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## I. INTRODUCTION AND SUMMARY

This suit is about Plaintiff David Schneider’s and Intervening Plaintiff Highlands of McKamy IV and V Community Improvement Association’s (the “HOA”) (collectively, “Plaintiffs”) attempt to obtain an injunction that would end community religious practice for approximately thirty families of Orthodox Jews in far North Dallas based only on minor irritations such as having to stop vehicles to permit blind people and mothers with children to cross the street. The members and other attendees of the Congregation Toras Chaim, Inc. (the “Congregation”)<sup>1</sup> are homeowners who want to practice their religious beliefs in their homes, an issue that lies at the core of individual liberty. Plaintiffs—a single neighbor and the HOA—unfortunately are attempting to bully minority members of their community with this suit.

Since February 2011, with the HOA’s full knowledge, the Congregation’s prayer and study activities have taken place primarily at two homes in the housing development over which the HOA has authority: the Highlands of McKamy IV and V (the “Highlands of McKamy”). From February 2011 until August 2013, the Congregation’s activities took place primarily at the home of Rabbi Yaakov Rich at 7119 Bremerton Court, and since August 2013, the same activities have taken place primarily at 7103 Mumford Court,<sup>2</sup> the home owned by Defendants Judith D. Gothelf and Mark B. Gothelf. The HOA has known about these activities since early 2011, but took no steps to try to stop them until sending a letter on October 14, 2013. The HOA

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<sup>1</sup> The Congregation is not a proper Defendant in this case because it is not, nor ever has been, a homeowner in the Highlands of McKamy. The Congregation therefore cannot be bound by the restrictive covenants at issue in this case. See *Jim Walter Homes, Inc. v. Youngtown, Inc.*, 786 S.W.2d 10, 11 (Tex. App.—Beaumont 1990, no writ) (holding that non-property owners have no duty to comply with restrictive covenants). Indeed, the HOA has intervened only against the Gothelfs. The Congregation has filed a no-evidence motion for summary judgment that is pending before the Court. See Defendant Congregation Toras Chaim’s No-Evidence Motion for Summary Judgment, filed March 7, 2014; Defendant Congregation Toras Chaim’s Reply in Support of No-Evidence Motion for Summary Judgment, filed June 26, 2014. The Congregation hereby incorporates all of its briefing and evidence submitted in support of its No-Evidence Motion for Summary Judgment.

<sup>2</sup> Avrohom Rich’s use of 7103 Mumford Court as his personal residence is the primary use of the property. Some of the Congregation’s religious activities also take place there. See Defendants’ Response to Plaintiff’s and Intervening Plaintiff’s Motions for Partial Summary Judgment, filed June 19, 2014.



sent this letter despite the conclusion of its counsel that the Highlands of McKamy's restrictive covenants lacked the "preferred language" for deeming the Congregation's presence in the neighborhood to be a violation.<sup>3</sup>

The Court has already denied two of Plaintiffs' attempts to shut down the Congregation's religious practice by (1) denying a request for a temporary injunction on April 10, 2014, and (2) denying the HOA's motion for summary judgment on August 20, 2014, on the issue of whether Defendants are in breach of the Highlands of McKamy's restrictive covenants. Discovery has since closed, and based on the application of Texas law to the undisputed facts (and in some instances the complete absence of facts) Defendants are entitled to summary judgment based on several independent grounds.

First, although Defendants are not at this time moving for summary judgment on the issue of whether their activities at 7103 Mumford Court violate the Highlands of McKamy's restrictive covenants,<sup>4</sup> Defendants are entitled to complete summary judgment on all of their affirmative defenses, each of which has been established as a matter of law and which independently foreclose Plaintiffs' claims:

- Interpreting the restrictive covenants to prevent the Congregation's religious activities would violate the Texas Religious Freedom Restoration Act ("Texas RFRA"), Tex. Civ. Prac. & Rem. Code §§ 110.001, *et seq.*, because it would place a substantial burden on the Congregation members' religious practice, would not further any compelling interest, and would not be the least restrictive means of furthering any interest that may exist.
- Interpreting the restrictive covenants to prevent the Congregation's religious activities would violate the federal Religious Land Use and Institutionalized Persons Act of 2000 ("RLUIPA"), 42 U.S.C. §§ 2000cc, *et seq.*, because it would

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<sup>3</sup> Exhibit V at 4.

<sup>4</sup> Defendants are not in violation of the restrictive covenants. *See* Defendants' Response to Plaintiff's and Intervening Plaintiff's Motions for Partial Summary Judgment, filed June 19, 2014. If this case proceeds to trial, the evidence will show, among other things, that Avrohom Rich's use of 7103 Mumford Court as his personal residence is the primary use of the property.

place a substantial burden on the Congregation members' religious practice, would not further any compelling interest, and would not be the least restrictive means of furthering any interest that may exist. Interpreting the restrictive covenants to prevent the Congregation's religious activities would also violate RLUIPA because it would treat the Congregation's religious activities on unequal terms with other non-residential uses that are or have taken place in the Highlands of McKamy.

- The HOA may not enforce the Highlands of McKamy's restrictive covenants against Defendants because the HOA's decisions to intervene in this suit and to attempt to enforce the restrictive covenants were arbitrary, capricious, or discriminatory under § 202.004 of the Texas Property Code.
- Plaintiffs have waived and/or abandoned their right to enforce the residential use restriction because the HOA has never attempted to prevent other non-residential uses of homes within the Highlands of McKamy.
- The doctrine of laches bars the HOA's claims because the HOA unreasonably delayed in challenging the Congregation's activities, and the Gothelfs and the Congregation relied on the HOA's non-opposition to their detriment.
- The doctrine of unclean hands bars Schneider from asserting claims to enforce the restrictive covenants in the Highlands of McKamy because he is himself in violation of the restrictive covenants he seeks to enforce. In direct contravention of the residential-only provision of the restrictive covenants, Schneider maintains a shed in his yard. *See Exhibit B at Article VI.1.*<sup>5</sup>

Second, independent of Defendants' affirmative defenses, summary judgment is also proper as to certain of Plaintiffs' claims for additional reasons:

- Defendants are entitled to summary judgment on Plaintiffs' claim for a permanent injunction to the extent an injunction would prohibit the Congregation's religious activities at 7103 Mumford Court. The Court must balance the equities before issuing a permanent injunction, and the undisputed facts reflect that no balancing of the equities could reasonably be resolved in favor of Plaintiffs. An injunction prohibiting the Congregation from meeting at 7103 Mumford Court would end community religious life for approximately thirty families. By contrast, Plaintiffs complain of alleged harms such as parking and dogs barking. Even if Plaintiffs were to prevail at trial, any injunction should be narrowly tailored to address specific alleged harms (such as parking), rather than shutting down the synagogue entirely.

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<sup>5</sup> Exhibit A identifies the evidence attached to this Motion. Defendants hereby incorporate all Exhibits attached to this Motion.

- Defendants are entitled to a no-evidence summary judgment on Schneider’s claim for statutory damages under Tex. Prop. Code § 202.004(c). The statute does not permit individual homeowners to recover damages.
- Defendants are entitled to a no-evidence summary judgment on Schneider’s claim for \$50,000 due to an alleged decline in value of his home. Schneider has no evidence that his home has lost value.

This case should be put to rest now. Defendants should not have to incur the burden and expense of going to trial in a case that never should have been filed. Defendants respectfully request that the Court grant Defendants’ Motion for Summary Judgment.<sup>6</sup>

## **II. STATEMENT OF FACTS**

### **A. The Congregation’s Formation**

The Congregation is a small community of Orthodox Jews in far North Dallas in existence since 2007. Exhibit C at 27:25-28:2; Exhibit D at 16:7-16:9, 41:15-42:7, 55:17-56:12. There is only one other congregation of Orthodox Jews in the entire Dallas-Fort Worth area that shares the Congregation’s particular outlook on spiritual life: the Ohr HaTorah Shul, which is located approximately seven miles south of the Highlands of McKamy. Exhibit D at 41:15-42:7, 74:3-75:3. While a member of the Ohr HaTorah Shul, Rabbi Yaakov Rich discovered that several families living around the Highlands of McKamy wanted to join an Orthodox Jewish synagogue that shared the same focus as the Ohr HaTorah Shul. Exhibit D at 74:3-75:3. Orthodox Jews are prohibited from driving on the Sabbath; these families therefore must live within walking distance of a synagogue to attend prayer services on the Sabbath. Exhibit C at 28:20-29:2; Exhibit D at 30:20-31:4, 39:25-40:4, 74:16-75:3, 84:1-84:13; Exhibit F at 72:9-73:4.

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<sup>6</sup> If this Motion is granted in its entirety, it would dispose of all of Plaintiffs’ claims. The Motion does not address Defendants’ contention that they are entitled to attorneys’ fees and expenses. *See* Defendants’ First Amended Answer, filed October 1, 2014, at ¶¶ 8-10. Defendants intend to present evidence and argument regarding attorneys’ fees and expenses at a later time.

When Rabbi Rich started the Congregation in 2007, locating it in and around the Highlands of McKamy was facilitated by the fact that the area had already been established as an eruv.<sup>7</sup> Exhibit D at 76:11-76:17. Creating an eruv is an extensive process that requires approval from and a leasing agreement with the city. Exhibit D at 74:21-76:10. The eruv that encompasses the Highlands of McKamy is called the Far North Dallas Eruv and is approximately two square miles. Exhibit E (map of Far North Dallas Eruv); Exhibit F at 72:9-73:4. The eruv had been created by the members of another Orthodox Jewish synagogue, Ohev Shalom, but that synagogue does not share the same particular outlook on the spiritual life as the Congregation. Exhibit D at 38:21-39:2, 41:15-42:7, 66:1-67:11, 74:3-74:15, 75:23-76:17.

**B. Rabbi Rich Begins Hosting Congregation Activities**

From 2007 until 2011, the Congregation met at a small home on Hillcrest Road (outside the Highlands of McKamy). Exhibit C at 27:25-28:4; Exhibit D at 42:23-43:3, 63:2-63:17. In February 2011, Rabbi Rich's home in the Highlands of McKamy became the primary location for the Congregation. Exhibit C at 28:3-28:10; Exhibit D at 63:2-63:5. By then, most of the members lived east of Hillcrest Road, so the Rabbi's home in the middle of the Highlands of McKamy was more centrally located with respect to where the Congregation's members lived than the Hillcrest home. Exhibit D at 66:1-67:22, 76:21-77:11. The main activities of the Congregation took place at 7119 Bremerton Court for two and a half years—from February 2011 to August 2013. Exhibit C at 28:3-28:14; Exhibit D at 63:2-63:5. During that time, members of the HOA board were fully aware of the Congregation's activities at 7119 Bremerton Court, yet the HOA never claimed that this activity was somehow not permitted under the restrictive

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<sup>7</sup> An eruv is a ritual enclosure that allows Orthodox Jews to carry certain objects outside of their homes on the Sabbath. Exhibit D at 74:21-76:10, 91:5-91:23; Exhibit F at 72:9-73:4. The enclosure is formed by integrating a number of private and public properties into one larger private domain utilizing PVC piping and wires connected to telephone and electric poles. Exhibit D at 74:21-76:10.

covenants. Exhibit C at 33:20-34:14; Exhibit D at 77:12-78:11; Exhibit G (deposition notice to HOA); Exhibit H (HOA's designation of Carolyn Peadon as representative to testify for the HOA); Exhibit I at 6:3-6:9, 9:3-10:2, 22:1-13 (Ms. Peadon's testimony).

### **C. The Congregation Moves to 7103 Mumford Court**

In the spring of 2013, a longtime friend of Rabbi Rich, Mark Gothelf (and his mother, Judith Gothelf), purchased a home in the Highlands of McKamy at 7103 Mumford Court, planning to have the home occupied by a resident and also permitting it to be used for the Congregation's activities. Exhibit D at 23:10-24:2; Exhibit F at 10:8-11:7, 73:17-74:7. Avrohom Moshe Rich moved into the home on September 16, 2013, and has since that time used the house as his personal residence. Exhibit D at 79:8-79:17. Avrohom Rich's use of 7103 Mumford Court is the primary use of the property.<sup>8</sup> The Congregation began meeting there in August 2013. Exhibit C at 28:11-28:14; Exhibit D at 79:18-79:23. No changes have been made to the exterior of the home, and no changes are planned. Exhibit J at 70:25-71:7, 75:1-75:17; Exhibit K.

Although the home's address is on Mumford Court and the front of the home faces that street, 7103 Mumford Court actually sits on the corner of Frankford Road and Meandering Way, both major streets that run for miles through North Dallas. Exhibit D at 67:12-67:22; Exhibit L (map reflecting location of 7103 Mumford Court); Exhibit M (map reflecting that Frankford Road stretches for over eleven miles across Dallas); Exhibit N (map reflecting that Meandering Way stretches for over five miles across Dallas).<sup>9</sup> Thus, attempts to characterize 7103 Mumford Court as being tucked away in the middle of a quiet neighborhood are simply inaccurate.

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<sup>8</sup> See Defendants' Response to Plaintiff's and Intervening Plaintiff's Motions for Partial Summary Judgment, filed June 19, 2014. Defendants hereby incorporate their June 19, 2014 filing, including all evidence cited therein, in its entirety.

<sup>9</sup> The Court can take judicial notice of Exhibits L, M, and N under Tex. R. Evid. 201.

#### **D. Congregation Activities at 7103 Mumford Court**

The activities that take place at Mumford Court are the same activities that took place at 7119 Bremerton Court for two and a half years. Exhibit C at 28:15-29:2; Exhibit D at 79:24-80:16. On non-Sabbath days, the Congregation has morning, afternoon, and evening prayer meetings, attended by no more than ten to twelve people on average. Exhibit C at 29:5-30:1; Exhibit D at 80:17-81:13. Usually, about five members drive to these prayer meetings. Exhibit D at 81:14-81:23. Three cars typically park in the backyard driveway, and three cars park in front of 7103 Mumford Court. Exhibit C at 30:2-31:3; Exhibit D at 81:24-82:10. It is most often the case that no cars are parked in front of other houses. Exhibit C at 30:18-31:3. Also, between two and six people study at the home during the day. Exhibit C at 29:15-29:23; Exhibit D at 80:17-81:13.

Once a week, on the evening before the Sabbath, approximately twenty people gather at the home to pray. Exhibit D at 83:16-83:25. On Saturday morning, approximately thirty people gather to pray. *Id.* Afternoon and evening prayer on the Sabbath usually attracts about twenty people. *Id.*<sup>10</sup> Because Orthodox Jews cannot drive on the Sabbath, all of the Congregation's members walk to 7103 Mumford Court for the events on Friday evening and Saturday. Exhibit C at 28:20-29:2; Exhibit D at 30:20-31:4, 39:25-40:4, 74:16-75:3, 84:1-84:13; Exhibit F at 72:9-73:4.

#### **E. The Congregation Has Nowhere Else to Go**

If the Gothelfs are enjoined from hosting Congregation activities at 7103 Mumford Court, multiple families in the Highlands of McKamy will be without a spiritual gathering place. Exhibit C at 31:4-33:19; Exhibit D at 41:15-42:7, 66:1-68:4. In the years before operating at

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<sup>10</sup> Thus, although approximately thirty families identify with the Congregation, even the most highly attended prayer gatherings each week average no more than about twenty to thirty attendees.

7103 Mumford Court, the Congregation explored a move to another location. *Id.* It discovered that all of the commercially zoned properties within walking distance of its members were unavailable. *Id.* Other areas within walking distance of the Congregation's members were also ruled out as unsuitable for various reasons.<sup>11</sup> *Id.* Thus, the Congregation has nowhere else to go if it is prevented from conducting activities in the Highlands of McKamy. *Id.* Indeed, as Rabbi Rich testified regarding the effect of an injunction on the Congregation and its members:

Asking the activities to stop would be similar to asking a person to stop eating. Let me explain what I mean.

You see, we believe that there are physical needs and there are spiritual needs. And just like our bodies need nourishment every day, our souls need nourishment every day. That's our prayer and that is our Torah study.

And if our members were asked . . . that they could not participate actively in Torah study or prayer, it would individually be a terrible disaster for those individuals, force people to have to relocate and immediately shut down the Congregation, without question.

Exhibit C at 31:12-32:1.

**F. The Alleged Harms Due to the Congregation's Presence in the Neighborhood are Trivial**

In contrast to the harm that would result from prohibiting the Congregation's activities in the Highlands of McKamy—ending community religious life for thirty families—the alleged harms from the Congregation's presence in the community are trivial. At the temporary injunction hearing on April 10, 2014, and in depositions since that time, Plaintiffs have repeatedly had the opportunity to testify at to what they perceive as the negative effects of the Congregation's presence in the Highlands of McKamy. *See* Exhibit C at 8:10-9:3, 13:12-16:5, 17:2-18:6, 20:13-21:19, 22:7-23:5 (temporary injunction hearing testimony of witnesses called

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<sup>11</sup> For example, it would have been very disrespectful to Ohev Shalom and its rabbi and a violation of the Congregation's religious beliefs for the Congregation to center its activities in close proximity to another Orthodox Jewish synagogue. Exhibit C at 31:4-33:19; Exhibit D at 41:15-42:7, 66:1-68:4.

by Plaintiffs); Exhibit J at 65:18-69:18, 82:6-82:23 (Schneider’s deposition testimony); Exhibit O at 46:8-48:17 (HOA board member Ted Day’s deposition testimony); Exhibit P at 16:9-18:5 (HOA board member Michael Donohue’s testimony). Setting aside speculative alleged harms regarding what Plaintiffs fear *could* happen in the future, the only specific evidence of actual alleged harms is:

- A pile of dirt that has since been removed was on the property at 7103 Mumford Court at one time. Exhibit C at 8:10-9:3; Exhibit K.
- Neighbors were forced to look at a window air-conditioning unit. Exhibit C at 8:10-9:3.
- People and cars come and go from the home at 7103 Mumford Court. Exhibit C at 8:10-9:3, 14:21-15:6, 20:16-21:6; Exhibit J at 66:2-66:12, 82:6-82:23; Exhibit O at 46:8-46:14, 48:6-48:17; Exhibit P at 16:23-17:15.
- It sometimes looks “unusual” and “odd” when Congregation members exit the home. Exhibit J at 82:6-82:23.
- When Jewish worshipers come to 7103 Mumford Court, it causes dogs to bark, which sometimes causes teenage children to wake up. Exhibit C at 14:3-14:13.
- A neighbor has had to stop his vehicle to allow a woman pushing a baby carriage to cross the street. Exhibit C at 14:14-14:17.
- A neighbor has had to stop his vehicle to allow a blind person to cross the street. Exhibit C at 14:21-15:3.
- The synagogue allegedly causes parking issues on Mumford Court, which the Congregation has taken steps to address. Exhibit C at 14:21-15:3, 15:19-16:5, 17:2-17:12, 20:16-21:6, 30:2-31:3; Exhibit O at 46:8-46:14, 48:6-48:17.
- There are speculative concerns—with no evidence—that the Congregation affects home values in the neighborhood. *E.g.*, First Amended Petition, filed April 2, 2014, at 18; Exhibit J at 67:13-67:18.



**G. Plaintiff Schneider, His Relentless Pursuit of the Congregation, and Takeover of the HOA Board**

Schneider and his wife Laura are the two owners of the home at 7035 Mumford.<sup>12</sup> Exhibit J. at 83:5-83:12. In December 2013, he sued Defendants for allegedly violating a residential-only restrictive covenant despite the fact that a shed he admits is in his yard blatantly violates the same residential-only restrictive covenant. Exhibit J at 23:21-25:13; Exhibit S.

Article VI.1 of the HOA's restrictive covenants provides:

RESIDENTIAL USAGE: No structure shall be erected, placed, altered, used for or permitted to remain on any residential building lot other than one detached single family dwelling not to exceed three stories and one private garage for not more than four automobiles and servants' quarters if they are employed on the premises. No temporary structures may be placed on lot except during construction. Metal storage buildings, sheds or structures are not permitted. Only new structures shall be constructed on any lot and no house or structures shall be moved onto a lot.

Exhibit B at Article VI.1.

After suing, Schneider then attempted to get the HOA to join his suit, even stating that he could help keep the HOA's costs down by serving as "lead counsel" if the HOA were to intervene. Exhibit T at 1. The HOA's board at the time did not decide to intervene, having concluded that the HOA had no right to stop the Congregation from worshiping in homes in the neighborhood. Exhibit U at 3 (HOA minutes reflecting "Conclusions: The HOA cannot stop the building from being used for worship"). The HOA's counsel had also concluded that the restrictive covenants did not have the "preferred language" for deeming Defendants to be in violation. Exhibit V at 4 ("With the appropriate set of facts and the appropriate language in the deed restrictions, courts have ruled that use of a residence as a church did violate the deed

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<sup>12</sup> Laura Schneider is not a plaintiff in this suit.

restrictions. Unfortunately, The Highlands Declaration and other governing documents do not contain the preferred language.”).

Schneider then waged a proxy campaign to get himself and four likeminded neighbors (collectively, the “Schneider Board”) elected as the new HOA board. Exhibit J at 39:8-40:1; Exhibit O at 17:18-19:6; Exhibit P at 19:17-20:17; Exhibit W (Schneider’s promotional flier). Upon the takeover, one of the first acts of the Schneider Board was to cause the HOA to intervene in Schneider’s lawsuit. Exhibit X at 4-5. The Schneider Board also adopted a “new policy” to enforce the residential-only restrictive covenant, implying that the HOA did not have such an enforcement policy prior to that time. Exhibit P at 21:4-21:20 (Schneider Board member Donohue answering “Correct” when asked if “a new policy was adopted to enforce deed-use restrictions” in February 2014); Exhibit Y (HOA minutes reflecting that the Schneider Board adopted a policy of enforcement on February 3, 2014).

The HOA membership was upset with the decision to intervene and demanded a special meeting for the neighborhood to discuss potential bylaw changes. Exhibit O at 35:23-37:1; Exhibit P at 24:14-25:21; Exhibit Z at 4. Schneider scheduled the meeting to occur on the Jewish Sabbath, and refused to move the date to accommodate members of the Congregation. *Id.* Regrettably, this decision is not the only instance of Schneider expressing hostility to the faith of Orthodox Jews:

- He has published a paper on his web site that criticizes Orthodox Jewish views of the Torah. Exhibit J at 32:16-35:9 (Schneider testifying that he views the Torah as the “word of man” and as a compilation of writings by multiple human authors).
- He recently filed a pro se lawsuit against another one of his neighbors for building a temporary structure (called a “Sukkah”) in celebration of a Jewish holiday. Exhibit AA.

- He has referred to a Sukkah as a “strange-looking thing,” “unusual structure,” and “eyesore” and stated that he was “disturbed and dismayed” by its presence. Exhibit AA.
- He has stated that Jewish residents of the Highlands of McKamy should “[g]o outside the neighborhood to celebrate.” Exhibit BB.

#### **H. The HOA’s Conflicted and Delayed Involvement in this Suit**

Although it was forced into this suit by the Schneider Board, the HOA’s own corporate representative deponent testified that she would have preferred that the HOA not do so. Exhibit G (deposition notice to HOA); Exhibit H (HOA’s designation of Carolyn Peadon as representative to testify for the HOA); Exhibit I at 16:23-17:8 (“I would have preferred not to resort to litigation.”), 29:2-29:6 (expressing concern about the appropriateness of expending HOA funds on this litigation), 25:14-26:8. This testimony is attributable to the HOA as an entity, thus putting the HOA in the awkward position of having testified under oath that it should not have intervened in a suit in which it remains a party. *Id.* Furthermore, despite being aware of the Congregation’s activities in the Highlands of McKamy since early 2011, the HOA did not take any action to oppose those activities until October 14, 2013, in a letter sent to the Gothelfs. Exhibit F at 55:7-55:22; Exhibit CC (October 14, 2013 letter). The HOA sent this letter despite concluding that it had no right to stop the Congregation from worshiping in homes in the neighborhood. Exhibit U at 3. Moreover, its counsel had concluded that (1) the restrictive covenants lacked “preferred language,” and (2) the HOA may be barred from opposing the Congregation’s activities for failing to object for approximately three years. Exhibit V at 4, 6.

As a result of sentiments within the neighborhood that the HOA should not be involved in this suit, the homeowners voted to remove Schneider from the board on July 20, 2014, and the remaining members of the Schneider Board were only narrowly retained. Exhibit J at 51:10-53:12; Exhibit O at 21:23-25:17; Exhibit P at 30:25-33:6.

## **I. The HOA's History of Non-Enforcement of the Restrictive Covenants and Singling Out of the Congregation**

When the HOA suddenly decided to oppose the religious activities of its own members, it was the first time that the HOA had brought an enforcement action in court in the HOA's 35-year history since 1979. Exhibit I at 14:12-15:5, 17:17-17:20; Exhibit J at 58:1-61:16; Exhibit O at 55:10-55:13. Indeed, the HOA was required to implement a "new policy" to enforce the residential-only restrictive covenant in February 2014. Exhibit P at 21:4-21:20; Exhibit Y. This is true notwithstanding the fact that there are currently numerous non-residential uses of property in the Highlands of McKamy, and there have been others over the years. For example:

- There is an eldercare facility at 7038 Lattimore Dr. known as the Weismer House. Exhibit C at 39:18-40:9; Exhibit D at 88:15-89:16; Exhibit J at 56:9-57:9; Exhibit O at 51:3-51:12; Exhibit DD (HOA minutes reflecting HOA knew of use in 2006); Exhibit EE (letter reflecting HOA knew of use in 2001); business web site at <http://www.weismerhouse.com>.
- There is a residential care facility at 6806 Rocky Top Circle known as Wellington Residential Care. Exhibit C at 39:18-40:9; Exhibit D at 88:15-89:16; Exhibit J at 56:9-57:9; Exhibit O at 51:3-51:12; Exhibit FF (letter reflecting HOA knew of use in 2011); business web site at <http://www.wellingtonresidentialcaredallas.com>.
- A home on Bremerton Court regularly conducts swimming lesson camps. Exhibit C at 39:18-40:9; Exhibit D at 88:15-89:16; Exhibit I at 18:5-19:1; Exhibit O at 51:13-51:19; Exhibit GG at 2 (minutes reflecting HOA knew of use in 2013).
- A used car business with a revolving inventory of cars operates on Judi Street. Exhibit HH.
- A seven-day per week music school that has hosted a recital operates on Judi Street. Exhibit HH.
- The wife of the HOA's secretary ran a court reporting business from her home. Exhibit P at 38:13-38:19; 40:9-40:24; Exhibit II (reflecting business address on Mumford Street); business web site at <http://www.bradfordcourtreporting.com>.
- An HOA board member has mentioned a garage rental apartment near his home. Exhibit JJ (2013 email from Ted Day mentioning "a garage near my home has been converted to a rental apartment").

- Schneider testified that an attorney in the neighborhood runs his law practice from his home. Exhibit J at 60:19-61:8.
- A former neighborhood resident operated a sales business from her home. Exhibit P at 38:2-38:12.
- A business training center was formerly operated at 7031 Bremerton Drive. Exhibit KK (HOA board minutes reflecting knowledge of existence of business training center in 2007 and 2008).
- Schneider maintains a shed in his yard in direct violation of the residential-only restrictive covenant. Exhibit J at 23:21-25:13; Exhibit S.

Under its “new policy” or otherwise, the HOA has never brought an enforcement action regarding any of these other non-residential uses, arbitrarily singling out the Congregation’s activities. Exhibit I at 14:12-15:5, 17:17-17:20; Exhibit J at 58:1-61:16; Exhibit O at 55:10-55:13.

## **J. Plaintiffs’ Claims**

In the two operative Petitions in this case, Plaintiffs assert the following claims:

- The HOA brings a claim against Mark and Judith Gothelf for breach of the restrictive covenants. *See* Petition in Intervention, filed March 13, 2014, at 9-10. The HOA does not seek monetary damages in connection with the claim, but rather asks the Court to enter a declaratory judgment. *Id.* The Court has denied the HOA’s motion for summary judgment on this claim. Schneider brings the same claim against the Gothelfs and the Congregation. *See* First Amended Petition, filed April 2, 2014, at 12.
- The HOA brings a claim for a temporary and permanent injunction to prohibit the Gothelfs from permitting the Congregation and its members to practice their religion at 7103 Mumford Court. *See* Petition in Intervention, filed March 13, 2014, at 10-12. The Court has denied the HOA’s request for a temporary injunction, leaving only the request for permanent injunctive relief to be adjudicated. Schneider brings the same claim against the Gothelfs and the Congregation. *See* First Amended Petition, filed April 2, 2014, at 13-16.<sup>13</sup>
- The HOA brings a claim against the Gothelfs for a discretionary statutory penalty of up to \$200 per day for alleged violations of the restrictive covenants. *See*

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<sup>13</sup> Schneider also brings a second, duplicative claim seeking a permanent injunction. *See* First Amended Petition, filed April 2, 2014, at 18-19 (“Count 5 – Likelihood of Future Violations”).

Petition in Intervention, filed March 13, 2014, at 12-13. Schneider brings the same claim against the Gothelfs and the Congregation, although the relevant statute does not authorize individual homeowners to pursue damages. *See* First Amended Petition, filed April 2, 2014, at 16-18.

- The HOA brings a claim against the Gothelfs to recover its attorneys' fees and costs. *See* Petition in Intervention, filed March 13, 2014, at 13.
- Schneider brings a purported claim against Defendants for \$50,000 in compensatory damages for allegedly causing his home to decline in value. *See* First Amended Petition, filed April 2, 2014, at 18. It is unclear what legal cause of action (if any) Schneider sues under, as the title of the claim is simply "Count 4 – Damage to Schneider's Property," and nothing within the text of the count identifies a specific cause of action. *Id.*

Each of these claims requires Plaintiffs to show that Defendants have breached the restrictive covenants. Thus, if there has been no breach and/or if Defendants establish an affirmative defense on the issue of breach, all of Plaintiffs' claims necessarily fail.

### **III. SUMMARY JUDGMENT GROUNDS**

Defendants are entitled to summary judgment on the following independent grounds:

- Defendants are entitled to summary judgment on all of Schneider's claims, and the Gothelfs are entitled summary judgment on all of the HOA's claims because Defendants have established their affirmative defense under the Texas Religious Freedom Restoration Act.
- Defendants are entitled to summary judgment on all of Schneider's claims, and the Gothelfs are entitled summary judgment on all of the HOA's claims because Defendants have established their affirmative defense under the Religious Land Use and Institutionalized Persons Act.
- The Gothelfs are entitled to summary judgment on all of the HOA's claims because Defendants have established their affirmative defense that the HOA's actions were arbitrary, capricious, or discriminatory under the Texas Property Code.
- Defendants are entitled to summary judgment on all of Schneider's claims, and the Gothelfs are entitled summary judgment on all of the HOA's claims because Defendants have established their affirmative defense that the Highlands of McKamy's residential use restriction has been waived and/or abandoned.

- The Gothelfs are entitled to summary judgment on all of the HOA’s claims because Defendants have established the affirmative defense of laches.
- Defendants are entitled to summary judgment on all of Schneider’s claims because Defendants have established the affirmative defense of unclean hands.
- Defendants are entitled to summary judgment on Schneider’s claim for a permanent injunction, and the Gothelfs are entitled to summary judgment on the HOA’s claim for a permanent injunction to the extent Plaintiffs seek injunctive relief that would prohibit the Congregation from meeting at 7103 Mumford Court. No balancing of the equities could possibly support the issuance of such an injunction.
- Defendants are entitled to summary judgment on Schneider’s claim for statutory damages under the Texas Property Code because the law does not permit individual homeowners to recover such damages. Therefore, no evidence supports the claim.
- Defendants are entitled to summary judgment on Schneider’s claim for an alleged decline in value of his home because there is no evidence that supports the claim.

#### **IV. ARGUMENT AND AUTHORITIES**

##### **A. Summary Judgment Standards**

Texas Rule of Civil Procedure 166a governs the propriety of summary judgments. Entry of summary judgment is appropriate where the summary judgment record establishes that there are no genuine issues of material fact, and that movant is entitled to judgment as a matter of law. Tex. R. Civ. P. 166a(c). A defendant moving for summary judgment must conclusively negate at least one essential element of each of the plaintiff’s causes of action, or conclusively establish an affirmative defense. *Randall’s Food Mkts., Inc. v. Johnson*, 891 S.W.2d 640, 644 (Tex. 1995). When moving for summary judgment on a plaintiff’s claim, once a defendant presents evidence entitling it to summary judgment by negating an element of the claim, the burden shifts to the plaintiff to present evidence raising a fact issue on the negated element. *Lecton v. Dyll*, 65 S.W.3d 696, 701 (Tex. App.—Dallas 2001, pet. denied). When moving for summary judgment

on an affirmative defense, the defendant has the burden to conclusively establish that defense. *KPMG Peat Marwick v. Harrison Cnty. Hous. Fin. Corp.*, 988 S.W.2d 746, 748 (Tex. 1999).

Under Texas Rule of Civil Procedure 166a(i), a party may also move for summary judgment on the ground that there is no evidence of one of the essential elements of a claim on which an adverse party would have the burden of proof at trial. A no-evidence motion for summary judgment “is essentially a motion for a pretrial directed verdict. Once such a motion is filed, the burden shifts to the nonmoving party to present evidence raising an issue of material fact as to the elements specified in the motion.” *Mack Trucks, Inc. v. Tamez*, 206 S.W.3d 572, 582 (Tex. 2006). “The Court must grant the motion unless the respondent produces summary judgment evidence raising a genuine issue of material fact.” Tex. R. Civ. P. 166a(i).

**B. Defendants are Entitled to Summary Judgment on Each of Their Affirmative Defenses.**

Defendants have asserted six independent affirmative defenses, each of which independently entitles Defendants to summary judgment. *See* Defendants’ First Amended Answer, filed October 1, 2014, at ¶¶ 2-7. Each defense is entirely dispositive as to all claims of one or both Plaintiffs. *See supra* Section III. Thus, although Defendants contend that each defense has been established as a matter of law, Defendants need only win summary judgment on a single defense as to each Plaintiff in order for Plaintiffs’ claims to be dismissed in their entirety.

**1. Interpreting the restrictive covenants to prevent the Congregation’s religious activities would violate the Texas Religious Freedom Restoration Act.**

Texas RFRA prohibits the government from “substantially burden[ing] a person’s free exercise of religion” unless the burden “is in furtherance of a compelling governmental interest” and “is the least restrictive means of furthering that interest.” Tex. Civ. Prac. & Rem. Code § 110.003. This prohibition against governmental burden of the free exercise of religion applies



whether or not the government itself is a party to the action. Tex. Civ. Prac. & Rem. Code § 110.004 (“A person whose free exercise of religion has been substantially burdened . . . may assert that violation as a defense in a judicial or administrative proceeding without regard to whether the proceeding is brought in the name of the state or by any other person.”).

**a. Texas RFRA applies to this litigation.**

Texas RFRA applies to this litigation in three independent ways: (i) Plaintiffs are seeking to enforce state statutes that are subject to Texas RFRA, (ii) judicial enforcement of restrictive covenants is itself state action subject to Texas RFRA, and (iii) homeowners’ associations are quasi-governmental entities that are themselves subject to Texas RFRA.

**i. Plaintiffs are seeking to enforce state statutes that are subject to Texas RFRA.**

Texas RFRA “applies to each law of this state unless the law is expressly made exempt from the application of this chapter by reference to this chapter.” Tex. Civ. Prac. & Rem. Code § 110.002(c). Each of Plaintiffs’ claims is based in state law that has not been exempted from Texas RFRA. Fundamentally, Plaintiffs are seeking to enforce restrictive covenants, both the creation and the enforcement of which are authorized by Tex. Prop. Code §§ 5.001 *et seq.* and 202.001 *et seq.* None of these statutes, however, has been exempted from Texas RFRA and are thus subject to the limitations imposed by Texas RFRA. This is true even though the state is not a party to this litigation. Tex. Civ. Prac. & Rem. Code § 110.004.

**ii. Judicial enforcement of restrictive covenants is itself state action subject to Texas RFRA.**

Not only are the underlying statutes themselves subject to Texas RFRA, but any judicial enforcement of Plaintiffs’ claims is itself state action subject to Texas RFRA. The principle that judicial enforcement of restrictive covenants is state action subject to constitutional protections

was first applied by the United States Supreme Court in *Shelley v. Kraemer*, 334 U.S. 1 (1943). In that case, the Court refused to enforce restrictive covenants that limited the use or occupancy of a building on the basis of race because judicial action enforcing them would be state action that would violate the Fourteenth Amendment to the United States Constitution. The Court noted that judicial enforcement had long been considered state action in other contexts as well. *Shelley*, 334 U.S. at 16-18 (*see, e.g., American Federation of Labor v. Swing*, 312 U.S. 321 (1941) (refusing to enforce a common-law policy that would restrain peaceful picketing because judicial enforcement of the policy would offend the Constitution)); *see also Shaver v. Hunter*, 626 S.W.2d 574, 578-79 (Tex. App.—Amarillo 1981, writ ref'd n.r.e.) (subjecting the state's action in enforcing a restrictive covenant to constitutional scrutiny); *Gerber v. Long Boat Harbour*, 757 F. Supp. 1339, 1341 (M.D. Fla. 1991) (“[J]udicial enforcement of private agreements contained in a declaration of condominium constitutes state action and brings the heretofore private conduct within the scope of the Fourteenth Amendment, through which the First Amendment guarantee of free speech is made applicable to the state.”).

That judicial enforcement is state action subject to Texas RFRA is an even easier case. Texas RFRA itself includes a definition of state action that is very broad, applying to “any ordinance, rule, order, decision, practice, or other exercise of governmental authority,” which encompasses judicial action. Accordingly, at least one Texas court has suggested that judicial enforcement of restrictive covenants would be subject to Texas RFRA. *See Voice of the Cornerstone Church Corp. v. Pizza Prop. Partners*, 160 S.W.3d 657, 672 n.10 (Tex. App.—Austin 2005, no pet.) (“Cornerstone did not raise the Texas Religious Freedom [Restoration] Act below in its pleadings, summary-judgment response, or briefing. *See Tex. Civ. Prac. & Rem. Code* § 110.004 (person whose free exercise of religion has been violated under act may assert

violation as defense in judicial or administrative proceeding). . . . Thus, we have no occasion here to consider the potential implication of the Act or the merit of ExxonMobil’s contention that it does not apply to courts. *See id.* § 110.001(a)(2) (defining ‘Government agency’ to include ‘any agency of this state . . . including a department’), .002(a) (Act ‘applies to any . . . order, decision, practice or other exercise of governmental authority.’)” (second and third ellipses in original)).

**iii. Homeowners’ associations are quasi-governmental entities that are themselves subject to Texas RFRA.**

Finally, homeowners’ associations themselves are subject to Texas RFRA because of their quasi-governmental nature. *See Mayad v. Cummins Lane Owners Ass’n*, 1988 Tex. App. LEXIS 1973, at \*4 (Tex. App.—Houston [1st Dist.] Aug. 11, 1988, no writ) (“[A]n owners association is a ‘quasi-governmental’ entity with the power to charge individual owners assessments to fund common expenses.”); *Belvedere Condominium Unit Owners’ Ass’n v. R.E. Roark Cos.*, 617 N.E.2d 1075, 1080 (Ohio 1993) (“An owners’ association acts as a ‘quasi-governmental entity paralleling in almost every case the powers, duties, and responsibilities of a municipal government.”) (quoting Hyatt & Rhoads, *Concepts of Liability in the Development and Administration of Condominium and Home Owners Associations*, 12 *Wake Forest L. Rev.* 915, 918 (1976)); *Colo. Homes v. Loerch-Wilson*, 43 P.3d 718, 722 (Colo. Ct. App. 2001) (homeowners associations serve “quasi-governmental functions”).

In *Marsh v. Alabama*, 326 U.S. 501 (1946), the Supreme Court struck down a privately-owned town’s restrictions on distributing flyers and recognized that Constitutional protections can limit even private property rights when the property is taking on the nature of a governmental entity. The *Marsh* Court stated,

When we balance the Constitutional rights of owners of property against those of the people to enjoy freedom of press and religion, as we must here, we remain mindful of the fact that the latter occupy a preferred position. As we have stated before, the right to exercise the liberties safeguarded by the First Amendment “lies at the foundation of free government by free men” and we must in all cases “weigh the circumstances and . . . appraise the . . . reasons . . . in support of the regulation . . . of the rights.” *Schneider v. State*, 308 U.S. 147, 161. In our view, the circumstance that the property rights to the premises where the deprivation of liberty, here involved, took place, were held by others than the public, is not sufficient to justify the State’s permitting a corporation to govern a community of citizens so as to restrict their fundamental liberties and the enforcement of such restraint by the application of a state statute.

*Marsh*, 326 U.S. at 509 (ellipses in original).

Here, the HOA is “govern[ing] a community of citizens” in just such a way that it is violating their most fundamental rights—rights that Texas RFRA was intended to protect. *See Barr v. City of Sinton*, 295 S.W.3d 287, 305-06 (Tex. 2009) (noting that Texas RFRA protects “fundamental, constitutional rights” that are superior to the interests protected by zoning ordinances); *see also E. Tex. Baptist Univ. v. Sebelius*, 2013 U.S. Dist. LEXIS 180727 at \*77-78 (S.D. Tex. Dec. 27, 2013) (holding, in interpreting the Federal Religious Freedom Restoration Act, upon which Texas RFRA is based, that “[p]rotecting constitutional rights and the rights under RFRA are in the public’s interest”). If fully private property, as in *Marsh*, is limited in its ability to restrict fundamental liberties, how much more should a quasi-governmental entity such as the HOA be limited in its ability to restrict fundamental liberties.

**b. Preventing the Congregation from meeting at 7103 Mumford Court would completely prevent thirty families from being able to worship, which is a substantial burden on their religious exercise.**

There is no bright-line rule for what constitutes a “substantial burden.” The Texas Supreme Court has held that Texas RFRA, “like its federal cousins, ‘requires a case-by-case, fact-specific inquiry.’” *Barr*, 295 S.W.3d at 302 (quoting *Adkins v. Kaspar*, 393 F.3d 559, 570 (5th Cir. 2004)).

*Barr*, however, provides an example of a situation that the Texas Supreme Court held to be a substantial burden. In that case, Barr, on the basis of his religious convictions, operated a halfway house in two homes. The City of Sinton, Texas, wanted Barr to relocate, but finding a viable alternative location for the halfway house was unlikely. *Barr*, 295 S.W.3d at 302. The Texas Supreme Court held that prohibiting Barr from exercising his faith through operating the halfway house was a substantial burden. Furthermore, the Texas Supreme Court held that “evidence of *some* possible alternative, irrespective of the difficulties presented, does not, standing alone, disprove substantial burden.” *Id.* The Court noted that “[i]n a related context, the [United States] Supreme Court has observed that ‘one is not to have the exercise of his liberty of expression in appropriate places abridges on the plea that it may be exercised in some other place.’” *Id.* (quoting *Schneider v. New Jersey*, 308 U.S. 147, 163 (1939)). The *Barr* Court also pointed to an example similar to the present case in *Islamic Ctr. of Miss., Inc. v. City of Starkville*, 840 F.2d 293, 294 (5th Cir. 1988), in which Starkville, Mississippi, violated the Free Exercise Clause by attempting to use zoning restrictions to keep Muslim students from worshipping in a home in a residential area of Starkville. “By making a mosque relatively inaccessible within the city limits to Muslims who lack automobile transportation, the City burdens their exercise of their religion.’ . . . Although the zoning ordinance did not foreclose all locations, the court determined ‘relatively impecunious Muslim students’ were left with ‘no practical alternatives for establishing a mosque in the city limits.’” *Id.* at 304 (quoting *Islamic Ctr.*, 840 F.2d at 299-300).

The Texas Supreme Court also rejected the idea that the size of the relevant location alleviates the substantial burden, stating, “The City argues that its zoning restrictions on locating Barr’s ministry inside city limits could not have been a substantial burden because the City is so

small that excluding the ministry from inside the city limits was inconsequential. But size alone is not determinative. . . . [In *Schad v. Borough of Mount Ephraim*, 452 U.S. 61 (1981), t]he Supreme Court did not consider the small size of the municipality to be important and specifically rejected the argument that the adult entertainment business at issue could simply move elsewhere.” *Id.* at 302-03.

The City of Sinton also argued that relocating Barr’s halfway house was not a substantial burden because the parolees could be disbursed among other homes. The Texas Supreme Court rejected this argument, too, holding that “a burden on a person’s religious exercise is not insubstantial simply because he could always choose to do something else.” *Id.* at 303.

In the present case, the Congregation must meet within walking distance of its members and within the North Dallas Eruv. *See supra* Sections II.A., II.D., II.E.; Exhibit C at 28:20-29:2; Exhibit D at 30:20-31:4, 39:25-40:4, 74:16-75:3, 84:1-84:13; Exhibit F at 72:9-73:4. After searching for a suitable location to replace Rabbi Rich’s home, which is within the HOA, 7103 Mumford Court was determined to be the only viable location that was available to the Congregation. Exhibit C at 31:4-33:19; Exhibit D at 41:15-42:7, 66:1-68:4. If the Congregation cannot meet at 7103 Mumford Court, then, because of the restrictions placed upon the Congregation by their Orthodox Jewish religious beliefs, they will be unable to have communal worship. *Id.*; *see supra* Section II.E. The practical abolition of the Congregation’s members’ religious worship is a much more significant burden than that in *Barr*, and is similar to the burden in *Islamic Ctr.*

**c. Plaintiffs do not have a compelling interest in prohibiting the Congregation from meeting at 7103 Mumford Court.**

Because Plaintiffs’ action would substantially burden Defendants’ religious freedoms, Plaintiffs have the burden of showing that their interests are compelling. The Texas Supreme

Court noted that, “[b]ecause religious exercise is a fundamental right, that justification can only be found in ‘interests of the highest order’, to quote the Supreme Court in [*Wisconsin v. Yoder*], 406 U.S. 205, 215 (1972)], and to quote *Sherbert [v. Verner]*, 374 U.S. 398, 406 (1945)], only to avoid ‘the gravest abuses, endangering paramount interest[s].’” *Barr*, 295 S.W.3d at 306.

Not only must a compelling interest be an interest “of the highest order,” the Texas Supreme Court pointed to the United States Supreme Court’s holding that:

“RFRA requires the Government to demonstrate that the compelling interest is satisfied through application of the challenged law ‘to the person’—the particular claimant whose sincere exercise of religion is being substantially burdened.” To satisfy this requirement, the Supreme Court stated, courts must “look[] beyond broadly formulated interests justifying the general applicability of government mandates and scrutinize[] the asserted harm of granting specific exemption to particular religious claimants.”

*Id.* at 306 (quoting *Gonzalez v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418, 430-31, 439 (2006) (brackets in original)). “In this regard, there is no basis for distinguishing RFRA from [Texas ] RFRA; the same requirement verbatim is in both.” *Id.*

The Texas Supreme Court held that interests such as “preserv[ing] the public safety, morals, and general welfare” are “the kind of ‘broadly formulated interest’ that does not satisfy the scrutiny mandated by [Texas ] RFRA.” *Id.* The Court went on to note, particularly relevantly to the present litigation, “[T]he compelling interest test must be taken seriously. Courts and litigants must focus on real and serious burdens to neighboring properties, and not assume that zoning codes inherently serve a compelling interest, or that every incremental gain to city revenue (in commercial zones), or incremental reduction of traffic (in residential zones), is compelling.” *Id.* at 307 (quoting Douglas Laycock, *State RFRA’s and Land Use Regulation*, 32 U.C. Davis L. Rev. 755, 784 (1999)).

Plaintiffs have not shown any compelling interest in preventing the Congregation from meeting at 7103 Mumford Court. Their stated interests have included being forced to wait while a blind man and a woman pushing a stroller crossed the street and general concerns about parking. *See supra* Section II.F. None of these concerns are “real and serious burdens to neighboring properties” that would constitute “an interest of the highest order” and avoid “the gravest abuses, endangering paramount interests.”

Any assertion by Plaintiffs that they have a compelling interest in prohibiting the Congregation from meeting at 7103 Mumford Court is further undercut by their refusal to stop other uses within the Highlands of McKamy IV and V that are non-residential. *See supra* Section II.I.; Exhibit I at 14:12-15:5, 17:17-17:20; Exhibit J at 58:1-61:16; Exhibit O at 55:10-55:13. As the Supreme Court noted, “a law cannot be regarded as protecting an interest of the highest order when it leaves appreciable damage to that supposedly vital interest unprohibited.” *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 547 (1993) (internal citations omitted). In this case, Plaintiffs have never sued to prohibit non-residential uses within the HOA, and thus the same claimed “harms” Plaintiffs allege here abound throughout the neighborhood without any attempt to curb them. *See supra* Section II.I.; Exhibit I at 14:12-15:5, 17:17-17:20; Exhibit J at 58:1-61:16; Exhibit O at 55:10-55:13. Their efforts to stop the Congregation and the Gothelfs are thus unique, demonstrating that the interests are manufactured and not compelling.

**d. Prohibiting the Congregation from meeting at 7103 Mumford Court is not the least restrictive means of furthering any compelling interest.**

To avoid summary judgment, not only must Plaintiffs show that they have a compelling interest in prohibiting the Congregation from meeting at 7103 Mumford Court, Plaintiffs must also show that their actions in prohibiting the Congregation from meeting at 7103 Mumford



Court are the “least restrictive means” of achieving their compelling interest. Tex. Civ. Prac. & Rem. Code § 110.003. “The least-restrictive-means standard is exceptionally demanding. . . .” *Hobby Lobby Stores, Inc. v. Burwell*, 134 S. Ct. 2751, 2781 (2014). In order to satisfy the least-restrictive-means test, Plaintiffs must show that they lack any other means of achieving any compelling interest “without imposing a substantial burden on the exercise of religion by the objecting parties.” *Id.* at 2782. Plaintiffs have been unwilling to even discuss alternatives to completely prohibiting the Congregation from meeting at 7103 Mumford Court, but even if Plaintiffs had an interest that qualified as compelling, a resolution short of stopping the religious exercise of the members of the Congregation could be found. For example, Plaintiffs could have sought to limit parking near 7103 Mumford Court, ensure that the home maintains its exterior character, etc. Instead, Plaintiffs seek the broadest possible relief—a complete shutdown of the Congregation that would prohibit any gathering at all.

**2. Interpreting the restrictive covenants to prevent the Congregation’s religious activities would violate the Religious Land Use and Institutionalized Persons Act.**

There is a second, independent statute that forecloses Plaintiffs’ claims—a statute that Congress enacted to prohibit the very actions taken by Plaintiffs here. RLUIPA “is the latest of long-running congressional efforts to accord religious exercise heightened protection from government-imposed burdens, consistent with [the Supreme] Court’s precedents.” *Cutter v. Wilkinson*, 544 U.S. 709, 714 (2005). Following the Supreme Court’s refusal to apply Federal RFRA against the states, Congress enacted a more measured attempt to ensure that state and local governments protect the rights of religious institutions and adherents in two particular contexts where Congress concluded that constitutional rights were most threatened by laws of general applicability: land use regulation and religious exercise by institutionalized persons. *Cutter*, 544 U.S. at 715; 42 U.S.C. §§ 2000cc, 2000cc-1. As Congress recognized, land use

regulations pose a particularly serious risk to religious freedom because “[t]he right to assemble for worship is at the very core of the free exercise of religion,” and “[c]hurches and synagogues cannot function without a physical space adequate to their needs and consistent with their theological requirements.” 146 Cong. Rec. 16698 (2000). Importantly, Congress specifically described “[t]he right to build, buy, or rent such a space [a]s an indispensable adjunct of the core First Amendment right to assemble for religious purposes.” *Id.*

To protect this right, RLUIPA imposes several limitations, divided into two categories, on government land-use restrictions relevant here. *First*, the “Substantial Burden Clause” uses the same fundamental test that is employed by Texas RFRA. *Second*, under the category of “Discrimination and exclusion,” the “Equal Terms Clause” provides that “No government shall impose or implement a land use regulation in a manner that treats a religious assembly or institution on less than equal terms with a nonreligious assembly or institution.” RLUIPA § 2000cc(b)(1). *Third*, the “Nondiscrimination Clause” prohibits any government from “impos[ing] or implement[ing] a land use regulation that discriminates against any assembly or institution on the basis of religion or religious denomination.” RLUIPA § 2000cc(b)(2). *Finally*, the “Unreasonable Limitation Clause” prohibits governments from “impos[ing] or implement[ing] a land use regulation that . . . unreasonably limits religious assemblies, institutions, or structures within a jurisdiction.” RLUIPA § 2000cc(b)(3)(B). Congress specifically provided that RLUIPA “shall be construed in favor of a broad protection of religious exercise, to the maximum extent permitted by the terms of this Act and the Constitution.” RLUIPA § 2000cc-3(g). Plaintiffs violate all four of these restrictions.

**a. RLUIPA applies to this litigation.**

RLUIPA applies to this litigation for the same reasons that Texas RFRA applies to this litigation as discussed in Section IV.B.1.a. above. Furthermore, while the application of RLUIPA to restrictive covenants has yet to be litigated, the United States Court of Appeals for the Eleventh Circuit itself raised the issue that RLUIPA may apply to restrictive covenants. *Konikov v. Orange County*, 410 F.3d 1317, 1324 n.3 (11th Cir. 2005) (noting that a restrictive covenant “originating from” a neighborhood homeowners’ association “might constitute a constitutional violation and substantial burden in violation of RLUIPA”).

**b. Plaintiffs have violated RLUIPA’s Substantial Burden Clause.**

RLUIPA’s Substantial Burden Clause has the same basic test that Texas RFRA uses. This clause provides that “[n]o government shall impose or implement a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution, unless the government demonstrates that imposition of the burden on that person, assembly, or institution – (A) is in furtherance of a compelling governmental interest; and (B) is the least restrictive means of furthering that compelling governmental interest.” RLUIPA § 2000cc(a)(1). Because this test is the same as the test used by Texas RFRA, and because Plaintiffs have substantially burdened Defendants’ religious exercise, do not have a compelling interest to do so, and have not used the least restrictive means, Defendants are entitled to prevail under the Substantial Burden Clause of RLUIPA.

**c. Plaintiffs have violated RLUIPA’s Equal Terms Clause.**

RLUIPA’s Equal Terms Clause prohibits the government from “treat[ing] the Church on terms that are less than equal to the terms on which it treats similarly situated nonreligious institutions.” *The Elijah Grp. v. City of Leon Valley, Tex.*, 643 F.3d 419, 424 (5th Cir. 2011).

