

CAUSE NO. 2019-CCV-61513-3

PORT OF CORPUS CHRISTI	§	IN THE COUNTY COURT
AUTHORITY OF NUECES COUNTY,	§	
TEXAS	§	
	§	
V.	§	AT LAW NUMBER THREE
	§	
CITY OF PORT ARANSAS, TEXAS	§	NUECES COUNTY, TEXAS

THE CITY OF PORT ARANSAS, TEXAS' FIRST AMENDED MOTION FOR CONTINUANCE OF THE PORT OF CORPUS CHRISTI AUTHORITY OF NUECES COUNTY, TEXAS' TEMPORARY INJUNCTION HEARING, SUBJECT TO THE CITY OF PORT ARANSAS, TEXAS' PLEA TO THE JURISDICTION

TO THE HONORABLE JUDGE OF SAID COURT:

Now comes Defendant, City of Port Aransas, Texas (hereafter "Port Aransas"), and subject at all times to Port Aransas' November 26, 2019, Plea to the Jurisdiction, files its First Amended Motion for Continuance of Plaintiff, Port of Corpus Christi Authority of Nueces County, Texas' (hereafter "Port") Notice of a December 3, 2019, 1:30 p.m. hearing on the Port's Request for a Temporary Injunction ¹, and in support hereof would respectfully show the Court as follows.

Grounds For Continuance

(1) Robert F. Brown, Brown and Hofmeister, is lead counsel for Port Aransas. Mr. Brown has a conflict with the Port's requested December 3, 2019, temporary injunction setting, and cannot attend and examine or cross-examine witnesses, or defend Port Aransas in connection with the Port's requested December 3, 2019, hearing. Accordingly, such hearing should be

¹ The Port's Notice of Hearing is attached as Exhibit "1". Port Aransas received this notice of a full blown evidentiary hearing (as opposed to an "argument only" TRO) less than six days in advance of the Port's proposed evidentiary hearing. The six days included the day before Thanksgiving (the undersigned believes the Court was closed), Thanksgiving, the Friday following Thanksgiving (the undersigned believes the Court was closed), and the weekend following Thanksgiving. In effect, the Port has provided Port Aransas about two business day notice of its temporary injunction hearing.

continued to and until such time as Port Aransas' lead counsel is available, and has the opportunity to properly prepare for any temporary injunction hearing.

(2) For purposes of efficiency and judicial economy Port Aransas' pending Plea to the Jurisdiction should be heard, considered and granted by the trial court prior to an extensive evidentiary temporary injunction hearing.

(3) In order to obtain a temporary injunction, the Port has to plead and prove the following specific elements *Butnaru v. Ford Motor Co.*, 84 S.W.3d 198, 204 (Tex. 2002); see, e.g., *Argo Group US, Inc. v. Levinson*, 468 S.W.3d 698, 700–705 (Tex. App.—San Antonio 2015, no pet.), (a) A cause of action against the defendant; (b) A probable right to the relief sought; and (c) A probable, imminent, and irreparable injury in the interim.

(4) It is difficult to see how the Port can meet its temporary injunction burdens in light of reasons that include, without limitation: (a) the August 29, 2019, moratorium (see Exhibit "2") the Port is primarily complaining about expired thirty days ago²; (b) the alleged controversy is moot; (c) the Court lacks jurisdiction (please refer to Port Aransas' Plea to the Jurisdiction)³; and (d) among other temporary injunction elements the Port cannot demonstrate a probable, imminent, and irreparable injury in the interim, much less establish that its development plans for Harbor Island will even come to fruition; especially in light of the fact that one of the Port's major financial backers, the Carlyle Group, has terminated any involvement in the project.

² Incredibly, it appears the Port is even complaining about Port Aransas' decision to adopt a February 21, 2019, Resolution attached hereto as part of Exhibit "2" wherein Port Aransas resolved to protect the life and property of the citizens of Port Aransas simply by resolving to be actively involved in, and made aware of, any and all administrative procedures, public comment periods, permitting processes, studies and other matters that relate or pertain to the Port's Harbor Island development plans

³ Port Aransas November 26, 2019, Plea to the Jurisdiction is attached as Exhibit "5".

(5) In order to defend itself Port Aransas intends to call and cross examine numerous witnesses at any temporary injunction hearing demanded by the Port including, without limitation, Sean Strawbridge, Sam Esquivel, all Port Commissioners, including without limitation, Charles W. Zahn, Wayne Squires, W. Wesley Hoskins, Richard Ralph Valls, the “Berry Brothers”; that is, Allen Lawrence Berry, Marvin Glenn Berry, and Dennis Wayne Berry⁴, and other Port officials/representatives, because, among other reasons, Port Aransas believes (1) the Port does not have a valid, lawful cause of action against Port Aransas; (2) the Port does not have a probable right to the relief it seeks; and (3) there is not, nor has there been, a probable, imminent, and irreparable injury to the Port caused by Port Aransas’ completely valid resolution and sixty day moratorium ordinance.

