NO. _____

MM BELLAIRE ONE, LLC,	§	IN THE DISTRICT COURT
	§	
Plaintiff,	§	
	§	
v.	§	HARRIS COUNTY, TEXAS
	§	
CITY OF BELLAIRE, TEXAS, EVELYN'S PARK CONSERVANCY, AND KEVIN TAYLOR	§	
	§	
Defendants.	§	_____ JUDICIAL DISTRICT

PLAINTIFF MM BELLAIRE ONE, LLC'S ORIGINAL PETITION, APPLICATION FOR TEMPORARY RESTRAINING ORDER, AND APPLICATION FOR TEMPORARY AND PERMANENT INJUNCTIVE RELIEF

Plaintiff MM BELLAIRE ONE, LLC ("MM Bellaire" or "Plaintiff") files this Original Petition, Application for Temporary Restraining Order, and Application for Temporary and Permanent Injunctive Relief against Defendants CITY OF BELLAIRE, TEXAS, EVELYN'S PARK CONSERVANCY, and KEVIN TAYLOR (collectively, "Defendants") and in support thereof shows follows:

I. DISCOVERY LEVEL AND AMOUNT IN CONTROVERSY

1. Plaintiff intends to conduct discovery under Level 2 of the Texas Rule of Civil Procedure 190. Plaintiff seeks monetary relief over $200,000, but not more than $1,000,000, and non-monetary relief. *See* TEX. R. CIV. P. 47(c).

II. PARTIES

2. MM BELLAIRE ONE, LLC is a domestic limited liability company operating in Harris County, Texas. MM Bellaire is authorized to conduct business in Texas.

3. CITY OF BELLAIRE, TEXAS (the "City") is a political subdivision located in Harris County, Texas. The City may be served with process pursuant to Texas Civil Practice and

Remedies Code § 17.024 by serving citation on the mayor, clerk, secretary, or treasurer. The City of Bellaire Mayor, Andrew S. Friedberg, may be served at 7008 S. Rice, Bellaire, Texas 77401, or wherever he may be found. CITATION IS HEREBY REQUESTED.

4. EVELYN'S PARK CONSERVANCY ("Evelyn's Park") is a domestic nonprofit corporation authorized to conduct business in the State of Texas. Evelyn's Park may be served through its registered agent, Keith Rubenstein at 2330 Holmes Road, Houston, Texas, 77051 or wherever he may be found. CITATION IS HEREBY REQUESTED.

5. KEVIN TAYLOR ("Taylor") is an individual rising in Harris County, Texas. Taylor may be served at his place of business, City of Bellaire Development Services, 7008 S. Rice Ave., Bellaire, Texas 77401 or at his residence located at 201 Westheimer #G, Hosuton, Texas 77006, or wherever he may be found. CITATION IS HEREBY REQUESTED.

III. JURISDICTION AND VENUE

6. Jurisdiction is proper in this Court as the amounts in controversy are within this Court's jurisdictional limits. Jurisdiction is also proper because the City of Bellaire is a Texas political subdivision, Evelyn's Park is actively engaged in business in the State of Texas, and Kevin Taylor is a Texas resident.

7. Venue is proper in Harris County, Texas, because the suit involves a Sublicense Agreement concerning rights to real property located in Harris County, Texas. *See* TEX. CIV. PRAC. & REM. CODE § 155.035; *see also id.* § 15.0115 (governing mandatory venue in a suit between a landlord and a tenant arising under a lease). Venue is also proper in Harris County, Texas because all or a substantial part of the events giving rise to this cause of action occurred in Harris County, Evelyn's Park's principal office is in Harris County, and Harris County is the county of Taylor's residence. *See* TEX. CIV. PRAC. & REM. CODE §§ 15.002, 65.023.

Additionally, venue is mandatory in Harris County under Texas Civil Practice & Remedies Code section 15.0151 because this is a suit against a city located in Harris County, which has a population of 100,000 or less. *See* TEX. CIV. PRAC. & REM. CODE § 15.0151.

IV. CONDITIONS PRECEDENT

8. All conditions precedent necessary to maintain this action have been performed, have occurred, have been waived, or have been excused.

V. BACKGROUND

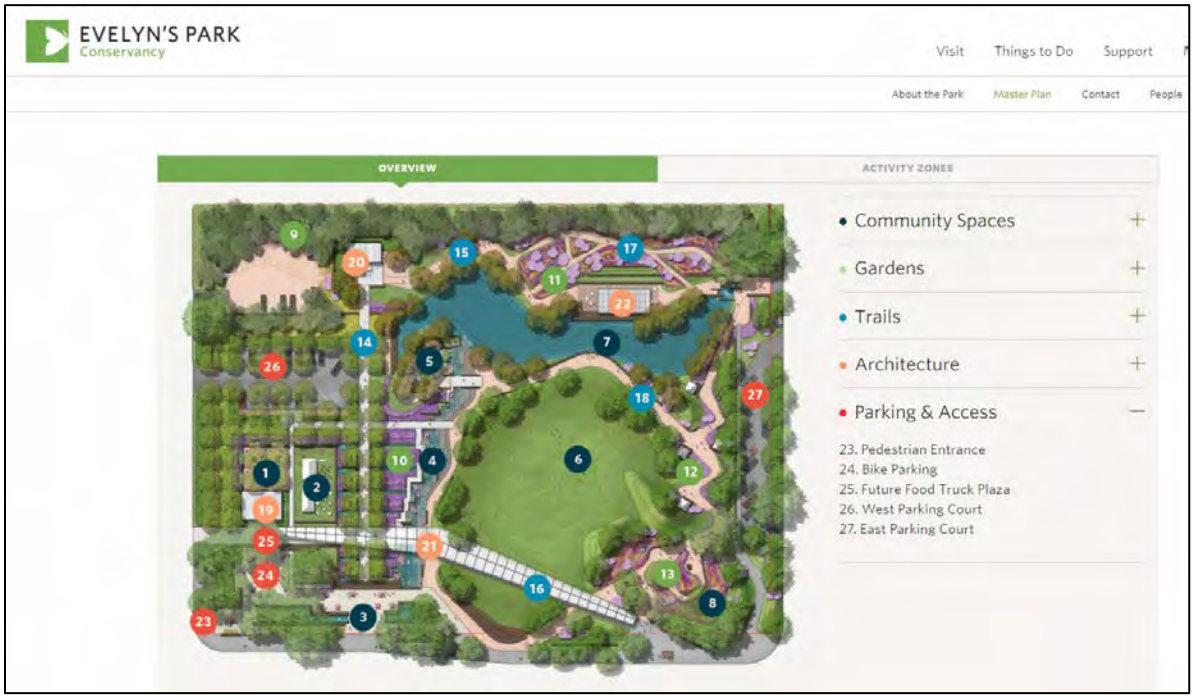
9. The following documents are attached hereto and incorporated for all purposes as if fully cited herein:

Exhibit A	Affidavit of John Morton (Dec. 3, 2020)
[redacted]	[redacted]
Exhibit A-2	Consent to Sublet (Mar. 27, 2019)
Exhibit A-3	Sublicense Agreement (Apr. 30, 2019)
Exhibit A-4	Letter ARKK Engineers to City of Bellaire (Aug. 15, 2019)
Exhibit A-5	Permit and Plan Approval
Exhibit A-6	Notice of Substantial Completion (Mar. 18, 2020)
Exhibit A-7	Email M. Kennedy to P. Case (Mar. 18, 2020)
Exhibit A-8	Letter K. Taylor to CenterPoint (Mar. 26, 2020)
Exhibit A-9	Letter Evelyn's Park to City of Bellaire (Apr. 14, 2020)
Exhibit A-10	Letter Evelyn's Park to City of Bellaire (Apr. 22, 2020)
Exhibit A-11	Letter Evelyn's Park to City of Bellaire (Jun. 24, 2020)
Exhibit A-12	Letter City of Bellaire to CenterPoint, MM Bellaire, and Evelyn's Park (Nov. 23, 2020)
Exhibit A-13	Email L. Waters to J. Morton (Dec. 1, 2020)

Exhibit B	Mayor's Musings (Nov. 17, 2020)
Exhibit C	*Is Removal Imminent? Bellaire Council Nixes Bellaire Blvd. Parking Lot*, Village News (Nov. 24, 2020).
Exhibit D	Affidavit of M. Klasing (Dec. 4, 2020)
Exhibit D-1	MM Bellaire Application to City of Bellaire (Dec. 4, 2020)
Exhibit D-2	Photo of Property (Dec. 2, 2020)

