



FEB - 2 2011

Date: \_\_\_\_\_

CLERK OF COURT



Signature of Clerk or Deputy Clerk



2. Defendant, Whispering Oaks Home Owners' Association, Inc. (hereinafter "Whispering Oaks") is incorporated with the State of Texas and may be served by serving Edwin F. Einstein at 11016 Whisper Hollow, San Antonio, Texas 78230, its registered agent for service of process.

3. Defendant, Northside Neighborhoods for Organized Development (hereinafter "Northside Neighborhoods") is incorporated with the State of Texas and may be served by serving Charles Conner at 3400 River Path, San Antonio, Texas 78230, its registered agent for service of process.

4. Defendant V. J. Neighborhood, Inc. d/b/a Vance Jackson Neighborhood Association (hereinafter "Vance Jackson") is incorporated with the State of Texas and may be served by serving Theodore C. Trakas at 11106 Claypoop, San Antonio, Texas 78230, its registered agent for service of process.

5. Defendant, City of San Antonio is an incorporated municipality in the State of Texas. The City of San Antonio may be served through the City Clerk's Office, Leticia Vacek, City Clerk, City of San Antonio, Office of the City Clerk, PO. Box 839966, San Antonio, 78283-3966.

6. Defendant, Sylvia Diane Gonzalez-Cibrian a/k/a Diane Cibrian (hereinafter "Cibrian") is the former Councilperson for District 8 in the City of San Antonio and may be served at 6526 Rosewood Crest, San Antonio, Texas 78238. Defendant Cibrian is being sued both in her official capacity and individual capacity.

7. Defendant, Richard L. Higbie (hereinafter "Higbie") is an individual residing at 11225 Dreamland Drive, San Antonio, Texas 78232 and may be served at that address.

8. Joel Garcia (hereinafter "Garcia") is an individual residing at 2603 S. Whisper

Dove, San Antonio, Texas 78230 and may be served at that address.

9. Michael A. Makowski (hereinafter "Makowski") is an individual residing at 2602 S. Whisper Dove, San Antonio, Texas 78230 and may be served at that address.

10. Defendant Carl B. Saks (hereinafter "Saks") is an individual residing at 2602 Whisper Hill Street, San Antonio, Texas 78230.

11. William T. "Bill" Kaufman (hereinafter "Kaufman") is an individual residing in Bexar County, Texas and may be served at his office address of 100 W. Houston St., Suite 1250, San Antonio, Texas 78205.

12. William B. "Bill" Chenault III (hereinafter "Chenault") is an individual residing in Bexar County, Texas and may be served at his office located at 909 N.E. Loop 410, Suite 635, San Antonio, Texas 78209.

#### JURISDICTION AND VENUE

13. This is a cause of action under 42 U.S.C. §§ 1983 and 1985.

14. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331(a) involving federal question and 28 U.S.C. § 1343 for denial of equal rights.

15. Venue is proper in the United States District Court, Western District of Texas, San Antonio Division under 28 U.S.C § 1391(b). The property that is the subject of this lawsuit (Lots 1-5, Block 1, NCB 11670, City of San Antonio) is located within the Western District of Texas, San Antonio Division (hereinafter the "Subject Property").

#### STATEMENT OF FACTS

16. In 1937, Mr. R. N. White platted a long strip of large lots along the northwest side

of Dreamland Drive and called the newly platted area Beverly Hills. A copy of that plat is attached hereto as Exhibit A. In 1937 the entire surrounding area was undeveloped.

17. As time passed, all of the lots for the Beverly Hills subdivision were developed, except Lots 1-4 that abut a T-intersection of Dreamland Drive into Lockhill-Selma Road. For over 70 years, those lots have laid fallow and not been developed.

18. Meanwhile, in the intervening 70+ years, all of the property around the long, narrow strip called Beverly Hills Subdivision has been developed. Dreamland Oaks was built on the opposite side of Dreamland Drive from the Beverly Hills Subdivision. Dreamland Oaks had lot sizes about one-fourth the size of the lots in Beverly Hills Subdivision.

