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District Clerk
Travis County
D-1-GN-16-005374
Carrisa Escalante

CAUSE NUMBER: **D-1-GN-16-005374**

WALLER COUNTY SUB-REGIONAL	§	IN THE DISTRICT COURT
PLANNING COMMISSION,	§	
	§	
<i>Plaintiff,</i>	§	
	§	
v.	§	TRAVIS COUNTY, TEXAS
	§	
JAMES M. BASS, in his official capacity as	§	
Executive Director of the TEXAS	§	
DEPARTMENT OF TRANSPORTATION,	§	
<i>Defendant.</i>	§	<u>201ST</u> JUDICIAL DISTRICT

PLAINTIFF’S ORIGINAL PETITION

TO THE HONORABLE TRAVIS COUNTY DISTRICT COURT JUDGE:

NOW COMES Waller County Sub-Regional Planning Commission and files this suit complaining of and about James M. Bass, in his official capacity as Executive Director of the Texas Department Transportation (“TxDOT”).

INTRODUCTION

The Texas Department of Transportation is openly ignoring Texas law with respect to Texans who find themselves in the path of proposed high-speed rail corridors. While helping prepare the way for a high-speed railroad from Houston to Dallas, the Texas Department of Transportation is openly violating state law requiring it to coordinate planning with regional planning commissions. Section 391.009(c) of the Texas Government Code expressly provides:

“In carrying out their planning and program development responsibilities, state agencies shall, to the greatest extent feasible, coordinate planning with commissions to ensure effective and orderly implementation of state programs at the regional level.”

TxDOT is the lead Texas state agency working on the implementation of the high-speed rail project that is planned between Dallas and Houston. It is working on the project with the Federal Railroad Administration. However, instead of coordinating planning on the high-speed railway project with

local commissions such as the Waller County Sub-Regional Planning Commission, as required by Texas law, TxDOT has refused to coordinate or attend coordination meetings with the Waller County Sub-Regional Planning Commission saying that it has been asked by federal authorities not to coordinate with local planning commissions.

Meanwhile, planning and studies for the implementation of high-speed rail through Waller County are moving forward at full steam without input by the Waller County Sub-Regional Planning Commission. TxDOT is enabling the FRA to move forward with the preparation of an environmental impact statement based on a pre-selected route for the high-speed rail line without any consideration being given to local concerns in counties such as Waller County or consideration of alternate routes as required by law. Representatives of proponents of the pre-selected route are already approaching landowners on the route and pressuring those landowners to allow surveys, grant easements, and prepare for condemnation proceedings. Despite repeated requests and demands from the Waller County Sub-Regional Planning Commission, TxDOT continues to refuse to comply with Texas law and coordinate with the Commission in order to have local concerns taken into account when deciding on a route and placement of the high-speed rail line. Unable to persuade TxDOT to fulfill its statutory obligations under Texas Government Code 391.009, the Commission asks this Court to require TxDOT to coordinate with the Commission on the implementation of the high-speed railway project between Dallas and Houston. By this suit, the Commission requests (1) a declaratory judgment that TxDOT has a duty to coordinate planning with the Commission that TxDOT has refused to fulfill, (2) a writ of mandamus ordering TxDOT to fulfill its duty, and (3) a temporary and permanent injunction requiring TxDOT to comply with Texas law and coordinate planning with the Commission.

I. DISCOVERY PLAN

1. Discovery in this matter will be conducted under Level 2 of the Discovery Control Plan set forth in Texas Rule of Civil Procedure 190.3.

II. PARTIES

2. Plaintiff Waller County Sub-Regional Planning Commission (“Plaintiff” or “the Commission”) is a political subdivision of the State of Texas located in Waller County.

3. Defendant James M. Bass (“Defendant” or “the Director” or “TxDOT”) is the Executive Director of the Texas Department Transportation and is sued in his official capacity. Defendant may be served with suit by delivering citation and a copy of this petition to him at 125 E. 11th St., Austin, TX 78701 or wherever he may be found within or without the State of Texas.