A. Evelyn's Park and the City of Bellaire

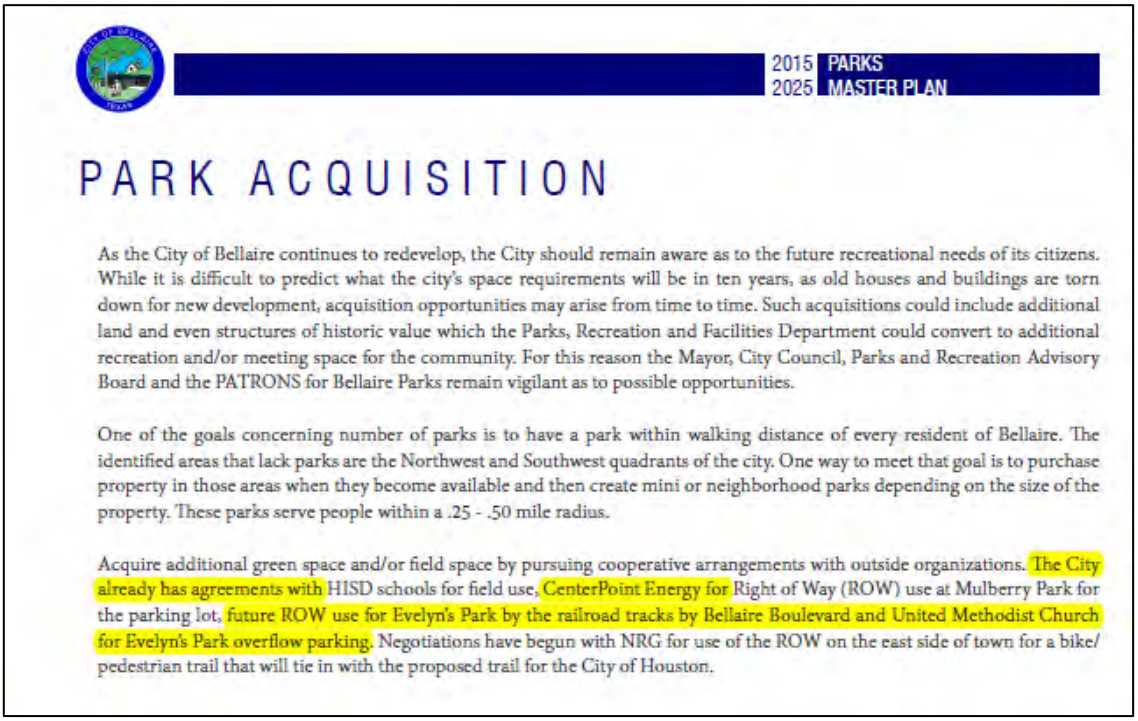
10. Evelyn's Park Conservancy ("Evelyn's Park") maintains Evelyn's Park, an outdoor green space located in Bellaire, Texas. *See* Exh. A, Aff. of John Morton ¶ 3 (Dec. 3, 2020).



See Master Plan, EVELYN'S PARK, *available at* https://evelynspark.org/master-plan.

11. Betsy's at Evelyn's Park ("Betsy's") is a commercial eatery located on the premises of Evelyn's Park. *See* Master Plan, EVELYN'S PARK, available at https://evelynspark.org/master-plan (Betsey's is No. 19 on the map).

12. In or about 2015, the City created a comprehensive community plan, which included using the Property located 4300 Bellaire Boulevard (the "Property") for park parking. *See* Exh. A ¶ 4.



2015 PARKS
2025 MASTER PLAN

PARK ACQUISITION

As the City of Bellaire continues to redevelop, the City should remain aware as to the future recreational needs of its citizens. While it is difficult to predict what the city's space requirements will be in ten years, as old houses and buildings are torn down for new development, acquisition opportunities may arise from time to time. Such acquisitions could include additional land and even structures of historic value which the Parks, Recreation and Facilities Department could convert to additional recreation and/or meeting space for the community. For this reason the Mayor, City Council, Parks and Recreation Advisory Board and the PATRONS for Bellaire Parks remain vigilant as to possible opportunities.

One of the goals concerning number of parks is to have a park within walking distance of every resident of Bellaire. The identified areas that lack parks are the Northwest and Southwest quadrants of the city. One way to meet that goal is to purchase property in those areas when they become available and then create mini or neighborhood parks depending on the size of the property. These parks serve people within a .25 - .50 mile radius.

Acquire additional green space and/or field space by pursuing cooperative arrangements with outside organizations. The City already has agreements with HISD schools for field use, CenterPoint Energy for Right of Way (ROW) use at Mulberry Park for the parking lot, future ROW use for Evelyn's Park by the railroad tracks by Bellaire Boulevard and United Methodist Church for Evelyn's Park overflow parking. Negotiations have begun with NRG for use of the ROW on the east side of town for a bike/ pedestrian trail that will tie in with the proposed trail for the City of Houston.

See Parks Master Plan, CITY OF BELLAIRE, 2015 – 2025 p. 40, *available at* https://www.bellairetx.gov/DocumentCenter/View/3435 (hereinafter "City Parks Master Plan").

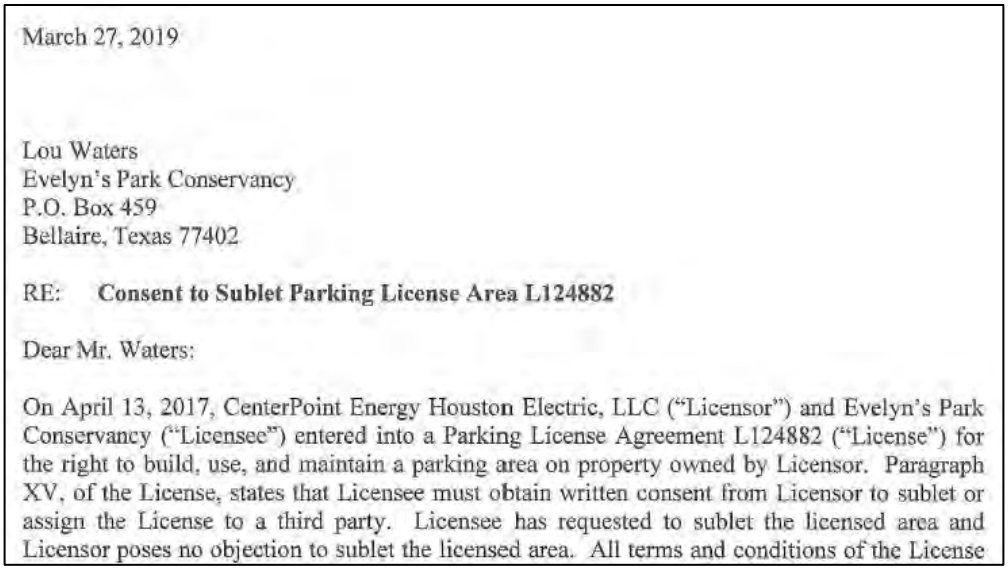
13. In or about April 2017, Evelyn's Park entered into a Parking License Agreement, License No. L124882 ("License"), with CenterPoint Energy Houston Electric, LLC ("CenterPoint"). *See* Exh. A ¶ 5.

[redacted]

14. In or about summer 2018, MM Bellaire began construction of an 80,000 square foot mixed used commercial development called Southside Commons. *See* Exh. A ¶ 6. Southside Commons is located approximately 1,250 feet east of the Property. *See* Exh. A ¶ 6.

15. In early 2018, MM Bellaire began discussions with Evelyn's Park to develop the Property into a parking lot. *See* Exh. A ¶ 7. The proposed lot would serve both Evelyn's Park and Southside Commons. *See* Exh. A ¶ 7.

16. On or about March 27, 2019, CenterPoint consented to Evelyn's Park's proposal to sublicense the Property to MM Bellaire. *See* Exh. A ¶ 8.



March 27, 2019

Lou Waters
Evelyn's Park Conservancy
P.O. Box 459
Bellaire, Texas 77402

RE: **Consent to Sublet Parking License Area L124882**

Dear Mr. Waters:

On April 13, 2017, CenterPoint Energy Houston Electric, LLC ("Licensor") and Evelyn's Park Conservancy ("Licensee") entered into a Parking License Agreement L124882 ("License") for the right to build, use, and maintain a parking area on property owned by Licensor. Paragraph XV, of the License, states that Licensee must obtain written consent from Licensor to sublet or assign the License to a third party. Licensee has requested to sublet the licensed area and Licensor poses no objection to sublet the licensed area. All terms and conditions of the License

See Exh. A-2, Consent to Sublet (Mar. 27, 2019).

