

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
SHREVEPORT DIVISION

**U.L. COLEMAN COMPANY, LTD.,
SEQUOIA VENTURE NO. 2, LTD. and
A. TEAGUE PARKWAY, L.L.C.**

Plaintiffs

VERSUS

**BOSSIER CITY-PARISH
METROPOLITAN PLANNING
COMMISSION, OFFICE OF PERMITS
AND INSPECTIONS FOR THE CITY
OF BOSSIER, AND THE CITY
COUNCIL OF BOSSIER CITY**

Defendants

*
* C.A. NO.: 08-2011
*
* DIVISION: “ ___ ”
*
* SECTION: ___
*
* JUDGE _____
*
* MAG. _____

**COMPLAINT FOR INJUNCTIVE RELIEF
AND MONETARY DAMAGES**

This Complaint For Injunctive Relief and Monetary Damages, filed for and on behalf of U.L. Coleman Company, Ltd., Sequoia Venture No. 2, Ltd. and A. Teague Parkway, L.L.C., Plaintiffs herein, through undersigned counsel, respectfully show:

PARTIES

1.

Plaintiffs:

a. U.L. Coleman Company, Ltd., (“Coleman”) is a corporation organized and existing under the laws of the State of Louisiana with its principal office in Shreveport, Louisiana and within this district.

b. Sequoia Venture No. 2, Ltd., (“Sequoia”) is a corporation organized and existing under the laws of Louisiana with its principal office in Shreveport, Louisiana and within this district.

c. A. Teague Parkway, L.L.C. (“ATP”), is a limited liability company organized and existing under the laws of Louisiana with its principal office in Shreveport, Louisiana and within this district.

2.

Defendants:

a. Bossier City–Parish Metropolitan Planning Commission (hereinafter “MPC”), a commission jointly constituted by the City of Bossier and Bossier Parish, located in Bossier City and within this district, whose Executive Director is Sam Marsiglia (“Marsiglia”) and which has designated James Hall (“Hall”), Bossier City City Attorney, as its agent for service of process.

b. The Office of Permits and Inspections, City of Bossier, an office of the municipal government of Bossier City, residing in Bossier City and within this district, whose Director is Ken Womack (“Womack”) and which has designated Hall as its agent for service of process.

c. The City Council of Bossier City (“the Council”), the governing body of Bossier City, located in Bossier City and within this district, and which has designated Hall as its agent for service of process.

SUBJECT MATTER JURISDICTION

3.

Subject matter jurisdiction is founded on 28 U. S. C. §1331 and 42 U. S. C. § 1983 and this court’s supplemental jurisdiction under 28 U. S. C. §1367.

VENUE

4.

Venue is founded on 28 U. S. C. §1391(d).

INTRODUCTION

5.

In 2002, the Land Use Master Plan for the City of Bossier indicated that a 24.80 acre tract owned by the City fronting on the east side of Teague Parkway was to be designated for a mixture of commercial and residential uses.

In 2003, the City of Bossier was looking for a private company to develop the 24.80 acre tract fronting on the east side of Arthur Ray Teague Parkway as a multi-use development. Coleman expressed an interest in purchasing and developing the 24.80 acre tract and began discussions with Bossier City officials. During these discussions, the City of Bossier committed to rezone the property from riverfront agricultural to riverfront development. At all times Coleman was assured by City officials that if they purchased the 24.80 acre tract and other adjacent tracts it would have curb cut access to the parkway to maximize the development opportunity for the benefit of the City and its citizens, the occupants of the development, and the owners of the development. Without curb cut access to the parkway for the development, there were no incentives for Coleman to purchase the property as the risks of failure of the project far outweighed the potential benefits. Based on the assurances from City officials, Coleman entered into a contract to purchase the 24.80 acre tract on August 13, 2004 for \$1,430,000.00. Coleman began planning the development of the 24.80 acre tract and was assured by City officials that it would have curb cut access. Based on these continued assurances, Sequoia, an affiliate of Coleman, entered into additional contracts to purchase adjacent tracts of land totaling 27.32 acres at a total cost of \$1,169,792.50. Sequoia was aided in these efforts for additional acquisitions by City officials. The total land acquisition cost for all tracts was \$2,599,792.50. On November 21, 2005, the MPC approved zoning for a planned unit development submitted by the Plaintiffs for all tracts totaling 52.12 acres which included curb cut access to Teague Parkway.

On May 30, 2006, the Plaintiffs submitted a master plan for the planned unit development to the Metropolitan Planning Commission. On June 19, 2006, the Metropolitan Planning Commission approved the planned unit development for all 52.12 acres subject to a traffic study to be submitted by the Plaintiffs. On July 13, 2006 a traffic study was submitted by the Plaintiffs to the City which clearly showed that there are no legitimate interests to deny curb cut access from the development to the parkway. However, the next day, on July 14, 2006, Plaintiffs received a letter from Marsiglia rescinding the zoning. Then, four days later on July 18, 2006 the City Council for the City of Bossier introduced an ordinance preventing any curb cuts on the parkway unless the Council had provided specific approval. This ordinance was passed on August 1, 2006. On that same day the City Council introduced and voted down a motion supported by Bossier City Mayor Lorenz Walker seeking curb cut access on the parkway for the Walker Place Development. The City had no legitimate safety or other public or governmental interest for denying the ordinance as to the Walker Place Development. The actions of the City Council were clearly arbitrary and capricious.

