

<b>BEAUMONT HERITAGE SOCIETY</b>	§	<b>IN THE DISTRICT COURT OF</b>
<b>AND EDDIE ESTILETTE</b>	§	
	§	
	§	
<b>VS.</b>	§	
	§	<b>JEFFERSON COUNTY, TEXAS</b>
<b>DR. CARROL THOMAS,</b>	§	
<b>BEAUMONT INDEPENDENT</b>	§	
<b>SCHOOL DISTRICT, WOODROW</b>	§	
<b>REECE AND PARSONS</b>	§	
<b>COMMERCIAL TECHNOLOGY</b>	§	
<b>GROUP, INC.</b>	§	<b>58<sup>th</sup> JUDICIAL DISTRICT</b>

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

The above captioned case came on for trial before the Court without a jury on September 21, 2009 and concluded on September 22, 2009. BEAUMONT HERITAGE SOCIETY and EDDIE ESTILETTE appeared in person and through their attorney, Michael D. Getz. DR. CARROL THOMAS, WOODROW REECE and the BEAUMONT INDEPENDENT SCHOOL DISTRICT appeared through their attorney, Melody Chappell. PARSONS COMMERCIAL TECHNOLOGY GROUP, INC. was non-suited from this action prior to the commencement of the trial. After considering the pleadings, the evidence, the argument and briefs from counsel, the Court, in response to a request from Defendants, DR. CARROL THOMAS, WOODROW REECE and the BEAUMONT INDEPENDENT SCHOOL DISTRICT, makes its findings of fact and conclusions of law as follows:

**FINDINGS OF FACT**

1. As a result of the citizens of the Beaumont Independent School District (BISD) voting down a bond proposal in 2002, BISD determined that it would be necessary to do some public relations work to get Beaumont, Texas citizens and the local business community to be supportive of any future bond election.

2. The Citizens Advisory Bond Committee (CABC) was created in 2006 by having each of the seven (7) school board trustees of BISD select five (5) people to serve on the CABC and by having the superintendent of BISD, Dr. Carroll Thomas, select an additional 14 members to serve on the committee.
3. The purpose of the CABC was to establish trust and credibility within the community served by BISD as to how projects and the funds from any bond issuance would be handled and to relay from BISD to the public all appropriate information for scrutiny and review.
4. The CABC was authorized by BISD to speak for the board of trustees on issues regarding the bond proposal.
5. As early as March 6, 2007, BISD administration was giving consideration to replacing the South Park school building that currently sits at 4500 Highland Avenue, Beaumont, Texas, with a new school building at a cost of \$42,385,000.00.
6. As early as March of 2007, the BISD school board and administration had decided that there was going to be a new South Park school building, but no mention or discussion of this was made to the general public or the CABC.
7. The South Park school building has been used as a middle school since 1986 and BISD plans to continue to use that site as a middle school and there are no additional special programs or additional elementary schools that will be feeding into the middle school at that site.
8. As of October, 2008, there were only 430 children that attended South Park Middle School, and BISD's demographic projections show that the school will continue to lose enrollment. BISD's projected enrollment of South Park Middle School for the 2010-2011 school year is only 380 students. However, despite those projections, BISD is planning on building a new school on the site of the existing building that is capable of housing a student enrollment of 700 children.
9. The history of the South Park school building dates back to the 1920's and has housed up to 900 students in the past. The South Park school building has previously been designated as a historical site by the Texas Historical Commission and has had a historical marker affixed to it. The marker was removed by agents of BISD without following the required procedures promulgated by the Texas Historical Commission. The Texas Historical Commission is on record as being strongly opposed to the demolition of the South Park school building.

10. The total square footage of the existing South Park school building, including its outbuildings and gymnasium, is 103,579 square feet. The total square footage of the existing, three story main building is 55,960 square feet.
11. According to BISD retained experts, the existing, three story main building that now houses South Park Middle School is structurally sound and in good condition. The building shows no signs of excessive structural distress and is adequate to continue to support the service loads on it for its intended use. There are no exterior cracks in the exterior brick veneer or other signs of distress that would be related to excessive structural deflection. The building is able to safely support the service loads imposed upon it by its intended use. There is no evidence of current rodent infestation or active termite infestation at the South Park school building.
12. BISD never performed a detailed cost analysis of what it would cost to renovate the existing, three story main building that now houses South Park Middle School as opposed to the cost of demolishing the main building and erecting a new structure on the site. There are no conditions that presently exist that would prevent the South Park school building from being able to be renovated for use as a middle school.
13. According to the Historical Society experts in the case, as of April, 2007, the estimated cost of making repairs to the existing, three story main building that now houses South Park Middle School and bringing it up to all then current educational and building standards was 9.8 million dollars. As of July, 2009, the estimated cost of making repairs to the existing, three story main building that now houses South Park Middle School and bringing it up to all current educational and building standards remains less than 10 million dollars.
14. In July of 2007, BISD announced that it was going to explore the possibility of providing a new South Park school building near the site of the current building at issue in this case and would seek to find an alternative use for the historic South Park school building.
15. By July 2007 a petition drive had commenced which ultimately resulted in over 2700 residents of BISD presented petitions to the BISD school board requesting that the existing, three story main building that now houses South Park Middle School not be demolished. Eddie Estillette, one of the plaintiff's in this litigation, is an alumnus of South Park High School and represents tens of hundreds of other citizens that signed petitions requesting that the South Park school building not be demolished.
16. In early August of 2007, BISD had adopted the position that it would explore the possibility of providing a new South Park school building on or near the site of the current South Park school building and that if built on the current site, BISD would try to preserve as much as possible of the original building.