17. On or about April 30, 2019, Evelyn's Park and MM Bellaire entered into a Sublicense Agreement for the Property ("Sublicense"). *See* Exh. A ¶ 9; *see also* Exh. A-3, Sublicense Agreement (Apr. 30, 2019). The purpose of the Sublicense was for MM Bellaire to develop the Property into the parking lot. *See* Exh. A ¶ 9. MM Bellaire agreed to pay Evelyn's Park's rent on the Property and costs of constructing the parking lot. *See* Exh. A ¶ 9; *see also* Exh. A-3 § 3.

18. MM Bellaire subsequently hired the following parties to work on the parking lot development: ATRR Engineering to complete civil engineering; Raba Kistner to compile a geotechnical report and complete construction materials and testing; Project Solutions, LLC to manage the project; Arch-Con to act as the contractor; and TBG Partners to complete landscape design services. *See* Exh. A ¶ 10.

19. In the summer of 2019, Evelyn's Park and MM Bellaire submitted a permit application to the City for approval and comments. *See* Exh. A ¶ 11. MM Bellaire's engineers

corresponded with the City and responded to the City's comments and requirements. *See* Exh. A ¶ 11; *see also* Exh. A-4, Letter ARKK Engineers to City of Bellaire (Aug. 15, 2019).

ARKK ENGINEERS

August 15, 2019

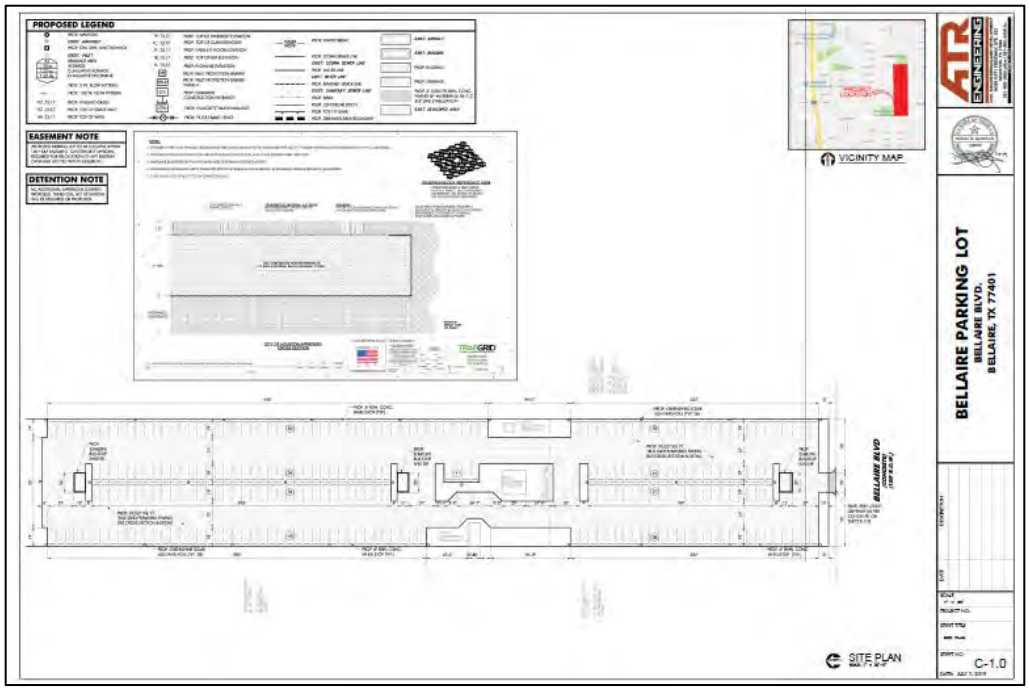
Ms. ChaVonne Sampson
Director of Development Services
City of Bellaire
7008 S. Rice Avenue
Bellaire, Texas 77401

Re: Plan Review
Parking lot in Centerpoint Right-of-Way - Bellaire Blvd.
City of Bellaire, Texas

Dear Ms. Sampson:

As you requested, I have reviewed the proposed parking lot drainage plan on the Centerpoint right-of-way submitted by Daniel M. Quarles of ATR Engineering and offer the following comments:

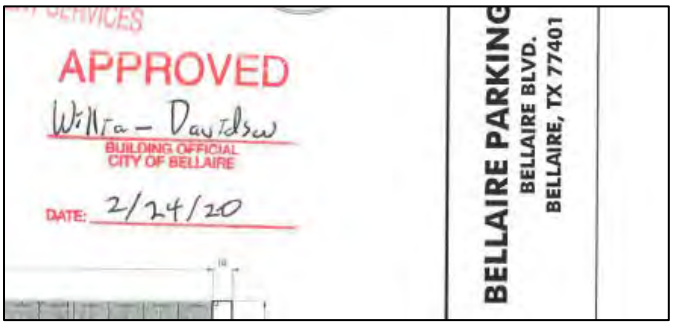
See Exh. A-4 p. 1.



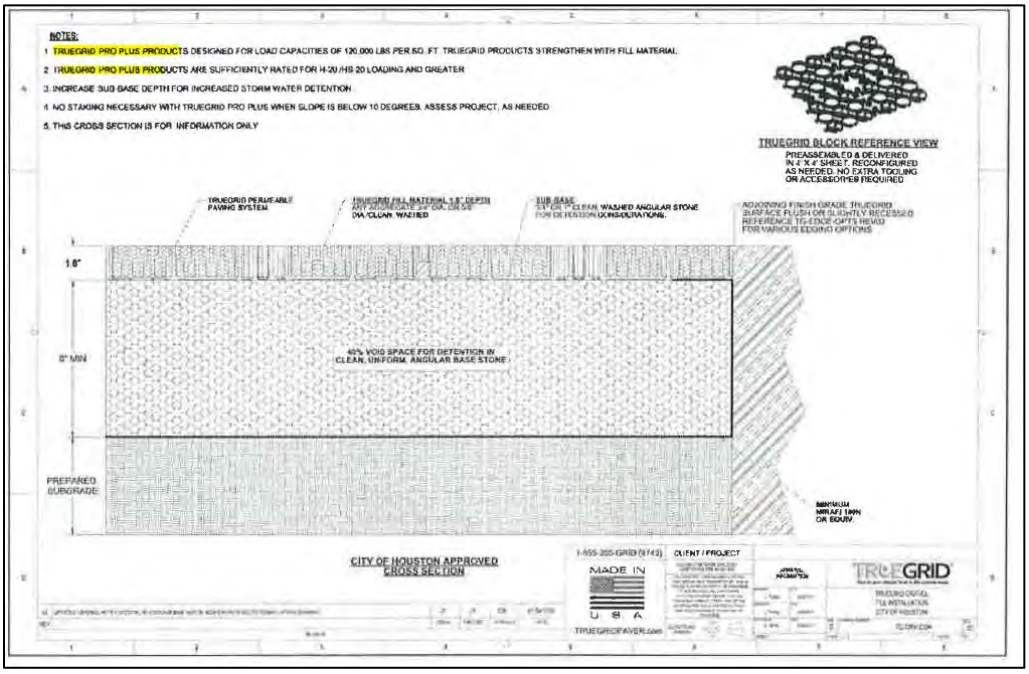
See Exh. A-4 p. 3.

20. The efforts coordinating with the City were successful. *See* Exh. A ¶ 12. On or about January 6, 2020, the City issued a CR – 100K – 499,999 Permit, Number 2000021 (the

"Permit"). *See* Exh. A ¶ 12; *see also* Exh. A-5 Permit and Plan Approval. The Permit authorized Arch-Con to proceed with construction of the parking lot. *See* Exh. A ¶ 12. On or about February 24, 2020, William Davidson, a City employee, approved and stamped MM Bellaire's construction plans (the "Plans"). *See* Exh. A ¶ 12.



See Exh. A-5 p. 2. The Plans clearly state that the parking lot was to be constructed with Truegrid system with gravel fill. *See* Exh. A ¶ 12.



See Exh. A-5 p. 3.