Meanwhile, a legal dispute had surfaced in 2006 over the sale of a portion of the tract of land adjacent to the tract sold by the City that Sequoia had contracted to buy from some third party sellers, which would ultimately be resolved on January 11, 2008. Sequoia and the third party sellers then closed the sale on March 10, 2008. The next day Sequoia sold the property to a sister company ATP which then re-commenced the permitting process which the City had interrupted in July of 2006.

On September 2, 2008 the Metropolitan Planning Commission sent a letter to ATP advising them that it would only grant a permit for the development if ATP paid for a deceleration lane and agreed to surrender its rights to a curb cut on the Arthur Ray Teague Parkway. Again, there was no legitimate safety or other public or governmental interest in the conditions imposed by the Metropolitan Planning Commission for issuance of the permit.

The actions of the MPC in 2008 have been clearly arbitrary and capricious. After five years of effort, more than two and one half million dollars in land acquisition costs, approximately one and one half million dollars in other direct costs, and tremendous internal costs represented by thousands of hours of labor, the Plaintiffs have been duped by the

Defendants as all of their efforts and reliances upon City officials were thrown out the window for purely political and personal reasons and on no legitimate grounds.

ATP is continuing to pursue its rights to obtain a permit and thus to mitigate the economic damage the City has caused it. ATP successfully re-applied for and obtained financing to commence construction on the 16.67 acre tract from the Office of Housing and Urban Development of the federal government on November 7, 2008. Time is of the essence as the financing will lapse on January 6, 2009.

COUNT 1: SUBSTANTIVE DUE PROCESS VIOLATION
UNDER THE FOURTEENTH AMENDMENT OF THE
CONSTITUTION OF THE UNITED STATES

6.

This action is brought under 42 U. S. C. §1983 alleging the deprivation of Plaintiffs' rights secured by the Constitution of the United States due to actions of Defendants that have caused direct injury to Plaintiffs, entitling Plaintiffs to injunctive relief; and the Plaintiffs are entitled to monetary relief as will be shown at trial.

7.

Defendants' abuse of the permitting process, including the unconstitutional conditioning of permit issuance on waiving constitutionally protected rights violates the guarantee of due process of the Fourteenth Amendment of the Constitution of the United States, as alleged herein.

8.

In 2002 the City of Bossier commissioned a Land Use Master Plan. The City owned a 24.30 acre tract fronting on the east side of Arthur Ray Teague Parkway. Under the Land Use Master Plan this land was designated for a mixture of commercial and residential uses.

9.

In 2003, the City of Bossier was looking to find a private company to develop this 24.80 acre tract fronting on the eastside of Arthur Ray Teague Parkway for a multi-use development. U.L. Coleman Company, Ltd. expressed an interest in purchasing and developing the 24.80 acre

tract and began discussions with Bossier City officials. During these discussions, the City of Bossier committed to rezone the property from riverfront agricultural to riverfront development. The actions by the City of Bossier were based in part on a study entitled "Economic Impact of a Multi-Use Development in Bossier City," prepared by the LSU-Shreveport Center for Business & Economic Research and a master planning committee including the Parkway and Riverfront Development Committee to develop that area of the city for the purpose of creating greater opportunities for the citizens of the City and to generate additional tax revenues for the City. U.L. Coleman Company, Ltd. had further discussions with numerous City officials including: the Mayor, members of the Council, members of the MPC, the City Engineer, the City Attorney and others. At all times U.L. Coleman Company, Ltd. and its affiliate companies were also assured that if it purchased the 24.80 acre tract it would have full opportunity to develop the property for multi-uses including multi-family, office, retail, commercial, and recreational purposes. At all times U.L. Coleman Company, Ltd. and its affiliate companies were also assured by City officials that they would have curb cut access to the parkway to maximize the development opportunity for the benefit of the City and its citizens, the occupants of the development and the owners of the development.

10.

Without curb cut access to the parkway the property has substantially less value and its development would be greatly impinged. Without curb cut access to the parkway for the development, Plaintiffs had no incentive to purchase and would never have purchased the property as the risks of failure of the project far outweigh the potential benefits.

11.

On August 13, 2004 the U.L. Coleman Company, Ltd. entered into a purchase agreement for the 24.80 acre tract for the sum of \$1,430,000.00. Paragraph 3 of the contract to purchase specifically stated: "that the site ... shall be rezoned RFD-riverfront development district." The contract further provided for a multi-use development which included 16.75 acres for multi-family, six acres for townhomes, and three acres for commercial use. The property description

attached to the contract to purchase makes specific reference to a right-of-way along Arthur Ray Teague Parkway in excess of 1,000 feet.