17. On August 30, 2007, the BISD adopted a resolution that called for the building of a new South Park school building on or near the site of the current South Park school building and that if built on the current site, BISD would try to preserve as much as possible of the original building.
18. The decision to demolish the existing, three story main building that now houses South Park Middle School was never discussed in a duly convened open board meeting of the BISD Board of Trustees.
19. The administration of Beaumont Independent School District had the responsibility to distribute all press releases and manage communications with local news media concerning all aspects of the BISD bond proposal, pursuant to BISD school board resolution passed October 15, 2007.
20. In the days leading up to the November 2007 school bond election, BISD administrators and school board members were openly advocating in favor of the passage of the BISD bond issuance.
21. Shortly before the November, 2007 BISD school bond election, the Greater Beaumont Chamber of Commerce Political Action Committee, paid for a pamphlet that was printed by the Beaumont Examiner newspaper, the content of which came from BISD information director Jolene Ortego with the approval of BISD superintendent, Dr. Carroll Thomas. Neither the Greater Beaumont Chamber of Commerce or the Greater Beaumont Chamber of Commerce Political Action Committee was responsible for the content of the material that was published in the pamphlet other than coordinating some quotations from some of its members. The purpose of the pamphlet was to give taxpayers and voters of BISD information about what BISD intended to do with the proceeds of the bond proposal if the bond proposal were to pass. In that pamphlet, it is stated in italicized, bold letters that there would be no demolition of old South Park. At least 50,000 copies of the pamphlet were printed and the pamphlet was sent to BISD voters prior to the November, 2007 bond election.
22. Dr. David Teuscher, co-chairman of the CABC, was an agent of BISD as he was appointed by the BISD school board to speak for and promote for the passage of the November 2007 school bond issue.
23. At a meeting of the Beaumont Downtown Rotary Club as well as at other venues, prior to the November, 2007 BISD bond election, Dr. David Teuscher presented a power point presentation to members of the public that proclaimed that should the bond pass, the South Park school building would not be bulldozed.
24. The testimony by BISD superintendent Dr. Carroll Thomas that he did not discuss the statement, that there would be no demolition of old South Park, which was to

be published in a pamphlet and disseminated to the public prior to the November, 2007 bond election with BISD information director Jolene Ortego is not credible. The testimony by BISD superintendent Dr. Carroll Thomas that he did not authorize the release of the statement, that there would be no demolition of old South Park, which was to be published in a pamphlet and disseminated to the public prior to the November, 2007 bond election by BISD information director Jolene Ortego is not credible.

25. BISD made no substantive effort to try and incorporate a design for a new school that preserves any part of the existing, three story main building that now houses South Park Middle School. BISD never sought bids for the renovation of the South Park school building.
26. The proposed new school as designed by the architects hired by BISD does not incorporate any of the elements of the existing, three story main building that now houses South Park Middle School.
27. In 2008, South Park Middle School was the only Recognized middle school in BISD, despite BISD's claims that the building was not conducive to achieving a good education.
28. Parsons/3DI, the project manager for the BISD bond construction program, was directed by BISD administration to make a recommendation to demolish the South Park school building instead of to attempt to renovate it.
29. Documents produced by BISD that show it might cost as much as 40 to 50 million dollars to renovate the South Park school building were unknown to chief estimator of Parsons/3DI, John Reagan, and are not credible.
30. Citizens of BISD did not have the opportunity to vote for or against the construction of a new school or renovation of the existing, three story main building that now houses South Park Middle School because this language was not on the ballot that voters were presented with when they went to the polls to vote for or against the issuance of bond funds in November, 2007.
31. At a meeting of the Beaumont Downtown Rotary Club, prior to the November, 2007 BISD bond election, Dr. David Teuscher presented a power point presentation to club members and members of the public that proclaimed that should the bond pass, the South Park school building would not be bulldozed.
32. The message being disseminated by the BISD school board and administration, both directly and through their agents that there would be no demolition of the South Park school building prior to the November, 2007 bond election, was calculated to and did cause passage of the November, 2007 BISD bond election.

33. BISD violated the Texas Open Meetings Act by deciding behind closed doors that the South Park school building was to be demolished.
34. BISD misled its citizens into believing that the South Park school building would not be demolished.
35. The affidavit concerning attorney's fees submitted by counsel for plaintiff's demonstrated that the attorney's fees incurred by plaintiff's counsel were reasonable and necessary.
36. Any finding of fact that is found to be a conclusion of law shall be deemed a conclusion of law.

#### CONCLUSIONS OF LAW

1. In failing to make a substantive inquiry as to what the costs of renovation of the South Park school building would be as opposed to demolition of the three story main building that now houses South Park Middle School and construction of a new school, the BISD school board has breached its fiduciary duty to the citizens of BISD.
2. In continuing to put out the message that there would be no demolition of the South Park school building prior to the November, 2007 bond election when the BISD school board and administration had already decided that should the bond pass that the South Park school building would be demolished, the BISD school board and administration committed a fraud upon the citizens of BISD.
3. In deciding to demolish the South Park school building behind closed doors and outside of public scrutiny, the BISD board violated the Texas Open Meetings Act.
4. The Court feels it is limited by the pleadings and the strict statute of limitations for election contest cases. Had this been an election contest case, the Court feels sufficient evidence was produced to require the Court to order a new bond election.

Signed this 31<sup>st</sup> day March of 2010.

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JUDGE PRESIDING