III. JURISDICTION AND VENUE

4. This Court has jurisdiction over the subject matter and over Defendant, because Defendant is an official of a Texas state agency that is headquartered in Travis County, Texas. While acting in his official capacity, Defendant committed the acts and omissions of which Plaintiff complains in Travis County, Texas. The acts and omissions of the Defendant of which Plaintiff complains are violations of Texas law, not authorized by Texas law, and therefore, are ultra vires acts and omissions on the part of the Defendant over which this Court has jurisdiction. This Court has jurisdiction to determine applications for writs of mandamus and injunction and to grant declaratory relief. TEX. CIV. PRAC. & REM. Code §§ 24.011, 37.003, 65.021(a).

5. Venue is proper in Travis County, Texas, with respect to Plaintiff’s claims under Texas Civil Practice and Remedies Code § 15.002 because all or a substantial part of the events or omissions giving rise to Plaintiff’s claims occurred in Travis County, Texas. Venue in Travis County, Texas is proper under Texas Civil Practice and Remedies Code § 15.014 because Plaintiff brings an action for mandamus against the head of a department of the state government.

6. Plaintiff seeks monetary relief of \$100,000 or less and non-monetary relief, and demands judgment for all other relief to which it is entitled.

IV. FACTUAL BACKGROUND

7. The Waller County Sub-Regional Planning Commission was created in 2007 to improve residents' health, safety, and general welfare by planning for future development. Commission members include the City of Waller, Prairie View, Pine Island, Hempstead, Pattison, Brookshire, Katy, Waller Independent School District and Hempstead Independent School District. The Commission members cooperate to improve infrastructure for growing communities while recognizing agricultural and commercial needs, to ensure healthful surroundings for families, preserve historical and cultural values, and use public funds economically.

8. In 2009, Texas Central High Speed Railway ("Railway Company") was formed as a private company to bring high-speed passenger rail to Texas between Houston and Dallas.

9. In 2010, the Texas Rail Plan identified three potential corridors for such a rail line, but no environmental impact analysis was prepared.

10. In June 2014, the Federal Railroad Administration ("FRA") announced that it would be preparing an environmental impact statement ("EIS") that would, in part, identify reasonable alternatives for the route of the high-speed railway. The FRA also stated that it would study the impacts of alternative route alignments including shared corridors with other existing linear infrastructure corridors such as railroads, roads, and electric utility lines.

11. In April 2015, the FRA narrowed the scope of the EIS based on recommendations by the Railway Company. FRA presented one of the three Texas Rail Plan routes and a new route proposed by the Railway Company. Although the National Environmental Policy Act requires coordination with local governments early in the process, neither the Railway Company, the FRA,

nor TxDOT considered or analyzed the plans, policies, concerns, or local circumstances of Waller County.

12. The FRA then conducted a four-month analysis of seven corridor alternatives, including the Railway Company's preferred route. Rather than applying the 23 environmental criteria required by the FRA's own procedures, the FRA eliminated several alternative routes by prioritizing the private Railway Company's economic viability determinations. By selective application and weighting of relevant criteria, the FRA eliminated an alternative that would have followed Interstate 45 in large part because it passes through a national forest. The FRA focused on the Railway Company's suggested route—the path directly through the heart of Waller County and Waller County business and commercial interests.

13. The momentum for the route through Waller County was reinforced by the Alignment Alternatives Analysis Report, released in November 2015. The FRA did not do field surveys or coordinate with local governments or planning commissions in gathering information. Again, through selective narrowing or outright disregard of relevant criteria, the FRA focused on the same path through Waller County. This tactic deprived the public and federal decision-makers of a meaningful way to compare the effects of this path on the people of Waller County with, for example, the effects of the I-45 route on the forest.

14. The FRA is in the process of preparing a draft of the required Environmental Impact Statement. The Environmental Impact Statement is supposed to provide full and fair discussion of all significant environmental impacts. It should inform decision-makers and the public of reasonable alternatives that would avoid or minimize adverse impacts or enhance the quality of the human environment. It should not be used to support or justify a pre-selected outcome that is favored by the federal and private interests involved in the project. The recent track record of the

agencies and interested parties involved in the process guarantees that statutory requirements with respect to the Environmental Impact Statement will not be met.

