

the prosecution of this Information, *id.* § 66.003(2). The State intends to conduct discovery under a Level 2 Discovery Control Plan. Tex. R. Civ. P. 190.1, 190.3.

2. Defendants are the following Travis County residents, who may be personally served at the addresses shown:

- A. Karen McGraw, Karen McGraw Architect Office, 4315 Avenue C, Austin, TX 78751.
- B. Trinity White, 2304 E. 16th Street, Austin, TX, 78702.
- C. Fayez Kazi, Civilitude LLC, 1210 Rosewood Ave., Austin, TX, 78702.
- D. James Shieh, 818 Morrow Street, TX 78757.
- E. James M. Schissler, Civilitude LLC, 1210 Rosewood Ave., Austin, TX, 78702.
- F. Patricia Seeger, Council Chambers, City Hall, Austin, TX on July 10 or 24, 2018.
- G. Greg Anderson, Habitat for Humanity, 500 W. Ben White Blvd., Austin, TX, 78704.
- H. Tom Nuckols, Travis County Attorney's Office, 314 W. 11th St., Austin, TX, 78701.

Alternatively, service may be had on any and all of these individuals at either of the next-to-occur scheduled meetings of the Commission, July 10 or 24, at City Hall, in Council Chambers.

3. Venue is proper in this Court. Tex. Civ. Prac. & Rem. Code, § 15.002.

II. Facts and Grounds for Relief

4. The City of Austin's Charter creates a Planning Commission with responsibility to create a comprehensive city plan, advise the City Council on all land development regulations, and control platting and subdividing land. *See* Austin, Tex., Charter art. X, § 4. Article X, section 2 of the Charter controls eligibility to serve on the Commission: "The planning commission shall have a number of members equal to the number of members on the council plus two (2) additional members, a minimum of two-thirds of the members who shall be lay members not directly or indirectly connected with real estate and land development." Members are to be appointed by the City Council to two-year terms to be staggered by odd and even years. *Id.*; *see also* Bylaws of the Planning Comm'n (the "Bylaws"), art. 3(A), approved by Austin City Council on October 6, 2016, *available at* www.austintexas.gov/edims/document.cfm?id=265449, and [id=264201](http://www.austintexas.gov/edims/document.cfm?id=264201). The City Code provides that the two-year terms begin March 1. Austin, Tex., Code of Ordinances § 2-1-22. Article 3(C) of the Bylaws provides that terms begin on March 1 of the year of appointment, with seven members appointed in every odd-numbered year and six in every even-numbered year.

5. Under these provisions, with thirteen voting positions on the Commission, a minimum of nine members must be lay members. Thus, no more than four members of the Commission may be directly or indirectly connected with real estate and land development. Once the Commission has four members who are directly or indirectly connected with real estate and land development, any additional

proposed member is not qualified to serve on the Commission if he or she, too, is directly or indirectly connected to real estate and land development. Further, no more than seven appointments may be made in an odd year, such as 2017, and all terms must begin March 1. Appointments that do not comply with these requirements are unlawful insofar as they violate the City Charter, the City Code, and the Bylaws. Members appointed in violation of these requirements do not lawfully hold positions on the Commission.

6. On Thursday, June 15, 2017, the City Council appointed two members to the Commission: Fayez Kazi and James Schissler. Austin, Tex., Regular City Council Minutes, Consent Agenda Item 60, p. 11 (June 15, 2017), *available at* <http://www.austintexas.gov/edims/document.cfm?id=279887>. On Thursday June 22, 2017, the Council appointed another ten members to the Commission: Angela De Hoyos Hart, Stephen Oliver, James Shieh, Karen McGraw, Patricia Seeger, Jose Vela, Greg Anderson, Trinity White and Nuria Zaragoza. Austin, Tex., Regular City Council Minutes, Consent Agenda Item 32, p. 6–7 (June 22, 2017), *available at* <http://www.austintexas.gov/edims/document.cfm?id=281619>. On December 7, 2017, the Council appointed another member, Conor Kenny, to replace Jose Vela. Austin, Tex., Regular City Council Minutes, Consent Agenda Item 53, p. 10 (Dec. 7, 2017), *available at* www.austintexas.gov/edims/document.cfm?id=290208. Twelve of the thirteen then existing, voting Commission members were appointed in a single year, 2017. The City Council appointed the thirteenth member, Todd Shaw, on February

1, 2018. Austin, Tex., Regular City Council Minutes, Consent Agenda Item 62, p. 11 (Feb. 1, 2018), *available at* www.austintexas.gov/edims/document.cfm?id=293229.