The test is one of strict liability: if a restrictive covenant treats a church on less than equal terms than a similarly situated nonreligious institution, Plaintiffs have no opportunity to offer a justification for the disparity. *See, e.g., id.* (finding a violation of RLUIPA’s Equal Terms Clause after determining that a church was treated on less than equal terms with a nonreligious institution, without any analysis of possible justification); *Lighthouse Inst. for Evangelism, Inc. v. City of Long Branch*, 510 F.3d 253, 269 (3d Cir. 2007) (same). The only concern of the Equal Terms Clause is whether “secular and religious institutions are treated equally.” *Third Church of Christ, Scientist v. City of New York*, 626 F.3d 667, 671 (2d Cir. 2010); *see also Centro Familiar Cristiano Buenas Nuevas v. City of Yuma*, 651 F.3d 1163, 1172 (9th Cir. 2011) (“Both because the language of the equal terms provision does not allow for it, and because it would violate the ‘broad construction’ provision, we cannot accept the notion that a ‘compelling governmental interest’ is an exception to the equal terms provision, or that the church has the burden of proving a ‘substantial burden’ under the equal terms provision.”).

In the present case, Plaintiffs have acknowledged that while there are non-residential uses within the HOA, no enforcement action has been brought against any such uses. *See supra* Section II.I.; Exhibit I at 14:12-15:5, 17:17-17:20; Exhibit J at 58:1-61:16; Exhibit O at 55:10-55:13. The only enforcement action brought under the residential use provision of the restrictive covenants has been against Defendants in violation of RLUIPA’s Equal Terms Clause.

**d. Plaintiffs have violated RLUIPA’s Nondiscrimination and Unreasonable Limitation Clauses.**

Because of Plaintiffs’ refusal to enforce their restrictive covenants against anyone except Defendants, their enforcement is both discriminatory against Defendants’ religious exercise and unreasonable, in violation of RLUIPA.

**3. The HOA's claims are barred because the HOA has arbitrarily singled out Defendants.**

The Texas Property Code also independently forecloses the HOA's claims. Under that statute, a homeowners' association may not enforce a restrictive covenant if the decision to do so is arbitrary, capricious, or discriminatory. *See* Tex. Prop. Code § 202.004(a). The Property Code prevents homeowners' associations from enforcing a restrictive covenant against a property owner when the association has not enforced similar alleged violations against others in the neighborhood. *Leake v. Campbell*, 352 S.W.3d 180, 190 (Tex. App.—Fort Worth 2011, no pet.) (enforcement against one owner but not others committing similar alleged violations is evidence of arbitrariness); *Nolan v. Hunter*, 2013 Tex. App. LEXIS 11990, at \*12-14 (Tex. App.—San Antonio Sept. 25, 2013, no pet.) (homeowners association's opposition to a fence was arbitrary, capricious, or discriminatory when there were other similar fences in the neighborhood).

Here, this lawsuit is the only enforcement action the HOA has ever brought since it was formed in 1979. *See supra* Section II.I.; Exhibit I at 14:12-15:5, 17:17-17:20; Exhibit J at 58:1-61:16; Exhibit O at 55:10-55:13. Yet, there are numerous non-residential uses of property in the neighborhood that the HOA has never attempted to stop. *See supra* Section II.I. As catalogued above, non-residential uses such as an eldercare facility, a residential care facility, swimming camps, a court reporting business, a music school, a used car business, and others have occurred freely in the neighborhood. *See supra* Section II.I. Only after Schneider took over the board and the Schneider Board implemented a "new policy" in early 2014 did the HOA decide to get involved in this suit. *See supra* Section II.G. The "new policy," however, has not been enforced against anyone other than Defendants. The HOA's action can only be described as arbitrary as a

matter of law, and thus the Gothelfs are entitled to granted summary judgment for this reason alone.

**4. Plaintiffs have waived and/or abandoned their right to enforce the residential use restriction because the HOA has never attempted to prevent other non-residential uses of homes within the Highlands of McKamy.**

The common law doctrine of waiver precludes both Plaintiffs' claims as a matter of law. Until this case, the HOA had never filed suit to enforce its residential-only restrictive covenant since its founding in 1979. *See supra* Section II.I.; Exhibit I at 14:12-15:5, 17:17-17:20; Exhibit J at 58:1-61:16; Exhibit O at 55:10-55:13. The HOA has had this hands-off approach for years despite the existence of numerous non-residential uses of property in the neighborhood. *See supra* Section II.I. As a result of the HOA's inaction, Article VI.1 of the restrictive covenants has therefore been waived and is no longer enforceable.

“A party asserting waiver of a restrictive covenant or deed restriction must prove . . . that the party seeking enforcement of the covenant or restriction has acquiesced in such substantial violations to amount to abandonment of the covenant or restriction.” *Loch ‘N’ Green Vill. Section Two Homeowners Ass’n v. Murtaugh*, 2013 Tex. App. LEXIS 6613, at \*14 (Tex. App.—Fort Worth May 30, 2013, no pet.). “Among the factors to be considered are the number, nature and severity of the existing violations, any prior acts of enforcement, and whether it is still possible to realize to a substantial degree the benefits sought to be obtained by way of the covenants.” *Wildwood Civic Ass’n v. Martin*, 1995 Tex. App. LEXIS 1575, at \*13 (Tex. App.—Houston [1st Dist.] July 13, 1995, no writ). “Evidence showing multiple violations of a restrictive covenant in a subdivision is more than sufficient to uphold a trial court’s finding that the restrictive covenant has been abandoned.” *Glenwood Acres Landowners Ass’n v. Alvis*, 2007

Tex. App. LEXIS 6060, at \*7 (Tex. App.—Tyler July 31, 2007, no pet.).<sup>14</sup> “Waiver may be proved by a party’s express renunciation of an actually or constructively known right or by silence or inaction for so long a period as to show an intention to yield the known right.” *Loch ‘N’ Green*, 2013 Tex. App. LEXIS 6613, at \*14 (citation omitted). “[L]ong-term acquiescence in violations of . . . restrictions” supports granting summary judgment on the issue of waiver. *Id.* at \*20-22 (granting summary judgment on waiver based on failure to attempt to enforce restrictions over a period of years).

Courts commonly find that a provision has been waived where, as here, there are multiple similar uses coupled with a history of non-enforcement. *See, e.g.:*

- *Loch ‘N’ Green*, 2013 Tex. App. LEXIS 6613, at \*12-22 (granting summary judgment on waiver where association had not sought to enforce other alleged violations);
- *Glenwood Acres*, 2007 Tex. App. LEXIS 6060, at \*5-7 (finding waiver where association had not enforced mobile home prohibition against others);
- *Lay v. Whelan*, 2004 Tex. App. LEXIS 5777, at \*12-17 (Tex. App.—Austin July 1, 2004, pet. denied) (finding waiver where there were similar alleged violations and no evidence of prior enforcement actions);
- *Wildwood*, 1995 Tex. App. LEXIS 1575, at \*11-15 (finding waiver where association had not enforced maintenance fee provision against another homeowner);
- *Foxwood Homeowners Ass’n v. Ricles*, 673 S.W.2d 376, 379-80 (Tex. App.—Houston [1st Dist.] 1984, writ ref’d n.r.e.) (affirming finding of waiver based on “similar violations” and where association was “inconsistent” in its enforcement efforts);

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<sup>14</sup> When a provision of a restrictive covenant has been waived, the waiver also applies in suits by individual homeowners—such as *Schneider*—in addition to applying to suits by homeowners’ associations. *See Cowling v. Colligan*, 312 S.W.2d 943, 945 (Tex. 1958) (holding in suit brought by individual homeowners that courts can refuse to enforce residential-only restrictive covenants based on “acquiescence of the lot owners . . . of substantial violations within the restricted area”); *Baker v. Brackeen*, 354 S.W.2d 660, 663 (Tex. Civ. App.—Amarillo 1962, no writ) (finding waiver in suit brought by individual homeowners). This makes sense, as the doctrine of waiver would be rendered a nullity if homeowners’ associations could evade its application merely by having an individual property owner bring a suit in his own name.

- *Baker*, 354 S.W.2d at 663 (finding waiver of residential-only provision where homeowners had not sought to enforce provision in the past).

Here, the numerous instances of non-residential uses of property that the HOA has never brought enforcement actions to stop—both current and past—in the Highlands of McKamy are more than sufficient to find that the residential-only restrictive covenant has been waived. As catalogued above, non-residential uses such as an eldercare facility, a residential care facility, swimming camps, a court reporting business, a music school, a used car business, and others have occurred freely in the neighborhood. *See supra* Section II.I. The residential-only provision has been waived as a matter of law, and the Court should grant Defendants summary judgment, dismissing all claims by both Plaintiffs, for this additional reason.

**5. The doctrine of laches bars the HOA’s claims.**

The HOA’s claims further fail under the common law defense of laches. A defendant establishes the defense of laches by showing “(1) unreasonable delay in asserting one’s legal or equitable rights and (2) a good faith change of position by another to his detriment because of the delay.” *Houston Lighting & Power Co. v. City of Wharton*, 101 S.W.3d 633, 639 (Tex. App.—Houston [1st Dist.] 2003, pet. denied).

The HOA unreasonably delayed in asserting its legal rights in this case. As noted above, the same Congregation activities that the HOA now challenges have taken place with the HOA’s knowledge at homes within the Highlands of McKamy since February 2011. Exhibit C at 33:20-34:14; Exhibit D at 77:12-78:11; Exhibit G (deposition notice to HOA); Exhibit H (HOA’s designation of Carolyn Peadon as representative to testify for the HOA); Exhibit I at 6:3-6:9, 9:3-10:2, 22:1-13 (Ms. Peadon’s testimony). The HOA did not take a position against these activities until October 14, 2013, well over two and half years after the Congregation’s activities first started in the Highlands of McKamy. Exhibit F at 55:7-55:22; Exhibit CC (October 14,



2013 letter). And the HOA did not take legal steps against the Congregation until March 2014, over three years after the Congregation began having its prayer and study activities at homes within the Highlands of McKamy. *See* Petition in Intervention, filed March 13, 2014. This delay is unreasonable as a matter of law. *See Henke v. Fuller*, 2005 Tex. App. LEXIS 3141, at \*8-12 (Tex. App.—San Antonio Apr. 27, 2005, no pet.).

In good faith reliance on the HOA's non-opposition, the Gothelfs purchased a home in the Highlands of McKamy, in part so that the Congregation and its members could use it to practice their religion. Exhibit D at 89:17-90:15. Moreover, in the months before the HOA first opposed the Congregation's activities, some of the Congregation's members purchased property in the area with the good faith belief that the Congregation would be able to have its activities in the neighborhood. Exhibit D at 90:16-90:24. The Gothelfs, the Congregation, and some of its members have thus all changed their position to their detriment in good faith reliance on the HOA's non-opposition. The defense of laches therefore precludes the HOA's claims as a matter of law. *See, e.g., Huntington Park Condo. Ass'n v. Van Wayman*, 2008 Tex. App. LEXIS 1480, at \*11-13 (Tex. App.—Corpus Christi Feb. 28, 2008, no pet.) (affirming trial court's application of laches where association did not sue until years after homeowner acted); *Henke*, 2005 Tex. App. LEXIS 3141, at \*8-12 (suit barred by laches where plaintiffs had not objected to defendant's prior similar use of property within the neighborhood and defendant had spent money in good faith reliance on this non-opposition).

**6. The doctrine of unclean hands bars Schneider's claims.**

“Under the doctrine of unclean hands, a court may refuse to grant equitable relief to a plaintiff who has been guilty of unlawful or inequitable conduct regarding the issue in dispute.” *Lazy M Ranch v. TXI Operations, LP*, 978 S.W.2d 678, 683 (Tex. App.—Austin 1998, pet. denied); *see also Jamison v. Allen*, 377 S.W.3d 819, 823-24 (Tex. App.—Dallas 2012, no pet.)

(holding that homeowners could not sue to enforce a restrictive covenant when they were in violation of the same covenant); *Foxwood Homeowners Ass'n v. Ricles*, 673 S.W.2d 376, 379 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.) (“Injunctive relief is an equitable remedy and the complaining party must come into court with clean hands . . .”).

Schneider is himself in violation of the residential-only restrictive covenant that forms the basis of his claims. He admits that he has a shed in his yard, and the residential-only restrictive covenant unambiguously prohibits sheds. Exhibit B at Article VI.1; Exhibit J at 23:21-25:13; Exhibit S. Schneider therefore comes to the Court with unclean hands. It is unconscionable to permit Schneider to sue on a covenant provision when he is indisputably in violation of that same covenant. *See Jamison*, 377 S.W.3d at 823-24. The Court should hold that the doctrine of unclean hands bars Schneider’s claims as a matter of law.

**C. Defendants are Entitled to Summary Judgment on Certain of Plaintiffs’ Claims for Additional Independent Reasons**

Independent of their affirmative defenses, Defendants are also entitled to summary judgment on certain of Plaintiffs’ claims for other independent reasons.

**1. Plaintiffs’ claims for a permanent injunction fail as a matter of law to the extent Plaintiffs seek an injunction that would prohibit the Congregation from meeting at 7103 Mumford Court.**

The HOA brings a claim for a permanent injunction to prohibit the Gothelfs from permitting the Congregation and its members to practice their religion at 7103 Mumford Court. *See* Petition in Intervention, filed March 13, 2014, at 10-12. Schneider brings the same claim against the Gothelfs and the Congregation. *See* First Amended Petition, filed April 2, 2014, at 13-16. These claims fail as a matter of law based upon an application of the proper factors to the undisputed facts here.

A permanent injunction is an equitable remedy that can only be issued by the Court, not a jury. *Priest v. Tex. Animal Health Comm'n.*, 780 S.W.2d 874, 876 (Tex. App.—Dallas 1989, no writ); *see also* Tex. R. Civ. P. 683. Among other requirements, in order to issue an injunction the Court must balance the equities to determine whether the harm from not issuing the injunction would exceed the harm from issuing the injunction. *Reliant Hosp. Partners, LLC v. Cornerstone Healthcare Grp. Holdings, Inc.*, 374 S.W.3d 488, 503 (Tex. App.—Dallas 2012, pet. denied). Even where a defendant has committed a primary violation of some kind, the Court should still refuse to enjoin the conduct if the balancing of the equities weighs against doing so. *See, e.g., Storey v. Cent. Hide & Rendering Co.*, 226 S.W.2d 615, 617-19 (Tex. 1950) (balancing equities to conclude that operation of jury-found nuisance could not be enjoined where there was nowhere the defendant could have moved and an injunction would have put the defendant out of business); *Georg v. Animal Def. League*, 231 S.W.2d 807, 808-11 (Tex. Civ. App.—San Antonio 1950, writ ref'd n.r.e.) (affirming denial of injunctive relief even where jury had found for plaintiff as to some claims); *see also Cowling v. Colligan*, 312 S.W.2d 943, 946 (Tex. 1958) (holding that court can refuse to enforce a residential-only restriction by injunction if the decision arises from a “balancing of equities” or of “relative hardships” where the harm from the injunction would be significantly greater than the harm from declining to enjoin). Moreover, where—as here—a homeowners’ association attempts to enforce a restrictive covenant only after a significant period of inaction, the prior inaction should factor into the Court’s balancing of the equities analysis. *Indian Beach Prop. Owners’ Ass’n v. Linden*, 222 S.W.3d 682, 691 (Tex. App.—Houston [1st Dist.] 2007, no pet.) (balancing of equities weighed against injunction where homeowners’ association delayed taking action).

Issuing the permanent injunction requested by Plaintiffs would effectively end community religious life for the approximately thirty families in the Congregation. *See supra* Section II.E.; Exhibit C at 31:4-33:19; Exhibit D at 41:15-42:7, 66:1-68:4. If the Gothelfs are enjoined from hosting the Congregation’s prayer and study activities at 7103 Mumford Court, the Congregation’s members would have nowhere else to go within walking distance of their homes and would therefore not be able to pray in community as their religious beliefs require. *Id.* Plus, Congregation members have purchased homes within walking distance of 7103 Mumford Court in reliance on the ability to practice their religious beliefs there. Exhibit D at 90:16-90:24. The ability to worship in community is of central importance to Orthodox Jews. Thus, the permanent injunction that Plaintiffs propose would bring about severe and irreparable harm to the religious liberty of the Congregation and its members.

In contrast to ending community religious life for thirty families, Plaintiffs complain of such “harms” as having to stop to let blind people and mothers cross the street, barking dogs, and street parking issues (which the Congregation has already taken steps to minimize). *See supra* Section II.F.; Exhibit C at 30:2-31:3. Also, as explained above, the HOA permits multiple non-residential uses of property in the neighborhood (including Schneider’s own violation of the restrictive covenants) and delayed taking action regarding the Congregation for years. *See supra* Sections II.G., II.H., II.I., IV.B.

Accordingly, no balancing of the equities could possibly favor Plaintiffs to such a degree that would justify an injunction prohibiting the Congregation from meeting at 7103 Mumford Court. As the HOA’s counsel has acknowledged,<sup>15</sup> even should the Court be of the opinion that some of the alleged harms from the Congregation’s presence in the Highlands of McKamy are

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<sup>15</sup> Exhibit V at 1-2 (HOA’s counsel acknowledging that even if the use of 7103 Mumford Court were found to violate the restrictive covenants, an injunction from the Court could either “order[] the owner to stop using the residence as a synagogue *or order[] the owner to limit/restrict certain aspects of the activities*” (emphasis added)).

significant, the Court could issue an injunction that is narrowly tailored towards those specific harms without taking the drastic and harsh step of enjoining the Congregation's religious practice altogether. Therefore, Defendants are entitled to summary judgment on Plaintiffs' claims for a permanent injunction to the extent Plaintiffs seek to prevent the Congregation from meeting at 7103 Mumford Court.

**2. No evidence supports Schneider's claim for statutory damages under Tex. Prop. Code § 202.004(c).**

Schneider purports to seek damages under § 202.004(c) of the Texas Property Code, even though he is an individual homeowner, not a homeowners' association. *See* First Amended Petition, filed April 2, 2014, at ¶¶ 1, 7-8, 42-43 & page 19. Under both the plain language of the statute and the unanimous case law interpreting the statute, however, individual homeowners may not recover damages.

Section 202.004 of the Texas Property Code applies only to associations or their designated representatives, not to individual homeowners:

ENFORCEMENT OF RESTRICTIVE COVENANTS. (a) An exercise of discretionary authority by a property owners' association or other representative designated by an owner of real property concerning a restrictive covenant is presumed reasonable unless the court determines by a preponderance of the evidence that the exercise of discretionary authority was arbitrary, capricious, or discriminatory.

(b) A property owners' association or other representative designated by an owner of real property may initiate, defend, or intervene in litigation or an administrative proceeding affecting the enforcement of a restrictive covenant or the protection, preservation, or operation of the property covered by the dedicatory instrument.

(c) A court may assess civil damages for the violation of a restrictive covenant in an amount not to exceed \$200 for each day of the violation.

Tex. Prop. Code § 202.004.

Thus, courts unanimously hold that § 202.004 does not permit individual homeowners to recover damages:

- *Quinn v. Harris*, 1999 WL 125470 (Tex. App.—Austin Mar. 11, 1999, pet. denied). The court in *Quinn* held that the plain language of the statute precludes individual homeowners from recovery and therefore reversed the trial court’s award of statutory damages. *Id.* at \*7-8. The court also observed that permitting individual homeowners to recover under § 202.004 would lead to absurd results that the legislature could not have intended: “If appellees’ interpretation of section 202.004(c) were followed, each individual homeowner in a subdivision could recover up to \$200 per day from the time she filed suit until the judgment was signed. We do not believe the legislature intended this result.” *Id.* at \*8.
- *Hawkins v. Walker*, 233 S.W.3d 380 (Tex. App.—Fort Worth 2007, no pet.). In *Hawkins*, the court reversed the trial court’s judgment for homeowners under § 202.004, and held that the statute unambiguously precludes homeowners from seeking recovery. *Id.* at 388-90, 403. The court held that the “exclusive language [of the statute] evidences a legislative intent that only property owners’ associations or the designated representative of a property owner may sue for civil damages under the statute. Individual property owners are not identified in the statute as persons or entities who are authorized to bring suit under the statute.” *Id.* at 389.
- *Jacks v. Bobo*, 2009 WL 2356277 (Tex. App.—Tyler July 31, 2009, pet. denied). Relying on *Hawkins* and *Quinn*, the court held that “[b]oth courts that have addressed the question have held that an individual owner bringing suit on his own behalf and not as a representative designated by the other owners may not recover civil damages under subsection 202.004(c).” *Id.* at \*7. Accordingly, the court held that the trial judge erred in concluding that an individual homeowner can bring suit to recover civil damages under § 202.004(c). *Id.* at \*7-8.
- *Tanglewood Homes Ass’n, Inc. v. Feldman*, 436 S.W.3d 48 (Tex. App.—Houston [14th Dist.] 2014, pet. filed). The court in *Tanglewood* affirmed the trial court’s rejection of plaintiffs’ request for damages under § 202.004, holding that individual homeowners may not recover damages under the statute. *Id.* at 75-76.

In fact, Defendants are not aware of a single case that permitted individual homeowners to recover damages under § 202.004(c). Defendants are thus entitled to summary judgment on this claim by Schneider as a matter of law.

### **3. No evidence supports Schneider’s claim based on his home’s alleged loss of value.**

Without identifying any particular cause of action under which he sues, Schneider asserts that he is entitled to \$50,000 because Defendants have allegedly caused his home to decline in

value. *See* First Amended Petition, filed April 2, 2014, at 18. This claim is meritless and should be summarily dismissed because Schneider has no evidence that his home has lost value.

The only record “evidence” that facially relates to the value of Schneider’s home is Schneider’s response to Defendants’ Request for Disclosure and his own deposition testimony. Exhibit D at 20:13-23:20 (Schneider’s deposition testimony); Exhibit LL (response to Request for Disclosure). Those sources reflect that the alleged reduction in value to Schneider’s home is based solely on his own conjecture without regard to market conditions and that he has no training and no expertise in real estate valuation. *Id.* The Texas Supreme Court prohibits this kind of testimony as to a home’s value, requiring instead that a property owner’s testimony be based on market data rather than another speculative measure. *Natural Gas Pipeline Co. of Am. v. Justiss*, 397 S.W.3d 150, 155 (Tex. 2012). “An owner’s conclusory or speculative testimony will not support a judgment.” *Id.* at 158. Schneider makes no effort to base his claim on market conditions. Thus, there is no evidence that Schneider could present at trial in support of his claim, and Defendants are entitled to summary judgment on this claim as a matter of law.

#### V. PRAYER

WHEREFORE, Defendants respectfully request that the Court:

- (1) grant their Motion for Summary Judgment in its entirety;
- (2) enter an order dismissing all of Plaintiffs’ claims with prejudice;
- (3) enter an order directing that Plaintiffs take nothing by way of their claims against Defendants;
- (4) grant Defendants all other and further relief to which they may be entitled; and
- (5) Defendants further request that, upon dismissing Plaintiffs’ claims, the Court receive evidence and argument regarding Defendants’ entitlement to recover attorneys’ fees and expenses at a later time.

Dated: January 9, 2015

Respectfully Submitted,

HAYNES AND BOONE, LLP

By: /s/ Matthew A. McGee

2323 Victory Avenue, Suite 700  
Dallas, TX 75219

JEREMY D. KERNODLE

Tex. Bar No.: 24032618

T: (214) 651-5159

F: (214) 200-0693

jeremy.kernodle@haynesboone.com

MATTHEW A. MCGEE

Tex. Bar No.: 24062527

T: (214) 651-5103

F: (214) 200-0585

matt.mcgee@haynesboone.com

PHONG T. TRAN

Tex. Bar No.: 24093273

T: (214) 651-5126

F: (214) 200-0588

phong.tran@haynesboone.com

**ATTORNEYS FOR CONGREGATION TORAS  
CHAIM, INC.**

THE LIBERTY INSTITUTE

By: /s/ Justin Butterfield

2001 West Plano Parkway, Suite 1600  
Plano, TX 75075

KELLY J. SHACKELFORD

Tex. Bar No. 18070950

kshackelford@libertyinstitute.org

JEFFREY C. MATEER

Tex. Bar No. 13185320

jmateer@libertyinstitute.org

JUSTIN BUTTERFIELD

Tex. Bar No. 24062642

jbutterfield@libertyinstitute.org

T: (972) 941-4444

F: (972) 941-4457

**ATTORNEYS FOR CONGREGATION TORAS  
CHAIM, INC., JUDITH D. GOTHELF, AND  
MARK B. GOTHELF**



**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing instrument has been served in accordance with the Texas Rules of Civil Procedure, on this 9th day of January 2015, upon the following:

David R. Schneider, Pro Se  
7035 Mumford  
Dallas, TX 75252  
T: (214) 315-5531  
Email: [DavidRaySchneider@gmail.com](mailto:DavidRaySchneider@gmail.com)

David A. Surratt  
Riddle & Williams, P.C.  
3710 Rawlins Street, Suite 1400  
Dallas, TX 75219  
T: (214) 760-6766  
Email: [dsurratt@riddleandwilliams.com](mailto:dsurratt@riddleandwilliams.com)  
*Attorney for Intervenor Highlands of McKamy  
IV and V Community Improvement Association*

/s/ Matthew A. McGee  
Matthew A. McGee

# **EXHIBIT A**



STATE OF TEXAS           §  
  §  
COUNTY OF DALLAS       §

BEFORE ME, the undersigned Notary Public, on this day personally appeared Matthew A. McGee, known to me to be the person whose name is subscribed below, who being duly sworn, deposed and states as follows:

1. My name is Matthew A. McGee. I am over 21 years of age and I am fully competent to make this Affidavit under oath. All of the facts set forth in this Affidavit are based on my personal knowledge and on the records produced in this case and are true and correct.

2. I am counsel for the Congregation Toras Chaim, Inc. in the above-styled lawsuit. I have reviewed and am familiar with the documents produced in this matter.

3. Attached to this Affidavit are Exhibits B through LL in support of Defendants' Motions for Summary Judgment.

4. Attached hereto as Exhibit B is a true and correct copy of the "First Revised Declaration of Restrictions for Highlands of McKamy, Phase IV and Phase V, Dallas, Texas," which are the restrictive covenants at issue in this suit.

5. Attached hereto as Exhibit C is a true and correct copy of excerpts of the hearing on Intervenor's application for temporary injunction, conducted April 10, 2014, in this cause.

6. Attached hereto as Exhibit D is a true and correct copy of the transcript of the oral deposition of Rabbi Yaakov Rich, taken April 9, 2014, in this cause.

7. Attached hereto as Exhibit E is a true and correct copy of a map of the Far North Dallas Eruv produced by the Congregation Toras Chaim, Inc. in the course of this litigation.

8. Attached hereto as Exhibit F is a true and correct copy of excerpts of the transcript of the oral deposition of Mark B. Gothelf, taken March 18, 2014, in this cause.

9. Attached hereto as Exhibit G is a true and correct copy of Defendants' Notice of Intent to Take Oral and Video Deposition of Intervenor Highlands of McKamy IV and V Community Improvement Association.

10. Attached hereto as Exhibit H is a true and correct copy of an email I received from counsel for the Highlands of McKamy IV and V Community Improvement Association on October 15, 2014.

11. Attached hereto as Exhibit I is a true and correct copy of the transcript of the oral deposition of Carolyn Peardon, taken November 4, 2014, in this cause.

12. Attached hereto as Exhibit J is a true and correct copy of the transcript of the oral deposition of Plaintiff David R. Schneider, taken August 5, 2014, in this cause.

13. Attached hereto as Exhibit K is a true and correct copy of a letter from Justin Butterfield to David Surratt dated January 31, 2014.

14. Attached hereto as Exhibit L is a true and correct copy of a map that I printed from Google Maps reflecting the location of 7103 Mumford Court, Dallas, TX 75252.

15. Attached hereto as Exhibit M is a true and correct copy of a map that I printed from Google Maps reflecting the location and length of Frankford Road.

16. Attached hereto as Exhibit N is a true and correct copy of a map that I printed from Google Maps reflecting the location and length of Meandering Way.

17. Attached hereto as Exhibit O is a true and correct copy of the transcript of the oral deposition of Theodore E. Day, taken August 8, 2014, in this cause.

18. Attached hereto as Exhibit P is a true and correct copy of the transcript of the oral deposition of Michael D. Donohue, taken August 8, 2014, in this cause.

19. Attached hereto as Exhibit Q is a true and correct copy of an email produced by Plaintiff David R. Schneider in the course of this litigation.

20. Attached hereto as Exhibit R is a true and correct copy of an email chain produced by Plaintiff David R. Schneider in the course of this litigation.

21. Attached hereto as Exhibit S are true and correct copies of three pictures that were introduced as exhibits at the oral deposition of Plaintiff David R. Schneider on August 5, 2014, and that have been produced by the Congregation Toras Chaim, Inc. in the course of this litigation.

22. Attached hereto as Exhibit T is a true and correct copy of an email chain produced by Plaintiff David R. Schneider in the course of this litigation.

23. Attached hereto as Exhibit U is a true and correct copy of an Agenda & Minutes produced by the Highlands of McKamy IV and V Community Improvement Association in the course of this litigation.

24. Attached hereto as Exhibit V is a true and correct copy of an email chain produced by Plaintiff David R. Schneider in the course of this litigation.

25. Attached hereto as Exhibit W is a true and correct copy of a document produced by Plaintiff David R. Schneider in the course of this litigation.

26. Attached hereto as Exhibit X is a true and correct copy of Board Minutes produced by the Highlands of McKamy IV and V Community Improvement Association in the course of this litigation.

27. Attached hereto as Exhibit Y is a true and correct copy of Board Minutes produced by the Highlands of McKamy IV and V Community Improvement Association in the course of this litigation.

28. Attached hereto as Exhibit Z is a true and correct copy of Board Minutes produced by the Highlands of McKamy IV and V Community Improvement Association in the course of this litigation.

29. Attached hereto as Exhibit AA is a true and correct copy of a document produced by the Congregation Toras Chaim, Inc. in the course of this litigation.

30. Attached hereto as Exhibit BB is a true and correct copy of an email chain produced by the Congregation Toras Chaim, Inc. in the course of this litigation.

31. Attached hereto as Exhibit CC is a true and correct copy of a letter produced by the Highlands of McKamy IV and V Community Improvement Association in the course of this litigation.

32. Attached hereto as Exhibit DD is a true and correct copy of Board Minutes produced by the Highlands of McKamy IV and V Community Improvement Association in the course of this litigation.

33. Attached hereto as Exhibit EE is a true and correct copy of a letter produced by the Highlands of McKamy IV and V Community Improvement Association in the course of this litigation.

34. Attached hereto as Exhibit FF is a true and correct copy of a letter produced by the Highlands of McKamy IV and V Community Improvement Association in the course of this litigation.

35. Attached hereto as Exhibit GG is a true and correct copy of Board Minutes produced by the Highlands of McKamy IV and V Community Improvement Association in the course of this litigation.

36. Attached hereto as Exhibit HH is a true and correct copy of the Declaration of Michael Benklifa produced by the Congregation Toras Chaim, Inc. in the course of this litigation. Attached to Exhibit HH as Exhibit 1 thereto is a true and correct copy of an email produced by the Congregation Toras Chaim, Inc. in the course of this litigation.

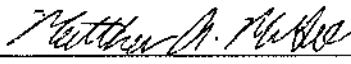
37. Attached hereto as Exhibit II is a true and correct copy of a document produced by the Congregation Toras Chaim, Inc. in the course of this litigation.

38. Attached hereto as Exhibit JJ is a true and correct copy of an email produced by the Highlands of McKamy IV and V Community Improvement Association in the course of this litigation.

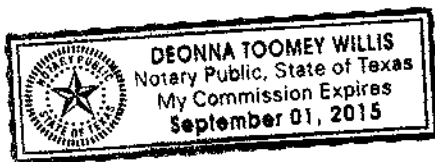
39. Attached hereto as Exhibit KK are true and correct copies of Board Minutes produced by the Highlands of McKamy IV and V Community Improvement Association in the course of this litigation.

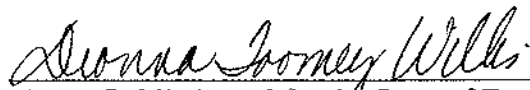
40. Attached hereto as Exhibit LL is a true and correct copy of Plaintiff David R. Schneider's Response to Defendant's Request for Disclosure.

Further affiant sayeth not.

  
Matthew A. McGee

SWORN TO AND SUBSCRIBED before me on this 8<sup>th</sup> day of January 2015.



  
Notary Public in and for the State of Texas



# **EXHIBIT B**

2778:  
**FIRST AMENDMENT TO**  
**FIRST REVISED**  
**DECLARATION OF RESTRICTIONS**  
**FOR**  
**HIGHLANDS OF MCKAMY, PHASE IV AND PHASE V,**  
**DALLAS, TEXAS**

VR 1300 477

NOTICE TO PURCHASER: THE CITY OF DALLAS HAS MADE NO DETERMINATION AS TO THE ADVISABILITY OR INADVISABILITY OF THE PURCHASING OF PROPERTY ENCUMBERED BY THE COVENANTS, CONDITIONS, AND RESTRICTIONS CONTAINED IN THIS DOCUMENT.

THE STATE OF TEXAS §  
 §  
 COUNTY OF COLLIN §

KNOW ALL MEN BY THESE PRESENTS:

WHEREAS MCKAMY DEVELOPMENT CORPORATION, a Texas corporation, has heretofore filed of record in Volume 1189, Page 504, Deed Records of Collin County, Texas, an instrument designated "First Revised Declaration of Restrictions for Highlands of McKamy, Phase IV and V, Dallas, Texas," affecting the following described property in the City of Dallas, Collin County, Texas, to-wit:

**TRACT ONE**

All of the lots and tracts of land in Highlands of McKamy, Phase IV, an Addition to the City of Dallas, Collin County, Texas, 41,192 acres, according to the Plat thereof of record in Cabinet B, Page 169, Map Records of Collin County, Texas (herein called "McKamy IV").

**TRACT TWO**

57.7742 acres of land in Survey No. 1, Collin County School Lands, Abstract No. 169, being the same property described in Deed of Trust from McKamy Development Corporation to Manuel DeBusk or John Simms, Trustee, dated January 6, 1978, or record in Volume 511, Page 327, Deed of Trust Records of Collin County, Texas, plat of same for residential purposes to be filed by Declarant (herein called "McKamy V"), dated August 14, 1979,

and

WHEREAS, as of this date, 504 of more of the lots in Tracts One and two have not been occupied by residences, and therefore McKamy Development Corporation has, under the provisions of Article VIII, Section 2 of said instrument of record, the right to amend Article VI of said instrument of record;

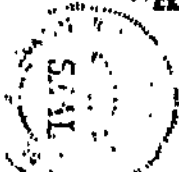
NOW, THEREFORE, the said McKamy Development Corporation, a Texas corporation, does hereby amend Article VI of said recorded instrument

by changing the first sentence of Section 3 of said Article VI to read as follows:

"The minimum air conditioned square footage of the main building or dwelling house, exclusive of porches, terraces, garages and out-buildings, shall be 2700 square feet."

Except as specifically modified herein the above said recorded instrument shall remain in full force and effect.

EXECUTED this 3rd day of September, 1980.



MCKAMY DEVELOPMENT CORPORATION

By John F. Skelton III  
JOHN F. SKELTON III, President

ATTEST:  
Roy L. Cole  
Roy L. Cole,  
Assistant Secretary

THE STATE OF TEXAS §  
§  
COUNTY OF DALLAS §

BEFORE ME, the undersigned authority, on this day personally appeared JOHN F. SKELTON III, President, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said McKamy Development Corporation, a corporation, and that he executed the same as the act of such corporation for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 3rd day of September A.D. 1980.



My Commission Expires:

Diana Barfield  
Notary Public in and for  
Dallas County, Texas

DIANA BARFIELD, Notary Public  
for Dallas County, Texas  
Commission Expires 6-11-84



**FILED**

FEB 29 AM 11:12

COURT CLERK'S OFFICE  
COLLIN COUNTY, TEXAS

BY \_\_\_\_\_ DEPUTY

*Adair Management Co  
4301 Spring Valley Rd  
Suite 118  
Dallas, TX 75244*

2077M1

189-501

PA. 6

FIRST REVISED  
 DECLARATION OF RESTRICTIONS  
 FOR  
 HIGHLANDS OF MCKAMY, PHASE IV AND PHASE V,  
 DALLAS, TEXAS

NOTICE TO PURCHASER: THE CITY OF DALLAS HAS MADE NO DETERMINATION AS TO THE ADVISABILITY OR INADVISABILITY OF THE PURCHASING OF PROPERTY ENCUMBERED BY THE COVENANTS, CONDITIONS, AND RESTRICTIONS CONTAINED IN THIS DECLARATION.

THE STATE OF TEXAS }  
 COUNTY OF COLLIN } KNOW ALL MEN BY THESE PRESENTS:

That, MCKAMY DEVELOPMENT CORPORATION, a Texas corporation (herein Declarant), is the owner of the following described property in the City of Dallas, Collin County, Texas, to-wit:

TRACT ONE

All of the lots and tracts of land in Highlands of McKamy, Phase IV, an Addition to the City of Dallas, Collin County, Texas, 41.192 acres, according to the Plat thereof of record in Cabinet B, Page 169, Map Records of Collin County, Texas (herein called "McKamy IV").

TRACT TWO

57.7742 acres of land in Survey No. 1, Collin County School Lands, Abstract No. 169, being the same property described in Deed of Trust from McKamy Development Corporation to Manuel DeBusk or John Simms, Trustee, dated January 6, 1978, of record in Volume 511, Page 327, Deed of Trust Records of Collin County, Texas, plat of same for residential purposes to be filed by Declarant (herein called "McKamy V");

and

WHEREAS, Declarant, desiring to establish a uniform plan for the benefit of the present and future owners of residential lots, has heretofore filed Articles of Incorporation for Highlands of McKamy IV and V Community Improvement Association (herein the Association) and has filed that certain "Declaration of Restrictions for Highlands of McKamy, Phase IV and Phase V, Dallas, Texas," dated March 13, 1979, of record in Volume 1162, Page 613, Deed Records of Collin County, Texas; and

WHEREAS, the City of Dallas, Texas has requested certain changes in said Restrictions.

E

NOW, THEREFORE, Declarant, owner of all the lots in said McKamy IV and McKamy V does hereby, pursuant to authority granted in said Declaration does hereby cancel the above said Declaration and substitutes this First Revised Declaration of Restrictions, imposing the following restrictions, reservations, covenants and conditions upon all residential lots in McKamy IV and McKamy V, which shall constitute covenants running with the title of said residential lots and which shall be binding upon and inure to the benefit of Declarant, its successors and assigns, and each and every purchaser of any of said residential lots and their respective heirs, administrators, successors and assigns, and each and all of such beneficiaries and further, the Highlands of McKamy IV and V Community Improvement Association shall have the right to enforce the restrictions, reservations, covenants and conditions herein set forth by any proceeding at law and/or in equity as may be deemed advisable or appropriate.

Declarant reserves the right to develop, file and obtain the approval of the City of Dallas, Texas of a final plat of the properties above referred to as McKamy V.

#### ARTICLE I

##### DEFINITIONS

1. "Association" shall mean and refer to Highlands of McKamy IV and V Community Improvement Association, a Texas non-profit corporation, its successors and assigns.
2. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any lot which is a part of the Properties, including contract buyers, but excluding those whose title is held merely as security for the performance of an obligation.
3. "Properties" shall mean and refer to the real property hereinabove described, and, where applicable, the real property which may hereafter be annexed into the jurisdiction of the Association in the manner hereinafter described.
4. "Common Area" shall mean all real property which may be required by the Association for the common use and enjoyment of the Owners in McKamy IV and McKamy V (including present common green areas); and, so long as the City of Dallas, Texas shall permit the Association to light and maintain the Floodway Management Area extending through the properties, shall also mean such Floodway Management Area.

5. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map or plat of the Properties, with the exception of (a) public areas such as parks, parkways, common greens and floodway management areas as shown on any such subdivision map or plat, and (b) any common area or common green which may be acquired by the Association.

6. "Declarant" shall mean and refer to McKamy Development Corporation, a Texas corporation, and its successors and assigns, and shall include any person or entity to which Declarant may assign its rights and privileges, duties and obligations hereunder, which are and shall be assignable.

#### ARTICLE II

##### PROPERTY RIGHTS IN COMMON AREA

1. Every Owner shall have non-exclusive right and easement of enjoyment in and to the Common Area, if any, which right shall be appurtenant to and shall pass with the title to every lot, subject to the following provisions:

(a) The right of the Association to charge reasonable admissions and other fees for the use of any recreational facility situated upon the Common Area; and

(b) The right of the Association to suspend the voting rights and right to use of the recreational facilities by an Owner for any period during which any assessment against his lot remains unpaid, and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations; and

(c) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility company for such purposes and subject to such conditions as may be agreed to by the members; provided, however, that no such dedication or transfer shall be effective unless an instrument signed by two-thirds (2/3rds) of each class of members agreeing to such dedication or transfer has been recorded.

(d) The right and obligation of the Association, which obligation is hereby irrevocably assumed, to pay for the installation and maintenance of lighting of the Floodway Management Area and any other improvements to the Floodway Management Area which might be desired to be made by the Association and approved by the City of Dallas, Texas, the Association hereby irrevocably guaranteeing to the City of Dallas, Texas that the Association will bear all such installation and maintenance expenses promptly as incurred, specifically including the payment of all utility bills for lighting the Floodway Maintenance Area. This guarantee is made for a valuable consideration, being the agreement of the City of Dallas, Texas to permit the Association to light the Floodway Management Area.

2. Any Owner may delegate, in accordance with the By-Laws of the Association, his right of enjoyment to the Common Area and facilities to the members of his family or to persons residing on the lot under a lease or contract to purchase from the Owner.

#### ARTICLE III

##### RIGHTS OF THE CITY OF DALLAS, REVISED AND SUPPLEMENTARY DECLARATIONS

1. Revised and Supplementary Declarations. Declarant may file of record a Supplementary Declaration, to reflect the different character, if any, of McKamy IV and McKamy V; provided, however, that any supplementary declaration will not in any way add to the obligations, or increase the restrictions of the Owners of McKamy IV except as permissible by the provisions of this instrument relating to modification or amendment hereof, or as may be required by the City of Dallas, Texas.

2. Rights of the City of Dallas, Texas. For purposes of this Article III only the hereinafore stated definitions shall be expanded to include the following:

(a) "Association" shall also include all the predecessors to the Association whose duty it is to maintain the appearance and condition of the Common Properties;

(b) "Owner" shall also include the Declarant and any Builder, their successors, assigns, heirs, and employees.

The City of Dallas, Texas shall have the right and may assume the duty of performing all maintenance obligations of the Association in either of the following events:

(a) The Association dissolves and the City of Dallas has given written notice to the Owners; or

(b) The Association shall fail or refuse to maintain the appearance and condition of the Common Properties which it is obligated to maintain hereunder and the maintenance defects have not been corrected within ten (10) days after receipt by the Association of written notice from the City of Dallas setting forth in detail the nature and extent of such maintenance defects.

Upon assuming such maintenance obligations, the City of Dallas may collect, when the same may become due, all assessments, annual or special, for the purpose of repairing, replacing, maintaining, or caring for the Common Properties; and, if necessary to collect delinquent assessment in accordance with any state or local law or ordinance, or the applicable provisions set forth within this Declaration. The City of Dallas, in its sole and complete discretion, may choose either of the following two alternatives in computing and levying assessments;

(a) Those assessments levied by the Association pursuant to the provisions hereof; or

(b) An assessment upon each lot on a pro rata basis.

Upon the City of Dallas assuming the maintenance obligations of the Association, assessments shall be made on all lots regardless of ownership, and the assessments will constitute a lien upon the lot against which each assessment is made. During the period the City of Dallas assumes the obligation to maintain and care for the Common Properties, the Association shall have no obligation or authority with respect to such maintenance. The power and authority herein granted to the City of Dallas shall cease to exist at such time as the Association shall deliver to the City of Dallas substantial evidence as its willingness and ability to resume maintenance of the Common Properties. In the event that the City of Dallas assumes the duty of performing the maintenance obligations of the Association provided herein, then the City of Dallas, its agents, representatives, and employees shall have the right of access in, to, and over the Common Properties for the purposes of maintaining, improving, and preserving the same. Further, in the event that the City of Dallas assumes the obligation of the Association in accordance of this section, the Association and all owners shall indemnify and hold the City of Dallas harmless of and from any and all costs, expenses, suits, demands, liabilities, damages, or otherwise, including attorney's fees and costs of suit, arising from or in connection with the performance of any acts, or the omission of any act, by the City of Dallas pursuant



to the terms of this section; and in no event and under no circumstances shall the City of Dallas be liable to the Association or any Owner or their respective heirs, personal representatives, successors, and assigns for negligent acts or construction relating in any manner to maintaining the Common Areas, or for failure to perform such maintenance. In the event any of the terms or provisions of this section are in conflict with any other provision contained in this Declaration, the terms and provisions of this section shall prevail. This section may not be altered or changed without the consent of the City Council of the City of Dallas evidenced by Resolution. It is understood among the parties that the City Attorney's Office of the City of Dallas has approved as to form this section only.

ARTICLE IV

MEMBERSHIP AND VOTING RIGHTS IN ASSOCIATION

1. MEMBERSHIP. Every Owner of a lot which is subject to Assessment shall be a member of the Association. Membership shall be appurtenant to and shall not be separate from ownership of any lot which is subject to Assessment. Every member shall have the right at all reasonable times during business hours to inspect the books of the Association.

2. VOTING RIGHTS. The Association shall have two (2) classes of voting Memberships.

(CONTINUED ON PAGE 4)

**CLASS A:** Class A members shall be all Owners (with the exception of the Declarant) until Class B membership is converted to Class A membership as below provided, and shall be entitled to one vote for each lot owned. When more than one person holds an interest in any lot, all such persons shall be members. The vote for such lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any lot, and there shall be no fractional votes.

**CLASS B:** The Class B member shall be the Declarant and Declarant shall be entitled to give (5) votes for each lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of any one of the following events, whichever occurs earlier:

- (a) on December 31, 1963; or
- (b) the written declaration of the Declarant, delivered to the Association, that it desires to convert its Class B membership into Class A membership; or
- (c) Declarant's ownership of properties within Tracts One and Two above described shall be reduced to less than 20 lots.

3. **BY-LAWS.** The Association may make whatever rules and By-Laws it shall deem desirable to govern the Association and its members, provided, however, any conflict between such By-Laws and the provisions hereof shall be controlled by the provisions hereof.

#### ARTICLE V

##### ASSESSMENTS

1. **COVENANTS FOR ASSESSMENTS.** The Declarant for each lot, tract or parcel of land owned by it within McKay IV and McKay V, hereby covenants, and each purchaser of any such lot, tract or parcel of land by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant to pay to the Association annual assessments or charges as specified in Paragraph 3 of this Article V, all of such assessments to be fixed, established, and collected from time to time as hereinafter provided.

2. **PURPOSE OF ASSESSMENTS.** The assessments levied by the Association shall be used exclusively for the purpose of promoting the comfort, health, safety and welfare of the Owners of the properties, or any part thereof, and for carrying out the purposes of the Association as stated in its Articles of Incorporation.

3. **ASSESSMENTS.** Each Owner of any part of the properties then subject to this Declaration shall pay to the Association, in advance, a monthly, quarterly or semi-annual assessment as may from time to time be fixed by the Board of Directors of the Association, provided that the assessment shall never exceed the sum of thirty Dollars (\$30.00) per lot per month without the affirmative vote of at

least seventy-five percent (75%) of the Class A members of the Association. Special assessments for acquisition of property, construction or reconstruction costs, replacements and for other purposes of the Association may be levied only upon the affirmative vote of 75% of the Class A members at a meeting called for such purposes on not less than thirty (30) days notice.

4. COMMENCEMENT DATE OF ASSESSMENTS. The first assessment provided for herein, which shall not exceed Five Dollars (\$5.00) per month per lot, shall commence:

(a) On lots in McKay IV, upon the first day of the month next succeeding the closing of sale of the first lot to be sold by Declarant to builders in McKay IV, and shall be collected for the first year in advance at the closings of lot sales from Declarant to builders.

(b) On lots in McKay V, upon the first day of the month next succeeding the closing of sale of the first lot to be sold by Declarant to builders in McKay V, and shall be collected for the first year in advance at the closings of lot sales from Declarant to builders.

5. DUE DATE OF ASSESSMENTS. The first assessment shall be payable annually in advance as provided in Paragraph 4 of this Article V. Subsequent assessments, levied as provided in Paragraph 3 of this Article V, shall be due and payable within thirty (30) days of the mailing of an invoice for same.

6. OWNER'S PERSONAL OBLIGATION FOR PAYMENT OF ASSESSMENTS. The assessments provided for herein shall be the personal and individual debt of the Owner of the Property covered by such assessments. No Owner may exempt himself from liability for such assessments. In the event of default in the payment of any such assessment, the Owner of the Property shall be obligated to pay interest at the rate of ten percent (10%) per annum on the amount of the assessment from the due date thereof, together with all costs and expenses, including attorney's fees.

7. ASSESSMENT LIEN AND FORECLOSURE. All sums assessed in the manner provided in this Article but unpaid, shall, together with interest as provided in paragraph 6 of this Article V and the cost of collection, including attorney's fees as hereinafter provided, thereupon become a continuing lien and charge on the property covered by such assessment, which shall bind such property in the hands of the Owner, and his heirs, devisees, personal representatives, and assigns. The aforesaid lien shall be superior to all other liens and charges against the said property, except only for tax liens and all sums unpaid on a first mortgage lien or first deed of trust lien of record, securing in either instance sums borrowed for the purchase or improvement of the property in question. The Association shall have the power to subordinate the aforesaid assessment lien to any other lien. Such power shall be entirely discretionary with the Association. To evidence the aforesaid assessment lien, the Association shall prepare a written notice of assessment lien setting forth the amount of the unpaid indebtedness, the name of the Owner of the property covered by such lien and a description of the property. Such notice shall be signed by one of the Officers of the Association and shall be recorded in the office of the County Clerk of Collin County, Texas. Such lien for payment of assessments shall attach with the

priority shall be set forth from the date that such period becomes delinquent as set forth in paragraph 5 of this Article V and may be enforced by foreclosure of the defaulting Owner's property by the Association in like manner as a mortgage on real property subsequent to the recording of a notice of assessment lien as provided above, or the Association may institute suit against the Owner personally obligated to pay the assessment and/or for foreclosure of the aforesaid lien judicially. In any foreclosure proceeding, whether judicial or not judicial, the Owner shall be required to pay the costs, expenses, and reasonable attorney's fees incurred. The Association shall have the power to bid on the property at foreclosure or other legal sale and to acquire, hold, lease, mortgage, convey or otherwise deal with the same. Upon the written request of any mortgagee holding a prior lien on any part of the Properties, the Association shall report to said mortgagee any unpaid assessments remain unpaid for longer than thirty (30) days after the same are due.

B. COMMON PROPERTIES EXEMPT. Any Common Properties and all portions of the Properties owned by or otherwise dedicated to any political subdivision shall be exempt from the assessments and liens created herein.

ARTICLE VI

CONSTRUCTION, USAGE, AND ARCHITECTURAL COVENANTS

The abovesaid properties are hereby made subject to the following restrictions, conditions, limitations and covenants (herein the covenants), to-wit:

1. RESIDENTIAL USAGE: No structure shall be erected, placed, altered, used for or permitted to remain on any residential building lot other than one detached single family private dwelling not to exceed three stories and one private garage for not more than four automobiles and servants' quarters if they are employed on the premises. No temporary structures may be placed on lot except during construction. Metal storage buildings, sheds or structures are not permitted. Only new structures shall be constructed on any lot and no house or structures shall be moved onto a lot.

2. CARAGES: No garage may open or face onto a street in this addition except for the following lots in McKay IV:

- Block 4/8758: Lots 1-7
- Block 1/8758: Lots 20-27
- Block 3/8758: Lots 8-11

On the above lots, garages must have a circular drive in the front to open or face the street, otherwise, they shall open to the sides or rear. Furthermore, each case must be reviewed and approved by the Architectural Review Committee for compatibility with neighboring homes.

3. MINIMUM SQUARE FOOTAGE: The minimum air-conditioned square footage of the main building or dwelling house, exclusive of porches, terraces, garages and out-buildings, shall be 2600 square feet. Greenhouses, where incorporated, attached or contained in the main building, shall be included as air-conditioned space but interior courts open to weather shall not.

4. **MASONRY CONSTRUCTION:** The exterior construction of the dwelling house erected on any lot shall be at least 50% masonry, exclusive of windows, doors and roofs, unless otherwise approved by the Architectural Review Committee. Masonry is hereby defined as stone, brick or veneers of same. Hardboard siding is prohibited for use on any dwelling. All fireplaces and chimneys shall be 100% masonry construction on the exterior.

5. **ROOF CONSTRUCTION:** At least 75% of each roof structure shall have pitch. Flat roofs are prohibited unless specifically reviewed and approved in writing by the Architectural Review Committee. Mansard type roofs are specifically prohibited for use on any dwelling where they can be seen from the street. All roofs shall be of wood shingle, metal, slate, clay, or concrete tile unless otherwise specifically approved by the Architectural Review Committee.

6. **SEPPACKS:** The main body of any dwelling house shall not be erected at any point closer than twenty five (25) feet from the front property line.

7. **FENCES:** No fence shall extend closer than thirty (30) feet to the front property line. No chain link, woven metal, wire or similar fence type shall be constructed where it can be viewed from the street. Wood fences shall be no higher than six feet and constructed of redwood, cedar or cypress. No fence shall be constructed across the back of any of the following lots in McKamy IV unless it has been specifically reviewed and approved in writing by the Architectural Review Committee, is constructed of wrought iron, is painted and semi-transparent in character, and is no more than four (4) feet in height from finish grade:

Block 4/8758:	Lots 1-7
1/8758	20-27
3/8758	8-11

In the event a fence or brick wall is constructed along the rear or side property line of Lots 13-24 of Block 5/8758 in McKamy IV, prior to occupancy of a residence on said lots, then it shall be prohibited to alter said fence or wall or to construct any fence or structure parallel to said wall, closer than five (5) feet in distance from or higher than said brick wall or fence. The purpose of said restriction is to have an attractive appearance common to each of these properties.

8. **DRAINAGE:** No building shall be so constructed that drainage water is forced onto adjoining property. No lot shall be finish graded so that drainage water will intrude on adjoining lots. All roof and area drains shall discharge either toward the front or the rear of the lot, and shall be carried to the curb or alley when drainage would cross adjacent property.

9. **SCREENING:** All air-conditioning equipment shall be installed in the rear or in the sideyard, screened from view from the street, by an opaque fence or masonry wall. Gas and electrical meters shall be concealed from view from the front.

10. **YARD LIGHTS:** All dwellings shall have a lighted gas or electric yard light situated not more than four (4) feet from

the rear property line. For dwellings with alley access, such lights shall be positioned so that light will illuminate the alley for security. For lots having no alley, the light shall be positioned in the center of the rear property line unless otherwise approved by the Architectural Review Committee.