19. In the 70+ years apartments were built across Lockhill-Selma from the Beverly Hills Subdivision, which apartments have greatly deteriorated in the intervening years.

20. Behind Beverly Hills Subdivision, Whispering Oaks was built. The lot sizes in Whispering Oaks are a fraction of the lot sizes in the Beverly Hills Subdivision.

21. Also, as time passed since the original platting of the narrow strip in 1937, the City of San Antonio incorporated the area called Beverly Hills Subdivision and subsequently applied zoning to the already platted property. The zoning applied to Beverly Hills Subdivision was R-20, which according to the City of San Antonio, Municipal Code is "to provide a buffer between 'agricultural' and 'RE' classifications in the higher density areas of the City"<sup>1</sup>. The "R-20" zoning means the lot size must be a minimum of 20,000 square feet.

22. In the intervening 70+ years from the time the Beverly Hills Subdivision was platted in the undeveloped countryside outside San Antonio until the present time, all of the undeveloped area around the Beverly Hills Subdivision has been developed in much higher concentrations than the strip of large lots making up the Beverly Hills Subdivision. On each side

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<sup>1</sup> San Antonio, Tex. Unified Dev. Code Section 35-103.04 ("R-20" residential single family).

of the single strip of lots making up the Beverly Hills Subdivision, neighborhoods have been developed with R-6 zoning (see Attached Exhibit B). "R-6" stands for lots having a minimum lot size of 6,000 square feet.

23. In the intervening 70+ years, some of the adjacent property has been developed and even run down, such as the run-down apartments across Lockhill-Selma or the boarded up H.E.B. just down Lockhill-Selma. Even the Voelker Ranch is being developed by K.B. Homes with a dense concentration of single family units (see Exhibit B).

24. Through the years, Lots 1-4 of the Beverly Hills Subdivision, which abuts the T-intersection with a busy traffic light on a well-traveled Lockhill-Selma Road, remained undeveloped.

25. Also, during the intervening years, five different times, people or entities wanted to develop Lots 1-4. Twice zoning cases were filed and dropped. Three additional groups proposed developing the property and dropped their efforts. Each time the proposed developer was backed down by surrounding hostile neighbors in Whispering Oaks and adjacent areas. The following are past attempts by others to rezone and develop Lots 1-4 of the Beverly Hills Subdivision:

Past Proposed Re-Zoning

Z7974	Randy D. Dym	From "A" Single Family Residence District to "R3" Multi-Family Residence District	1/17/80
Z84247	Glen Westrom	From "A" Single Family Residence to R6 Townhouse Residence District and "O1" Office District	5/14/84
	Jewish Synagogue	Dropped	Early 1980's
	Tom Rohde	To "O1" and Multi-Family	Mid-1980's
	Lennie Nguyen Francisco Maillon	To "O1" and Multi-Family	2004

3

Each of these attempts to develop Lots 1-4 were vehemently opposed by Whispering Oaks and adjacent land owners.

26. As an example of such hostility, adjacent property owner Makowski made fun of Vietnam refugee Phu Van "Lennie" Nguyen when Mr. Nguyen approached him about possible rezoning and development of Lots 1-4.

27. Whispering Oaks even opposed a Jewish Synagogue being built on the Subject Property.

28. On February 9, 2007, Plaintiffs purchased Lots 1-4, which were vacant, as well as adjacent Lot 5 in the Beverly Hills Subdivision, the Subject Property. The address for Lot 5 is 11303 Dreamland, San Antonio, Texas 78230. While there is no box to receive mail at Lots 1-4, their street address is 11327 Dreamland, San Antonio, Texas 78230.

29. At the time Plaintiffs purchased Lots 1-5, the house on Lot 5 was in a state of partial remodeling/disrepair and Lots 1-4 had junk on the backside, were generally overgrown, had a dilapidated fence there around and generally looked bad. Plaintiffs spent a considerable sum finishing up the remodeling on the house, cleaning up Lots 1-4 and putting a new picket fence around the Subject Property.

