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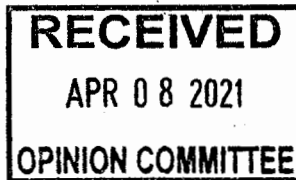
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April 8, 2020

**RQ-0403-KP**

*Via Electronic Mail*  
([opinion.committee@oag.texas.gov](mailto:opinion.committee@oag.texas.gov))  
The Honorable Ken Paxton  
Attorney General of the State of Texas  
Attention: Opinion Committee  
P.O. Box 12548  
Austin, Texas 78711-2548



FILE# **ML-48945-21**  
I.D.# **48945**

Re: Request for an opinion regarding the authority of the Williamson County Attorney to file a suit to enjoin a violation of a restriction contained in a properly recorded plat of property located in Williamson County

Dear Attorney General Paxton:

The Williamson County Attorney's Office respectfully asks for your opinion regarding the following issue:

**Question:**

Whether the Williamson County Attorney may file a suit against the City of Austin ("City") to enjoin the City from using a platted lot within Williamson County for residential purposes in violation of a plat note that states "Development of this subdivision is restricted to uses other than residential."

Chapter 203 of the Texas Property Code authorizes the county attorney in counties with a population of more than 200,000 to enforce use restrictions contained within a plat. Chapter 203 provides, in pertinent part:

Sec. 203.001. APPLICABILITY OF CHAPTER. This chapter applies only to a county with a population of more than 200,000.

Sec. 203.002. DEFINITION. In this chapter, "restriction" means a limitation that affects the use to which real property may be put, fixes the distance at which buildings or other structures must be set back from property, street, or lot lines, affects the size of lots, or affects the size, type, or number of buildings or other structures that may be built on the property.

Sec. 203.003. COUNTY ATTORNEY AUTHORIZED TO ENFORCE RESTRICTIONS. (a) The county attorney may sue in a court of competent jurisdiction to enjoin or abate violations of a restriction contained or incorporated by reference in a properly recorded plan, plat, replat, or other instrument affecting a real property subdivision located in the county, regardless of the date on which the instrument was recorded.

TEX. PROP. CODE §§ 203.001-.003. Williamson County has a population of more than 200,000.

On February 4, 2021, the Austin City Council authorized the purchase of the property located at 10811 Pecan Park Boulevard, Building 2 (“Property”) with the intent to use the Property as a long-term residential facility for the homeless. The Property is located within Williamson County.

The City has publicly described the proposed use of the Property as “residential.”

“Those folks that we keep describing as homeless, they won’t be anymore,” said Mayor Pro-Tem Natasha Harper Madison. “Ultimately, the city will operate the property like any other multifamily residential property, without regard to the fact that the individuals who will live there experienced homelessness in the past.”

Gabriela Vidal, *City Council votes to approve controversial purchase of NW Austin hotel to house homeless*, CBS Austin (Feb. 4, 2021), at <https://cbsaustin.com/news/local/city-council-votes-to-approve-controversial-purchase-of-nw-austin-hotel-to-house-homeless>.

In a January 20, 2021 City staff report, “Staff Recommendation for Hotel Purchases,” discussing the proposal to purchase the Property, Alex Gale from the City’s Office of Real Estate Services and Homeless Strategy Officer Dianna Grey said that the “property is expected to provide approximately 80 units of permanent supportive housing...” The report also described the proposed use as “multifamily” and “long-term residential use” and said that the purchase of the Property would “substantially advance the City of Austin’s commitment to ... providing affordable housing...”

The City’s Land Development Code (“LDC”), Title 25 of the City’s Code of Ordinances, defines “residential” as “the occupancy of living accommodations on a nontransient basis.” LDC § 25-2-3(A). The LDC states that “Multifamily” use “is the use of a site for three or more dwelling units, within one or more buildings, and includes condominium residential use.” LDC § 25-2-3(B)(7).

The Property is within the Pecan Park development that was zoned for commercial use by the City on December 18, 1986. As part of the rezoning case, the City required the developer to enter into restrictive covenants governing the commercial development of Pecan Park. The Pecan Park Preliminary Plan (Williamson County Records Volume 1674, Page 503) and Zoning Plan (Williamson County Records Volume 1707, Page 341) both show the use of the Property as “commercial.”

The Property is currently zoned “GR” “Community Commercial,” which does not allow for residential use. The LDC describes the “GR” district as “Community commercial (GR) district is the designation for an office or other commercial use that serves neighborhood and community needs and that generally is accessible from major traffic ways.” LDC § 25-2-98.

Since the 1986 rezoning, multiple plats have been approved by the City within the Pecan Park project area that included a plat note stating, “Development of this subdivision is restricted to uses other than residential.” These plat notes are consistent with the commercial development of Pecan Park as anticipated in 1986, and consistent with current zoning.

The Property is one of three (3) lots within Plat Number 2004007398, approved by the City, and filed and recorded on January 29, 2004 (“2004 Plat”). Plat Note Number 19 contains the following use restriction: “Development of this subdivision is restricted to uses other than residential.”

The use of plat notes to describe a project and permitted uses has been recognized by the Texas Legislature and courts. *See, e.g.,* TEX. LOC. GOV’T CODE § 245.002(d); *City of Austin v. Garza*, 124 S.W.3d 867 (Tex. App. – Austin 2003); *Harper Park Two, LP v. City of Austin*, 359 S.W.3d 247 (Tex. App. – Austin 2011).

Chapter 203 of the Texas Property Code authorizes a county attorney to “enjoin ... violations of a restriction contained ... in a properly recorded plan, plat, replat, or other instrument affecting a real property subdivision located in the county”. TEX. PROP. CODE § 203.003(a). Chapter 203 does not require that a complaint be filed before the county attorney can initiate a suit to enjoin a violation.

In a September 14, 2020 Attorney General Opinion, you discussed the enforceability of restrictions.

Before addressing your question, we consider the methods for enforcing restrictive covenants. Restrictive covenants are contractual arrangements between private parties. They are generally enforced by the contracting parties, those in direct privity of estate with the contracting parties, or, in some instances, property owners in the same subdivision and subject to the same restrictive covenants. However, the Legislature also granted some local officials express authority to enforce restrictive covenants in certain instances. *See, e.g.,*...TEX. PROP. CODE § 203.003(a) (authorizing county attorneys to sue to enforce a restrictive covenant “contained or incorporated by reference in a properly recorded plan, plat, replat, or other instrument affecting a real property subdivision located in the county”)...

TEX. ATTY GEN. OP. KP-0333 (2020).

The 2004 Plat prohibits the residential use of the Property. The City has stated clearly that it intends to use the Property for a residential use. The Property is located within Williamson County. We request your opinion as to whether our office may file a suit to enjoin the City’s use of the Property in violation of the restriction contained in the 2004 Plat regardless of whether a formal complaint

has been filed with our office. As time is of the essence in preventing the illegal use of the Property we ask that your office expedite our request.

If you have any questions concerning this request, please feel free to contact me or Shannon Francis, Civil Division Chief. Thank you for your review and consideration of this opinion request.

Respectfully submitted,

A handwritten signature in black ink that reads "Dee Hobbs". The signature is written in a cursive style with a large initial "D".

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Dee Hobbs  
Williamson County Attorney