



## PRESS RELEASE

### Third Court of Appeals upholds decisions regarding Pine Forest Unit 6...

Officials with Bastrop County and the City of Bastrop received notification Friday from the Third Court of Appeals upholding rulings regarding Pine Forest Unit 6 litigation. “We are very pleased that the Third Court of Appeals upheld every decision of the district judge on the facts concerning the void Pine Forest Unit #6 real estate contract, all the invalid actions taken by the developer regarding the Pine Forest Property Owners Association (PFPOA) and all of our claims regarding voting rights and make-up of the PFPOA board of directors,” said County Judge Paul Pape. Together the entities, Bastrop County, and the City of Bastrop, own almost 400 lots in the 700-lot subdivision south of SH 71, adjacent to Tahitian Village. About half of Unit 6 is in the city limits of Bastrop.

Judge Pape has led the efforts to disengage several entities from a failed real estate contract that has tied Unit 6 up in litigation for years. Earlier this year, an interlocal agreement was amended that relieved Bastrop Independent School District of all responsibilities and financial obligations related to the pending lawsuit regarding the lots. Friday’s Court of Appeals ruling did send one point of the case back to district court - whether the City of Bastrop may have violated the Texas Open Meetings Act (TOMA) back in 2015. However, Friday’s ruling affirmed that the outcome of the TOMA issue does not affect their final ruling on the facts and merits of the case. Simply stated, whether the district court concludes that the city violated the TOMA or not, the Third Court of Appeals conclusion is that the district court’s decision on the Pine Forest case stands and is final. “We are very satisfied with the thoroughness of the brief issued by the Third Court of Appeals, which included an exhaustive list of facts and provides an excellent summary of the issues involved in this legal matter,” said Bastrop City Manager Lynda Humble. “The development contract is considered null and void by both the district court and Court of Appeals. The property owned by the County and City can now have clear title. The Pine Forest Investment Group has no voting rights. These findings do not change regardless of the outcome of the TOMA issue.”

Pine Forest Unit 6 has been resolved in the eyes of both Bastrop County and the City of Bastrop. Officials are delighted at Friday’s ruling and look forward to the challenge of seeing that Pine Forest Unit 6 is developed to its highest and best potential.

## **The Backstory**

Pine Forest Unit 6 was originally platted in the 1970s. There are around 700 lots in the 400-acre subdivision, on the southeast edge of the City of Bastrop. About 35 homes were built in Unit 6 before a moratorium was placed on the development by the city. Issues with drainage, utility services, and access were drivers behind the moratorium.

Many of the lots in Unit 6 were acquired by the school district or county through delinquent tax foreclosure proceedings. To get these prime lots back in the private sector, and back on the tax rolls, discussions began with a local development firm, Pine Forest Investments Group (PFIG) in 2011. The intent was for PFIG to purchase about 262 lots entrusted to the public entities at that time for \$2,000 each, after getting a master development agreement worked out with the city. A contract was signed in early 2012.

It wasn't long before problems came to the surface. The citizens of Unit 6 reported that PFIG intended to place huge financial assessments on all their lots, even where homes were already occupied. Voting as if they already owned the 262 lots, PFIG changed the Covenants, Conditions and Restrictions (CC&Rs) to protect PFIG as the only developer of Unit 6.

Since many of the lots are in the city limits or the extraterritorial jurisdiction of the City of Bastrop, the developer was required to obtain and comply with a development agreement with the City. The development agreement would address major utility and construction issues such as streets, water and wastewater service, and drainage on the entire 400 acres of Unit 6. This development agreement would prevent a piecemeal development and assure the marketability of the improved lots. The developer failed to perform these tasks and did not close on the lots within the timeframe required by the real estate contract.

After repeatedly asking for completion of a master plan, the city denied PFIG's development application in 2013. Soon thereafter, the county voted to void the real estate contract. PFIG sued the city, BISD, and county claiming that they had a vested interest in the lots in the voided contract. District Judge Carson Campbell ruled that the public entities had the right to void the contract and that PFIG had no vested interest in the lots in Unit 6, which should have ended the conflict. Undeterred, PFIG wrote letters to anyone who expressed an interest in developing the properties, and continued to vote in elections as if they owned the lots that were the subject of the canceled contract.

The public entities deemed it to be in the public's interest to sue PFIG to clear the title to the lots and force them to stop misusing voting rights on the lots. At question in this suit was whether the real estate contract was still valid, whether PFIG could act as if they owned the 262 lots by voting at the annual Property Owners Association meetings, and whether the CC&R changes that they had made were valid.

The complicated case required highly skilled and experienced legal representation for the three public entities. Then-City Manager Mike Talbot recommended Charles Bundren, who had helped resolve disputes for other cities where Talbot had worked. In May 2016, Mr. Bundren untangled a jumbled web of documents and Pine Forest POA board actions that had clouded the title on these lots. He presented the case clearly and concisely to the judge. After three days of testimony, the District Judge ruled in the three public entities' favor and against PFIG on every point. The cost of preparing and presenting the case was high, but the three public entities had to win in order to keep control of the properties and protect the citizens who already lived in Unit 6.

Again, that Court ruling should have ended the fight. Instead, PFIG appealed the decision to the Third Court of Appeals, which issued its findings on Friday, June 22, 2018 upholding the District Court's decisions. The entities have already been told that PGIF intends to appeal to the Texas Supreme Court. This continued appeal process will force the entities to spend even more on legal fees to protect the public's interest in this property on matters that have been settled in their favor at both District Court and the Third Court of Appeals.

The cost of defending the entities' ownership of the foreclosed lots in Unit 6, clearing the titles, and gaining control of the CC&Rs and the POA board has been high, costing the entities over \$800,000 so far. The County and City have been steadfast in protecting the citizens and their property values in Unit #6 from day one, and will continue to do so until this lawsuit is settled by the Court system.

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