15. The need for coordination between state, federal, and local governments and planning commissions at this point in the process is critical. Coordinated planning is crucial for large-scale projects like the proposed high-speed railway between Dallas and Houston. The more than 200-mile route will affect schools, homes, businesses, farms, communities, emergency response providers, wildlife, and undeveloped areas, imposing untold environmental and economic costs. While some disruption is part of change, a lack of coordination with local authorities will cause this process to needlessly trample on deeply-held local interests and values. This is why the Texas Legislature created Section 391.009 of the Texas Government Code—to clearly require state agencies, such as TxDOT, to coordinate planning with local authorities and planning commissions when studying and implementing projects such as the high-speed railway. The coordination requirement in Section 391.009 is not discretionary. It is mandatory. Section 391.009 unequivocally states that state agencies “*shall*, to the greatest extent feasible, coordinate planning with commissions to ensure effective and orderly implementation of state programs at the regional level.” Despite this mandate, TxDOT has refused to coordinate any planning on the high-speed rail line through Waller County with the Waller County Sub-Regional Planning Commission.

16. Incredibly, TxDOT states that it cannot coordinate with the Commission *because* the Environmental Impact Statement is being prepared. Although TxDOT participated in the Commission’s coordination meeting on February 9, 2016, it has since refused to attend coordination meetings with the Commission, much less actually coordinate planning and consider local concerns.

17. By letter dated May 6, 2016, the Commission expressed alarm at the effect of FRA's improper focus on one, pre-selected route through Waller County and asked for TxDOT's help in correcting FRA's course. The Commission criticized the FRA's disingenuous, formalistic, and tardy nod at its duty to ask for local input and noted that the focus on one route had delayed or diverted development plans. The Commission strongly opposed efforts by the Railway Company and its affiliates to obtain the power from the Surface Transportation Board to condemn land before the Environmental Impact Statement was completed. In addition, the Railway Company's request for expedited approval and failure to notify affected landowners and communities is particularly problematic in its failure to follow Texas law and its open avoidance of dealing with legitimate local issues and concerns. The Commission asked for TxDOT's help as the joint lead agency on the project to persuade the FRA to pull back and properly conduct the study and presentation of alternative routes. The Commission requested that TxDOT bring an FRA representative to the next coordination meeting to discuss members' concerns.

18. Instead, TxDOT responded by letter that it would not coordinate with the Commission until the draft Environmental Impact Statement was completed:

The Draft Environmental Impact Statement (DEIS) will be published in the fall of this year, at which time the public comment period will begin. During this time, there will be a round of public hearings at which all stakeholders can formally express their opinions on the project. Therefore, FRA has indicated that until the DEIS is released, they will not participate in any coordination meetings, and has requested that TxDOT also refrain from participating. Thus, FRA and TxDOT will not be able to attend WCSRPC's upcoming coordination meeting.

TxDOT also announced that it would remain neutral concerning the Railway Company's attempt to quickly and quietly initiate condemnation proceedings, but did notify some stakeholders and officials of the Railway Company's petitions.

19. There are grave concerns that the FRA will continue to ignore effects of the pre-selected route on vulnerable communities, provision of emergency services, planned economic developments, schools, a bird sanctuary, historical sites, and public safety. The improper focus on one pre-selected route further deprives decision-makers of information related to alternate routes as well as information related to potential the impacts on Waller County of all of possible routes. They will not be able to weigh the effects on Waller County communities and wildlife versus the challenges of negotiating with freight railroads on a different route. At this moment when coordination is most critical, TxDOT is simply ignoring its statutory duty to coordinate with and consider the concerns of Texans in Waller County.

V. CAUSES OF ACTION AND RELIEF SOUGHT

20. Plaintiff is pursuing three types of relief: a declaratory judgment, a writ of mandamus, and a temporary and permanent injunction. Using these tools, this Court can recognize TxDOT's obligation and failure to coordinate with the Commission, require TxDOT to coordinate with the Commission, and ensure TxDOT's continued coordination.