11. SIGNS: The building contractor or owner may erect or place one sign of not more than five (5) square feet identifying the builder or advertising the property for sale or lease.

12. MINERAL DRILLING: No oil or other mineral drilling, refining, storage, quarrying or mining operations of any kind shall be permitted upon any lot.

13. RUBBISH: No rubbish, trash, garbage or waste shall be placed, dumped or permitted to remain on any lot in this Addition.

14. ANIMALS: No animals of any type shall be raised, bred or kept for commercial purposes. Household pets shall be kept on any lot only when a dwelling is constructed and occupied thereon. Not more than a total of five household pets shall be allowed.

15. NOXIOUS ACTIVITY: No activity shall be carried on upon any lot which may be or may become an annoyance or nuisance to the neighborhood. Trucks in excess of 3/4 ton or any vehicles with painted advertisement are prohibited from parking overnight on streets, driveways, alleys or lots.

16. ARCHITECTURAL QUALITY: All dwellings shall be designed and constructed of quality materials and with external design in harmony with existing adjacent dwellings.

17. ARCHITECTURAL REVIEW COMMITTEE: The Committee shall be composed of the president of McKamy Development Corporation and two members appointed by the President of McKamy Development Corporation, one of whom shall be a registered architect or registered civil engineer in the State of Texas. Within thirty (30) days after 40% of the lots in the above-described properties have residences occupied by homeowners, one (1) of said homeowners shall be appointed to replace one of the two members appointed by the president of McKamy Development Corporation on the Architectural Review Committee. Within thirty days (30) after 100% of the lots have residences occupied by homeowners, the President of McKamy Development Corporation shall appoint an additional homeowner to take the President's place on the Committee. Thereafter, the homeowners shall elect by a majority vote, within two weeks after January 1st of each successive year, two members to the Architectural Committee, the third member continuing to be a registered Engineer or Architect appointed by McKamy Development Corporation, or his designated representative or successors. In the event an election is not held as herein provided, the current members will continue until such an election is held. The powers and duties of such Committee shall cease thirty (30) years from date hereof. The Architectural Committee shall hold meetings at least quarterly and shall keep minutes of each regular meeting and any other meeting necessarily held, and such minutes shall be open for inspection by the homeowners at all reasonable times.

18. **SUBMISSION:** No building, fence or improvements shall be erected, placed or altered until the building plans, specifications and plot plan showing the location of same have been reviewed and approved, in writing, by the Architectural Committee for compliance with these covenants and Deed Restrictions. Owners or building contractors shall make application in writing to the Committee. In the event said Committee shall fail to approve the application within thirty (30) days after it is requested, then it is deemed that same has been disapproved. The building plans shall include, as a minimum, the following:

- A. All four (4) elevations
- B. Floor Plan.
- C. Foundation plan.
- D. Roof Plan.
- E. Setback lines on site plan.

The Architectural Review Committee may require additional submittals at its discretion. Applications shall be submitted at the offices of McKamy Development Corporation or at the office of the Architect or Engineer Committee member when two Homeowners are on the Committee.

19. **FEES:** The President of McKamy Development Corporation and all other members of the Architectural Review Committee, except the registered Architect or Engineer, shall serve without any compensation for services performed pursuant hereto. The registered Engineer or Architect shall be compensated for his services on the basis of an hourly fee at a rate approved by the other two members of the Committee. The Committee shall set a fee for review of applications sufficient to cover its administrative expenses.

#### ARTICLE VII

##### MAINTENANCE

1. **DUTY OF MAINTENANCE.** Owners and occupants (including lessees) of any part of the above properties shall jointly and severally have the duty and responsibility, at their sole cost and expense, to keep that part of the Properties so owned or occupied, including buildings, improvements and grounds in connection therewith, in a well-maintained, safe, clean and attractive condition at all times. Such maintenance includes, but is not limited to, the following:

- a. Prompt removal of all litter, trash, refuse, and wastes.
- b. Lawn mowing.
- c. Tree and shrub pruning.
- d. Watering.
- e. Keeping lawn and garden areas alive, free of weeds, and attractive.
- f. Keeping parking areas, driveways, and roads in good repair.
- g. Complying with all government health and police requirements.

- h. Repainting of improvements.
- i. Repair of exterior damages to improvements.

2. ENFORCEMENT. If, in the opinion of the Association any such owner or occupant has failed in any of the foregoing duties or responsibilities, then the Association may give such person written notice of such failure and such person must within ten (10) days after receiving such notice, perform the care and maintenance required. Should any such person fail to fulfill this duty and responsibility within such period, then the Association through its authorized agent or agents shall have the right and power to enter onto the premises and perform such care and maintenance without any liability to the Association for wrongful entry, trespass or otherwise to any person. The Owners and occupants (including lessees) of any part of the Properties on which such work is performed shall jointly and severally be liable for the cost of such work and shall promptly reimburse the Association for such cost. If such owner or occupant shall fail to reimburse the Association within 30 days after receipt of a statement for such work from the Association, then said indebtedness shall be a debt of all of said persons jointly and severally, and shall constitute a lien against that portion of the Properties on which said work was performed. Such lien shall have the same attributes as the lien for assessments set forth in Article V, Paragraph 7 above, which provisions are incorporated herein by reference, and the Association shall have identical powers and rights in all respects, including but not limited to the right of foreclosure.

ARTICLE VIII

MISCELLANEOUS PROVISIONS

1. DURATION. This Declaration and the covenants, restrictions, charges, and liens set out herein shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, and every owner of any part of the Properties subject hereto, including Declarants, and their respective legal representatives, heirs, successors, and assigns, for a term beginning on the date this Declaration is recorded, and continuing through and including December 31, 2008 after which time said covenants shall be automatically extended for successive periods of ten (10) years unless a change (the word "change" including additions, deletions or modifications thereto, in whole or in part) is approved by a majority of the total eligible votes of the membership of the Association voting in person or by proxy at a meeting duly called for such purpose, written notice of which shall be given to all members at least thirty (30) days in advance and shall set forth the purpose of such meeting; provided, however, that no such change shall be effective until one (1) year following the vote referred to above, nor shall any such change be effective prior to the recording of a certified copy of such resolution in the Deed Records of Collin County, Texas.

2. AMENDMENT. Prior to the occupancy of residences on 50% or more of the lots in McKay IV and McKay V, Articles VI and VII of this Declaration may be amended by instrument in writing executed by Declarant and filed for record in Deed Records of Collin County, Texas; thereafter, amendment of said



Articles VI and VII shall require two-thirds (2/3rds) of the total votes of the Association, with both Classes of the membership voting together. All other Articles may be amended upon affirmative vote of two-thirds of the Class B members' vote, provided that no such amendment may be made prior to January 1, 1956 without the written consent of Declarant. Written notice of all amendments shall be given to all members of the Association. On amendment requiring a vote of the members, members may vote in person or by proxy at a meeting duly called for such purpose, written notice of which shall be given to all members at least thirty (30) days in advance and shall set forth the purposes of such meeting. Provided, however, that notwithstanding any of the other provisions of Paragraph 7 of Article V, this Declaration may not be amended in any manner to derogate from the rights of first mortgage or first deed of trust holders as said paragraph set forth.

3. ENFORCEMENT. The Association shall have the right (but not the duty) to enforce any of the covenants and restrictions set out in any Declaration hereafter filed by Declarant or any subsequent owner. Enforcement of the covenants and restrictions shall be by any proceedings at law or in equity against any persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages, and against the land, to enforce any lien created by these covenants; and failure by the Association or any Owner to enforce any such covenant or restriction shall in no event be deemed a waiver of the right to do so thereafter.

4. SEVERABILITY OF PROVISIONS. If any paragraph, sentence, clause or phrase of this Declaration shall be or become illegal, null, or void for any reason or shall be held by any court of competent jurisdiction to be illegal, null, or void, the remaining paragraphs, sentences, clauses, or phrases of this Declaration shall continue in full force and effect and shall not be affected thereby. It is hereby declared that said remaining paragraphs, sentences, clauses, and phrases would have been and are imposed irrespective of the fact that any one or more other paragraphs, sentences, clauses, or phrases shall become or be illegal, null, or void.

5. NOTICE. Wherever written notice to a member (or members) is permitted or required hereunder, such shall be given by the mailing of such to the member at the address of such member appearing on the records of the Association, unless such member has given written notice to the Association of a different address, in which event such notice shall be sent to the member at the address so designated. In such event, such notice shall conclusively be deemed to have been given by the Association by placing same in the United States mail, properly addressed, whether received by the addressee or not.

6. TITLE. The titles, headings, and captions have been used throughout this Declaration are for convenience only and are not to be used in construing this Declaration or any part thereof.

EXECUTED this 14 day of August, 1979.

McKAY DEVELOPMENT CORPORATION

By John F. Skelton  
John F. Skelton, President

WITNESS:

Lucretia C. Cole

Assistant Secretary



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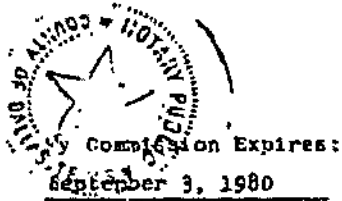
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THE STATE OF TEXAS |

COUNTY OF DALLAS |

BEFORE ME, the undersigned authority, on this day personally appeared JOHN F. SKELTON III, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said McXANY DEVELOPMENT CORPORATION, a corporation, and that he executed the same as the act of such corporation for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 14th day of August, 1979.



*Ruth Palmer*  
Notary Public in and for  
Dallas County, Texas  
Ruth Palmer

# **EXHIBIT C**

1 REPORTER'S RECORD VOLUME 1 OF 1  
 2 TRIAL COURT CAUSE NO. 429-04998-2013  
 3 DAVID R. SCHNEIDER }} THE DISTRICT COURT  
 4 VS. }} 429TH JUDICIAL DISTRICT  
 5 JUDITH D. GOTHOLF, MARK B. }}  
 6 GOTHOLF, CONGREGATION }}  
 7 TORAS CHAIM, INC. }} COLLIN COUNTY, TEXAS  
 8  
 9  
 10  
 11 -----  
 12 TEMPORARY INJUNCTION HEARING  
 13 APRIL 10, 2014  
 14 -----  
 15  
 16  
 17  
 18  
 19 On the 10th day of April, 2014, the following  
 20 proceedings came on to be heard in the above-entitled  
 21 and -numbered cause before the Honorable Jill Willis,  
 22 held in McKinney, Collin, Texas;  
 23 Proceedings reported by Computerized Stenotype  
 24 Machine.  
 25

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1 I N D E X  
 2 TEMPORARY INJUNCTION APRIL 10, 2014:  
 3 WITNESS. Direct Cross  
 4 David Schneider 7  
 5 Robert Colmery 13  
 6 Marilyn Frey 16 18  
 7 Dawn Coates 20  
 8 Hika Donohoe 22  
 9 Yaakov Rich 27, 38 34, 37  
 10 PAGE:  
 11 Argument by Mr. Surratt 41  
 12 Argument by Mr. Schneider 45  
 13 Argument by Mr. Tancabel 46  
 14 Court's ruling 50  
 15 Reporter's certification 53  
 16  
 17  
 18  
 19  
 20  
 21  
 22  
 23  
 24  
 25

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1 A P P E A R A N C E S  
 2 FOR THE PLAINTIFF:  
 3 PRO SE - DAVID R. SCHNEIDER  
 4 FOR THE INTERVENOR PLAINTIFF, HIGHLANDS OF MCKAHY IV and  
 5 V COMMUNITY IMPROVEMENT ASSOCIATION:  
 6 SBOT NO. 19519100  
 7 DAVID A. SURRATT  
 8 Riddle & Williams, P.C.  
 9 3710 Rawlins Street  
 10 Regency Plaza, Suite 1400  
 11 Dallas, Texas 75219  
 12 (214) 760-6766  
 13  
 14 FOR THE DEFENDANTS:  
 15 SBOT NO. 24062692  
 16 JUSTIN E. BUTTERFIELD  
 17 Liberty Institute  
 18 2001 W. Plano Parkway  
 19 Plano, Texas 75075  
 20 (972) 941-4451  
 21  
 22 FOR THE DEFENDANT, CONGREGATION TORAS CHAIM, INC.:  
 23 SBOT NO. 24060698  
 24 JOHN A. TANCABEL  
 25 SBOT NO. 24032618  
 JEREMY D. KERNODLE  
 Haynes and Boone, LLP  
 2323 Victory Avenue, Suite 700  
 Dallas, Texas 75219  
 (214) 651-5159

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1 EXHIBIT INDEX  
 2 INTERVENOR'S EXHIBIT NO. DESCRIPTION OFFERED ADMITTED  
 3 1 Website printout 11 11  
 4 2 Deed restrictions 11 11  
 5 PLAINTIFF'S EXHIBIT NO. DESCRIPTION OFFERED ADMITTED  
 6 1 News article  
 7  
 8  
 9  
 10  
 11  
 12  
 13  
 14  
 15  
 16  
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 21  
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 24  
 25

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## P R O C E E D I N G S

1  
2 THE COURT: Let's go on the record.  
3 420-04998-2013. Please state your names and who you  
4 represent.  
5 MR. SCHNEIDER: David Schneider,  
6 representing myself  
7 MR. SURRETT: David Surratt, representing  
8 the Intervening Plaintiff, Highlands of McKamy IV and V  
9 Community Improvement Association.  
10 MR. TANCABEL: John Tancabel, representing  
11 Congregation Toras Chaim.  
12 MR. BUTTERFIELD: Justin Butterfield,  
13 representing the Congregation Toras Chaim and Mark and  
14 Judith Gohelf.  
15 MR. KERNODLE: Jeremy Kernodle, Haynes and  
16 Boone, for Congregation.  
17 THE COURT: Okay. I will ask you to give  
18 the court reporter your business cards after the hearing  
19 so that she can get the proper spellings of your last  
20 names.  
21 You have 20 minutes a side. I have read  
22 all the briefs, which I thought were very good on both  
23 sides. So I will hear 20 minutes of testimony or  
24 however you would like to use your 20 minutes.  
25 MR. TANCABEL: Your Honor, just a point of

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1 Gohelf, the owners of record of the property that's in  
2 issue. I would like to go ahead and call as a witness  
3 the pro se Plaintiff, Mr. Schneider.  
4 THE COURT: Okay. Sir, if you'll take a  
5 seat up here in the black chair. And I'm going to swear  
6 you in before you testify, if you will raise your right  
7 hand.  
8 (Witness sworn.)  
9 THE COURT: Okay. Thank you.  
10 DAVID R. SCHNEIDER,  
11 having been duly sworn, testified under oath as follows:  
12 DIRECT EXAMINATION  
13 BY MR. SURRETT:  
14 Q. Sir, please state your name for the record.  
15 A. David R. Schneider.  
16 Q. If you cannot hear me, please let me know as we  
17 proceed.  
18 Where do you live, sir?  
19 A. At 7035 Mumford, Dallas, Texas.  
20 Q. Is that in the Highlands of McKamy community?  
21 A. Yes, sir.  
22 Q. And you are the Plaintiff that brought this  
23 lawsuit, correct?  
24 A. I am.  
25 Q. How long have you lived at the Mumford Court

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1 clarification. Is that 20 minutes for both the  
2 temporary injunction and the motion for summary  
3 judgment?  
4 THE COURT: No. The motion for summary  
5 judgment is separate. You get 10 minutes a side to  
6 argue that.  
7 So we're proceeding with the injunction at  
8 this point.  
9 MR. SURRETT: Right. Your Honor, if  
10 there's no objection, the Intervening Plaintiff is  
11 actually the one who noticed the hearing. If there's no  
12 objection, I'll proceed.  
13 Your Honor, do you prefer that I talk from  
14 here or do I need to come to the microphone?  
15 THE COURT: That's fine, as long as we can  
16 hear you.  
17 MR. SURRETT: Let me know if I'm not loud  
18 enough.  
19 THE COURT: She will.  
20 MR. SURRETT: I represent the Intervening  
21 Plaintiff, and the Court has had the opportunity to  
22 review the pleadings and the essence of the temporary  
23 injunction.  
24 The Defendants with regard to the  
25 Intervening Plaintiff is Mark B. Gohelf and Judith D.

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1 address?  
2 A. Just over a year.  
3 Q. And where is your house in relation to the  
4 property at 7103 Mumford Court?  
5 A. It's directly across the street.  
6 Q. And are you aware of the activities at 7103  
7 Mumford Court that are being undertaken by the  
8 Congregation Toras Chaim?  
9 A. Yes, daily.  
10 Q. Have you personally experienced any negative  
11 effects, in your opinion, of the activities that occur  
12 at 7103 Mumford Court?  
13 A. Any number of effects. There's a tremendous  
14 number of people coming and going in all varying times  
15 of the day. There is all kinds of things that appear  
16 around the place.  
17 One day, a huge pile of dirt appeared on  
18 the property that was visible from the street. One  
19 time, a window air-conditioning unit, which is  
20 unscreened, appeared in the living room window.  
21 I have seen groups of people outside,  
22 across the street from the house having some kind of. I  
23 guess, ceremony, I'm not sure. There's been cars coming  
24 and going.  
25 A lot of times, it's very difficult for --

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1 you can see cars trying to go get in and out. There's  
2 enough coming through that it's a problem. And I can go  
3 on as long as you like.

4 Q. That should be sufficient.

5 As the Plaintiff and participating in the  
6 pleadings in this lawsuit, you understand why we're here  
7 today. Is there anything particular you would like for  
8 the Court to instruct the Gothelfs, as the owners of the  
9 property, or the Congregation to refrain from doing  
10 until the time of trial in this case?

11 A. Yes. I would like that house to be operated  
12 like other houses that are in the neighborhood. I moved  
13 into a beautiful, quiet neighborhood. And I am amazed  
14 every day at all the things that are going on and don't  
15 fully understand them. And that's why I'm here.

16 Q. Have you experienced anything similar to the  
17 activity that you are seeing at 7103 Mumford with any  
18 other houses in the neighborhood area or adjoining  
19 streets?

20 A. No, sir.

21 Q. You are also a member of the association's  
22 board of directors, correct?

23 A. I am.

24 Q. You were not a member of the board of directors  
25 when you were elected -- correction.

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1 offer into evidence Intervenor's Exhibit No. 1

2 THE COURT: Any objection?

3 MR. TANCABEL: No, Your Honor.

4 THE COURT: Admitted.

5 MR. SURRETT: Counsel, we have, I think,  
6 stipulated and agreed to the declarations and covenants  
7 and restrictions. Is that acceptable to do so for the  
8 purposes of today?

9 MR. TANCABEL: Yes.

10 MR. SURRETT: May I approach, Your Honor?

11 THE COURT: Yes.

12 MR. SURRETT: Your Honor, I would like to  
13 offer into evidence for the record -- and it's the same  
14 document attached to the motion for summary judgment and  
15 other pleadings in the case -- the First Revised  
16 Declaration of Restrictions for Highlands of McKamy,  
17 Phase IV and V, Dallas, Texas, what we refer to as the  
18 declaration of the restrictions. I believe this has  
19 been marked as Intervenor's Exhibit No. 2, correct?

20 MR. TANCABEL: No objection.

21 THE COURT: Admitted.

22 Q. (By Mr. Surratt) Mr. Schneider, could you cite  
23 from the declaration the provision that you feel is  
24 being violated at 7103 Mumford Court?

25 A. Certainly. "Article VI, construction: Usage

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1 You were not a member of the board of  
2 directors when you filed suit originally?

3 A. No, sir.

4 Q. Have you had an opportunity to review the  
5 Congregation's website?

6 A. I have on a number of occasions.

7 MR. SURRETT: May I approach, Your Honor?

8 THE COURT: Yes.

9 Q. (By Mr. Surratt) Mr. Schneider, I'll move  
10 right along. The court reporter's just handed you what  
11 has been marked as Intervenor's Exhibit No. 1. If you  
12 will take a minute to look at that.

13 A. (Witness complied.)

14 Q. Does that appear to be an accurate hard copy  
15 printout of the information you have seen on the  
16 Congregation's website?

17 A. Yes, sir.

18 Q. And does that list a schedule of activities for  
19 the Congregation on a weekly basis?

20 A. It does.

21 Q. Does that seem to be similar to what you have  
22 seen on the different occasions when you have viewed the  
23 website?

24 A. Very similar.

25 MR. SURRETT: Your Honor, we'd like to

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1 and architectural covenants, Section No. 1: Residential  
2 usage. No structure shall be erected, placed, altered,  
3 used for or permitted to remain on any residential  
4 building lot other than one detached, single-family,  
5 private dwelling, not to exceed three stories, and one  
6 private garage for not more than four automobiles and  
7 servants' quarters if they are employed on the  
8 premises."

9 Q. Is that the primary provision, then, that you  
10 believe is being violated at 7103 Mumford Court?

11 A. It is. There are a couple of other ancillary  
12 things, but this is really the heart of the issue.

13 Q. Did you live in your property prior to the sale  
14 of 7103 Mumford Court to the Gothelfs?

15 A. I believe -- you said 7103 -- before the sale  
16 of 7103?

17 Q. Correct.

18 A. Yes. I lived there for approximately four  
19 months.

20 Q. In your observations during that time period,  
21 did you see the type of activity at 7103 Mumford as you  
22 are now seeing at 7103 Mumford?

23 A. No. It's a night-and-day difference. Before,  
24 it was like most other houses.

25 MR. SURRETT: Pass the witness, Your Honor.

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1 MR. TANCABEL: Your Honor, we have no  
2 questions.  
3 THE COURT: Okay. Thank you. You may step  
4 down. You may call your next witness.  
5 MR. Surratt: Your Honor, I would like to  
6 call Robert Colmery.  
7 (Witness sworn.)  
8 ROBERT COLMERY,  
9 having been duly sworn, testified under oath as follows:  
10 DIRECT EXAMINATION  
11 BY MR. Surratt:  
12 Q. Please state your name for the record.  
13 A. It's Robert Colmery.  
14 Q. Where do you live, sir?  
15 A. 7108 Mumford Court.  
16 Q. And is that in the Highlands of McKamy  
17 community?  
18 A. Yes, sir.  
19 Q. And how long have you lived there?  
20 A. Eighteen years.  
21 Q. And where is your house in relation to 7103  
22 Mumford Court?  
23 A. The house is just -- the house next to me is  
24 right across the street, so caddy-corner.  
25 Q. Are you personally aware of the activities

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1 going on at 7103 Mumford by the Congregation?  
2 A. Yes, sir.  
3 Q. Do you have any personal complaints about the  
4 activities that have been occurring there since the  
5 Congregation moved in?  
6 A. Yes, sir.  
7 Q. Could you explain to the Court what those are?  
8 A. Well, the traffic that comes into the  
9 cul-de-sac starts anywhere from 5:45 in the morning.  
10 I have two Labrador Retrievers. What it  
11 does, they start barking. It triggers my neighbor's  
12 dogs; they start barking, which wakes up my twins, which  
13 are 17 years old.  
14 Just this Sunday, when I was trying to turn  
15 into the Court after going on a hunting trip, there was  
16 a young lady trying to push a baby carriage across the  
17 street that I had to stop and let her go.  
18 There's a lot of people walking down the  
19 alley, which, you know, is not safe, as far as going to  
20 and from.  
21 You know, there's just -- there's a lot of  
22 traffic there. There's a gentleman that just stepped  
23 into the courthouse that -- who is blind. I think it  
24 was before daylight savings time, he was crossing the  
25 street from across the street, and I was turning in and

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1 a young man was sitting there putting his hands up to  
2 stop me because he was just crossing the street.  
3 There's just -- there's a lot of activity.  
4 It's tough to park on the Court sometimes  
5 I've got twins. Cars, you know, their friends and  
6 everything else.  
7 Q. We're here today to ask the Court to issue a  
8 temporary restraint on activities at 7103 Mumford.  
9 Is that something you would request as a  
10 personal homeowner?  
11 A. Oh, absolutely.  
12 Q. In your personal opinion, do the activities at  
13 7103 Mumford affect your personal enjoyment of your  
14 home?  
15 A. Absolutely.  
16 Q. Were you aware of any previous similar  
17 activities by the prior owners of 7103 Mumford?  
18 A. No. Rocky and Charlotte were great.  
19 Q. Have you experienced any problems with parking?  
20 You alluded to that a minute ago.  
21 A. Yes, sir.  
22 Q. Explain to the Court what you have personally  
23 experienced.  
24 A. Well, when you have -- you know, we have a  
25 total of five cars. We've got an extra car if one's in

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1 the shop. And we have to -- you know, we can get three  
2 cars in front.  
3 But if the kids have any friends and  
4 they're having a meeting, sometimes they have to park  
5 further down in the cul-de-sac, you know.  
6 MR. Surratt: No further questions. Pass  
7 the witness.  
8 MR. TANCABEL: No questions, Your Honor.  
9 THE COURT: Thank you. You may step down.  
10 MR. Surratt: I'd like to call Marilyn  
11 Frey.  
12 (Witness sworn.)  
13 MARILYN FREY,  
14 having been duly sworn, testified under oath as follows:  
15 DIRECT EXAMINATION  
16 BY MR. Surratt:  
17 Q. Ms. Frey, where do you live?  
18 A. I live at 7116 Mumford Court.  
19 Q. Where is that in relationship to 7103 Mumford  
20 Court?  
21 A. About three houses down on the other side.  
22 Q. How long have you lived in your residence?  
23 A. Twenty-five years this June.  
24 Q. Are you, personally, aware of the activities  
25 occurring at 7103 Mumford by the Congregation?

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1 A. Yes, I am.

2 Q. Do you have any personal complaints or  
3 objections to any of the activities that are occurring  
4 at 7103 Mumford?

5 A. Yes, I do.

6 Q. Could you explain to the Court what those are?

7 A. One of the issues is the parking. There are a  
8 lot of cars on the street, both morning and night.

9 I have family that likes to come visit at  
10 night. And both of my boys have a pickup, and sometimes  
11 it's very difficult for them to get down through the  
12 street, down to my house on the cul-de-sac.

13 Q. We're here today to ask the Court to issue a  
14 temporary order to have the activities at 7103 Mumford  
15 stopped until a final decision can be made in the  
16 lawsuit.

17 Is that something you support?

18 A. Yes, it is.

19 Q. Anything in particular you would want  
20 restrained or stopped at 7103 Mumford?

21 A. Could you repeat that? I'm sorry.

22 Q. Other than the items you mentioned that you  
23 have experienced that you feel are a problem for you, is  
24 there anything else you would want stopped at 7103  
25 Mumford on a temporary basis until the Court can make a

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1 are services at the house every day, twice a day.

2 Is this consistent with what you observed  
3 since they've been on Mumford?

4 A. Yes.

5 Q. It says that the synagogue is home to about 25  
6 members. Does that sound approximately right as to the  
7 approximate number of people you might see coming and  
8 going?

9 A. Approximately.

10 Q. That would -- if there is two services per day  
11 seven days a week, that's 14 services a week, 10, 20  
12 people coming and going.

13 That's a lot of people, isn't it?

14 A. Yes, it is.

15 Q. Okay. Is that more than you would expect to  
16 see from other houses on your street?

17 A. Yes, it is, definitely.

18 MR. SCHNEIDER: That's all, Your Honor.

19 MR. TANCABEL: No questions.

20 MR. SURRETT: I'd like to call Dawn Coates.

21 THE COURT: And just so you'll know, I do  
22 stop the clock in between until the witnesses actually  
23 begin speaking. You have five minutes and 28 seconds  
24 remaining.

25 (Witness sworn.)

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1 final ruling in the case?

2 A. Well, I just think that we're -- in our deed  
3 restrictions, we're a single-family home.

4 Q. In your opinion, do the activities at 7103  
5 Mumford interfere with your enjoyment of your property?

6 A. Yes, it does.

7 MR. SURRETT: No further questions. Pass  
8 the witness.

9 MR. TANCABEL: No questions, Your Honor.

10 THE COURT: Okay. Thank you.

11 MR. SCHNEIDER: Your Honor, I have a couple  
12 of questions for the witness.

13 THE COURT: Oh, ma'am. I'm sorry. If you  
14 can stay there for just a moment.

15 MR. SCHNEIDER: I have an item I would like  
16 to introduce into evidence.

17 THE COURT: Okay. And you can mark it P-1.

18 MR. SCHNEIDER: Thank you, Your Honor.

19 CROSS-EXAMINATION OF MARILYN FREY

20 BY MR. SCHNEIDER:

21 Q. Ms. Frey, this is an article related to a TV  
22 news broadcast on Fox 4 News. Are you aware of this  
23 particular broadcast?

24 A. Yes, sir, I am.

25 Q. And in the broadcast, it mentions that there

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1 DAWN COATES,

2 having been duly sworn, testified under oath as follows:

3 DIRECT EXAMINATION

4 BY MR. SURRETT:

5 Q. Ms. Coates, where do you live?

6 A. 7112 Mumford Court.

7 Q. Where is that in relation to 7103 Mumford?

8 A. It's in the same cul-de-sac, but 7103 is on the  
9 end. I'm like three houses down on the other side.

10 Q. Okay. How long have you lived in your  
11 residence?

12 A. Twenty years and a few months.

13 Q. Have you personally experienced any of the  
14 activities going on at 7103 Mumford?

15 A. I have, yes, sir.

16 Q. Do you have any complaints about any of those  
17 activities?

18 A. Yes, sir, I do.

19 Q. Can you explain to the Court what those are?

20 A. Well, there's a couple of things: There's the  
21 additional traffic, both automobiles and foot traffic  
22 going in and out of the house, on the street, as well as  
23 in the alley. Cars parking on the street. Sometimes  
24 there's a lot of cars; sometimes there's a few cars.

25 And there is services both morning and

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1 evening, but the services in the morning, there's like  
 2 three different meetings.  
 3           So it's not just one meeting with people  
 4 coming the whole time. There's people -- they start at  
 5 six and they leave and then another two or three people  
 6 come or four people come. A lot of in-and-out.  
 7           Q. Have you experienced anything like that prior  
 8 to the Congregation using 7103 Mumford?  
 9           A. No, sir.  
 10          Q. We're here today to ask the Court to issue a  
 11 temporary restraint on some of the activities at 7103  
 12 Mumford until the Judge can have an opportunity to make  
 13 a final ruling in this case.  
 14           Is that something you support?  
 15          A. Yes, sir.  
 16          Q. In your opinion, do you feel the activities at  
 17 7103 Mumford interfere with your enjoyment of your  
 18 property?  
 19          A. Yes, sir.  
 20           MR. SURRETT: No further questions.  
 21           MR. TANCABEL: No questions, Your Honor.  
 22           THE COURT: Okay. Thank you.  
 23           MR. SURRETT: Just a second. I may be  
 24 done. Let me check.  
 25           (Pause in proceedings.)

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1           MR. SURRETT: We call Mike Donahue.  
 2           (Witness sworn.)  
 3           MIKE DONOHUE,  
 4 having been duly sworn, testified under oath as follows:  
 5           DIRECT EXAMINATION  
 6 BY MR. SURRETT:  
 7           Q. Mr. Donohue, do you live in the Highlands of  
 8 McKamy IV and V community?  
 9           A. I do.  
 10          Q. Are you currently on the homeowner's  
 11 association board of directors?  
 12          A. I am.  
 13          Q. Do you happen to live on Mumford Court?  
 14          A. I live on Mumford Street on the other side of  
 15 Meandering, just down from 7103 Mumford Court, yes.  
 16          Q. We have a time limitation, so I want to focus  
 17 here on just a few key questions.  
 18           When did you become a member of the board  
 19 of directors?  
 20          A. January 31st of this year.  
 21          Q. In your capacity as a member of the board of  
 22 directors, can you explain to the Court whether or not  
 23 other homeowners have expressed concerns or interest in  
 24 seeing that the activities at 7103 Mumford Court stop?  
 25          A. Yes, they have, a number have.

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1           Q. And am I correct that the board of directors on  
 2 behalf of the HOA is pursuing and has decided to  
 3 intervene in this lawsuit to represent the interests of  
 4 the community; is that correct?  
 5           A. Correct.  
 6           MR. SURRETT: No further questions.  
 7           MR. TANCABEL: No questions, Your Honor.  
 8           THE COURT: Okay. Thank you.  
 9           MR. SURRETT: Your Honor, that concludes  
 10 the Intervening Plaintiff's part.  
 11           THE COURT: And the Plaintiff?  
 12           MR. SCHNEIDER: Nothing further for me.  
 13           THE COURT: Okay. Defendants may call your  
 14 first witness.  
 15           MR. TANCABEL: Your Honor, may I approach  
 16 the witness stand?  
 17           THE COURT: Yes.  
 18           MR. TANCABEL: Your Honor, John Tancabel,  
 19 representing the Congregation, of Haynes and Boone.  
 20           I'd just like point out, Your Honor, first  
 21 that some members of the Congregation are here, Rabbi  
 22 Rich and his family.  
 23           Your Honor, the stakes are very high for  
 24 this temporary injunction. The proposed temporary  
 25 injunction for the Intervenor would probably kill the

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1 average draws 10 to 12 people. Seven of them drive;  
 2 they come in six cars.  
 3           Three cars are to be parked in the backyard  
 4 driveway; three in front of the house. And so the  
 5 normal course of events is that there is no extra burden  
 6 of parking on the other neighbors.  
 7           Now, this parking plan has only been in  
 8 place two months, and so there may have been some stray  
 9 cars in front of other homes before that. But that is  
 10 what is the norm now.  
 11           Your Honor, I would like to call Rabbi Rich  
 12 at this time.  
 13           (Witness sworn.)  
 14           YAAKOV (JORDAN) RICH,  
 15 having been duly sworn, testified under oath as follows:  
 16           DIRECT EXAMINATION  
 17 BY MR. TANCABEL:  
 18           Q. Rabbi Rich, can you state your name?  
 19           A. My legal, English name is Jordan. My Hebrew  
 20 name that I go by is Yaakov, Y-A-A-K-O-V. Last name is  
 21 Rich.  
 22           Q. And what is your employment?  
 23           A. I'm employed by Congregation Toras Chaim as the  
 24 Rabbi, spiritual leader.  
 25           Q. And how long has the Congregation been in

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1 existence?

2 A. Since about May 2007.

3 Q. How long has the Congregation had its principal  
4 activities within the Highlands of McKamy?

5 A. Within the Highlands of McKamy, we -- the  
6 Congregation moved into my home February of 2011.

7 Q. And how long were those activities at your  
8 home?

9 A. For -- between two and a half, close to three  
10 years.

11 Q. When did you move to -- your principal  
12 activities to the 7103 Mumford Court property?

13 A. Most of our activities moved to the 7103  
14 Mumford address in August of 2013.

15 Q. Are the activities that take place at 7103  
16 Mumford Court, are those the same activities that took  
17 place at your home?

18 A. Exactly the same. Very little difference in  
19 terms of the activity.

20 Q. And in terms of the size of the congregation  
21 when you started in 2011, how does that compare to the  
22 size of the congregation now?

23 A. The congregation has been very consistent over  
24 those years. We serve the people who live within the  
25 Highlands of McKamy, within walking distance, and the

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1 those people walk, and then the rest will drive.

2 Q. Could you explain to the Court the plan you  
3 have for parking on non-Sabbath days?

4 A. Correct. In response to the community -- and  
5 we were trying to be very responsive and sensitive to  
6 the needs of the community.

7 So I sent out to all the members of the  
8 Congregation through text message list and in person  
9 that we request that people only park on the three spots  
10 directly in front of the house on the north side of  
11 Mumford Court and in our driveway in the back of the  
12 house, which also has room for three cars.

13 Any overflow is directed to park at the  
14 local Orthodox Jewish elementary school called Torah Day  
15 School of Dallas, approximately 300 feet away.

16 And so when we have a large gathering,  
17 that's where all of the members participating will park.

18 Q. So in the normal course of events, would there  
19 be cars of members parked in front of homes other than  
20 7103 Mumford Court?

21 A. We make every effort humanly possible to make  
22 sure that that does not happen. If it does happen  
23 because somebody might come from outside the community  
24 or who has not received the message yet, then we make  
25 sure to tell that person that the next time, please

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1 size of the congregation is really determined by the  
2 people in the neighborhood.

3 Q. And on non-Sabbath days, what are the events  
4 that draw the most people to the Congregation?

5 A. On the non-Sabbath days, we would have a  
6 morning service that begins at 6:40 a.m. We have a  
7 study group that begins at 6 a.m. A study group  
8 typically has two to three people. Of the two to three  
9 that are there, two of those people walk; one person  
10 drives.

11 And then we have a prayer service at 6:40,  
12 as I mentioned. We have 10 to 12 people at that prayer  
13 service. Five of those people walk and then the rest  
14 will drive to the synagogue.

15 Q. And in the afternoon and evening?

16 A. In the evening, we have the -- a couple of  
17 nights a week beginning at 7:15 p.m., we would have a  
18 marriage class on Monday nights for men, a marriage  
19 class on Tuesday nights for the ladies. And those  
20 classes typically average five or six people.

21 Eight o'clock, we have a Talmud study  
22 class, and that averages two people, sometimes three on  
23 a good night.

24 And then the evening prayer service is at  
25 nine o'clock. That's between 10 and 12 people. Five of

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1 don't park in front of other people's homes. But, in  
2 general, people are not parking in front of other  
3 people's homes.

4 Q. Do you understand what the Intervenor is -- the  
5 proposed injunction that the Intervenor is requesting in  
6 this case?

7 A. He's asking that the activity in the synagogue  
8 stop immediately until the decision is reached about the  
9 ability of the synagogue to function at 7103 Mumford.

10 Q. And what would be the effect of that injunction  
11 on the Congregation and its members?

12 A. Asking the activities to stop would be similar  
13 to asking a person to stop eating. Let me explain what  
14 I mean.

15 You see, we believe that there are physical  
16 needs and there are spiritual needs. And just like our  
17 bodies need nourishment every day, our souls need  
18 nourishment every day. That's our prayer and that is  
19 our Torah study.

20 And if our members were asked for a period  
21 of six months or one year that they could not  
22 participate actively in Torah study or prayer, it would  
23 individually be a terrible disaster for those  
24 individuals, force people to have to relocate and  
25 immediately shut down the Congregation, without

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1 question.

2 Q. In the years before you moved to 7103 Mumford  
3 Court, did the Congregation study possible alternative  
4 locations of where you might be able to conduct your  
5 activities?

6 A. For years, we were looking at many locations.  
7 We looked, for instance, north of Frankford. North of  
8 Frankford was not a viable option for us. There are  
9 gated communities over there. There are commercial  
10 places, but nothing for lease. And there are also some  
11 restrictions as to the types of activities that are  
12 allowed within those commercial establishments.

13 We looked south of McCallum to the east.  
14 South of McCallum is a very rough neighborhood and is  
15 not suitable for mothers and children to come to the  
16 synagogue.

17 And directly south of McCallum, it's within  
18 very, very close proximity to another synagogue in the  
19 neighborhood that is of a different emphasis and a  
20 different outlook than what our synagogue is.

21 And even though -- we may differ in outlook  
22 and emphasis, but we are of the same community, very  
23 friendly, and it would be a terrible affront and  
24 disrespect to relocate in their backyard, so to speak.

25 As well, when the Congregation started in

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1 Q. How do you know that?

2 A. I had a conversation with Carolyn "Cookie"  
3 Peadon, who spoke to me about the activities in our home  
4 and asked me if we were going to be relocating at some  
5 time in the future.

6 I said the intent was that we were going to  
7 be relocating at some time in the future, all things  
8 being equal -- financially, demographically,  
9 et cetera -- but in the meantime, we were going to be in  
10 our home until that could happen, and I did not know  
11 when that was going to be.

12 Q. Who is --

13 A. Cookie Peadon was the HOA president for many  
14 years, until early February of this year.

15 MR. TANCABEL: Your Honor, I have no  
16 further questions.

17 MR. SURRETT: Your Honor, I have a few  
18 questions, and Mr. Schneider may. Is it okay if we both  
19 ask?

20 THE COURT: Yes.

21 MR. SURRETT: I'll go first, if that's  
22 okay.

23 CROSS-EXAMINATION OF YAAKOV (JORDAN) RICH

24 BY MR. SURRETT:

25 Q. Rabbi, your deposition was taken yesterday, and

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1 2007. I sought the counsel of a very great Torah sage in  
2 New York, somebody who everybody in the Jewish community  
3 in Dallas greatly respects, and I was told we could only  
4 open if we were far enough away that it didn't seem as  
5 if we were competing with the other synagogue.

6 Q. If this temporary injunction is put in place,  
7 would the Congregation have anywhere else to go?

8 A. We don't believe that there are other places.  
9 The only other option would be coming back to our home,  
10 were that to be legal, and right now in my -- thank God,  
11 we have ten children.

12 And we have five living at home, five who  
13 are away who come back frequently with their families  
14 and their children. And to have the Congregation in our  
15 home again would be a very, very great burden on my wife  
16 and the family.

17 And, as well, the membership was already  
18 starting to feel that it was too difficult to come to  
19 our home because of the invasion in our private space.

20 Q. Rabbi Rich, how do you know that the  
21 homeowner's association -- or let me put it differently,

22 Do you -- was the homeowner's association  
23 aware of the activities of the Congregation at your home  
24 when it was at 7119 Bremerton Court?

25 A. They were absolutely aware.

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1 I believe you stated that when you purchased your  
2 property, you were not aware of the deed restrictions on  
3 your property at Bremerton; is that correct?

4 A. That's correct.

5 Q. And I understood from your testimony that you  
6 were not aware of any deed restrictions for Highlands of  
7 McKamy until you received one of the demand letters or  
8 cease-and-desist letters that preceded this lawsuit; is  
9 that correct?

10 A. That's correct.

11 Q. And prior to moving the Congregation's  
12 activities to 7103 Mumford, you also did not meet with  
13 or confer with the HOA board of directors on the plans  
14 and use of the property; is that correct?

15 A. That is correct.

16 Q. When you were conducting activities at your  
17 home on Bremerton, did you receive any complaints from  
18 neighbors?

19 A. The only complaint that I received -- not  
20 directly to us, but through other people -- was that  
21 there was one neighbor who, when any of our friends  
22 might park in front of their home, they requested not to  
23 park in front of their home.

24 Q. As you just stated, you did communicate to the  
25 HOA president at that time, Carolyn "Cookie" Peadon,

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1 that there were plans at that time, which was several  
 2 years ago, for the Congregation to perhaps build a new  
 3 facility, the property on Hillcrest Road; is that  
 4 correct?  
 5 A That is correct.  
 6 Q. And you have, as we've established here,  
 7 received complaints from neighboring property owners on  
 8 Mumford Court for the activities that are occurring  
 9 there now, correct?  
 10 A. Yes, and that's why we put that parking policy  
 11 in place, because we want to be responsive to our  
 12 neighbors and make sure that everybody is able to live  
 13 the way they want to.  
 14 Q. Now, the City of Dallas has required that the  
 15 Congregation obtain a certificate of occupancy for use  
 16 of the property by the Congregation, correct?  
 17 A. That is correct.  
 18 Q. And that's because the City of Dallas views it  
 19 as a church or commercial-type activity, correct?  
 20 A. Because of the frequency of our activity there,  
 21 so the City of Dallas is asking us to receive -- to  
 22 acquire a CO for commercial use.  
 23 THE COURT: You have 30 seconds remaining.  
 24 MR. SURRETT: Pardon me?  
 25 THE COURT: Thirty seconds.

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1 Q. (By Mr. Surratt) Has that CO been obtained?  
 2 A. We are in the process right now in active  
 3 negotiation and discussion with the city, and they are  
 4 aware of everything that we are doing.  
 5 MR. SURRETT: I'll defer to Mr. Schneider  
 6 at this time, Your Honor.  
 7 MR. SCHNEIDER: Your Honor, do I have a  
 8 minute for a question or two?  
 9 THE COURT: You have 30 seconds.  
 10 CROSS-EXAMINATION OF YAAKOV (JORDAN) RICH  
 11 BY MR. SCHNEIDER:  
 12 Q. Rabbi, you had indicated that when you were  
 13 looking at alternative space, one of the spots you  
 14 looked at was a commercial place, and why did -- did you  
 15 indicate that they didn't allow certain types of  
 16 activities there?  
 17 A. The place that did not allow certain activities  
 18 was the school. We looked at going to the Torah Day  
 19 School of Dallas.  
 20 Q. And the first time that you heard about the  
 21 deed restrictions, as I understand it, was in October  
 22 of 2013?  
 23 A. Correct.  
 24 Q. Is that accurate?  
 25 A. That is correct.

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1 Q. After -- if the parking is moved, will there  
 2 still be the same number of people coming and going to  
 3 the house at 7103 Mumford as today?  
 4 A. I'm sorry. Can you clarify the question?  
 5 Q. If the parking is improved -- situation is  
 6 improved so that there were no cars parking in front of  
 7 7103 Mumford, would there still be the same number of  
 8 people coming and going to that house?  
 9 A. I don't -- I'm not sure I understand the  
 10 question. If the parking is improved?  
 11 Q. Does the parking mitigate anything else other  
 12 than the parking?  
 13 A. No.  
 14 THE COURT: Okay. Thank you. It's time.  
 15 MR. TANCABEL: Your Honor, how much time do  
 16 I have left?  
 17 THE COURT: Five minutes, 31 seconds.  
 18 REDIRECT EXAMINATION OF YAAKOV (JORDAN) RICH  
 19 BY MR. TANCABEL:  
 20 Q. Rabbi Rich, you testified earlier that you had  
 21 told Cookie Peardon about the activities at the home.  
 22 Did Cookie or anyone else on the board of the HOA take  
 23 any actions against the Congregation?  
 24 A. Not once, never.  
 25 Q. Rabbi Rich, is 7103 -- 7103 Mumford Court, is

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1 that used as a residence?  
 2 A. It is used as a primary residence. My son, who  
 3 is 22 years old, his name is Abraham Lasha (phonetic)  
 4 Rich, lives there and uses it as his primary residence.  
 5 Q. And can you explain some of the things that he  
 6 does there using it as his residence?  
 7 A. Well, he's a teenager, 22 -- more than a  
 8 teenager. He's a young man, 22 years old, who uses it  
 9 for entertaining with his friends. He is responsible  
 10 for the upkeep of the house, for the security of the  
 11 house, for maintaining things that go wrong in the home.  
 12 And he uses the entire top floor of the house plus the  
 13 bottom kitchen area and then the backyard and the  
 14 driveway area.  
 15 Q. Rabbi Rich, are you aware of other  
 16 nonresidential uses of homes within the Highlands of  
 17 McKamy?  
 18 A. I am personally aware of two other  
 19 nonresidential uses in the Highlands of McKamy. One of  
 20 them is our next door neighbor on Bremerton Court. The  
 21 family operates a swimming school for toddlers and  
 22 infants. And during the spring, summer, and fall  
 23 months, there can be three, four or five cars coming and  
 24 going at a time.  
 25 I just want to say that I am not at all

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1 affected or I am not complaining about that, but just  
 2 stating a fact that that school has been there for many  
 3 years and operating freely. And I think that the amount  
 4 of the traffic from that school is greater than the  
 5 traffic from our synagogue.

6 And there are other -- two hospice homes --  
 7 I'm not sure about the street. I don't know about that  
 8 personally, but I know of these homes from other members  
 9 in the community.

10 MR. TANCABEL: Your Honor, no further  
 11 questions.

12 THE COURT: Thank you. You may step down.  
 13 You may call your next witness.

14 MR. TANCABEL: Your Honor, we have no other  
 15 witnesses.

16 THE COURT: All right. Then I'll let you  
 17 proceed with your five minutes of closing. And let me  
 18 ask if the Plaintiff will address the issue of when  
 19 Intervenor's counsel asked the Plaintiff what he wanted  
 20 the Court to do, I wasn't clear other than you wanted  
 21 the Defendants to act like the other residents.

22 So I need something more specific in your  
 23 argument. The testimony is what it is, so you can't  
 24 change that. But I would like for you to address what  
 25 specifically you're asking the Court to do

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1 REPORTER'S CERTIFICATE

2 THE STATE OF TEXAS )

3 COUNTY OF COLLIN )

4 I, Shawn R. Gant, Official Court Reporter in and  
 5 for the 429th District Court of Collin County, State of  
 6 Texas, do hereby certify that the above and foregoing  
 7 contains a true and correct transcription of all  
 8 portions of evidence and other proceedings requested in  
 9 writing by counsel for the parties to be included in  
 10 this volume of the Reporter's Record, in the  
 11 above-styled and -numbered cause, all of which occurred  
 12 in open court or in chambers and were reported by me.

13 I further certify that this Reporters Record of the  
 14 proceedings truly and correctly reflects the exhibits,  
 15 if any, admitted by the respective parties.

16 I further certify that the total cost for a  
 17 certified copy of this Reporter's Record is \$92.00 and  
 18 was paid by Haynes Boone.

19 WITNESS MY OFFICIAL HAND this the 15th day of  
 20 May, 2014.

21 /s/ Shawn R. Gant

22 Shawn R. Gant, Texas CSR 7316  
 23 Expiration Date: 12/31/14  
 24 Official Court Reporter  
 25 429th District Court  
 Collin County, Texas  
 McKinney, Texas 75071

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# **EXHIBIT D**

NO. 429-04998-2013

DAVID R. SCHNEIDER,	)	IN THE DISTRICT COURT
Plaintiff	)	
	)	
VS.	)	
	)	
JUDITH D. GOTHELF, MARK B.	)	
GOTHELF, AND CONGREGATION	)	
TORAS CHAIM, INC.,	)	
Defendants	)	
	)	
and	)	429th JUDICIAL DISTRICT
	)	
HIGHLANDS OF MCKAMY IV AND	)	
V COMMUNITY IMPROVEMENT	)	
ASSOCIATION,	)	
Intervening Plaintiff	)	
	)	
V.	)	
	)	
JUDITH D. GOTHELF AND MARK	)	
B. GOTHELF,	)	
Defendants	)	COLLIN COUNTY, TEXAS

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ORAL DEPOSITION OF

RABBI "JORDAN" YAAKOV RICH

APRIL 9, 2014

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ALPHA DEPO  
(888) 667-DEPO

Schneider vs. Gothelf, et al.

