

19-001731-CV-361

NO. _____

BRV PARTNERS, L.P.

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IN THE DISTRICT COURT OF

VS.

BRAZOS COUNTY, TEXAS

THE CITY OF BRYAN

____ TH JUDICIAL DISTRICT

**PLAINTIFF'S VERIFIED PETITION FOR JUDICIAL REVIEW OF A
MUNICIPAL ORDER, PURSUANT TO TEXAS LOCAL GOVERNMENT
CODE SECTION 214.0012**

TO THE HONORABLE JUDGE OF SAID COURT:

This suit is: (a) an appeal for Judicial Review of a municipal ORDER, brought pursuant to Section 214.0012 of the TEXAS LOCAL GOVERNMENT CODE; (b) made necessary to correct and redress harm being sustained by the Plaintiff, BRV Partners, L.P. ("Plaintiff"), aggrieved by illegal decisions made in the ORDER of The City of Bryan ("Defendant") which is the subject of this appeal; and (c) filed within thirty (30) calendar days of the respective dates a copy(ies) of the complained-of ORDER was/were personally delivered and/or mailed to BRV Partners, L.P. The Plaintiff will show the following:

I.
DISCOVERY CONTROL PLAN

1. Plaintiff intends that discovery be conducted under Level Three of the Discovery Control Plan of Rule 190, *et seq.*, of the TEXAS RULES OF CIVIL PROCEDURE.

II.
PARTIES

2. BRV Partners, L.P. is: (a) a Texas Limited Partnership; (b) the owner of record of property jointly or severally aggrieved by an ORDER of The City of Bryan, issued through the City

of Bryan Building and Standards Commission (hereinafter the "Commission"); and (c) has standing to bring this statutory cause of action for Judicial Review, pursuant to Section 214.0012 of the TEXAS LOCAL GOVERNMENT CODE.¹

3. The City of Bryan ("Defendant") is a municipality whose commission, the City of Bryan Building and Standards Commission (the "Commission"), issued the illegal ORDER which is the subject of this appeal for Judicial Review; and it is reasonably believed this Defendant will enter its appearance and Answer this lawsuit / appeal for Judicial Review without need for citation. If not, then The City of Bryan may be served with process by delivering citation to the City Secretary for The City of Bryan at 300 S. Texas Avenue, Bryan, Texas.

III. JURISDICTION AND VENUE

4. This Court has jurisdiction over this appeal for Judicial Review of the Defendant's ORDER made the subject of this appeal, pursuant to the operative provisions of the LOCAL GOVERNMENT CODE, to wit:

§ 214.0012 Judicial Review

(a) Any owner, lienholder, or mortgagee of record of property jointly or severally aggrieved by an order of a municipality issued under Section 214.001 may file in district court a verified petition setting forth that the decision is illegal, in whole or in part, and specifying the grounds of the illegality...

¹ The controlling provisions of LOCAL GOVERNMENT CODE, pursuant to which Plaintiff brings this lawsuit, state:

§ 214.0012. Judicial Review

(a) Any owner, lienholder, or mortgagee of record of property jointly or severally aggrieved by an order of a municipality issued under Section 214.001 may file in district court a verified petition setting forth that the decision is illegal, in whole or in part, and specifying the grounds of the illegality. The petition must be filed by an owner, lienholder, or mortgagee within 30 calendar days after the respective dates a copy of the final decision of the municipality is personally delivered to them, mailed to them by first class mail with certified return receipt requested, or delivered to them by the United States Postal Service using signature confirmation service, or such decision shall become final as to each of them upon the expiration of each such 30 calendar day period. ...

5. Venue is proper in Brazos County in that: (a) The City of Bryan is located in Brazos County; (b) the property aggrieved by the illegal decisions made in the ORDER of The City of Bryan is located in Brazos County; and (c) all or a substantial part of the events giving rise to this statutory suit seeking Judicial Review of the order occurred in Brazos County, Texas.

