

FILED

This 24 Day of July 1975 AM 11:15

Sue Blackley Clerk
District Court, Jeff Davis Co., Texas

No. 1692

RICHARD L. McLaren,

IN THE 83RD JUDICIAL ^{Deputy}

RELATOR

VS.

DISTRICT COURT OF

COMMISSIONERS COURT OF
JEFF DAVIS COUNTY, TEXAS,

RESPONDENT

JEFF DAVIS COUNTY, TEXAS

PETITION FOR A WRIT OF MANDAMUS

TO THE HONORABLE DISTRICT JUDGE:

Comes now Richard L. McLaren hereafter called the **Relator** and files this his petition seeking this courts issuances of a Writ of Mandamus against the governing body corporate Commissioners Court of Jeff Davis County, Texas, hereafter called the **Respondent**. The **Relator** would hereby respectfully show in support of his petition the following:

Jurisdiction

That Jurisdiction is invoked against the **Respondent** pursuant to Article 5 Section 8 of the Constitution of Texas of 1876 that this court exercise appellate jurisdiction over the **Respondent**.

Venue

Venue is proper in Jeff Davis County, Texas, in that the acts and actions occurred within the county and all parties are domiciled therein.



Body of Complaint for Basis of Issuances of Writ of Mandamus

I

On or about April 7, 1986, the **Relator** pursuant to Article 1 Section 27 of the Constitution of 1876 started petitioning the Commissioners Court of Jeff Davis County, Texas, the **Respondent** for acts and actions regarding the removing and vacating of certain survey plats of records which had been unlawfully filed and were unlawfully approved by the Commissioners Court to establish a statutory subdivision for the conveyance of real property commonly known as the Davis Mountains Resort, by maintaining this allegedly unlawful statutory subdivision did and would continue to both oppress and injure the **Relator** personally and in his business and bring forth a continuous mushroom of litigation based upon the alleged unlawful plat system.

II

These acts and actions have continued for over a period of nine years and have involved presentations of evidence and personal appearances thereto before the **Respondent** by the **Relator** with no solution or relief from damages and Injury of both a personal and financial matters which in part includes and hereby references the following legal requests and dates of relief of which the originals should be in the care and custody of the Respondent.

1. 6/3/94	CMRRR Z 780 828 233	6. 9/14/87	CMRRR P 497 848 887
2. 4/5/94	CMRRR Z 780 828 249	7. 6/15/87	CMRRR P 185 400 258
3. 8/26/92	CMRRR P 803 777 814	8. 3/10/87	CMRRR P 582 306 423
4. 6/19/89	CMRRR P 652 078 750	9. 10/24/86	CMRRR P 297 279 621
5. 10/2/87	CMRRR P 497 848 889	10. 4/7/86	CMRRR P 064 988 185

A

Further Request for Support of Respondent's Previous and Continuous Legal Acts

The **Relator's** Attorney Steven E. Rogers on March 10, 1987, requested that the **Respondent** show cause in their previous acts of approving plats for the conveyance and establishment of title and interest to real property outside of either their constitutional or statutory authority, to date the **Respondent** has refused to address and respond to the **Relator's** attorney's show cause and address the direct legal issues at hand. A copy of this show cause in letter form is attached here as **Exhibit "A"** and is incorporated herein by operation of law as if it were set forth at length in these pleadings.

B

Request Under the Texas Open Records Act

On or about April 5, 1994, the **Realtor's** caused to be served by Certified Mail Return Receipt Requested a request against the **Respondent** under the Texas Open Records Act with the **Respondent** to provide documents to support its legal foundation and acts for the continuation and use of unlawfully filed and maintain plats of record which were being used as the origination and foundation for conveyances of title and interest to lands in the commonly called Davis Mountains Resort, which are as follows:

Volume 13, Pages 57-66, Date June 1971, File Date 6/25/71
Volume 23, Pages, 67-76, Date: Sept. 1971, File Date 9/13/71
Volume 23, Pages 77-86, Date: Nov. 1971, File Date 11/6/71
Volume 23, Page 87-96, Date: Nov. 1971, File Date 11/8/71
Volume 23, Page 162, Date: June 13, 1977, File Date 2/13/78
Volume 23, Page 165, Date: Dec. 1977, File Date 7/13/78
Volume 24, All 33 Plats
Volume 25, All 20 Plats
Slot 5/C Date Nov. 1985, All Plats, File Date 7/14/86
Slot 6/D Date May, 1989, File Date 6/10/89

To this very day the Respondent has not supplied one single document to contest the Relator's April 5, 1994, request to prove that the Davis Mountains Resort plats are lawful in nature or character. A copy of this request under the Texas Open Records Act is attached hereto this petition as **Exhibit "B"** and is incorporated herein by operation of law as if it were set forth at length herein.