4/9/2014

Rabbi "Jordan" Yaakov Rich

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<p>1 ORAL DEPOSITION OF RABBI "JORDAN" YAAKOV RICH,                  2 produced as a witness at the instance of the INTERVENING                  3 PLAINTIFF, Highlands of McKamy IV and V Community                  4 Improvement Association, and duly sworn, was taken in                  5 the above-styled and numbered cause on April 9, 2014,                  6 from 1:26 p.m. to 4:36 p.m., before Lisa M. Durham, CSR                  7 in and for the State of Texas, reported by machine                  8 shorthand, at the offices of Haynes and Boone, LLP,                  9 located at 2323 Victory Avenue, Suite 700, City of                  10 Dallas, County of Dallas, State of Texas, pursuant to                  11 the Texas Rules of Civil Procedure and the provisions                  12 stated on the record or attached hereto.</p>	<p>1 INDEX PAGE                  2                  3 Appearances..... 3                  4 RABBI "JORDAN" YAAKOV RICH                  5 EXAMINATION BY MR. SURRATT..... 5                  6 EXAMINATION BY MR. SCHNEIDER.....47                  7 FURTHER EXAMINATION BY MR. SURRATT.....68                  8 FURTHER EXAMINATION BY MR. SCHNEIDER.....73                  9 EXAMINATION BY MR. TANCABEL..... 74                  10 FURTHER EXAMINATION BY MR. SCHNEIDER..... 91                  11 Signature and Changes..... 100                  12 Reporter's Certificate..... 101                  13                  14 EXHIBITS                  15 NO. DESCRIPTION MARKED ID'D                  16 Exhibit 1 Printout from Website 26 26                  17 Exhibit 2 Printout from Website 31 31                  18 Exhibit 3 Printout from Website 33 33                  19 Exhibit 4 Printout from Website 33 34                  20 Exhibit 5 Printout from Website 37 37                  21 Exhibit 6 Map Showing Eruv Boundary                  22 Lines 37 37                  23 Exhibit 7 Printout from Facebook                  24 Page 49 49                  25 Exhibit 8 Printout from Website 50 50                  26 Exhibit 9 Calendar of Services per                  27 Website Calendar 51 51                  28 Exhibit 10 Intervening Plaintiff's                  29 Notice of Deposition 72 72</p>
3	5
<p>1 APPEARANCES                  2                  3 FOR THE PLAINTIFF:                  4 Mr. David R. Schneider                  5 7035 Mumford                  6 Dallas, Texas 75252                  7 (214) 315-5531                  8 davidrayschneider@gmail.com                  9                  10 FOR THE DEFENDANTS, JUDITH D. GOTHELF, MARK B. GOTHELF,                  11 AND CONGREGATION TORAS CHAIM, INC.:                  12 Mr. Justin Butterfield                  13 LIBERTY INSTITUTE                  14 2001 Plano Parkway                  15 Suite 1600                  16 Plano, Texas 75075                  17 (972) 941-4444                  18 jbutterfield@libertyinstitute.org                  19                  20 FOR THE DEFENDANT, CONGREGATION TORAS CHAIM, INC.:                  21 Mr. John Tancabel                  22 HAYNES AND BOONE, LLP                  23 2323 Victory Avenue                  24 Suite 700                  25 Dallas, Texas 75219                  (214) 651-5597                  john.tancabel@haynesboone.com                  26                  27 FOR THE INTERVENING PLAINTIFF, HIGHLANDS OF MCKAMY IV                  28 AND V COMMUNITY IMPROVEMENT ASSOCIATION:                  29 Mr. David A. Surratt                  30 RIDDLE &amp; WILLIAMS, P.C.                  31 3710 Rawlins Street                  32 Suite 1400, Regency Plaza                  33 Dallas, Texas 75219                  34 (214) 760-6766                  35 dsurratt@riddleandwilliams.com</p>	<p>1 (April 9, 2014, 1:26 p.m.)                  2 RABBI "JORDAN" YAAKOV RICH,                  3 having been first duly affirmed, testified as follows:                  4 EXAMINATION                  5 BY MR. SURRATT:                  6 Q. Rabbi Rich, my name is David Surratt, and I'm                  7 an attorney, and I represent the Highlands of McKamy                  8 Community Improvement Association. Do you understand                  9 that? Do you understand who I represent?                  10 A. Highlands of McKamy Community Improvement?                  11 Q. Yeah, Highlands of McKamy IV and V Community                  12 Improvement Association.                  13 A. (Moving head affirmatively).                  14 Q. Is that a yes?                  15 A. Yes, I understand that.                  16 Q. Okay. And that's a good point. Have you ever                  17 given a deposition prior to today?                  18 A. No.                  19 Q. Okay. What the court reporter will do is she's                  20 taking down everything we say, and here's -- just you                  21 can glance from here, an example of a prior deposition.                  22 You see that there's a question and an answer.                  23 So if you'll actually answer instead of                  24 nodding, it'll be clearer in the written record. So                  25 that will be extremely helpful.</p>



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6	<p>1 A. Uh-huh.</p> <p>2 Q. If at any point today you don't understand a</p> <p>3 question that I'm asking, please let me know and I'll do</p> <p>4 my best to rephrase it. Please state your full name for</p> <p>5 the record.</p> <p>6 A. Jordan, J-o-r-d-a-n, Rich, R-i-c-h. I am using</p> <p>7 my Hebrew name, which is Yaakov, Y-a-a-k-o-v.</p> <p>8 Q. And that's your first name, Yaakov Rich,</p> <p>9 correct?</p> <p>10 A. Yes.</p> <p>11 Q. Do you have a middle initial that you go by</p> <p>12 with Jordan Rich?</p> <p>13 A. No.</p> <p>14 MR. SURRETT: Okay. And for the purposes</p> <p>15 of the attorneys, we're continuing with the same</p> <p>16 agreements that we had with the previous deposition of</p> <p>17 Mark Gothelf. Is that correct?</p> <p>18 MR. TANCABEL: That is correct.</p> <p>19 Q. (BY MR. SURRETT) Do you mind if I call you</p> <p>20 Rabbi Rich for our purposes today?</p> <p>21 A. Please.</p> <p>22 Q. There may be some pauses during the time period</p> <p>23 today, Rabbi, and that's so that I can look at my notes</p> <p>24 and not take up any more time than we have to. So bear</p> <p>25 with me, and hopefully that'll help us expedite and get</p>	8	<p>1 protecting privacy.</p> <p>2 A. Okay. Can I give you a different document</p> <p>3 instead of my driver's license?</p> <p>4 Q. Well, I would like to see your Texas driver's</p> <p>5 license, please.</p> <p>6 A. Okay. It happens to be expired, so I have to</p> <p>7 renew it.</p> <p>8 MR. SURRETT: Let the record reflect that</p> <p>9 the Rabbi did provide a copy of his driver's license,</p> <p>10 and I am taking down by hand certain information.</p> <p>11 Q. (BY MR. SURRETT) And while I'm doing this,</p> <p>12 sir, would you mind writing down your social security</p> <p>13 number again so we don't get it into the record, and</p> <p>14 I'll just make a handwritten note of that?</p> <p>15 MR. SURRETT: Do you have a pen? If he</p> <p>16 could borrow one of the --</p> <p>17 MR. TANCABEL: Yeah.</p> <p>18 A. (Witness complies.)</p> <p>19 Q. (BY MR. SURRETT) Sir, I notice that it has an</p> <p>20 address on here, 11824 Jamestown Road --</p> <p>21 A. That's a previous address.</p> <p>22 Q. Okay. And that's a good example, too. I</p> <p>23 anticipated that that was the answer, but let me finish</p> <p>24 my question, and that way we're not talking over each</p> <p>25 other --</p>
7	<p>1 through the process. What is your age, sir?</p> <p>2 A. Fifty-three.</p> <p>3 Q. Do you have a Texas driver's license?</p> <p>4 A. I do.</p> <p>5 Q. Do you have it with you?</p> <p>6 A. Yes.</p> <p>7 Q. May I see it, please?</p> <p>8 MR. TANCABEL: Why do you need to see his</p> <p>9 driver's license?</p> <p>10 MR. SURRETT: It's to obtain information</p> <p>11 off the driver's license. Now, we can put it in the</p> <p>12 record, but rather than ask for his driver's license</p> <p>13 number, date of birth and that kind of thing, just to</p> <p>14 protect his privacy, I'll just make a note of it. If</p> <p>15 you'd like, I can ask him those questions. It's just a</p> <p>16 matter of protecting his privacy since sometimes the</p> <p>17 transcript is attached as exhibits to court documents.</p> <p>18 MR. TANCABEL: Okay. Sure.</p> <p>19 MR. SURRETT: Is that acceptable?</p> <p>20 MR. TANCABEL: That is.</p> <p>21 Q. (BY MR. SURRETT) That's the purpose, Rabbi.</p> <p>22 That way I can take down the information, and it's not</p> <p>23 typed out. And, then, if this is attached --</p> <p>24 MR. TANCABEL: Sure. That's fine.</p> <p>25 Q. (BY MR. SURRETT) It's just a matter of</p>	9	<p>1 A. Uh-huh.</p> <p>2 Q. -- and it will be clearer for the court</p> <p>3 reporter. What is your current residence, sir?</p> <p>4 A. 7119 Bremerton Court, 75252.</p> <p>5 Q. And is that in the city of Dallas?</p> <p>6 A. Yes.</p> <p>7 Q. And that is located within the Highlands of</p> <p>8 McKamy IV and V community, correct?</p> <p>9 A. Correct.</p> <p>10 Q. How long have you lived at that address, sir,</p> <p>11 approximately?</p> <p>12 A. Seven years.</p> <p>13 Q. And was the Jamestown Road address -- that you</p> <p>14 moved from there to Breinerton?</p> <p>15 A. Yes.</p> <p>16 Q. And I understand that you are married. Is that</p> <p>17 correct?</p> <p>18 A. Yes.</p> <p>19 Q. Your wife's name?</p> <p>20 A. Susan L. Rich.</p> <p>21 Q. And as I understand it, you do have children,</p> <p>22 correct?</p> <p>23 A. Yes.</p> <p>24 Q. How many, sir?</p> <p>25 A. Ten.</p>

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10	<p>1 Q. All by the same marriage?</p> <p>2 A. Yes.</p> <p>3 Q. Now, you have a son who is residing at</p> <p>4 7103 Mumford Court, and I may not pronounce the name</p> <p>5 correctly, but Avrohom. Is that close?</p> <p>6 MR. TANCABEL: Objection, form.</p> <p>7 A. Avrohom (pronunciation).</p> <p>8 Q. (BY MR. SURRATT) Avrohom?</p> <p>9 A. Moshe.</p> <p>10 Q. What would be his first name if I refer to him</p> <p>11 by his first name?</p> <p>12 A. Avrohom.</p> <p>13 Q. Avrohom?</p> <p>14 A. Uh-huh.</p> <p>15 Q. Now, where is Avrohom within the age range of</p> <p>16 your children, oldest, youngest, middle, somewhere like</p> <p>17 that?</p> <p>18 A. Fourth oldest.</p> <p>19 Q. Okay. And what is Avrohom's current residence</p> <p>20 address?</p> <p>21 A. His current -- can you clarify the question?</p> <p>22 Q. If Avrohom were filling out an application for</p> <p>23 something, say a loan, a school application, what would</p> <p>24 he list as his residence address?</p> <p>25 MR. TANCABEL: Objection, form.</p>	12	<p>1 you been in the employment of the congregation,</p> <p>2 approximately?</p> <p>3 A. Seven years.</p> <p>4 Q. Do you have any other employment?</p> <p>5 A. Currently, no.</p> <p>6 Q. All right. The way you stated that, are you</p> <p>7 anticipating something in the future?</p> <p>8 A. No.</p> <p>9 Q. Was there some other employment that you had</p> <p>10 previously?</p> <p>11 A. Yes.</p> <p>12 Q. If you could explain.</p> <p>13 A. Yeah. I used to teach in a -- very part-time</p> <p>14 in a local school.</p> <p>15 Q. Okay. And which local school was that?</p> <p>16 A. Mesorah.</p> <p>17 Q. And would that have been teaching Jewish</p> <p>18 religious studies or something like that?</p> <p>19 A. Correct.</p> <p>20 Q. Okay. Now, is the congregation your sole</p> <p>21 source of income?</p> <p>22 A. When you say my sole source, me personally?</p> <p>23 Q. Well, let's start --</p> <p>24 A. My family or --</p> <p>25 Q. Let's start with you personally.</p>
11	<p>1 A. 7103 Mumford Court.</p> <p>2 Q. (BY MR. SURRATT) Am I correct that you grew up</p> <p>3 in Canada?</p> <p>4 A. Yes.</p> <p>5 Q. Are you a U.S. citizen?</p> <p>6 A. No.</p> <p>7 Q. Okay. Still retain your Canadian citizenship?</p> <p>8 A. Yes.</p> <p>9 Q. Approximately how long have you been here in</p> <p>10 the United States full-time?</p> <p>11 A. Thirty-plus years.</p> <p>12 Q. Are you currently employed in any capacity?</p> <p>13 A. Yes.</p> <p>14 Q. And who was your employer?</p> <p>15 A. Congregation Toras, T-o-r-a-s, Chaim,</p> <p>16 C-h-a-i-m.</p> <p>17 Q. And how long have you been in the employment of</p> <p>18 the congregation?</p> <p>19 And for purposes of today's discussion,</p> <p>20 will it be acceptable to you if I just use the phrase</p> <p>21 "congregation" to refer to the Toras Chaim?</p> <p>22 A. Uh-huh.</p> <p>23 Q. Okay. Is that a yes?</p> <p>24 A. Yes.</p> <p>25 Q. And let me restate my question. How long have</p>	13	<p>1 A. Yes.</p> <p>2 Q. Okay. And that's another good point. If</p> <p>3 there's something about a question you don't understand,</p> <p>4 ask me, and I will do my best to clarify.</p> <p>5 A. Uh-huh.</p> <p>6 Q. So let's restate. Is there any other source of</p> <p>7 income that you personally have?</p> <p>8 A. No.</p> <p>9 Q. Okay. Any other source of income for your</p> <p>10 family?</p> <p>11 A. Yes.</p> <p>12 Q. And what would that be?</p> <p>13 A. Mesorah.</p> <p>14 Q. And is that the same school where you used to</p> <p>15 teach part-time?</p> <p>16 A. Yes.</p> <p>17 Q. And would that be through your wife or another</p> <p>18 family member?</p> <p>19 A. My wife.</p> <p>20 Q. And is she employed there full-time?</p> <p>21 A. She's the vice principal.</p> <p>22 Q. And where is the Mesorah located?</p> <p>23 A. Park Central Drive.</p> <p>24 Q. And is that in the city of Dallas or in close</p> <p>25 proximity to where you reside?</p>

14	<p>1 <b>A. No. It's near Medical City of Dallas.</b></p> <p>2 Q. With your employment with the congregation, are</p> <p>3 you paid on a flat salary basis, or are you paid based</p> <p>4 on contributions from the congregation?</p> <p>5 <b>A. I don't understand the difference.</b></p> <p>6 Q. Okay. Do you receive a flat salary payment</p> <p>7 each month, quarterly or on some basis, or does your</p> <p>8 income relate to what donations or contributions that</p> <p>9 the congregation members might make to the congregation?</p> <p>10 By analogy -- and I'm not Jewish, but let's</p> <p>11 say in the Baptist church, for example, there are some</p> <p>12 ministers where an offering is taken up each weekend,</p> <p>13 Sunday services or at other times, and part of their</p> <p>14 income may be based on the amount of income generated</p> <p>15 from those offerings. Does that help clarify?</p> <p>16 MR. TANCABEL: Objection, form.</p> <p>17 MR. SURRATT: Basis for objection?</p> <p>18 MR. TANCABEL: That was a long narration.</p> <p>19 It wasn't really a question.</p> <p>20 Q. (BY MR. SURRATT) Well, let me rephrase the</p> <p>21 question, then, Rabbi. Explain to me how you receive</p> <p>22 income from the congregation.</p> <p>23 <b>A. They write me a check once a month based on a</b></p> <p>24 <b>contract.</b></p> <p>25 Q. Okay. And that was going to be the next</p>	16	<p>1 <b>spiritual source of growth and learning, and he made a</b></p> <p>2 <b>match between me and them.</b></p> <p>3 Q. When the congregation first started -- let's</p> <p>4 say the first year or two -- approximately how many</p> <p>5 members did it have?</p> <p>6 <b>A. Ten.</b></p> <p>7 Q. And currently, what would be the number of</p> <p>8 members of the congregation?</p> <p>9 <b>A. Thirty-plus.</b></p> <p>10 Q. Does the congregation have a membership roster,</p> <p>11 names of the members?</p> <p>12 <b>A. A loose roster.</b></p> <p>13 Q. And by loose roster, meaning that it may not be</p> <p>14 a hundred percent accurate. Would that be a fair</p> <p>15 statement?</p> <p>16 <b>A. It's probably 95 percent accurate, and just to</b></p> <p>17 <b>explain why it's about 95 percent accurate, these things</b></p> <p>18 <b>can change from one week to another week.</b></p> <p>19 Q. And I appreciate the clarification.</p> <p>20 <b>A. Yeah.</b></p> <p>21 Q. Does the congregation have a board of directors</p> <p>22 or a board that goes by some other name?</p> <p>23 <b>A. Yes.</b></p> <p>24 Q. Okay. And what would that be?</p> <p>25 <b>A. The board of directors.</b></p>
15	<p>1 question, whether or not you had any form of written</p> <p>2 contract or employment contract with them. So I take it</p> <p>3 that you do. Is that correct?</p> <p>4 <b>A. Yes.</b></p> <p>5 Q. Okay. And is that check once a month the same</p> <p>6 dollar amount?</p> <p>7 <b>A. Yes.</b></p> <p>8 Q. And you are the only rabbi for the</p> <p>9 congregation, correct?</p> <p>10 <b>A. Yes.</b></p> <p>11 Q. Have you been a rabbi for any previous</p> <p>12 congregations?</p> <p>13 <b>A. No.</b></p> <p>14 Q. I believe you stated you've been in the</p> <p>15 employment of the congregation approximately seven</p> <p>16 years. Would that also have been about the time frame</p> <p>17 that the congregation was formed or created?</p> <p>18 <b>A. Correct.</b></p> <p>19 Q. Could you explain to the court how the</p> <p>20 congregation was created? And what I mean by that is</p> <p>21 did a group of people get together? Did you talk with</p> <p>22 potential members of the congregation? How did it get</p> <p>23 started?</p> <p>24 <b>A. I had a friend who knew some members of the</b></p> <p>25 <b>community in the area who were looking for a certain</b></p>	17	<p>1 Q. Okay. Do they have --</p> <p>2 <b>A. Well, the executive board.</b></p> <p>3 Q. Do they also have what's called an advisory</p> <p>4 board?</p> <p>5 <b>A. Yes.</b></p> <p>6 Q. Let me start with the advisory board. What is</p> <p>7 the role of the advisory board?</p> <p>8 <b>A. To facilitate the needs of programming and</b></p> <p>9 <b>functioning within the congregation.</b></p> <p>10 Q. Now, are the members of the advisory board --</p> <p>11 <b>A. I will also add one more, to implement</b></p> <p>12 <b>programming.</b></p> <p>13 Q. Are the members of the advisory board also the</p> <p>14 same members as the executive board?</p> <p>15 <b>A. No.</b></p> <p>16 Q. Currently, who's on the advisory board?</p> <p>17 <b>A. You want names?</b></p> <p>18 Q. Yes, please.</p> <p>19 <b>A. Okay. Ehoud Wilson, E-h-o-u-d, last name</b></p> <p>20 <b>Wilson; Shoshana Chana, C-h-a-n-a, Jacobs. Currently,</b></p> <p>21 <b>those are the only two people on the advisory board.</b></p> <p>22 Q. Are those individuals also members of the</p> <p>23 congregation?</p> <p>24 <b>A. Yes.</b></p> <p>25 Q. The executive board, how many members?</p>

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<p>1 A. Oh, let's see, five.</p> <p>2 Q. And who are the current members of the</p> <p>3 executive board?</p> <p>4 A. Okay. President, Ben Nise. Treasurer, Josh</p> <p>5 Rothstein. I guess just general member, Wes Sutkin.</p> <p>6 Past president, Avi, A-v-i, Bloomenstiel,</p> <p>7 B-l-o-o-m-e-n-s-t-i-e-l. And, then, we have one</p> <p>8 position that is currently being filled. So we have</p> <p>9 technically four right now that are active members.</p> <p>10 Q. Now, as the rabbi, would you serve on the board</p> <p>11 of directors?</p> <p>12 A. Without a vote. That should be, yes, without</p> <p>13 a vote.</p> <p>14 Q. How old is your son Avrohom, approximately?</p> <p>15 A. Yeah, 22.</p> <p>16 Q. Is Avrohom employed in any capacity by the</p> <p>17 congregation?</p> <p>18 A. No.</p> <p>19 Q. Is Avrohom a member of the congregation?</p> <p>20 A. No.</p> <p>21 Q. Is Avrohom a member of another congregation?</p> <p>22 A. No. I should add, nor does he participate in</p> <p>23 congregational functions.</p> <p>24 Q. And let me follow up, and bear with me today,</p> <p>25 Rabbi, again, my lack of familiarity with the Jewish</p>	<p>1 apology necessary, sir.</p> <p>2 Now, is Avrohom currently employed</p> <p>3 anywhere?</p> <p>4 A. No.</p> <p>5 Q. Does he go to school either full-time or</p> <p>6 part-time? And what I mean by that, some institution of</p> <p>7 higher learning.</p> <p>8 A. No.</p> <p>9 Q. Is he enrolled in any type of Jewish religious</p> <p>10 studies program?</p> <p>11 A. No. Can I refer back to the previous question?</p> <p>12 You said is he employed anywhere. His employment ended</p> <p>13 two weeks ago.</p> <p>14 Q. And what was that employment, sir?</p> <p>15 A. He was a manager in a Jewish bookstore.</p> <p>16 Q. Is -- well, strike that. I'm not certain if</p> <p>17 "understudy" or "apprentice" is an appropriate term, but</p> <p>18 I think you understand --</p> <p>19 A. Uh-huh.</p> <p>20 Q. -- those terms. Is Avrohom by chance an</p> <p>21 understudy of you or an apprentice to become a rabbi?</p> <p>22 A. He would snicker at that. No.</p> <p>23 Q. Okay.</p> <p>24 A. I can't wait to tell my wife that question.</p> <p>25 Q. Based on your testimony a few minutes ago about</p>
<p>1 faith.</p> <p>2 A. That's okay.</p> <p>3 Q. And there may be others, the court, we don't</p> <p>4 know, who might be reading this.</p> <p>5 Now, for Avrohom, is this by choice, or is</p> <p>6 there something where there's some age limitation? Is</p> <p>7 there something within the Jewish practice that would</p> <p>8 prohibit him from being in the congregation?</p> <p>9 A. (Moving head negatively).</p> <p>10 Q. Is that no?</p> <p>11 A. No.</p> <p>12 Q. So this is just a personal choice of his own,</p> <p>13 correct?</p> <p>14 A. Yes. If I'm pausing, it's because I'm</p> <p>15 carefully considering your questions before I give you</p> <p>16 an answer.</p> <p>17 Q. And there's nothing wrong with that, and I</p> <p>18 appreciate that. That's -- I'm not here to trick you</p> <p>19 today.</p> <p>20 A. Yeah.</p> <p>21 Q. I'm just here to get information. So, yeah.</p> <p>22 And if you'll notice, I'll trying to allow you to think</p> <p>23 through an answer --</p> <p>24 A. Yeah. I just --</p> <p>25 Q. -- so I don't step on your answers. So no</p>	<p>1 how the congregation came to be, would it be fair to say</p> <p>2 that you helped create the congregation, Congregation</p> <p>3 Toras Chaim?</p> <p>4 A. Yes.</p> <p>5 Q. Is there an imposed limit on the size of the</p> <p>6 congregation, or is it such to where, as long as people</p> <p>7 are interested, the congregation is available to grow</p> <p>8 based upon the needs of the community?</p> <p>9 A. The congregation can grow and serve as many</p> <p>10 people as are desirous of our services within the</p> <p>11 Highlands of McKamy and surrounding area.</p> <p>12 Q. And in that area, I've learned that there's</p> <p>13 what's called an eruv, if I'm pronouncing that</p> <p>14 correctly?</p> <p>15 A. Eruv.</p> <p>16 Q. E-r-u-v?</p> <p>17 A. Uh-huh.</p> <p>18 Q. Is that a yes?</p> <p>19 A. Yes.</p> <p>20 Q. So the Congregation's geographic limits,</p> <p>21 though, were only imposed by the eruv?</p> <p>22 A. Correct.</p> <p>23 Q. Going back to my questions to you about your</p> <p>24 compensation through your employment, is your</p> <p>25 compensation reviewed periodically with the board of</p>

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<p>1 directors, say, for example, every year, every two 2 years?</p> <p>3 <b>A. Do you mean by a formal review?</b></p> <p>4 Q. Formal or informal. Good point. Let me phrase 5 it this way.</p> <p>6 And there's going to be some introductory 7 statements here, so bear with me. If I confuse you, let 8 me know.</p> <p>9 In some employment, an employee feels that 10 perhaps -- and it may be one of the lawyers. You know, 11 we feel that perhaps -- you know, maybe it's time for a 12 review and we would like an increase.</p> <p>13 Under what circumstances, whether formal, 14 if there are such, or informal, would you then have the 15 option to talk with the board about increase in salary?</p> <p>16 <b>A. The relationship between the board and the 17 rabbi is extremely open, and we could have that 18 discussion at any time.</b></p> <p>19 Q. Is the basis of the compensation affected by 20 the size of the congregation?</p> <p>21 <b>A. No.</b></p> <p>22 Q. Is there any particular criteria that's been 23 expressed to you by the board or -- as you understand 24 it, that affects your compensation?</p> <p>25 <b>A. No.</b></p>	<p>1 congregation to have as a -- to have their prayer 2 services and functions, et cetera.</p> <p>3 Q. Did you approach the sellers of the property to 4 connect them to Gothelf?</p> <p>5 <b>A. No.</b></p> <p>6 Q. Were you involved in any of the negotiations 7 between Mark Gothelf and the sellers of 7103 Mumford 8 Court?</p> <p>9 <b>A. Not to my knowledge.</b></p> <p>10 Q. Can you describe the difference in size of 11 7103 Mumford Court to the size of your residence on 12 Bremerton?</p> <p>13 <b>A. Our house on Bremerton is about 3100 square 14 feet. The house on Mumford is about 3400 square feet. 15 But more importantly, my house on Bremerton has two 16 parents with five children residing there and five older 17 children that come back on a regular basis that make 18 having the congregation in our house difficult at best.</b></p> <p>19 Q. Mark Gothelf had testified that there was a 20 coded lock on the main door, the front door, of 7103 21 Mumford Court. Is that correct?</p> <p>22 <b>A. I don't know.</b></p> <p>23 Q. Do you gain access to the property --</p> <p>24 <b>A. Oh, you mean now?</b></p> <p>25 <b>Q. Yes, sir. Yes, sir.</b></p>
23	25
<p>1 Q. Does your son, Avrohom, receive any form of 2 financial compensation from the congregation?</p> <p>3 <b>A. No.</b></p> <p>4 Q. Does he pay any form of rent or compensation to 5 the congregation to reside at 7103 Mumford Court?</p> <p>6 <b>A. He pays rent in kind, which means that he 7 services the house, takes care of things, provides a 8 level of security by living there, does maintenance, as 9 he's very handy, things like that.</b></p> <p>10 Q. I'd like to focus a little bit now on the 11 property at 7103 Mumford Court. As everyone here is 12 familiar, the Gothelfs, Mark and Judith Gothelf, 13 purchased the property.</p> <p>14 What role, if any, did you play in 15 connecting the Gothelfs to the purchase of 7103 Mumford 16 Court? Do you understand my question?</p> <p>17 <b>A. It was really the opposite.</b></p> <p>18 Q. Okay.</p> <p>19 <b>A. They connected us with the property.</b></p> <p>20 Q. All right. Could you explain for the court 21 what you mean by that?</p> <p>22 <b>A. Mark was looking to move into the area, saw the 23 house, liked it very much, was considering buying it for 24 his family. In the end, thought wouldn't work out for 25 his family, but that it would be a great place for the</b></p>	<p>1 <b>A. Oh, I thought you were talking about --</b></p> <p>2 Q. No. Let me rephrase that, then.</p> <p>3 <b>A. Yeah. I didn't --</b></p> <p>4 Q. Currently, to gain access --</p> <p>5 <b>A. Because you said there was a coded lock.</b></p> <p>6 Q. I apologize, so -- appreciate you asking for 7 clarification.</p> <p>8 In talking to Mark Gothelf during his 9 deposition, we were discussing how someone, himself 10 specifically, as the owner, could gain access to the 11 property, and we asked if he had a key. He said, no, 12 that there was a coded lock on the front door.</p> <p>13 <b>A. Uh-huh.</b></p> <p>14 Q. Is that correct?</p> <p>15 <b>A. Correct.</b></p> <p>16 Q. Is there a particular reason why there's a 17 coded lock on the front door as opposed to a keyed lock?</p> <p>18 <b>A. Yes.</b></p> <p>19 Q. And what would that be?</p> <p>20 <b>A. To allow the members to have access as it's a 21 little bit burdensome to make a key for every single 22 person.</b></p> <p>23 Q. So the members have the code and can come and 24 go as they need to the property of 7103 Mumford?</p> <p>25 <b>A. Some members have the code.</b></p>

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<p>1 Q. Approximately how many out of the approximate 2 30 families that you indicated were members? 3 A. <b>About ten.</b> 4 Q. Mark Gothelf had stated in his deposition that 5 the congregation provided a \$75,000 deposit for the use 6 of the property. Is that your understanding? 7 A. <b>Yes.</b> 8 Q. The source of that \$75,000, did any of those 9 funds come from the sale of the property that the 10 congregation had owned on Hillcrest? 11 A. <b>Yes.</b> 12 Q. For the benefit of the court, how would you 13 define or explain what a synagogue is? 14 A. <b>A synagogue, or shul in Yiddish, is a</b> 15 <b>membership of families who have similar spiritual</b> 16 <b>religious goals and outlooks and pray together, study</b> 17 <b>together and celebrate life events together.</b> 18 Q. Would the Congregation Toras Chaim be 19 considered a synagogue? 20 A. <b>Yes.</b> 21 (Deposition Exhibit 1 was marked.) 22 Q. (BY MR. SURRATT) Sir, the court reporter has 23 just handed you what's been marked as Deposition Exhibit 24 Number 1, if you'll take a minute to look at that. 25 Am I correct the congregation does have a</p>	<p>1 Q. And that's the 7119 Bremerton Court, correct? 2 A. <b>Uh-huh.</b> 3 Q. Is that yes? 4 A. <b>Yes, uh-huh, yes. Wednesday, 7 to 8 p.m. takes</b> 5 <b>place in Rabbi Bodenheimer's house. Shabbos, ten</b> 6 <b>minutes before -- the first item on Shabbos afternoon,</b> 7 <b>ten minutes before the Chumash Shiur, says Shabbos</b> 8 <b>Chassidus Chaburah with Rabbi Avi Bloomenstiel. That's</b> 9 <b>at the Bloomenstiel home.</b> 10 <b>Okay. One hour after Shabbos ends, Avos</b> 11 <b>U'Banim does not occur anymore. That's only during the</b> 12 <b>winter months.</b> 13 Q. What is Shabbos? 14 A. <b>The seventh day of the week, Saturday, day of</b> 15 <b>rest.</b> 16 Q. Is that what would be commonly referred to as 17 the Jewish Sabbath? 18 A. <b>Correct.</b> 19 Q. And is the Jewish Sabbath or Shabbos where the 20 congregation comes together as a group for any type of 21 prayer or studies? 22 A. <b>Yes to both.</b> 23 Q. Okay. Approximately how long does that type of 24 service, for sake of a better term, last? 25 A. <b>You have a service Friday night about one hour.</b></p>
<p>1 website, yes? 2 A. <b>Yes.</b> 3 Q. Are you familiar with that website? 4 A. <b>I'm the web designer.</b> 5 Q. Okay. What I've handed you as Deposition 6 Exhibit Number 1 is a hard copy printout, Rabbi, from 7 the website taken April 7th, and it lists activities 8 for, I assume, the week of April 7. Would that be 9 correct, or maybe starting April 6th, Sunday? I 10 apologize. I don't have my calendar here in front of 11 me. Let me withdraw that. 12 A. <b>Some of this is incorrect. Some of this is</b> 13 <b>correct.</b> 14 Q. Okay. Let me rephrase and maybe assist thiugs 15 here a little bit. If you'll lake a minute and look at 16 this schedule, is this a schedule that is weekly on an 17 ongoing basis? 18 A. <b>Yes.</b> 19 Q. You just stated that some of it is inaccurate. 20 Could you point out for me where any inaccuracies might 21 be? And take the time that you need to to look at it. 22 A. <b>Sunday morning, 8:45 a.m. to 9:45 does not</b> 23 <b>occur anymore. Sunday night, 7:15 to 8 p.m. is on break</b> 24 <b>for a month. Just for the record, Sunday morning,</b> 25 <b>6:30 a.m. takes place in my house.</b></p>	<p>1 <b>You have a service Saturday morning, two hours. Then</b> 2 <b>you have one Saturday late afternoon, 15 minutes, and</b> 3 <b>then a break and then about 15 minutes after that.</b> 4 Q. Which of the activities on this schedule on 5 Exhibit Number 1 -- 6 A. <b>I gave you the -- those are the prayer</b> 7 <b>services, what I just told you.</b> 8 Q. And when you say prayer services, is that where 9 people come together as a group and pray as a 10 congregational group? 11 A. <b>That's correct.</b> 12 Q. I'll get the hang of this before this is all 13 over, Rabbi. 14 A. <b>That's okay.</b> 15 Q. Of these events on this schedule on Exhibit 1, 16 which one would draw the most number of congregation 17 numbers on an average basis? 18 A. <b>It's not on here. It would be Saturday morning</b> 19 <b>from 8:30 until 11:00.</b> 20 Q. And what -- 21 A. <b>That's the Shabbos morning prayer service.</b> 22 Q. Are there any other events that are occurring 23 now that would be occurring through the upcoming summer 24 months that are not on here? 25 Let me rephrase that. I realize things are</p>

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<p style="text-align: right;">30</p> <p>1 fluid, and there may be special events. Let me rephrase 2 that.</p> <p>3 Is there any type of recurring event that 4 will be upcoming that will go through the next several 5 months?</p> <p>6 <b>A. No. This is pretty accurate.</b></p> <p>7 Q. Am I correct that starting approximately next 8 week would get into what's called a high holiday?</p> <p>9 <b>A. Yes, Passover.</b></p> <p>10 Q. Right. What are the activities of the 11 congregation members during Passover with regard to the 12 congregation?</p> <p>13 <b>A. Just prayer service.</b></p> <p>14 Q. Daily or just on the Saturday?</p> <p>15 <b>A. It's going to be on the day of the festival, 16 which is not tied to the Sabbath. So people would walk 17 to the synagogue. Because it's a holy day, they're not 18 allowed to drive. They would walk. We'll spend some 19 time praying, and then everybody will leave.</b></p> <p>20 Q. So for the high holidays, the congregatio 21 members are not supposed to drive, correct?</p> <p>22 <b>A. Correct.</b></p> <p>23 Q. And is that also true for Shabbos?</p> <p>24 <b>A. That's correct.</b></p> <p>25 Q. The other activities during the weekday, these</p>	<p style="text-align: right;">32</p> <p>1 website designer. Is this part of the design you would 2 have done back around the time frame of June of 2013?</p> <p>3 <b>A. Yes.</b></p> <p>4 Q. Now, the photo there where it says the banner 5 "sold," is that a photo of 7103 Mumford Court?</p> <p>6 <b>A. Yes.</b></p> <p>7 Q. I want to go down through some of the bullet 8 points underneath the photo. The one in bold print that 9 says "building dedication, \$100,000," that the structure 10 would be named "Beis," a blank line, "Kehillas Toras 11 Chain," what would that blank be? Would that be the 12 name of somebody who gave the contribution?</p> <p>13 <b>A. Correct.</b></p> <p>14 Q. Okay. That same bullet point, the last 15 sentence, it says, "All learning and shiurim" --</p> <p>16 <b>A. Shiurim (pronunciation).</b></p> <p>17 Q. -- "shiurim," what is shiurim?</p> <p>18 <b>A. Classes.</b></p> <p>19 Q. It also lists renovations. Have any 20 renovations been done to the house?</p> <p>21 <b>A. None.</b></p> <p>22 Q. Another bullet point, it says, "Sanctuary, 23 25,000." Where would the sanctuary be located within 24 the house?</p> <p>25 <b>A. Where it currently is when you walk in the</b></p>
<p style="text-align: right;">31</p> <p>1 other related activities, they can drive if needed?</p> <p>2 <b>A. If they -- yes, if they take place during the 3 week, uh-huh. But any activities that take place during 4 Shabbos precludes driving.</b></p> <p>5 Q. Are there any activities on Sundays?</p> <p>6 <b>A. Yes.</b></p> <p>7 Q. Are any of those activities conducted at 8 7103 Mumford Court?</p> <p>9 <b>A. Yes. It's right on -- it's the first item on 10 Page 1.</b></p> <p>11 Q. I apologize. Yes, Rabbi, I see it there. I 12 was looking back at the end of the calendar.</p> <p>13 <b>A. Sunday is the first day of the week for us. In 14 Israel, they say the Monday morning blues begin on 15 Sunday.</b></p> <p>16 (Deposition Exhibit 2 was marked.)</p> <p>17 Q. (BY MR. SURRETT) Sir, the court reporter has 18 just handed you what's been marked as Deposition Exhibit 19 Number 2.</p> <p>20 <b>A. Uh-huh, yes.</b></p> <p>21 Q. If you'll take a minute to look at that, again, 22 that's a hard copy printout of the Congregation's 23 website approximately back in around the 26th of June of 24 last year.</p> <p>25 Now, you indicated that you were the</p>	<p style="text-align: right;">33</p> <p>1 door, to the left.</p> <p>2 Q. Okay. And would that be a large room that 3 maybe was a former dining room or something like that?</p> <p>4 <b>A. I think more a family room.</b></p> <p>5 Q. And does this website page accurately reflect 6 the plans for the house as of June of 2013?</p> <p>7 <b>A. Yes.</b></p> <p>8 Q. Okay. Another web page listing for the 9 congregation refers to Tefillah, Tefillah 10 (pronunciation), T-e-f-i-l-l-a-h. What is that?</p> <p>11 <b>A. Tefillah, prayer.</b></p> <p>12 Q. Okay.</p> <p>13 (Deposition Exhibit 3 was marked.)</p> <p>14 Q. (BY MR. SURRETT) The court reporter has handed 15 you what's been marked Deposition Exhibit Number 3, 16 which is another paper printout of a segment of the 17 Congregation's website. It addresses advertising, and 18 it lists some rates for sizes of ads, and to the right 19 is an example of an ad.</p> <p>20 So the congregation does take 21 advertisements to post ads on the website. Is that 22 correct?</p> <p>23 <b>A. Yes.</b></p> <p>24 (Deposition Exhibit 4 was marked.)</p> <p>25 Q. (BY MR. SURRETT) The court reporter has just</p>

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34	<p>1 handed you what's been marked as Deposition Exhibit                  2 Number 4. I'll represent to you again that this is                  3 another paper printout of part of the website for the                  4 congregation. Do you recognize that?                  5 <b>A. Yes.</b>                  6 Q. Okay. Can you explain for the court what the                  7 Toras Chaim Defense Fund is?                  8 <b>A. It is a fund to help us to defend ourselves</b>                  9 <b>against the lawsuit from David Schneider and the</b>                  10 <b>Highlands of McKamy.</b>                  11 Q. And you're referring to the current lawsuit                  12 that -- the purpose for which we're taking your                  13 deposition today, correct?                  14 <b>A. Correct.</b>                  15 Q. Now, is it your understanding that the HOA is                  16 suing the shul or the synagogue?                  17 <b>A. That is my understanding.</b>                  18 Q. For your benefit, the HOA -- the defendants                  19 named by the HOA at this time are just Mark and Judith                  20 Gothelf as the owners of the property. If we needed to                  21 request to have the HOA removed from this segment, would                  22 that be something you, as the website designer, could                  23 take care of?                  24 <b>A. Yes.</b>                  25 Q. Now, on this defense fund, is the congregation</p>	36	<p>1 contributions?                  2 <b>A. Yes.</b>                  3 Q. And what would that number be?                  4 <b>A. Zero.</b>                  5 Q. How long has this -- I call it a web banner,                  6 but this posting been on the web page?                  7 <b>A. Today we are -- as it is right now, it's been</b>                  8 <b>up since last Thursday or Friday.</b>                  9 MR. SURRETT: Off the record a second.                  10 (Off-the-record discussion)                  11 MR. SURRETT: Back on the record.                  12 Q. (BY MR. SURRETT) If funds are by chance                  13 received through the defense fund and they are not                  14 needed to cover any cost, any additional cost, what                  15 would happen to any excess funds?                  16 <b>A. We would speak to the donors, and we would ask</b>                  17 <b>them what they would like us -- or allow us to do with</b>                  18 <b>that money.</b>                  19 Q. So through the website and their                  20 contribution --                  21 <b>A. Not a problem right now, though.</b>                  22 Q. Through the link, though, you would be able to                  23 track who gave a contribution. Then you could go back                  24 to that specific person or entity and say, hey, we need                  25 to do X with this?</p>
35	<p>1 currently paying any legal fees to attorneys in defense                  2 of this lawsuit?                  3 <b>A. No.</b>                  4 Q. Is the congregation potentially obligated to                  5 pay legal fees to either of your attorneys in the future                  6 for the purposes of this lawsuit? What I mean by that                  7 is, is there some agreement whereby you're not paying                  8 anything now, the congregation, but after X event or at                  9 X point in time, yes, you will pay legal fees? Do you                  10 understand the question?                  11 <b>A. Yes. I think it depends on the outcome.</b>                  12 Q. That's your understanding or is that the                  13 agreement you have with either the law firm of Haynes &amp;                  14 Boone or the Liberty Institute? And when I say "you," I                  15 mean the congregation.                  16 <b>A. There are potential fees, depending on what</b>                  17 <b>might happen. There are ancillary costs, even though</b>                  18 <b>right now I'm not paying any fees -- I say "I,"</b>                  19 <b>representing the congregation -- to the lawyers, but as</b>                  20 <b>a congregation, we have incurred fees, marketing, public</b>                  21 <b>relations, loss of donations. So these all together,</b>                  22 <b>being that we are a very small congregation, can be very</b>                  23 <b>hurtful to us.</b>                  24 Q. Do you personally know approximately how much                  25 has been received through the defense fund</p>	37	<p>1 <b>A. Absolutely.</b>                  2 MR. SURRETT: I have one of these, but                  3 since it's marked --                  4 MR. TANCABEL: Yeah.                  5 MR. SURRETT: If you'll pass it to the                  6 court reporter so she can mark it.                  7 (Deposition Exhibit 5 was marked.)                  8 <b>A. Okay.</b>                  9 Q. (BY MR. SURRETT) Sir, the court reporter has                  10 marked a document Deposition Exhibit Number 5, and I'll                  11 represent to you again it's a printout from part of the                  12 Congregation's website. Do you recognize that?                  13 <b>A. Yes.</b>                  14 Q. And does that give a description of the                  15 geographic location of the eruv?                  16 <b>A. It's old, and it's about 95 percent accurate.</b>                  17 Q. Well, good. That's why I want to kind of                  18 address that with you. I have -- I'm going to have it                  19 marked as a deposition exhibit -- is an enlargement. It                  20 doesn't cover everything, but maybe we can go through                  21 and you can help us correct what the boundary lines                  22 would be.                  23 (Deposition Exhibit 6 was marked.)                  24 Q. (BY MR. SURRETT) I'll represent to you, sir,                  25 this was an attempt of an enlargement of the small photo</p>



38	<p>1 map on Exhibit Number 5. It didn't capture the very 2 bottom portion. 3 But this portion that is depicted on 4 Exhibit Number 6, you indicated there may be some 5 changes. Could you, using Exhibit Number 6, point out 6 or explain where the changes currently are in the eruv 7 location? 8 <b>A. You see Texas Torah Institute?</b> 9 <b>Q. Yes, sir.</b> 10 <b>A. That's currently in the eruv.</b> 11 <b>Q. So if you extend that upper top left-hand</b> 12 <b>corner out, would it go all the way over to -- I guess</b> 13 <b>that's Preston Road/289?</b> 14 <b>A. No, no. Just take it straight up and then</b> 15 <b>straight over.</b> 16 <b>Q. It would encompass the Texas Torah Institute?</b> 17 <b>A. Yes.</b> 18 <b>Q. Any other changes that you see other than the</b> 19 <b>fact that the bottom part just didn't capture?</b> 20 <b>A. No.</b> 21 <b>Q. Okay. Now, within this North Dallas eruv, are</b> 22 <b>there -- how many congregations are there?</b> 23 <b>MR. TANCABEL: Objection, form.</b> 24 <b>A. There's four. One of them's not listed.</b> 25 <b>Q. (BY MR. SURRETT) I see the Congregation Ohev</b></p>	40	<p>1 within the eruv technically? 2 <b>A. Technically, theoretically, but you're limited</b> 3 <b>because the Sabbath prohibits driving. So it's only</b> 4 <b>going to be within walking distance.</b> 5 <b>Q. If you will retrieve, sir, the Deposition</b> 6 <b>Exhibit -- I believe it was Number 1, with the calendar</b> 7 <b>of events.</b> 8 <b>A. Uh-huh.</b> 9 <b>Q. Prior to the congregation starting to use</b> 10 <b>7103 Mumford Court, which of the activities listed on</b> 11 <b>Exhibit Number 1 were conducted at your home on</b> 12 <b>Bremerton Court?</b> 13 <b>A. All of them.</b> 14 <b>Q. On the same frequency and schedule as listed</b> 15 <b>here?</b> 16 <b>A. Yes.</b> 17 <b>Q. And what was the approximate size of the</b> 18 <b>congregation prior to moving to 7103 Mumford?</b> 19 <b>MR. TANCABEL: Objection, form.</b> 20 <b>MR. SURRETT: Basis?</b> 21 <b>MR. TANCABEL: It's confusing. What time</b> 22 <b>frame are you talking about? "Before" could mean 2007,</b> 23 <b>could mean 2011.</b> 24 <b>Q. (BY MR. SURRETT) Let me rephrase the question.</b> 25 <b>We talked previously about the size of the congregation</b></p>
39	<p>1 Shalom, Congregation Toras Chaim. The Chabad of Dallas, 2 is that a congregation? 3 <b>A. Chabad (pronunciation).</b> 4 <b>Q. Chabad. Is that a congregation, sir?</b> 5 <b>A. Yes.</b> 6 <b>Q. And what would be the fourth one that's not</b> 7 <b>listed?</b> 8 <b>A. I'm trying to think of the name. It's fairly</b> 9 <b>new. If I can just give you the rabbi's name, Rabbi</b> 10 <b>Sionit, S-i-o-n-i-t.</b> 11 <b>Q. What would be considered the location of that</b> 12 <b>new congregation within the eruv area?</b> 13 <b>A. Start from Chabad of Dallas and move north</b> 14 <b>about a half an inch.</b> 15 <b>Q. Now, within the diagram here that we have as</b> 16 <b>Deposition Exhibit Number 6, is there any geographic</b> 17 <b>boundary within the eruv for Congregation Toras Chaim?</b> 18 <b>A. I don't understand the question.</b> 19 <b>Q. Okay. Is there any agreement or reason, under</b> 20 <b>the Jewish faith or otherwise, whereby your congregation</b> 21 <b>could not for some reason draw from any members who may</b> 22 <b>live within the eruv? Do you understand my question?</b> 23 <b>A. Why we -- why we could not draw from members</b> 24 <b>within the eruv?</b> 25 <b>Q. Right. Can you draw from anyone that lives</b></p>	41	<p>1 in the past. Around 2012 into early 2013, before the 2 congregation started having services at 7103 Mumford 3 Court, what was the approximate size of the congregation 4 at that time? 5 <b>A. Hard to remember exactly. Probably very</b> 6 <b>similar in size to what we are right now. It's a</b> 7 <b>community issue. In other words, it's -- the people who</b> 8 <b>are living there are living there. You know what I</b> 9 <b>mean?</b> 10 <b>Q. Not quite. When you say "the people living</b> 11 <b>there are living there" --</b> 12 <b>A. The Congregation doesn't change because we may</b> 13 <b>be in one location or another location. It's the people</b> 14 <b>who are living within the neighborhood.</b> 15 <b>Q. If the court were to order the congregation to</b> 16 <b>temporarily halt activities at 7103 Mumford, would the</b> 17 <b>congregation be able to meet with one of the other</b> 18 <b>congregation groups within the eruv?</b> 19 <b>A. No.</b> 20 <b>Q. And why not?</b> 21 <b>A. Within Orthodox Judaism, there are different</b> 22 <b>streams of thought, outlooks, emphasis, and the --</b> 23 <b>including cultural differences. So the congregation</b> 24 <b>that we would be closest to culturally would be</b> 25 <b>Congregation Ohev Shalom, but the emphasis between our</b></p>

42	<p>1 congregation and their congregation is vastly different.</p> <p>2 And, so, it wouldn't service the spiritual needs of our</p> <p>3 members.</p> <p>4 We focus on Torah study and quiet,</p> <p>5 respectful prayer and put a great emphasis on that.</p> <p>6 That was the reason why the congregation started to</p> <p>7 begin with.</p> <p>8 Q. I want to refer back now to the legal</p> <p>9 representation. Correspondence received from</p> <p>10 Mr. Butterfield in the past indicated that the</p> <p>11 congregation had also retained the law firm of Haynes &amp;</p> <p>12 Boone to represent the congregation in addition to the</p> <p>13 Liberty Institute. Do you know personally why the</p> <p>14 decision to have two law firms?</p> <p>15 A. No.</p> <p>16 Q. Who would have made that decision, yourself or</p> <p>17 the executive board or board of advisers?</p> <p>18 THE WITNESS: Would that be your decision,</p> <p>19 Justin?</p> <p>20 Q. (BY MR. SURRATT) And the attorneys aren't</p> <p>21 being questioned today. If you don't know, then --</p> <p>22 A. I'll say I don't know.</p> <p>23 Q. Am I correct that at one point, the</p> <p>24 congregation was meeting, in years past, at a house on</p> <p>25 Hillcrest?</p>	44	<p>1 Hillcrest, and they met with tremendous opposition. For</p> <p>2 us to be able to build on that property, we would have</p> <p>3 had to replat because they were two smaller pieces of</p> <p>4 property, and replatting meant that we opened ourselves</p> <p>5 up to community opposition. We did not feel confident</p> <p>6 that we would be able to get that passed.</p> <p>7 Q. Where was the opposition coming from?</p> <p>8 A. I don't know.</p> <p>9 Q. Was it people who lived in the area?</p> <p>10 A. I don't know.</p> <p>11 Q. Was it from the City?</p> <p>12 A. No.</p> <p>13 Q. Who would know where the opposition was coming</p> <p>14 from within the congregation?</p> <p>15 A. When you say where the opposition was coming</p> <p>16 from --</p> <p>17 Q. Yeah. Let me --</p> <p>18 A. I mean, I can tell you that it was the</p> <p>19 neighborhood, but I can't be more specific.</p> <p>20 Q. Okay. I don't need to know specific names, but</p> <p>21 obviously the congregation or at least you and other</p> <p>22 members knew that you -- enough to where you changed</p> <p>23 your plans on building. I don't need to know specific</p> <p>24 names of homeowners or businesspeople, but was it from</p> <p>25 the residential community, business community, city</p>
43	<p>1 A. Correct.</p> <p>2 Q. What was the purpose for leaving that location?</p> <p>3 A. We outgrew it.</p> <p>4 Q. Was parking an issue at the Hillcrest location?</p> <p>5 Let me correct -- let me withdraw that.</p> <p>6 Due to outgrowing the location, did parking</p> <p>7 become part of that issue at the Hillcrest location?</p> <p>8 A. No. It was the physical space inside the</p> <p>9 house.</p> <p>10 Q. At one time, did the congregation have plans to</p> <p>11 construct its own facility on vacant property on</p> <p>12 Hillcrest?</p> <p>13 A. Yes.</p> <p>14 Q. Approximately what time frame was that when it</p> <p>15 was part of the plan?</p> <p>16 A. From within the first year that the</p> <p>17 congregation formed in the house on Hillcrest.</p> <p>18 Q. How long did the congregation own the vacant</p> <p>19 land on Hillcrest approximately?</p> <p>20 A. From 2007 through the early part of 2013, I</p> <p>21 guess, through the first quarter.</p> <p>22 Q. What were the reasons for not proceeding with</p> <p>23 building a specific facility on Hillcrest?</p> <p>24 A. Another Jewish group tried to build a dormitory</p> <p>25 structure within that area on the west side of</p>	45	<p>1 zoning? Where was that opposition coming from?</p> <p>2 A. Residential community.</p> <p>3 Q. Okay. Were those vacant lots located within a</p> <p>4 property owner's association?</p> <p>5 A. They -- they are.</p> <p>6 Q. Do you recall the name of that particular</p> <p>7 association?</p> <p>8 A. I don't.</p> <p>9 Q. Do you recall if those lots had deed</p> <p>10 restrictions or restrictive covenants on how the</p> <p>11 property would be used?</p> <p>12 A. That was not something I was aware of until</p> <p>13 very recently.</p> <p>14 Q. And we're talking about the Hillcrest property?</p> <p>15 A. Right. Deed restrictions, right.</p> <p>16 Q. Now, when you purchased your home on Brenerton,</p> <p>17 were you aware that it was located in a community with</p> <p>18 deed restrictions?</p> <p>19 A. Honestly, no. I was aware that there was a</p> <p>20 homeowner's association.</p> <p>21 Q. Approximately when did you first learn that</p> <p>22 there were restrictions or what are commonly referred to</p> <p>23 as deed restrictions on the properties within Highlands</p> <p>24 of McKamy?</p> <p>25 A. When we were served with the cease and desist</p>

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4/9/2014

Rabbi "Jordan" Yaakov Rich

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<p>1 letter from Mr. Schneider.</p> <p>2 MR. SURRETT: Off the record a second.</p> <p>3 (Off-the-record discussion)</p> <p>4 Q. (BY MR. SURRETT) Did you have any discussions</p> <p>5 at any time with any members of the HOA board of</p> <p>6 directors in the past regarding the services being</p> <p>7 conducted at your home on Brenerton, if you recall?</p> <p>8 A. I don't recall.</p> <p>9 Q. Do you recall having any conversations with any</p> <p>10 members of the board of directors about the</p> <p>11 congregation's plans to -- strike that.</p> <p>12 Going back to the time period when the</p> <p>13 congregation was thinking about possibly constructing on</p> <p>14 the vacant lots on Hillcrest, do you recall having any</p> <p>15 conversations with any members of the board of directors</p> <p>16 indicating to them that that was the plan for the</p> <p>17 congregation?</p> <p>18 A. Yes.</p> <p>19 Q. Do you know who it was you spoke with?</p> <p>20 A. Carolyn Peadon.</p> <p>21 Q. Could you describe the nature of that</p> <p>22 conversation as best as you recall it? I mean, was she</p> <p>23 expressing any concerns about what was going on? Were</p> <p>24 you sharing the plans for the future? Just basically,</p> <p>25 why did that come up in the discussion?</p>	<p>1 today. I'm going to be asking you a series of questions</p> <p>2 as well, and as with Mr. Surratt, I'll be jumping around</p> <p>3 a little bit trying not to cover ground that we've</p> <p>4 already covered as best as I can.</p> <p>5 Let's get started. Can you give me a</p> <p>6 little background on your education after high school?</p> <p>7 A. I have a BA in economics from York University</p> <p>8 in Toronto. I have a rabbinic ordination from Torah</p> <p>9 V'das, T-o-r-a-h, second word is V, apostrophe, d-a-s.</p> <p>10 Q. Thank you.</p> <p>11 A. And I have a -- I guess you would call it a --</p> <p>12 I'm a professional graphic designer as well.</p> <p>13 Q. Your contract with the congregation, is it a</p> <p>14 written document?</p> <p>15 A. Yes.</p> <p>16 Q. Can you describe some of your responsibilities</p> <p>17 as rabbi for the congregation, just some of the -- maybe</p> <p>18 some of the top ones, so I can understand?</p> <p>19 A. Top responsibilities would be overseeing</p> <p>20 matters of Jewish law, teaching and implementing them,</p> <p>21 teaching Torah classes for purposes of knowledge and</p> <p>22 inspiration, counseling. That's it.</p> <p>23 Q. Thank you. Would you consider the congregation</p> <p>24 to be the day-to-day possessor of the house at 7103</p> <p>25 Mumford? Does the congregation --</p>
<p>1 A. Cookie wanted to know if the congregation was</p> <p>2 planning on building on those properties, and I said</p> <p>3 that was the plan. Cookie, Carolyn.</p> <p>4 Q. Correct.</p> <p>5 MR. SURRETT: And for the record, that's</p> <p>6 Carolyn "Cookie" Peadon, P-e-a-d-o-n.</p> <p>7 Q. (BY MR. SURRETT) Before the Gotherfs purchased</p> <p>8 7103 Mumford, to your knowledge, did the congregation</p> <p>9 request any type of legal opinion as to whether or not</p> <p>10 there would be any problems with the congregation using</p> <p>11 7103 Mumford?</p> <p>12 A. Not to my knowledge.</p> <p>13 Q. Does the congregation at this time have any</p> <p>14 interest in possibly purchasing 7103 Mumford from the</p> <p>15 Gotherfs?</p> <p>16 A. It's so not a possibility financially that it</p> <p>17 doesn't enter anybody's mind, quite honestly.</p> <p>18 Q. If the finances were to allow, would that be</p> <p>19 something that the board might entertain an interest on?</p> <p>20 A. I don't know.</p> <p>21 MR. SURRETT: Off the record.</p> <p>22 (Off-the-record discussion)</p> <p>23 EXAMINATION</p> <p>24 BY MR. SCHNEIDER:</p> <p>25 Q. Good afternoon, Rabbi. Thank you for your time</p>	<p>1 A. No, I wouldn't.</p> <p>2 Q. Who would you say controls what goes on there?</p> <p>3 MR. TANCABEL: Objection, form.</p> <p>4 MR. SCHNEIDER: Basis for objection?</p> <p>5 MR. TANCABEL: It's a confusing term. You</p> <p>6 can control in so many different respects.</p> <p>7 Q. (BY MR. SCHNEIDER) As rabbi, do you decide</p> <p>8 what services are to be held for the congregation?</p> <p>9 A. Yes.</p> <p>10 Q. Do you decide where they're to be held?</p> <p>11 A. Where?</p> <p>12 Q. Where they are to be held, where the -- where</p> <p>13 the location of the service is.</p> <p>14 A. Yes.</p> <p>15 Q. Would it be fair to say that you determine the</p> <p>16 time that the services are to occur as well?</p> <p>17 A. Yes.</p> <p>18 Q. I've got an item here that I'd like to</p> <p>19 introduce as an exhibit.</p> <p>20 (Deposition Exhibit 7 was marked.)</p> <p>21 Q. (BY MR. SCHNEIDER) And with a little luck,</p> <p>22 you'll recognize this, I hope, as something from the</p> <p>23 Congregation Facebook page. Is that an accurate</p> <p>24 depiction as of September 2013?</p> <p>25 A. I'm not -- I'm not active with the Facebook</p>

