-compliance with the Settlement Agreement, or the effort to mislead the jury and the Court about the project's foundation issues. Surely the organizations submitting the *amici* would not endorse such tactics.

- The letter from the City of Houston suggests that the Project was properly permitted, but the evidence at trial showed otherwise. Furthermore, and pertinent to a question the Court asked yesterday, plaintiffs offered evidence at trial regarding Mayor White's and Mayor Parker's opposition to the Project only to respond to Defendant's primary theme that the Project was fully permitted, which plaintiffs tried to exclude at trial because it is not relevant in a nuisance in fact case.

- None of the *amici* submissions provide even a single example of any harm or chilling effect that the neighborhood opposition, this case, the jury verdict, or the proposed injunction has or will have on development. With the current buffering ordinance, the nuisance situation that exists in this case cannot recur.

- Not entering an injunction will have a "chilling effect" on property owners' ability to stand up for their rights in the face of development that disregards and interferes with their property rights. This dispute is unique, it has been expensive and long for this neighborhood, and a jury that was certainly not inclined to do any favors for a largely well-to-do neighborhood (one of Defendant's key trial themes) unanimously found that this this proposed project will be a nuisance.

- This is a community-wide problem. The entire community will be impacted by the mixed-use high rise with multiple restaurants, as evidenced by the hundreds of people who attended meetings about this project over the years and the 140 individuals who signed up to be plaintiffs before the case was streamlined for trial. The neighboring communities and historic districts that surround and strongly oppose this project are full of Houston leaders who have as much interest in having Houston grow and thrive as any of the developer groups that have made *amici* submissions, and they are strongly opposed to this project as currently planned and permitted.

- The injunction issue, and nuisance law in general, is not about land use or judicial zoning. It is about impact on neighboring properties. The same is true in every nuisance case that both sides have cited to the Court, whether they involved racetracks, rendering plants, parking garages, motels, or parking lots. The only question in each case was whether a particular development as designed and operated would have an unreasonable impact on the neighboring properties. They were not referendums on racetracks, plants or parking garages per se, just as this case is not a referendum on high rises. If a racetrack, plant, parking garage, high rise, or anything else will unreasonably interfere with neighboring property rights on a recurring basis, as the jury found this project will, then it should be enjoined (absent some public necessity as in *Storey*). If those exact same projects are designed (or re-designed) so as not to interfere with neighboring property rights, then there is no claim and no injunction.

- If Defendant were to modify the design to actually fix the impacts that were the focus of the jury trial, then any future lawsuit would easily be disposed of, if one were to even be filed. Defendant has not done so. Not entering an injunction would be tantamount to finding that the project with the two minor modifications is not a nuisance, without any evidence, analysis, or jury finding to support such a conclusion.

- Not entering an injunction will also leave these plaintiffs without any adequate remedy. Defendant has made clear that it has no intention of paying the damages that the jury awarded, and they will certainly appeal any such award of damages, including by arguing that because they have made a couple of very minor changes to the proposed project, the damage award was conditioned on building the project as proposed at trial and Defendant is now planning to build a "different" project.

Very truly yours,

Jean C. Frizzell

JCF/sb

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