IV. OPERATIVE FACTS

6. At all times material to this appeal for Judicial Review, BRV Partners, L.P. was the owner of record of real property, and improvements thereon, located in The City of Bryan at 401 West 26th Street, Bryan Texas 77083 on which is located the historic Bowie School building (the "Property").

7. The City of Bryan and the City of Bryan Building and Standards Commission instituted proceedings to require the structures and improvements on the Property be demolished pursuant to provisions of Chapter 14 of the Bryan City Code including Article VIII – *Dangerous Structures*.

8. On or about May 20, 2019 a public hearing was conducted by the City of Bryan Building and Standards Commission, during which the Commission considered the Property and the structures which existed on the Property – structures commonly known as the historic "Bowie School building"; and purported to do so pursuant to Chapter 14 of the Bryan City Code. Following that public hearing, the "City of Bryan Building and Standards Commission's Findings and Order" (the "ORDER") complained of herein was signed by the Chairperson of the City of Bryan Building and Standards Commission, acting as agents for and at the direction of The City of Bryan.²

² Attached hereto as Exhibit A is a true and authentic copy of the "City of Bryan Building and Standards Commission's Findings and Order" dated May 20, 2019 which is complained of herein.

V.
CONTENTIONS AND RELIEF SOUGHT

9. On information and belief, The City of Bryan and its agents (i.e., the City of Bryan Building and Standards Commission and its Chairperson who signed the complained-of ORDER) issued the ORDER (Exhibit A) believing they had authority to do so pursuant to Section 214.001 of the TEXAS LOCAL GOVERNMENT CODE³ and Chapter 14 of the Bryan City Code.

10. However, the Plaintiff:

- (a) denies that The City of Bryan had authority to enter the ORDER;
- (b) contends that the ORDER was illegal, in whole or in part;

³ The statute, among other things, provides:

§ 214.001. Authority Regarding Substandard Building

(a) A municipality may, by ordinance, require the vacation, relocation of occupants, securing, repair, removal, or demolition of a building that is:

- (1) dilapidated, substandard, or unfit for human habitation and a hazard to the public health, safety, and welfare;*
- (2) regardless of its structural condition, unoccupied by its owners, lessees, or other invitees and is unsecured from unauthorized entry to the extent that it could be entered or used by vagrants or other uninvited persons as a place of harborage or could be entered or used by children; or*
- (3) boarded up, fenced, or otherwise secured in any manner if:*
 - (A) the building constitutes a danger to the public even though secured from entry; or*
 - (B) the means used to secure the building are inadequate to prevent unauthorized entry or use of the building in the manner described by Subdivision (2).*

(b) The ordinance must:

- (1) establish minimum standards for the continued use and occupancy of all buildings regardless of the date of their construction;*
- (2) provide for giving proper notice, subject to Subsection (b-1), to the owner of a building; and*
- (3) provide for a public hearing to determine whether a building complies with the standards set out in the ordinance. (b-1) For a condominium, as defined by Section 81.002 or 82.003, Property Code, located wholly or partly in a municipality with a population of more than 1.9 million, notice to a unit owner in accordance with Section 82.118, Property Code, and notice to the registered agent for the unit owners' association in the manner provided for service of process to a condominium association under Section 54.035(a-1) satisfy the notice requirements under this section.*

...
(d) After the public hearing, if a building is found in violation of standards set out in the ordinance, the municipality may order that the building be vacated, secured, repaired, removed, or demolished by the owner within a reasonable time as provided by this section. ...

- (c) disputes the relevance, weight and sufficiency of “evidence”, such as it was, offered in support of the Findings set forth in the ORDER;
- (d) disputes all of the grounds and FINDINGS set forth in sections 1,2,4,5,7,8,9 of the ORDER, in addition to certain other unsubstantiated FINDINGS set forth on the second page of the ORDER without numerical reference, to wit:

[T]he building and accessory structure may not be feasibly repaired in compliance with City ordinances and must be demolished and all debris must be lawfully removed within 90 days.

- (e) contends that the all of the grounds and FINDINGS set forth in sections 1,2,4,5,7,8,9 of the ORDER, in addition to the above-quoted FINDINGS set forth on the second page of the ORDER without numerical reference, are not supported by substantial evidence and/or, alternatively, are arbitrary and capricious and wholly without merit.