21. Work began on the Property shortly thereafter. *See* Exh. A ¶ 13. On or about March 18, 2020, Arch Con issued a notice of substantial completion of the parking lot (the

"Improvements"). *See* Exh. A ¶ 13; *see also* Exh. A-6, Notice of Substantial Completion (Mar. 18, 2020). On the same date, Kevin Taylor, a City employee, emailed Arch-Con ***to cease work on the Property***. *See* Exh. A ¶ 13; *see also* Exh. A-7, Email M. Kennedy to P. Case (Mar. 18, 2020). Despite the fact that the construction of the Improvements was substantially complete, the City revoked the Permit and advised that the Permit had been "issued in error." *See* Exh. A ¶ 13. The City revoked the Permit under the International Building Code ("IBC"), which it adopted. *See* BELLAIRE CODE OF ORDINANCES § 9-16. The provisions of the IBC apply to the "construction, alteration, relocation, enlargement, replacement, repair, equipment, use and occupancy, location, maintenance, removal and demolition of every ***building*** or ***structure***." INTERNATIONAL CODE COUNCIL, *International Building Code* (2018) § 101.2 Scope (emphasis added).

From: City of Bellaire Building Official <buildingofficial@bellairetx.gov>
Sent: Wednesday, March 18, 2020 2:30 PM
To: Mark Kennedy <mkennedy@arch-con.com>
Cc: ChaVonne Sampson <csampson@bellairetx.gov>
Subject: 4300 Bellaire Blvd permit #2000021

> > EXTERNAL EMAIL < <

Mr. Kennedy,

It has been determined that the project located 4300 Bellaire Blvd. is in violation of the City of Bellaire's adopted Code of Ordinances. In accordance with the City of Bellaire adopted Building Code, Sections 105.4 and 105.6, it has been determined that permit #2000021 was issued in error and is hereby revoked. A notice has been posted on site to make all contractors aware that until a building permit has been obtained, no further work may be done on this site.

"105.4 Validity of permit. The issuance or granting of a permit shall not be construed to be a permit for, or an approval of, any violation of any of the provisions of this code or of any other ordinance of the jurisdiction. Permits presuming to

1

give authority to violate or cancel the provisions of this code or other ordinances of the jurisdiction shall not be valid. The issuance of a permit based on construction documents and other data shall not prevent the building official from requiring the correction of errors in the construction documents and other data. The building official is also authorized to prevent occupancy or use of a structure where in violation of this code or of any other ordinances of this jurisdiction."

"2018 IBC Section 105.6 Suspension or revocation. The building official is authorized to suspend or revoke a permit issued under the provisions of this code wherever the permit is issued in error or on the basis of incorrect, inaccurate or incomplete information, or in violation of any ordinance or regulation or any of the provisions of this code."

A more detailed letter will follow to further explain the violations of the City of Bellaire Code of Ordinances.

Sincerely,

Kevin Taylor
Building Official
City of Bellaire
713-662-8232

See Exh. A-7.

22. On or about March 26, 2020, Mr. Taylor, on behalf of the City, served a letter upon CenterPoint, Arch-Con, and Evelyn's Park, which stated that the Improvements did not comply with the Bellaire City Ordinances. *See* Exh. A ¶ 14; *see also* Exh. A-8, Letter K. Taylor to CenterPoint (Mar. 26, 2020). Taylor pointed to the Improvements' material and the location of the Property as the basis for the revocation:

> The parking lot improvements generally located at 4300 Bellaire Blvd (HCAD Account #0370410000143) have been determined to be noncompliant with the Planning and Zoning Ordinance and the Building Ordinance. A parking lot is only a permitted use within the R-5 residential district, as detailed in the City of Bellaire Code of Ordinances, under sections 24-534 B. (1) a) g). The current parking lot material of gravel does not comply with Section 9-21, which requires that all parking areas be paved with concrete, asphalt materials, or masonry paving units.

See Exh. A-8 p. 1.

23. Evelyn's Park submitted a response on or about April 14, 2020. *See* Exh. A ¶ 14; *see also* Exh. A-9, Letter Evelyn's Park to City of Bellaire (Apr. 14, 2020). Upon information and belief, Mr. Davidson was reassigned as a result of this error. *See* Exh. A ¶ 15.

24. Around this time, residents of the City began organizing in protest of the now-substantially complete Improvements. *See* Exh. A ¶ 16.

25. Over the spring and summer of 2020, MM Bellaire and Evelyn's Park attempted to work with the City to address and resolve their concerns. *See* Exh. A ¶ 17.

26. Evelyn's Park applied to the City to amend the zoning code. *See* Exh. A ¶ 18; *see also* Exh. A-10, Letter Evelyn's Park to City of Bellaire (Apr. 22, 2020); Exh. A-11, Letter Evelyn's Park to City of Bellaire (Jun. 24, 2020). Before Evelyn's Park met with the City Planning and Zoning Committee, and in an attempt to alleviate the Bellaire community's concerns, MM Bellaire proposed redesigning the lot to add greenery and additional improvements. *See* Exh. A ¶ 19.

27. On or about August 13, 2020, the City Planning and Zoning Committee voted unanimously that they would not recommend Evelyn Park's application to the City Council. *See* Exh. A ¶ 20. On or about November 16, 2020, the City Council denied Evelyn's Park's application to amend the zoning code. *See* Exh. A ¶ 21. A Houston Chronicle article detailed the widespread protests of the Improvements leading up to the City's decision. *See* Ryan Nickerson,

Bellaire deems parking lot near Evelyn's Park illegal, HOUSTON CHRONICLE (Nov. 18, 2020), https://www.houstonchronicle.com/neighborhood/bellaire/news/article/Bellaire-rejects-request-for-new-parking-spaces-15734735.php.

28. On November 17, 2020, Andrew S. Friedberg, Mayor of the City of Bellaire, posted the following blog entry about the events that transpired related to the present case:

> ***The erroneously permitted parking lot at 4300 Bellaire Boulevard***, in the CenterPoint utility easement by the railroad tracks, ***will soon be removed***. The City Council, after public hearing and on the unanimous recommendation of the Planning and Zoning Commission, has itself unanimously rejected proposed zoning code amendments that would have retroactively allowed the parking lot to remain. It took several months to get to this point, but that's as it should be—the applicant, like any property owner, was legally entitled to due process, which included a stay of enforcement while its applications were pending.
>
> It's also because of that same due process that I'm only now writing about the parking lot, as some of you have asked me. Until last night the matter had not yet come to City Council, much less been decided. Since mine is only one of seven votes, I'm careful to avoid blogging prematurely about a given issue before Council as a whole has deliberated and taken action.
>
> ***It's no secret that a mistake was made***. The permit violated the applicable zoning regulations and should not have been issued, as has been very publicly acknowledged and with repercussions for the staff member who made the error. I love a good conspiracy theory as much as the next guy, and there have been some interesting ones going around, but there's really nothing more to it; ***this was all just an unfortunate, but honest mistake***.
>
> In fairness, though (glass houses and all that), it was at least a somewhat understandable mistake considering the character of the property at issue. While it's zoned residential, it's obviously not developable as such and one can easily see how its zoning status could have been overlooked. Indeed, it seems likely the property was zoned residential in the first place simply for legislative convenience, lumped in with the adjacent R-5 district rather than requiring the creation of a new zoning district devoted to electric utility transmission lines, again because it's not otherwise developable anyway.
>
> ***Furthermore, we've been talking—publicly—about a parking lot at that location for years now*** (so really, shame on all of us for having not

> recognized the zoning issue much sooner). ***Dating back to the very beginning of Evelyn's Park, from at least around 2013 or so, the need for additional off-site parking was well accepted***. In fact, the residents on surrounding streets who demanded solutions for all the cars parked up and down their blocks, were expressly assured there were plans for the eventual development of this lot. It was discussed extensively back at that time, and the Evelyn's Park Conservancy Board kept us apprised of their efforts over the years, ***but not until the Southside Commons development recently came along was there anyone to provide funding for it***.
>
> That said, speaking for myself and I think I can safely say for most if not all of the Council members who have served during that time, ***what was actually built doesn't look anything like what we'd envisioned. We were expecting something much more visually pleasing***—and complementary to Evelyn's Park—with rows of parking broken up by trees and other attractive landscaping. Quite like, incidentally, the parking lot in front of Southside Commons itself. And certainly with at least some setback from the neighboring residential properties along with a privacy fence or other suitable buffering. Of course, even with those features it still would not have complied with our zoning.
>
> ***Once it showed up***, taking many by surprise, ***residents made clear they don't want the thing***. ***Even among those nearby who were promised the lot and whose interests it was intended to protect, not a single one came out in favor of it. That being the case, it was an easy call for P&Z and then Council to make, and we declined the invitation to retroactively reinstate the permit***. But like any other applicant the Conservancy had every right to make the request, and was entitled to a fair hearing. ***The issue having now been finally decided, the parking lot will be gone, and hopefully we and the Conservancy can put it behind us and move on***.