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Rabbi "Jordan" Yaakov Rich

<p style="text-align: right;">50</p> <p>1 page.</p> <p>2 Q. I see. It depicts --</p> <p>3 <b>A. I know it exists, but one of the members is --</b></p> <p>4 Q. I see. It depicts a map that shows</p> <p>5 approximately 7103 as the home of the congregation as of</p> <p>6 September of 2013 and has the address of that as well.</p> <p>7 Would you say that's an accurate description of the home</p> <p>8 of the congregation as of September of 2013?</p> <p>9 <b>A. Yes.</b></p> <p>10 (Deposition Exhibit 8 was marked.)</p> <p>11 Q. (BY MR. SCHNEIDER) Perhaps you recognize that</p> <p>12 item as a --</p> <p>13 MR. SCHNEIDER: In fact, John, can I get</p> <p>14 that back?</p> <p>15 MR. TANCABEL: Oh, yeah.</p> <p>16 MR. SCHNEIDER: I don't think I have an</p> <p>17 extra copy. I apologize.</p> <p>18 Q. (BY MR. SCHNEIDER) -- a website posting that --</p> <p>19 on the Congregation Toras Chaim website as of August</p> <p>20 2013 that purports to have been posted by yourself. Do</p> <p>21 you recall having posted this?</p> <p>22 <b>A. Yes.</b></p> <p>23 Q. This particular post is marked as being</p> <p>24 presented and written by Avi Bloomenstiel, then</p> <p>25 president of the congregation. Is that correct?</p>	<p style="text-align: right;">52</p> <p>1 <b>A. Uh-huh.</b></p> <p>2 Q. I see that on Thursday, August 1st, there's one</p> <p>3 marked -- and I'm sorry -- at 6 a.m. I can't say it</p> <p>4 correctly?</p> <p>5 <b>A. Gemara. It's Talmud study, Talmud study.</b></p> <p>6 Q. Thank you.</p> <p>7 <b>A. And then Makkos is the name of the track tape.</b></p> <p>8 Q. Okay. There's another one marked as being at</p> <p>9 6:40, directly below it. And, again, I apologize. I</p> <p>10 won't attempt --</p> <p>11 <b>A. Shacharis, morning prayer service.</b></p> <p>12 Q. Thank you. The next day, there's one marked as</p> <p>13 being the same two as we just said, and then there's one</p> <p>14 at 7:00 in the evening. Again, I do not want to --</p> <p>15 <b>A. That's okay. That's the beginning of the</b></p> <p>16 <b>Sabbath or the Shabbos.</b></p> <p>17 Q. Thank you.</p> <p>18 <b>A. That's the late afternoon/evening prayer</b></p> <p>19 <b>service.</b></p> <p>20 Q. And, then, at 8:08 is what is called candle</p> <p>21 lighting?</p> <p>22 <b>A. Candle lighting is how we bring in, in</b></p> <p>23 <b>quotation marks, the Sabbath, generally done within 18</b></p> <p>24 <b>minutes of sunset.</b></p> <p>25 Q. I promise I'm not going to go through every one</p>
<p style="text-align: right;">51</p> <p>1 <b>A. Yes.</b></p> <p>2 Q. He states, "After tremendous effort from the</p> <p>3 rabbi, board and several very involved members and, of</p> <p>4 course, amazing" --</p> <p>5 <b>A. Heavenly help.</b></p> <p>6 Q. Yeah. I need help.</p> <p>7 <b>A. That's what that means.</b></p> <p>8 Q. Say it again.</p> <p>9 <b>A. Siyata d'shemaya is Aramaic for heavenly help.</b></p> <p>10 Q. Thank you very much -- "our growing shul made a</p> <p>11 big step forward this summer in acquiring our own home."</p> <p>12 Do you see that quote there?</p> <p>13 <b>A. Yes.</b></p> <p>14 Q. Would you say that's an accurate statement,</p> <p>15 that the -- our own home is representing the house at</p> <p>16 7103 Mumford?</p> <p>17 <b>A. Yes.</b></p> <p>18 Q. Thank you.</p> <p>19 (Deposition Exhibit 9 was marked.)</p> <p>20 Q. (BY MR. SCHNEIDER) I pulled from the</p> <p>21 congregation's website, as of September of 2013, a list</p> <p>22 of activities that were scheduled on the calendar for a</p> <p>23 period of about 90 days, and these are services that</p> <p>24 were marked as being August of 2013. So I wanted to ask</p> <p>25 you about these different services.</p>	<p style="text-align: right;">53</p> <p>1 of these. I just wanted to get the --</p> <p>2 <b>A. Happy to teach.</b></p> <p>3 Q. I'm happy to learn. There is one at 9:07 in</p> <p>4 the evening on Saturday, August 3rd?</p> <p>5 <b>A. Havdalah marks the end of the Sabbath.</b></p> <p>6 Q. Thank you, Rabbi. There's one on Sunday,</p> <p>7 August 4th, that again I may mispronounce that.</p> <p>8 <b>A. Okay. 6:30 a.m.?</b></p> <p>9 Q. Yes, please.</p> <p>10 <b>A. Hilchos Taaruvos, the laws of forbidden</b></p> <p>11 <b>mixtures. It's a class -- small group class that I give</b></p> <p>12 <b>in my house on Sunday morning.</b></p> <p>13 Q. As best as you recall, in August of 2013, was</p> <p>14 that service held at your house on Bremerton?</p> <p>15 <b>A. Yes. It's a class. It's not a service.</b></p> <p>16 Q. I see. Thank you. Looking through these</p> <p>17 various entries, when I got them, I didn't see any</p> <p>18 distinguishing factor as to which ones might have been</p> <p>19 held at 7103 Mumford or at some other location. Except</p> <p>20 for the Sunday morning class during the month of August,</p> <p>21 were all these held at 7103 Mumford, to the best of your</p> <p>22 recollection?</p> <p>23 <b>A. Yes.</b></p> <p>24 Q. Thank you. Do you recall an interview that you</p> <p>25 held with Brandon Todd recently of Fox 4 news?</p>

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<p style="text-align: right;">54</p> <p>1 <b>A. Yes.</b></p> <p>2 Q. During that interview, you made a series of</p> <p>3 statements that were later broadcast on television. Do</p> <p>4 you recall that?</p> <p>5 <b>A. Don't know what you're referring to.</b></p> <p>6 Q. Did you see the -- did you ever see the</p> <p>7 broadcast?</p> <p>8 <b>A. Sure.</b></p> <p>9 Q. Okay. Either internet version or whatever.</p> <p>10 And I don't mean to put words in your mouth, so please</p> <p>11 correct me if I'm wrong in trying to paraphrase. But I</p> <p>12 believe you stated to the effect that, generally,</p> <p>13 services were held at 7103 Mumford two times per day,</p> <p>14 seven days per week. Did I get --</p> <p>15 <b>A. That's correct.</b></p> <p>16 Q. -- the paraphrasing approximately correct?</p> <p>17 Thank you.</p> <p>18 The decision to -- as we mentioned before,</p> <p>19 to have those services at 7103 Mumford is a decision</p> <p>20 that you would normally make. You might perhaps make it</p> <p>21 to be at another location another time. That would be</p> <p>22 up to you?</p> <p>23 <b>A. In theory, I could say we would -- we would</b></p> <p>24 <b>meet somewhere else, but --</b></p> <p>25 Q. And I didn't mean to imply --</p>	<p style="text-align: right;">56</p> <p>1 <b>A. And some could be single, and some could be</b></p> <p>2 <b>married.</b></p> <p>3 Q. Right. If we were to say, including the</p> <p>4 husband and the wife, where the wife is also a member,</p> <p>5 would we say the total membership is closer to 60?</p> <p>6 Would we say it was closer to 30, 45? Again, I'm not</p> <p>7 trying to put a number in your mouth, just whatever --</p> <p>8 <b>A. We value memberships as a family unit, so</b></p> <p>9 <b>that's how we measure our membership.</b></p> <p>10 Q. So it's 30 families would be how you would</p> <p>11 count it?</p> <p>12 <b>A. Yes.</b></p> <p>13 Q. Thank you. You mentioned Rabbi -- and I may</p> <p>14 get his name wrong -- Bodenheimer?</p> <p>15 <b>A. Yes.</b></p> <p>16 Q. At his house, that there was an occasion when</p> <p>17 at least one service was held at his house?</p> <p>18 <b>A. Class.</b></p> <p>19 Q. Class. Thank you. Where does -- is that a he</p> <p>20 or a she?</p> <p>21 <b>A. He.</b></p> <p>22 Q. He. Again, sorry.</p> <p>23 <b>A. No problem.</b></p> <p>24 Q. Where does he live?</p> <p>25 <b>A. In the Willow Green Condominiums.</b></p>
<p style="text-align: right;">55</p> <p>1 <b>A. Yeah.</b></p> <p>2 Q. -- that that would be something that would be a</p> <p>3 decision you'd make, but you would be typically the</p> <p>4 person making that decision?</p> <p>5 <b>A. If there was a need to meet somewhere else,</b></p> <p>6 <b>yes, I would be the person.</b></p> <p>7 Q. Did you have a service this morning at 7103</p> <p>8 Mumford?</p> <p>9 <b>A. Yes.</b></p> <p>10 Q. Did you have a service last night at</p> <p>11 7103 Mumford?</p> <p>12 <b>A. Yes.</b></p> <p>13 Q. Thank you. I had heard reference to several</p> <p>14 different comments about the size of the congregation,</p> <p>15 and I wanted to clarify a point.</p> <p>16 <b>A. Uh-huh.</b></p> <p>17 Q. In a filing made by your attorneys, they</p> <p>18 indicated that the congregation had approximately 30</p> <p>19 families as members, and when we were discussing it</p> <p>20 earlier, I heard the term 30 members. And I want to</p> <p>21 distinguish, would you say that there are 30 people</p> <p>22 including -- I'm guessing many of your congregation may</p> <p>23 be married so that there's a husband and wife.</p> <p>24 <b>A. Right, member families.</b></p> <p>25 Q. Member families, approximately 30?</p>	<p style="text-align: right;">57</p> <p>1 Q. I know where those are. Thank you.</p> <p>2 And I believe it would be fair to say</p> <p>3 that's within the eruv?</p> <p>4 <b>A. Yes.</b></p> <p>5 Q. And you also mentioned that there was an</p> <p>6 occasion where either a class may be held at Avi</p> <p>7 Bloomenstiel's home. May I ask where Avi Bloomenstiel</p> <p>8 lives?</p> <p>9 <b>A. On Kirkham.</b></p> <p>10 Q. Can you spell that, if you know the spelling?</p> <p>11 <b>A. K-i-r-k-h-a-m.</b></p> <p>12 Q. Thank you. And is that a house or an apartment</p> <p>13 or a condo?</p> <p>14 <b>A. House.</b></p> <p>15 Q. Thank you. Would it be fair to say that is</p> <p>16 also within the eruv?</p> <p>17 <b>A. Yes, uh-huh.</b></p> <p>18 Q. Did you know Mark Gothelf personally before the</p> <p>19 purchase of the house at 7103 Mumford Court?</p> <p>20 <b>A. Yes.</b></p> <p>21 Q. How long had you known him?</p> <p>22 <b>A. Several years.</b></p> <p>23 Q. As best you know, during that time, did he live</p> <p>24 in New York?</p> <p>25 <b>A. Yes.</b></p>

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<p>1 Q. Can you describe the circumstances by which you 2 came to discuss the transaction on the house at 7103? 3 A. Mark and I, our relationship is based on him 4 leading the services for the high holidays for the 5 congregation the past few years, and he wanted -- he 6 grew up in Dallas, wanted to move back, very much likes 7 the congregation, the spiritual outlook, wanted to 8 purchase a home for his family in the neighborhood, saw 9 one that he initially liked. We considered and thought 10 it would be good for the congregation. He told me about 11 it and asked me to take a look. 12 Q. Thank you. What's the nature of the agreement 13 between the congregation and Mr. Gohelf whereby the 14 congregation is able to operate from there? 15 A. Mr. Gohelf purchased the house. We were not 16 able to get financing as the congregation, but we pay 17 the mortgage. We made the -- reimbursed him for the 18 down payment and take care of the maintenance and 19 utilities as pertaining to the bottom level of the 20 house. 21 Q. And when you say the bottom level, you mean the 22 lower floor? 23 A. Correct. 24 Q. Is he responsible for the upper floor? 25 A. He who?</p>	<p>1 finance any portion of the purchase of the house? 2 A. Yes. 3 Q. And how was that accomplished? 4 A. Through fundraising. 5 Q. Uh-huh. 6 A. That's the answer. 7 Q. I've heard the figure -- 8 A. And the -- I should add to that. 9 Q. Yeah. 10 A. And the sale of the property. 11 Q. That's what I was going to ask. 12 A. Yeah. 13 Q. I heard the figure that -- an amount, 14 approximately \$75,000, was provided to assist in the 15 purchase of the house, and some portion came from 16 fundraising. Is that accurate? 17 A. Yes. 18 Q. And some portion came from the proceeds of the 19 sale of the lot on Hillcrest? 20 A. Yes, lots. 21 Q. Lots. There were two lots? 22 A. Uh-huh. 23 Q. Because you were considering the idea that you 24 would make one big lot from the two small ones? 25 A. Right.</p>
<p>1 Q. Mr. Gohelf. 2 A. No. That would be my son. 3 Q. Oh, okay. I understand. Does the congregation 4 use any of the upper floor for storage or other? 5 A. No. No one ever goes up there actually, except 6 his father. 7 MR. SCHNEIDER: Off the record for just a 8 second. 9 (Off-the-record discussion) 10 MR. SCHNEIDER: Back on the record. 11 Q. (BY MR. SCHNEIDER) Do you have a written -- is 12 there a written agreement between the congregation and 13 the Gohelfs? 14 A. No. 15 Q. Have you yourself ever resided at 7103 Mumford 16 Court? 17 A. No. 18 Q. Did Mr. Gohelf ever express why he agreed to 19 assist the congregation in this manner to you? 20 A. Doing acts of kindness when somebody is in need 21 or when one person can help and -- is considered a very 22 praiseworthy thing, and we try to do it to the best of 23 our abilities. He likes us, he trusts us, and -- and we 24 like and trust him as well. 25 Q. Thank you. Did the congregation help to</p>	<p>1 Q. Did the congregation ever purchase -- I'm 2 sorry. Strike that. 3 Did the congregation or yourself ever 4 personally get involved in negotiations with the 5 seller's agent or the seller regarding 7103 Mumford 6 Court? 7 A. I don't know. 8 Q. Were Mr. Gohelf to lose this case and be 9 assessed any damages that would need to be paid, would 10 the congregation reimburse him for any portion of those 11 damages? 12 A. I need a clarification. 13 Q. Okay. 14 A. If Mr. Gohelf were to lose this case -- my 15 understanding is that you're suing the congregation 16 and Mr. Gohelf. 17 Q. I am. I am. That's correct. 18 A. Okay. So -- 19 Q. That's correct. If he was assessed damages 20 himself and perhaps the congregation was not assessed 21 any for whatever reason -- 22 A. Right. 23 Q. -- and if he were to be assessed any damages 24 and was out-of-pocket, is there any agreement between 25 the congregation and Mr. Gohelf to reimburse him?</p>

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63	<p>1 <b>A. Correct.</b></p> <p>2 Q. Approximately when did the congregation start</p> <p>3 using your house on Bremerton as its primary base of</p> <p>4 operations?</p> <p>5 <b>A. February 2011.</b></p> <p>6 Q. What was the address of where you had -- where</p> <p>7 the congregation's base of operations was prior to that</p> <p>8 time?</p> <p>9 <b>A. The address?</b></p> <p>10 Q. Do you recall?</p> <p>11 <b>A. Sure, 17912 Hillcrest.</b></p> <p>12 Q. Just to make sure I got that right, that's</p> <p>13 17912 Hillcrest?</p> <p>14 <b>A. Uh-huh.</b></p> <p>15 Q. And approximately how long was that used as a</p> <p>16 location for basic services for the congregation?</p> <p>17 <b>A. Three and a half years.</b></p> <p>18 Q. I wanted to clarify a comment you made earlier</p> <p>19 regarding the issue of usage, deed restrictions and</p> <p>20 Highlands of McKamy. At what time did you become aware</p> <p>21 that there were usage restrictions in Highlands of</p> <p>22 McKamy?</p> <p>23 <b>A. I mentioned when you sent the cease and desist</b></p> <p>24 <b>letter.</b></p> <p>25 Q. Would it be fair to say the congregation had</p>	65	<p>1 <b>Cookie Peadon saying that the concern of the homeowner's</b></p> <p>2 <b>association was that the synagogue should be in</b></p> <p>3 <b>compliance with city code.</b></p> <p>4 Q. Did you ever seek a certificate of occupancy</p> <p>5 for the congregation at 7103 Mumford Court as a church?</p> <p>6 <b>A. We are in the process of doing that.</b></p> <p>7 Q. Can you describe to me where in the process you</p> <p>8 are?</p> <p>9 <b>A. We are in the process of trying to get parking</b></p> <p>10 <b>agreements in order to facilitate the -- the CO.</b></p> <p>11 Q. The certificate of occupancy that you're</p> <p>12 requesting, would that allow someone to live at the</p> <p>13 house as well?</p> <p>14 <b>A. Yes.</b></p> <p>15 Q. Were that to be granted, would it be necessary</p> <p>16 to make any changes to the interior of the house to</p> <p>17 comply with the City of Dallas rules?</p> <p>18 <b>A. To be determined.</b></p> <p>19 Q. And the reason that you are seeking the</p> <p>20 certificate of occupancy?</p> <p>21 <b>A. The City has asked us to.</b></p> <p>22 Q. Under what basis is it saying that you need to</p> <p>23 get a certificate of occupancy?</p> <p>24 <b>A. Because they view our usage in the house as</b></p> <p>25 <b>being commercial.</b></p>

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<p style="text-align: right;">66</p> <p>1 Q. Thank you. Within the eruv, are there any                  2 other places where the congregation could operate from                  3 in which it would not be coming up against residential                  4 usage restrictions?                  5 A. The congregation studied long and hard where we                  6 could locate if it would not be in my home. We                  7 considered the west side of Hillcrest. Demographically,                  8 all of our members had moved to the east side within                  9 Highlands of McKamy IV and V and Highlands of McKamy II                  10 and III. So it didn't make sense to move to that side.                  11 That was one of the reasons why, even though I didn't                  12 mention it before, we also abandoned the building on the                  13 land.                  14 We looked at south of McCallum. South of                  15 McCallum has two issues. Toward the east, it's mostly                  16 apartments and a very rough neighborhood, not suitable                  17 for mothers and children to be walking.                  18 Going directly south of McCallum on                  19 Meandering Way is in very close proximity to                  20 Congregation Ohev Shalom, and when the congregation                  21 started, I consulted with a major rabbinic authority in                  22 New York whether or not we could have a congregation in                  23 close proximity to Ohev Shalom, how close, et cetera. I                  24 was told that we needed to be -- that the closest we                  25 could be would be where that Hillcrest house was</p>	<p style="text-align: right;">68</p> <p>1 than, or was it more open-ended?                  2 A. It's not a specific distance. It's a how does                  3 this look and how does this feel and will this create a                  4 sanctification or desecration of God's name.                  5 Q. Thank you. Were the congregation to have a                  6 permanent injunction against operating within the                  7 Highlands of McKamy IV and V, has any discussion                  8 occurred about an alternative location?                  9 A. No.                  10 MR. SCHNEIDER: Rabbi, that's the end of my                  11 questions at this time.                  12 FURTHER EXAMINATION                  13 BY MR. SURRETT:                  14 Q. Just a few more, Rabbi. You were discussing                  15 with Mr. Schneider the parking agreements that were                  16 being pursued for purposes of the City's certificate of                  17 occupancy. Can you explain what type of parking                  18 agreements you're referring to?                  19 A. If you -- in order to have a certificate of                  20 occupancy, you need a minimum amount of parking spaces                  21 not on city streets, and sometimes that can be through                  22 shared parking agreements with other institutions,                  23 organizations. So that's what we are pursuing right                  24 now.                  25 Q. Have they told you what the minimum number of</p>
<p style="text-align: right;">67</p> <p>1 originally.                  2 And in Judaism, we have a sort of -- it's a                  3 written law by which we govern our lives, V'ahavta                  4 L'reicha K'mocha, love your neighbor as you love                  5 yourself and don't do something to somebody else that                  6 you wouldn't want done to you.                  7 So because of those two reasons, the rabbi                  8 telling me we can't be right in his backyard and I                  9 wouldn't want somebody to be across the street from me,                  10 so that neighborhood directly across McCallum is                  11 likewise not suitable.                  12 Q. Thank you.                  13 A. If you go across Frankford, you have some                  14 commercial space there. Everything's rented, nothing                  15 available. There's a gated community, which is not                  16 accessible.                  17 And, so, this was -- the house and the                  18 location, also being that it's bordering two major                  19 streets, Frankford and Meandering Way, and at the edge                  20 of the homeowner's association, feeling that it would                  21 create the most minimum impact on the neighborhood was                  22 why we chose that location.                  23 Q. Thank you. The authority that you consulted,                  24 did he indicate that there was a specific minimum                  25 distance from Ohev Shalom that you should not get closer</p>	<p style="text-align: right;">69</p> <p>1 spaces are that would be needed for your particular                  2 operation?                  3 A. Yes.                  4 Q. What are they?                  5 A. Eleven.                  6 Q. Back with regard to the purchase of                  7 7103 Mumford Court, if the congregation had been in                  8 a position financially, through its own funds or to                  9 qualify for funding, would it have purchased                  10 7103 Mumford in its own name?                  11 A. Yes.                  12 Q. If good fortune were to arise and financially                  13 be in a position to purchase in the future 7103 Mumford,                  14 would the congregation still be interested at some time                  15 to possibly purchase from Mr. Gothelf and his mother?                  16 A. I can't answer that question because it's based                  17 on demographics. It's based on many variables.                  18 Q. Have you seen a copy of the lawsuit petition                  19 filed by either Mr. Schneider or on behalf of the                  20 homeowner's association?                  21 A. I have not.                  22 Q. To your knowledge, has the congregation                  23 submitted any claim to an insurance carrier as a result                  24 of the claims in the lawsuit?                  25 A. No.</p>



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<p>1 Q. And I take it, then, to your knowledge, an 2 insurance carrier is not paying for any of the legal 3 fees in this matter at this time?</p> <p>4 A. No.</p> <p>5 Q. Other than the meeting in August in 2013 at 6 Ms. Peardon's house, the meeting of the homeowner's 7 association members, were there any other times where 8 you personally discussed with any board members of the 9 HOA, prior to the purchase of 7103 Mumford, about the 10 anticipated plans and would there be any issues?</p> <p>11 A. I did not personally discuss with any member of 12 the board the plans to purchase or to -- for the 13 congregation to move to 7103 Mumford.</p> <p>14 Q. Do you know if any members of the congregation 15 board of executives did?</p> <p>16 A. I don't know.</p> <p>17 Q. In Mark Gotherf's deposition, he stated that 18 you had told him that in order to have any type of 19 synagogue within the neighborhood, that it had to be 20 considered a home church. Could you explain what you 21 meant by that?</p> <p>22 A. Has nothing to do with the neighborhood, 23 per se, but in order to be able to have a synagogue, my 24 understanding was, vis-a-vis city codes, without having 25 to get a certificate of occupancy if it was a residence</p>	<p>1 the past?</p> <p>2 A. No.</p> <p>3 Q. Have you ever filed a discrimination complaint 4 against -- under any federal or state law on your own 5 behalf?</p> <p>6 A. No.</p> <p>7 Q. Have you ever filed a religious freedom 8 complaint under federal or state law?</p> <p>9 A. No.</p> <p>10 Q. And I need to ask, have you ever been arrested?</p> <p>11 A. No.</p> <p>12 MR. Surratt: Just an administrative 13 matter, let me have the copy of the deposition notice 14 just marked and attached to the --</p> <p>15 THE REPORTER: Okay. 16 (Deposition Exhibit 10 was marked.) 17 THE REPORTER: It'll be 10.</p> <p>18 Q. (BY MR. Surratt) Sir, have you understood my 19 questions today before answering, or if not, have you 20 asked me to clarify them for you?</p> <p>21 A. Yes.</p> <p>22 Q. This sounds like a trick question. It's not, 23 but we've gone through a lot of questions. But as 24 you're sitting here right at this minute, is there any 25 one question that I've asked you where you're thinking,</p>
<p>1 that also served -- it was a residence where classes and 2 services took place.</p> <p>3 Q. What is your current salary as the rabbi for 4 the congregation?</p> <p>5 A. Sixty thousand per year.</p> <p>6 Q. I asked you at the beginning of the deposition 7 whether or not you've ever provided deposition testimony 8 previously. Have you ever testified in court before?</p> <p>9 A. No.</p> <p>10 Q. Prior to living in the Highlands of McKamy IV 11 and V, have you ever lived in a property owner's 12 association community?</p> <p>13 A. No.</p> <p>14 Q. The exhibits that we've marked as deposition 15 exhibits which were printouts from the website, do those 16 appear to be accurate printouts of the congregation's 17 website? If you'll take a minute to look at the --</p> <p>18 A. Yes.</p> <p>19 Q. You don't have any reason to doubt the 20 authenticity of those?</p> <p>21 A. No.</p> <p>22 Q. Some additional background information, have 23 you personally ever had to sue anyone in the past?</p> <p>24 A. No.</p> <p>25 Q. Have you previously been sued personally in</p>	<p>1 I need to go back and change that or correct that?</p> <p>2 A. No.</p> <p>3 MR. Surratt: Okay. Pass the witness. 4 MR. Schneider: And I apologize. I just 5 have one more question. 6 MR. Tancabel: That's fine. Go ahead. 7 FURTHER EXAMINATION 8 BY MR. SCHNEIDER: 9 Q. Regarding insurance coverage of 7103 Mumford, 10 do you know how much insurance you're carrying there?</p> <p>11 A. I personally don't know. We do have a policy, 12 but I don't know what that --</p> <p>13 Q. Is it in the congregation's name?</p> <p>14 A. Yes.</p> <p>15 Q. Who would -- I'm sorry. Who would know the 16 terms of that policy?</p> <p>17 A. Treasurer, Josh Rothstein. 18 MR. Schneider: Okay. That's all my 19 questions. 20 MR. Tancabel: Why don't we take a break. 21 I do have some cleanup points, and I don't think it'll 22 take too long, but it might -- 23 MR. Surratt: Sure. I'm fine. Whatever 24 time you need, yeah. 25 (A recess was taken.)</p>

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75	<p>1 it would preclude any participation in that</p> <p>2 congregation, and that's really the focus of the whole</p> <p>3 week.</p> <p>4 Q. You mentioned that the 7103 Mumford Court</p> <p>5 property is situated within an eruv. Can you explain</p> <p>6 what an eruv is?</p> <p>7 A. On the Sabbath, one is prohibited from carrying</p> <p>8 any objects outside a private domain. The definition of</p> <p>9 a private domain is not only one's home where they live,</p> <p>10 but it would be any domain which is surrounded by a</p> <p>11 series of vertical and horizontal poles, wires creating</p> <p>12 what's called a tzuras hapesach in Hebrew, or the form</p> <p>13 of a door, and you connect these together.</p> <p>14 When you create that boundary, all of the</p> <p>15 homes within -- the Jewish homes within that boundary</p> <p>16 then have to join together as if they live in one place,</p> <p>17 thus creating one large private domain facilitating the</p> <p>18 ability to carry within that domain. Were there not to</p> <p>19 be an eruv, only men would be able to attend services,</p> <p>20 classes on the Sabbath, but women, children, et cetera,</p> <p>21 would be totally precluded, thus greatly burdening the</p> <p>22 congregation and the families' ability to grow.</p> <p>23 Q. How do you set up an eruv?</p> <p>24 A. There is tremendous expense, tens of thousands</p> <p>25 of dollars of expense in setting up an eruv. The first</p>	77	<p>1 holding services for the 10-plus members that we had in</p> <p>2 the garage.</p> <p>3 Q. When you first began, where did -- in terms of</p> <p>4 the location of the first members, was there any shift</p> <p>5 over time?</p> <p>6 A. Yeah. When we began, the membership was evenly</p> <p>7 spaced on the east side and on the west side of</p> <p>8 Hillcrest, and over time, the membership migrated to the</p> <p>9 east side of Hillcrest, both in Highlands of McKamy IV</p> <p>10 and V and Highlands of McKamy II and III, which would be</p> <p>11 on the east side of the bicycle path.</p> <p>12 Q. You testified earlier that you began hosting</p> <p>13 the main activities of the congregation at your home,</p> <p>14 the Bremerton property, beginning in February of 2011</p> <p>15 and that you operated there until August of 2013. Was</p> <p>16 the homeowner's association aware of the activities that</p> <p>17 were taking place at your home during those two and a</p> <p>18 half years?</p> <p>19 A. Yes, they were.</p> <p>20 Q. And how do you know that?</p> <p>21 A. I had a conversation with Cookie Peadon where</p> <p>22 she spoke to me about the congregation being in our home</p> <p>23 and if the plans were to stay there or if the plans were</p> <p>24 to build somewhere else, i.e., the property that we</p> <p>25 owned on Hillcrest. I indicated that the plans were</p>

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78	<p>1 ultimately to build on the properties on Hillcrest. I 2 said I did not know when, and there were, you know, too 3 many issues to discuss.</p> <p>4 Q. And when the congregations were primarily at 5 your home during that time span, that two and a half 6 years, did any member of the HOA ever raise the issue of 7 restrictive covenants?</p> <p>8 A. Not once.</p> <p>9 Q. Did the HOA ever seek to prevent you from 10 hosting these activities in your home?</p> <p>11 A. No.</p> <p>12 Q. I think you've testified a bit about some of 13 the challenges on having activities in your home. Can 14 you explain what those challenges -- what challenges 15 might be, if any, that were there?</p> <p>16 A. Sometimes it's helpful to understand based on a 17 different circumstance. So if we understand that in 18 7103 Mumford there is the entire bottom floor 19 available -- well, in our home, my wife -- and we had 20 currently somebody living on the bottom floor, and a lot 21 of the living space was taken up by the family. So it 22 was very burdensome for my family to have the 23 congregation in our home.</p> <p>24 Q. How did the members of the congregation feel 25 about attending events at your home?</p>	80	<p>1 list, were those same activities taking place at your 2 home before August of 2013?</p> <p>3 A. Absolutely. Very little has changed, as a 4 matter of fact, in terms of the activities taking place 5 at Mumford.</p> <p>6 Q. And the size of the community, in terms of 7 where it is today versus 2011, 2013, how would you 8 describe the difference?</p> <p>9 A. Fairly consistent. The size of the community, 10 again, is based on -- the community is not going to 11 increase because we have more space necessarily. It's 12 going to be based on how many people are living within 13 walking distance of the shul, the synagogue.</p> <p>14 And, so, it's been pretty consistent. Some 15 people move in. Some people move out. But we've been 16 hovering around 30 for quite some time.</p> <p>17 Q. I want to ask you specifically about some of 18 the activities that -- regular activities that take 19 place at 7103 Mumford Court. I understand there's a 20 difference between Sabbath and non-Sabbath days. So for 21 non-Sabbath days, what are the main prayer events that 22 take place?</p> <p>23 A. The main prayer events are Shacharis, which is 24 the morning prayer service at 6:40 a.m., but because we 25 put such an emphasis on Torah study, so we have a study</p>
79	<p>1 A. So that was another issue, and that is that 2 people are reluctant to walk into somebody else's home 3 or, I would say, somebody else's space when they feel 4 they're walking into somebody's private space. So in my 5 home, it was much more of a private setting, and people 6 would feel that they were intruding and, as a result, 7 would rather not come.</p> <p>8 Q. Who lives currently at 7103 Mumford Court?</p> <p>9 A. My son, Avrohom Moshe Rich.</p> <p>10 Q. And how long has he been living there?</p> <p>11 A. Since September 16, 2013.</p> <p>12 Q. And how do you know that this is his residence?</p> <p>13 A. He has internet access. He gets his bills 14 there. He lives there. He entertains his friends on a 15 nightly basis until all hours of the night and morning. 16 He maintains the home, takes out the garbage, things 17 like that.</p> <p>18 Q. When did the congregation move the bulk of its 19 activities to the 7103 Mumford Court property?</p> <p>20 A. In August 2013.</p> <p>21 Q. Was it any -- I mean, do you remember 22 specifically when in August, or do you not recall that?</p> <p>23 A. Middle of August, I think.</p> <p>24 Q. The activities that the counsel for the HOA and 25 Plaintiff David Schneider went through on that long</p>	81	<p>1 group that takes place at 6 a.m. beforehand. So the 2 study group would have two to three people, and then the 3 prayer service in the morning would have 10 to 12 people 4 attending that.</p> <p>5 And then nothing for the rest of the day 6 until the evening, when we would have a class a couple 7 of days a week at 7:15. I do a marriage class for the 8 men, my wife does a marriage class for the ladies, and 9 approximately six people attend those classes.</p> <p>10 Then there's a Talmud study class on a 11 nightly basis at 8:00. Three people come to that class. 12 And then we have the evening service, again, at which 10 13 to 12 people attend.</p> <p>14 Q. How many of those 10 to 12 people drive to 15 7103 Mumford Court to attend those events?</p> <p>16 A. So of those 10 to 12 who come -- and it's 17 generally -- it's usually more 10 than 12, but -- and 18 the reason why we stress ten, just by the way, is 19 because you need a quorum for a prayer service. In 20 Jewish law, you need ten. It's called a minyan. So 21 that's why we're talking about we always want to have 22 ten people there. So of those ten, five walk and five 23 drive.</p> <p>24 Q. And has the congregation come up with a plan 25 for parking for these daily events?</p>

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82	<p>1 A. Yes. When it became clear that there -- I</p> <p>2 would say as a response to the neighborhood difficulties</p> <p>3 with the parking situation at the shul, so I sent out on</p> <p>4 our text message list that we are currently only</p> <p>5 allowing parking on three spots directly in front of the</p> <p>6 shul on the north side of Mumford, three spots on the</p> <p>7 driveway in the back, and any overflow should be at</p> <p>8 Torah Day School, which is the major school on</p> <p>9 Frankford -- the corner of Frankford and Hillcrest at</p> <p>10 the northeast corner. It's approximately 300 feet away.</p> <p>11 Q. Let's talk about events on the Sabbath, and I</p> <p>12 know the Sabbath begins on Friday evening. So what are</p> <p>13 the main events for the Friday evening through Saturday,</p> <p>14 through the Sabbath on --</p> <p>15 A. Okay. Beginning on Friday night, we have a</p> <p>16 prayer service. It starts at approximately sundown.</p> <p>17 It's an hour and a quarter, one hour devoted to prayer,</p> <p>18 15 minutes devoted to Torah study in the middle of that</p> <p>19 prayer service.</p> <p>20 Then Shabbos morning, S-h-a-b-b-o-s, we</p> <p>21 have a prayer service that begins at 8:30. Part of that</p> <p>22 prayer service is a mommy and me program that takes</p> <p>23 place in our home. There's a junior congregation that</p> <p>24 takes place in the home of the Krycers. That's a family</p> <p>25 that lives in the neighborhood.</p>	84	<p>1 Q. And for all of those Sabbath activities that</p> <p>2 you've just described, do any of your members drive to</p> <p>3 that, drive to the 7103 Mumford Court property?</p> <p>4 A. No. Nobody drives, and from the very</p> <p>5 beginning -- nobody drives because on the Sabbath</p> <p>6 driving is prohibited. But one might think, well, I</p> <p>7 can't drive, but let me drive my car to the synagogue on</p> <p>8 Friday afternoon and leave it there.</p> <p>9 So from the very beginning, it was a rule</p> <p>10 that nobody was allowed to park on the streets from</p> <p>11 Friday through Saturday. And, so, if anybody comes,</p> <p>12 they either walk or get dropped off at the synagogue by</p> <p>13 a spouse or friend.</p> <p>14 Q. Would you describe your prayer services as</p> <p>15 noisy events?</p> <p>16 A. No, very -- as a matter of fact, the major part</p> <p>17 of the prayer service is what we call a silent devotion,</p> <p>18 and people's breathing is the loudest that you'll hear.</p> <p>19 Q. I wanted to ask you a few questions about your</p> <p>20 search for alternative locations. I know you've</p> <p>21 testified a bit about this already, and I'm going to try</p> <p>22 not to overlap.</p> <p>23 But approximately how long had you explored</p> <p>24 alternative locations when you were -- after starting in</p> <p>25 2007?</p>
83	<p>1 And, then, for the men and women, the</p> <p>2 prayer service is from 8:30 until 11:00. And at 11:00,</p> <p>3 we have what's called a kiddush, k-i-d-d-u-s-h, and that</p> <p>4 is in reference to a special blessing said over a cup of</p> <p>5 wine to sanctify the day, and a table laden with food</p> <p>6 and drink for the people who've been praying and haven't</p> <p>7 eaten all morning.</p> <p>8 Q. And, then, in the evening of that day?</p> <p>9 A. And, then, in the evening, we come back towards</p> <p>10 sundown. There's a class in the afternoon that I give</p> <p>11 to about five, six, seven people. Then there's a prayer</p> <p>12 service around sundown, a small meal. About ten people</p> <p>13 attend that. And then a concluding prayer service</p> <p>14 called Maariv in the evening. That is 50 minutes after</p> <p>15 sundown.</p> <p>16 Q. And how many people approximately attend that?</p> <p>17 A. About 10 to 12 people likewise, so -- okay. So</p> <p>18 let me give you the numbers because I didn't give you</p> <p>19 the numbers on all of those.</p> <p>20 Q. Yeah.</p> <p>21 A. You'll have about 20 people attending Friday</p> <p>22 night. You'll have about 30, 35 people attending</p> <p>23 Shabbos morning. And, then, in the afternoon, it does</p> <p>24 dwindle. You could have 20. Most times, you'll have</p> <p>25 less than that.</p>	85	<p>1 A. We spent -- once we realized that Hillcrest --</p> <p>2 the Hillcrest home, that we were going to outgrow that</p> <p>3 and that the land that we owned across the street was</p> <p>4 looking less and less like a viable situation for us,</p> <p>5 which is probably three years into the existence of the</p> <p>6 congregation, so we spent then years looking at other</p> <p>7 possible places for the congregation, could we be in</p> <p>8 Torah Day School, could we be in some commercial space,</p> <p>9 could we be in a gated community, could we be -- you</p> <p>10 know, all of these other places, and everything just</p> <p>11 kept saying no.</p> <p>12 We couldn't be south of McCallum because it</p> <p>13 was too close to Ohev Shalom. We couldn't be in the</p> <p>14 apartment areas, A, because it was apartments and, B,</p> <p>15 because it was a rough neighborhood. And, so, we were</p> <p>16 really at a loss.</p> <p>17 Q. So what did you conclude? What properties were</p> <p>18 viable after that search?</p> <p>19 A. And, so, this was taking place while we were in</p> <p>20 our home.</p> <p>21 Q. Uh-huh.</p> <p>22 A. And the only time that we ever really saw a</p> <p>23 good solution was when Mark Gotherf called me and he</p> <p>24 said, I saw a home, it's at the edge of the Highlands of</p> <p>25 McKamy; we were very strongly considering it for our</p>

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<p>1 family, the Gohelf family, and I think that you should  2 take a look at it as a possible solution for the  3 synagogue.</p> <p>4 Q. What is the significance of the Torah Day  5 School with respect to the congregation and its  6 location?</p> <p>7 A. The Torah Day School is the only school in  8 Dallas where the members of Congregation Toras Chaim,  9 Ohev Shalom, Ohr Hatorah and a number of other new  10 burgeoning congregations send their children. So the  11 attractiveness of this area is Torah Day School. It  12 allows our children to walk to school, to be very close  13 to their social and celebratory events, and it's really  14 an anchor to the community.</p> <p>15 Q. If congregation activities are prevented from  16 taking place within the Highlands of McKamy by court  17 order, what would be the effect of that on the  18 congregation?</p> <p>19 A. It would probably kill the congregation.</p> <p>20 Q. And why is that?</p> <p>21 A. We could not -- we could not comfortably,  22 without tremendous burden, go back into our home. Even  23 if it would be considered legal, A, it would be a  24 tremendous burden to my wife, my family; B, the members  25 of the synagogue were uncomfortable being in such close</p>	<p>1 A. So there are other synagogues that would be  2 culturally unacceptable. For instance, you may have  3 Sephardic versus Ashkenazik, and that means people from  4 maybe north Africa, Syrian, Turkish, Greek communities,  5 different culture, different rules. So that would not  6 be acceptable for somebody who is of an Ashkenazik  7 cultural descent. That would be sort of the more  8 European descent, different rules, different cultures  9 completely.</p> <p>10 Then there's Ohev Shalom, which is a  11 wonderful, warm, fantastic synagogue, yet the emphasis  12 there is not as strong on Torah study and very quiet  13 prayer service like that we have, and the members would  14 not feel comfortable there.</p> <p>15 Q. I'm just about done here. Are you aware of any  16 nonresidential uses of property that are going on within  17 the Highlands of McKamy?</p> <p>18 A. I'm aware of two that are going on. One I'm  19 aware of sort of on a secondary basis, and one I'm  20 personally very close to.</p> <p>21 Of the two nonresidential uses, one is a  22 swimming -- swimming school for infants and toddlers, to  23 teach them emergency swim instruction. It's my next  24 door neighbor. We happen to love her very much and her  25 school. It creates -- and I'm not at all complaining.</p>
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<p>1 proximity to our privacy.</p> <p>2 We are bound by the eruv carrying. We  3 can't get into our cars on the Sabbath. And, therefore,  4 since we can't go south of McCallum, we can't go north  5 of Frankford. Most of the areas north of Frankford are  6 outside of the eruv.</p> <p>7 Q. Let me clarify. The order that may be entered  8 is a temporary injunction, so it would not be -- it  9 would not be permanent, at least at first. But would a  10 temporary injunction for six months, a year -- what  11 would be the effect of that on the congregation?</p> <p>12 A. So we understand the importance of prayer and  13 study, and this is something that takes place on a daily  14 basis. In Judaism, consistency in daily prayer and  15 study is of utmost importance, and just like we have to  16 eat daily, we have to feed our souls daily.</p> <p>17 And if people were restricted from doing  18 that for six months, it would decimate individuals,  19 families. They would be forced to relocate, and it  20 would, in effect, end the congregation.</p> <p>21 Q. Do members of the congregation have other shuls  22 to which they could move within walking distance?</p> <p>23 A. No, they don't.</p> <p>24 Q. And why is that? Aren't there other orthodox  25 synagogues in the area?</p>	<p>1 This is just factual -- creates probably more traffic  2 during the summer -- spring, summer, fall months from  3 the swim instruction than we have from the synagogue.</p> <p>4 Q. And how long has that swimming school been in  5 existence?</p> <p>6 A. Over four years for sure. And she'll have  7 instruction two times a day on a regular basis during  8 all of that time, and cars will come park in front of my  9 house, in front of her house. You'll have three, four,  10 five, six cars coming, pulling out, three more, four,  11 five, six cars coming until the several hours have  12 passed and the instruction is finished. That's one.</p> <p>13 And the other one is there are two homes  14 for hospice care in the neighborhood. I don't  15 personally know very much about it, but I have heard  16 about that.</p> <p>17 Q. Did you take any action in reliance on the  18 homeowner's association's failure to raise the  19 restrictive covenant issue?</p> <p>20 A. I'll tell you like this. I never knew about  21 restrictive covenants. They never talked about  22 restrictive covenants, so I never felt that I needed to  23 do something pro or con because of restrictive  24 covenants.</p> <p>25 The only issue that was ever raised to me</p>

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91	<p>1 MR. SCHNEIDER: I have a number of items.  2 MR. TANCABEL: All right.  3 FURTHER EXAMINATION  4 BY MR. SCHNEIDER:</p> <p>5 Q. You indicated that the boundary of an eruv is a  6 spot which one cannot carry items across, if I  7 understood what you were saying, and you specifically  8 indicated that women and children would be affected.  9 How so?</p> <p>10 A. Pushing a stroller is called carrying.</p> <p>11 Q. Okay. If a woman were to walk across it  12 without a stroller, by herself, she would be able to  13 cross that?</p> <p>14 A. As long as she wasn't carrying anything like a  15 handbag or --</p> <p>16 Q. Okay. A handbag?</p> <p>17 A. Uh-huh.</p> <p>18 Q. What about men? Are men allowed to carry a  19 wallet?</p> <p>20 A. No.</p> <p>21 Q. Okay.</p> <p>22 A. No. My specific reference was with respect to  23 mothers and children, yeah.</p> <p>24 Q. I understand completely. If I understand it  25 correctly, there is land on the west side of Hillcrest</p>	93	<p>1 of fairly good size houses over close to Texas Torah  2 Institute. Any number of them -- in fact, there are  3 several churches over there.</p> <p>4 A. Uh-huh.</p> <p>5 Q. Would not leasing one of those locations be a  6 perfect solution for you to need to relocate?</p> <p>7 A. That's very, very far from where our membership  8 is.</p> <p>9 Q. So it would be an inconvenience to your --</p> <p>10 A. It would be a real burden.</p> <p>11 Q. It would be an inconvenience?</p> <p>12 A. Yeah. No, it would not be an inconvenience.  13 It would be a burden. It would be very difficult.  14 Texas Torah Institute is on Davenport. Yeah, I don't  15 think that any of the mothers pushing strollers would be  16 able to make that. That's very, very far.</p> <p>17 It's important to realize that just because  18 the eruv extends to a certain boundary doesn't mean that  19 it's convenient to locate anywhere within the eruv. The  20 decision to make the eruv this wide or this long very  21 often is done for financial reasons or for technical  22 reasons --</p> <p>23 Q. Uh-huh.</p> <p>24 A. -- not because we expect the community to be  25 living there.</p>

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94	<p>1 Q. Uh-huh. You indicated it would be a burden, if</p> <p>2 you were unable to practice at 7103, if you moved back</p> <p>3 housing services at your location on Bremerton. Is that</p> <p>4 correct?</p> <p>5 A. Yes.</p> <p>6 Q. What makes you think that the location at</p> <p>7 7119 Bremerton is exempt from the deed restrictions?</p> <p>8 A. I believe I answered the question before, were</p> <p>9 it to be legal. So I included that in my statement.</p> <p>10 Q. If it were not possible because you were given</p> <p>11 a permanent injunction to operate from 7103, is there</p> <p>12 anything that makes you think that you'd be able to</p> <p>13 preferably operate from 7119 Bremerton?</p> <p>14 MR. TANCABEL: Objection, form.</p> <p>15 Q. (BY MR. SCHNEIDER) Okay.</p> <p>16 THE REPORTER: Was there an answer?</p> <p>17 THE WITNESS: Was there a question?</p> <p>18 MR. SCHNEIDER: I'll withdraw the question.</p> <p>19 Q. (BY MR. SCHNEIDER) You indicated that you had</p> <p>20 asked your congregation to limit parking to three spaces</p> <p>21 on the north side of Mumford. Would it surprise you to</p> <p>22 learn that at the services this morning, there was</p> <p>23 somebody parking on the south side of Mumford?</p> <p>24 A. It would not surprise me. We do our absolute</p> <p>25 best to communicate to the membership. So from time to</p>	96	<p>1 <b>operating within somebody else using the house as a</b></p> <p>2 <b>primary residence. So it was better legally for us</b></p> <p>3 <b>based on the city codes, and those are the two reasons</b></p> <p>4 <b>why.</b></p> <p>5 Q. When you say legal reasons, am I to understand</p> <p>6 that the driving legal reason would have been something</p> <p>7 from the City of Dallas?</p> <p>8 A. Correct.</p> <p>9 Q. It was my understanding that the City of Dallas</p> <p>10 was looking at that spot as being a church and that</p> <p>11 residential usage there is not really a factor one way</p> <p>12 or the other for the City of Dallas. Am I</p> <p>13 misunderstanding that?</p> <p>14 A. Yes, you're misunderstanding that.</p> <p>15 Q. You're saying that the City of Dallas is</p> <p>16 requiring somebody to live there and has always been</p> <p>17 requiring somebody to live there?</p> <p>18 A. No. The City of Dallas is only communicating</p> <p>19 with the congregation as far as the congregational use,</p> <p>20 and that's it. The City of Dallas is not talking about</p> <p>21 the person who's living there, and they're saying the</p> <p>22 fact that the congregation was using the house with the</p> <p>23 frequency with which it uses it wants us to get a CO,</p> <p>24 and that's it.</p> <p>25 Q. So why would the City of Dallas be asking you</p>
95	<p>1 time, we may have people who either forget or come from</p> <p>2 outside the membership to pray with us, and we do our</p> <p>3 best, when we see somebody parking in a place where they</p> <p>4 shouldn't be, to let them know that next time, please</p> <p>5 don't do that.</p> <p>6 Q. Did you have anybody attend this morning that</p> <p>7 was from outside of your normal membership?</p> <p>8 A. Yes.</p> <p>9 Q. Did that person drive?</p> <p>10 A. They did.</p> <p>11 Q. You indicated that your son moved into</p> <p>12 7103 Mumford on September 16th of 2013. Why did he move</p> <p>13 in then?</p> <p>14 A. I need clarification on the question.</p> <p>15 Q. Was there any particular reason? Did he need a</p> <p>16 place to stay? Was he doing it so that there would</p> <p>17 be -- it would be occupied as a residence? What was the</p> <p>18 driving factor there?</p> <p>19 A. There were many reasons why. A, it was good</p> <p>20 for my son, who was living at home, needed to spread his</p> <p>21 wings -- it was a great opportunity for him to learn</p> <p>22 responsibility.</p> <p>23 The shul felt that legally, based on</p> <p>24 consultation, that it was better to have somebody living</p> <p>25 as their primary residence in the house and the shul</p>	97	<p>1 to put somebody in there as a resident?</p> <p>2 A. They never asked us to do that. That was what</p> <p>3 we did on our own.</p> <p>4 Q. So what was the legal purpose of doing that?</p> <p>5 If the City of Dallas is not asking you to do it, why</p> <p>6 would you do it?</p> <p>7 A. Because there is a law called a home church,</p> <p>8 that if a home is being used as a residence, that one</p> <p>9 would be able to have services or classes taking place</p> <p>10 within that home without having a certificate of</p> <p>11 occupancy. And, so, that was what we were hoping for</p> <p>12 initially. The City of Dallas never asked us.</p> <p>13 Q. And I understood that the City of Dallas had</p> <p>14 already indicated that you needed to get a certificate</p> <p>15 of occupancy. So what would be the purpose of putting</p> <p>16 somebody there?</p> <p>17 A. They indicated that after Avrohom Moshe was</p> <p>18 already living there.</p> <p>19 Q. They did? That was the first time that you had</p> <p>20 heard that you needed a certificate of occupancy, was</p> <p>21 after he moved in?</p> <p>22 A. Yes.</p> <p>23 Q. And yet you indicated on August 18th that you</p> <p>24 were planning to get a certificate of occupancy that day</p> <p>25 or within days of that, which was a month earlier.</p>

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1 A. Uh-huh.  
 2 Q. Can you reconcile that?  
 3 A. Okay. Can you repeat the question again?  
 4 Q. On August 18th, you told me and a number of  
 5 other people that you --  
 6 A. Right, at the board meeting.  
 7 Q. -- were immediately getting a certificate of  
 8 occupancy because it was necessary. If it was necessary  
 9 to get a certificate of occupancy as a church, there  
 10 would be no reason to have anybody residing there. So  
 11 my question again is: What was the legal motivation?  
 12 A. It's not -- it's not true what you're saying.  
 13 We could have -- we could try to get a certificate of  
 14 occupancy but also have somebody living there because --  
 15 you know, you want to try to do things in the best way  
 16 possible. The best way possible would be to get the  
 17 certificate of occupancy, based on information that we  
 18 were getting, but in the event that that doesn't or  
 19 isn't able to be acquired, then we want to have a home  
 20 church situation.  
 21 Q. You indicated that there is a swimming school  
 22 next door to your house on Bremerton. Have you ever  
 23 reported that to the homeowner's association?  
 24 A. No.  
 25 Q. As far as you know, did anybody ever report

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1 your operation from Bremerton to the homeowner's  
 2 association?  
 3 A. Can you define "report"?  
 4 Q. Say to them --  
 5 A. That it's taking place?  
 6 Q. -- that it's taking place and needs to stop or  
 7 some variation, or is there a rule or anything like  
 8 that?  
 9 A. I can't tell you what residents did. I can  
 10 just tell you that the homeowner's association never  
 11 told me that it has to stop.  
 12 Q. The swim school, you indicated it's been there  
 13 over four years. Is that correct?  
 14 A. That's the information that the -- the owner  
 15 tells me.  
 16 Q. Were you aware there was a statute of  
 17 limitations in the state of Texas of four years for  
 18 violations of restrictive covenants?  
 19 A. (No audible response).  
 20 MR. SCHNEIDER: I think that's good for me.  
 21 Thank you.  
 22 MR. SURRETT: I don't have any questions.  
 23 MR. TANCABEL: I'm done, too. That's it.  
 24 THE REPORTER: Off the record.  
 25 (End of proceedings at 4:36 p.m.)

