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OF DISTRICT COURT
JENNIFER BRADY

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MONTANA EIGHTEENTH JUDICIAL DISTRICT COURT
COUNTY OF GALLATIN

CHRISTINA A. BAUER; KURT P. BENSON; WILLIAM BEEBE; KATHERINE BEEBE; DONALD D. CHERRY; PATRICIA D. CHERRY; TOBIAS H. MCCLAUGHRY; CARRIE M. MCCLAUGHRY; THOMAS A. RUSSELL; JUNE M. RUSSELL; JUDITH E. SLATE; CARL ERIK STECKMEST; DIANE M. STECKMEST; KATHLEEN K. VANUKA; ROBERT A. VANUKA, and JOHN DOES 1-20, Plaintiffs, v. CITY OF BOZEMAN, and JOHN DOES 1-10	Cause No. <u>DV-14-958 B</u> COMPLAINT AND REQUEST FOR JURY TRIAL <i>1 Summons Issued</i>
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The above-named Plaintiffs file this Complaint for Damages against Defendant,
the City of Bozeman ("City"), and John Does I-X. Plaintiffs allege the following:

I. INTRODUCTION

1. This is a case about private property rights. The City's negligence has forever altered Plaintiffs' ability to safely enjoy the private property rights to which they are entitled.

2. The City released a cocktail of toxic chemicals into the groundwater surrounding the Bozeman Sanitary Landfill. This cocktail of toxic chemicals has and will continue to migrate onto Plaintiffs' properties and into their homes, spoiling Plaintiffs' quality of life, threatening their health and that of their families, and destroying the present and future value of their homes.

II. PARTIES, JURISDICTION AND VENUE

A. Plaintiffs

3. Plaintiffs are individuals who own property and live in Phase III of the Bridger Creek Subdivision ("Phase III"). Plaintiffs bought property and built homes in Phase III with the intention to reside in the homes, enjoy the natural beauty of the surrounding area and nearby recreational opportunities, and welcome their family and friends.

4. Even though Plaintiffs' bought property and built homes in Phase III long after Defendants had knowledge of the cocktail of toxic chemicals leaking from the Landfill and flowing onto their land, it was not until 2013, almost twenty years after Defendants learned of the toxic plume originating at the Landfill, that anyone informed Plaintiffs about the danger to their families and properties.

5. Plaintiffs William and Katherine Beebe reside at 825 St. Andrews Drive.

The property is vested in their names individually as trustees of the Katherine F. Beebe Revocable Trust.

6. Plaintiff Judith Slate resides at 833 Turnberry Court.

7. Plaintiffs Thomas and June Russell reside at 909 Turnberry Court.

8. Plaintiffs Carl Erik and Diane Steckmest reside at 903 St. Andrews Drive.

The property is vested in their names individually as trustees of the D. M. Revocable Living Trust dated August 5, 2002.

9. Plaintiffs Robert and Kathleen Vanuka reside at 790 St. Andrews Drive.

10. Plaintiffs Tobias and Carrie McClaughry reside at 556 St. Andrews Drive.

11. Plaintiffs Christina Bauer and Kurt Benson own Lot 2 in Phase III, located on St. Andrews Drive.

12. Plaintiffs Donald and Patricia Cherry own Lot 28 in Phase III, located on St. Andrews Drive. The property is vested in their names individually as trustees of the Cherry Property Trust dated April 26, 2007.

13. Plaintiffs Ben Burda and Molly Johnson own Lot 37 in Phase III, located on St. Andrews Drive.

B. Defendants

14. Defendant, City of Bozeman (the City), is a municipal corporation located within Gallatin County. The City owns and operates the Landfill from which the toxic chemicals originate.

15. The entire Bridger Creek subdivision is located within the City, which approved Phase III.

16. The City granted Plaintiffs building permits before they could commence construction and certificates of occupancy, necessary before Plaintiffs could take up residence in their homes.

17. Defendant John Does are individuals or entities, yet unknown to Plaintiffs, who have contributed to causing Plaintiffs' damages alleged herein.

C. Jurisdiction and Venue

18. Defendant is located in Gallatin County and the Plaintiffs' injuries arose in Gallatin County. Jurisdiction is proper in this Court pursuant to Mont. Code Ann. § 3-5-302. Venue in Gallatin County is proper pursuant to Mont. Code Ann. §§ 25-2-122, 25-2-117, and 25-2-126.

