

EXHIBIT GG

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

68V BTR HOLDINGS, LLC,

Plaintiff,

vs.

**CITY OF FAIRHOPE; CITY OF
FAIRHOPE PLANNING COMMISSION;
REBECCA BRYANT; HARRY KOHLER;
HOLLIE MACKELLAR; ART DYAS;
CLARICE HALL-BLACK; JOHN
WORSHAM; JASON LANGLEY; and
COREY MARTIN,**

Defendants.

Civil Action No.: 1:22-CV-00430-WS-B

STATE OF ALABAMA:

COUNTY OF BALDWIN:

DECLARATION OF HOLLIE MACKELLAR

1. My name is Hollie MacKellar. I am above the age of nineteen, suffer no incapacities, and I make this declaration based upon my own personal knowledge.

2. I have been a member of the Fairhope Planning Commission since February 3, 2014. In my role as a Planning Commissioner, I voted on denial of the Gables multiple occupancy project ("MOP") applications submitted by 68V BTR Holdings, LLC pursuant to the Fairhope Subdivision Regulations.

3. I have been a licensed realtor since 2005 and became a real estate broker and owner of my realty company Local Property in 2018. As a real estate broker, I am constantly driving around Fairhope and the surrounding community viewing real property and properties for sale. While driving on Dyer Road where it meets Rolling Oaks Drive near the site of the proposed

Skyline MOP, I have observed significant flooding and drainage issues. I have friends that lived on Rolling Oaks and know that they frequently had flooding problems with the road caused by significant drainage problems in the area of the proposed Skyline development.

4. I regularly drive on Dyer Road because I have a networking meeting every week at Celebration Church which is located on Dyer Road. I specifically avoid the Dyer Road and Greeno Road intersection because I know that it is a difficult intersection to navigate and can be dangerous due to traffic congestion, particularly when trying to turn south onto Greeno Road from Dyer Road. I also regularly drive on Bishop Road, Gayfer Extension and Fairhope Avenue. I believe that adding more traffic to the Bishop Road and Gayfer Extension and Bishop Road and Fairhope Avenue intersections will cause a dangerous situation without additional traffic improvements. I was not present at the April 2022 Planning Commission meeting and did not vote on the Skyline MOP, but I have real concerns about traffic and drainage problems at the site of the proposed Skyline MOP based upon my own personal knowledge and experience living and working in the community for many years.

5. I made the decision to vote to deny the Gables MOP because the Gables MOP application failed to meet the Fairhope Subdivision Regulations. My decision that the regulations were not met was informed by the application details, engineering reports, traffic studies, the documents presented in the Staff packets, the evidence presented at the public meetings, and my own personal knowledge and experience. My decision was not based on any outside influence by other Planning Commissioners.

6. I determined that the Gables townhome development would cause substantial adverse effects to the neighboring property owners to the South and East less than 100 feet from the Gables property line and the outflow from the detention ponds, and 68V failed to mitigate those

effects as required by the Fairhope Subdivision Regulations. 68V's engineer admitted that additional volume of stormwater would leave the site after the development and he said that only time was available to mitigate the effects on the neighbors. 68V failed to obtain drainage easements from the neighboring property owners or do anything in an effort to mitigate the adverse effects.

7. I believe that adding more traffic to Lawrence Road and Fairhope Avenue without additional traffic improvements could cause a dangerous situation without additional traffic improvements.

8. I believed and continue to believe that approval of the Gables MOP as presented would have caused substantial adverse effects to the neighboring properties that were not adequately addressed by 68V in the Gables MOP application.

9. The reasons I voted to deny the Gables MOP are set forth in the Motion which I joined in: that the Gables MOP failed to meet the drainage and traffic requirements of the Fairhope Subdivision Regulation due to adverse effects of stormwater and drainage as set forth in Article V.F.3.b, because the Gables MOP failed to meet the greenspace requirements, was inconsistent with the Comprehensive Plan and caused unsafe traffic conditions.

10. For each Fairhope Planning Commission monthly meeting, the Planning Commissioners sit at the dais with individual microphones and are aware that the meetings are recorded and livestreamed via YouTube.