12.

The Plaintiffs began planning the development of the 52.12 acre tract and were assured by City officials that they would have access to the Teague Parkway.

13.

U.L. Coleman Company, Ltd. transferred its right to purchase the 24.80 acre tract to an affiliate company ATP prior to the purchase from the City of Bossier City. Based on the commitment by the City of Bossier to the development of the property for multi-use purposes and the assurances at all times that there would be access to the parkway, Sequoia, an affiliate company to U.L. Coleman Company, Ltd., entered into additional contracts in 2005 to purchase additional adjacent tracts for multi-use development. The total of these acquisitions was 27.32 acres. These additional acquisitions have a partially contiguous boundary to the original 24.80 acre tract, all of which immovable property was zoned riverfront development and which is hereinafter referred to as the Walker Place Development. City officials aided Sequoia in the acquisition of some of these adjacent acre tracts. The total cost of these additional tracts was \$1,169,792.50.

14.

The total land acquisition costs to the Plaintiffs for all tracts amounts to \$2,599,792.50. At all times the Plaintiffs were assured by City officials that they would have curb cut access to the parkway which would maximize the development opportunity for the benefit of the City and its citizens, the occupants of the development and the owners of the development. Without curb cut access to the parkway the property has substantially less value and its development be would greatly-impinged. Without curb cut access to the parkway for the development, Plaintiffs would have had no incentives to invest and would never have invested the \$2,599,792.50 to purchase the properties as the risks of success of the project outweigh the potential benefits.

15.

The MPC unanimously approved a Planned Unit Development (“PUD”) for all tracts of the 52.12 acres of the Walker Place Development on November 21, 2005. The approval is designated on the records of the MPC as Item C-124-05. The PUD clearly showed the property in the plan to abut the parkway and have access to the parkway. The record of the MPC’s approval of November 21 includes a staff report prepared for the MPC and presented at the November 21 meeting stating the Land Use Master Plan (2002) designates the area for commercial uses and further states under the “Thoroughfare Plan”: “this property is accessed from Arthur Ray Teague Parkway, a major arterial.” Staff Report Sec. VII “Planning Analysis” Item 1.

16.

The MPC approval at that time was consistent with all of the meetings and discussions between the Plaintiffs and the Defendants that there would be curb cut access to the parkway and was consistent with the 2002 City of Bossier Land Use Master Plan. By this point those meetings and discussions had been ongoing for nearly three years.

17.

The approval of the Walker Place Development PUD followed a lengthy period of planning, consultation and coordination among the Plaintiffs with the City Engineer, the Office of Permits, the Mayor of Bossier City, MPC representatives and various outside consultants and advisors at costs of approximately one and one half million dollars, and the total land acquisition cost by the plaintiffs of \$2,599,792.50 culminating in the formal submission of the application for the PUD and plat, site plans and other supporting documentation and information and the aforesaid formal approval by the MPC. Aside from the hard costs as described, Plaintiffs have invested tremendous internal costs represented by thousands of hours of labor in pursuing this development.

18.

On December 6, 2005, in order to allow Sequoia to proceed with its plans for the Walker Place Development, the Council passed Ordinance No. 144 of 2005 changing the zoning classification of the 27.32-acre tract included in the Walker Place Development to "river front development for multi-family/town homes and office/light retail."

19.

After completing the zoning in early December of 2005, Coleman met with the MPC director, the City Attorney, Mayor, and other planning members. Coleman was asked by the City Attorney and the Mayor, if it were possible, to complete the purchase of the 24.80 acre tract before the plat was submitted under the PUD obligation per regulation 3.7.3 B of the Bossier City-Parish, Louisiana Unified Development Code. Coleman was told by the City Attorney and the Mayor that the City of Bossier was bidding the Benton Road overpass, that they were anticipating cost overruns on this project and that Coleman would obtain substantial considerations if Coleman closed early on the purchase of the 24.80 acre tract. The City was planning to use the money from the sale of the 24.80 acre tract to Coleman to pay for these cost overruns. Additionally, during this time Coleman was simultaneously talking to the City about their participation in the infrastructure cost of the development and the City had expressed the willingness to consider paying all or a portion of that cost. Coleman asked several times, "is there anything that could go wrong?" Coleman was always assured by these City officials that everyone was kept informed and that there would be no problem with the approval of the plat. Based on these advices and as an accommodation to the City, Coleman agreed to close in December of 2005 on the City of Bossier property. Coleman assigned their rights to the 24.80 acre tract in late December of 2005 to ATP, an affiliate company. ATP completed its purchase of the 24.80 acre tract for \$1,430,000.00 on December 31, 2005.

20

In compliance with zoning laws and regulations and in furtherance of the PUD approval and the passage of Ordinance No. 144, Sequoia and ATP formally submitted its application for the amended PUD approval on May 30, 2006.