30. At the time Plaintiffs bought the property, Plaintiffs intended to build their home and move onto the subject property. Initially, plans were to re-plat, but not rezone the property. The Plaintiffs would take a portion of the property for their home and develop the rest for high-end homes.

31. However, shortly after Plaintiffs purchased the property, the housing market collapsed. It is estimated there is a four-year supply of high-end homes on the market today. High-end homes cannot be sold for the cost of building. Therefore, Plaintiffs had to re-access



their plans.

32. The reason why Lots 1-4 of the subject property have not been developed is because of the busy intersection between Dreamland and Lockhill-Selma. To develop the property, the traffic at the busy intersection of Dreamland and Lockhill-Selma must either be (a) walled off, or (b) utilized. If the intersection was to be walled off and Lots 1-4 developed internally, it would require building roads, installing utilities, building a barrier fence, which Plaintiffs roughly estimate would cost in the hundreds of thousands of dollars. This is not economically feasible with R-20 zoning.

33. In early 2008, Plaintiffs met with adjacent property owner, Defendant Higbie and discussed possible rezoning of Lots 1-5. Defendant Higbie pretended to be interested in the possibility of including his property in the rezoning request. Initial sketches were even prepared that would include Defendant Higbie's property as part of a zoning request (see Exhibit C). Later, Defendant Higbie switched positions from wanting to be part of the zoning request to being in opposition to the proposed rezoning.

34. On May 30, 2008, Plaintiffs filed an application to rezone Lots 1-5 (the "Subject Property") to R-6, the same zoning as is on both sides of the strip of large lots called Beverly Hills Subdivision (see Exhibits B and D).

35. At the time Plaintiffs bought the Subject Property adjacent landowners were using the Subject Property as if it was their own, especially Lots 1 through 4. Defendant Makowski had a gate in his backyard fence so that he could go on the subject property anytime he desired. Adjacent landowner Defendant Saks had torn down the fence between his property and the Subject Property. Defendant Saks was using the Subject Property as a storage place for his construction business and had put a lot of worthless junk on the Subject Property.

36. Plaintiffs had to clear up and haul away the junk Defendant Saks had placed on the Subject Property.

37. At the time Plaintiff purchased the property, Defendant Garcia was using the Subject Property as if it was his own. Defendant Garcia had built a gate in his rear fence so that he could go on the Subject Property anytime he so desired. In fact, Defendant Garcia had accumulated a large compost pile on the Subject Property, which compost he used in literally hundreds of flower pots Defendant Garcia had in his yard (see Exhibit E). Defendant Garcia would walk his dog on the Subject Property.

38. After Plaintiffs purchased the property, including vacant Lots 1-4, Plaintiffs asserted control over the Subject Property and built a new fence between the Subject Property and Defendant Saks. This meant adjacent property owners of Defendants Saks, Makowski and Garcia could not use the Subject Property as if it were their personal property.

39. After Plaintiffs filed their petition for rezoning, the main vocal, outspoken critics were the adjacent property owners of Defendants Higbie, Makowski, Garcia and Saks.

40. When Plaintiff Ted Lee discussed the zoning case with Defendant Higbie, Defendant Higbie stated he would control the zoning outcome, and know the outcome, before any vote was taken. Defendant Higbie clearly implied that he controlled the vote that would occur in Plaintiffs' request for rezoning.

41. The City of San Antonio is divided into ten council districts with a separate councilperson being elected from each separate district. The Subject Property is located in District 8, which in 2008 was Council Woman/Defendant Cibrian. Each councilperson controls the zoning within their council district. If that councilperson opposes the rezoning, the rezoning will not occur. In effect, each council person is a dictator for all zoning cases in their district.

42. While the purpose of zoning laws is for a uniform system of development of a community or city, that does not occur in San Antonio, especially with each council member being a dictator over all zoning for their district.