11. The Skyline MOP was discussed by the Fairhope Planning Commissioners at the February 2022 Planning Commission meeting and the April 2022 Planning Commission meeting. The Gables MOP was discussed by the Commissioners at the February 2022 Planning Commission meeting and the May 2022 Planning Commission meeting. Other than those public meetings, the

Planning Commissioners never discussed the Skyline MOP or Gables MOP together in person, on the phone, by email, or any other form of communication.

12. I was unaware of any outside communications between any other Planning Commissioners and anyone else outside of the public meetings for Skyline or Gables.

13. I do not know if any of the other Planning Commissioners had any opinions about the Skyline or Gables cases, and I did not know prior to the public meetings for the Skyline and Gables cases, and the public vote, how the other Planning Commissioners would vote.

14. The Fairhope Planning Commission has approved multiple subdivisions, including other MOPs for 68 Ventures-related entities and Nathan Cox. I personally voted in favor of approval of Laurelbrooke and several other subdivision cases of 68 Ventures-related entities and Nathan Cox, and the Fairhope Planning Commission approved those subdivisions. I am unaware of any subdivision case that the Fairhope Planning Commission denied for a 68 Ventures or any Nathan Cox entity, other than the Skyline Village and Gables at Lawrence MOP applications.

15. More than a month after the Planning Commission denied the Gables MOP application, I was contacted by an individual by telephone who introduced himself as Tyler Cuttingham on June 27, 2022. He stated that he and his wife Olivia Cuttingham were interested in purchasing a home in Fairhope and asked me as a realtor to show them multiple houses for sale. On June 28, 2022, I met the person I believed to be Tyler Cuttingham and viewed two houses with him on that day. Over the next few months, I engaged in multiple communications by email, text message, and over the phone with him and a person who identified herself as Olivia Cuttingham, Tyler Cuttingham's wife. I spent many hours researching and reviewing property listings and sent the Cuttinghams dozens of real estate listings to review.

16. The Cuttingshams told me that they had moved from Atlanta and were interested in Fairhope because they wanted to live near Olivia Cuttingshams' parents. They told me that Olivia Cuttingham's mother had fallen, was in Thomas Hospital, and was in poor health. They told me that they were in a short-term rental in Gulf Shores and that there were people in that area that were "a little shady." They told me Olivia Cuttingham's father lived in Arlington Farms in Fairhope and they were looking for a house in that area which is somewhat near Lawrence Road where the Gables MOP was proposed to be located. Later, they told me that Olivia's mother was seeing a doctor in New Orleans, and a few months later they told me that her mother had passed away. I prayed for the Cuttingshams particularly on the news that Olivia's mother passed away.

17. In October 2022, I met with a person who introduced herself as Olivia Cuttingham along with the person I believed to be Tyler Cuttingham. We went to lunch at Dragonfly and discussed their home search, and then went back to my office to review other listings.

18. Olivia Cuttingham also told me that she was assaulted in Atlanta and she was very concerned about crime and safety based upon her prior experience when she was attacked.

19. I spent over twenty hours attempting to find a home for this couple and meeting with them to show multiple houses.

20. Unbeknownst to me, the Cuttingshams were impostors that were hired by 68V to secretly record me and attempt to entrap me into making statements against Nathan Cox, 68V, and the Gables at Lawrence project. Also unbeknownst to me, the people pretending to be the Cuttingshams secretly recorded every meeting and telephone conversation we had without my knowledge or permission and under false pretenses. I have since learned that almost all of what they told me was a lie, including their made-up cover story involving a pretend family and false reasons for contacting me. These individuals used burner phones, created a phony Facebook

account, and phony email addresses to trick me into believing they were sincere in who they purported to be and their purported desire to purchase a home in Fairhope. I have also learned that private investigator Ketrick Kelly, who continued to pretend to be Tyler Cuttingham, met with Planning Director Hunter Simmons and Planning Commissioner Rebecca Bryant also under false pretenses and secretly recorded them as well with the intent of entrapping them into making statements for 68V's use in this case.