21.

In connection with the application for the amended PUD approval, Sequoia and ATP submitted a vicinity map, plat, site plan, building elevations and other materials.

22.

At a formal hearing on the application for the amended PUD approval, on June 19, 2006 some MPC members asked questions for the first time about access to the parkway from the Walker Place Development, which a representative of Sequoia and ATP addressed at the hearing. These questions were never raised before. For three years, all of the Plaintiffs always had assurances from key representatives of the City connected with the project that there was no issue as to parkway access. As previously described, parkway access was a key factor in the Plaintiffs' decisions to invest millions of dollars to acquire the property and pursue the development in cooperation with City officials.

23.

Sequoia's and ATP's reliance on the assurances of access to the parkway in submitting the PUD application was an exercise of its property rights as owners of the land abutting the parkway, rights the MPC did not contest at the hearing or any time before or thereafter, and was consistent with all discussions with the City and its representatives.

24.

The amended PUD was formally approved by the vote of the MPC on June 19, 2006 as Item C-44-06. The approval C-44-06 was conditioned on Sequoia and ATP submitting a traffic study for the Walker Place Development.

25.

Sequoia and ATP commissioned a traffic study by Fehr & Peers Transportation Consultants which was delivered to Marsiglia and the Mayor of Bossier City on July 13, 2006. The cost of the study was \$37,732.00, which Sequoia and ATP incurred. The traffic study

results showed that there are no legitimate interests to deny curb cut access from the development to the parkway.

26.

After the MPC issued its formal Approval No. C-44-06 on June 19, 2006 and after Sequoia's and ATP's compliance with the required filing of the traffic study, the MPC claimed in a letter from Marsiglia to Sequoia dated July 14, 2006, that "it had come to the attention of the MPC" that some of the tracts comprising the Walker Place Development's approved PUD were owned by third parties who did not authorize Sequoia to apply for the PUD approval and therefore the approval did not comply with certain zoning laws.

27.

At least several of the third parties Marsiglia referred to in his July 14 letter were his relatives and were obligated under a Buy/Sell Agreement they entered into on October 13, 2005 to sell certain of its prospective Walker Place Development tracts to Sequoia. At the time of Marsiglia's letter those parties were attempting to renounce their obligation under the Buy/Sell Agreement.

28.

The Marsiglia related third parties' ~~attempt to interrupt~~ the process for issuing the PUD approval and renounce the existing Buy/Sell Agreement was patently specious for several reasons. First, like the other parties they were bound by the public notice requirements and applicable time periods, and secondly their time period for objection or comment regarding Sequoia's and ATP's application for the amended PUD approval had expired.

29.

Moreover, the Buy/Sell Agreement included a provision whereby the Marsiglia related parties specifically authorized Sequoia to file such permits and other applications as Sequoia might require.

30.

Notwithstanding Marsiglia's apparent conflict of interest, the lack of the Marsiglia related parties' right to object and the Marsiglia related parties' binding authorization to Sequoia to seek the PUD approval, Marsiglia writing for the MPC notified Sequoia in a letter that Approval C-44-06 was "invalid." This action was clearly arbitrary and contrary to law.

31.

On July 18, 2006, four days after the letter from the MPC to Sequoia, the Council introduced an ordinance preventing any curb cuts on the parkway unless the Council specifically approved. The ordinance was drafted by Hall, who was serving at the same time as the MPC's Attorney. The timing of the letter from Sam Marsiglia of the MPC on July 14, 2006 and the actions of the Council four days later on July 18, 2006 were politically coordinated by the MPC and the Council, to interrupt the permit process and deny Plaintiffs the permit and parkway access they were seeking based on the approved PUD, the existing record and the representations and assurances of the City.

32.

On August 1, 2006, the Council passed the ordinance, No. 68 of 2006, effective July 18, 2006, and on the same day the Council introduced and denied a motion to grant a curb cut on the parkway to Sequoia and ATP for the Walker Place Development. There was no valid public or governmental interest or justification in denying Walker Place Development curb cut access to the parkway. The actions of the MPC and the Council in July of 2006 after three years of total commitment to the development was completely unexpected by Plaintiffs and were clearly arbitrary and capricious. The actions of the MPC and the Council duped the Plaintiffs out of their investment of three years of time, more than two and one half million dollars in land acquisition costs, more than one and one half million dollars in other direct costs, and tremendous internal costs represented by thousands of hours of labor only to have all their efforts and reliances upon City officials thrown out the window on no legitimate grounds.

33.

The Council member or members promoting the ordinance are on record as stating they were aware that the MPC had requested that a traffic study be done for the Walker Place Development to determine the safety of ingress and egress to the Arthur Ray Teague Parkway and they requested the City Attorney to draft an ordinance to prevent further curb cuts to the parkway which later became Ordinance 68.

34.

The actions of the Council member or members promoting the ordinance also served to assist the Marsiglia related parties to the Buy/Sell Agreement with Sequoia who were seeking to extinguish their obligations under the Buy/Sell Agreement.