See Exh. B, Andrew S. Friedberg, MAYOR'S MUSINGS (Nov. 17, 2020), http://cityofbellairemayorsmusings.blogspot.com/2020/11/a-matter-of-due-process.html# (last visited December 6, 2020) (emphasis added). Contrary to the Mayor's proclamation, MM Bellaire has not had due process.

29. On November 23, 2020, the City issued a letter to CenterPoint, Evelyn's Park, and MM Bellaire advising that "the Bellaire City Council failed to approve the zoning text amendments / [Specific Use Permit] application," that the parking lot Improvements were not permitted within the City's zoning, and that CenterPoint, Evelyn's Park, and MM Bellaire were

required to file an application for demolition of the parking lot within 14 days. *See* Exh. A ¶ 22; *see also* Exh. A-12, Letter City of Bellaire to CenterPoint, MM Bellaire, and Evelyn's Park (Nov. 23, 2020). The letter further stated that the recipients would be subject to fines if they failed to meet the fourteen day deadline. *See* Exh. A ¶ 22.

30. In its November 24, 2020 issue, a local periodical, Village News, wrote about the parking lot and the City's taking after "Bellaire's city council. . . unanimously denied a request by Evelyn's Park . . . for text amendments to the city's zoning code[.]" *See* Exhibit C, *Is Removal Imminent? Bellaire Council Nixes Bellaire Blvd. Parking Lot*, VILLAGE NEWS (Nov. 24, 2020), The Village News noted that "what happens next is a bit cloudy" as "[t]he parking lot already exists[.]" *See id*. The article details the protracted approval process and that it is unclear when Improvements will be removed. *See id.*

31. The City's reasoning for demanding MM Bellaire to remove the Improvements is for the public use of community aesthetics and beautification and to appease an outcry from City residents. *See* Exh. A ¶ 23; *see also* Hunter Marrow, *Bellaire City Council shoots down request to keep overflow parking lot*, COMMUNITY IMPACT NEWSLETTER (9:34 PM Nov. 16, 2020), https://communityimpact.com/houston/bellaire-meyerland-west-university/government/2020/11/16/bellaire-city-council-shoots-down-request-to-keep-overflow-parking-lot/ (quoting City Council member Michael Fife, "I certainly do not think [the parking lot] belongs on our front door. . . . To me, it's like putting your washer and dryer in your living room[.]"). Many of the complaints related to deemed "commercial" nature of the Improvements. This is notwithstanding the fact that Betsy's is a commercial development, and the two other parking lots that serve Evelyn's Park allow parking for the customers of Betsy's.

32. On or about December 1, 2020, CenterPoint notified Evelyn's Park of its intent to terminate the License it granted to Evelyn's Park. *See* Exh. A ¶ 24; *see also* Exh. A-13, Email L. Waters to J. Morton (Dec. 1, 2020).

33. MM Bellaire spent over $300,000 to construct the Improvements, pursuant to a City-approved Permit and City-approved Plans. *See* Exh. A ¶ 25. **The City is now requiring MM Bellaire to pay for the destruction of the newly-constructed lot**. *See* Exh. A ¶ 25. The City has not offered MM Bellaire any compensation for the monies it expended. *See* Exh. A ¶ 25.

34. Importantly, MM Bellaire's contractual obligations with third parties are now in jeopardy. *See* Exh. A ¶ 26. Pursuant to MM Bellaire's leases with tenants of Southside Commons, MM Bellaire is required to provide parking. *See* Exh. A ¶ 26. This obligation was satisfied by the Improvements. *See* Exh. A ¶ 26.

35. Below is a photo of the parking lot as it existed on December 2, 2020:

See Exh. D-2.

B. MM Bellaire's Attempt to Apply to the City

36. On December 4, 2020, MM Bellaire filed the variance application, attached hereto as Exhibit D-2, with the City of Bellaire. *See* Exh. D, Aff. of M. Klasing (Dec. 4, 2020); *see also* Exh. D-2, MM Bellaire Application to City of Bellaire (Dec. 4, 2020).

C. Other Parking Lots along the Bellaire Utility Easement

37. There are at last two parking lots located in the utility easement(s), north of the Property, directly west of the railroad tracks. Satellite image of the easement is depicted below with the three (3) parking lots highlighted:

[1]

38. Mulberry Park is a City park located at 700 Mulberry Lane:

[2]

Its parking lot lies to the east of Mulberry Park, west of the railroad tracks:

---

[1] *See* 4300 Bellaire Blvd Bellaire, TX 7740 - Google Maps, GOOGLE MAPS, https://www.google.com/maps/place/4300+Bellaire+Blvd,+Bellaire,+TX+77401/@29.709438,-95.4500672,1200m/data=!3m1!1e3!4m5!3m4!1s0x8640c1b98bb56109:0x716862cfde398b39!8m2!3d29.7059835!4d-95.4477239 (last visited on Dec. 6, 2020) (emphasis added).

[2] *See* Park Information, City of Bellaire, https://www.bellairetx.gov/737/Park-Information (last visited on Dec. 4, 2020).

[3]

The northern section of the lots appears to be asphalt and the southern portion appears to be constructed of gravel:

39. The City Parks Master Plan indicates that the lot servicing Mulberry Park is set in an utility easement:

[3] *See* 4300 Bellaire Blvd Bellaire, TX 7740 - Google Maps, GOOGLE MAPS, https://www.google.com/maps/place/4300+Bellaire+Blvd,+Bellaire,+TX+77401/@29.7125721,-95.4481197,150m/data=!3m1!1e3!4m13!1m7!3m6!1s0x8640c1b98bb56109:0x716862cfde398b39!2s4300+Bellaire+Blvd,+Bellaire,+TX+77401!3b1!8m2!3d29.7059835!4d-95.4477239!3m4!1s0x8640c1b98bb56109:0x716862cfde398b39!8m2!3d29.7059835!4d-95.4477239 (last visited Dec. 6, 2020).

PARK DESCRIPTIONS, INVENTORY & NEEDS ASSESSMENTS *continued*

MULBERRY PARK

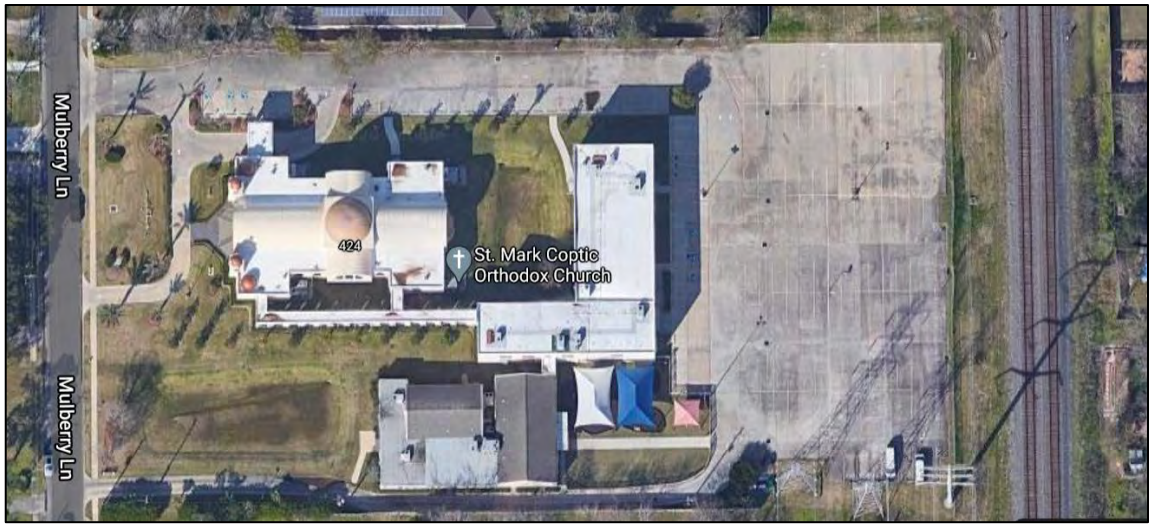
Mulberry Park is carved out of a quiet neighborhood on the eastern boundary of Bellaire. Mulberry Park serves residents with picnicking, tennis, youth baseball/softball, and play opportunities for younger children. A driveway segregates the picnic area from the rest of the site, with parking provided on an NRG easement at the back of the park. Approximately one half of the site is shaded with elm, pine and live oaks, while the remainder is utilized for tennis and sports fields.