III

On Friday March 13, 1987, Wm. C. Wilson, a Licensed State Land Surveyor, whose work was and is still the current state approved work by which the State of Texas bases title to conveyance to real property in the Davis Mountains Resort, testified before this court that the Davis Mountains Resort had no basis in law to be either established or maintained as a statutory subdivision.

A copy of the affidavit of record of this testimony is attached hereto this petition as **Exhibit "C"** and is incorporated herein by operations of law as if were set forth at length herein.

Additionally all court records, testimony, and affidavits involving Wm. C. Wilson's testimony since 1987 in Cause Numbers 1373, 1384, and 1395 and including the perfection of a Appellate Court judgment to uphold this court's previous decision to certify a class action based upon this testimony of a defective and unlawful subdivision are incorporated herein by matters of law and perfected into the records of this action and petition as if they were so attached and set forth at length.

Mr. Wilson's undisputed testimony is based upon the following:

1. That as a registered public land surveyor and a state land surveyor that he is mandated to follow Texas Law and the Texas Constitution as are other surveyors;
2. That the term subdivision is a term used in statutory law and means a subdivided piece of land or real property which has been subdivided and platted in accordance with statutory law when used in conjunction with filed plats of record;
3. That any creation of a subdivision which lies in what is the currently state-patented position of what is commonly called the Davis Mountains Resort that all surveyors would have to have complied with the following laws then in effect in 1971, 1978, and 1985;
4. That he was a practicing surveyor during this period and that the State of Texas used his work as the only current underlying survey system on which the Davis Mountains Resort could lawfully be constructed;
5. That no titles issued to any lands from the plats of record to lands known as the Davis Mountains Resort are based upon this state approved work;
6. That No lawful subdivision exists in accordance with Texas Law at Revised Civil Statutes 6626 A, as Revised 6702-1, as Revised 232.001; in that:

A. None of the plats accurately describe any of the so-called subdivision by metes and bounds, nor locates the same with respect to an original corner of the original survey of which it is part.

B. None of the plats accurately describe any of the so-called subdivision by metes and bounds, nor locates the same with respect to an original corner of the original survey of which it is part for approval and recordation of these plats.

C. Many of these plats were filed without presentation to or the approval of commissioners court.

D. Revised plats were approved and/or filed which were not properly acknowledged by the then existing property owners or proprietors of records at the time of their filing.

and are at best "a geometrical drawing of something somewhere in Jeff Davis County Texas."

I V

Joe Rowe, acting as agent for the Davis Mountains Property Owners Association (DMPOA), caused to be filed on November 29, 1994, a notice of Lis Pendens in Volume 2 Pages 145-190 of the Lis Pendens Record of Jeff Davis County involving Cause No 1572. This incorporated association is attempting to maintain this legal action against the **Relator** and all other property owners based upon the existence and continued use of these alleged unlawful plats as the basis for the conveyance of real property, based upon the continued acts and actions of the **Respondent** to maintain the alleged unlawful subdivision by plats in the Position as Grantor to Title.

The **Relator** received on July 17, 1995, a **Notice of Certification of a Class Action and Hearing** from the DMPOA attorney Bruce Ian Schimmel, in which he purports to establish a Class Action on the basis of the Davis Mountains Resort being a "Subdivision," without any signed certification of this court by order in conformance with Rule 42.

A copy of this **NOTICE OF CERTIFICATION OF CLASS ACTION AND HEARING** is attached to this petition as **Exhibit "D"** and is incorporated herein by operations of law as if it were set forth at length in this petition.

V

On December 4, 1994, the **Relator** entered into a settlement agreement with the developer of the Davis Mountains Resort, LJB Enterprises, for the settlement of Cause No. 1395. The parties agreed to decertify the suit for settlement purposes only and in no way did this action attempt to correct the problem of unmarketable titles to lands in the Davis Mountains Resort.

The **Relator** along with other plaintiffs in the suit received several deeds to property scattered in the Davis Mountains Resort in exchange for settlement. These deeds were conveyed without warranty from the former developer of the Davis Mountains Resort; all parties knew that no lawful subdivision existed and that neither would be responsible for the issuance of titles or conveyances from the unlawful plats of Record.

Judicial Notices

This Court is asked to take Judicial Notice of the fact that the Court of Appeals, Eight District of Texas, El Paso, Texas, upheld by entered judgment and opinion dated January 20, 1994, the 83rd Judicial District Court of Jeff Davis County, Texas, Certification of a Class Action in Cause No. 1395 involving the **Relator** and all landowners affected by these

alleged defective plats and the resulting unmarketable titles being used as a basis of an alleged unlawfully maintained statutory Subdivision. This Judgment, the opinion and the original Certification Order dated March 9, 1993, as filed in the District Court Records of Cause No. 1395, is attached here as **Exhibit "E"** and is incorporated herein by operation of law as if it were set forth at length within this petition.

VII

The **Respondent** and their predecessors have brought themselves into conflicts of interest and into positions of personal gain by maintaining these alleged illegal plats and have refused to remedy the situation.