35.

In addition to conflicts of interest presented by the Marsiglia related parties' benefit from the Council's interrupting Plaintiffs' application process, an additional conflict of interest surfaced when on several occasions from July through the fall of 2006, the Plaintiffs were approached by Councilman Scott Irwin to broker the sale of the City 24.80 acre tract to another investor. The Plaintiffs declined this offer.

36.

Notwithstanding the fulfillment of the traffic study requirement by Sequoia and ATP, and in violation of Sequoia's and ATP's constitutionally protected property rights to access to the parkway as owner of property abutting the roadway and based on which it sought the PUD approvals, the MPC ordered the City Engineer and the Office of Permits to cease any further work on the Walker Place Development building permit which had been formally applied for to begin construction on the 16.67 acre tract.

37.

The MPC's order that the processing of Sequoia's and ATP's building permit cease was with the full knowledge and acquiescence of the Council, who with the MPC intended to

interrupt and impede the issuance of the permit and delay or prevent the commencement of construction by Sequoia and ATP.

38.

The MPC's order interrupting and impeding issuance of the permit and prevention of commencement of construction allowed the Marsiglia related parties the time and opportunity to attempt through litigation to dishonor their obligations under the Buy/Sell Agreement.

39.

The MPC's order interrupting and impeding issuance of the permit and prevention of commencement of construction also caused Sequoia and ATP to fail to meet requirements that the permit be obtained by a deadline set for Housing and Urban Development ("HUD") program financing, which was consequently cancelled by HUD on February 18, 2007. Although ATP has another opportunity to obtain HUD financing, it is expected that ATP will suffer a substantial financial loss for the said financing by HUD involving less favorable interest rates and other terms.

40.

The Council and the MPC also intended its order purporting to render the June 19, 2006 Approval C-44-06 "invalid" on July 14, 2006 to speciously supply a basis for claiming Sequoia and ATP were not "grandfathered" access to the parkway under Ordinance 68 of August 1, 2006, which was passed after and had no effect to defeat Approval C-44-06.

41.

Thus, Ordinance 68 and the MPC's July 14, 2006 notification were not intended to serve any legitimate governmental or public interest, but rather to serve personal and political interests of the persons involved as set forth above. Sam Marsiglia testified in a deposition taken on November 5, 2008 in the matter of *Sequoia Venture No. 2, Ltd. versus Sonia Peters Cassidy and Joe Roy Peters*, that to his knowledge there is no study that supports a restriction of curb cut access to the Walker Place Development. (*See page 92, deposition of Sam Marsiglia.*) Clearly the actions of the Defendants are arbitrary and capricious.

42.

The litigation over the Buy/Sell Agreement resulted in a decision on appeal in favor of Sequoia, upholding the Buy/Sell Agreement and decreeing that the Marsiglia related sellers had to close the sale, which they appealed to the Supreme Court; but the Supreme Court denied the appeal by unanimous vote of all seven justices on January 11, 2008. The sale of this property was completed on March 10, 2008.

43.

ATP acquired the Walker Place Development from Sequoia on March 11, 2008. ATP acquired all the same rights as Sequoia.

44.

Once the litigation with the sellers had concluded, an attempt was made to re-establish the permitting process to construct the multi-family apartments aspect of the Walker Place Development, including updated electrical and other permits from the appropriate agencies and offices.

45.

On or about May 18, 2008, ATP formally requested that the MPC, through the City Attorney, review and approve ATP's application for a building permit to commence construction of the multi-family apartments on 16.67 acres of the 52.12 acres.

46.

On June 3, 2008, the MPC stated as one condition for review and approval that ATP had to show on its site plan a deceleration lane for entrance to the 16.67 acre portion, a condition never before raised or discussed and not included in Approval C-44-06 for the entire 52.12 acre project; and as an additional condition that ATP "must reflect the condition by the MPC to its approval of C-44-06, which is that no curb cuts will be made on A. R. Teague Parkway without special City Council approval." The MPC offered no legitimate governmental or public interest in support of these conditions. The requirements of these conditions are clearly arbitrary. As

described above, the traffic study provided to the City on July 13, 2006 shows no basis for the conditions required by the MPC. There is no legitimate purpose served by denying the Plaintiffs parkway access.

47.

Subsequently, on June 24, 2008, the MPC again conditioned issuance of the permit on the deceleration lane and reiterated that "the City's position remains firm: the construction drawings and improvements designation required to be submitted must reflect that no curb cuts will be made on the A. R. Teague Parkway without specific Bossier City Council approval." The MPC continued to state that "the no curb cut issue must be acknowledged by your client now if it wishes to proceed further with building permit review." The MPC's conditions for the permit are and remain arbitrary, capricious and unjustified.

48.

On September 2, 2008, the MPC notified ATP, through U.L. Coleman Companies, that it was continuing to insist on the elimination of the reference to a curb cut on the parkway, referring specifically to its earlier letters which required ATP to acknowledge it could not obtain a curb cut without specific City Council approval.