III. FACT ALLEGATIONS COMMON TO ALL COUNTS

19. The Bozeman Sanitary Landfill is located two miles north of downtown Bozeman on the southwest slope of the Bridger Mountain Range and began operations in 1969. When the Landfill opened, it accepted solid waste from individuals, businesses, the City, County, and other areas into a twenty-nine acre, unlined cell.

20. Because the Landfill's original cell was unlined, toxic chemicals infiltrated the groundwater beneath the cell and formed a toxic plume that flowed tetrachloroethylene, trichloroethylene, vinyl chloride, dichloromethane and other dangerous pollutants, downhill and beneath Plaintiffs homes and properties.

21. Tetrachloroethylene, also known as PERC, is an industrial solvent used in dry cleaning products, degreasing solutions, and paint strippers. The EPA has cautioned that even short-term exposure can result in irritation of the upper respiratory

tract and eyes, kidney dysfunction, and neurological effects such as mood and behavioral changes, impairment of coordination, dizziness, headache, sleepiness, and unconsciousness. Similarly, the EPA cautions that long-term respiratory exposure may cause impaired cognitive and motor neurobehavioral performance; adverse effects in the kidney, liver, immune system and hematologic system, and on development and reproduction; and associations with several types of cancer including bladder cancer, non-Hodgkin lymphoma, and multiple myeloma.

22. Trichloroethylene, also known as TCE, is used primarily as an industrial degreaser and can be found in paint removers, adhesives, spot removers, and rug-cleaning fluids. The EPA describes the dangers associated with TCE exposure to include sleepiness, fatigue, headache, confusion, and feelings of euphoria, along with effects on the liver, kidneys, gastrointestinal system, and skin. The EPA notes that TCE exposure is associated with several types of cancers in humans, especially kidney, liver, cervix, and lymphatic system.”

23. Vinyl chloride, also known as VCM, is an industrial solvent used primarily to produce polymer polyvinyl chloride (PVC), a plastic used in home construction and other consumer goods. The EPA warns that short-term respiratory exposure to VCM has resulted in central nervous system effects (CNS), such as dizziness, drowsiness, and headaches in humans. Long-term exposure has resulted in liver damage, and cancer is a major concern from exposure to vinyl chloride via inhalation.

24. Dichloromethane, also known as DCM, is a chemical solvent widely used as a paint stripper and degreaser. According to the EPA, the short-term impact of respiratory exposure consists mainly of nervous system effects including decreased visual,

auditory, and motor functions. Long-term exposure is likely to lead to damage to the central nervous system and animal studies have shown increases in liver and lung cancer and benign mammary gland tumors following the inhalation of DCM.

25. Exposure to the chemicals in the cocktail flowing from the Landfill can result in immediate or latent health impacts and disease, including cancer.

26. Many of the diseases caused by the chemicals leaching from the Landfill are susceptible to early detection and have better outcomes if treated promptly.

27. As a result, it will be necessary for Plaintiffs to closely monitor their health into the future in an effort to prevent and proactively treat any latent illness as a result of their toxic exposure.

28. The four chemicals listed above pose severe dangers as a result of their migration into Plaintiffs' homes. It is also clear from Defendants' testing that Plaintiffs and their families were exposed to many other toxic chemicals that leaked from the Landfill such as benzene, chloroform, and carbon tetrachloride.

29. Beyond the dangers associated with exposure to each of the individual toxic chemicals, the cocktail created by the blending of these chemicals creates cumulative and synergistic effects that multiply the danger to Plaintiffs and their family members both in the short- and long-term.

30. The City has been aware of the dangerous leaching of chemicals from the landfill since at least 1988.

31. In 1995, prior to the approval of Phase III, the City was required by the Montana Department of Environmental Quality (the DEQ) to conduct an assessment of corrective measures for the groundwater contamination originating at the Landfill.

32. As a result of the DEQ's findings, the City implemented a gas-extraction and flaring system. While this gas-extraction system was designed to remove methane, the City took the position that it would remove VOCs alongside the methane.

33. Because the DEQ was concerned that the City placed too much reliance on the gas-extraction system, it gave the City just two years to demonstrate the gas-extraction was a viable mitigation method before the DEQ would require other alternatives.

34. In 2000, the DEQ determined that the City's gas-extraction system did not staunch the flow of toxic chemicals into the surrounding groundwater.

35. Notwithstanding the DEQ's findings from as far back as 2000, the DEQ did not require the City to take more aggressive actions to prevent the spread of a toxic plume, and the consequent dangers to the health of all those living in the plume's path.