TCEQ and EIS⁵ Requirements

(6) Based upon information and belief, and assuming without conceding the Port can even move forward with the construction of a facility; that is a terminal that will emit air contaminants, the Port is required to obtain an air quality permit from the Texas Commission on Environmental Quality (“TCEQ”). Assuming the Port is even able to obtain the required TCEQ air quality permit that is at least nine months away.

(7) Moreover, the Port cannot begin any work on the cargo ship berths it claims it wants to construct until it has Army Corp of Engineers “Enterprise Infrastructure Solutions” (“EIS”) which may well be years away, and which, in any event, has not yet occurred.

⁴ Port Aransas believes the “Berry Brothers” will be able to testify, among other issues, about the allegations made by them in connection with Cause Number 2019-69542; Lone Star Ports, LLC, et. al. v. the Carlyle Group, LP, et. al.; 190th Judicial District Court, Harris County, Texas.

⁵ <https://www.gsa.gov/technology/technology-purchasing-programs/telecommunications-and-network-services/enterprise-infrastructure-solutions>.

(8) In order to defend itself Port Aransas Port Aransas should be afforded the time and the opportunity to subpoena and cross-examine any and all witnesses who can shed light on these facts.

Background

The Port Aransas Resolution, and Port Aransas Ordinance

Port Aransas' February 21, 2019, Resolution

“A RESOLUTION OF THE PORT ARANSAS CITY COUNCIL SUPPORTING THE POSITION THAT ALL REGULATORY PERMITTING FOR OIL AND GAS INDUSTRIAL DEVELOPMENTS HAVE EXTENDED DEADLINES FOR PUBLIC COMMENT PERIODS TO ACCOMMODATE THE TIME NEEDED FOR THE CITY OF PORT ARANSAS TO PROPERLY RESEARCH, EVALUATE, AND COMMENT ON SAID PERMITS, AND ASK FOR AN UP-TO-DATE ENVIRONMENTAL IMPACT STUDY FOR ANY PROJECT THAT COULD POTENTIALLY IMPACT THE CRITICAL NATURAL HABITAT, BEAUTIFUL BEACHES, TOURISM INDUSTRY, AND THE PLACE WHERE WE RAISE OUR FAMILIES.

WHEREAS, there is currently in the state of Texas a crude oil export boom creating a competitive environment on the Texas Gulf Coast to build one or more VLCC (Very Large Crude Carrier) terminals, with several proposed sites located within the city limits of Port Aransas; and

WHEREAS, the City is still in the midst of the critical rebuilding process as a result of being directly impacted by Hurricane Harvey on August 25, 2017, placing a huge work load on our citizens and municipal staff, re-enforcing the need for extended review periods; and

WHEREAS, industrial development permits are reviewed by the public and reviewing agencies such as the US Fish and Wildlife, EPA, USACE, Texas Commission on Environmental Quality (TCEQ), Texas Parks and Wildlife, and others, and such information contained within these permits should be the most updated and accurate scientific data available.

NOW, THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PORT ARANSAS, NUECES COUNTY, TEXAS, AGREES THAT:

Section 1. City staff is hereby directed to immediately requests public comment extensions on any and all regulatory permits for industrial development in the immediate region that may impact the city's welfare.

Section 2. City staff is hereby authorized to hire legal counsel to assist in challenging the scientific and socio-economic data's age, accuracy, and soundness contained in any and all regulatory permits.

Section 3. City staff is hereby directed to request updated an Environmental Impact Study for any ship channel dredging projects beyond the currently authorized 54' depth.

PASSED and APPROVED by the Port Aransas City Council, County of Nueces, State of Texas, on this 21st day of FEBRUARY, 2019.”.

Port Aransas has retained the services of a prominent Texas Law Firm, Bickerstaff Heath Delgado Acosta, LLP - , <https://www.bickerstaff.com/> - to assist Port Aransas in connection with the regulatory and administrative processes as they relate or pertain to the Port's Harbor Island development plans. Surely, the Port, by this lawsuit, is not seeking a temporary or permanent injunction to prevent or prohibit Port Aransas; its citizens; and its lawyers at Bickerstaff the free and unfettered opportunity to be actively involved with, and participate in, all phases of these processes.