11. In the alternative, Plaintiff will show that it is entitled to a trial de novo on the issues alleged by The City Bryan before the Commission pursuant to the holding of the Texas Supreme Court in *City of Dallas v. Heather Stewart*, 361 S.W.3d 562 (Tex. 2012)(holding that “substantial evidence review of a nuisance determination resulting in ... demolition does not sufficiently protect a person’s rights under Article I, Section 17 of the Texas Constitution”; and that nuisance determinations must be reviewed de novo).

12. Alternatively, Plaintiff seeks equitable relief from the ORDER of the Commission; and seeks a reasonable stay of the ORDER of the Commission, to permit the Plaintiff adequate time needed to fully investigate:

- a. the issues and operative facts mitigating against mandatory demolition of the historic Bowie School building; and
- b. the issues relating to acts that might be appropriate to either (i) repair the Property and historic Bowie School building, or (ii) demolish the structures on the Property, including the historic Bowie School building.

13. Plaintiff requests that a writ of certiorari be issued and directed to Defendant, requiring, at a minimum, that Defendant review the ORDER and return the original papers and records acted on by Defendant, or alternatively to return certified copies of said papers and records.

14. In addition to all relief requested above, including that sought alternatively, Plaintiff respectfully requests de novo review of the acts and actions of the Commission (and all who acted in concert with and/or on behalf of the Commission) to collect, create and/or offer “evidence” upon which the Commission acted. Additionally, and/or alternatively, Plaintiff also respectfully requests that the ORDER of the Commission be set aside, in whole or in part. Furthermore, in the unlikely event that the provision(s) of the ORDER requiring demolition is/are AFFIRMED, Plaintiff respectfully requests that the ORDER be MODIFIED to permit Plaintiff additional time to perform demolition activities which mitigate the loss of the historic Bowie School building –this specific relief being requested in the interests of justice, equity and the preservation of buildings of historic significance to all in the community who will suffer irreparable loss if the historic Bowie School building is demolished.

VI. **PRAYER**

WHEREFORE PREMISES CONSIDERED, Plaintiff BRV Partners, L.P. prays for:

- (a) the Court to issue a Writ of Certiorari directed to The City of Bryan, as discussed above;
- (b) the Court to GRANT the Plaintiff all of the other statutory, equitable and legal relief, both general and special, requested herein; and for
- (c) the Court to GRANT Plaintiff such other special and general relief, at law and in equity, to which Plaintiff may be justly entitled.

Respectfully submitted,

WEST, WEBB, ALBRITTON & GENTRY, P.C.

By: 

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VERIFICATION

STATE OF TEXAS §
 §
COUNTY OF BRAZOS §


BEFORE ME, the undersigned Notary Public, on this day personally appeared ZANE J. ANDERSON, who being by me duly sworn on his oath deposed and said that:

- (1) *he is the PRESIDENT for BRV Partners, L.P., the Plaintiff in the foregoing PLAINTIFF'S VERIFIED PETITION FOR JUDICIAL REVIEW OF A MUNICIPAL ORDER, PURSUANT TO TEXAS LOCAL GOVERNMENT CODE SECTION 214.0012 which will be filed in the District Court of Brazos County, Texas;*
- (2) *he has read the foregoing PLAINTIFF'S VERIFIED PETITION FOR JUDICIAL REVIEW OF A MUNICIPAL ORDER, PURSUANT TO TEXAS LOCAL GOVERNMENT CODE SECTION 214.0012; and*
- (3) *the statements made in paragraphs 2,3,6,7,8,10 of the foregoing PLAINTIFF'S VERIFIED PETITION FOR JUDICIAL REVIEW OF A MUNICIPAL ORDER, PURSUANT TO TEXAS LOCAL GOVERNMENT CODE SECTION 214.0012 are true and correct.*

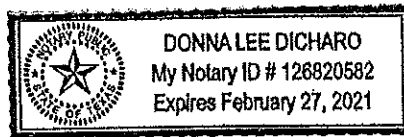


ZANE J. ANDERSON

SUBSCRIBED AND SWORNTO BEFORE ME by Zane J. Anderson on this 19 day of June, 2019, to certify which witness my hand and official seal.