A. Declaratory Relief

21. A party whose rights or other legal relations are affected by a statute may obtain a declaration of rights, status, or other legal relations under the statute. Tex. Civ. Prac. & Rem. Code § 37.004(a). A declaratory judgment is appropriate if a justiciable controversy exists as to the rights and status of the parties and the controversy will be resolved by the declaration sought. *Bonham State Bank v. Beadle*, 907 S.W.2d 465, 467 (Tex. 1995).

22. TxDOT is a state agency. The Commission and TxDOT disagree about their rights and responsibilities under section 391.009(c). The Commission believes that local/state coordination is never more critical than when a federal agency is shortcutting safeguards while preparing the way for a private company to condemn and take private land to construct a high-

speed railway that will permanently disrupt communities. TxDOT, however, has rejected a request that it coordinate with the Commission, choosing instead (it says) to honor a request from the FRA that it “refrain from participating” in any coordination meetings. TxDOT has plainly stated that it will not meet with the Commission while the draft EIS is prepared, by which time the opportunity for local/state coordination to benefit and impact the drafting process will be lost. This is nothing more than ignoring Texas law requiring coordination in order to announce the result of the environmental study as a *fait accompli*.

23. TxDOT’s complete refusal to meet with the Commission to coordinate is not coordination of planning to any extent, much less the statutorily required “greatest extent feasible.” *See id.* In refusing to perform its statutory duty to coordinate, TxDOT is acting outside the scope of its powers and authority under Texas law.

24. The Commission requests that this Court declare that Defendant James M. Bass, in his official capacity as executive director of the Texas Department of Transportation: (1) has a duty, to the greatest extent feasible, to direct the Texas Department of Transportation to coordinate with the Waller County Sub-Regional Planning Commission with respect to the implementation of the high-speed railway that is being planned to run between Dallas and Houston, Texas, and (2) has acted outside his powers and authority by refusing to perform this statutory duty to direct the Texas Department of Transportation to coordinate with the Waller County Sub-Regional Planning Commission with respect to the implementation of the high-speed railway that is being planned to run between Dallas and Houston, Texas.

B. Petition for Writ of Mandamus.

25. Plaintiff seeks issuance of a writ of mandamus compelling Defendant to perform his statutory duty. Texas law provides as follows: “In carrying out their planning and program development responsibilities, state agencies shall, to the greatest extent feasible, coordinate

planning with commissions to ensure effective and orderly implementation of state programs at the regional level.” Tex. Gov’t Code § 391.009(c). As set out above, Defendant expressly refuses to perform that duty despite Plaintiff’s demand. Plaintiff seeks a writ of mandamus ordering Defendant James M. Bass, in his official capacity as executive director of the Texas Department of Transportation to direct the Texas Department of Transportation to coordinate with the Waller County Sub-Regional Planning Commission with respect to the implementation of the high-speed railway that is being planned to run between Dallas and Houston, Texas.

C. Injunctive relief

26. TxDOT has acted outside its authority by refusing to coordinate planning with the Commission. This failure to comply with its statutory duty is causing and will continue to cause a lack of coordination in local/state planning during a critical time in the processes relating to the proposed high-speed railway between Dallas and Houston, Texas.

27. Plaintiff has a probable right to relief. Texas Government Code § 391.009 requires TxDOT to coordinate planning with commissions like Plaintiff Waller County Sub-Regional Planning Commission. TxDOT has refused to coordinate with Plaintiff or attend coordination meetings.

28. Plaintiff will suffer immediate and irreparable injury, loss, or damage if TxDOT is not mandatorily enjoined to comply with its statutory obligation to coordinate with Plaintiff with respect to the implementation of the high-speed railway that is being planned to run between Dallas and Houston, Texas. This failure to coordinate planning allows the FRA to continue drafting the Environmental Impact Statement without proper participation and input from Plaintiff. It allows the Railway Company and its affiliates to threaten property owners with legal action if they fail to “consent” to a survey of their land and to pursue without State or local opposition the power to condemn their land. TxDOT’s failure to comply with its duty will result in a draft Environmental

Impact Statement that does not comply with the law and the grant of the power of eminent domain to a private entity. These changes will strengthen the premature sense of inevitability of the route and will speed the taking of private property by the Railway Company without proper consideration of local concerns and impacts. These events will have compounding detrimental ripple effects on economic development and private property values and rights, with the concordant psychological and emotional effects on the citizens of Waller County. The damage to the Commission and its constituents will be irreparable and are already preventing the Commission from fully and meaningfully participating in planning the local/state response to the actions of these federal and private entities with respect to the implementation of the high-speed railway that is being planned to run between Dallas and Houston, Texas.