Port Aransas' August 29, 2019, Ordinance No. 2019-09⁶

(The Ordinance That Expired on October 29, 2019)

On August 29, 2019, Port Aransas passed Emergency Ordinance No. 2019-09 that provided, in relevant part,

“Section 2. In August, 2017, Hurricane Harvey devastated the middle Texas Coast and inflicted significant infrastructure and property damage to the City of Port Aransas. Among the many City services impacted by the Category 4 hurricane was the City's fire department, which was effectively destroyed as every single piece of firefighting equipment was lost. While the City is currently in the process of rebuilding its fire department, the City does not have the capability to provide fire protection services and emergency response to heavy industrial uses on Harbor Island and, in particular, oil and gas related operations. As a result, a public emergency exists which adversely affects the life, health, property, and public peace of those properties located on Harbor Island. To ensure that these life safety concerns are protected, a temporary moratorium on further heavy industrial development on Harbor Island is warranted until adequate fire protection services and emergency response are available.

Section 3. The City of Port Aransas developed as a fishing village. It is a non-industrial town and relatively clean and free of the pollutants which normally accompany some industrial developments. Its commercial structures historically were small and primarily wooden with peaked roofs. The City in its commercial area had and still has the flavor and ambiance of a small fishing village which imbues it with a distinctive charm and character. The City has in the past few years, experienced extremely rapid growth and is in danger of losing the charm which makes it an attractive, unique venue. In recognition of this situation the City Council is

⁶ Port Aransas Resolution No. 2019-18, and Ordinance No. 2019-09 are attached collectively as Exhibit “2”.

considering re-zoning some of Harbor Island, and/or the imposition of additional controls upon new development on Harbor Island. In order to prevent the development of Harbor Island in a way which would adversely affect, damage or destroy the aesthetics or environment of the City, and to recognize the historical uses of Harbor Island, the Council considers it necessary to pass this temporary moratorium on an emergency basis to allow the City to study and, if determined to be appropriate, institute additional zoning and other development controls on Harbor Island.

Section 4. From and after the passage of this ordinance and for a period of 60 days thereafter, unless sooner repealed by the Council, no development permits or approvals shall be issued for development of Harbor Island property. Under Section 3.13 of the City Charter, unless extended by further Council action, this emergency ordinance will automatically expire on the sixty-first (61st) day after its enactment.”.

The Port Files Suit

On September 3, 2019, the Port filed suit against Port Aransas contending, in general, that Port Aransas, among other so-called wrongs, violated Texas Natural Resources Code, Section 81.0523 in adopting Ordinance No. 2019-09,⁷ and sought equitable relief in the nature of a temporary restraining order, a temporary injunction, and a permanent injunction.

The Parties “Talk”

From mid-September 2019 the parties have engaged in discussions in an attempt to resolve their differences; however, it became apparent during the week of November 18, 2019, that the parties’ discussions were not bearing fruit.

⁷ Although it defies belief it appears the Port is also complaining about Port Aransas’ decision to adopt the February 21, 2019, Resolution (see Exhibit “2”) wherein Port Aransas resolved to protect the life and property of the citizens of Port Aransas simply by deciding to be actively involved in, and made aware of, any and all administrative procedures, public comment periods, permitting processes, studies and other matters that relate or pertain to the Port’s Harbor Island development plans.

Port Aransas Mayor Bujan's November 22, 2019, Letter ⁸

Accordingly, on or about November 22, 2019, Port Aransas Mayor Charles Bujan, transmitted a letter to Port Executive Director, Sean Strawbridge, and advised the Port, "The City of Port Aransas Temporary Moratorium expired a month ago which should have ended the lawsuit the Port filed against the City. However, the Port has not withdrawn the lawsuit. ... Additionally, the Port in a September 4, 2019, letter takes the position that City passage of the Temporary Moratorium caused the Marina Lease to be automatically terminated. We are confident the adoption of the Moratorium did not cause the lease to terminate. We want to continue negotiations with the Port and are hopeful they will be successful. But the lawsuit and the Ports position that the Lease has terminated are in our view detrimental to the prospects for success in these negotiations. We request that the Port dismiss the suit and disavow the letter and the position taken in this letter."

Port Aransas Counsel's November 22, 2019, Letter ⁹

In the same vein, Mr. Robert Brown, lead counsel for Port Aransas, transmitted a November 22, 2019, letter to the Port's attorneys and advised the Port, "While the City appreciates the on-going efforts by the Port to address the issues in dispute between the City and the Port regarding inspections and permitting on Harbor Island, as well as the City's Marina Lease with the Port, it has become clear to the City that such negotiations are being improperly leveraged by the Port through its pending litigation in County Court at Law No. 3 regarding the now expired temporary moratorium on permitting, and the legally and factually unsupportable letter dated September 4, 2019, from Mr. Sam Esquivel, the Port's Director of Real Estate

⁸ Mayor Bujan's November 22, 2019, letter to Mr. Strawbridge is attached as Exhibit "3".