100

1 CHANGES AND SIGNATURE  
 2 WITNESS NAME: RABBI "JORDAN" YAAKOV RICH DATE: 4/09/14  
 3 PAGE LINE CHANGE REASON  
 4 \_\_\_\_\_  
 5 \_\_\_\_\_  
 6 \_\_\_\_\_  
 7 \_\_\_\_\_  
 8 \_\_\_\_\_  
 9 \_\_\_\_\_  
 10 \_\_\_\_\_  
 11 \_\_\_\_\_  
 12 I, RABBI "JORDAN" YAAKOV RICH, have read the  
 13 foregoing deposition and hereby affix my signature that  
 14 same is true and correct, except as noted above.  
 15 RABBI "JORDAN" YAAKOV RICH  
 16 THE STATE OF \_\_\_\_\_ )  
 17 COUNTY OF \_\_\_\_\_ )  
 18 Before me, \_\_\_\_\_, on this day  
 19 personally appeared RABBI "JORDAN" YAAKOV RICH, known to  
 20 me (or proved to me under oath or through  
 21 \_\_\_\_\_) (description of identity  
 22 card or other document)) to be the person whose name is  
 23 subscribed to the foregoing instrument and acknowledged  
 24 to me that they executed the same for the purposes and  
 25 consideration therein expressed.  
 Given under my hand and seal of office this  
 \_\_\_\_\_ day of \_\_\_\_\_  
 \_\_\_\_\_  
 NOTARY PUBLIC IN AND FOR  
 THE STATE OF \_\_\_\_\_  
 COMMISSION EXPIRES: \_\_\_\_\_

101

1 NO. 429-04998-2013  
 2 DAVID R. SCHNEIDER, ) IN THE DISTRICT COURT  
 3 Plaintiff )  
 4 VS. )  
 5 JUDITH D. GOTHERF, MARK B. )  
 6 GOTHERF, AND CONGREGATION )  
 7 TORAS CHAIM, INC., )  
 8 Defendants )  
 9 and ) 429th JUDICIAL DISTRICT  
 10 )  
 11 HIGHLANDS OF MCKAMY IV AND )  
 12 V COMMUNITY IMPROVEMENT )  
 13 ASSOCIATION, )  
 14 Intervening Plaintiff )  
 15 V. )  
 16 )  
 17 JUDITH D. GOTHERF AND MARK )  
 18 B. GOTHERF, )  
 19 Defendants ) COLLIN COUNTY, TEXAS  
 20 )  
 21 )  
 22 )  
 23 )  
 24 )  
 25 )

15 REPORTER'S CERTIFICATION  
 DEPOSITION OF RABBI "JORDAN" YAAKOV RICH  
 APRIL 9, 2014

17 I, Lisa M. Durham, Certified Shorthand Reporter in  
 18 and for the State of Texas, hereby certify to the  
 19 following:  
 20 That the witness, RABBI "JORDAN" YAAKOV RICH, was  
 21 duly affirmed by the officer and that the transcript of  
 22 the oral deposition is a true record of the testimony  
 23 given by the witness;  
 24 That the deposition transcript was submitted on  
 25 \_\_\_\_\_ to the witness or to the attorney



Schneider vs. Gotherf, et al.

4/9/2014

Rabbi "Jordan" Yaakov Rich

102

1 for the witness for examination, signature and return to  
 2 me by \_\_\_\_\_;  
 3 That the amount of time used by each party at the  
 4 deposition is as follows:  
 5 Mr. David R. Schneider - 59 minutes  
 6 Mr. David A. Surratt - 1 hour, 25 minutes  
 7 Mr. John Tancabel - 30 minutes  
 8 Mr. Justin Butterfield - 0 minutes  
 9  
 10 That pursuant to information given to the  
 11 deposition officer at the time said testimony was taken,  
 12 the following includes counsel for all parties of  
 13 record:  
 14 Mr. David R. Schneider, Plaintiff Appearing Pro Se  
 15 Mr. Justin Butterfield, Attorney for Defendants  
 16 JUDITH D. GOTHERF, MARK B. GOTHERF AND CONGREGATION  
 17 TORAS CHAIM, INC.  
 18 Mr. John Tancabel, Attorney for Defendant,  
 19 CONGREGATION TORAS CHAIM, INC.  
 20  
 21 Mr. David A. Surratt, Attorney for the Intervening  
 22 Plaintiff, HIGHLANDS OF MCKAMY IV AND V COMMUNITY  
 23 IMPROVEMENT ASSOCIATION  
 24  
 25 I further certify that I am neither counsel for,  
 related to, nor employed by any of the parties or  
 attorneys in the action in which this proceeding was  
 taken, and further that I am not financially or  
 otherwise interested in the outcome of the action.

104

1 FURTHER CERTIFICATION UNDER RULE 203 TRCP  
 2 The original deposition was/was not returned to the  
 3 deposition officer on \_\_\_\_\_;  
 4 If returned, the attached Changes and Signature  
 5 page contains any changes and the reasons therefor;  
 6 If returned, the original deposition was delivered  
 7 to Mr. David A. Surratt, Custodial Attorney;  
 8 That S \_\_\_\_\_ is the deposition officer's  
 9 charges to the Intervening Plaintiff for preparing the  
 10 original deposition transcript and any copies of  
 11 exhibits;  
 12 That the deposition was delivered in accordance  
 13 with Rule 203.3, and that a copy of this certificate was  
 14 served on all parties shown herein on and filed with the  
 15 Clerk.  
 16 Certified to by me this \_\_\_\_\_ day of \_\_\_\_\_,  
 17 2014.  
 18  
 19 *Lisa M. Durham*  
 20  
 21 Lisa M. Durham, Texas CSR #6651  
 22 Expiration Date: 12/31/15  
 23 Firm Registration No. #298  
 24 Alpha Depo  
 25 13140 Coit Road, Suite 216  
 Dallas, Texas 75240  
 (214) 321-5599 Phone  
 (214) 321-1922 Fax  
 www.alphadepo.com

103

1 Further certification requirements pursuant to  
 2 Rule 203 of TRCP will be certified to after they have  
 3 occurred.  
 4 Certified to by me this \_\_\_\_\_ day of  
 5 \_\_\_\_\_, 2014.  
 6  
 7 *Lisa M. Durham*  
 8  
 9 Lisa M. Durham, Texas CSR #6651  
 10 Expiration Date: 12/31/15  
 11 Firm Registration No. #298  
 12 Alpha Depo  
 13 13140 Coit Road, Suite 216  
 14 Dallas, Texas 75240  
 15 (214) 321-5599 Phone  
 16 (214) 321-1922 Fax  
 17 www.alphadepo.com  
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 25

Digitally signed by Lisa Durham  
 Date: 2014.04.23 07:44:21 -07:00  
 Reason: I am the author of this document.  
 Location: Dallas, TX

Schneider vs. Gothelf, et al

Rabbi "Jordan" Yaakov Rich

4/9/2014

101

NO. 429-04998-2013

DAVID R. SCHNEIDER,  
Plaintiff

) IN THE DISTRICT COURT

VS.

JUDITH D. GOTHELF, MARK B.  
GOTHELF, AND CONGREGATION  
TORAS CHAIM, INC.,  
Defendants

) 429th JUDICIAL DISTRICT

and

HIGHLANDS OF MCKAMY IV AND  
V COMMUNITY IMPROVEMENT  
ASSOCIATION,  
Intervening Plaintiff

V.

JUDITH D. GOTHELF AND MARK  
B. GOTHELF,  
Defendants

) COLLIN COUNTY, TEXAS

REPORTER'S CERTIFICATION  
DEPOSITION OF RABBI "JORDAN" YAAKOV RICH  
APRIL 9, 2014

I, Lisa M. Durham, Certified Shorthand Reporter in  
and for the State of Texas, hereby certify to the  
following:

That the witness, RABBI "JORDAN" YAAKOV RICH, was  
duly affirmed by the officer and that the transcript of  
the oral deposition is a true record of the testimony  
given by the witness;

That the deposition transcript was submitted on  
4/23/14 to the witness or to the attorney

ALPHA DEPO  
(888) 667-DEPO

1 for the witness for examination, signature and return to  
2 me by 5/13/14 ;

3 That the amount of time used by each party at the  
4 deposition is as follows:

- 5 Mr. David R. Schneider - 59 minutes
- 6 Mr. David A. Surratt - 1 hour, 25 minutes
- 7 Mr. John Tancabel - 30 minutes
- 8 Mr. Justin Butterfield - 0 minutes

9 That pursuant to information given to the  
10 deposition officer at the time said testimony was taken,  
11 the following includes counsel for all parties of  
12 record:

13 Mr. David R. Schneider, Plaintiff Appearing Pro Se

14 Mr. Justin Butterfield, Attorney for Defendants  
15 JUDITH D. GOTHELF, MARK B. GOTHELF AND CONGREGATION  
16 TORAS CHAIM, INC.

17 Mr. John Tancabel, Attorney for Defendant,  
18 CONGREGATION TORAS CHAIM, INC.

19 Mr. David A. Surratt, Attorney for the Intervening  
20 Plaintiff, HIGHLANDS OF MCKAMY IV AND V COMMUNITY  
21 IMPROVEMENT ASSOCIATION

22 I further certify that I am neither counsel for,  
23 related to, nor employed by any of the parties or  
24 attorneys in the action in which this proceeding was  
25 taken, and further that I am not financially or  
otherwise interested in the outcome of the action.

1 Further certification requirements pursuant to  
 2 Rule 203 of TRCP will be certified to after they have  
 3 occurred.

4 Certified to by me this 23 day of  
 5 April, 2014.

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*Lisa M. Durham*

Digitally signed by Lisa Durham  
 Date: 2014.04.23 07:44:23 -0700  
 Reason: I am the author of this document  
 Location: Dallas, TX

Lisa M. Durham, Texas CSR #6651  
 Expiration Date: 12/31/15  
 Firm Registration No. #298  
 Alpha Depo  
 13140 Coit Road, Suite 216  
 Dallas, Texas 75240  
 (214) 321-5599 Phone  
 (214) 321-1922 Fax  
 www.alphadepo.com

ALPHA DEPO  
 (888) 667-DEPO

FURTHER CERTIFICATION UNDER RULE 203 TRCP

The original deposition was/was not returned to the deposition officer on 5/13/14;

If returned, the attached Changes and Signature page contains any changes and the reasons therefor;

If returned, the original deposition was delivered to Mr. David A. Surratt, Custodial Attorney;

That \$ 660.50 is the deposition officer's charges to the Intervening Plaintiff for preparing the original deposition transcript and any copies of exhibits;

That the deposition was delivered in accordance with Rule 203.3, and that a copy of this certificate was served on all parties shown herein on and filed with the Clerk.

Certified to by me this 15th day of May, 2014.

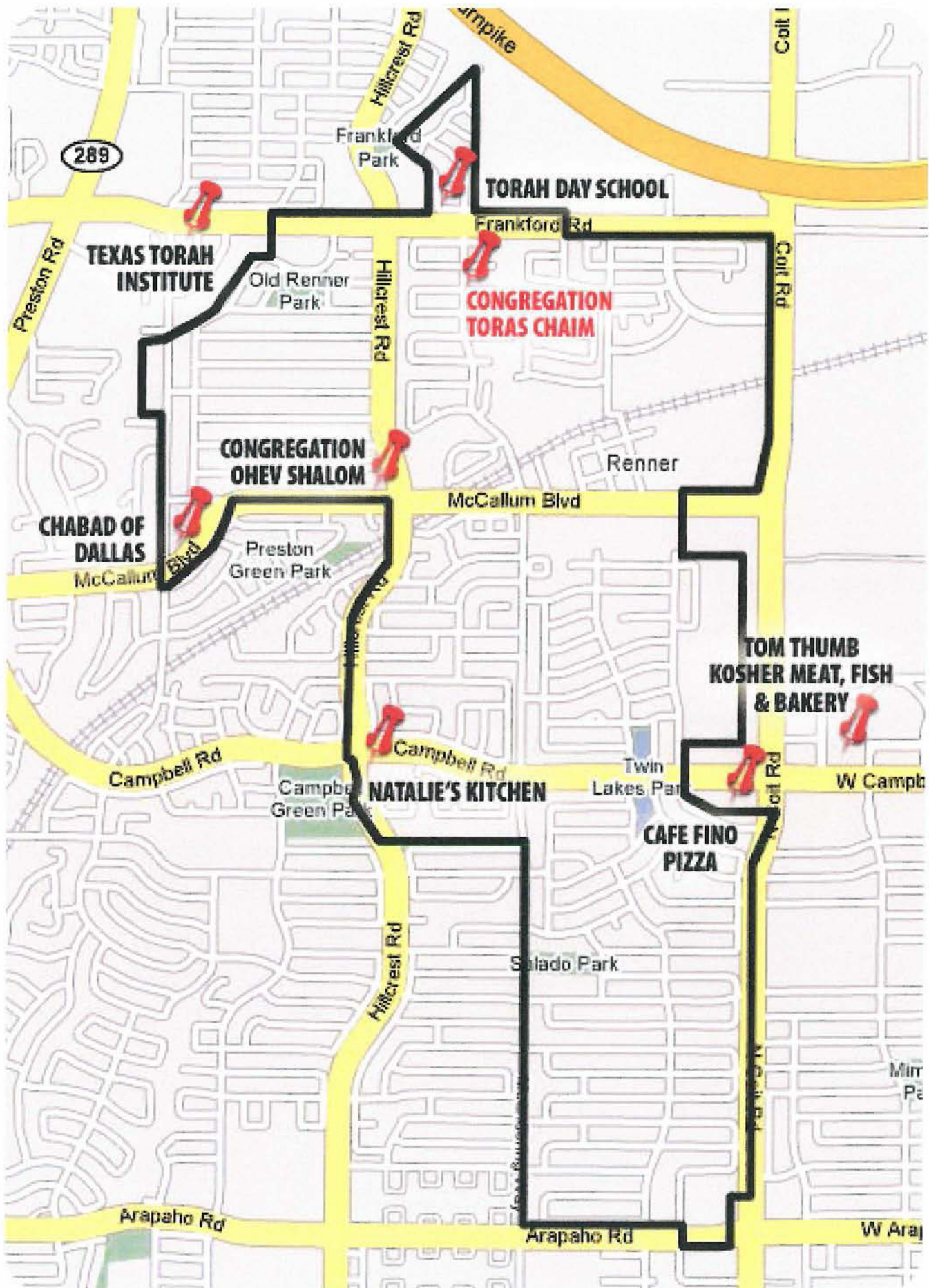
*Lisa M. Durham*

Lisa M. Durham, Texas CSR #6651  
Expiration Date: 12/31/15  
Firm Registration No. #298  
Alpha Depo  
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Dallas, Texas 75240  
(214) 321-5599 Phone  
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www.alphadepo.com

ALPHA DEPO  
(888) 667-DEPO

# EXHIBIT E

# Far North Dallas Eruv Boundries



# **EXHIBIT F**



CAUSE NO. 429-04998-2013

DAVID R. SCHNEIDER,	)	IN THE DISTRICT COURT
Plaintiff,	)	
	)	
vs.	)	
	)	
JUDITH D. GOTHELF, MARK	)	
B. GOTHELF, AND	)	
CONGREGATION TORAS	)	
CHAIM, INC.,	)	
	)	
Defendants,	)	
	)	
and	)	COLLIN COUNTY, TEXAS
	)	
HIGHLANDS OF MCKAMY IV	)	
AND V COMMUNITY	)	
IMPROVEMENT ASSOCIATION,	)	
	)	
Intervening Plaintiff,	)	
	)	
JUDITH D. GOTHELF AND	)	
MARK B. GOTHELF,	)	
	)	
Defendants.	)	429TH JUDICIAL DISTRICT

-----  
ORAL DEPOSITION OF

MARK B. GOTHELF

MARCH 18, 2014  
-----

ALPHA DEPO  
(888) 667-DEPO

Schneider vs. Gothelf, et al.

3/18/2014

Mark B. Gothelf

2	<p>1 ORAL DEPOSITION OF MARK B. GOTHELf, produced as</p> <p>2 a witness at the instance of the Plaintiff, and duly</p> <p>3 sworn, was taken in the above-styled and numbered</p> <p>4 cause on March 18, 2014, from 2:03 p.m. to 4:16 p.m.,</p> <p>5 before Annie Hervey, CSR in and for the State of</p> <p>6 Texas, reported by stenographic method, at the offices</p> <p>7 of Haynes and Boone, LLP, located at 2323 Victory</p> <p>8 Avenue, Suite 700, in the City of Dallas, County of</p> <p>9 Dallas, and State of Texas, pursuant to the Texas</p> <p>10 Rules of Civil Procedure and the provisions stated on</p> <p>11 the record or attached hereto.</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	4
3	<p>1 APPEARANCES</p> <p>2 APPEARING FOR THE PLAINTIFF PRO SE:</p> <p>3 Mr. David R. Schneider</p> <p>4 7035 Mumford</p> <p>5 Dallas, Texas 75252</p> <p>6 (214) 315-5531</p> <p>7 davidr.schneider@gmail.com</p> <p>8 APPEARING FOR THE DEFENDANTS:</p> <p>9 Mr. Justin Butterfield</p> <p>10 LIBERTY INSTITUTE</p> <p>11 2001 Plano Parkway</p> <p>12 Suite 1600</p> <p>13 Plano, Texas 75075</p> <p>14 (972) 941-4451</p> <p>15 jbutterfield@libertyinstitute.org</p> <p>16 APPEARING FOR THE DEFENDANT, CONGREGATION TORAS</p> <p>17 CHAIM, INC.:</p> <p>18 Mr. John Tancabel</p> <p>19 HAYNES AND BOONE, LLP</p> <p>20 2323 Victory Avenue</p> <p>21 Suite 700</p> <p>22 Dallas, Texas 75219</p> <p>23 (214) 651-5597</p> <p>24 john.tancabel@haynesboone.com</p> <p>25 APPEARING FOR THE INTERVENING PLAINTIFF:</p> <p>Mr. David A. Surratt</p> <p>RIDDLE &amp; WILLIAMS, PC</p> <p>3710 Rawlins Street</p> <p>Suite 1400</p> <p>Dallas, Texas 75219</p> <p>(214) 760-6766</p> <p>dsurratt@riddleandwilliams.com</p> <p>ALSO PRESENT:</p> <p>Mr. Mike Donohue, Homeowners Association of</p> <p>Highland McKamy IV and V</p>	5
2	<p>1 INDEX</p> <p>2 PAGE</p> <p>3 Appearances..... 3</p> <p>4 Stipulations..... 5</p> <p>5 Proceedings..... 5</p> <p>6 MARK B. GOTHELf</p> <p>7 Examination by Mr. David R. Schneider..... 7</p> <p>8 Examination by Mr. David A. Surratt..... 31</p> <p>9 Re-Examination by Mr. David R. Schneider..... 63</p> <p>10 Re-Examination by Mr. David A. Surratt..... 66</p> <p>11 Re-Examination by Mr. David R. Schneider..... 71</p> <p>12 Examination by Mr. Justin Butterfield..... 71</p> <p>13 Signature and Changes..... 75</p> <p>14 Reporter's Certificate..... 76</p> <p>15 EXHIBITS</p> <p>16 NO. DESCRIPTION PAGE</p> <p>17 Exhibit 1 Power of Attorney..... 48</p> <p>18 Exhibit 2 10/4/2013 Letter from Mr. Schneider... 54</p> <p>19 Exhibit 3 10/14/2013 Letter from Mr. Surratt.... 55</p> <p>20 Exhibit 4 11/7/2013 Letter from Mr. Surratt.... 56</p> <p>21 Exhibit 5 Notice of Deposition..... 69</p> <p>22 Exhibit 6 3/13/2014 Letter from Mr. Surratt.... 69</p> <p>23</p> <p>24</p> <p>25</p>	5
3	<p>1 PROCEEDINGS</p> <p>2 (MARCH 18, 2014, 2:03 p.m.)</p> <p>3 MARK B. GOTHELf,</p> <p>4 having been first duly sworn, testified as follows:</p> <p>5 MR. BUTTERFIELD: And -- but before we</p> <p>6 get started, we -- we wanted to have some preliminary</p> <p>7 matters on the record. Are you okay with having an</p> <p>8 agreement that if one person objects, that that</p> <p>9 objection is for both parties? Otherwise, then if I</p> <p>10 object, then he has to keep joining in. So it just</p> <p>11 simplifies it --</p> <p>12 MR. SCHNEIDER: Sure.</p> <p>13 MR. BUTTERFIELD: -- that when --</p> <p>14 MR. SurrATT: Agreed.</p> <p>15 MR. TANCABEL: And -- and it will go</p> <p>16 both ways --</p> <p>17 MR. BUTTERFIELD: Yeah.</p> <p>18 MR. TANCABEL: -- so that if --</p> <p>19 MR. BUTTERFIELD: If one of you</p> <p>20 objects --</p> <p>21 MR. TANCABEL: -- David Surratt</p> <p>22 objects --</p> <p>23 MR. BUTTERFIELD: -- it will -- it will</p> <p>24 be good for both.</p> <p>25 MR. TANCABEL: -- it will be good as to</p>	5

6	<p>1 you and --</p> <p>2 MR. BUTTERFIELD: Right.</p> <p>3 MR. SCHNEIDER: Sounds good.</p> <p>4 MR. TANCABEL: So you don't -- it just</p> <p>5 prevents less (inaudible).</p> <p>6 MR. SURRATT: Yeah. So one objection</p> <p>7 for either side stands --</p> <p>8 MR. BUTTERFIELD: Right.</p> <p>9 MR. TANCABEL: Yeah.</p> <p>10 MR. SURRATT: -- for all the parties for</p> <p>11 that side.</p> <p>12 MR. TANCABEL: Yeah. Yeah.</p> <p>13 MR. SCHNEIDER: Sounds good.</p> <p>14 MR. TANCABEL: And -- and -- and that</p> <p>15 will apply to later depositions, as well. And you're</p> <p>16 fine with that?</p> <p>17 MR. SURRATT: Yeah, I'm fine.</p> <p>18 MR. SCHNEIDER: Sure.</p> <p>19 MR. TANCABEL: Great.</p> <p>20 THE REPORTER: Okay.</p> <p>21 MR. SURRATT: Unsigned copy -- can an</p> <p>22 unsigned copy be used if the signed copy is not</p> <p>23 available yet?</p> <p>24 MR. BUTTERFIELD: (Moving head up and</p> <p>25 down.)</p>	8	<p>1 Q. Congratulations.</p> <p>2 A. (Moving head up and down.)</p> <p>3 Q. What line of business are you in?</p> <p>4 A. Investments.</p> <p>5 Q. Investments. Any particular kind?</p> <p>6 A. No.</p> <p>7 Q. Are you self-employed?</p> <p>8 A. Yes.</p> <p>9 Q. How long have you been in this line of</p> <p>10 business?</p> <p>11 A. About nine years.</p> <p>12 Q. Thank you. Before that, may I ask what you</p> <p>13 did?</p> <p>14 A. A variety of things. Real estate broker.</p> <p>15 Q. Real estate broker. Are -- your investments,</p> <p>16 do any of them include real estate?</p> <p>17 A. Yes.</p> <p>18 Q. Would you say that's a substantial area of</p> <p>19 your investments?</p> <p>20 A. You'd have to define substantial.</p> <p>21 Q. Fifty percent or more.</p> <p>22 A. No.</p> <p>23 MR. BUTTERFIELD: Objection, form.</p> <p>24 Q. (BY MR. SCHNEIDER) Where do you currently</p> <p>25 reside?</p>
7	<p>1 MR. SURRATT: And I assume Mr. Gothelf</p> <p>2 does want to read and sign the deposition?</p> <p>3 MR. BUTTERFIELD: Yeah, I -- I would</p> <p>4 think so.</p> <p>5 MR. SURRATT: Okay.</p> <p>6 MR. BUTTERFIELD: Yes.</p> <p>7 MR. TANCABEL: Yeah.</p> <p>8 EXAMINATION</p> <p>9 BY MR. SCHNEIDER:</p> <p>10 Q. Can you tell me your name, please.</p> <p>11 A. Mark Gothelf.</p> <p>12 Q. What is your middle name, please?</p> <p>13 A. Benjamin.</p> <p>14 Q. Could you say that again?</p> <p>15 A. Benjamin.</p> <p>16 Q. Okay. How old are you?</p> <p>17 A. Forty-three.</p> <p>18 Q. Are you married?</p> <p>19 A. Yes.</p> <p>20 Q. Do you or your wife have any children?</p> <p>21 A. Yes.</p> <p>22 Q. How many?</p> <p>23 A. Three.</p> <p>24 Q. Three. What ages, may I ask?</p> <p>25 A. Four, two, and nine months.</p>	9	<p>1 A. In Dallas.</p> <p>2 Q. Can you give me your address, please?</p> <p>3 A. 6406 Dykes Way.</p> <p>4 Q. What was your previous address -- residence</p> <p>5 address before you lived at 6406 Dykes?</p> <p>6 A. 1 Wilder Road, Monsey, New York.</p> <p>7 Q. How long did you reside there?</p> <p>8 A. Fifteen years.</p> <p>9 Q. Is that a house or an apartment?</p> <p>10 A. House.</p> <p>11 Q. Do you own it?</p> <p>12 MR. BUTTERFIELD: Objection, form.</p> <p>13 Q. (BY MR. SCHNEIDER) Do you own the house</p> <p>14 at --</p> <p>15 A. It's out in my name.</p> <p>16 Q. Okay. May -- if it is not too intrusive, may</p> <p>17 I ask your religious affiliation, if any?</p> <p>18 A. Jewish.</p> <p>19 Q. Do you understand you're here today as a</p> <p>20 defendant in a lawsuit I've initiated, Cause</p> <p>21 429-04998-2013 in the 429th District Court of the</p> <p>22 State of Texas?</p> <p>23 A. I'm unfamiliar with the cause number, but I'm</p> <p>24 aware that --</p> <p>25 Q. Okay.</p>

10	<p>1 A. -- I'm here as a defendant.</p> <p>2 Q. In that case, have you read the original</p> <p>3 petition that has been filed?</p> <p>4 A. Part of it.</p> <p>5 Q. Are you generally familiar with its contents?</p> <p>6 MR. BUTTERFIELD: Objection, form.</p> <p>7 A. I'm familiar with some of the contents.</p> <p>8 Q. (BY MR. SCHNEIDER) Okay. Are you owner or</p> <p>9 co-owner of a house at 7103 Mumford in Dallas, Collin</p> <p>10 County, Texas, zip code 75252?</p> <p>11 A. Yes --</p> <p>12 MR. BUTTERFIELD: Objection, form.</p> <p>13 A. Yes.</p> <p>14 Q. (BY MR. SCHNEIDER) When did you purchase</p> <p>15 that house?</p> <p>16 A. May or June of 2013.</p> <p>17 Q. How much did you pay for that house?</p> <p>18 MR. BUTTERFIELD: Objection, form.</p> <p>19 A. I believe it was 310.</p> <p>20 Q. (BY MR. SCHNEIDER) What is your percentage</p> <p>21 of ownership in 7103 Mumford?</p> <p>22 MR. BUTTERFIELD: Objection, form.</p> <p>23 A. I don't know that I can define that.</p> <p>24 Q. (BY MR. SCHNEIDER) Okay. Are there any</p> <p>25 co-owners of that house?</p>	12	<p>1 in.</p> <p>2 MR. SCHNEIDER: Sure.</p> <p>3 (Break taken from 2:10 p.m. to 2:12 p.m.)</p> <p>4 Q. (BY MR. SCHNEIDER) You currently live in</p> <p>5 Texas. And before that, lived in the state of New</p> <p>6 York. Had you ever resided in Texas before that?</p> <p>7 A. Yes.</p> <p>8 Q. How long had you spent in Texas approximately</p> <p>9 before that?</p> <p>10 A. Twenty-eight years.</p> <p>11 Q. Did you grow up here? So you grew up in --</p> <p>12 did you grow up in the Dallas area?</p> <p>13 A. Yes.</p> <p>14 Q. May I ask where you went to high school?</p> <p>15 A. Torah High School of Texas.</p> <p>16 Q. Okay. When you grew up, was it at the house</p> <p>17 at 6406 Dykes Way?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. Okay. In addition to yourself and</p> <p>20 your mother who are listed on the deed records in</p> <p>21 Collin County, is there anybody else that has an</p> <p>22 ownership or other equity interest in 7103 Mumford of</p> <p>23 any type?</p> <p>24 MR. BUTTERFIELD: Objection, form.</p> <p>25 A. Not quite sure how to answer that.</p>
11	<p>1 A. Yes.</p> <p>2 Q. Who are those, please?</p> <p>3 A. My mother.</p> <p>4 Q. And her name, please?</p> <p>5 A. Judith.</p> <p>6 Q. Is that Judith --</p> <p>7 A. Gotherf.</p> <p>8 Q. -- Gotherf? Thank you. Would you say that</p> <p>9 the two of you own it jointly?</p> <p>10 MR. BUTTERFIELD: Objection, form.</p> <p>11 A. It's hard to define.</p> <p>12 Q. (BY MR. SCHNEIDER) Okay. Does your wife</p> <p>13 have an interest in the house at 7103 Mumford, an</p> <p>14 ownership interest?</p> <p>15 A. No.</p> <p>16 Q. Okay. Would you say it's reasonable to think</p> <p>17 of it as your separate property and not your -- part</p> <p>18 of your marital estate?</p> <p>19 A. I haven't really defined it.</p> <p>20 Q. Okay.</p> <p>21 MR. TANCABEL: If we could pause here</p> <p>22 for a minute. I -- the gentleman from the HOA is</p> <p>23 here.</p> <p>24 MR. SCHNEIDER: Okay. Great.</p> <p>25 MR. TANCABEL: I'm going to go bring him</p>	13	<p>1 Q. (BY MR. SCHNEIDER) Interesting. Does</p> <p>2 Congregation Toras Chaim, Inc. have any owner interest</p> <p>3 or other equity interest in that house?</p> <p>4 MR. BUTTERFIELD: Objection, form.</p> <p>5 A. Not at this time.</p> <p>6 Q. (BY MR. SCHNEIDER) Have you ever personally</p> <p>7 resided at 7103 Mumford, Dallas?</p> <p>8 A. No.</p> <p>9 Q. To your knowledge, has your mother ever</p> <p>10 resided there?</p> <p>11 A. No.</p> <p>12 Q. What was the purpose of the purchase of the</p> <p>13 house?</p> <p>14 A. Can you say that again?</p> <p>15 Q. Why did you buy the house at 7103 Mumford?</p> <p>16 A. To provide a place for Toras Chaim to have</p> <p>17 services.</p> <p>18 Q. Did you ever plan to live in the house at the</p> <p>19 time you purchased it?</p> <p>20 A. No.</p> <p>21 Q. The purchase -- purchase itself, did you</p> <p>22 finance any portion of it?</p> <p>23 A. A portion of it, yes.</p> <p>24 Q. Can you tell me the percentage in approximate</p> <p>25 terms? You paid cash versus finance? Can you --</p>

54	<p>1 A. Occasionally, I do.</p> <p>2 Q. What would be some examples of that type of a</p> <p>3 contribution or donation?</p> <p>4 A. Writing them a check.</p> <p>5 Q. Fair -- fair enough. I mean, would there be</p> <p>6 a special Jewish holiday or just on an as-need basis?</p> <p>7 Could you explain to the Court when that might arise</p> <p>8 or when you have done that?</p> <p>9 A. Just when I feel like donating to the</p> <p>10 synagogue.</p> <p>11 Q. Has it been in -- in response to a request</p> <p>12 from them that they needed money?</p> <p>13 A. No.</p> <p>14 Q. So it was gratuitous on your part, just as a</p> <p>15 normal donation?</p> <p>16 A. Yes.</p> <p>17 Q. Okay.</p> <p>18 (Exhibit No. 2 marked.)</p> <p>19 THE WITNESS: Thank you.</p> <p>20 Q. (BY MR. SURRATT) Mr. Gohelf, I'm handing to</p> <p>21 you what has been marked as Deposition Exhibit No. 2.</p> <p>22 Mr. Schneider was asking you questions about a letter</p> <p>23 that was addressed to you and several other persons</p> <p>24 and entities regarding his concerns and objection</p> <p>25 about the use of the property. This is the letter</p>	56	<p>1 Wilder Road address. Around October 2013, based on</p> <p>2 your previous testimony, am I correct that no one was</p> <p>3 occupying the Wilder Road address?</p> <p>4 A. You are correct.</p> <p>5 Q. Okay. And as of October 2013, was the</p> <p>6 rabbi's son living at Mumford Court?</p> <p>7 A. I believe so.</p> <p>8 Q. Okay.</p> <p>9 A. I'm not certain when he moved in exactly.</p> <p>10 (Exhibit No. 4 marked.)</p> <p>11 Q. (BY MR. SURRATT) If you'll look at what's</p> <p>12 been marked as Deposition Exhibit No. 4, attached is a</p> <p>13 copy of the letter that we were previously</p> <p>14 discussing -- discussing as Exhibit No. 3 with a cover</p> <p>15 letter addressed to the occupants at 7103 Mumford</p> <p>16 Court because we had received no response or</p> <p>17 verification of delivery of the previous letter. Do</p> <p>18 you recall whether or not this November 7 version with</p> <p>19 the cover letter is the one that you found at Mumford</p> <p>20 Court?</p> <p>21 A. I think this might be the one that I</p> <p>22 received --</p> <p>23 Q. Okay.</p> <p>24 A. -- because the occupant rings a bell.</p> <p>25 Q. Okay. I'll represent to you, Mr. Gohelf,</p>
55	<p>1 dated October 4, 2013. Do you recall receiving this</p> <p>2 letter?</p> <p>3 A. Either I received it or my mother did.</p> <p>4 Q. You have seen a copy of it prior to today?</p> <p>5 A. I believe so.</p> <p>6 (Exhibit No. 3 marked.)</p> <p>7 Q. (BY MR. SURRATT) Mr. Gohelf, the court</p> <p>8 reporter has handed you what's been marked as</p> <p>9 Deposition Exhibit No. 3. I'll represent to you that</p> <p>10 this is a copy of a letter dated October 14, 2013 that</p> <p>11 was addressed to you and your mother at two different</p> <p>12 addresses -- one at the 1 Wilder Road, New York</p> <p>13 address, the other one at 7103 Mumford Court -- on</p> <p>14 behalf of the association expressing concerns about</p> <p>15 the use of the property and asking that those</p> <p>16 activities by the congregation cease and offering you</p> <p>17 the opportunity to request a hearing with the</p> <p>18 association board of directors. As you look at it</p> <p>19 today, do you recall ever receiving that letter?</p> <p>20 A. I think this might be the letter that I found</p> <p>21 over at Mumford Court quite sometime after it was</p> <p>22 sent.</p> <p>23 Q. Okay. And for the record, this letter was</p> <p>24 returned as unclaimed from at least the Mumford Court</p> <p>25 address -- or excuse me, correction -- at least the</p>	57	<p>1 that also on November 7 and November 19, other letters</p> <p>2 were sent to the 6406 Dykes Way address. One was</p> <p>3 certified mail, came back unclaimed. The other by</p> <p>4 priority mail. Do you know why perhaps that the</p> <p>5 certified mail was not received or accepted at Dykes</p> <p>6 Way?</p> <p>7 MR. BUTTERFIELD: Objection, form.</p> <p>8 A. I have no idea.</p> <p>9 Q. (BY MR. SURRATT) Okay. Did you receive any</p> <p>10 notice letter on my law firm's letterhead, Riddle &amp;</p> <p>11 Williams, from the HOA at Dykes Way -- at the Dykes</p> <p>12 Way address?</p> <p>13 A. I don't recall.</p> <p>14 Q. After receiving either of those letters from</p> <p>15 the association through their attorney, did you</p> <p>16 request a hearing with the association board of</p> <p>17 directors?</p> <p>18 A. No, I did not.</p> <p>19 Q. Why did you not?</p> <p>20 A. I believe that my attorney, Justin</p> <p>21 Butterfield, was already involved in the case, and I</p> <p>22 probably just forwarded it to him.</p> <p>23 Q. Without going into detail, do you recall</p> <p>24 discussing with Mr. Butterfield whether or not to meet</p> <p>25 with the board of directors of the association?</p>

70	<p>1 THE REPORTER: No. 5 is the notice and                  2 No. 6 is the letter.                  3 THE WITNESS: Has this been sent to me?                  4 MR. BUTTERFIELD: Yeah, he sent it to                  5 us.                  6 THE WITNESS: He sent it to you? Okay.                  7 Have you sent it to me?                  8 MR. BUTTERFIELD: I don't think -- it                  9 was just the notice that they were --                  10 THE WITNESS: Okay.                  11 MR. BUTTERFIELD: -- going to be here.                  12 MR. SURRATT: Off the record.                  13 (Off the record.)                  14 MR. SURRATT: Counsel have agreed that                  15 the copy of the first revised declaration of                  16 restrictions for the HOA that's been attached to the                  17 congregation's no evidence motion for summary judgment                  18 and excerpts have been attached to the HOA's petition                  19 intervention is a true and correct copy and                  20 stipulating to the admissibility for evidence purposes                  21 of that document. Does that sound correct, gentlemen?                  22 MR. TANCABEL: Yes.                  23 MR. BUTTERFIELD: (Moving head up and                  24 down.)                  25 Q. (BY MR. SURRATT) Mr. Gotherf, I believe that</p>	72	<p>1 BY MR. BUTTERFIELD:                  2 Q. So Mark, why did you buy the house at 7103                  3 Mumford Court?                  4 A. To provide a new location for the                  5 congregation to meet in because my wife and I were                  6 considering moving to that neighborhood.                  7 Q. And why did you look there?                  8 A. Why did I look --                  9 Q. So you -- you mentioned earlier that you                  10 looked in the area of Highlands of -- of McKamy. Why                  11 did you look in that -- in that region?                  12 A. Orthodox Jews walk on the Sabbath. So it had                  13 to be within walking distance of the members of the                  14 congregation.                  15 Q. So could -- could the house be anywhere in                  16 the city?                  17 A. It would have to be walking distance of the                  18 congregants.                  19 Q. But potentially could you walk 10 miles or                  20 100 miles?                  21 A. There's a limit to how far you can walk.                  22 Q. Are there any other unique features about                  23 this area that -- that --                  24 A. The --                  25 Q. -- were relevant to your decision?</p>
71	<p>1 wraps it up for me. Is there anything as you're                  2 sitting here right now -- I know a lot of questions                  3 have been asked. I'm not trying to trick you. But as                  4 you're sitting here right this minute, is there                  5 anything that comes to mind you think to yourself I                  6 need to go back and change or correct that answer?                  7 A. Not that I can think of.                  8 Q. Okay.                  9 MR. SURRATT: I pass the witness.                  10 RE-EXAMINATION                  11 BY MR. SCHNEIDER:                  12 Q. The \$75,000 deposit --                  13 A. Uh-huh.                  14 Q. -- that the congregation provided to you,                  15 was -- were those funds themselves used as part of the                  16 payment for the house?                  17 A. They can't be.                  18 Q. Okay.                  19 MR. SURRATT: All right. You finished?                  20 MR. SCHNEIDER: That's every -- that's --                  21 MR. SURRATT: Pass the witness.                  22 MR. SCHNEIDER: -- everything for me.                  23 MR. BUTTERFIELD: Okay.                  24 MR. SCHNEIDER: Thank you for your time.                  25 EXAMINATION</p>	73	<p>1 A. This neighborhood is within what's known as                  2 the far north Dallas eruv, E-R-U-V. And this allows                  3 people to carry things on the Sabbath and -- as well                  4 as push strollers.                  5 Q. You mentioned earlier that there had been --                  6 been discussions about -- about modifying the house.                  7 Were you privy to what those discussions were?                  8 A. There are discussions about in the future                  9 possibly removing one wall in the house inside.                  10 Q. And would that -- would that still leave the                  11 normal accoutrements of a house, like, a kitchen,                  12 dining room, bathrooms, those sorts of thing?                  13 A. It --                  14 MR. SURRATT: Objection, form.                  15 A. It would still allow for there to be three                  16 bedrooms upstairs. The kitchen would be untouched.                  17 Q. (BY MR. BUTTERFIELD) Were you aware when you                  18 purchased the house that somebody would be living at                  19 the house?                  20 A. Yes.                  21 Q. How were you aware of that?                  22 A. Rabbi Rich informed me.                  23 Q. And what -- what did he tell you about that?                  24 A. He told me that in order to have any type of                  25 synagogue within the neighborhood, that it had to be</p>

Schneider vs. Gothelf, et al.

3/18/2014

Mark B. Gothelf

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1 under the -- it had to be considered a -- a home  
 2 church, so somebody had to live there.  
 3 Q. And is your understanding that somebody lives  
 4 there today?  
 5 A. Yes.  
 6 Q. And that person lives there full-time?  
 7 A. Yes.  
 8 Q. You -- you mentioned a minute ago that you  
 9 were considering moving to the neighborhood and  
 10 attending Congregation Toras Chaim?  
 11 A. Yes.  
 12 Q. Why did you not?  
 13 A. At this time, my wife is having questionns if  
 14 she wants to live in that neighborhood anymore.  
 15 Q. Why is she questioning that?  
 16 A. Because of everything that's been going on  
 17 with the synagogue in terms of the legal fights and  
 18 the neighbor signs.  
 19 Q. And --  
 20 MR. BUTTERFIELD: I have no other  
 21 questions.  
 22 MR. SURRETT: I guess we're concluded.  
 23 MR. TANCABEL: That's it.  
 24 MR. BUTTERFIELD: Yeah.  
 25 (End of Proceedings at 4:16 p.m.)

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1 CORRECTIONS AND SIGNATURE  
 2 PAGE/LINE CHANGE REASON  
 3 \_\_\_\_\_  
 4 \_\_\_\_\_  
 5 \_\_\_\_\_  
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 7 \_\_\_\_\_  
 8 \_\_\_\_\_  
 9 \_\_\_\_\_  
 10 \_\_\_\_\_  
 11 \_\_\_\_\_  
 12 \_\_\_\_\_  
 13 I, MARK B. GOTHELFF, have read the foregoing deposition  
 14 and hereby affix my signature that same is true and  
 15 correct, except as noted herein.  
 16 \_\_\_\_\_  
 17 SIGNATURE OF WITNESS  
 18 STATE OF \_\_\_\_\_ )  
 19 COUNTY OF \_\_\_\_\_ )  
 20 Before me, \_\_\_\_\_, on this day personally  
 21 appeared MARK B. GOTHELFF, known to me (or proved to me  
 22 under oath or through \_\_\_\_\_) (description  
 23 of identity card or other document) to be the person  
 24 whose name is subscribed to the foregoing instrument  
 25 and acknowledged to me that they executed the same for  
 the purposes and consideration therein expressed.  
 Given under my hand and seal of office this \_\_\_\_\_  
 day of \_\_\_\_\_, 2014.  
 \_\_\_\_\_  
 Notary Public in and for the  
 State of \_\_\_\_\_  
 My Commission expires: \_\_\_\_\_

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1 CAUSE NO. 429-04998-2013  
 2 DAVID R. SCHNEIDER, ) IN THE DISTRICT COURT  
 3 Plaintiff, )  
 4 vs. )  
 5 JUDITH D. GOTHELFF, MARK )  
 6 B. GOTHELFF, AND )  
 7 CONGREGATION TORAS )  
 8 CHAIM, INC., )  
 9 Defendants, )  
 10 and ) COLLIN COUNTY, TEXAS  
 11 HIGHLANDS OF MCKAMY IV )  
 12 AND V COMMUNITY )  
 13 IMPROVEMENT ASSOCIATION, )  
 14 Intervening Plaintiff, )  
 15 JUDITH D. GOTHELFF AND )  
 16 MARK B. GOTHELFF. )  
 17 Defendants. ) 429TH JUDICIAL DISTRICT  
 18 REPORTER'S CERTIFICATION  
 19 ORAL DEPOSITION OF MARK B. GOTHELFF  
 20 MARCH 18, 2014  
 21 I, Annie Hervey, Certified Shorthand Reporter in  
 22 and for the State of Texas, hereby certify to the  
 23 following:  
 24 That the witness, MARK B. GOTHELFF, was duly  
 25 sworn by the officer and that the transcript of the  
 oral deposition is a true record of the testimony  
 given by the witness;  
 That the deposition transcript was submitted on

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1 \_\_\_\_\_ to the witness or to the attorney for  
 2 the witness for examination, signature and return to  
 3 me by \_\_\_\_\_;  
 4 That the amount of time used by each party at  
 5 the deposition is as follows:  
 6 Mr. David R. Schneider - 00:53  
 7 Mr. David A. Surratt - 00:53  
 8 Mr. Justin Butterfield - 00:03  
 9 That pursuant to information given to the  
 10 deposition officer at the time said testimony was  
 11 taken, the following includes counsel for all parties  
 12 of record:  
 13 Mr. David R. Schneider, Plaintiff Pro Se  
 14 Mr. Justin Butterfield, Attorney for  
 15 Defendants  
 16 Mr. John Tancabel, Attorney for Defendant,  
 17 Congregation Toras Chaim, Inc.  
 18 Mr. David A. Surratt, Attorney for  
 19 Intervening Plaintiff  
 20 I further certify that I am neither counsel for,  
 21 related to, nor employed by any of the parties or  
 22 attorneys in the action in which this proceeding was  
 23 taken, and further that I am not financially or  
 24 otherwise interested in the outcome of the action.  
 25 Further certification requirements pursuant to  
 Rule 203 of TRCP will be certified after they have  
 occurred.

3/18/2014

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1 Certified to by me this \_\_\_\_\_ day of  
 2 \_\_\_\_\_, 2014.  
 3  
 4  
 5  
 6 Alpha Depo  
 13140 Coit Road  
 Suite 216  
 Dallas, Texas 75240  
 (214) 321-5599  
 (888) 667-DEPO (Toll Free)  
 Firm Registration Number 298

7 \_\_\_\_\_  
 8 Annie Hervey,  
 9 Certified Shorthand Reporter  
 10 In and for the State of Texas  
 11 Certification Number: 8609  
 12 Date of Expiration: 12-31-2014  
 13 Alpha Depo  
 14 13140 Coit Road  
 15 Suite 216  
 16 Dallas, Texas 75240  
 17 (214) 321-5599  
 18 (214) 321-1922 (Facsimile)  
 19 (888) 667-DEPO (Toll Free)  
 20 Firm Registration Number 298  
 21  
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1 FURTHER CERTIFICATION UNDER RULE 203 TRCP  
 2 The original deposition was/was not returned to  
 3 the deposition officer on \_\_\_\_\_;  
 4 If returned, the attached Corrections and  
 5 Signature page contains any changes and the reasons  
 6 therefor;  
 7 If returned, the original deposition was  
 8 delivered to Mr. David R. Schneider, Custodial  
 9 Attorney;  
 10 That \$\_\_\_\_\_ is the deposition officer's  
 11 charges to the Plaintiff for preparing the original  
 12 deposition and any copies of exhibits;  
 13 That the deposition was delivered in accordance  
 14 with Rule 203.3, and that a copy of this certificate  
 15 was served on all parties shown herein on and filed  
 16 with the Clerk.  
 17 Certified to by me this \_\_\_\_\_ day of  
 18 \_\_\_\_\_, 2014.  
 19 \_\_\_\_\_  
 20 *Annie Hervey*  
 21 \_\_\_\_\_  
 22 Annie Hervey,  
 23 Certified Shorthand Reporter  
 24 In and for the State of Texas  
 25 Certification Number: 8609  
 Date of Expiration: 12-31-2014  
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 13140 Coit Road  
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Schneider vs. Gotheif, et al

3/18/2014

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CAUSE NO. 429-04998-2013

DAVID R. SCHNEIDER,	)	IN THE DISTRICT COURT
Plaintiff,	)	
vs.	)	
JUDITH D. GOTHELF, MARK	)	
B. GOTHELF, AND	)	
CONGREGATION TORAS	)	
CHAIM, INC.,	)	
Defendants,	)	
and	)	COLLIN COUNTY, TEXAS
HIGHLANDS OF MCKAMY IV	)	
AND V COMMUNITY	)	
IMPROVEMENT ASSOCIATION,	)	
Intervening Plaintiff,	)	
JUDITH D. GOTHELF AND	)	
MARK B. GOTHELF,	)	
Defendants.	)	429TH JUDICIAL DISTRICT

REPORTER'S CERTIFICATION  
ORAL DEPOSITION OF MARK B. GOTHELF  
MARCH 18, 2014

I, Annie Hervey, Certified Shorthand Reporter in  
and for the State of Texas, hereby certify to the  
following:

That the witness, MARK B. GOTHELF, was duly  
sworn by the officer and that the transcript of the  
oral deposition is a true record of the testimony  
given by the witness;

That the deposition transcript was submitted on

ALPHA DEPO  
(888) 667-DEPO

1 4/2/14 to the witness or to the attorney for  
 2 the witness for examination, signature and return to  
 3 me by 4/22/14 ;

4 That the amount of time used by each party at  
 5 the deposition is as follows:

6 Mr. David R. Schneider - 00:53  
 7 Mr. David A. Surratt - 00:53  
 8 Mr. Justin Butterfield - 00:03

9 That pursuant to information given to the  
 10 deposition officer at the time said testimony was  
 11 taken, the following includes counsel for all parties  
 12 of record:

13 Mr. David R. Schneider, Plaintiff Pro Se

14 Mr. Justin Butterfield, Attorney for  
 15 Defendants

16 Mr. John Tancabel, Attorney for Defendant,  
 17 Congregation Toras Chaim, Inc.

18 Mr. David A. Surratt, Attorney for  
 19 Intervening Plaintiff

20 I further certify that I am neither counsel for,  
 21 related to, nor employed by any of the parties or  
 22 attorneys in the action in which this proceeding was  
 23 taken, and further that I am not financially or  
 24 otherwise interested in the outcome of the action.

25 Further certification requirements pursuant to  
 Rule 203 of TRCP will be certified to after they have  
 occurred.

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Certified to by me this 1st day of  
April, 2014.

*Annie Hervey*

Digitally signed by Annie Hervey  
Date: 2014.04.01 07:58:46 -07:00  
Reason: I am the author of this document  
Location: Dallas, TX

\_\_\_\_\_  
Annie Hervey,  
Certified Shorthand Reporter  
In and for the State of Texas  
Certification Number: 8609  
Date of Expiration: 12-31-2014  
Alpha Depo  
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FURTHER CERTIFICATION UNDER RULE 203 TRCP

The original deposition was ~~was not~~ returned to the deposition officer on 4/22/14;

If returned, the attached Corrections and Signature page contains any changes and the reasons therefor;

If returned, the original deposition was delivered to Mr. David R. Schneider, Custodial Attorney;

That \$ 53365 is the deposition officer's charges to the Plaintiff for preparing the original deposition and any copies of exhibits;

That the deposition was delivered in accordance with Rule 203.3, and that a copy of this certificate was served on all parties shown herein on and filed with the Clerk.

Certified to by me this 25 day of April, 2014.

*Annie Hervey*

\_\_\_\_\_  
Annie Hervey,  
Certified Shorthand Reporter  
In and for the State of Texas  
Certification Number: 8609  
Date of Expiration: 12-31-2014  
Alpha Depo  
13140 Coit Road  
Suite 216  
Dallas, Texas 75240  
(214) 321-5599  
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# **EXHIBIT G**



October 10, 2014

*Via E-Mail and  
CM,RRR 70092820000207848801*  
David A. Surratt  
Riddle & Williams, P.C.  
3710 Rawlins Street, Suite 1400  
Dallas, TX 75219

Re: *Schneider v. Gothelf, et al., Civil Action No. 429-04998-2013*

Dear David:

Please see the attached deposition notice to your client. We intend to depose the individual(s) you designate as to all information that is known or reasonably available to the Highlands of McKamy IV and V Community Improvement Association related to the topics listed in Exhibit A to the deposition notice. In accordance with Rule 199.2(b)(1), please let us know a reasonable time before the deposition which individual(s) will testify as to each topic.

We have noticed the deposition for Tuesday, November 4. We are willing to work with you on the date if November 4 poses a conflict for you or the individual(s) who will testify. However, we need to complete the deposition no later than Friday, November 7 to ensure that there will be sufficient time before the close of discovery should the deposition reveal the need for any additional discovery.

Sincerely,

Justin Butterfield  
Senior Counsel

Encl.

Cc: David R. Schneider  
Matthew A. Mcgee

*Via Email and CM,RRR 70100780000125255274  
Via Email and Regular Mail*



PLEASE TAKE NOTICE that, pursuant to Rule 199.2 of the Texas Rules of Civil Procedure, Defendants Congregation Toras Chaim, Inc. (the "Congregation"), Judith D. Gothelf, and Mark B. Gothelf will take the oral deposition of the person(s) designated as the representative(s) of Intervening Plaintiff Highlands of McKamy IV and V Community Improvement Association, beginning at 9:30 a.m. on Tuesday, November 4, 2014, at the offices of Haynes and Boone, LLP, 2323 Victory Avenue, Suite 700, Dallas, Texas 75219, and continuing from day to day until completed, or as otherwise mutually agreed upon by the parties. The deposition will be taken before a Certified Shorthand Reporter, Notary Public, or other officer duly authorized to administer the oath and will be stenographically recorded and may be videotaped. The representative(s) will be required to testify about the information known or reasonably available to Highlands of McKamy IV and V Community Improvement Association as to each of the topics set forth in the attached Exhibit "A."



Dated: October 10, 2014

Respectfully Submitted,

HAYNES AND BOONE, LLP

By: /s/Matthew A. McGee  
2323 Victory Avenue, Suite 700  
Dallas, TX 75219  
JEREMY D. KERNODLE  
Tex. Bar No.: 24032618  
T: (214) 651-5159  
F: (214) 200-0693  
Jeremy.Kernodle@haynesboone.com  
MATTHEW A. MCGEE  
Tex. Bar No.: 24062527  
T: (214) 651-5103  
F: (214) 200-0585  
matt.mcgee@haynesboone.com

**ATTORNEYS FOR CONGREGATION  
TORAS CHAIM, INC.**

THE LIBERTY INSTITUTE

By: /s/ Justin Butterfield  
KELLY J. SHACKELFORD  
Tex. Bar No. 18070950  
kshackelford@libertyinstitute.org  
JEFFREY C. MATEER  
Tex. Bar No. 13185320  
jmateer@libertyinstitute.org  
JUSTIN BUTTERFIELD  
Tex. Bar No. 24062642  
jbutterfield@libertyinstitute.org  
2001 West Plano Parkway, Suite 1600  
Plano, TX 75075  
T: (972) 941-4444  
F: (972) 941-4457

**ATTORNEYS FOR CONGREGATION  
TORAS CHAIM, INC., JUDITH D.  
GOTHELF, AND MARK B. GOTHELF**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing instrument has been served in accordance with the Texas Rules of Civil Procedure, on this 10th day of October 2014, upon the following:

David R. Schneider, Pro Se  
7035 Mumford St.  
Dallas, TX 75252  
Cell: (214) 315-5531  
Email: DavidRaySchneider@Gmail.com

David A. Surratt  
Riddle & Williams, P.C.  
3710 Rawlins Street, Suite 1400  
Dallas, TX 75219  
T: (214) 760-6766  
Email: dsurratt@riddleandwilliams.com  
*Attorney for Intervenor Highlands of McKamy  
IV and V Community Improvement Association*

/s/ Justin Butterfield  
Justin Butterfield

## EXHIBIT A

### **I. Definitions**

1. "HOA" means Intervening Plaintiff Highlands of McKamy IV and V Community Improvement Association, including its respective directors, current and former board members, officers, agents, representatives, attorneys, and any other person acting on their behalf.

2. "Congregation" means the Congregation Toras Chaim, Inc.

3. The term "Highlands of McKamy" means the approximately 247 homes over which the HOA has authority.

4. The term "restrictive covenants" refers to the deed covenants burdening the land in the Highlands of McKamy.

5. The term "enforcement" includes any attempt by the HOA, by legal means or otherwise, to prevent or stop a perceived or real violation of the restrictive covenants.

6. The term "property" means real property.

7. The term "non-residential use" includes any use of property other than solely as single-family residence, including, but not limited to, religious uses, commercial uses, and home-based businesses.