Park Inventory:

- Play area – includes swing set
- Tennis courts – 3 lighted
- Sports Field – lighted and irrigated for youth baseball and girls softball
- Parking area with 57 spaces
- Portable restroom facility
- Picnic tables
- Benches
- Expanded parking
- Trash receptacles

See City Parks Master Plan p. 31.

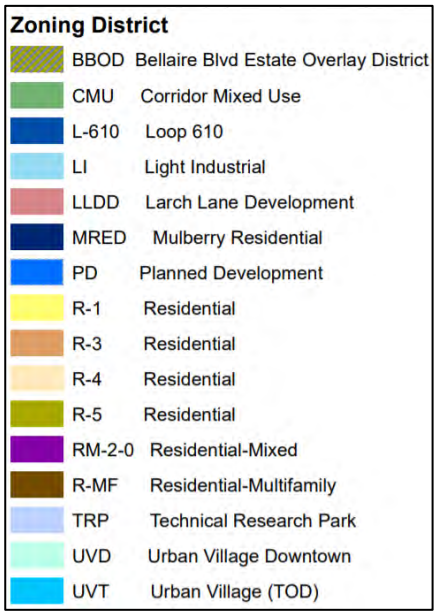
40. South of the Mulberry Park parking lots sits the parking lot for St. Mark Coptic Orthodox Church:

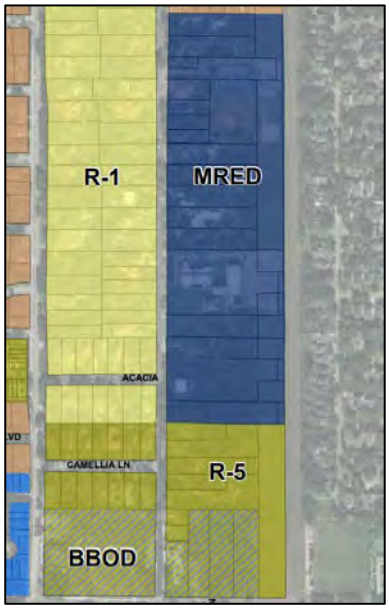


[4]

The parking lot to the west of the railroad tracks is also located in a utility easement.[5]

41. The Mulberry Park and St. Mark lots are located in the Bellaire Mulberry Residential Estate District ("MRED District") zoning district:





[6]

[4] *See* Google Maps, GOOGLE MAPS, https://www.google.com/maps/@29.710312,-95.448821,150m/data=!3m1!1e3 (last visited Dec. 6, 2020).

[5] *See* Minutes of Planning and Zoning Commission Regular Meeting May 13, 2003, City of Bellaire, https://bellairetx.gov/Archive.aspx?ADID=161 (last visited Dec. 6, 2020).

[6] *See* Zoning Map, City of Bellaire, https://www.bellairetx.gov/DocumentCenter/View/15260/Zoning-Map- (last visited Dec. 6, 2020).

The Property is located in the Bellaire R-5 Residential ("R-5 District") zoning district.[7] Evelyn's Park is located in the Bellaire Blvd Estate Overlay District ("BBOD District").[8]

G. MRED District v. R-5 District Zoning

42. The Bellaire Code of Ordinances § 24-543 (hereinafter, the "Code") states that the MRED District was "created to allow maximum flexibility in accordance with the specific requirements of this Code for the purposes of providing for development and/or redevelopment of the properties within th[e] District." The Code sets forth six (6) permissible property uses in MRED: single family dwellings; public parks; utilities; accessory uses; home occupations; and facilities owned and maintained by the City; and two (2) specific uses: churches and schools. *See* BELLAIRE CODE OF ORDINANCES § 24-543.

43. Code § 24-534 provides that the R-5 District is "a medium to upper medium density residential area characterized by the zoning requirements set forth" in Section 24-534. The Code sets forth seven (7) permissible property uses in R-5: single-family dwellings; public parks; utilities; accessory uses; home occupations; facilities owned and maintained by the City; and planned development (residential); and two (2) specific uses: churches and schools. *See id.* § 24-534.

44. The R-5 District has a number of standard regulations that are applicable to residential structures; however no such regulations exist in the section for nonresidential structures. *Compare* BELLAIRE CODE OF ORDINANCES § 24-534(C)(1) (Residential Structures) *with* § 24-534(C)(2) (Nonresidential Structures) (reserving subparts a and b for regulation of nonresidential uses). Section 24-543 contains no such "standard regulations" and the regulations

[7] *See id.*

[8] *See id.* The Bellaire Code of Ordinances § 24-546 sets forth six (6) permissible property uses in BBOD District: detached single-family dwellings; public parks; home occupations; facilities owned and maintained by the City; and accessory uses; and two (2) specific uses: churches (and house sf worship) and schools. *See* BELLAIRE CODE OF ORDINANCES § 24-546.

that do appear (without a section heading) are purely residential. Both sections 24-543 (MRED District) and 24-534 (R-5 District) allow for the same types of development,[9] and neither have non-residential regulations contained therein, notwithstanding the fact that both districts allow a number of nonresidential uses (public parks, utilities, accessory uses, facilities owned by the City, home occupations, churches, and schools). There are no other material differences between the two sections in regard to nonresidential regulations.

45. Section 9-21 details the construction "requirements for private parking areas and driveways in all zoned districts." BELLAIRE CODE OF ORDINANCES § 9-21. This section applies to both the MRED District and R-5 District. Subpart (b) states that "[f]or all uses not classified as single family residential, parking areas may be paved with *concrete, asphalt materials,* or *masonry paving units*." *Id.* (emphasis added). However, sections (c) and (d) go on to state exceptions. Section (d) specifically notes that "[t]he building official shall have the authority, in the case of an emergency or other overriding public necessity, to permit the construction of a parking area not in accord with the terms and provisions of this section when the same shall be deemed necessary by the building official." *Id.* Section (c) also allows for materials other than those specified to be used if the "proposed design is satisfactory and complies with the intent of this section [and] the material, method or work offered is, for the purposes intended, *at least the equivalent of that prescribed in this section in quality, strength, effectiveness, durability and safety*." *Id.* (emphasis added).

VI. DECLARATORY JUDGMENT CAUSE OF ACTION AGAINST THE CITY AND TAYLOR

46. MM Bellaire incorporates by reference the allegations set forth in Part V.

[9] Albeit, the R-5 District allows for an additional use: planned development.

47. MM Bellaire's rights, status, or other legal relations are affected by the Bellaire City Ordinances. MM Bellaire seeks to have determined whether the City and Taylor had legal basis for revoking the Permit and requiring MM Bellaire to remove the Improvements. MM Bellaire seeks a Declaratory Judgment, pursuant to Chapter 37 of the Texas Civil Practice and Remedies Code, with regard to:

a. Whether the City and Taylor had authority to revoke the Permit.

b. Whether the Property is a portion of Evelyn's Park.

c. Whether the Property is a permitted use in the R-5 District.

48. MM Bellaire seeks an order declaring:

a. The City and Taylor did not have the authority to revoke the Permit under the IBC, which only applies to buildings or structures.

b. The Property is a portion of Evelyn's Park.

c. The Property, as a portion of Evelyn's Park, is a portion of a public park.

d. The Property, as a portion of a public park, is a permitted use in the R-5 District.

49. Pursuant to Texas Civil Practice and Remedies Code section 37.009, MM Bellaire seeks to recover its costs and reasonable and necessary attorney's fees.

VII. CAUSES OF ACTION AGAINST THE CITY

A. Unconstitutional Taking and/or Inverse Condemnation (In The Alternative)

50. MM Bellaire incorporates by reference the allegations set forth in Part V.

51. Additionally, alternatively, and without wavier of the foregoing, the City's intentional acts, detailed in Part V, constitute an unconstitutional taking of MM Bellaire's property in violation of the Texas Constitution. "A property owner whose property has been

taken, damaged, destroyed for, or applied to public use without adequate compensation may bring an inverse condemnation claim." *Schrock v. City of Baytown*, 01-17-00442-CV, 2019 WL 2621736, at *10 (Tex. App.—Houston [1st Dist.] June 27, 2019, pet. filed). Article I, Section 17 of the Texas Constitution provides: "[n]o person's property shall be taken, damaged, or destroyed for or applied to public use without adequate compensation being made, unless by the consent of such person." TEX. CONST. ART. I, § 17; *see also Univ. of Houston Sys. v. Jim Olive Photography*, 580 S.W.3d 360, 364 (Tex. App.—Houston [1st Dist.] 2019, pet. filed) ("The Texas Constitution's takings clause (Article I, Section 17) includes personal property.").