⁹ Mr. Brown's November 22, 2019, correspondence is attached as Exhibit "4".

Services, asserting termination of Port Aransas Marina Lease.

As you know, City Ordinance No. 2019-09 (the “Temporary Moratorium”) was enacted by the Port Aransas City Council on August 29, 2019, enacting a moratorium on the issuance of City permits on Harbor Island for a period of 60-days to allow the City to study fire protection and emergency services issues presented by development on Harbor Island, and to study potential changes in land development regulations on Harbor Island. Shortly thereafter, the Port filed suit against the City challenging the Temporary Moratorium as being preempted by the Texas Natural Resources Code.

While the City has denied such allegations, the issue is now moot, however, since the Temporary Moratorium expired by its own terms on October 29, 2019. The City took no action as a result of the Temporary Moratorium and has no plans to pass another moratorium regarding Harbor Island. Despite that there is no longer a justiciable claim in the suit, the Port continues to maintain its litigation against the City. The only conceivable purpose for the Port to do so over a now-expired, one-time only, moratorium is to continue to use the litigation as a heavy hammer in its negotiations with the City. This impermissibly tilts the playing field in favor of the Port and presents a significant impediment to arms-length, good-faith, negotiations between two governmental entities that share a common goal: The safe and orderly development of Harbor Island. The Port should non-suit its litigation to allow negotiations to continue without the shadow of litigation hovering over the proceedings.

Similarly, the Port should retract the Marina Lease termination letter issued on September 4, 2019. The assertion that the Temporary Moratorium violated the terms of the City's Marina Lease with the Port is simply unsupportable as neither the zoning on Harbor Island, nor the Harbor Island District Regulations, have been changed or modified, as would be required to contemplate a termination of the Marina Lease per the express language of the Lease. In short, the threat of terminating the Lease is simply nothing more than, once again, an effort by the Port to strong-arm the City into capitulating to the Port's terms in its negotiations over Harbor Island. The City declines to negotiate under this unreasonable and unwarranted threat.

While the City remains confident that long-term solutions can be crafted between the City and the Port on Harbor Island, the Marina Lease, and other day-to-day intergovernmental matters that will most likely arise given the sovereign, yet occasionally conflicting, interests of the two entities, such discussions must take place in an environment where neither entity is suing the other, or threatening to terminate contractual arrangements. If the Port is willing to work with the City without the heavy sword of litigation and the Marina Lease termination hanging over the City's head, I believe that an acceptable solution to the current issues can be achieved. Without such a leveling of the playing field, however, I suspect that our discussions will not be fruitful. I urge you to take my suggestions under advisement and let me know how the Port desires to proceed going forward."

The Port's Response

Rather than simply acknowledge that (1) the controversy and claims that may have been in question are, for all practical purposes, moot as a result of the expiration of Ordinance No. 2019-09, (2) the Court lacks jurisdiction to hear matters where no real controversy exists; (3) the Port does not have a valid, lawful cause of action against Port Aransas; (4) the Port does not have a probable right to the relief it seeks; and (5) there is no, nor has there been, a probable, imminent, and irreparable injury to the Port caused by Port Aransas, the Port – the 800 pound gorilla in the courtroom – insists on moving forward with a full blown temporary injunction evidentiary hearing while refusing to afford Port Aransas the opportunity to prepare and defend itself.

Not Sought for Delay

This continuance is not sought for delay only, but so that justice may be done.

WHEREFORE, PREMISED CONSIDERED, Port Aransas prays this motion for continuance be granted, and that the temporary injunction hearing be reset to afford Port Aransas its due process rights to prepare and defend itself as prayed for herein. Port Aransas prays for such other and further legal and equitable relief as may be just.

Respectfully submitted,

MR. ROBERT F. BROWN
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740 EAST CAMPBELL ROAD, SUITE 800
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/s/ Robert F. Brown

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/s/ Fred D. Dreiling

FRED D. DREILING

**ATTORNEYS FOR DEFENDANT,
CITY OF PORT ARANSAS, TEXAS**

CERTIFICATE OF SERVICE

I certify that a true and correct copy of this document was served on all attorneys of record by one or more of the methods indicated below in accordance with Rule 21a, Texas Rules of Civil Procedure on this the 29th day of November, 2019.

/s/ Fred D. Dreiling
FRED D. DREILING

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Ms. Yvonne Trevino
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ATTORNEYS FOR PLAINTIFF
PORT OF CORPUS CHRISTI AUTHORITY OF NUECES COUNTY, TEXAS

CAUSE NO. 2019CCV-61513-3

PORT OF CORPUS CHRISTI
AUTHORITY OF NUECES COUNTY,
TEXAS

Plaintiff,

v.