### **II. Deposition Topics**

1. The timing regarding when any individual who was an HOA board member at the time of acquiring such knowledge first became aware that the Congregation was holding prayer and religious study meetings at 7119 Bremerton Court.

2. The timing regarding when any individual who was an HOA board member at the time of acquiring such knowledge first became aware that the Congregation was holding prayer and religious study meetings at 7103 Mumford Court.

3. All litigation to which the HOA has been a party since 1979.

4. All instances since 1979 of the HOA's enforcement or contemplated enforcement of the residential use restriction in the restrictive covenants.

5. All instances since 1979 of the HOA's enforcement or contemplated enforcement of the nuisance prohibition in the restrictive covenants.

6. Non-residential uses of property in the Highlands of McKamy since 1979.

# **EXHIBIT H**

**McGee, Matt**

---

**From:** David A. Surratt <DSurratt@riddleandwilliams.com>  
**Sent:** Wednesday, October 15, 2014 10:37 AM  
**To:** jbutterfield@libertyinstitute.org; McGee, Matt  
**Cc:** DavidRaySchneider@gmail.com  
**Subject:** Schneider v. Congregation Toras Chaim

Justin / Matt:

The HOA will tender former HOA President Carolyn ("Cookie") Peadon in response to your deposition notice. The morning of November 4 at 9:30 a.m. will work for Mrs. Peadon and me. However, she will have to leave by 12:00 to 12:30 due to business travel. I might have a few questions for Mrs. Peadon during the depo, and I anticipate that David Schneider may have some questions. Let me know if you believe 9:30 to noon will be sufficient time to conduct her deposition. If so, let's plan on November 4 starting at 9:30 a.m.

David A. Surratt  
Riddle & Williams, P.C.  
3710 Rawlins Street  
Suite 1400 - Regency Plaza  
Dallas, Texas 75219  
T: 214-760-6766  
F: 214-760-6765  
[dsurratt@riddleandwilliams.com](mailto:dsurratt@riddleandwilliams.com)  
[www.riddleandwilliams.com](http://www.riddleandwilliams.com)

**RIDDLE & WILLIAMS, P.C. -- E-MAIL NOTICE**

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---

**From:** JoElia Kelly [<mailto:jkelly@libertyinstitute.org>]  
**Sent:** Friday, October 10, 2014 4:43 PM  
**To:** David A. Surratt  
**Cc:** [DavidRaySchneider@gmail.com](mailto:DavidRaySchneider@gmail.com); McGee, Matt; Justin Butterfield; Cleve Doty  
**Subject:** Schneider v. Congregation Toras Chaim-Correspondence

Dear Mr. Surratt,

Please see attached correspondence I am sending on behalf of Justin Butterfield.

JoElia Kelly  
Legal Assistant



## *Restoring Religious Liberty in America*

o. 972.941.4444

d: 972.941.4452

f. 972.941.4457

[jkelly@libertyinstitute.org](mailto:jkelly@libertyinstitute.org)

[www.LibertyInstitute.org](http://www.LibertyInstitute.org)

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# **EXHIBIT I**



1 CAUSE NO. 429-04998-2013  
2 DAVID R. SCHNEIDER, \* IN THE DISTRICT COURT  
Plaintiff \*  
3 \*  
v. \*  
4 \*  
JUDITH D. GOTHELF, \*  
5 MARK B. GOTHELF, AND \*  
CONGREGATION TORAS CHAIM, \*  
6 INC., \*  
Defendants \*  
7 \*  
and \* COLLIN COUNTY, TEXAS  
8 \*  
HIGHLANDS OF MCKAMY IV AND \*  
9 V COMMUNITY IMPROVEMENT \*  
ASSOCIATION \*  
10 Intervening Plaintiff \*  
\*  
11 v. \*  
\*  
12 JUDITH D. GOTHELF and \*  
MARK B. GOTHELF, \*  
13 Defendants \* 429TH JUDICIAL DISTRICT  
\*\*\*\*\*  
14 ORAL AND VIDEOTAPED DEPOSITION OF CAROLYN PEADON  
Taken for the Defendants  
15 November 4, 2014  
\*\*\*\*\*  
16 ORAL AND VIDEOTAPED DEPOSITION OF CAROLYN PEADON,  
17 produced as a witness at the instance of the Defendants,  
18 and duly sworn, was taken in the above-styled and  
19 numbered cause on November 4, 2014, from 9:33 a.m. to  
20 10:24 a.m., before Pennie Futrell, CSR in and for the  
21 State of Texas, reported by machine shorthand, at the  
22 office of HAYNES & BOONE, LLP, 2323 Victory Avenue,  
23 Suite 700, Dallas, Texas 75219, pursuant to the Texas  
24 Rules of Civil Procedure and the provisions stated on  
25 the record or attached hereto.

Page 2

1 APPEARANCES  
 2 FOR THE INTERVENING PLAINTIFF:  
 3 Mr. David Surratt  
 RIDDLE & WILLIAMS, P.C.  
 4 3710 Rawlins Street  
 Suite 1400  
 5 Dallas, Texas 75219  
 Telephone: 214.760.6766  
 6 Facsimile: 214.760.6785  
 E-mail: dsurratt@riddicandwilliams

7  
 8 FOR THE DEFENDANTS:  
 9 Mr. Matt McGee  
 HAYNES & BOONE, LLP  
 10 2323 Victory Avenue  
 Suite 700  
 11 Dallas, Texas 75219  
 Telephone: 214.651.5584  
 12 Facsimile: 214.200.0373  
 E-mail: matt.mcgee@haynesboone.com

13  
 14 FOR THE DEFENDANTS:  
 15 Mr. Justin Butterfield  
 Liberty Institute - Senior Counsel and Director  
 of Research and Education  
 16 2001 Plano Parkway  
 Suite 1600  
 17 Plano, Texas 75075  
 Telephone: 972.941.4444  
 18 Facsimile: 972.941.4457  
 E-mail: jbutterfield@libertyinstitute.org

19 ALSO PRESENT:  
 20 Ms. Alexis Anderson - Videographer  
 21 Mr. Phong Tran  
 22  
 23  
 24  
 25

Page 4

1 THE VIDEOGRAPHER: Good morning. Going on  
 2 the record in the videotaped deposition of Carolyn  
 3 Peadon.  
 4 Today's date, November 4th, 2014. Time,  
 5 9:33 a.m. Start of tape one.  
 6 For the record, counsel will state their  
 7 appearances and then the court reporter will swear in  
 8 the witness.  
 9 MR. BUTTERFIELD: My name is Justin  
 10 Butterfield. I'm here for the Congregation Toras Chaim  
 11 and for Mark and Judith Gotheif.  
 12 MR. MCGEE: I'm Matt McGee, I -- I also  
 13 represent Congregation Toras Chaim. And also here with  
 14 me is Phong Tran. He's a recent law school graduate  
 15 who's waiting on his bar results.  
 16 MR. SURRATT: David Surratt here for  
 17 Highlands of McKamy IV and V Community Improvement  
 18 Association.  
 19 CAROLYN PEADON,  
 20 having been first duly sworn, testified as follows:  
 21 DIRECT EXAMINATION  
 22 BY MR. BUTTERFIELD:  
 23 Q. Ms. Peadon, thank you for coming.  
 24 Have you ever done a deposition before?  
 25 A. Yes.

Page 3

1 INDEX  
 2 APPEARANCES..... 2  
 3 EXAMINATION OF CAROLYN PEADON  
 4 Direct Examination by Mr. Butterfield..... 4  
 5 Cross-Examination by Mr. McGee..... 25  
 6 Cross-Examination by Mr. Surratt..... 29  
 7 Recross-Examination by Mr. McGee..... 32  
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 9 CERTIFICATE..... 38

10 EXHIBITS  
 11 NO. DESCRIPTION PAGE  
 12 Exhibit 1 Intervening Plaintiff's Designation of  
 Witness and Objections to Defendants'  
 Notice of Deposition 29  
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Page 5

1 Q. Okay. So this will be a little bit of a review  
 2 for you.  
 3 We -- we are videotaping this, but we're  
 4 also making a transcript. So any time I ask you a  
 5 question, if you could please respond orally. Because  
 6 if you shake your head or nod --  
 7 A. Okay.  
 8 Q. -- it's -- it's hard to -- to appear in the  
 9 transcript.  
 10 And if I ask you a question that you don't  
 11 understand or you want further clarification, please  
 12 feel free to -- to ask for that. I'm happy --  
 13 A. Okay.  
 14 Q. -- I -- I want to get the true answer, so I  
 15 want you to fully understand what I'm asking.  
 16 And if I ever say HOA or homeowners  
 17 association, by that I'm going to be referring to the  
 18 Highlands of McKamy IV and V Community Improvement  
 19 Association. And if I ever say congregation or CTC, by  
 20 that I'm referring to Congregation Toras Chaim.  
 21 Is that -- is that all right?  
 22 A. That's great.  
 23 Q. Could you please state your full name?  
 24 A. Carolyn Smith Peadon.  
 25 Q. And what is your address?

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1 A. 7111 Debbe Drive, spelled D-E-B-B-E, Dallas,  
2 Texas 75252.  
3 Q. And do you understand that you're here today as  
4 a representative of the homeowners association?  
5 A. That's fine.  
6 Q. What is your connection with the homeowners  
7 association?  
8 A. I was president of the homeowners association  
9 for several years.  
10 Q. Are you still in that position?  
11 A. No, I'm not.  
12 Q. Why?  
13 A. Couple of reasons. We had an election, and I  
14 had agreed that I would only stay on if reelected in  
15 a -- in a continuation type of capacity so that I could  
16 be providing con- -- continuity. English.  
17 My husband had been ill and I didn't feel  
18 like I could shoulder that additional responsibility any  
19 longer.  
20 Q. Do you recall the -- the exact dates you were a  
21 member of the homeowners association?  
22 A. I was nominated in 2009. I --  
23 MR. SURRATT: Let me interrupt just --  
24 member of the association or --  
25 THE WITNESS: Oh, member of the

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1 association?  
2 MR. SURRATT: -- member of board?  
3 Q. (By Mr. Butterfield) Member of the board?  
4 A. Member of board, I'm sorry. Thank you.  
5 I was nominated in 2009, I think the  
6 actual election was February 2010, and I served until  
7 2013.  
8 Q. Do you remember when in 2013?  
9 A. February -- early February. I don't remember  
10 the exact date.  
11 Q. Okay. Did you do anything to prepare for this  
12 deposition?  
13 A. Not really.  
14 Q. Okay. Did you review any documents in  
15 preparation for this deposition?  
16 A. No.  
17 Q. Did you speak to anyone other than Mr. Surratt  
18 in preparation for this deposition?  
19 A. No.  
20 Q. Have you been provided with a list of topics  
21 over which this deposition will -- will cover?  
22 A. If you're talking about the --  
23 Q. Yes.  
24 A. -- designation?  
25 Yes, I did receive that.

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1 Q. So let's -- let's look at the first topic,  
2 which says, The timing regarding when any individual who  
3 was an HOA board member at the time of acquiring such  
4 knowledge first became aware that the congregation was  
5 holding prayer and religious study meetings at 7119  
6 Bremerton Court.  
7 Have you prepared to discuss or been  
8 provided with any information regarding this topic?  
9 MR. SURRATT: Excuse me just a second,  
10 Justin.  
11 MR. BUTTERFIELD: Yeah.  
12 MR. SURRATT: The -- the deposition notice  
13 is attached. And if you'll flip over, there's a list of  
14 items.  
15 THE WITNESS: I'm not on the right page,  
16 David. Oh, thank you.  
17 MR. SURRATT: And you're referring to  
18 number 1?  
19 MR. BUTTERFIELD: Number 1.  
20 THE WITNESS: Okay.  
21 THE REPORTER: Hang on. One at a time,  
22 please.  
23 Q. (By Mr. Butterfield) Number 1.  
24 A. Okay. Okay.  
25 Q. So have you prepared to discuss or been

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1 provided with any information regarding that topic?  
2 A. No, I haven't been provided any information.  
3 Q. Are you aware that the congregation met within  
4 the homeowners association at 7119 Bremerton Court prior  
5 to its movement to 7103 Mumford Court?  
6 A. Yes.  
7 Q. And how -- how -- how were you aware of that?  
8 A. I received a complaint from some neighbors  
9 regarding parking there.  
10 Q. And when -- when was that complaint?  
11 A. It was in March or April, I think, 2011. I  
12 don't recall the specific date, but it was in that time  
13 frame.  
14 Q. March or April 2011.  
15 Are -- are you aware if that -- if that  
16 was the first time that any board member first learned  
17 that the congregation was holding prayer or religious  
18 meetings 7119 Bremerton Court?  
19 A. That's the first time I became aware of it.  
20 Q. What was done at that time?  
21 A. I contacted the neighbors who complained and  
22 went by to investigate how severe the parking was, did a  
23 follow-up call with Rabbi Rich's wife Susan and talked  
24 with her.  
25 Q. Were there -- did you have any discussions

Page 10	Page 12
<p>1 about that with other board members? 2 A. I alerted the board. 3 Q. And what was the nature of that discussion? 4 A. I'm sorry, Justin, I don't -- that's kind of 5 vague. 6 Q. Oh, what did you tell them? Do you remember 7 specifically the sort of information you gave to them? 8 A. Oh, I just advised that I had had a 9 conversation with Susan, and I discussed with her and 10 had been informed it was a temporary thing because they 11 were planning to build on some lots they had across 12 Hillcrest from our location. 13 Q. And did -- do you recall how the other board 14 members responded? Did they express any sort of opinion 15 about that or... 16 A. There was no real opposition as long as it was 17 a temporary thing, and we were looking at relocating, 18 that it was just a temporary thing, but nobody had 19 expressed a time frame. 20 Q. Did you discuss the restrictive covenants with 21 anybody from the congregation at that time? 22 A. I don't recall. 23 Q. Okay. Let's look at the second topic on your 24 list there, which says, The timing regarding when any 25 individual who is an HOA board member at the time of</p>	<p>1 covenants? 2 A. It was the opinion of the board that that was 3 in violation of the restrictive covenants. 4 Q. And was that opinion expressed to anybody from 5 the congregation? 6 A. I do recall trying to contact the owner of 7 record. 8 Q. Were you successful in that? 9 A. Took me quite a while to get in touch with Mark 10 Gothelf. 11 Q. But you eventually did? 12 A. Yes, I did. 13 Q. Okay. We can look at the third topic: All 14 litigation to which the HOA has been a party since 1979. 15 Have you prepared to discuss or been 16 provided with any information regarding this topic? 17 A. No, I haven't. 18 Q. So you have not been provided with any court 19 records or anything -- 20 A. No. 21 Q. -- regarding -- okay. 22 Do you know what litigation the HOA has 23 been a party to since 1979? 24 A. I am aware that there was litigation that was 25 filed and it dealt with the HUD office planning to build</p>
<p>Page 11</p> <p>1 acquiring such knowledge first became aware that the 2 congregation was holding prayer and religious study 3 meetings at 7103 Mumford Court. 4 Have you prepared to discuss or been 5 provided with any information regarding this topic? 6 A. I'm prepared to discuss it, but I haven't been 7 provided any additional information from anyone. 8 Q. Okay. Do you know when any board member first 9 learned that the congregation was holding prayer and 10 religious meetings at 7103 Mumford Court? 11 A. Sometime in the May time frame probably. 12 Q. May of when? 13 A. It was probably 2012. It may have been May or 14 early June. 15 Q. And was anything done at that time regarding 16 their meeting at 7103 Mumford Court? 17 A. We discussed it at the board meeting. 18 Q. And do you remember the nature of those 19 discussions? 20 A. We reviewed the deed restrictions and covenants 21 and discussed the concerns that the neighbors had 22 voiced. 23 Q. And in -- in reviewing the -- the restrictive 24 covenants, did -- was there a consensus as to whether 25 they were conforming with the -- with the restrictive</p>	<p>Page 13</p> <p>1 on a vacant corner south of our location. 2 Q. And what was the specific nature of that 3 litigation? 4 A. I can't address that. I was working full-time 5 at the time and was not on the board or any -- in any 6 capacity where I was intimately aware of it. 7 Q. So this was prior to your joining the board of 8 the -- 9 A. Oh, yeah. 10 Q. -- homeowners association? 11 Do you know if the -- the property 12 involved in that litigation was within the homeowners 13 association? 14 A. No, it was not. 15 Q. Is there any other litigation that the 16 homeowners association has been a party to that you're 17 aware of? 18 A. Not that I'm aware of. 19 Q. Since then, is the intervening action in this 20 present case the only litigation that the homeowners 21 association has been aware of -- or been involved in? 22 A. To the best of my knowledge, Justin. 23 Q. All right. Let's look at the fourth topic. 24 A. Okay. 25 Q. All instances since 1979 of the HOA's</p>

1 enforcement or contemplated enforcement of the  
2 residential use restrictions in the restrictive  
3 covenants.  
4 Have you prepared to discuss or been  
5 provided with any information regarding this topic?  
6 A. I'm prepared to discuss, but I've had no  
7 information provided.  
8 Q. Okay. Did you do anything to prepare to  
9 discuss this?  
10 A. No.  
11 Q. No?  
12 What enforcement actions of the  
13 residential use restriction has the homeowners  
14 association instituted since 1979?  
15 A. The only thing I'm aware of is when we had a  
16 group home purchase land within our community and I  
17 initiated research to find out what was going on.  
18 Q. And when was that?  
19 A. That was in -- I believe it was sometime in  
20 2010.  
21 Q. And did that lead to an enforcement action?  
22 A. No, it was an investigatory action because we  
23 learned that the City of Dallas did allow group homes  
24 within residential neighborhoods. And we did confer  
25 with Sandy Greyson, who was the newly elected

1 representative for our district, city council  
2 representative for our district.  
3 Q. So the Dallas city zoning ordinance directed  
4 your decision whether to enforce in that case?  
5 A. Yes.  
6 Q. Did the homeowners association contemplate  
7 enforcement of the residential use provision against the  
8 congregation when they met on Bremerton Court?  
9 A. We discussed the fact that because it was  
10 temporary, we chose to be nice neighbors and give them  
11 time to get their funds accrued and build at their two  
12 sites they had west of Hillcrest.  
13 Q. Did you inform anyone from the congregation  
14 that enforcement was an option?  
15 A. Define what you mean by enforcement.  
16 Q. Did -- did you -- did you tell anybody from the  
17 congregation that the homeowners association could bring  
18 a lawsuit against them under the restricted -- under the  
19 residential use restriction within the restrictive  
20 covenants if they continued to meet on Bremerton?  
21 A. I did discuss, I think it was with Susan, that  
22 we were single family residence and that hopefully this  
23 would be a short-term solution.  
24 Q. Was there any expression in that conversation  
25 that litigation could result from -- from remaining

1 within the homeowners association?  
2 A. No, we have tried to avoid litigation whenever  
3 possible.  
4 Q. Prior to the litigation against the  
5 congregation, has the homeowners association ever been  
6 involved in an enforcement action, by which I mean more  
7 than an -- just an investigation, but an actual sending  
8 of a demand letter or institution of litigation because  
9 of a nonresidential use?  
10 A. I would have to defer to the people that had  
11 previously served on the architecture committee. That  
12 has normally been a function of that entity.  
13 Q. So you would say that members of the  
14 architecture committee are best able to answer this  
15 question?  
16 A. Yes.  
17 Q. And you have not been provided with any  
18 information that would assist you in answering this  
19 question?  
20 A. No.  
21 Q. When was the decision made to litigate against  
22 the congregation?  
23 A. I don't know.  
24 Q. Did you agree with the decision to litigate  
25 against the congregation?

1 MR. SURRATT: In what capacity are you  
2 referring, as a homeowner or...  
3 Q. (By Mr. Butterfield) In however -- yes, as a  
4 homeowner in -- in the community, did you agree with the  
5 decision to -- to litigate against the congregation?  
6 A. That's a difficult question to answer. I would  
7 have preferred not to resort to litigation. I would  
8 have preferred to resolve it amicably with all sides.  
9 Q. Since instituting its action against the  
10 congregation, has the homeowners association enforced  
11 the residential use provision of the restrictive  
12 covenants against anyone else?  
13 A. I'm not aware. I'm no longer an officer.  
14 Q. And you were not informed of any subsequent  
15 actions by the homeowners association?  
16 A. No.  
17 Q. Has the homeowners association ever been  
18 involved in any enforcement actions because of a  
19 nonresidential use other than against the congregation?  
20 A. Not that I'm aware of.  
21 Q. Okay. Let's look at the fifth topic now.  
22 Which says, All instances since 1979 of  
23 the homeowners association's enforcement or contemplated  
24 enforcement of the nuisance prohibition in the  
25 restrictive covenants.

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1 Have you prepared to discuss or been  
2 provided with information regarding this topic?  
3 A. I'm prepared to discuss, but I have not been  
4 provided information.  
5 Q. What enforcement actions of the nuisance  
6 restriction has the homeowners association instituted  
7 since 1979?  
8 A. The only action I'm aware of is I received a  
9 complaint that someone was teaching classes. I think it  
10 was swimming classes. And I did investigate, went by  
11 because there were complaints of parking violations and  
12 noise, and went by on multiple occasions and never found  
13 any basis for those claims.  
14 Q. Did you speak with the homeowner of the home  
15 that was -- had the complaint filed against it?  
16 A. Briefly.  
17 Q. And what -- what was the content of that  
18 discussion?  
19 A. That it was a public service and that the  
20 person would work on trying to reduce the noise and any  
21 parking that occurred.  
22 Q. So that homeowner's promise to -- to reduce  
23 parking problems and avoid nuisance to the neighbors was  
24 sufficient to avoid an enforcement action in that  
25 incident?

Page 19

1 A. The board chose no additional action.  
2 Q. Do you know the board's reason for deciding not  
3 to proceed in that --  
4 A. No, I don't.  
5 Q. -- incident?  
6 And prior to the litigation against the  
7 congregation, has the homeowners association ever been  
8 involved in an enforcement action because of a nuisance?  
9 A. I don't know what happened prior to my tenure.  
10 Q. Okay. Since instituting its action against the  
11 congregation, has the homeowners association enforced  
12 the nuisance portion of the restrictive covenants  
13 against anyone else?  
14 A. I do not know the answer to that.  
15 Q. David Schneider filed a lawsuit against a  
16 homeowner recently within the homeowners association for  
17 having a sukkah or a booth required for the Feast of  
18 Tabernacles Jewish religious celebration.  
19 Has the homeowners association discussed  
20 joining that lawsuit?  
21 A. I have no knowledge of that.  
22 MR. Surratt: Again, are you asking in her  
23 capacity as a homeowner since she's no longer on the  
24 board?  
25 MR. Butterfield: Well, she's the

Page 20

1 corporate represent of the homeowners association, so I  
2 had anticipated that she would be prepared to discuss  
3 the topics in depth.  
4 MR. Surratt: To the extent of her  
5 involvement on -- as a member of the board of directors,  
6 but this is after her tenure, so...  
7 MR. Butterfield: Yes, but the deposition  
8 notice was not for Ms. Peadon, it was for a corporate  
9 representative of the homeowners association.  
10 MR. Surratt: I understand. I'm just  
11 clarifying the scope of your question.  
12 MR. Butterfield: I -- I understand. I'm  
13 just -- I'm asking her as though she is the corporate  
14 representative of the homeowners association, which is,  
15 my understanding, the reason you produced her.  
16 Q. (By Mr. Butterfield) Okay. Let's look at the  
17 sixth topic, which says, Nonresidential uses of property  
18 in the Highlands of McKamy since 1979.  
19 Have you prepared to discuss or been  
20 provided with information regarding this topic?  
21 A. No, I haven't been -- I haven't been provided  
22 information but I'm prepared to discuss it.  
23 Q. Has the homeowners association been aware of  
24 any nonresidential uses within the homeowners  
25 association since 1979?

Page 21

1 A. The one that I mentioned earlier, the lady who  
2 was teaching swim classes.  
3 Q. Was the homeowners association aware of a court  
4 reporting service that was operated on Mumford?  
5 A. No.  
6 Q. Was --  
7 A. Not to my knowledge, Justin.  
8 Q. Okay. Was the homeowners association aware of  
9 a hospice or elder care facility within the homeowners  
10 association?  
11 A. That's what we objected to. The first one we  
12 didn't know about.  
13 Q. Okay. Was the homeowners association aware of  
14 a children's clothing business operated within the  
15 homeowners association?  
16 A. No, not to my knowledge.  
17 MR. Butterfield: And I have no further  
18 questions.  
19 MR. McGee: Well, let's -- let's go off  
20 the record and then we -- we may have a few additional  
21 questions if that's okay.  
22 THE VIDEOGRAPHER: Off the record, time  
23 9:51.  
24 (Break from 9:51 a.m. to 10:04 a.m.)  
25 THE VIDEOGRAPHER: Back on record, 10:04.

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1 Q. (By Mr. Butterfield) Ms. Peadon, you mentioned  
2 earlier that after you got a complaint in March or April  
3 of 2011 about parking at 7119 Bremerton Court that you  
4 notified the board of that complaint.  
5 When did you notify the board?  
6 A. It would have been the next board meeting. I  
7 don't have the date.  
8 Q. How frequent were board meetings?  
9 A. Normally approximately once a month, but in  
10 summer we sometimes decreased the number.  
11 Q. But most likely within the next four months,  
12 you had notified the board?  
13 A. Yes.  
14 Q. And at the next available opportunity you  
15 notified the board?  
16 A. Right.  
17 Q. After they moved to 7103 Mumford Court, you --  
18 you testified that you notified -- you contacted Mark  
19 Gothelf?  
20 A. Yes.  
21 Q. How did you contact him?  
22 A. I had left him voice mail messages at his -- I  
23 believe it was his cell phone number.  
24 Q. Okay. When was that?  
25 A. It was sometime during the summer, probably

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1 July or August time frame.  
2 Q. Of which year?  
3 A. Would have been -- okay. Probably 2013.  
4 Q. Okay. As the corporate representative of the  
5 homeowners association, do you agree with this  
6 litigation?  
7 MR. SURRETT: Objection, form.  
8 THE WITNESS: I'm sorry, I don't  
9 understand what you're discussing in terms of objection  
10 and form.  
11 MR. SURRETT: The attorneys assert  
12 objections. Don't worry about that. That's something  
13 between the attorneys. So I'm merely asserting an  
14 objection.  
15 THE WITNESS: Oh, okay.  
16 MR. McGEE: But you can still answer the  
17 question.  
18 THE WITNESS: I would have preferred to  
19 resolve things through mediation and alternative means,  
20 but that's my personal preference, not as a  
21 representative of the board.  
22 Q. (By Mr. Butterfield) As a representative of --  
23 of the board, do you have an opinion about this  
24 litigation?  
25 MR. SURRETT: Objection, form.

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1 THE WITNESS: I personally object to any  
2 litigation if there are alternative means of resolving  
3 the issue, but that is a personal thing, not as a  
4 representative of the board.  
5 MR. BUTTERFIELD: Objection,  
6 nonresponsive.  
7 Q. (By Mr. Butterfield) As a corporate  
8 representative of the homeowners association, has any  
9 nuisance provision of the restrictive covenants ever  
10 been enforced through either demand letter or  
11 litigation?  
12 A. I would have to say yes.  
13 Q. And what are those enforcement actions?  
14 A. I had sent personal letters -- I can only  
15 address the time when I was an officer of the board.  
16 I had sent personal letters to people  
17 stating that they were in violation of certain codes and  
18 restrictions and asking that they bring their property  
19 into compliance.  
20 Q. And that's under the nuisance provision of the  
21 restrictive covenants?  
22 A. I guess you would call it nuisance.  
23 Q. Do you recall the letters that you sent, who  
24 you sent them to and what were the circumstances?  
25 A. I do not recall specifically who they were sent

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1 to. It was things like air conditioning causing noises  
2 where it was supposed to be screened to provide a noise  
3 barrier, lawns not being mowed, property falling into  
4 disrepair or causing risk to other people, like falling  
5 branches and things like that. And I'm not sure if  
6 that's how you define nuisance.  
7 MR. BUTTERFIELD: I have no further  
8 questions.  
9 CROSS-EXAMINATION  
10 BY MR. McGEE:  
11 Q. Yeah, just -- just a couple of questions, Ms.  
12 Peadon.  
13 A. Uh-huh.  
14 Q. Assuming that you -- assuming that you could  
15 speak for the board, what is your view about this  
16 litigation?  
17 MR. SURRETT: Objection, form.  
18 THE WITNESS: I'm trying to find a  
19 succinct answer.  
20 I think it's driving a lot of cost for the  
21 homeowners association. As a member of the board, I  
22 would be concerned about fiduciary responsibility.  
23 Excuse me.  
24 I would have preferred that Toras Chaim  
25 built on the property they had already acquired, which

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1 to me would have been a logical thing to do.  
2 Litigation? I'm at a loss to why people  
3 can't work together to resolve things amicably.  
4 So I don't really have a recommendation  
5 for the current -- current board. Litigation was  
6 instituted after I left office. So for me to express  
7 a -- an opinion is, in my thought, outside my current  
8 participation as simply a member of the HOA.  
9 Q. (By Mr. McGee) Do -- do you under- --  
10 A. You asked for a hypothetical answer. I don't  
11 have a hypothetical answer because I'm not in that  
12 situation any longer.  
13 Q. Do you understand that Mr. Surratt designated  
14 you to represent the HOA in speaking about these topics  
15 today?  
16 MR. Surratt: Subject to the objections  
17 asserted, go ahead.  
18 THE WITNESS: I didn't see anything in the  
19 information that I received that indicated I was the  
20 spokesperson for the HOA. So I can't address that.  
21 Q. (By Mr. McGee) So Mr. Surratt did not inform  
22 you that you would testify on behalf of the HOA?  
23 MR. Surratt: Objection, form.  
24 THE WITNESS: Am I allowed to answer it?  
25 MR. Surratt: Yes.

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1 THE WITNESS: I was simply told that I was  
2 being asked to testify based on the knowledge I had of  
3 what occurred during my tenure as an officer of the HOA.  
4 Q. (By Mr. McGee) But you -- but you were not  
5 asked to testify as to all information that was  
6 reasonably available to the HOA?  
7 MR. Surratt: Objection, form.  
8 THE WITNESS: That would have been limited  
9 to what I knew up front and personal when I was an  
10 officer of the HOA. I can't speculate on what other  
11 people have done since I left office.  
12 And maybe I'm misunderstanding, but to me  
13 that would be irresponsible on my part to assume that I  
14 knew what was going on for other people. I can't do  
15 that.  
16 Q. (By Mr. McGee) And no -- and no one asked you  
17 to, you know, become educated about matters that  
18 happened when you were not on the board --  
19 A. No.  
20 Q. -- so that you could be more prepared to -- to  
21 testify for the HOA here today?  
22 A. No.  
23 THE WITNESS: David, could we go off  
24 record for just a moment? Can I ask for that?  
25 MR. Surratt: If you like, yes, we'll take

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1 a break.  
2 MR. McGEE: That's fine with us.  
3 THE WITNESS: Okay.  
4 THE VIDEOGRAPHER: Off record. Time  
5 10:12.  
6 (Break from 10:12 a.m. to 10:13 a.m.)  
7 THE VIDEOGRAPHER: Back on record, 10:13.  
8 Q. (By Mr. McGee) Ms. Peadon, you mentioned a few  
9 minutes ago about your -- your concerns about the  
10 board's fiduciary duties. Are you concerned that the  
11 current board may be violating its fiduciary duties by  
12 spending, you know, so much money on this litigation?  
13 MR. Surratt: Objection, form.  
14 THE WITNESS: I think everyone who pays  
15 their dues is concerned about expenditures for the HOA.  
16 Q. (By Mr. McGee) And their -- do you think that  
17 the current board is violating its fiduciary duties?  
18 MR. Surratt: Objection, form.  
19 THE WITNESS: I have no opinion on that at  
20 this time.  
21 Q. (By Mr. McGee) You have no opinion as to  
22 whether they are or are not?  
23 A. In the past year, I have not had time to  
24 participate actively in any board meetings, so I can't  
25 answer that question. I have not been a participant, I

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1 have not been involved in discussions.  
2 Q. But you would be -- you would have a general  
3 concern that in a neighborhood of -- of your size that  
4 spending large amounts of money on litigation may -- may  
5 not be appropriate?  
6 A. Well, I think everybody has that concern.  
7 MR. McGEE: Thank you. I have no further  
8 questions.  
9 MR. Surratt: Just a couple formalities.  
10 I assume we're operating this deposition like we do in  
11 the past, same agreements, procedures?  
12 MR. Butterfield: Yes.  
13 MR. McGEE: Yes.  
14 (Exhibit 1 marked.)  
15 MR. Surratt: Justin, may -- what I had  
16 the reporter mark as Exhibit Number 1 is just a copy of  
17 our response and objections with the designation for  
18 Ms. Peadon's appearance today.  
19 CROSS-EXAMINATION  
20 BY MR. Surratt:  
21 Q. Ms. Peadon, you testified earlier in response  
22 to Mr. Butterfield's question, and I'm paraphrasing  
23 here, I believe the question was approximately when did  
24 you first learn of the prayer services at 7103 Mumford  
25 Court.



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1 I believe your testimony was May of 2012.  
2 Is that the correct year?  
3 A. No, I think it was last spring.  
4 Q. 2013?  
5 A. Yes.  
6 Q. Am I correct you served on the board from 2009  
7 until February of 2014?  
8 A. May need to correct that because I think I was  
9 nominated in 2009, actually elected in 2010.  
10 Q. During your tenure on the board, how many of  
11 those years did you serve as the association's  
12 president?  
13 A. I served from 2010 until 2013.  
14 Q. 2013 or the election of 20- --  
15 A. The election in 2014. Sorry, I don't have my  
16 calendar in front of me.  
17 Q. When the board learned of the activities by  
18 Congregation Toras Chaim at 7103 Mumford, at some point  
19 did they contact the association's legal counsel for  
20 guidance?  
21 A. Yes.  
22 Q. Did the board contact the city attorney's  
23 office regarding any zoning or code issues?  
24 A. Yes.  
25 Q. When services were being conducted at 7119

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1 Bremerton Court, did anyone from the congregation --  
2 what I mean by that, a member of the congregation board  
3 of directors or board of trustees, executive board --  
4 contact you or any other member of the board to discuss  
5 the activities at Bremerton Court?  
6 A. They did not contact me. I don't believe they  
7 contacted anyone else.  
8 Q. Did Rabbi Rich himself contact you to discuss  
9 the activities of Bremerton Court?  
10 A. No.  
11 Q. Were your discussions primarily with Rabbi  
12 Rich's wife?  
13 A. Yes. And I did send -- I believe I sent an  
14 e-mail to Rabbi Rich expressing a concern about the  
15 parking situation on one occasion.  
16 Q. During your tenure on the board of directors,  
17 were you ever aware of any other similar activities in  
18 any other residence in the Highlands of McKamy in which  
19 religious activities were being conducted on a regular  
20 basis?  
21 A. Not on a regular basis.  
22 Q. As a resident of Highlands of McKamy during the  
23 time period you've lived there, are you aware of any  
24 other similar activities?  
25 A. No.

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1 Q. Based on your tenure on the board and your  
2 familiarity with board operations and the HOA, in the  
3 past, from 1979 to present, if any of the boards had  
4 taken any sort of enforcement action or discussed  
5 enforcement action on a matter, would it be reflected in  
6 the association's meeting minutes for the board of  
7 directors?  
8 A. It should have been.  
9 Q. In your capacity as a former board member and  
10 officer, do you have an opinion whether the activities  
11 currently at 7103 Mumford violate the single family  
12 residential use restriction?  
13 A. I do think they violate the single family use.  
14 Q. Am I correct that earlier this year you had an  
15 opportunity to be interviewed by telephone by  
16 Mr. Butterfield and Mr. McGee's predecessor,  
17 Mr. Tancabel?  
18 A. Yes.  
19 MR. Surratt: No further questions.  
20 Reserve ours until time of trial.  
21 MR. McGEE: Yeah, just -- just a couple  
22 follow-ups.  
23 RE-CROSS-EXAMINATION  
24 BY MR. McGEE:  
25 Q. The -- you -- you just testified in response to

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1 Mr. Surratt's question that it's your opinion that the  
2 activities at 7103 Mumford violate the single family use  
3 restriction --  
4 A. Yes.  
5 Q. -- is that right?  
6 A. And which activities are you referring to?  
7 A. An ongoing conduct of religious service on --  
8 services on a regular basis is more like a church  
9 conducting full-time activities there.  
10 Q. And what do you -- what do you know about how  
11 the property at 7103 Mumford is used other than for the  
12 religious activities?  
13 A. I have heard that there's somebody residing on  
14 the second floor, but I have never seen an individual  
15 come or go from that residence.  
16 Q. So you don't -- you don't know much about --  
17 A. It's hearsay, no.  
18 Q. And -- and you don't -- do you know anything  
19 about, you know, how much time the house is used as a  
20 residence as compared to how much time it's used for  
21 religious purposes?  
22 A. No.  
23 Q. So you don't know which one of those two uses  
24 would be the predominant use of the property?  
25 A. No.

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1 MR. McGEE: That's all I have.  
 2 And I -- I'd just like to -- I'd like to  
 3 make a brief statement on the record since Mr. Surratt  
 4 introduced his objections just so our -- our view as to  
 5 those would be reflected on the record.  
 6 First, we're -- we're not aware of any  
 7 rule in the Texas Rules of Civil Procedure that  
 8 authorizes objections to a -- a corporate rep deposition  
 9 notice.  
 10 But that aside, on -- on the merits, we --  
 11 we disagree with the objections. We do not think it's  
 12 proper to restrict the scope of a corporate rep  
 13 deposition by saying here's the person I'm going to put  
 14 forward, but this person is only going to testify as to  
 15 her personal knowledge.  
 16 And I'm not saying that against you  
 17 individually, Ms. Peadon.  
 18 THE WITNESS: Uh-huh.  
 19 MR. McGEE: That the proper, you know,  
 20 procedure under the text of the rule is for the  
 21 representative to testify as to all information that is  
 22 reasonably available to the entity.  
 23 And if that -- if that requires getting a  
 24 person educated with additional information beyond what  
 25 the person already knows personally, then that's the

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1 proper procedure.  
 2 So we -- I just wanted to state that on  
 3 the record so that our views of the objections are --  
 4 are in the record along with the objections.  
 5 MR. Surratt: So noted.  
 6 MR. McGEE: That's all I have.  
 7 MR. Butterfield: No further questions.  
 8 THE VIDEOGRAPHER: All right. This  
 9 concludes the deposition of Carolyn Peadon. End of tape  
 10 one. Off record, 10:24.  
 11 (Whereupon the deposition was concluded.)  
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Page 36

1 CHANGES AND SIGNATURE  
 2 WITNESS NAME: CAROLYN PEADON  
 3 DATE OF DEPOSITION: NOVEMBER 4, 2014  
 4 PAGE LINE CHANGE REASON  
 5 \_\_\_\_\_  
 6 \_\_\_\_\_  
 7 \_\_\_\_\_  
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1 I, CAROLYN PEADON, have read the foregoing  
 2 deposition and hereby affix my signature that same is  
 3 true and correct, except as noted above.  
 4  
 5  
 6  
 7  
 8 \_\_\_\_\_  
 9 CAROLYN PEADON  
 10 STATE OF \_\_\_\_\_ )  
 11 COUNTY OF \_\_\_\_\_ )  
 12 Before me, \_\_\_\_\_, on this day  
 13 personally appeared CAROLYN PEADON, known to me (or  
 14 proved to me under oath or through  
 15 \_\_\_\_\_) to be the person whose name is  
 16 subscribed to the foregoing instrument and acknowledged  
 17 to me that they executed the same for the purposes and  
 18 consideration therein expressed.  
 19 Given under my hand and seal of office this \_\_\_\_\_  
 20 day of \_\_\_\_\_, \_\_\_\_\_.  
 21  
 22  
 23 \_\_\_\_\_  
 24 NOTARY PUBLIC IN AND FOR  
 25 THE STATE OF \_\_\_\_\_

CAROLYN PEADON  
November 4, 2014

1 CAUSE NO. 429-04998-2013  
2 DAVID R. SCHNEIDER, \* IN THE DISTRICT COURT  
Plaintiff \*  
3 v. \*  
4 \*  
5 JUDITH D. GOTHELF, \*  
6 MARK B. GOTHELF, AND \*  
CONGREGATION TORAS CHAIM, \*  
7 INC., \*  
Defendants \*  
8 and \* COLLIN COUNTY, TEXAS  
9 HIGHLANDS OF McKAMY IV AND \*  
10 V COMMUNITY IMPROVEMENT \*  
ASSOCIATION \*  
Intervening Plaintiff \*  
11 v. \*  
12 JUDITH D. GOTHELF and \*  
MARK B. GOTHELF, \*  
13 Defendants \* 429TH JUDICIAL DISTRICT  
14 REPORTER'S CERTIFICATION  
DEPOSITION OF CAROLYN PEADON  
15 NOVEMBER 4, 2014  
16 I, Pennie Futrell, Certified Shorthand Reporter in  
17 and for the State of Texas, hereby certify to the  
18 following:  
19 That the witness, CAROLYN PEADON, was duly sworn by  
20 the officer and that the transcript of the oral  
21 deposition is a true record of the testimony given by  
22 the witness;  
23 That the deposition transcript was submitted on  
24 \_\_\_\_\_, 2014 to the witness or to the  
25 attorney for the witness for examination, signature and

1 return to me by \_\_\_\_\_, 2014;  
2 That the amount of time used by each party at the  
3 deposition is as follows:  
4 Justin Butterfield 0 hours 25 minutes  
5 Matt McGee 0 hours 08 minutes  
6 David Surratt 0 hours 06 minutes  
7 That pursuant to information given to the deposition  
8 officer at the time said testimony was taken, the  
9 following includes counsel for all parties of record:  
10 FOR THE INTERVENING PLAINTIFF:  
11 Mr. David Surratt  
RIDDLE & WILLIAMS, P.C.  
3710 Rawlins Street  
Suite 1400  
12 Dallas, Texas 75219  
13 Telephone: 214.760.6766  
Facsimile: 214.760.6785  
E-mail: dsurratt@riddleandwilliams  
14 FOR THE DEFENDANTS:  
15 Mr. Matt McGee  
HAYNES & BOONE, LLP  
16 2323 Victory Avenue  
Suite 700  
17 Dallas, Texas 75219  
18 Telephone: 214.651.5584  
19 Facsimile: 214.200.0373  
E-mail: matt.mcgee@haynesboone.com  
20 FOR THE DEFENDANTS:  
21 Mr. Justin Butterfield  
Liberty Institute - Senior Counsel and Director  
22 of Research and Education  
2001 Plano Parkway  
23 Suite 1600  
24 Plano, Texas 75075  
25 Telephone: 972.941.4444

1 to Mr. Matt McGee, Custodial Attorney;  
2 That \_\_\_\_\_ is the deposition officer's  
3 charges to the Defendants for preparing the original  
4 deposition transcript and any copies of exhibits;  
5 That the deposition was delivered in accordance with  
6 Rule 203.3, and that a copy of this certificate was  
7 served on all parties shown herein and filed with the  
8 Clerk.  
9 Certified to by me this \_\_\_\_\_ day of \_\_\_\_\_,  
10 2014.  
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1 E-mail: jbutterfield@libertyinstitute.org  
2 I further certify that I am neither counsel for,  
3 related to, nor employed by any of the parties or  
4 attorneys in the action in which this proceeding was  
5 taken, and further that I am not financially or  
6 otherwise interested in the outcome of the action.  
7 Further certification requirements pursuant to Rule  
8 203 of the Texas Rules of Civil Procedure will be  
9 certified to after they have occurred.  
10 Certified to by me this 12th day of November, 2014.  
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PENNIE FUTRELL, CSR No. 4108  
Expiration Date: 12/31/15  
Firm Registration No. 526  
Corporate Plaza I, Suite 152  
4950 N. O'Connor Road  
Irving, Texas 75062  
972.719.5000  
972.717.3985 (fax)

FURTHER CERTIFICATION UNDER RULE 203 TRCP  
The original deposition was/was not returned to the  
deposition officer on \_\_\_\_\_.  
If returned, the attached Changes and Signature page  
contains any changes and the reasons therefor.  
If returned, the original deposition was delivered

1 to Mr. Matt McGee, Custodial Attorney;  
2 That \_\_\_\_\_ is the deposition officer's  
3 charges to the Defendants for preparing the original  
4 deposition transcript and any copies of exhibits;  
5 That the deposition was delivered in accordance with  
6 Rule 203.3, and that a copy of this certificate was  
7 served on all parties shown herein and filed with the  
8 Clerk.  
9 Certified to by me this \_\_\_\_\_ day of \_\_\_\_\_,  
10 2014.  
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PENNIE FUTRELL, CSR No. 4108  
Expiration Date: 12/31/15  
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Corporate Plaza I, Suite 152  
4950 N. O'Connor Road  
Irving, Texas 75062  
972.719.5000  
972.717.3985 (fax)

FILED DUPLICATE  
The original certificate - Transcript  
file was electronically signed  
using RealLegal technology.

**CAROLYN PEADON**  
**November 4, 2014**

1 CAUSE NO. 429-04998-2013  
2 DAVID R. SCHNEIDER, \* IN THE DISTRICT COURT  
Plaintiff \*  
3 \*  
v. \*  
4 \*  
JUDITH D. GOTHELF, \*  
5 MARK B. GOTHELF, AND \*  
CONGREGATION TORAS CHAIM, \*  
6 INC., \*  
Defendants \*  
7 \*  
and \* COLLIN COUNTY, TEXAS  
8 \*  
HIGHLANDS OF McKAMY IV AND \*  
9 V COMMUNITY IMPROVEMENT \*  
ASSOCIATION \*  
10 Intervening Plaintiff \*  
11 v. \*  
12 JUDITH D. GOTHELF and \*  
MARK B. GOTHELF, \*  
13 Defendants \* 429TH JUDICIAL DISTRICT  
14 REPORTER'S CERTIFICATION  
DEPOSITION OF CAROLYN PEADON  
15 NOVEMBER 4, 2014  
16 I, Pennie Futrell, Certified Shorthand Reporter in  
17 and for the State of Texas, hereby certify to the  
18 following:  
19 That the witness, CAROLYN PEADON, was duly sworn by  
20 the officer and that the transcript of the oral  
21 deposition is a true record of the testimony given by  
22 the witness;  
23 That the deposition transcript was submitted on  
24 November 12, 2014 to the witness or to the  
25 attorney for the witness for examination, signature and

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000001

## CAROLYN PEADON

November 4, 2014

1 return to me by December 8, 2014;

2 That the amount of time used by each party at the  
3 deposition is as follows:

4	Justin Butterfield	0 hours	25 minutes
	Matt McGee	0 hours	08 minutes
5	David Surratt	0 hours	06 minutes

6 That pursuant to information given to the deposition  
7 officer at the time said testimony was taken, the  
8 following includes counsel for all parties of record:

9 FOR THE INTERVENING PLAINTIFF:

10 Mr. David Surratt  
11 RIDDLE & WILLIAMS, P.C.  
3710 Rawlins Street  
Suite 1400  
12 Dallas, Texas 75219  
Telephone: 214.760.6766  
13 Facsimile: 214.760.6785  
E-mail: dsurratt@riddleandwilliams

14

15 FOR THE DEFENDANTS:

16 Mr. Matt McGee  
HAYNES & BOONE, LLP  
17 2323 Victory Avenue  
Suite 700  
18 Dallas, Texas 75219  
Telephone: 214.651.5584  
19 Facsimile: 214.200.0373  
E-mail: matt.mcgee@haynesboone.com

20

21 FOR THE DEFENDANTS:

22 Mr. Justin Butterfield  
Liberty Institute - Senior Counsel and Director  
23 of Research and Education  
2001 Plano Parkway  
24 Suite 1600  
Plano, Texas 75075  
25 Telephone: 972.941.4444

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000002

**CAROLYN PEADON**

November 4, 2014

1 E-mail: jbutterfield@libertyinstitute.org

2 I further certify that I am neither counsel for,  
3 related to, nor employed by any of the parties or  
4 attorneys in the action in which this proceeding was  
5 taken, and further that I am not financially or  
6 otherwise interested in the outcome of the action.

7 Further certification requirements pursuant to Rule  
8 203 of the Texas Rules of Civil Procedure will be  
9 certified to after they have occurred.

10 Certified to by me this 12th day of November, 2014.

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PENNIE FUTRELL, CSR No. 4408  
Expiration Date: 12/31/15  
Firm Registration No. 526  
Corporate Plaza I, Suite 152  
4950 N. O'Connor Road  
Irving, Texas 75062  
972.719.5000  
972.717.3985 (fax)

**FURTHER CERTIFICATION UNDER RULE 203 TRCP**

The original deposition was/was not returned to the  
deposition officer on Dec. 8, 2014.

If returned, the attached Changes and Signature page  
contains any changes and the reasons therefor.

If returned, the original deposition was delivered

**CSI GLOBAL DEPOSITION SERVICES**

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000003

**CAROLYN PEADON**  
**November 4, 2014**

1 to Mr. Matt McGee, Custodial Attorney;

2 That \$488.00 is the deposition officer's  
 3 charges to the Defendants for preparing the original  
 4 deposition transcript and any copies of exhibits;

5 That the deposition was delivered in accordance with  
 6 Rule 203.3, and that a copy of this certificate was  
 7 served on all parties shown herein and filed with the  
 8 Clerk.

9 Certified to by me this 10 day of Dec.,  
 10 2014.

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25

  
 PENNIE FUTRELL, CSR No. 4108  
 Expiration Date: 12/31/15  
 Firm Registration No. 526  
 Corporate Plaza I, Suite 152  
 4950 N. O'Connor Road  
 Irving, Texas 75062  
 972.719.5000  
 972.717.3985 (fax)

**CSI GLOBAL DEPOSITION SERVICES**

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000004

**CAROLYN PEADON**  
**November 4, 2014**

1 CHANGES AND SIGNATURE

2 WITNESS NAME: CAROLYN PEADON

3 DATE OF DEPOSITION: NOVEMBER 4, 2014

4 PAGE	LINE	CHANGE	REASON
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000005



**CAROLYN PEADON**

**November 4, 2014**

1 I, CAROLYN PEADON, have read the foregoing  
2 deposition and hereby affix my signature that same is  
3 true and correct, except as noted above.

4

5

6

7

\_\_\_\_\_  
CAROLYN PEADON

8

9 STATE OF \_\_\_\_\_)

10 COUNTY OF \_\_\_\_\_)

11 Before me, \_\_\_\_\_, on this day  
12 personally appeared CAROLYN PEADON, known to me (or  
13 proved to me under oath or through  
14 \_\_\_\_\_) to be the person whose name is  
15 subscribed to the foregoing instrument and acknowledged  
16 to me that they executed the same for the purposes and  
17 consideration therein expressed.

18 Given under my hand and seal of office this \_\_\_\_\_  
19 day of \_\_\_\_\_, \_\_\_\_\_.

20

21

22

\_\_\_\_\_  
NOTARY PUBLIC IN AND FOR  
23 THE STATE OF \_\_\_\_\_

24

25

**CSI GLOBAL DEPOSITION SERVICES**

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# **EXHIBIT J**

1 CAUSE NO. 429-04998-2013  
2 DAVID R. SCHNEIDER, § IN THE DISTRICT COURT  
Plaintiff, §  
3 §  
v. §  
4 §  
JUDITH D. GOTHELF, MARK B. §  
5 GOTHELF, AND CONGREGATION §  
TORAS CHAIM, INC., §  
6 Defendants. §  
§  
7 and § 429TH JUDICIAL DISTRICT  
§  
8 HIGHLANDS OF MCKAMY IV AND §  
V COMMUNITY IMPROVEMENT §  
9 ASSOCIATION, §  
Intervening Plaintiff, §  
10 §  
v. §  
11 §  
JUDITH D. GOTHELF AND §  
12 MARK B. GOTHELF, §  
Defendants. § OF COLLIN COUNTY, TEXAS

13  
14  
15 -----  
16 ORAL AND VIDEOTAPED DEPOSITION OF  
17 DAVID R. SCHNEIDER  
18 AUGUST 5, 2014  
19 -----  
20  
21  
22

23 ORAL AND VIDEOTAPED DEPOSITION OF DAVID R.  
24 SCHNEIDER, produced as a witness at the instance of the  
25 Defendant Congregation Toras Chaim and duly sworn, was

1 taken in the above-styled and numbered cause on August 5,  
2 2014, from 10:05 a.m. to 1:07 p.m., before Jamie Prince  
3 Hess, Certified Shorthand Reporter in and for the State of  
4 Texas, reported by computerized stenotype machine at  
5 Haynes and Boone, LLP, 2323 Victory Avenue, Suite 700,  
6 Dallas, Texas 75219, pursuant to the Texas Rules of Civil  
7 Procedure and the provisions stated on the record or  
8 attached hereto.  
9  
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1 APPEARANCES

2 FOR THE PLAINTIFF:

3 Mr. David R. Schneider (Pro Se)

4 7035 Mumford

5 Dallas, Texas 75252

6 214.315.5531

7 davidr.schneider@gmail.com

8 FOR THE DEFENDANT CONGREGATION TORAS CHAIM:

9 Mr. Matt McGee

10 Haynes and Boone, LLP

11 2323 Victory Avenue

12 Suite 700

13 Dallas, Texas 75219

14 214.651.5000

15 matt.mcgee@haynesboone.com

16 FOR THE DEFENDANTS CONGREGATION TORAS CHAIM, JUDITH D.

17 GOTHELF AND MARK B. GOTHELF:

18 Mr. Justin E. Butterfield

19 Liberty Institute

20 2001 Plano Parkway

21 Suite 1600

22 Plano, Texas 75075

23 972.941.4444

24 jbutterfield@libertyinstitute.org

25 FOR THE INTERVENOR HIGHLANDS OF MCKAMY IV AND V COMMUNITY

IMPROVEMENT ASSOCIATION:

Mr. David A. Surratt

Riddle & Williams, PC

3710 Rawlins Street

Suite 1400

Dallas, Texas 75219

214.760.6766

dsurratt@riddleandwilliams.com

ALSO PRESENT:

Mr. Randy Johnson, the videographer

1 THE VIDEOGRAPHER: We are now on the record

2 for the video deposition of David Schneider. The time is

3 10:05 a.m. The date is August 5th, 2014.

4 Would the court reporter please administer the

5 oath.

6 (Witness sworn.)

7 MR. MCGEE: And just for the record, I'm

8 Matt McGee, and I represent the Defendant Congregation

9 Toras Chaim, Inc.

10 MR. BUTTERFIELD: I'm Justin Butterfield.

11 I represent Congregation Toras Chaim, Inc. and Mark and

12 Judith Gothelf.

13 MR. SURRATT: And David Surratt. I

14 represent the Intervening Plaintiff, the Highlands of

15 McKamy HOA.

16 MR. MCGEE: Good morning, Mr. Schneider.

17 THE VIDEOGRAPHER: Are you wearing your

18 microphone?