43. Defendant Higbie in keeping with this statement that he would control the vote in any rezoning attempt, hired Defendant Kaufman to represent him on the zoning matter. Defendant Kaufman contributed heavily to Defendant Cibrian's election campaigns and represented her number one contributor. Based on information and belief, Defendant Kaufman was Defendant Cibrian's largest fundraiser. Defendant Higbie was clearly implying that he would control Defendant Cibrian's vote by political influence and campaign contributions of his attorney, Defendant Kaufman.

44. At Defendant Cibrian's insistence, a neighborhood meeting was held at Plaintiffs' house located at 11303 Dreamland on October 8, 2008 at 7:00 p.m. (see Exhibit I). The neighborhood meeting that Defendant Cibrian insisted upon having, which Plaintiffs graciously hosted in their house, turned into a lynch mob with Defendant Cibrian leading the lynching party. Plaintiffs were the guest of honor. The only objective the neighborhood meeting had was to get Plaintiffs to drop their zoning request.

45. At the neighborhood meeting in Plaintiffs' house, Defendants Northside Neighborhood for Organized Development was present and represented by its President, Chuck Saxer. Mr. Saxer stated to Plaintiffs that Northside Neighborhoods opposes any rezoning that would increase density, regardless of merit. Defendants Northside Neighborhoods has opposed the requested rezoning every step of the way and has attempted to exert its influence at both the Zoning Commission and City Council.

46. Another group called Vance Jackson Neighborhood Association (incorporated as

V. J. Neighborhood, Inc.), which is a member of the Northside Neighborhoods, has also opposed the zoning request. Defendant Vance Jackson Neighborhood is approximately one mile away from the requested rezoning and has lot sizes therein much smaller than the requested R-6 (see Exhibit G). Based on information and belief, Defendant Vance Jackson Neighborhood opposes any increase in density, the same as Defendant Northside Neighborhoods.

47. Defendant Garcia, who no longer had use of the Subject Property for his compost pile or to walk his dog, did everything possible to defeat the zoning request. Defendant Garcia created a website of <http://no-rezoning.info> opposing the zoning request. Defendant Garcia sent a letter dated September 20, 2008 falsely stating Plaintiffs are "...asking the city to allow Plaintiff to build up to thirty (30) homes on those 4.352 acres." [Emphasis added] (see Exhibit H). It is physically impossible to put thirty homes on 4.352 acres and have streets to get to those homes.

48. Defendant Garcia created form letters for the neighbors to sign and return in opposition to the zoning (see Exhibit H). When the neighbors did not sign and return the form letters opposing the zoning, Defendant Garcia contacted them and attempted to "persuade" them to file the opposition to the zoning. As much pressure as could be was put on the neighbors to oppose the zoning request was exerted.

49. Over the course of the next several months from September 20, 2008 (the date of Defendant Garcia's letter to the neighbors), Defendant Garcia coordinated the opposition to the zoning request and contacted every governmental official he thought might influence the outcome.

50. Meanwhile, Defendant Cibrian made sure the City staff knew her wishes and desires concerning this zoning request. As a result of the influence being exerted by Defendant

Cibrian, City staff, through its planner, Michael Diaz, opposed the zoning request at both the Zoning Commission and at City Council, falsely contending the zoning request was “out of character” with the surrounding neighborhood. The surrounding neighborhood was zoned R-6 or lower. The zoning request was for R-6.

51. The requested rezoning went to the Zoning Commission on December 16, 2008. The Zoning Commissioner for District 8 was Ramiro Valadez, III, who was appointed by Defendant Cibrian. Having been appointed by Defendant Cibrian, Commissioner Valadez always voted how Defendant Cibrian wanted him to vote. At the Zoning Commission, the zoning commissioners always defer to the commissioner from the district in which the property is located, which in this case was Commissioner Valadez. Defendant Cibrian, through her appointed Commissioner controlled the outcome of the Zoning Commission.