CITY OF PORT ARANSAS, TEXAS

Defendant.

§ IN COUNTY COURT AT LAW

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COUNTY COURT AT LAW NO. 3

NUECES COUNTY, TEXAS

PORT OF CORPUS CHRISTI AUTHORITY'S
NOTICE OF HEARING ON TEMPORARY INJUNCTION

The hearing on Plaintiff Port of Corpus Christi Authority of Nueces County, Texas' Request for Temporary Injunction will take place on December 3, 2019 at 1:30 p.m. in County Court at Law No. 3, Nueces County, Texas.

Respectfully submitted,

/s/ Doug Allison

Doug Allison
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/s/ Earnest W. Wotring

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EXH " 1 "

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**ATTORNEYS FOR PORT OF CORPUS
CHRISTI AUTHORITY OF
NUECES COUNTY, TEXAS**

CERTIFICATE OF SERVICE

I certify that a true and correct copy of this document was served on all attorneys of record in accordance with Rule 21a, Texas Rules of Civil Procedure on this 26th day of November 2019.

/s/ Earnest W. Wotring
Earnest W. Wotring

RESOLUTION NO 2019-18

A RESOLUTION OF THE PORT ARANSAS CITY COUNCIL SUPPORTING THE POSITION THAT ALL REGULATORY PERMITTING FOR OIL AND GAS INDUSTRIAL DEVELOPMENTS HAVE EXTENDED DEADLINES FOR PUBLIC COMMENT PERIODS TO ACCOMMODATE THE TIME NEEDED FOR THE CITY OF PORT ARANSAS TO PROPERLY RESEARCH, EVALUATE, AND COMMENT ON SAID PERMITS, AND ASK FOR AN UP-TO-DATE ENVIRONMENTAL IMPACT STUDY FOR ANY PROJECT THAT COULD POTENTIALLY IMPACT THE CRITICAL NATURAL HABITAT, BEAUTIFUL BEACHES, TOURISM INDUSTRY, AND THE PLACE WHERE WE RAISE OUR FAMILIES.

WHEREAS, there is currently in the state of Texas a crude oil export boom creating a competitive environment on the Texas Gulf Coast to build one or more VLCC (Very Large Crude Carrier) terminals, with several proposed sites located within the city limits of Port Aransas; and

WHEREAS, the City is still in the midst of the critical rebuilding process as a result of being directly impacted by Hurricane Harvey on August 25, 2017, placing a huge work load on our citizens and municipal staff, re-enforcing the need for extended review periods; and

WHEREAS, industrial development permits are reviewed by the public and reviewing agencies such as the US Fish and Wildlife, EPA, USACE, Texas Commission on Environmental Quality (TCEQ), Texas Parks and Wildlife, and others, and such information contained within these permits should be the most updated and accurate scientific data available.

NOW, THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PORT ARANSAS, NUECES COUNTY, TEXAS, AGREES THAT:

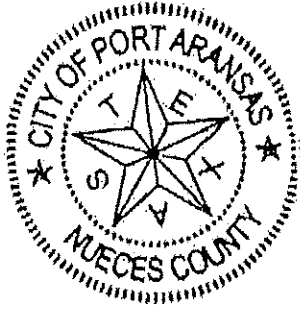
Section 1. City staff is hereby directed to immediately requests public comment extensions on any and all regulatory permits for industrial development in the immediate region that may impact the city's welfare.

Section 2. City staff is hereby authorized to hire legal counsel to assist in challenging the scientific and socio-economic data's age, accuracy, and soundness contained in any and all regulatory permits.


Section 3. City staff is hereby directed to request updated an Environmental Impact Study for any ship channel dredging projects beyond the currently authorized 54' depth.

PASSED and APPROVED by the Port Aransas City Council, County of Nueces, State of Texas, on this 21st day of FEBRUARY, 2019.

EXH "2"

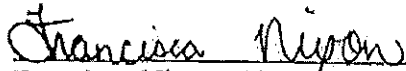


CITY OF PORT ARANSAS, TEXAS



Charles R. Bujan, Mayor

ATTEST:


Francisca Nixon, City Secretary

EXH "2"

ORDINANCE NO. 2019-09

EMERGENCY

AN EMERGENCY ORDINANCE PROVIDING FOR A MORATORIUM PRECLUDING THE ISSUANCE OF PROPERTY DEVELOPMENT PERMITS OR APPROVALS FOR DEVELOPMENT OF ANY HARBOR ISLAND PROPERTIES FOR HEAVY INDUSTRIAL USES, PROVIDING FOR EFFECTIVE DATE, READING, PUBLICATION, AND SEVERANCE

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PORT ARANSAS, COUNTY OF NUECES, STATE OF TEXAS:

Section 1. This is an emergency ordinance passed in accordance with Sections 3.12 and 3.13 of the Charter of the City of Port Aransas. Because this moratorium impacts only heavy industrial property uses, it is not subject to the procedures and limitations set forth in Subchapter E of Texas Local Government Code Chapter 212.