52. "Takings can be classified as either physical or regulatory takings." *Schrock*, 2019 WL 2621736, at *10. "A physical taking occurs when the government authorizes an unwarranted physical occupation of an individual's property." *Id.* "The government commits a 'regulatory taking' if it imposes restrictions that either deny a property owner all economically viable use of his property or unreasonably interfere with his right to use and enjoy his property." *Selinger v. City of McKinney*, 05-19-00545-CV, 2020 WL 3566722, at *4 (Tex. App.—Dallas July 1, 2020, no pet.). The United States and Texas Supreme Courts have discussed at least three regulatory takings theories, including "a property regulation that denies a property owner of all economically beneficial or productive use of the property" and a "government action [that] unreasonably interferes with a landowner's use and enjoyment of the property". *City of Sherman v. Wayne*, 266 S.W.3d 34, 43–44 (Tex. App.—Dallas 2008, no pet.) (noting the first theory, which is not included here, "has been called into question") (internal citations omitted). In determining whether a taking has occurred under the latter theory, the Court must consider: "(1) the economic impact of the regulation; (2) the extent to which the regulation interferes with

the owner's distinct investment-backed expectations; and (3) the character of the governmental action." *Id.*

53. Sovereign immunity does not shield the City from liability. *See Gen. Servs. Comm'n v. Little-Tex Insulation Co., Inc.*, 39 S.W.3d 591, 598 (Tex. 2001).

54. An inverse condemnation claim has three elements: (1) the government's intentional acts, "(2) that resulted in a 'taking' of property, (3) for public use." *Little-Tex Insulation*, 39 S.W.3d at 598.

55. Here, the City intentionally revoked the Permit, barred MM Bellaire from utilizing the Improvements, and now demands that MM Bellaire pay for the removal of the Improvements. The City has taken MM Bellaire's property for the public use of city aesthetics and beautification.

B. Violations under the Texas Constitution (In The Alternative)

56. MM Bellaire incorporates by reference the allegations set forth in Part V.

57. Additionally, alternatively, and without wavier of the foregoing, the City's actions requiring MM Bellaire to remove the Improvements at MM Bellaire's expense violate MM Bellaire's due course of law and equal protection rights under the Texas Constitution. A party "may sue for equitable remedies under the Texas Constitution." *See Harrison v. Tex. Dep't of Criminal Justice-Institutional Div.*, 915 S.W.2d 882, 888 (Tex. App.—Houston [1st Dist.] 1995, no writ).

i. *Due Process / Due Course of Law*

58. "The Texas Constitution provides that no person 'shall be deprived of life, liberty, property, privileges or immunities . . . except by the due course of the law of the land.'" *Bailey v. Smith*, 581 S.W.3d 374, 389 (Tex. App.—Austin 2019, pet. denied) (quoting Tex.

Const. art. I, § 19). The City granted MM Bellaire the Permit and MM Bellaire built the Improvements in reliance on the Permit. The City revoked the Permit and now requires MM Bellaire to remove the Improvements at MM Bellaire's cost. Once a privilege is granted by a government actor, "it cannot be taken away except for good cause." *See House of Tobacco, Inc. v. Calvert*, 394 S.W.2d 654, 657 (Tex. 1965) (considering the license granted to a wholesale cigarette distributor)**.** A court may "set aside a zoning determination for a substantive due process violation" if "the action 'has no foundation in reason and is a mere arbitrary or irrational exercise of power having no substantial relation to the public health, the public morals, the public safety or the public welfare in its proper sense." *Mayhew v. Town of Sunnyvale*, 964 S.W.2d 922, 938 (Tex. 1998). The City's actions in requiring MM Bellaire to remove the Improvements has no foundation in reason and is a mere arbitrary and irrational exercise in power having no substantial relation to public health, morals, safety, or welfare.

59. MM Bellaire seeks injunctive relief.

ii. *Equal Protection*

60. The Texas Constitution "directs governmental actors to treat all similarly situated persons alike." *See City of Houston v. Johnson*, 353 S.W.3d 499, 503 (Tex. App.—Houston [14th Dist.] 2011, pet. denied). As stated, upon information and belief, Mulberry Park is permitted to maintain a parking lot in a utility easement just north of the Property. MM Bellaire's Improvements service Evelyn's Park. Upon information and belief, the City has intentionally treated MM Bellaire differently than Mulberry Park and there is no rational basis for this treatment. Similarly, upon information and belief, St. Mark's is permitted to maintain its parking lot without being required by the City to destroy the same.

61. The Improvements and the Mulberry Park parking lot are directly comparable in all material respects. There is no rational basis for the disparate treatment between the Mulberry Park parking lot and the Improvements.

62. MM Bellaire seeks injunctive relief.

C. Application for Temporary Restraining Order, Temporary Injunction, and Permanent Injunction.

63. MM Bellaire incorporates by reference the allegations set forth in Part V.

64. Additionally, and without wavier of the foregoing, MM Bellaire seeks a temporary restraining order and injunctive relief.

65. Pursuant to Texas law, an injunction can be ordered when allowed by statute, where there is no other adequate remedy at law, or where irreparable injury is threatened. *See Tex. Farm Bureau Cotton Assoc. v. Stovall*, 253 S.W. 1101, 1108 (Tex. 1923); *see also Mortgagebanc & Trust, Inc. v. Texas*, 718 S.W.2d 865, 869 (Tex. App.—Austin, 1986, no writ); *Gulf Oil Corp. v. Walton*, 317 S.W.2d 260, 263 (Tex. Civ. App.—El Paso 1958, no writ). The primary concern of a court in granting equitable injunctive relief is to preserve the status quo, which is defined as the last peaceable, non-contested status that preceded the controversy. *See Davis v. Huey*, 571 S.W.2d 859, 866 (Tex. 1978).

iii. *Application for Temporary Restraining Order.*

66. MM Bellaire asks the Court to immediately temporarily restrain the City from (1) interfering with MM Bellaire's use and enjoyment of the Improvements at the Property; (2) interfering with the use and enjoyment of the Improvements at the Property by MM Bellaire's tenants; (3) destructing, demolishing, or removing the Improvements at the Property; (4) causing the Improvements to be destructed, demolished, or removed; (5) requiring MM

Bellaire to submit an application for demolition of the Improvements; or (6) fining MM Bellaire for a failure to submit an application for demolition of the Improvements.

67. Plaintiff's application for a temporary restraining order is authorized by Texas Civil Practices & Remedies Code Section 65.011, which authorizes injunctions when:

> [T]he applicant is entitled to the relief demanded and ***all or part of the relief requires the restraint of some act prejudicial to the applicant***;
>
> [When] a party performs or ***is about to perform or is procuring or allowing the performance of an act relating to the subject of pending litigation***, in violation of the rights of the applicant, and the act would tend to render the judgment in that litigation ineffectual; [and]
>
> [When] ***irreparable injury to real or personal property is threatened***, irrespective of any remedy at law.

See TEX. CIV. PRAC. & REM. CODE § 65.011 (1), (2), (5) (emphases added).

68. The relief requested by MM Bellaire requires the restraint of the City's proposed acts. The City has widely declared, through its mayor's blog and other mediums, that the Improvements at the Property will be imminently removed. Furthermore, such an act would be related to a pending litigation, in violation of the rights of MM Bellaire, and would render any judgement ineffectual. Additionally, the City's imminent acts threaten irreparable injury to the MM Bellaire's property.

69. Furthermore, MM Bellaire's application is authorized under common law because it has alleged a proper cause of action against the City; it has a probable right to the relief sought; and a probable, imminent, and irreparable injury will be suffered by MM Bellaire in the absence of a temporary restraining order and temporary injunction.

70. It is probable that MM Bellaire will recover from the City after a trial on the merits. *See 183/620 Group Joint Venture v. SPF Joint Venture*, 765 S.W.2d 901, 904 (Tex. App.—Austin 1989, writ dism'd w.o.j.) ("The expression, 'probable right to recover' is a term of

art; it does not imply any kind of determination that becomes the law of the case . . . concerning both the facts and the law, appellee was only required to show that a bona fide issue exists as to his right to ultimate relief.").

71. MM Bellaire also seeks declaratory relief that the Property in question is a portion of a public park and therefore a permitted use in the R-5 District.

72. If MM Bellaire's application is not granted, harm is imminent because the City has widely declared, through its mayor's blog and other mediums, that MM Bellaire's Improvements at the Property, which cost over $300,000, will be imminently removed.