52. Commissioner Valadez was also a member of the family that was the largest contributor for Defendant Cibrian. Defendant Kaufman represented Commissioner Valadez’s family. As expected, Commissioner Valadez voted against the zoning request and the other commissioners followed suit.

53. The zoning request was placed on the City Council agenda on February 19, 2009. Just as the neighborhood being led by Defendant Garcia had opposed the zoning request at the Zoning Commission, they appeared also in mass before City Council. When Councilwoman Cibrian opposed the zoning request, the City Council, as it always does, deferred to the councilperson for that district (Defendant Cibrian) and rejected the zoning request.

54. Merit had nothing to do with the rejection. As the council always does, it was deferring to Defendant Cibrian, the councilperson for the property in question.

55. Defendant Cibrian was improperly influenced by the large contributions

Defendant Kaufman had generated in her election campaigns.

56. Also, Defendant Cibrian was running for Mayor of San Antonio, Texas. Merits of any zoning request was not the issue. The issue for Defendant Cibrian was how many votes she could get in her upcoming election. It was obvious to Defendant Cibrian she could get more votes by opposing the zoning request. In fact, Defendant Cibrian bragged to Defendant Garcia "I have not had a single zoning case in my district that has passed Council with my opposition." Merit had nothing to do with the rejection of the zoning request. Instead, the zoning request was denied based upon (1) favors to large contributors of election campaigns, (2) currying favor for future votes in a future election and (3) loss of the use of the Subject Property by adjacent property owners.

57. Throughout the attempted rezoning, Defendant Whispering Oaks allowed and approved of Defendants Garcia, Makowski and Saks speaking and acting on behalf of the Whispering Oaks Neighborhood. The self-interest of Defendants Garcia, Makowski and Saks to continue to use the Subject Property was never mentioned by Defendants.

58. After the City Council meeting, attorney William B. Chenault, III, who lives in Whispering Oaks, whom Plaintiffs have known for years, called Plaintiff Ted Lee asking why Plaintiffs had not contacted him when trying to get the zoning approved by Whispering Oaks. Defendant Chenault offered his services in the future concerning any other attempts to rezone the Subject Property. Earlier this year, Plaintiff Ted Lee met with District 8 Councilperson Reed Williams about a rezoning request. Subsequently, Reed Williams met with the Whispering Oaks Neighborhood Association concerning the zoning request. Afterwards Councilman Reed Williams informed Plaintiffs that he had to go along with the desires of the Whispering Oaks Neighborhood Association and would oppose any rezoning request.

59. After meeting with Councilman Williams, but before Councilman Williams met with Defendant Whispering Oaks, Plaintiffs contacted Defendant Chenault to retain his services to assist in dealing with Defendant Whispering Oaks neighborhood on the rezoning request. Rather than assisting, Defendant Chenault tried to talk Plaintiffs out of the rezoning request.

60. Based upon information and belief, Defendant Chenault used the information discussed with Plaintiffs when Plaintiffs were seeking his employment adversely to Plaintiffs. Specially, based on information and belief, Defendant Chenault took the position with Whispering Oaks Neighborhood Association and Councilman Reed Williams that the property could be developed without rezoning. Defendant Chenault was unaware of the meeting between Plaintiff Ted Lee and Councilman Reed Williams, nor of Councilman Williams' planned meeting with Whispering Oaks Neighborhood Association, except for confidential communication from Plaintiffs when Plaintiffs were attempting to hire him. The information communicated to Defendant Chenault during the attempted employment was then used against the Plaintiffs.

## COUNT I

### DENIAL OF DUE PROCESS

61. Plaintiffs repeat and reallege paragraphs 1 through 60 herein above.

62. 42 U.S.C. § 983 in pertinent part provides the following:

Every person who, under color of any statute, ordinance, regulation, custom, or usage of any state or territory... subjects, or causes to be subject, any citizen... the deprivation of any rights... secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity or other proper proceeding for redress.

63. By denying the zoning request, Defendants have arbitrarily, capriciously or unreasonably deprived Plaintiffs of substantive due process.