Section 2. In August, 2017, Hurricane Harvey devastated the middle Texas Coast and inflicted significant infrastructure and property damage to the City of Port Aransas. Among the many City services impacted by the Category 4 hurricane was the City's fire department, which was effectively destroyed as every single piece of firefighting equipment was lost. While the City is currently in the process of rebuilding its fire department, the City does not have the capability to provide fire protection services and emergency response to heavy industrial uses on Harbor Island and, in particular, oil and gas related operations. As a result, a public emergency exists which adversely affects the life, health, property, and public peace of those properties located on Harbor

EXH "2" 1

Island. To ensure that these life safety concerns are protected, a temporary moratorium on further heavy industrial development on Harbor Island is warranted until adequate fire protection services and emergency response are available.

Section 3. The City of Port Aransas developed as a fishing village. It is a non-industrial town and relatively clean and free of the pollutants which normally accompany some industrial developments. Its commercial structures historically were small and primarily wooden with peaked roofs. The City in its commercial area had and still has the flavor and ambiance of a small fishing village which imbues it with a distinctive charm and character. The City has in the past few years, experienced extremely rapid growth and is in danger of losing the charm which makes it an attractive, unique venue. In recognition of this situation the City Council is considering re-zoning some of Harbor Island, and/or the imposition of additional controls upon new development on Harbor Island. In order to prevent the development of Harbor Island in a way which would adversely affect, damage or destroy the aesthetics or environment of the City, and to recognize the historical uses of Harbor Island, the Council considers it necessary to pass this temporary moratorium on an emergency basis to allow the City to study and, if determined to be appropriate, institute additional zoning and other development controls on Harbor Island.

Section 4. From and after the passage of this ordinance and for a period of 60 days thereafter, unless sooner repealed by the Council, no development permits or approvals shall be issued for development of Harbor Island property. Under Section 3.13 of the City Charter, unless extended

EXH "2"

2

by further Council action, this emergency ordinance will automatically expire on the sixty-first (61st) day after its enactment.

Section 5. Effective Date. As provided by Sections 3.12 and 3.13 of the Charter of the City of Port Aransas, this ordinance shall be effective upon adoption.

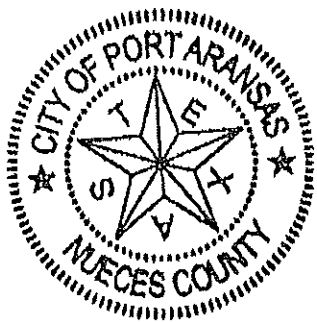
Section 6. Reading. As provided by Sections 3.12 and 3.13 of the Charter of the City of Port Aransas, this ordinance or the caption of it shall be read at one city council meeting.

Section 7. Severance. If any part of this ordinance is invalid or void or is declared to be so, then said part shall be severed from the balance of this ordinance and said invalidity shall not affect the balance of this ordinance, the balance of the ordinance to be read as if said invalid or void portion thereof were not included.

Section 8. Publication. As provided by Sections 3.12 and 3.13 City Charter of the City of Port Aransas this ordinance shall be published one time in the official newspaper of the City of Port Aransas, Nueces County, Texas, which publication shall contain the caption of this ordinance stating in substance the purposes of same.

PASSED, ORDAINED, APPROVED AND ADOPTED on one reading on this 29th day of August, 2019.

EXH "2"



CITY OF PORT ARANSAS

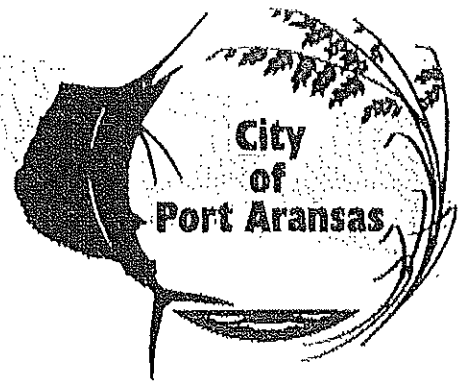
BY: *Charles R. Bujan*
Charles R. Bujan, Mayor

ATTEST:

Francisca Nivan
City Secretary

EXH "2"

City of Port Aransas



To: Sean Strawbridge, Executive Director, POCC


Dear Mr. Stawbridge:

The City of Port Aransas Temporary Moratorium expired a month ago which should have ended the lawsuit the Port filed against the City. However, the Port has not withdrawn the lawsuit. If the Port intends to pursue this suit, the City is prepared to vigorously defend itself and protect the interests of the City.