36. In addition, the City did not notify surrounding landowners of the dangers until 2013.

37. Despite the City's knowledge of an actual threat to the health of all those living in proximity to the Landfill, the City continued to approve and plat neighborhoods that were directly in the line of the migrating toxic plume.

38. In 1995, Golf Course Partners, Inc., applied to the City for approval of Phase III. Because Golf Course Partners' request constituted a major subdivision, it was required to comply with the Montana Subdivision and Platting Act, M.C.A. §§ 76-3-101, et seq.

39. The City, in turn, was bound to carry out its review and approval process with the purpose of the Act in mind. As stated in M.C.A. § 76-3-102, the Act was

designed to “promote the public health, safety, and general welfare by regulating the subdivision of land,” “require development in harmony with the natural environment,” and “protect the rights of property owners.”

40. Despite the City’s obligation to act in accordance with the purpose of the Subdivision and Platting Act and its knowledge of the toxic plume flowing from the Landfill, the City acted in conscious disregard of the Act’s controlling principles as well as the health, safety, and welfare of anticipated residents when it approved and platted the subdivision.

41. With similar neglect of the dangers posed by the Landfill’s toxic plume, the City approved building permits and certificates of occupancy for Plaintiffs and others who unknowingly built directly atop poisoned land.

42. In the summer of 2013, more than twenty years after the issues with migrating chemicals became known to the City, the City alerted the residents of Phase III of the dangers to their health and that of their families.

43. Unbeknownst to Plaintiffs, their homes acted as catchments for the VOCs off-gassing from the poisoned groundwater. Elevated VOC levels have been identified in the indoor air in Plaintiffs’ homes.

44. The plume of toxic chemicals continues to flow onto Plaintiffs’ properties daily. Each day that the City fails stem the flow of toxic chemicals onto Plaintiffs’ property Plaintiffs suffer a new injury. And, because the City has yet to undertake efforts to stop the flow of toxic chemicals, Plaintiffs will continue to be injured in the future.

45. The cocktail of toxic chemicals flowing onto Plaintiffs' properties are adverse to Plaintiffs' health, have caused and likely will cause respiratory exposure, and can cause short and long-term sickness, including cancer.

46. In addition to posing a direct threat to Plaintiffs' health and wellbeing, the flow of toxic chemicals has and will forever dramatically reduce the value and marketability of Plaintiffs' properties. Realtors refuse to list the poisoned properties and Plaintiffs will be required to disclose the dangers to buyers should they be able to find someone willing to buy their residences.

IV. CLAIMS FOR RELIEF

COUNT ONE – CONTINUING TRESPASS

47. Each and every allegation set forth in this Complaint is incorporated herein by reference.

48. At all times relevant to this Complaint, Plaintiffs were in possession of property located within Phase III. The City's intentional and negligent acts caused a direct, physical invasion of Plaintiffs' properties that has interfered with Plaintiffs' exclusive use, enjoyment and protection of their properties, and their right to a clean and healthful environment.

49. The City's has not stopped the plume of toxic chemicals that continues to flow onto Plaintiffs' properties.

50. The City's continued and daily trespasses are a direct and proximate cause of injuries and damages to Plaintiffs as herein alleged. Each day that the City allows the toxic plume to flow onto Plaintiffs' properties, Plaintiffs suffer another injury through no fault of their own.

COUNT TWO - NEGLIGENCE

51. Each and every allegation set forth in this Complaint is incorporated herein by reference.

52. The City had a duty to act with reasonable care so as not to jeopardize Plaintiffs' health, welfare, private property rights, and right to a clean and healthful environment.

53. The City had a specific duty under Montana land use and environmental statutes to protect the health and safety of landowners near the Bozeman Landfill. The City had a specific duty under Montana land use and environmental statutes to protect the health, safety and property rights of landowners near the landfill that applied for land use, building permits and/or certificates of occupancy.

54. The City undertook a duty to prevent the escape of toxic chemicals from the Bozeman Landfill, and to promptly and properly respond to any escape that did occur.

55. The City was on notice of the chemicals leaking from the Landfill by at least 1988, was aware of the necessity of remediation of the chemicals in 1995, and by the year 2000, understood that the levels of toxic chemicals on the land in Phase III were beyond acceptable limits.

56. The City had a duty notify Plaintiffs, other homeowners, and landowners who were directly threatened by the escape of these and migration of this cocktail of toxic chemicals.