Notary Public, State of Texas



**CITY OF BRYAN
BUILDING AND STANDARDS COMMISSION'S
FINDINGS AND ORDER**

BE IT REMEMBERED THAT ON May 20, 2019 the City of Bryan's Building and Standards Commission conducted a public hearing regarding the structure located at 401 West 26th Street; Bryan Original Townsite, Block 261, Lot All, Case no. 2341.

After considering the evidence presented, the arguments of the owner, lienholder, mortgagee, and City staff

THE COMMISSION FINDS that the structure is an unsafe building and one (1) accessory structure based on the standards set forth in Section 14-224 subsection(s)]:

- 1) The building, structure, or any part thereof is likely to partially or fully collapse.
- 2) The structure or any part thereof was constructed or maintained in violation of any provision of the City's Building Code, or any other applicable ordinance or law of the city, county, state or federal government.
- 3) One or more walls or other vertical structural members list, lean, or buckle to such an extent that a plumb line passing through the center of gravity falls outside of the middle third or its base.
- 4) The foundation or the vertical or horizontal supporting members are twenty five percent (25%) or more damaged or deteriorated.
- 5) The non-supporting coverings of walls, ceilings, roofs, or floors are fifty percent (50%) or more damaged or deteriorated.
- 6) The structure has improperly distributed loads upon the structural members, or they have insufficient strength to be reasonably safe for the purpose used.
- 7) The structure or any part thereof has been damaged by fire, water, earthquake, wind, vandalism, or other cause to such an extent that it has become dangerous to the public health, safety and welfare.
- 8) The structure or any part thereof has inadequate means of egress as required by the City's Building Code.
- 9) The structure does not have adequate light ventilation, or sanitation facilities as required by the City's Building Codes and Plumbing Code.

THE COMMISSION FURTHER FINDS AND ORDERS THAT:

- the building and accessory structure are unsecured and due to the nature of the building and structure as an attractive nuisance, past attempts to secure the building by boarding up doors and windows have failed. Therefore, the building and accessory structure must be fenced in such a manner to prevent unauthorized entry into the building or structures within 30 days.
- the building(s) are occupied and pose a hazard to health, safety, or general welfare of the occupants and must be vacated within ___ days.
- the building(s) are connected to public utilities, including water and electricity, and utilities must be disconnected within ___ days.

EXHIBIT

A

- the building is a manufactured home and may be safely moved from the property to another location outside the city limits of Bryan.
- the building and accessory structure may not be feasibly repaired in compliance with City ordinances and must be demolished and all debris must be lawfully removed within 90 days.
- the building(s) may be feasibly repaired in compliance with City ordinances and must be repaired within _____ days in accordance with the schedule below:

Deadline	Task

Other:

1. That all related items and debris be removed from the property.
2. That an asbestos survey is obtained and submitted to City staff and that any asbestos containing materials be abated per State and Federal laws prior to the demolition of the building and structure.

If the building(s) have been ordered repaired, the owner, lienholder, mortgagee making repairs is required to appear before the Commission at each regularly scheduled meeting until repairs are completed to show progress in compliance with the Commission's order.


IT IS FURTHER ORDERED BY THE COMMISSION THAT:

In the event that the owner, mortgagee, or lienholder fails to timely comply with this Order to a) disconnect water and electric utilities to the property; b) secure the building(s); c) vacate the property; or d) demolish the building(s) and remove the debris, then the City may take action to fulfill the order and attach a lien to the property for the expense of same pursuant to Bryan Code of Ordinances 14-233.

In the event that a person fails to comply with an order to repair, the City may bring the property back before the Commission for further orders, including but not limited to demolition of the building.

In addition to the foregoing, the City may also issue a citation under Bryan Code of Ordinances Section 14-219 to a person for failing to comply with this Order.

Executed and effective on the 20th day of May 2019.



 Chairperson