Additionally, the Port in a September 4, 2019 letter takes the position that City passage of the Temporary Moratorium caused the Marina Lease to be automatically terminated. We are confident the adoption of the Moratorium did not cause the lease to terminate.

We want to continue negotiations with the Port and are hopeful they will be successful. But the lawsuit and the Ports position that the Lease has terminated are in our view detrimental to the prospects for success in these negotiations. We request that the Port dismiss the suit and disavow the letter and the position taken in the letter.

Sincerely,


Charles R. Bujan
Mayor, City of Port Aransas

cc: D. Parsons, City Manager, City of Port Aransas
City of Port Aransas Attorneys
Port Aransas City Council

EXH "3"

Motion made and passed at Port Aransas City Council 11-21-2019

I move that the Council authorize the City's attorneys to file such pleadings and prosecute such causes of action and claims as are reasonable or necessary in their judgment to protect the City's Marina Lease and other City interests, to fully defend the City in the pending case styled *Port of Corpus Christi Authority of Nueces County, Texas vs. City of Port Aransas*, and to continue negotiations with Port of Corpus Christi representatives on all matters in dispute.

BROWN & HOFMEISTER, L.L.P.

740 East Campbell Road
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November 22, 2019

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Earnest Wotring
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VIA EMAIL ONLY
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Re: Continued Settlement Negotiations between the Port of Corpus Christi Authority of Nueces County, Texas ("Port"), and the City of Port Aransas, Texas ("City")

Dear Doug and Earnest:

While the City appreciates the on-going efforts by the Port to address the issues in dispute between the City and the Port regarding inspections and permitting on Harbor Island, as well as the City's Marina Lease with the Port and other issues, it has become clear to the City that such negotiations are being improperly leveraged by the Port through its pending litigation in County Court at Law No. 3 regarding the now expired temporary moratorium on permitting, and the legally and factually unsupportable letter dated September 4, 2019, from Mr. Sam Esquivel, the Port's Director of Real Estate Services, asserting termination of Port Aransas Marina Lease.

As you know, City Ordinance No. 2019-09 (the "Temporary Moratorium") was enacted by the Port Aransas City Council on August 29, 2019, enacting a moratorium on the issuance of City permits on Harbor Island for a period of 60-days to allow the City to study fire protection and emergency services issues presented by development on Harbor Island, and to study potential changes in land development regulations on Harbor Island. Instead of simply reaching out to Port Aransas in order to provide a good faith, neighborly response to the City's concerns regarding these important issues, the Port simply chose to immediately and without notice file suit against the City challenging the Temporary Moratorium as being preempted by the Texas Natural Resources Code.

While the City has denied such allegations, the issue is now moot, however, since the Temporary Moratorium expired by its own terms on October 29, 2019. As the Port well knows, the City took no action that could be considered against the Port's interests as a result of the Temporary Moratorium, and has no plans to pass another similar moratorium. Despite the fact

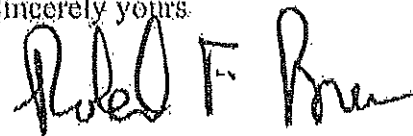
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that there is no longer a justiciable claim/controversy in the suit, the Port continues to maintain its litigation against the City. The only conceivable purpose for the Port to do so over a now-expired, one-time only, moratorium is to continue to use the Port's unnecessary, expensive litigation, together with the Port's patently frivolous claim the Marina Lease is terminated/breached, as a heavy hammer in its negotiations with the City. This impermissibly tilts the playing field in favor of the Port, and presents a significant impediment to arms-length, good-faith, negotiations between two governmental entities that share a common goal: The safe, lawful, and orderly development of Harbor Island. The Port should non-suit its litigation to allow negotiations to continue without the shadow of litigation hovering over the proceedings.

Similarly, the Port should retract the Marina Lease termination letter issued on September 4, 2019. The assertion that the Temporary Moratorium violated the terms of the City's Marina Lease with the Port is simply unsupported as neither the zoning on Harbor Island, nor the Harbor Island District Regulations, have been changed or modified, as would be required to contemplate a termination of the Marina Lease per the express language of the Lease. In short, the threat of terminating the Lease is simply nothing more than, once again, an effort by the Port to strong-arm the City into capitulating to the Port's terms in its negotiations over Harbor Island. The City declines to negotiate under this unreasonable and unwarranted threat.