21. I have reviewed the recordings of my conversations that were produced by 68V in this case. As the actual recordings show, Ketrick Kelly, who was pretending to be Tyler Cuttingham, repeatedly asked me about unsafe areas around town, and repeatedly stated that he was trying to avoid areas with "transients" and avoiding areas of town with "low rent." He mixed those leading questions in with a discussion about the proposed Gables at Lawrence townhome project and pretended to be concerned about looking at a house in the area if the townhome project could be approved. He repeatedly discussed crime and asked about areas of town that I suggested to them, and at one point he asked "what kind of people are living in those houses." I have since learned that Mr. Kelly a/k/a Mr. Cuttingham's pretend wife is a contractor that works for his private investigation company named Tobi Libra and she was the person pretending to be named Olivia Cuttingham.

22. As the recordings and an accurate transcript of an excerpt of the recording show, I said that the Fairhope Planning Commission denied the Gables at Lawrence application due to traffic concerns, because it was too much of an impact on the area and because it was in a "floodplain" or had drainage concerns. I specifically stated those reasons twice in my discussion with the pretend Mr. Cuttingham as the reasons for the denial, and said the Planning Commission had concerns about the health, safety and general welfare of the community in light of those

concerns. I never used the word "pretext" or suggested that there was any sort of ulterior motive for denying the Gables at Lawrence MOP application other than the reasons that were stated for denial by the Commission at the public meeting and later restated by me to the phony Mr. Cuttingham.

23. I have read the transcript prepared by 68V and attached to the Complaint in this case purporting to be a transcript of a "Consensual Recording." I was shocked when I saw 68V BTR's allegations in the Complaint and how they shamelessly and completely misstated what I said. I have compared the transcript with the actual audio recording secretly made by Ketrick Kelly of the conversation. The transcript attached to the Complaint is not accurate, contains numerous typos, and omits a substantial part of the conversation in that it is only an excerpt of a fifty-four minute conversation. The transcript contains statements that are contrary to what was actually said on the audio recording. It is also misleading because it omits about seven minutes of the conversation in the middle of the transcript without any indication that several minutes were omitted. It is by no means true or correct.

24. In my meetings with the Cuttingshams, I recommended that the Cuttingshams look at homes built by Nathan Cox's former homebuilding company Truland Homes, and complimented the workmanship of Truland Homes. I told them that I did not believe that Nathan Cox would file a lawsuit against the City of Fairhope and the Fairhope Planning Commission because he lives in this community and I believed he cared about the community and the people. I did not think he would stoop to the level of hiring someone to secretly record and harass volunteer Commissioners, deceptively trying to get us to say something that was not true (like the projects were denied because we did not like apartments or "low-income" as alleged in the Complaint). Just like I told Ketrick, the man 68 Ventures hired to secretly record me, I voted to deny the Gables

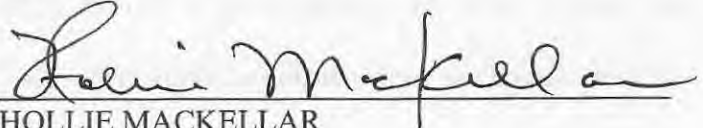
application because of the drainage and traffic problems related to the proposed projects which adversely affect the safety and welfare of the neighbors surrounding the proposed site. Those reasons were discussed at length at the meeting when the Commission considered the Gables MOP application.

25. I have voted in favor for approval of numerous subdivisions of 68 Ventures and related Nathan Cox-entities even after this lawsuit was filed against me personally.

26. The Fairhope Planning Commission is not informed of the financial details of a proposed subdivision, like consumer sales price or anticipated monthly rental rate. I was not informed about such details with regard to the Gables project being proposed. The suggestion made by 68V that I was against low-income housing is false and very offensive to me. Regardless I had no knowledge of the rental price that 68V intended to charge for the Skyline Village or Gables at Lawrence townhome rental units and it did not inform my decision whether to approve the Gables MOP.

27. I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 15 day of March 2024.


HOLLIE MACKELLAR