49.

Thus, the MPC has clearly determined that the permitted use of ATP's property will include a deceleration lane and will not include use of the curb cut to access the parkway.

50.

The MPC's insistence that no permit will be issued unless ATP surrender its property right to access to the parkway "without special City Council approval" is an abusive and illegitimate application of Ordinance 68 of 2006.

51.

The MPC has not relied on any evidence that a deceleration lane is debatably necessary for ingress and egress to the multi-family apartment portion of the Walker Place Development.

In fact, the Plaintiffs have obtained a traffic study which demonstrates that there is no legitimate interest for the requirement of a deceleration lane. The cost of the study was \$8,920.00.

52.

There is no debatable evidence to support the Council's claim that ingress or egress to ATP's property justified the denial of the construction permit for the multi-family apartments for safety reasons.

53.

The MPC and/or the Council has refused to meet with ATP's principal U. L. Coleman in regard to the conditions the MPC has relied upon to deny the permit or otherwise amicably resolve the issues raised by the MPC.

54.

ATP has exhausted all attempts at securing a permit from the MPC to develop the property based on the commitments given by the City of Bossier beginning in 2004. The five year delay by the Defendants has clearly been arbitrary with no justifiable basis that serves the public or any governmental interest.

55.

The foregoing actions of the MPC, the Office of Permits and Council deprive Plaintiffs of constitutional rights as set forth below.

56.

Defendants have denied Plaintiffs their access to the parkway, a property right under Louisiana law.

57.

Defendants denied Plaintiffs their permit unless Plaintiffs should surrender their property right to access the parkway.

58.

The permit condition insisted upon by Defendants has little or no relationship to the property right of access because the permit pertains to a parcel that does not abut the parkway.

59.

Defendants' denial of the multi-family parcel building permit, a benefit conferred by the MPC, unless Plaintiffs should surrender their right of access to the parkway, is a gimmick to force Plaintiffs to give up that right and constitutes an extortionary unconstitutional condition.

60.

Plaintiffs' right of access is also being denied them by Defendants in violation of substantive due process as follows:

a. The MPC's denial of the building permit for the multi-family apartments was the result of the afore-stated actions taken by the MPC, the Office of Permits, and the third-parties who were parties to the Buy/Sell Agreement which were intended to benefit their political and/or personal aims and are not rationally related to a legitimate government objective, and constitute arbitrary and capricious governmental and private action, bad faith and conflict of interest;

b. The MPC's denial of the permit for construction on the multi-family site, based on Plaintiffs' not including a deceleration lane and lack of special City Council approval for a curb cut to the parkway, after continuous assurances by the Mayor, members of the Council, the MPC Director, the City Engineer, and the City Attorney dating back to 2004, is an intentional abuse of the permitting process on clearly illegal and specious grounds and unconstitutional application of Ordinance 68 to deprive Plaintiffs of property rights, entitlements and justifiable expectations in and with respect to their Walker Place Development site as owner and as grandfathered holder of Approval C-44-68 issued prior to the ordinance's effect, and was not intended to promote safety on the parkway;

c. The MPC's denial of the permit for construction on the multi-family site, based on Plaintiffs' not including a deceleration lane and the lack of special City Council approval for a curb cut to the parkway, after continuous assurances by the Mayor, members of the City Council, the MPC Director, the City Engineer, and the City Attorney dating back to 2004, is an arbitrary,

capricious, unreasonable, specious and bad-faith application of Ordinance 68 intended and designed to deny Plaintiffs' rights and entitlements in and to use of the multi-family tract as owner and grandfathered holder of Approval C-44-68 issued prior to the ordinance's effect;

d. The MPC's denial of the building permit for the multi-family apartments constitutes arbitrary and capricious application of Ordinance 68 that is unsupported by any debatable evidence or rational relation to the promotion of a legitimate government objective;

e. The Council's denial of the motion to grant a curb cut to Sequoia in the passage of Ordinance 68 was without any supporting evidence and in furtherance of wrongful intent to prevent the issuance of the permit to Sequoia and to promote political and personal aims, not a legitimate government objective, and which constitutes further and additional arbitrary, capricious, unreasonable and bad faith action;

f. The MPC's and City Attorney's gag order to City employees gave rise to an intentional chilling effect in violation of the First and Fourteenth Amendments of the United States Constitution;

g. The aforesaid actions are all in deprivation of Plaintiffs' substantive due process, and were done in concert by all Defendants named herein;

h. Such other actions and conduct as may be shown at trial of this matter.

61.

The arbitrary and capricious conduct of Defendants has deprived and will continue to deprive the Plaintiffs of its substantial economic investment in its property and its constitutional rights therein, and the Plaintiffs are entitled to injunctive relief prohibiting Defendants from (1) denying the Plaintiffs building permits for the Walker Place Development or any portion thereof that would require it to create a deceleration lane or surrender its right to access to the parkway or deny it access to the parkway, and (2) denying the Plaintiffs' request for a curb cut to the parkway.