7. Terms for all thirteen of these existing members end June 30, 2019. Commission Roster, *available at* <https://austintexas.granicus.com/boards/w/e8a392f100751dbe> (last visited June 27, 2018). With a two-year term, these appointments were to begin on July 1, 2017.

8. Stephen Oliver resigned from the Commission as of June 12, 2018.

9. Of the thirteen existing Commission members, eight are directly or indirectly connected to real estate and land development.

a. Karen McGraw is an architect. According to her application to the City to serve on the Commission, she specializes in historic preservation, neighborhood planning and conservation and commercial and residential architecture. According to her American Institute of Architects website, she specializes in “neighborhood planning and zoning, home restoration and renovation, commercial projects, and historic preservation,” and her areas of work include “Residential Single-Family.”¹

b. Trinity White is an architect. Her application lists her occupation as “building designer,” and includes among her qualifications a focus on “affordable and in infill housing.” Her website lists professional services she offers, including: Schematic Design, Design Development, Permit

¹ AIA Austin, Firm Profile of Karen McGraw, *at* aiaaustin.org/firm_profile/karen-mcgraw-architect (last visited June 27, 2018).

Set, Construction Documents, Construction Observation. She states: “Each process is tailored to meet the needs of the specific project and the owners. So projects include a complete package from Feasibility Report through Construction Administration.”²

- c. Faye Kazi is an engineer and is President of Civiltude LLC. His application states he has “18 years’ experience in land development and infrastructure planning.” His company’s website states that its services include land development, site development plans, subdivision, site plan correction, administration, permitting, general permit plans, and district engineering. “[Faye] remains intimately involved in the design and execution of all of Civiltude’s projects.” Civiltude’s projects include apartments, fire stations, restaurants, building towers, mixed-use developments, and many other types of developments.³
- d. James Shieh is an architect. His application states his occupation to be “Design and Development,” and says he assists client with “development work.” His firm, J Square Architecture, recites that it is involved “in commercial and residential design, land development and interior design. The firm provides professional services for development, new construction, remodel, addition, interior design, and restoration for

² Trinity White Architecture, Services, at www.trinitywhite.com/services/ (last visited June 28, 2018).

³ Civiltude Engineers & Planners, Team, at www.civiltude.com/staff/ (last visited June 28, 2018).

commercial and residential projects.”⁴ His firm also recites that he has “a personal history in real estate investments.”⁵

- e. James M. Schissler is a civil engineer. His application states: “I have over thirty years of civil engineering experience including project management and project engineering on a wide variety of civil engineering and site development projects,” and that his work has included “design and permitting for single family, apartments, shopping centers, office buildings, schools and other development projects in several states.” His LinkedIn profile recites that he is Vice President and a partner in Civiltude, whose connection to real estate and land development is described in subparagraph c, above.⁶
- f. Patricia Seeger is currently a real estate broker with Patricia Seeger Realtors.⁷ She holds broker license 0514944.⁸
- g. Greg Anderson is an “affordable housing builder” according to his application to serve on the Commission. He states he works as “Director of Operations” for Habitat for Humanity and is project manager of its

⁴ J Square Architecture, Firm, at www.jsquarearch.com/firm/ (last visited June 28, 2018)

⁵ J Square Architecture, About Us, James Shieh, at www.jsquarearch.com/james/ (last visited June 28, 2018).

⁶ Jim Schissler, LinkedIn, www.linkedin.com/in/jimschissler/ (last visited June 28, 2018).

⁷ Patricia Seeger, LinkedIn, www.linkedin.com/in/patrica-seeger-b8731a11 (last visited June 28, 2018).