73. The harm that will result if the temporary restraining order is not issued is irreparable should the City either destroy or cause the Improvements to be destroyed. MM Bellaire spent over $300,000 to build the Improvements at the Property—with City permitting and approval. Additionally, MM Bellaire has no adequate remedy at law because nothing other than an injunction affords its complete, final and equal relief pending the outcome of its permanent injunction. *Henderson v. KRTS, Inc.*, 822 S.W.2d 769, 772 (Tex. App.—Houston [1st Dist.] 1992, no writ).

74. Moreover, MM Bellaire has contractual provisions to provide parking for tenants at Southside Commons. If the City prohibits MM Bellaire's use of the Property, MM Bellaire will be prohibited from performing.

75. Prior efforts to amend permitting with the City were brought through Evelyn's Park but were unsuccessful.

76. There is not enough time to serve notice on the Defendants and to hold a hearing on this application. *See* TEX. R. CIV. P. 680. As previously mentioned, the City has widely declared that the Improvements will be imminently removed.

77. MM Bellaire will post an appropriate bond.

iv. *Application for Temporary Injunction.*

78. MM Bellaire asks the Court to set its application for a temporary injunction for a hearing and within fourteen (14) days. After notice to the City and after the hearing, Plaintiff asks the Court to issue a temporary injunction restraining the City, directly or indirectly from (1) interfering with MM Bellaire's use and enjoyment of the Improvements at the Property; (2) interfering with the use and enjoyment of the Improvements at the Property by MM Bellaire's tenants; (3) destructing, demolishing, or removing the Improvements at the Property; (4) causing the Improvements to be destructed, demolished, or removed; (5) requiring MM Bellaire to submit an application for demolition of the Improvements; or (6) fining MM Bellaire for a failure to submit an application for demolition of the Improvements.

v. *Application for Permanent Injunctive Relief*

79. MM Bellaire asks the Court to set its request for a permanent injunction for a full trial on the merits and, after the trial, issue a permanent injunction against the City.

80. Upon information and belief, the City intends to continue to engage in further wrongful acts against MM Bellaire in the manner set forth in this Petition. The City's wrongful acts can be expected to continue to cause damage to MM Bellaire. The damage caused to MM Bellaire by the City's continuation of its wrongful acts is irreparable and not easily quantified. Any remedy at law for the damage done by the continuation of the City's wrongful acts would be inadequate.

81. The City's wrongful acts should be restrained permanently to prevent further irreparable injury to MM Bellaire. Specifically, MM Bellaire requests a permanent injunction that prevents the City from (1) interfering with MM Bellaire's use and enjoyment of the

Improvements at the Property; (2) interfering with the use and enjoyment of the Improvements at the Property by MM Bellaire's tenants; (3) destructing, demolishing, or removing the Improvements at the Property; (4) causing the Improvements to be destructed, demolished, or removed; (5) requiring MM Bellaire to submit an application for demolition of the Improvements; or (6) fining MM Bellaire for a failure to submit an application for demolition of the Improvements.

VIII. CAUSES OF ACTION AGAINST EVELYN'S PARK

A. ***Breach of Contract***

82. MM Bellaire incorporates by reference the allegations set forth in set forth in Part V.

83. Evelyn's Park is liable for breach of contract. The Sublicense is a valid and enforceable contract. MM Bellaire performed its contractual obligations under the Sublicense.

84. The Sublicense provides that Evelyn's Park is in default "if it fails to perform any covenant or condition under the License [] and such default is not cured within any applicable grace or cure period." *See* Exh. A-3 p. 5–6 ¶ 10(a). Section XVII of the License requires Evelyn's Park to, [redacted] Evelyn's Park failed to perform this covenant and condition, as is evidenced by the November 23, 2020 letter from the City. *See* Exh. A-12

85. The Sublicense provides that Evelyn's Park is in default "if it fails to perform any covenant or condition under the License [] and such default is not cured within any applicable grace or cure period." *See* Exh. A-3 p. 5–6 ¶ 10(a). Section XIX of the License requires Evelyn's Park [redacted]

[redacted] Evelyn's Park failed to perform this covenant and condition, as is evidenced by the November 23, 2020 letter from the City. *See* Exh. A-12.

86. The Sublicense provides that Evelyn's Park "hereby grants to [MM Bellaire] a license to use, build, and maintain a parking area on the [] Property." *See* Exhibit A-3. Evelyn's Park lacked the authority to do so, as is evidenced by the November 23, 2020 letter from the City, and, accordingly, breached the Sublicense. See Exh. A-12.

87. Evelyn's Park's breaches have caused and continue to cause MM Bellaire injury for which it seeks to recover herein.

88. MM Bellaire is entitled to recover reasonable attorney's fees pursuant to the prevailing party provision in the Sublicense. *See* Exh. A-3 p. 6 ¶ 11(e).

B. *Fees and Expenses to cure Evelyn's Park's Default*

89. MM Bellaire is entitled to reimbursement for its claims against the City, because Evelyn's Park is a defaulting party under the Sublicense Agreement:

> Upon an event of default which is not cured within any applicable grace period, the non-defaulting party may immediately or at any time thereafter, without notice, cure the breach for the account and at the expense of the defaulting party. ***If the non-defaulting party at any time, by reason of the breach, must pay, or elects to pay, any sum of money or do any act that will require paying any sum of money, or must incur any expense, including reasonable attorney's fees, in instituting or prosecuting any action or proceeding to enforce such party's rights under this Sublicense***, the sums paid by the non-defaulting party, will be due from the defaulting party on the first day of the month following payment of the respective sums or expenses.

See Exh. A-3 p. 6 ¶ 10(d).

C. *Negligent Misrepresentation*.

90. MM Bellaire incorporates by reference the allegations set forth in set forth in Part V.

91. Additionally, alternatively, and without waiver of the foregoing, Evelyn's Park is liable for negligent misrepresentation. Evelyn's Park made representations to MM Bellaire in the course of its business, and supplied MM Bellaire with inaccurate information. Evelyn's Park did not exercise reasonable care or competence in communicating the information, and MM Bellaire justifiably relied on the representations. MM Bellaire suffered pecuniary losses by Evelyn's Park's failure to adequately address any issues MM Bellaire may have had with the City in approving the development of the Improvements.

IX. JURY DEMAND

92. Plaintiff demands a jury trial and tenders the appropriate fee with this petition.

X. REQUEST FOR DISCLOSURE

93. Under Texas Rule of Civil Procedure 194, plaintiff requests that the City and Evelyn's Park disclose, within 50 days of the service of this request, the information or material described in Rule 194.2.

XI. REQUEST FOR RELIEF

For these reasons, Plaintiff respectfully request that the Court temporarily restrain the City from (1) interfering with MM Bellaire's use and enjoyment of the Improvements at the Property, (2) interfering with the use and enjoyment of the Improvements at the Property by MM Bellaire's tenants, (3) destructing, demolishing, or removing the Improvements at the Property, (4) causing the Improvements to be destructed, demolished, or removed, (5) requiring MM Bellaire to submit an application for demolition of the Improvements, or (6) fining MM Bellaire

for a failure to submit an application for demolition of the Improvements; that Defendants be cited to appear and at a trial by jury; that the Court enter judgment in favor of MM Bellaire (1) declaring that (a) the City and Taylor did not have the authority to revoke the Permit under the IBC, which only applies to buildings or structures, (b) the Property is a portion of Evelyn's Park, (c) the Property, as a portion of Evelyn's Park, is a portion of a public park, and (d) the Property, as a portion of a public park, is a permitted use in the R-5 District; (2) awarding MM Bellaire actual damages, reasonable and necessary attorney's fees, prejudgment and post judgment interest as allowed by law or equity, and entry of injunctive relief as described herein against the City; (3) awarding MM Bellaire reasonable and necessary attorney's fees, prejudgment and post judgment interest as allowed by law or equity against Taylor; (4) awarding MM Bellaire actual damages, reasonable and necessary attorney's fees and costs, expenses incurred pursuant to ¶ 10(d) of the Sublicense, and prejudgment and post judgment interest as allowed by law or equity against Evelyn's Park; and that the Court award MM Bellaire such other and further relief to which MM Bellaire may be justly entitled in law or in equity.

Respectfully submitted,

WEYCER, KAPLAN, PULASKI & ZUBER, P.C.

By: *__/s/ Murphy S. Klasing__*

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was emailed to the following parties on December 7, 2020:

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