29. The Commission has no adequate remedy at law for TxDOT's failure to comply with its duty at this crucial stage in the railway implementation process. Once this opportunity for planning and participation is past, it will be lost irretrievably.

30. The Commission is entitled to a mandatory injunction to require Defendant James M. Bass to direct TxDOT to coordinate planning with the Commission with respect to the implementation of the high-speed railway that is being planned to run between Dallas and Houston, Texas. Because of the rapid pace of activities hurtling toward the selection of the railway route through Waller County, the Commission requests that this Court grant temporary relief to ensure that TxDOT does not irretrievably lose these opportunities to meaningfully coordinate planning with the Commission relating to these ongoing steps toward approval of the proposed route and the condemnation of landowners property along that route.

31. The Commission requests a temporary and a permanent mandatory injunction ordering that James Bass, in his official capacity as executive director of the Texas Department of Transportation, direct TxDOT to coordinate planning with the Commission with respect to the

implementation of the high-speed railway that is being planned to run between Dallas and Houston, Texas as required by law.

D. Attorneys' fees and costs

32. Because TxDOT has refused to comply with Texas law, Plaintiff has hired counsel to prepare and file this cause and pursue Plaintiff's legal remedies. Plaintiff requests that this Court award it costs of court and its reasonable attorneys' fees under Texas Civil Practice & Remedies Code § 37.009 and applicable law.

VI. CONDITIONS PRECEDENT

33. All conditions precedent for Plaintiff obtaining the relief sought in this cause have been performed or have occurred.

VII. CONCLUSION AND PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, Plaintiff Waller County Sub-Regional Planning Commission requests that Defendant James M. Bass, in his official capacity as Executive Director of the Texas Department of Transportation, be cited to appear and answer herein, and that Plaintiff Waller County Sub-Regional Planning Commission have judgment against Defendant James M. Bass, in his official capacity as Executive Director of the Texas Department of Transportation as follows:

- (a) Declaratory relief in the form of a declaration by the Court that James M. Bass, in his official capacity as executive director of the Texas Department of Transportation, (1) has a duty, to the greatest extent feasible, to coordinate planning with the Waller County Sub-Regional Planning Commission direct TxDOT to coordinate planning with the Commission with respect to the implementation of the high-speed railway that is being planned to run between Dallas and Houston, Texas, and (2) has acted outside his powers and authority by refusing to direct the Texas Department of Transportation to perform this statutory duty to coordinate planning, to the greatest extent possible with the Waller County Sub-Regional Planning Commission with respect to the implementation of the high-speed railway that is being planned to run between Dallas and Houston, Texas;

- (b) A writ of mandamus ordering James M. Bass, in his official capacity as executive director of the Texas Department of Transportation, to direct the Texas Department of Transportation to coordinate planning with the Waller County Sub-Regional Planning Commission to the greatest extent possible with respect to the implementation of the high-speed railway that is being planned to run between Dallas and Houston, Texas;
- (c) Temporary mandatory and permanent mandatory injunctive relief requiring James M. Bass, in his official capacity as executive director of the Texas Department of Transportation, to direct the Texas Department of Transportation to coordinate planning with the Waller County Sub-Regional Planning Commission to the greatest extent possible with respect to the implementation of the high-speed railway that is being planned to run between Dallas and Houston, Texas;
- (d) An award of Plaintiff's reasonable attorneys' fees, expenses, and costs expended in connection with this cause;
- (e) Post-judgment interest on all amounts awarded; and
- (f) All other just relief, at law or in equity, to which Plaintiff may show itself justly entitled.

Respectfully submitted,

By:  _____

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