62.

In addition to the above-stated injunction under §1983, the Plaintiffs are entitled to damages including its loss of investment caused by the unconstitutional impingement of its

property rights and its rights under the PUD approval, delay damages and loss of investment-backed expectation, including but not limited to loss of the difference in financing costs due to loss of the original HUD financing arrangement, and lost profits caused by the unnecessary delays.

63.

Pursuant to §1983, the Plaintiffs are also entitled to all of its attorneys' fees associated with obtaining its permits and bringing this action.

COUNT 2: INVERSE CONDEMNATION

64.

Alternatively, and only in the event that this Court should conclude that the Plaintiffs were not subjected to unconstitutional conditions or deprived of substantive due process under the Fourteenth Amendment of the United States Constitution by being denied its right to access to the parkway and rights to obtain its building permit by being compelled to surrender its right to access to the parkway, then, and only in that event, the actions of Defendants in limiting the Plaintiffs' right to access to the parkway was a "taking" within the meaning of Article 1 §4 of the Louisiana Constitution for which the Plaintiffs are entitled to just compensation. Plaintiffs are expressly not asserting a taking under the Fifth Amendment of the United States Constitution at this time.

65.

The right to access to public thoroughfares by owners of property abutting those thoroughfares is a recognized and established property right under Louisiana law and the impingement of that right is compensable under Louisiana law.

66.

The denial of the right to access and the insistence that the Plaintiffs waive their rights to access as a condition for the grant of a building permit is a substantial limitation of the access rights granted by Louisiana law, is clearly a wrongful appropriation, and has resulted in damage

to the Plaintiffs in the amount of the difference in the market value of the Walker Place Development that abuts the parkway as well as severance damages related to the remaining portions of the property, attorneys' fees, and costs.

67.

ATP as the current property owner is entitled to and prays for recovery of damages as may be proven at trial through the testimony of valid and competent fact and expert valuation evidence.

68.

The City of Bossier has not paid any amount as compensation for the substantial limitation on Plaintiffs' right of access.

COUNT 3: DETRIMENTAL RELIANCE

69.

The Plaintiffs have worked with various representatives of Defendants since approximately 2003 in an effort to realize the economic benefit of Walker Place Development.

70.

The Plaintiffs have invested substantial money in purchasing the tracts to be used for the Walker Place Development, undergoing studies and retaining consultants, preparing plans, plats, site plans, conducting research and valuations and obtaining the traffic study as required by the MPC.

71.

The expenditures that the Plaintiffs have made were induced by assurances made by Defendants and their agents and representatives which constituted formal action by the bodies authorized to make determinations as to permitting including but not limited to the initial PUD zoning approval, the expanded site PUD approval, the passage of Ordinance 144 of 2005, and the associated votes of the MPC and Council, on all of which the Plaintiffs relied to their detriment. Throughout all of these informal and formal proceedings, the Plaintiffs were assured that they

would have access to the parkway. The Defendants knew that the Plaintiffs would be induced by these assurances to purchase the tracts necessary for the Walker Place Development and the Plaintiffs were reasonable in relying on said assurances and purchasing the necessary property.

72.

The Plaintiffs are entitled to full approval of the project providing for access to the parkway, including all building permits with which any incidental requirements be discussed and concluded in good faith.

73.

Alternatively, the Plaintiffs are entitled to the expenses incurred and damages suffered as a result of its reliance on the representations and approvals made by the Defendants throughout the permit proceedings.

COUNT 4: REQUEST FOR PRELIMINARY INJUNCTION

74.

ATP is entitled to a preliminary injunction pursuant to 42 U.S.C. §1983 prohibiting Defendants from refusing to issue the building permit for the multi-family apartments planned for the 16.67 acre tract.

75.

Defendants will not issue the permit for that tract unless ATP includes a deceleration lane and renounces its right to access to the parkway and surrenders its position of a curb cut, which ATP will not agree to do.

76.

The imposition of those unconstitutional conditions and the denial of due process rights as shown in Count One, above, establish irreparable injury sufficient to support a preliminary injunction.

77.

Further evidence of irreparable injury exists as to the Plaintiffs as they have already lost the approval of the Department of Housing and Urban Development for financing due to the MPC and the Council's denial of necessary building permits, and have been forced to re-start the process with HUD on new terms not as favorable.

78.

On November 7, 2008, ATP obtained a firm commitment from HUD for new financing of the multi-family development of 16.67 acres. Time is of the essence to obtain issuance of the permit as the HUD financing must be completed by January 6, 2009 or HUD will cancel its approval. Loss of the HUD arrangement a second time will likely render it impossible to obtain this financing and thus render impossible or commercially impracticable the building of the Walker Place Development.

79.

No prejudice will be worked to the interests of the Defendants by the granting of the preliminary injunction, because the deceleration lane has never been shown to be justified, and because the curb cut issue relates to property abutting the parkway, and does not impact the property made the subject of the pending permit application.