57. The City also had a duty to not make representations that purchasing lots and building homes were safe through its approval of subdivisions and approval of building permits.

58. The City breached its duties of care in numerous ways, including, but not limited to:

- a. Failing to ensure that the Landfill was planned, designed, engineered, constructed, installed, and monitored in such a way as to prevent toxic chemicals from escaping the Landfill, forming a toxic plume that migrated onto Plaintiffs' land;
- b. Failing to properly mitigate the toxic chemicals that were escaping the Landfill;
- c. Continuing to operate the Landfill without proper mitigation methods to prevent the escape of toxic chemicals;
- d. Approving the Phase III neighborhood and platting it as if there were no danger from the toxic plume flowing from the Landfill;
- e. Failing to follow statutory and regulatory duty to prevent the migration of toxic chemicals from the Landfill when Defendants had knowledge that residences were being constructed in the path of the toxic plume;
- f. Approving Plaintiffs' building permits and certificates of occupancy in spite of the City's knowledge that Plaintiffs' homes were being constructed directly atop a cocktail of toxic chemicals flowing from the Landfill;
- g. Failing to warn residents and potential residents of the dangers posed by the toxic plume migrating from the Landfill; and

h. Failing to be forthright with the public regarding the facts, the City's knowledge of, and the City's response to the toxic plume migrating from the Landfill.

59. As a direct and proximate result of the City's foregoing negligent acts and omissions, Plaintiffs have sustained injuries as alleged herein.

COUNT THREE – NEGLIGENCE PER SE

60. Each and every allegation set forth in this Complaint is incorporated herein by reference.

61. The City is further liable to Plaintiffs under a negligence per se theory because the release of hazardous chemicals from the Landfill violates Montana State environmental protection laws, including, but not limited to, the Montana Hazardous Waste Act, § 75-10-401 et seq., Mont. Code Ann., and the Montana Water Quality Act, § 75-5-101 et seq. Mont. Code Ann.

62. Plaintiffs are adversely affected citizens of Montana and are members of the group that Montana's environmental protection laws were designed to protect.

63. The harm suffered by Plaintiffs as a result of the City's activities is the kind of harm that Montana's environmental protection laws were designed to prevent.

64. As a direct and proximate result of the City's foregoing negligent acts and omissions, Plaintiffs have sustained injuries as alleged herein.

COUNT FOUR – PRIVATE NUISANCE

65. Each and every allegation set forth in this Complaint is incorporated herein by reference.

66. The Plaintiffs are members of the public who reside, work, conduct their personal and business affairs, and have proprietary interests in certain real and personal property in the areas affected by the City's contamination. Plaintiffs also have rights incidental to that property, including the right to the exclusive use and quiet enjoyment of the property.

67. The City's negligent acts and omissions violate § 27-30-101, Mont. Code Ann., et seq., and constitute a common law nuisance that has resulted in contamination and special, actual, imminent, substantial, and impending harm to Plaintiffs. The City's breach has created a nuisance that is injurious to Plaintiffs' health, safety, comfort, and right to enjoy a clean and healthful environment; that is offensive to the senses; that unreasonably interferes with their use and enjoyment of their property; and that forever diminishes their real property values.

68. As a direct and proximate result of the nuisance created by the City's unlawful acts and omissions, and the toxic contamination that resulted therefrom, Plaintiffs have suffered and continue to suffer damages and detriment as herein alleged.

COUNT FIVE – WRONGFUL OCCUPATION OF LAND

69. Each and every allegation set forth in this Complaint is incorporated herein by reference.

70. The toxic plume released from the City's Landfill continues to flow onto Plaintiffs' properties every day. The City has made no substantial efforts to stem the flow of toxic chemicals.

71. The City has wrongfully occupied, and continues to wrongfully occupy, Plaintiffs' real property in violation of Montana common law and Mont. Code Ann. § 27-1-318.

72. As a result of the City's continuing wrongful occupation of Plaintiffs' property, Plaintiffs have suffered damages as herein alleged.

COUNT SIX – NEGLIGENT MISREPRESENTATION

73. Each and every allegation set forth in this Complaint is incorporated herein by reference.

74. The City was aware of toxic chemicals leaking from the Landfill at least as early as 1988.

75. Notwithstanding that knowledge, the City took no steps to notify the landowners directly threatened by the toxic plume. In contrast, the City explicitly and implicitly represented that the land was fit for habitation and approved and platted the Phase III neighborhood.