While the City remains confident that long-term solutions can be crafted between the City and the Port on Harbor Island, the Marina Lease, and other day-to-day intergovernmental matters that will most likely arise given the sovereign, yet occasionally conflicting, interests of the two entities, such discussions must take place in an environment where neither entity is suing the other, or threatening to terminate contractual arrangements. If the Port is willing to work with the City without the heavy sword of litigation, and the Marina Lease termination, hanging over the City's head, I believe that an acceptable solution to the current issues can be achieved. Without such a leveling of the playing field, however, I suspect that our discussions will not be fruitful. I urge you to take my suggestions under advisement; present them to the entire Port Commission for a public discussion, motion and vote; and let me know how the Port desires to proceed going forward.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Robert F. Brown". The signature is written in a cursive, somewhat stylized font.

Robert F. Brown

RFB/rfb

cc:

David Parsons
Michael G. Morris
Fred Dreiling

VIA EMAIL ONLY
VIA EMAIL ONLY
VIA EMAIL ONLY

CAUSE NO. 2019CCV-61513-3

PORT OF CORPUS CHRISTI
AUTHORITY OF NUECES COUNTY,
TEXAS,

Plaintiff,

v.

CITY OF PORT ARANSAS, TEXAS,

Defendants.

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IN THE COUNTY COURT
AT LAW

COUNTY COURT AT LAW
NO. 3

NUECES COUNTY, TEXAS

DEFENDANT CITY OF PORT ARANSAS' PLEA TO THE JURISDICTION

TO THE HONORABLE JUDGE OF SAID COURT:

Defendant City of Port Aransas, Texas ("City"), respectfully submits the following plea to the jurisdiction to the Port of Corpus Christi Authority's Original Petition for Declaratory Judgment and Request for Injunctive Relief ("Petition") filed by Plaintiff Port of Corpus Christi Authority of Nueces County, Texas ("Port"), in this matter on September 3, 2019, and respectfully shows the court as follows:

1. The court does not have subject matter jurisdiction over the Port's request for declaratory judgment, injunctive relief, and attorney's fees based on the City's passage of City Ordinance No. 2019-09 (the "Temporary Moratorium Ordinance"), which enacted a moratorium on the issuance of City permits on Harbor Island for a period of 60-days to allow the City to study fire protection and emergency services issues presented by development on Harbor Island, and to study potential changes in land development regulations on Harbor Island, because the Temporary Moratorium Ordinance expired by its own terms on October 29, 2019, and the matter is now moot. As a result, the Port lacks standing to bring its claims against the City because, for a litigant to have standing, a controversy must exist between the parties at every stage of the

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legal proceedings and, if a controversy ceases to exist, the issues are no longer “live” and the parties lack a legally cognizable interest in the outcome.

2. The court does not have subject matter jurisdiction over the Port’s request for declaratory judgment, injunctive relief, and attorney’s fees based on the Port’s request for a judgment permanently enjoining the City from “interfering with the Port Authority’s development of Harbor Island in any way” (Petition, ¶63(c)), as such an overbroad, all-encompassing, prospective injunction would violate the separation of powers doctrine set forth in Article II, § 1 of the Texas Constitution as it is improper for the judicial branch (*i.e.*, a court) to enjoin or adjudicate a decision of the legislative branch (*i.e.*, the Port Aransas City Council) before the City Council actually enacts the legislative act to be reviewed. The Port lacks standing to request an injunction that would prohibit the City Council from passing laws regarding, or otherwise regulating, Harbor Island.

3. The court does not have subject matter jurisdiction over the Port’s request for declaratory judgment, injunctive relief, and attorney’s fees based on the Port’s request for a judgment permanently enjoining the City from “interfering with the Port Authority’s development of Harbor Island in any way” (Petition, ¶63(c)), as such an overbroad, all-encompassing, prospective injunction would be based on the adjudication of anticipated ordinances by the City which, prior to such their enactment, would violate the ripeness doctrine by seeking an advisory opinion on a controversy that is not yet ripe or before the court. If, and only if, the City Council enacts legislation regarding Harbor Island will there be a ripe and justiciable controversy for the court to adjudicate. The Port lacks standing to assert its claims at this time.

WHEREFORE, PREMISES CONSIDERED, Defendant City of Port Aransas, Texas, prays (1) that the court grant the City's plea to the jurisdiction, with prejudice, on the grounds asserted therein and find that it does not have subject matter jurisdiction over the Port's claims based on lack of standing; (2) that the Port take nothing by this suit and that all relief requested therein be denied; and (3) that the City have such other and further relief, general or special, at law or in equity, to which it may be justly entitled.

By: /s/ Robert F. Brown

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**ATTORNEYS FOR DEFENDANT CITY OF PORT
ARANSAS, TEXAS**

CERTIFICATE OF SERVICE

A copy of the foregoing document was served by electronic service on November 26, 2019,

upon the following:

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By: /s/ Robert F. Brown

**ATTORNEYS FOR DEFENDANT CITY OF PORT
ARANSAS, TEXAS**