80.

The injury worked to the public by denying the injunction and denying the permit is far greater than injury from granting the injunction, if any, since the economic benefits and social improvements contemplated by the development of Walker Place will be jeopardized and likely would not be realized by the citizens of the City of Bossier.

81.

For the reasons stated herein, ATP is likely to prevail on the merits of this case and to obtain a permanent injunction in order to preclude any further damage or deprivation of its civil

rights, and a preliminary injunction is required in order to preserve the status quo and prevent the immediate loss of those rights by loss of the financing from HUD.

82.

Therefore, ATP files contemporaneously with this Complaint a Motion for Preliminary Injunction as above stated.

83.

Plaintiffs request a trial by jury.

WHEREFORE, U.L. Coleman Company, Ltd., Sequoia Venture No. 2, Ltd., and A. Teague Parkway, L.L.C., Plaintiffs herein, pray:

1. That this Complaint be filed in these proceedings and citation be issued to undersigned counsel for service thereof;

2. That after due proceedings there be judgment in favor of U.L. Coleman Company, Ltd., Sequoia Venture No. 2, Ltd. and A. Teague Parkway, L.L.C. and against Bossier City-Parish Metropolitan Planning Commission, Office of Permits and Inspections for the City of Bossier, and the City Council of Bossier City for preliminary injunction that the said Defendants are prohibited from precluding the building permit on the 16.67 acre tract for multi-family uses based on any conditions of a deceleration lane, and waiver of access rights to the parkway, and that the said Defendants are precluded from prohibiting the building permit for the remainder of Walker Place Development based on any condition of waiver of access to the parkway;

3. That after due proceedings there be judgment converting the preliminary injunction to a permanent injunction in favor of U.L. Coleman Company, Ltd., Sequoia Venture No. 2, Ltd. and A. Teague Parkway, L.L.C. and against Bossier City-Parish Metropolitan Planning Commission, Office of Permits and Inspections for the City of Bossier, and City Council of Bossier City and for damages under §1983 of Title 42 of the United States Code, together with attorneys' fees, expert fees, and costs;

4. That after due proceedings there be judgment in favor of U.L. Coleman Company Ltd., Sequoia Venture No. 2, Ltd. and A. Teague Parkway, L.L.C. and against Bossier City Parish Metropolitan Planning Commission, the Office of Permits and Inspections for the City of Bossier, and the City Council of Bossier City for all damages arising from Inverse Condemnation and Detrimental Reliance, attorneys' fees, expert fees and costs;

5. Plaintiffs request a trial by jury; and

6. For all further just and equitable relief.

ADAMS AND REESE LLP

/s/ Richard B. Eason II

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***Attorneys for Plaintiffs,
U.L. Coleman Company, Ltd.,
Sequoia Venture No. 2., Ltd
and A. Teague Parkway, L.L.C.***

SERVICE THROUGH RULE 4 OF FED.R.CIV.PRO.

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
SHREVEPORT DIVISION**

**SEQUOIA VENTURE NO. 2, LTD. and
A. TEAGUE PARKWAY, LTD.,
*Plaintiffs***

*
* C.A. NO.: 08-2011
*

VERSUS

*
* DIVISION: “ ”
*

**BOSSIER CITY-PARISH
METROPOLITAN PLANNING
COMMISSION, OFFICE OF PERMITS
AND INSPECTIONS FOR THE CITY
OF BOSSIER, AND THE CITY
COUNCIL OF BOSSIER CITY
*Defendants***

*
* SECTION:
*
* JUDGE
*
* MAG.

STATE OF LOUISIANA

PARISH OF Caddo

VERIFICATION

BEFORE ME, the undersigned authority, personally came and appeared:

U. L. COLEMAN III

who, after being duly sworn, did depose and state that he has read the Complaint for Injunctive Relief and Monetary Damages, and that all of the allegations contained therein are true and correct to the best of his knowledge and belief.



U. L. COLEMAN III

**SWORN TO AND SUBSCRIBED
BEFORE ME THIS 11 DAY
OF December, 2008.**



NOTARY PUBLIC
 53171
Printed Name & Notary Number

JS 44 (Rev. 12/07)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

U.L. Coleman Co., Ltd., Sequoia Venture No. 2, Ltd., & A. Teague Parkway, L.L.C.

(b) County of Residence of First Listed Plaintiff Caddo
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

See attached list

DEFENDANTS

Bossier City-Parish Metropolitan Planning Commission, et al

County of Residence of First Listed Defendant Bossier
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input checked="" type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition			

V. ORIGIN

(Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from another district (specify)
- 6 Multidistrict Litigation
- 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing. (Do not cite jurisdictional statutes unless diversity):
14th Amendment to the U.S. Constitution & 42 USC 1983

Brief description of cause:

Unnecessary conditions for a permit in violation of the plaintiffs' due process rights

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

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