⁸ HomeLight, Texas, Real Estate Agent, Patricia Seeger, at www.homelight.com/agents/patricia-seeger-tx-0514944 (last visited June 28, 2018).

new 53,000 square foot headquarters. Habitat for Humanity creates and sells “safe and affordable homes.”⁹

- h. Tom Nuckols is an attorney. Since 2002, he has been board certified in Real Estate by the Texas Board of Legal Specialization.¹⁰ According to his application, since 2010, he has been Director, Land Use Section, Travis County Attorney’s Office, where his work includes, among other things: “Land use, real estate, [and] development regulations”

These individuals are directly and indirectly connected with real estate and land development—they are not “lay members” within the meaning of the City Charter.

10. The appointments of the current members of the Commission, as a group, are unlawful in at least three significant respects. They violate the minimum two-thirds “lay member” requirement of the City Charter and the Bylaws, the staggered terms requirement of the City Charter and the Bylaws, and the March 1 term commencement date in the City Code and the Bylaws. Because the appointments are unlawful, the members do not lawfully hold positions on the Commission and must be removed. Tex. Civ. Prac. & Rem Code §§ 66.001, *et seq.*

11. Further, and in the alternative, viewed individually, the appointments of more than four individuals who are directly or indirectly connected with real estate and land development violate the minimum two-thirds “lay member” requirement of the City Charter and the Bylaws. Thus, after such four positions were filled on the

⁹ Austin Habitat for Humanity, About Habitat, What We Do, Build, *at* www.austinhabitat.org/build (last visited June 28, 2018).

¹⁰ Tex. Bd. of Legal Specialization, Search for “Nuckols” in Travis County, Tex., *at* www.tbls.org/profile/attorney.aspx?bid=63414 (last visited June 28, 2018).

current Commission, additional proposed appointees were no longer qualified to serve if they were directly or indirectly connected with real estate and land development.

12. City of Austin Code of Ordinances § 2-1-21(F) provides that an appointee “is not eligible to begin service until the person has signed a written acknowledgment stating that the person has signed a written acknowledgement that the person has (1) taken the oath of office; (2) has received a copy of and agreed to comply with the City’s ethics and personal responsibility guidelines; and (3) has agreed to complete the training required by section 2-1-23.” Further, City of Austin Code of Ordinances § 2-1-25(A) provides that a member’s failure to file a public financial statement required by § 2-7-72 automatically vacates the member’s position.

13. In the alternative to the determination set forth in paragraph 10, above, these requirements may be used to determine the sequence in which the four permitted real estate and land development positions were filled, with all others thereafter disqualified from serving.

III. Requested Relief

14. The State seeks judgment removing all Defendants from the Commission for the reasons stated in paragraph 10, above, or, in the alternative, removing all Defendants in excess of the four permitted positions, as determined in paragraphs 12 and 13, above.

15. The State also seeks against all removed Defendants an award of its costs in prosecuting this Information and any other relief permitted under Tex. Civ. Prac. & Rem Code § 66.003.

IV. Prayer

16. Wherefore premises considered, the State prays that Defendants be cited to appear and answer, and that upon final trial or other resolution hereof, judgment be entered removing Defendants from the Commission, awarding the State its costs of prosecution, and awarding the State such other relief to which it may be justly entitled.

Respectfully submitted this 2nd day of July, 2018.

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VERIFICATION

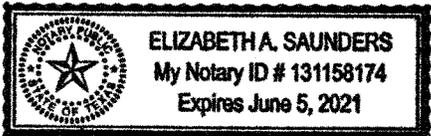
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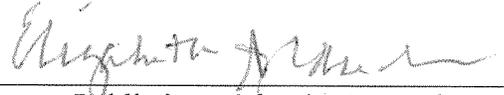
BEFORE ME, the undersigned authority, on this day personally appeared David J. Hacker, Special Counsel for Civil Litigation, known to me to be the person whose name is subscribed below, and upon first being duly sworn, on his oath deposed and stated that he has read the foregoing document and that based on knowledge gathered from the identified documents and websites the statements of fact contained therein are true and correct.



DAVID J. HACKER

SWORN TO AND SUBSCRIBED BEFORE ME this 29th day of June, 2018, to certify which witness my hand and seal of office.




Notary Public in and for the State of Texas