76. The representation that land was fit for habitation was untrue.

77. The representation was made with the intent to induce reliance on the part of Plaintiffs.

78. Plaintiffs were unaware of the falsity of the representation and reasonably relied on the City to condition and/or withhold approval for a subdivision that was threatened with toxic chemicals before it was even platted. Plaintiffs' reasonably relied on the City to disallow the creation and platting of Phase III when it was apparent to the City that a plume of toxic chemicals threatened the anticipated residents of Phase III.

78. Notwithstanding the City's knowledge of the toxic plume flowing from the Landfill and the dangers it posed to those building directly above it, the City approved Plaintiffs' building permits and certificates of occupancy, again representing the land was fit for habitation.

79. The representation that land was fit for habitation was untrue.

80. The representation was made with the intent to induce reliance on the part of Plaintiffs.

81. Plaintiffs were unaware the representations were false and reasonably relied on the City to withhold approval for building permits and certificates of occupancy that allowed them to build directly atop a toxic plume owned by and known to the City.

82. Through their actions and approvals, the City negligently misrepresented to Plaintiffs that they were building and living in a clean and healthful environment that posed no unreasonable risk to Plaintiffs' health. The City made these negligent and/or fraudulent misrepresentations despite its knowledge that Plaintiffs' health was at all times threatened by the toxic plume flowing from the Landfill.

83. As a direct and proximate result of the City's negligent misrepresentations, Plaintiffs have suffered and will continue to suffer damages including: unreasonable interference with the use and enjoyment of their property; diminishment of the value of their property; and frustration, inconvenience, trouble, and vexation.

COUNT SEVEN -VIOLATION OF THE MONTANA CONSTITUTION

84. Each and every allegation set forth in this Complaint is incorporated herein by reference.

85. Plaintiffs have inalienable rights under the Montana Constitution that “include the right to a clean and healthful environment and the rights of pursuing life’s basic necessities, enjoying and defending their lives and liberties, acquiring, possessing and protecting property, and seeking their safety, health and happiness in all lawful ways.” Mont. Const. Art. II, Sec. 3.

86. The City’s negligence and neglect poisoned Plaintiffs’ properties and the City’s failure to warn and negligent and/or fraudulent misrepresentations about the danger posed by the Landfill prevented Plaintiffs’ ability to affirmatively protect themselves and their family members.

87. As a direct and proximate result of the City’s violation of Plaintiffs’ right to a clean and healthful environment, Plaintiffs have suffered and will continue to suffer damages including, but not limited to: unreasonable interference with the use and enjoyment of their property; diminishment of the value of their property; and frustration, inconvenience, trouble, and vexation.

COUNT EIGHT - INVERSE CONDEMNATION

88. Each and every allegation set forth in this Complaint is incorporated herein by reference.

89. The City’s negligent release of a toxic plume that has migrated onto Plaintiffs’ property constitutes a taking that permanently reduces Plaintiffs’ property values.

90. Plaintiffs will be obligated to disclose the condition to potential buyers and Plaintiffs are required to give the City access to their residences so long as the City manages the mitigation systems it has installed.

91. As a result of the City's inverse condemnation of Plaintiffs' property, Plaintiffs will continue to suffer from damages described herein.

V. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request the Court grant the following relief:

1. Determine that the Defendant is liable for compensatory damages in an amount that is fair and reasonable to each Plaintiff for injuries including, but not limited to:
 - a. The cost of stopping the toxic plume and remediating and restoring Plaintiffs' properties to their pre-contaminated state;
 - b. Diminishment of property values, including permanent stigma devaluation;
 - c. Loss of peace of mind, inconvenience, trouble, vexation, anger, frustration, and fear pertaining to Defendant's contamination of Plaintiffs' properties;
 - d. The cost to monitor Plaintiffs' properties in order to detect and prevent latent damage caused by Defendants' toxic contamination;
 - e. The cost to monitor Plaintiffs' health and that of their family members to detect and proactively treat latent disease arising from exposure to the cocktail of toxic chemicals beneath their homes.
2. Award Plaintiffs the costs of litigation and attorney fees pursuant to Article II, Section 29 of the Montana Constitution; the private attorney general doctrine; and as otherwise provided by law;

3. Award Plaintiffs damages based on Defendant's trespass, wrongful occupation, and inverse condemnation of Plaintiffs' land;
4. Award Plaintiffs prejudgment interest; and
5. Award any other relief to which Plaintiffs may be entitled at law or in equity.

DATED this 16th day of December, 2014.

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