64. The zoning regulations as applied are arbitrary, capricious or unreasonable and deprive Plaintiffs of their substantive due process. Because of Defendants' denial of the rezoning, Plaintiffs have been deprived of their Constitutional rights in that Plaintiffs' property has been taken without due process of law. Plaintiffs have been deprived of their rights to enjoy, use and develop the property, contrary to the United States Constitution and 42 U.S.C. § 193-198.

## **COUNT II**

### **VIOLATION OF CONSTITUTIONAL RIGHTS**

65. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 64 herein above. The acts complained of herein above violate Plaintiffs' constitutional rights as established in the Due Process clauses of the 5<sup>th</sup> and 14<sup>th</sup> Amendments of the United States Constitution.

66. The actions taken by the Defendants deprive Plaintiffs of the use and enjoyment of their property without due process of law.

## **COUNT III**

### **CIVIL CONSPIRACY**

67. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 66 herein above.

68. Defendants have conspired together, and with others currently unknown to deny Plaintiffs of substantive due process and of their civil rights. The individual Defendants have conspired with those acting under color of law and entered into a civil conspiracy to deny equal protection of the law, depriving Plaintiffs of their right to enjoy, use and develop the Subject Property, all of which is contrary to the United States Constitution, the Texas Constitution, and



42 U.S.C. §§ 1983 and 1985(3).

69. Defendants' denial of the rezoning has resulted in the taking or the damaging of all of the Subject Property in violation of the United States Constitution and/or the Texas Constitution.

#### **COUNT IV**

##### **TAX EVALUATION**

70. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 69 herein above.

71. The most recent tax appraisals for the Subject Property are attached hereto as Exhibit I.

72. If all other relief requested herein above by Plaintiffs are denied, then the tax appraisals for Lots 1-5 is excessive and should be reduced. It is not economically feasible to develop the Subject Property for residential purposes. The tax evaluation for Lots 1-4 of the Subject property should be reduced to that similar to taxes imposed on undeveloped ranch land or farms.

#### **COUNT V**

##### **BREACH OF FIDUCIARY DUTY**

73. Plaintiffs repeat and reallege paragraphs 1 through 72 herein above.

74. Through action of Defendant Chenault in using information he received in confidence from Plaintiffs who contacted him as prospective clients against the interest of the prospective clients is in violation of the Texas Disciplinary Rules of Professional Conduct.

75. Such actions by Defendant Chenault in using the confidential communications from Plaintiffs against their interest violates fiduciary duties owed by Defendant Chenault to

Plaintiffs.

76. As a result of Defendant Chenault's actions, Plaintiffs have been damaged.

**PRAYER**

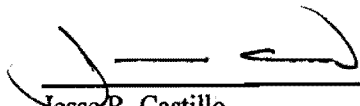
Plaintiffs, Ted D. Lee and Jerelene W. Lee hereby respectfully pray for judgment against Defendants declaring as follows:

1. That Defendants have taken or damaged Plaintiffs' right, title and/or interest to the Subject Property;
2. Awarding damages to Plaintiffs against Defendants as a result of Defendants' acts;
3. That Defendants' acts constitute an intentional taking, damaging or destroying of the Subject Property without adequate compensation for Plaintiffs;
4. Awarding Plaintiffs court costs, attorneys' fees, pre-judgment interest and post-judgment interest as provided by law; and
5. Any other relief to which Plaintiffs are justly entitled.

Plaintiffs, Ted D. Lee and Jerelene W. Lee further specifically requests that judgment be entered against Defendant William B. Chenault, III as follows:

1. Declaring that Defendant Chenault breached his fiduciary duties to Plaintiffs;
2. Awarding Plaintiffs damages against Defendant Chenault due to his breach of fiduciary duties;
3. Awarding Plaintiffs attorneys' fees, costs pre-judgment, and post-judgment interest as provided by law; and
4. Any other relief to which Plaintiffs are justly entitled against Defendant Chenault.

Respectfully submitted,



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