1. The **Respondent** and their predecessors have in the past as now derived an unlawful personal tax savings by maintaining these plats as a subdivision in order to conceal the unmarketable titles. Simply, if there is no marketable title, there is no value to the assets or land from which to establish a taxing base or authority.

2. One members of the **Respondent**, County Commissioner Bill Gearhart, as Chairman of the Board of the Marfa National Bank, has personal financial gain at stake in maintaining the alleged unlawful plats and maintaining the Resort as a Subdivision, so that the Marfa National Bank can prevail in a title claim against the **Relator** and his business interest Vineyard at the Ridge and can further continue to perpetuate the Bank's Deceptive Trade Practices involving land holdings in the Resort.

3. Both previous County Judges Bob Dillard and Ann Scudday have derived personal financial gains from the existence and continuation of these plats in concert with local Real Estate and Title Agents and have deliberately and Intentionally circumvented any and all prior actions in remedying the situation.

Statement of Relator

The Relator hereby states that he believes after his own investigation that there is currently no other remedy available at this time, and due to the fact that Respondent has never contested or presented any evidence to the contrary over the past nine years of Requests from the Relator involving the maintaining of the plats as an alleged unlawful subdivision as the basis for and conveyance of real property there from; and that no other parties have ever intervened in the past or present involving these matters directly with the Relator or the Respondent.

Summary

The Relator has shown by what he believes is conclusive evidence that since 1987 in this court that the Davis Mountain Resort was never lawfully created and is still being maintained in violation of law specifically by plats that violate Texas Revised Statute 6626A, as Revised 6702-1, as Revised 232.001, and no Statutory Subdivision exists nor any basis for the Conveyance of Marketable Title.

In that:

A. None of the plats accurately describe any of the so-called subdivision by metes and bounds, nor locates the same with respect to an original corner of the original survey of which it is part.

B. None of the plats accurately describe any of the so-called subdivision by metes and bounds, nor locates the same with respect to an original corner of the original survey of which it is part for approval and recordation of these plats.

C. Many of these plats were filed without presentation to or the approval of commissioners court.

D. Revised plats were approved and/or filed which were not properly acknowledged by the then existing property owners or proprietors of records at the time of their filing.

Conclusion

In conclusion the records and evidence will show that the Respondent has and is refusing to remedy their own unlawful acts either in a ministerial capacity or in a legislative or constitutional capacity and have and continue to abuse their discretion in protecting the health, safety, and welfare of those they have taken an oath to serve in that they are unjustly enriching themselves and others and are now the Grantor to Title to all Lands in the Davis Mountains Resort and have voluntarily stepped into the shoes of the former developer LJB Enterprises.

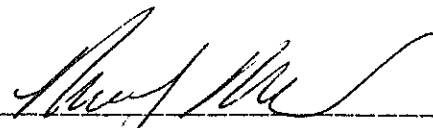
Prayer

WHEREFORE, RICHARD L. MCLAREN **Relator**, respectfully requests and prays that:

1. This Court grant a hearing to the **Relator** on this Petition for a Writ of Mandamus.
2. Notice of the filing of this Petition and the hearing date be given to all members of the **Respondent**.
3. Following the hearing, this court grant **Relator** a Writ of Mandamus directed to the **Respondent** Commissioners Court of Jeff Davis County, Texas, commanding that they enter this order; then issue an order duly and properly vacating the unlawful plats for the basis of a Statutory Subdivision of the county known as the Davis Mountains Resort as follows:

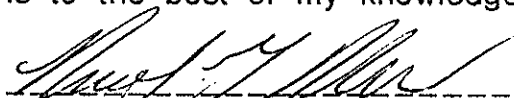
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Volume 24, All 33 Plats
Volume 25, All 20 Plats
Slot 5/C Date Nov. 1985, All Plats, File Date 7/14/86
Slot 6/D Date May, 1989, File Date 6/10/89

4. The court would grant such other and further relief to which **Relator** may be entitled.

By: 
Richard L. McLaren
HCR-74 Box 101A
Fort Davis Texas
Relator

Verification before the Court

I hereby certify under oath before the Clerk of Court that the following Petition for a Writ of Mandamus is based upon my personal knowledge and is to the best of my knowledge true and correct.

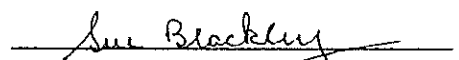


Richard L McLaren

Subscribed and sworn to before me, this 24 day of July 1995.

Witness my hand and seal of office, at Fort Davis, Texas,

this 24 day of July 1995


Clerk of the District Court
Jeff Davis County Texas

Certificate of Service

I hereby Certify that a true and correct copy of the forgoing petition with exhibits was forwarded to the C/O Honorable Peggy Robertson, County Judge, Respondent Commissioners Court Jeff Davis County, Texas, at P.O. Box 836, Fort Davis, Texas, Certified Mail Returned Receipt Request this the 27 day of July 1995.



Richard L. McLaren