19 DAVID R. SCHNEIDER,

20 having been first duly sworn, testified as follows:

21 EXAMINATION

22 BY MR. MCGEE:

23 Q. My name is Matt McGee. And we just met this

24 morning --

25 A. Yes.

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1 Q. -- is that right?  
2 A. Yes.  
3 Q. And do you understand that the oath you just  
4 took is made under a penalty of perjury?  
5 A. Yes.  
6 Q. And that it requires you to answer my questions  
7 truthfully and completely --  
8 A. Yes.  
9 Q. -- to the best of your ability?  
10 And do you agree to do that?  
11 A. Yes.  
12 Q. And, Mr. Schneider, have you ever been deposed  
13 before?  
14 A. I believe I have. It's been a long time, so I  
15 can't remember for sure, but...  
16 Q. Okay. And what -- was there a particular case  
17 that you're thinking you may have been deposed in?  
18 A. When I was divorced from my then-wife Karen  
19 Schneider, we went through several motions to modify and I  
20 think there was a deposition in there somewhere. As far  
21 as I recall that's the only deposition I've had  
22 previously.  
23 Q. And have you ever given testimony in court  
24 before other than the hearing in this case?  
25 A. No.

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1 THE VIDEOGRAPHER: Do you mind moving that  
2 glass? I'm sorry.  
3 THE WITNESS: Sure.  
4 THE VIDEOGRAPHER: Thank you.  
5 Q. So you mentioned the divorce with Karen  
6 Schneider. Other than that suit and this suit, have you  
7 been involved in other litigation before?  
8 A. Yes.  
9 Q. And what -- if you could, please give me a list  
10 of other cases you've been involved in.  
11 A. Sometime around 2002 I was the plaintiff in a  
12 lawsuit against a neighbor of mine named John Vann, and it  
13 was in Collin County.  
14 Q. And first, let's go through and just get a list  
15 and then I may go back and follow up on some of the  
16 individual items.  
17 Are there any other cases where you were either  
18 a plaintiff or a defendant?  
19 A. Not that I recall.  
20 Q. And what is the -- what was the nature of the  
21 lawsuit with Mr. Vann?  
22 A. It was a lawsuit to enforce deed restrictions.  
23 Q. And what were the allegations in that suit?  
24 A. He put up a fence that was prohibited under the  
25 deed restrictions, and I sued to get him to pull it down.

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1 Q. And what did you contend was wrong with the  
2 fence that he put up?  
3 A. It blocked my view of the golf course that was  
4 behind our house, or a portion of it.  
5 Q. And were you represented in that suit?  
6 A. By pro se, as in this.  
7 Q. Was Mr. Vann represented?  
8 A. He was.  
9 Q. And do you remember who his attorney was?  
10 A. I do not.  
11 Q. What did Mr. Vann contend in the suit?  
12 A. Nothing, really. I mean, his defense didn't  
13 really contend anything.  
14 Q. So did he admit that the fence violated the  
15 covenants?  
16 A. The suit was ultimately dismissed and he took  
17 the fence down, so that was the resolution, so...  
18 Q. Was that like pursuant to a settlement where,  
19 like, you agreed --  
20 A. No.  
21 Q. -- to drop it if he --  
22 A. No.  
23 Q. -- took the fence down?  
24 A. No. But I can't say exactly the sequence. All  
25 I know is the suit was dismissed on a -- for a technical

Page 9

1 reason and that same day the fence came down, presumably  
2 because I was going to refile it, but I'm speculating as  
3 to motive at this point.  
4 Q. Have you ever been involved in litigation with  
5 the Village of Glen Eagles Homeowners Association?  
6 A. No.  
7 Q. What about litigation with Miller & Miller, DDS?  
8 A. That was my dentist. I'm not sure. We had a  
9 dispute over a bill and it's possible that there was some  
10 litigation, but I don't recall anything on it.  
11 Q. Okay. And what about litigation with Legacy  
12 Executive Suites, Incorporated?  
13 A. Same thing. There was a dispute over a bill,  
14 and I'm not sure if there was any litigation on either of  
15 those things. It was settled, and I don't remember the  
16 terms of settlement. It's been a while.  
17 Q. And you mentioned the divorce proceeding with  
18 Karen Schneider. Are there any other divorces that you've  
19 been a party to?  
20 A. Yes. I was divorced from Cynthia Schneider, and  
21 also from Claudia Schneider. That was their names when we  
22 were married.  
23 Q. And other than the proceedings you mentioned  
24 with Karen Schneider that may have involved a deposition,  
25 was there any real litigation involved in the others or

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1 were they just kind of standard divorces?  
2 A. What I would refer to as a standard divorce,  
3 uncontested.  
4 Q. Have you ever been in litigation with the Plano  
5 ISD?  
6 A. No.  
7 Q. Have you ever filed for bankruptcy?  
8 A. Yes.  
9 Q. And what were the circumstances around that?  
10 A. The usual type things, creditors that couldn't  
11 satisfy and...  
12 Q. Was -- did -- were there any court hearings,  
13 court proceedings in connection with that?  
14 A. You know, there must have been because it was  
15 ultimately discharged. This was back in 1997 was the  
16 discharge date, and I'm sure there was a court proceeding  
17 at the time.  
18 Q. And before I go further, I just want to state on  
19 the record -- and you've been doing a good job so far of  
20 this, but that our court reporter here is taking down  
21 everything that we say --  
22 A. Yes.  
23 Q. -- and so I just will request that you answer my  
24 questions out loud, like not with --  
25 A. Okay.

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1 Q. -- nods or head shakes.  
2 A. Sure.  
3 Q. And if I ask you a question you don't  
4 understand, then just please ask me to restate it or  
5 rephrase it and I'll try to do that.  
6 A. Certainly.  
7 Q. And is it fair for me to assume that if you  
8 don't ask me to rephrase or tell me that you don't  
9 understand then I'll assume that you do understand the  
10 question?  
11 A. That would be correct.  
12 Q. If you need a break at any time, just let me  
13 know and we'll -- if there's a question pending, I might  
14 ask you to answer it first, but then we'll be happy to  
15 take a break if you need one.  
16 A. Thank you.  
17 Q. And sometimes during the deposition Mr. Surratt  
18 might state objections for the record. And I'm sure  
19 you've heard that in the previous depositions here.  
20 That's a legal issue that the judge may need to decide  
21 down the road, but in general, if -- even if he makes an  
22 objection, you can still answer the question.  
23 A. All right.  
24 Q. Is there anything about your physical, mental or  
25 emotional condition that would prevent you from

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1 understanding my questions?  
2 A. No.  
3 Q. And anything about your physical, mental or  
4 emotional condition that would prevent you from giving  
5 truthful and complete answers to my questions?  
6 A. No.  
7 Q. Are you currently on any medications that would  
8 prevent you from understanding my questions --  
9 A. No.  
10 Q. -- or giving truthful answers?  
11 And, if you could, please just wait for me to  
12 the finish the question before you answer so that it's  
13 easier for the court reporter.  
14 A. Sure.  
15 Q. I'm going to show you what we'll mark as  
16 Exhibit 1.  
17 (Exhibit 1 marked.)  
18 Q. And I'd just ask you to look over the document,  
19 and once you've had a chance to look at it, let me know.  
20 A. All right.  
21 Q. So this -- I'll represent to you that this is  
22 a -- just from a search run on Collin County's website  
23 that -- just on the name David Schneider that lists  
24 several lawsuits. And so I'd just like to -- and I asked  
25 you about each of these earlier, but I'd like to just walk

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1 through it and if you could let me know for each one  
2 whether it is you or isn't you, and then I may have  
3 follow-ups from there.  
4 A. Every one of these looks like me.  
5 Q. And some of these are -- for example, the Plano  
6 ISD, the Village -- and the Village of Glen Eagles  
7 Homeowners Association and the Legacy Executive Suites I  
8 believe are ones that you testified earlier that you were  
9 not involved in litigation with those entities?  
10 A. As far as I know, I wasn't. I can see that  
11 they're listed here. I did live at the Village of Glen  
12 Eagles, so I -- and I am David R. Schneider. So I don't  
13 recall any litigation or any suit filed in that case, and  
14 the same thing with the Plano ISD.  
15 Q. Okay. So for each of these three, Legacy  
16 Executive Suites, Plano ISD, and Village of Glen Eagles,  
17 you don't have any knowledge about the circumstances of  
18 the --  
19 A. The Legacy --  
20 Q. -- disputes?  
21 A. I'm sorry. I interrupted your --  
22 Q. That's okay. Go ahead.  
23 A. For the Legacy Executive Suites, we did have a  
24 dispute over a bill and I know I settled that. I wasn't  
25 actually aware that there was litigation filed in that,

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1 but it was 15 years ago. I don't recall the exact  
2 circumstances, so that there's litigation here isn't  
3 completely surprising to me, but we never went to court or  
4 anything like that.  
5 Q. And, Mr. Schneider, have you ever been arrested?  
6 A. Yes.  
7 Q. And how many times?  
8 A. Once.  
9 Q. And what were the circumstances?  
10 A. When I was 18, 1971, I was arrested for  
11 possession of marijuana.  
12 Q. And what was the ultimate outcome of that  
13 arrest?  
14 A. Received deferred adjudication and served my  
15 probationary period and it was expunged from my record.  
16 Q. And so, as you know, we're here today with a --  
17 here on a case that you filed involving the Congregation  
18 Toras Chaim, Inc. And as we proceed through this  
19 deposition, I'll often refer to "the congregation," and  
20 when I say that, I'm referring to the defendant in this  
21 action, Congregation Toras Chaim, Inc. And when I mention  
22 the HOA, I'm referring to the Highlands of McKamy IV and V  
23 Community Improvement Association.  
24 A. That makes sense to me.  
25 Q. And I may also refer to your neighborhood as

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1 Highlands of McKamy for short.  
2 A. That makes sense as well.  
3 Q. I'll show you what I'm going to mark as  
4 Exhibit 2.  
5 (Exhibit 2 marked.)  
6 Q. If you could, look at it and let me know when  
7 you're ready.  
8 A. Yes.  
9 Q. Again, what is this document?  
10 A. Notice of intent to take videotaped deposition  
11 of myself.  
12 Q. And is this the notice of deposition pursuant to  
13 which you're appearing here today?  
14 A. Yes.  
15 Q. What did you do to prepare for this deposition  
16 today?  
17 A. Not a lot. Brought this pad and had a brief  
18 conversation with Mr. Surratt.  
19 Q. Did you review any documents to prepare for the  
20 deposition?  
21 A. No, I did not.  
22 Q. And if I understand it, you're a former board  
23 member in the -- of the HOA; is that correct?  
24 A. Yes, I am.  
25 Q. And was your conversation with Mr. Surratt to

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1 prepare for this deposition, was that in your capacity as  
2 a former board member or --  
3 A. Yes.  
4 Q. -- or in your capacity -- just wait for me to  
5 finish, please.  
6 Was that in your capacity as a former board  
7 member or your capacity as a pro se plaintiff?  
8 A. Capacity as former board member.  
9 Q. What damages are you seeking to recover in this  
10 lawsuit?  
11 A. \$50,000 damages to my house property value as  
12 well as any other statutory or -- statutory damages I may  
13 be entitled to.  
14 Q. What do you mean when you refer to statutory  
15 damages you may be entitled to?  
16 A. I believe that there's a \$200 per day violation  
17 per -- for violation of restrictive covenants that's  
18 provided by Texas statutory law.  
19 Q. So other than the \$50,000 alleged damages to  
20 your home's value and the \$200 per day statutory damages,  
21 are you seeking any other damages?  
22 A. No.  
23 And if the \$50,000 damages was determined later  
24 to be higher or lower, that is certainly possible. The  
25 \$50,000 number is an estimate.

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1 Q. I'd like to walk through with you the  
2 circumstances that just led to you becoming a resident in  
3 the Highlands of McKamy. So maybe you -- if you could,  
4 just like tell me the story of how did you come to live  
5 there, what led up to it and just give me the back story.  
6 A. Sure. At the time I had become engaged to my  
7 now-wife, Laura Schneider, and we made the decision to buy  
8 a house prior to getting married, and we decided this in  
9 December of 2012. And we began looking at houses, and one  
10 of the houses we looked at was 7035 Mumford; and after  
11 looking at it a couple of times, we fell in love with the  
12 house and decided to make an offer on it. And that was at  
13 the end of December of 2012. We did strike an agreement  
14 with the owner and preceeded to execute the purchase.  
15 MR. Surratt: Excuse me just a second.  
16 He's speaking softly. Are you picking this up okay?  
17 THE VIDEOGRAPHER: Yes.  
18 MR. Surratt: Okay.  
19 THE WITNESS: If you have any trouble  
20 hearing me, let me know. I can speak louder.  
21 Q. And what is your understanding of when the  
22 congregation first began meeting in the Highlands of  
23 McKamy?  
24 A. Sometime in July of 2013.  
25 Q. And do you have any understanding about where

Page 18

1 the congregation was meeting prior to July 2013?  
2 A. It has been said that the congregation was  
3 meeting at another house in the Highlands of McKamy, that  
4 of Rabbi Rich.  
5 Q. When you say "it has been said," what -- who are  
6 you --  
7 A. I don't recall.  
8 Q. -- referring to?  
9 A. I do not recall who said it first. I've heard  
10 it from a number of different people. Rabbi Rich himself  
11 spoke of it at one point.  
12 Q. And do you know how long the congregation was  
13 meeting at Rabbi Rich's home prior to July of 2013?  
14 A. Again, from what other people have said, the  
15 congregation was meeting there for about two years prior  
16 to moving to 7103 Mumford.  
17 Q. And you mentioned Rabbi Rich and maybe some  
18 other people. Who are the other people that you have  
19 heard say the congregation was meeting there?  
20 A. Let's see. I think Ben Nise mentioned that  
21 early on. I believe Hershel Krycer said much the same.  
22 Q. And what was his last name again?  
23 A. Krycer, spelled K-r-y-c-e-r, I believe.  
24 Q. And who is Mr. Krycer?  
25 A. He is a member of the congregation. Sadly, he's

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1 no longer with us.  
2 Q. Did anyone else mention this other than Rabbi  
3 Rich, Ben Nise, and Hershel Krycer?  
4 A. Probably, but honestly, I can't remember  
5 specifics. And over time it's been repeated many number  
6 of times, but that's -- that's where I first heard it was  
7 from these individuals.  
8 Q. So do you have any reason to -- do you have any  
9 reason to disagree with the proposition that the  
10 congregation has been meeting in the Highlands of McKamy  
11 since 2011?  
12 A. Not particularly.  
13 Q. Getting back to your home purchase. What --  
14 your wife's name is --  
15 A. Laura.  
16 Q. -- Ms. -- and I'll refer to her as Ms. Schneider  
17 if that's okay.  
18 What did you and Ms. Schneider do to investigate  
19 the neighborhood before you purchased?  
20 A. We drove around the neighborhood. We reviewed  
21 the restrictive deed covenants that were provided to us in  
22 advance of our purchase by the title company. That's all  
23 I can recall at this point.  
24 Q. Do you recall anything from your drive or --  
25 drive or drives around the neighborhood before you

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1 purchased?  
2 A. Certainly it was a beautiful neighborhood and it  
3 was actually a neighborhood that I was somewhat familiar  
4 with already because the best man at my wedding had  
5 previously lived in the Highlands of McKamy, so I knew it  
6 to be a very pretty place.  
7 Q. And how much did you and Ms. Schneider pay for  
8 the home?  
9 A. \$295,000, give or take a few hundred.  
10 Q. And would you be willing to sell the home today  
11 for \$295,000?  
12 A. No.  
13 Q. I'm going to mark Exhibit 3. And I'll just ask  
14 you to look over it and then let me know when you're  
15 ready.  
16 (Exhibit 3 marked.)  
17 A. I've looked it over.  
18 Q. And what is Exhibit 3?  
19 A. It's my response to Defendant's Request for  
20 Disclosure.  
21 Q. And what is the general substance of this  
22 document?  
23 A. It's to request to disclose the method of  
24 calculating \$50,000 in damages for loss to my home value.  
25 Q. And what is the substance of your response?

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1 What was the method that you disclosed here?  
2 A. It's to attempt as best as possible to determine  
3 the difference between what the value of the house would  
4 be were it to be offered for sale comparing it with there  
5 being a synagogue across the street from me versus there  
6 not being a synagogue across the street from me.  
7 Q. And the -- I see here as part of your response  
8 you state that the method was for Plaintiff Homeowner  
9 David R. Schneider to estimate the fair market value of  
10 his house at 7035 Mumford, Dallas, were it to be offered  
11 for sale, with residential only usage at nearby houses, as  
12 most potential buyers would expect, less the fair market  
13 value of same house having Defendant Congregation Toras  
14 Chaim operating an Orthodox Jewish synagogue directly  
15 across the street.  
16 What is the basis for the estimate that you  
17 refer to in that response?  
18 A. I don't believe I can state it any differently  
19 than how it's stated here. I can read through this if you  
20 would like.  
21 Q. Well, let me ask it this way: Do you have any  
22 basis for the \$50,000 number other than what is in this  
23 document, Exhibit 3?  
24 A. No.  
25 Q. If you -- I'll direct your attention to the



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1 first full paragraph on Page 2. You -- there, do you --  
2 you acknowledge that there would be some buyers that would  
3 be willing to pay more for the house because of the  
4 synagogue's presence?  
5 A. No. I would not agree that there would be  
6 buyers that would pay more, but there would be buyers that  
7 would be interested in the house because of its location.  
8 Q. And you also contend that there are, and I  
9 quote, a great many more who would not be interested in  
10 the home because of the synagogue's presence?  
11 A. I believe that, yes.  
12 Q. And what is your basis for contending that some  
13 buyers would not be interested because of the synagogue?  
14 A. I believe that the reason that people buy in  
15 deed restricted communities is because they expect those  
16 deed restrictions to be enforced and complied with, and  
17 there's a house across the street from mine which is not  
18 complying with those deed restrictions. I believe that  
19 generally would be considered something that people would  
20 want to shy away from were they to know about it.  
21 Q. Have you talked to any potential buyers that  
22 have said they're not interested because of the  
23 congregation?  
24 A. Since my house is not for sale, no.  
25 Q. Do you have any formal training in real estate

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1 valuation?  
2 A. I do not.  
3 Q. Do you claim any expertise in real estate  
4 valuation?  
5 A. No, I do not.  
6 Q. Other than your estimate as noted in this  
7 document, have you done anything to investigate what the  
8 current value of your home might be?  
9 A. No.  
10 Q. So prior to filing this lawsuit, did you do  
11 anything to investigate the value of your home?  
12 A. I did not.  
13 Q. Did you make any --  
14 A. I take that back. We had an appraisal done on  
15 our house at the time we purchased it.  
16 Q. And what was the value in that appraisal?  
17 A. To the best of my knowledge, it was 298,000,  
18 give or take.  
19 Q. Would you sell your house today for \$298,000?  
20 A. No, I would not.  
21 Q. I'm going to mark Exhibits 4, 5 and 6, which are  
22 three photos, and I'll just hand them to you, ask you to  
23 look at them and let me know when you're ready.  
24 (Exhibits 4, 5 and 6 marked.)  
25 A. I'm ready.

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1 Q. Okay. I'll hand you all three at once. And do  
2 you recognize Exhibits 4, 5 and 6?  
3 A. I do.  
4 Q. And what are they?  
5 A. This is the back yard of my house.  
6 Q. And do you recognize these particular  
7 photographs?  
8 A. No.  
9 Q. Do you know when they were taken?  
10 A. I would say that they were taken before I  
11 purchased the house.  
12 Q. And do you know who took them?  
13 A. I do not.  
14 Q. Do these three photographs in Exhibits 4, 5 and  
15 6, do they reflect an accurate depiction of what your back  
16 yard looks like today?  
17 A. It does.  
18 Q. Is there anything in any of these photographs  
19 that has changed or is not accurate currently?  
20 A. Well, there are a couple of very minor details;  
21 but in substance, no.  
22 Q. And what are the minor details?  
23 A. Well, there's -- in Exhibit 5 there's a picture  
24 that shows what looks to be some kind of a chest or  
25 container which is not there at this time.

Page 25

1 Q. And are you -- are you referring to the -- like  
2 the tan-looking chest that's to the right of the green  
3 door on Exhibit 5?  
4 A. Yes.  
5 Q. And anything else that is not accurate?  
6 A. Well, as of today, we've made some changes to  
7 the back yard. We've planted some trees, we've put up  
8 some decorations, and those are not reflected in these  
9 pictures.  
10 Q. Is the shed that's present in all three of these  
11 pictures, most prominently in Exhibit 6, is that shed  
12 there today?  
13 A. Yes, it is.  
14 Q. And you mentioned that other than the appraisal  
15 that at the time of your home purchase you did not conduct  
16 any inquiry into the alleged \$50,000 in damages. Now  
17 moving to the same issue with the statutory damages that  
18 you're seeking. Did -- prior to when you filed your suit,  
19 did you conduct any kind of inquiry into statutory  
20 damages?  
21 A. I'm not sure I understand the question.  
22 Q. At the time you filed your suit -- I'll rephrase  
23 it. At the time you filed your suit, what was the basis  
24 for seeking the statutory damages that you mentioned  
25 earlier?

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1 A. Texas statutory law. I can't quote the exact  
2 section, but I believe it was somewhere in 209.  
3 Q. So you read the statute before you --  
4 A. I did.  
5 Q. -- included that in your petition?  
6 And did you do anything other than read the  
7 statute before you filed your petition seeking statutory  
8 damages?  
9 A. Again, I'm not entirely sure I understand your  
10 question.  
11 Q. I'll rephrase it.  
12 So other than reading the statute that you quote  
13 in your petition, prior to the time when you filed your  
14 petition, did you do anything to make an inquiry into  
15 whether you would or would not be entitled to those  
16 damages?  
17 A. I don't recall specifically.  
18 Q. So would it be fair to say that the only thing  
19 you do recall doing is to read the statute?  
20 A. That's correct.  
21 Q. Do you have an opinion as to what impact the  
22 existence of this litigation might have on your home's  
23 value?  
24 A. I'm sorry. I don't have any idea.  
25 Q. Do you think this litigation makes your home

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1 worth more?  
2 A. I'm not sure I could answer that one way or the  
3 other.  
4 Q. And why is it that you think you cannot answer  
5 that?  
6 A. I don't think the litigation is the factor that  
7 primarily drives my home value; however, I do believe the  
8 existence of the synagogue across the street in violation  
9 of our restrictive deed covenants is the cause.  
10 Therefore, I don't see the litigation as being a part of  
11 that.  
12 Q. Do you think some buyer -- some potential buyers  
13 in your neighborhood may be scared off from purchasing if  
14 they see neighbors suing each other?  
15 A. I couldn't say.  
16 Q. Would it be reasonable to think that there would  
17 be people out there that wouldn't want to live in a  
18 neighborhood where neighbors are suing each other?  
19 A. I can't say. I wouldn't -- I wouldn't want to  
20 characterize it one way or the other.  
21 Q. I'm going to mark Exhibit 7, and please look  
22 over it and let me know once you've done so.  
23 (Exhibit 7 marked.)  
24 A. Yes, I recognize this.  
25 Q. And is Exhibit 7 a document that you produced in

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1 this litigation?  
2 A. It is.  
3 Q. And this appears to be an e-mail chain between  
4 you and Mr. Hervey Levin; is that correct?  
5 A. Yes.  
6 Q. And then I'll direct your attention to the next  
7 to the last paragraph of Mr. Levin's e-mail that is at the  
8 top of the chain on the first page. And there he says  
9 that "The opinion you heard yesterday that said had they  
10 known about this fight they would not have bought in H of  
11 M will be replicated and affect the value of all homes in  
12 H of M adversely."  
13 Do you remember reading that --  
14 A. Yes.  
15 Q. -- at the time Mr. Levin sent it to you?  
16 A. I'm sorry. Yes. The answer is yes.  
17 Q. And what is your understanding of what he meant  
18 by that?  
19 A. His opinion was that the fight over the lawsuit  
20 would affect the value of all homes in Highlands of McKamy  
21 adversely.  
22 Q. So Mr. Levin is at least one person who believes  
23 that the existence of this litigation negatively impacts  
24 home values?  
25 A. That is true.

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1 Q. And what is he referring to when he mentions the  
2 opinion you heard yesterday? Is he referring to some kind  
3 of meeting that occurred on February 16th?  
4 A. He is. And I'm not certain whose opinion he's  
5 referring to and I don't recall that particular opinion.  
6 Q. So do you --  
7 A. But that wouldn't surprise me because there was  
8 a great many opinions expressed at that meeting.  
9 Q. So do you recall opinions being expressed at  
10 that meeting about this litigation's negative impact on  
11 home values in the Highlands of McKamy?  
12 A. I don't, but I do recall comments to the effect  
13 that people, if they knew that the congregation was  
14 practicing at 7103 Mumford, that they would not have  
15 purchased in the neighborhood.  
16 Q. I'm going to mark Exhibit 8. Please let me know  
17 once you've had a chance to look at it.  
18 (Exhibit 8 marked.)  
19 A. Yes.  
20 Q. And do you recognize this e-mail chain in  
21 Exhibit 8?  
22 A. I do.  
23 Q. And did you produce this in this litigation?  
24 A. I did.  
25 Q. And it appears to be an e-mail chain between Ted

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1 Day and Stan and Marilyn Rothstein; is that correct?  
2 A. Yes.  
3 Q. And who are those people?  
4 A. I don't know them.  
5 Q. Well, let's take them one by one. Who is Ted  
6 Day?  
7 A. Ted Day is a member of the board of directors of  
8 Highlands of McKamy HOA and someone who was on -- served  
9 on the board with me while I was on the board and he is  
10 the vice president of the HOA.  
11 Q. And how -- if you look at the To and From lines  
12 at the top, how -- how is it that you came to receive this  
13 e-mail? Are you a member of, like, one of the groups on  
14 the To line here?  
15 A. Yes.  
16 Q. And who's a member of that e-mail group? Is it  
17 board members only or is it more widespread?  
18 A. No. It's board members plus officers, and in  
19 this particular case, that means Aaron Orshalick also  
20 received this e-mail. He's not a board member, but is an  
21 officer.  
22 Q. So other than yourself, Aaron Orshalick and Ted  
23 Day, who else would have received this e-mail?  
24 A. Doug Galbraith, who's a board member; Marilyn  
25 Frey, who's a board member; and Michael Donohue, who is a

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1 board member.  
2 Q. Are you still a member of this e-mail group?  
3 A. I am.  
4 Q. And in what capacity do you currently receive  
5 e-mails as -- under the -- that are sent to the Highlands  
6 of McKamy IV and V group?  
7 A. I'm in control of the HOA president account  
8 until somebody is ready to take it over from me, which  
9 could be done sooner rather than later, as far as I'm  
10 concerned.  
11 Q. And who are Stan and Marilyn Rothstein?  
12 A. I do not know them.  
13 Q. Do you know if they reside in the Highlands of  
14 McKamy?  
15 A. I don't know.  
16 Q. Is it fair to say that it appears from their  
17 e-mail that they likely reside in the Highlands of McKamy?  
18 A. Absolutely. That's my assumption. It's  
19 possible I've met one or both of them and don't recall  
20 because I've met a lot of homeowners in the past year. So  
21 my apologizes to Stan and Marilyn if I don't recall them  
22 from their name alone.  
23 Q. And under No. 3 of their e-mail -- this is close  
24 to the bottom of the first page -- they say, "We believe  
25 that a lawsuit severely decreases the value of our

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1 property. Who would want to purchase in our neighborhood  
2 with all of this increased dissection and possible large  
3 assessments to the homeowners. We have lived in this  
4 neighborhood for over 29 years and we have never seen a  
5 homeowner starting such an action against his own  
6 neighbors."  
7 Would it be fair to characterize that statement  
8 as expressing an opinion that this litigation has a  
9 negative impact on the value of homes in the Highlands of  
10 McKamy?  
11 A. Yes.  
12 Q. I'm going to mark Exhibit 9, and please let me  
13 know once you've had a chance to look it over.  
14 (Exhibit 9 marked.)  
15 A. I have, and a fine document it is.  
16 Q. And what is Exhibit 9?  
17 A. This is a document that I wrote a number of  
18 years ago regarding a brief history of the Bible.  
19 Q. And have you produced this document in this  
20 litigation?  
21 A. Yes.  
22 Q. And I -- I can see the abstract here, but if I  
23 could just ask you to -- in your own words, could you  
24 state for the record a brief summary of what this document  
25 says and your -- the views that you express in it?

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1 A. This is a summary of information that I've read  
2 regarding how the various books of the Bible came to  
3 appear in the form that they appear to us today; basically  
4 how the New Testament and the Old Testament came to be in  
5 the form that we read it in English today.  
6 Q. And this is a 56-page mostly single-spaced  
7 document with some tables and interspersed. Is that a  
8 fair characterization of the length --  
9 A. Yes.  
10 Q. -- of the document?  
11 A. It's actually a draft and is not complete,  
12 although I did publish it in substantially identical form  
13 on my website and that is why I produced it.  
14 Q. Do you know what the Torah is?  
15 A. I do.  
16 Q. And what -- what's your understanding of what  
17 the Torah is?  
18 A. It's the first books of the Old Testament.  
19 Q. And how many books are in the Torah?  
20 A. Five.  
21 Q. And are those the books of Genesis, Exodus,  
22 Leviticus, Numbers, and Deuteronomy?  
23 A. Yes.  
24 Q. Do you have any knowledge about the  
25 congregation's views of the authorship of the Torah?

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1 A. I do not.  
2 Q. And what are your views on the authorship of the  
3 Torah?  
4 A. I follow what is generally called the  
5 documentary hypothesis.  
6 Q. What is the documentary hypothesis?  
7 A. It essentially says that there were several  
8 different authors of the Torah and that their works were  
9 placed together in such a fashion as to form the Torah as  
10 we know it today.  
11 Q. According to the documentary hypothesis, would  
12 Moses be one of the authors of the Torah?  
13 A. No.  
14 Q. In your opinion, was Moses one of the authors of  
15 the Torah?  
16 A. No.  
17 Q. In your opinion, did the events that are  
18 recorded -- let me rephrase that.  
19 In your opinion, did the events that are  
20 recorded in the Torah actually occur?  
21 A. I'm sure some did and some did not. I'm not  
22 sure I'm in a position to go down a list item by item  
23 of -- to say which did or did not occur.  
24 Q. Your -- the title of this document is The Word  
25 of Man: A Brief History of the Bible. What do you mean

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1 by the phrase "the word of man"?  
2 A. In my opinion, the Bible was brought to us and  
3 all the words in it by human beings.  
4 Q. In your opinion, is the Torah inspired by God?  
5 A. I'm not able to answer that one way or the  
6 other.  
7 Q. So you have no opinion on whether the -- on  
8 whether God inspired the Torah?  
9 A. I don't really have an opinion on it, no.  
10 MR. McGEE: How long have we been going?  
11 THE VIDEOGRAPHER: 55 minutes.  
12 Q. Do you need a break? Are you okay to continue?  
13 A. No, thank you. I don't need a break.  
14 Q. And I'd like to ask a few questions next about  
15 the board in the Highlands of McKamy.  
16 A. Certainly. And in -- as we move forward in  
17 this, if there are questions that you are more clearly  
18 asking for me to answer as a former board member versus as  
19 plaintiff or occupant of 7035 Mumford, if there's a  
20 distinction between those roles, could you help me to  
21 understand that so I can give you a proper answer?  
22 Q. Yes. I'll try to do that. And I'll also ask  
23 you for any question for the remainder of the deposition,  
24 if your response would be different in those two roles,  
25 then please try to let me know that so we can -- can talk

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1 about them separately and keep them separate. Can you --  
2 will you do that?  
3 A. I will.  
4 Q. Thank you.  
5 Why did you want to be on the board in the  
6 Highlands of McKamy?  
7 A. I felt it was important that the deed  
8 restrictions be enforced by the board of directors and  
9 that I did not feel that the board that was previously in  
10 place would ultimately decide to enforce those deed  
11 restrictions.  
12 Q. And were there other reasons you wanted to be on  
13 the board besides your view of the deed restrictions?  
14 A. That would be the primary reason. Although I  
15 should add that there were certainly other things that I  
16 thought were important that should be handled differently,  
17 but that was the prime motivator. But just by way of  
18 example is I felt that the board had ceased to operate in  
19 an open manner and that that was problematic to me.  
20 Q. I'm going to mark Exhibit 10. Please let me  
21 know once you've had a chance to look it over.  
22 (Exhibit 10 marked.)  
23 A. I've looked it over.  
24 Q. And do you recognize Exhibit 10?  
25 A. I do.

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1 Q. And what is it?  
2 A. It is a flier that was passed out to homes in  
3 the Highlands of McKamy.  
4 Q. And did you produce Exhibit 10 in this  
5 litigation?  
6 A. I did.  
7 Q. And you say this is a flier that was passed out,  
8 so who passed it out?  
9 A. I don't remember the specific individuals, but I  
10 was one of them.  
11 Q. Do you remember any of the other -- and I  
12 understand you don't remember the full list, but are there  
13 others that you do remember that passed this out?  
14 A. My wife passed it out with me.  
15 Q. Do you remember anyone other than yourself and  
16 your wife?  
17 A. No, I don't.  
18 Q. So there's a bulleted list here at the top of  
19 the first page of Exhibit 10. Would it be fair to say  
20 that each of these bullets are some of the other reasons  
21 that you wanted to be on the board?  
22 A. That's true.  
23 Q. So is it -- prior to the time that you were on  
24 the board, is it your view that the HOA was not enforcing  
25 the deed restrictions?

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1 A. I'm not sure that would be an accurate statement  
2 of my view. I would say that -- that it did not look like  
3 the board was planning to enforce the deed restrictions.  
4 Q. What about what I said would not be an accurate  
5 statement of your view?  
6 A. That anytime you have a situation where there is  
7 a deed violation, it's fairly common for there to be a  
8 period of time a group of people might make an assessment  
9 of whether the deed restrictions warranted enforcement,  
10 whether they were in fact in breach, et cetera, and for  
11 any number of reasons it could take a period of time to  
12 make a judgment about that. As a result, I can't say for  
13 fact that the board wasn't -- actively was not enforcing  
14 the deed restrictions so much as they were determining  
15 whether or not in the future that the deed restrictions  
16 should be enforced.  
17 Q. Prior to this lawsuit, are you aware of the HOA  
18 ever bringing an enforcement action in court --  
19 A. No.  
20 Q. -- to enforce deed restrictions?  
21 A. Not to my knowledge. But I would also point out  
22 that I wouldn't expect it to be within my knowledge either  
23 as a new resident of Highlands of McKamy.  
24 Q. While you were on the board, did you gain  
25 knowledge about what had happened in the neighborhood in

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1 the past before you moved into the Highlands of McKamy?  
2 A. I think I gained a good bit of knowledge, yes.  
3 Q. And how long has the HOA existed?  
4 A. Approximately 30 years in homeowner control and  
5 perhaps five years in developer control prior to that.  
6 And I'm not certain of the date where it switched over,  
7 but my understanding, it was perhaps sometime around 1984.  
8 Q. So looking back at Exhibit 10, was there -- who  
9 was the leader in this effort to present this slate of  
10 candidates?  
11 A. I think most people would say it was me, and I  
12 wouldn't disagree with that.  
13 Q. And is that why the second page has a box for  
14 homeowners that choose to do so could designate you as a  
15 proxy?  
16 A. Yes.  
17 Q. And so on the first page, these -- the names at  
18 the bottom of the page, David Schneider, Ted Day, Marilyn  
19 Frey, Doug Galbraith, Michael Donohue, that it's fair to  
20 say that this is a slate of candidates that you were in  
21 favor of having -- of being elected to serve as the new  
22 board?  
23 A. Yes. Slate of candidates would be a good way to  
24 describe it.  
25 Q. And were -- was this entire slate elected?

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1 A. Yes.  
2 Q. And did this flier play a role in that election?  
3 A. I believe it did.  
4 Q. And how did it?  
5 A. Because there were some people that signed the  
6 second page which had a proxy form on it allowing me to  
7 vote in their stead at the annual meeting.  
8 Q. And are the -- were the votes that were cast  
9 through this proxy form on Page 2, were those votes  
10 necessary for the election of these five individuals?  
11 A. I believe so.  
12 Q. So I'm looking now at the third bullet down from  
13 the top of the first page, and I'll just read it and then  
14 ask a question about it. It says, "The board of directors  
15 has not acted while a variety of nonresidential  
16 organizations moved into homes on Rocky Top and Mumford.  
17 These are not allowed by our deed restrictions, which  
18 limit usage to single family dwellings. We will act to  
19 reverse this trend and keep us residential only. If we  
20 don't, you can expect more traffic and parking issues."  
21 So this bullet seems to suggest that a trend had  
22 developed in the neighborhood of not enforcing the  
23 residential-only deed restriction. Is that accurate?  
24 A. I don't believe I would use the word "trend," so  
25 I would disagree.

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1 Q. And why did you use the word "trend" on this  
2 flier?  
3 A. I believe that in the future if we do not  
4 enforce the deed restrictions that there will be other  
5 violations of the residential-only deed restrictions in  
6 the future.  
7 Q. So at the time you distributed this flier, do  
8 you think that a trend had developed of not enforcing the  
9 residential-only deed restriction at that time?  
10 A. I'm concerned that there would be a trend in the  
11 future. I'm not sure if two is enough to qualify as a  
12 trend one way or the other, but I certainly foresaw a  
13 situation where this could be repeated in the future.  
14 Q. So what did you mean by the phrase "reverse this  
15 trend"?  
16 A. To draw a line in the sand and say that we want  
17 to enforce the deed restrictions.  
18 Q. That, in your view, had not been enforced to  
19 that point?  
20 A. I'm not sure if I would use the word "not been  
21 enforced." With both of these -- the house on Mumford had  
22 just shown up, so the discussion was very active and  
23 current as to whether or not there should be litigation to  
24 enforce the deed restrictions. So my objective was to  
25 make sure that they were in that particular case.

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1 The situation on Rocky Top is quite complicated  
2 in terms of whether or not the deed restrictions can in  
3 fact be enforced at that particular location, and at this  
4 time I had come to understand from Ted Day that he  
5 believed that the Rocky Top location was exempt under  
6 Texas statute from residential deed restriction  
7 enforcement. On the other hand, in my review of the  
8 related law, it appeared to me that they were not exempt.  
9 But it is a somewhat complicated issue and a complicated  
10 situation, and my understanding in effect is, is that the  
11 board would have enforced it or certainly would have at  
12 least considered enforcing the deed restrictions at Rocky  
13 Top were it not for their belief, whether correct or  
14 incorrect, that there was a statutory exemption for that  
15 location.  
16 Q. I'm marking Exhibit 11.  
17 (Exhibit 11 marked.)  
18 Q. And please let me know when you're ready for me  
19 to ask a question.  
20 A. Yes.  
21 Q. And I'll represent to you that this is a  
22 document that the HOA has produced in this litigation.  
23 And you may have also produced the same e-mail. I don't  
24 recall either way. But do you recognize this document?  
25 A. I do.

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1 Q. And what is Exhibit 11?  
2 A. It's an e-mail from me to the then-president of  
3 the HOA and the board answering some questions, I believe,  
4 that Cookie or somebody had had about a meeting at my  
5 house.  
6 Q. And what was the meeting at your house?  
7 A. It was a meeting to try to find support amongst  
8 homeowners in the Highlands of McKamy to deal with the  
9 synagogue across the street.  
10 Q. And what happened -- what happened at that  
11 meeting?  
12 A. I discussed the facts as I understood them with  
13 the people that came to the meeting and explained to them  
14 my understanding of the law such as it was and tried to  
15 see who there was more or less of the same opinion as I.  
16 Q. And now looking at Item 4 in your e-mail to  
17 Cookie on the first page of Exhibit 11. This is Bates HOA  
18 000177. You mention homes on Rocky Top and Lattimore and  
19 that, as you understand it, the HOA had chosen not to  
20 enforce the deed re- -- the deed usage requirements there.  
21 Is that accurate?  
22 A. Yes.  
23 Q. Looking at the second page of the exhibit, on  
24 HOA 000178, after your signature there you tell  
25 Mr. Surratt that you -- you say, "I applaud your

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1 conscientious devotion to suppressing information transfer  
2 to the association membership." What do you mean by that?  
3 A. Honestly, I don't recall. Clearly a bit of  
4 humor on my part, or perhaps a poor attempt at humor,  
5 so...  
6 Q. Do you think Mr. Surratt was suppressing  
7 information to the HOA members?  
8 A. Not really.  
9 Q. I'm going to mark Exhibit 12.  
10 (Exhibit 12 marked.)  
11 A. I recognize this.  
12 Q. And this, I'll represent that the HOA has  
13 produced this document in this litigation. And what is  
14 Exhibit 12?  
15 A. It's the minutes of the HOA board meeting. I  
16 believe the date is not quite correct. It says the date  
17 meeting was held was on February 3rd. I actually believe  
18 it was held on the 2nd.  
19 Q. Okay. So I see at the top, it says  
20 February 3rd, but then the subject line --  
21 A. Yeah.  
22 Q. -- mentions 2nd. So February 2nd is the --  
23 A. Yes.  
24 Q. -- correct date?  
25 A. Yes.

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1 Q. Okay. And who would have drafted these minutes?  
2 A. Michael Donohue, the secretary of the HOA.  
3 Q. And how long has he been the secretary?  
4 A. Since that date.  
5 Q. And is he still the secretary today?  
6 A. He is.  
7 Q. So during -- during the time when you were on  
8 the board, what was the normal process for the creation of  
9 minutes? Like after a meeting, how did -- how were the  
10 minutes generated?  
11 A. Typically Michael prepares the minutes pretty  
12 quickly after a board meeting and distributes it to the  
13 other board members for review.  
14 Q. And so he will send around a draft and other  
15 board members have a chance to give input?  
16 A. That's correct.  
17 Q. And then does Mr. Donohue then take that input  
18 and finalize the minutes?  
19 A. He does.  
20 Q. And then he will redistribute the final version?  
21 A. That's correct.  
22 Q. And is this the final version of the minutes  
23 from that meeting?  
24 A. As best as I can tell, yes. I don't have any  
25 reason to think it's not the final version. Everything

1 looks exactly right.  
 2 Q. So near the bottom of Page 1 there is a header  
 3 that says Official Policy of HOA Board to Enforce Deed Use  
 4 Restriction of Residential Only, and then the document  
 5 reads that Ted Day made a motion that it be the policy of  
 6 the board to enforce the deed use restrictions of  
 7 residential only, and then it says that you,  
 8 Mr. Schneider, second the motion and the motion passed.  
 9 Is that an accurate description of what happened at that  
 10 meeting?  
 11 A. Yes, it is.  
 12 Q. Why did the board feel the need to adopt a  
 13 policy of enforcing residential-only restrictions?  
 14 A. I think it needed to be made clear to any future  
 15 persons that might consider violating the deed restriction  
 16 that we were a determined board and would do the things it  
 17 would take to enforce those deed restrictions.  
 18 Q. Prior to February 2nd, 2014, did the HOA have a  
 19 policy of enforcing residential-only deed restrictions?  
 20 A. I don't think that it would be fair to  
 21 characterize it one way or the other, in all honesty. The  
 22 situation really had not occurred in such a manner as to  
 23 be able to say that there was a policy one way or the  
 24 other.  
 25 Q. But on February 2nd of this year, you and the

1 individuals assisted me at that time, but I believe  
 2 Marilyn Frey assisted in this, distributing the flier.  
 3 Q. In the -- kind of the first full paragraph there  
 4 in the middle of Page 1, is it fair to say that you were  
 5 expressing the view there that the board at the time was  
 6 not enforcing the residential-only deed restrictions?  
 7 A. I don't know if I would use the phrase the way  
 8 that you used it, that they were not enforcing the deed  
 9 restrictions. They had not taken any action at that point  
 10 in time that I considered appropriate for the situation,  
 11 and I felt more action needed to be taken.  
 12 Q. What's the first time that you're aware of any  
 13 action being taken against the congregation?  
 14 A. The first time any action that I knew of was  
 15 when I sent a cease and desist letter to the congregation.  
 16 Q. And when was that?  
 17 A. On or about October 4th, 2013.  
 18 (Exhibit 14 marked.)  
 19 Q. Mr. Schneider, this is Exhibit 14.  
 20 A. Yes.  
 21 Q. And did -- did you produce this document in this  
 22 litigation?  
 23 A. I did.  
 24 Q. What is Exhibit 14?  
 25 A. It's a proxy signed by James Morrison on Blue

1 other board members thought there was a need to adopt a  
 2 new policy of enforcing residential-only deed  
 3 restrictions?  
 4 A. Absolutely. Certainly we wanted to make sure  
 5 that we were in a position to send a message to anybody  
 6 who might move into the neighborhood as to the intent.  
 7 (Exhibit 13 marked.)  
 8 Q. This is -- what I'll hand you, this is  
 9 Exhibit 13. Have you seen Exhibit 13 before?  
 10 A. Yes.  
 11 Q. And what is Exhibit 13?  
 12 A. It's a flier that I passed out to houses in the  
 13 Highlands of McKamy.  
 14 Q. And did you produce this in this litigation?  
 15 A. I did.  
 16 Q. And so this flier appears to be kind of a  
 17 promotional piece for the meeting we talked about earlier  
 18 that occurred in October 2013. Is that fair?  
 19 A. Yes.  
 20 Q. If you look in kind of the smallest font on  
 21 Page 1 just above the picture at the bottom, it says,  
 22 "Prepared and distributed by David Schneider and concerned  
 23 neighbors of Highlands of McKamy IV and V." Who are the  
 24 concerned neighbors of Highlands of McKamy?  
 25 A. I don't remember specifically what group of

1 Mesa.  
 2 Q. And you produced a number of very similar  
 3 completed forms from other residents; is that correct?  
 4 A. I did.  
 5 Q. And I just chose this one as an example. But is  
 6 this a good -- like a representative example of the proxy  
 7 forms that you collected?  
 8 A. It is.  
 9 Q. And these are the proxy forms that you mentioned  
 10 earlier that were used to get yourself and the other  
 11 members of the slate of candidates elected to the board?  
 12 A. It is.  
 13 Q. And am -- am I correct that there is nowhere on  
 14 this form for a notary's signature?  
 15 A. There's not.  
 16 Q. And what -- what's the process by which you  
 17 collected these? How did they come -- from the time when  
 18 you distributed the forms, just walk me through from that  
 19 time to the time that you collected the completed forms.  
 20 Like how did that happen?  
 21 A. The individuals such as this would have either  
 22 dropped the proxy in a container that was on my front  
 23 porch or they would have knocked and handed it to me  
 24 personally.  
 25 Q. And do you -- do you have an estimate as to the

1 number on each of those categories? Like -- let me break  
2 that up.

3 How many people personally handed a proxy form  
4 to you?

5 A. Perhaps one in three.

6 Q. And do you know about how many total proxies you  
7 collected?

8 A. Approximately 45.

9 Q. So it would be fair to say that approximately 30  
10 just left it in a container and approximately 15 handed it  
11 to you?

12 A. That's correct.

13 Q. Were any steps taken to guard against the  
14 possibility of forgeries or fraud on these forms?

15 A. No, not on my part.

16 Q. Are you aware of anyone else that did anything  
17 to guard against forgeries or fraud on the forms?

18 A. Not that I'm aware of.

19 Q. So not to cast aspersions on Mr. Morrison here.  
20 Just to use him purely as an example, that if we -- if we  
21 assume that he were one of the people -- or if we assume  
22 that this is one of the forms that was just left on your  
23 porch, do I understand you correctly that if someone -- if  
24 someone who's not Mr. Morrison had just filled out this  
25 form and wrote down his name and his address and signed

1 Q. Now, the group that was circulating a petition  
2 to try to recall the board, what did they contend in that  
3 petition?

4 A. They contended that the board should be  
5 recalled. I don't know that they had a specific set of  
6 concerns or allegations, honestly. I'm not really sure  
7 what they said or did not say or what the substance of  
8 their representations were to people.

9 Q. At the July 20th meeting, was there any  
10 discussion prior to the recall vote?

11 A. Yes, there was.

12 Q. What was discussed?

13 A. There were people speaking for recall and there  
14 were people speaking against recall. Each had some time  
15 to give their respective arguments.

16 Q. And of the people who spoke for recall, what do  
17 you remember about what they said?

18 A. They were unhappy with the cost of the lawsuit.  
19 They were unhappy with the communications that they had  
20 received from myself. They had a number of grievances.  
21 I'm not sure I can recall them all, but basically a lot of  
22 the grievances were that I was a bad person or other  
23 members of the board were bad people.

24 Q. And what was the outcome of the vote?

25 A. Four of the directors were not recalled and I

1 his signature and left it on your porch, then that form  
2 still would have been used as a proxy to cast a vote at  
3 the meeting?

4 A. Certainly.

5 Q. What is the current composition of the board?

6 A. There are four members of the board of directors  
7 out of a possible five positions, and those members are  
8 Ted Day, Marilyn Frey, Doug Galbraith, and Michael  
9 Donohue.

10 Q. And what are the circumstances that led to you  
11 no longer being with the board?

12 A. I was recalled on July 20th of this year as a  
13 director.

14 Q. And what happened that led up to you being  
15 recalled?

16 A. There was a petition by a group of homeowners  
17 that asked for a recall vote, and that vote was held. A  
18 meeting was called, that vote was held, and I was recalled  
19 and the other four board members were not.

20 Q. And were you replaced on the board?

21 A. I have not been as of this time.

22 Q. Are you aware of any plans to fill the vacancy  
23 from your former seat?

24 A. Not that I know of, but I'm not sure I would be  
25 in a position to know.

1 was the lone director that was recalled.

2 Q. And do you remember the breakdown of the vote or  
3 an estimate of it?

4 A. Yes. I believe there were 128 votes to recall  
5 myself and somewhere around 113 to recall the other  
6 directors.

7 Q. And how many votes were there to not recall  
8 yourself and the others?

9 A. That, I honestly don't recall.

10 Q. So at what point did you stop being a member of  
11 the board? Was it immediately after that vote?

12 A. Yes.

13 Q. And since that time when you -- since the time  
14 that you rotated or came off the board, who all have you  
15 talked about either the congregation or this lawsuit with?

16 A. I'm not sure I understand your question.

17 Q. I'd just like to get a list of the people that  
18 you have, you know, discussed this lawsuit or the  
19 congregation with since July 20th.

20 A. Do you mean board members?

21 Q. No. Any person.

22 A. Any person.

23 Q. Yeah.

24 A. I've spoken about it with my mom and dad, my  
25 sister and her boyfriend, my son, my daughter, and there



1 might be a couple of other people that I can't think of in  
 2 particular.  
 3 Q. Have you spoken about it with Mrs. Schneider?  
 4 A. Yes.  
 5 Q. And what about Mr. Surratt?  
 6 A. I'm not sure we've spoken about it since then.  
 7 Q. And what about the current members of the board?  
 8 Have you talked to them since July 20th?  
 9 A. I've talked to them, but we don't really talk  
 10 about the lawsuit because we have kind of erected what I  
 11 refer to as a Chinese wall between myself and the HOA and  
 12 the lawsuit in order to keep a degree of separation  
 13 between myself as an individual plaintiff and the HOA as  
 14 an intervening plaintiff.  
 15 Q. What about other residents of the neighborhood?  
 16 Have you talked to any of them about the congregation or  
 17 about this suit?  
 18 A. I've spoken to Ken and Suzie Alterman, who are  
 19 residents of the Highlands of McKamy.  
 20 Q. Anyone else?  
 21 A. Not that I can recall.  
 22 Q. Have you talked to any members of the  
 23 congregation?  
 24 A. I don't believe I have. And, again, we're  
 25 talking about since July 20th?

1 however, as far as I could imagine, I would expect that  
 2 the lawsuit would continue forward in its current form.  
 3 Q. Any -- any meaningful difference in those  
 4 conversations with your various family members?  
 5 A. No.  
 6 Q. How often do you discuss this lawsuit with  
 7 Mrs. Schneider?  
 8 A. Maybe once every week or two.  
 9 Q. Again, we've covered a little of this, but I'd  
 10 like to just make a complete list if we can. Would you  
 11 please let me know about any -- any nonresidential uses  
 12 that you know about in the Highlands of McKamy other than  
 13 what you've alleged in this suit.  
 14 A. The only three I know about are the two group  
 15 homes and --  
 16 (Interruption.)  
 17 Q. I'm sorry. You mentioned the two group --  
 18 A. The two group homes, the synagogue operating at  
 19 7103 Mumford, and the synagogue at the period of time that  
 20 it was being operated out of Rabbi Rich's house.  
 21 Q. And on the two group homes, is one of those the  
 22 Wellington Residential Care at 6806 Rocky Top?  
 23 A. The address is right. I didn't know it was  
 24 called Wellington. But yes, that's -- that's the Rocky  
 25 Top location. What was that address? 6806?

1 Q. Yeah. For now, just since July 20th.  
 2 A. As best as I can recall, no.  
 3 Q. And tell me about your conversation with Ken and  
 4 Suzie Alterman.  
 5 A. I went over to their house after the recall to  
 6 let them know that although I'd been recalled, the other  
 7 members of the board had not. And they were happy to hear  
 8 that news. They feel strongly, as I do, that the  
 9 synagogue should not be in the neighborhood. And so I  
 10 indicated to them that although I was no longer on the  
 11 board, I would be continuing my lawsuit.  
 12 Q. And did you -- did you say anything else about  
 13 the congregation in that conversation?  
 14 A. No, I don't believe so.  
 15 Q. And did you say anything about what was  
 16 happening in the lawsuit?  
 17 A. Not in particular. Just that I was planning to  
 18 continue it.  
 19 Q. And you also mentioned your wife, your parents,  
 20 your son, your daughter, and your sister and her  
 21 boyfriend. What -- what's the general nature of those  
 22 conversations about the --  
 23 A. Letting them --  
 24 Q. -- congregation or the suit?  
 25 A. It was letting them know that I'd been recalled;

1 Q. In my notes, 6806, yeah. Not -- probably  
 2 accurate, but no guarantee that I got the number accurate  
 3 in my notes.  
 4 And then is the other on the Weismer House at  
 5 7038 Lattimore Drive?  
 6 A. Yes. And again, didn't know it was called  
 7 Weismore, but...  
 8 Q. That's Weismer, W-e-i-s-m-e-r.  
 9 A. Okay. Thank you.  
 10 Q. And what do you know about those two? Or let's  
 11 take them one by one. What do you know about 6806 Rocky  
 12 Top?  
 13 A. Very little, actually. Several people had  
 14 pointed out to me that there was a group home on Rocky  
 15 Top, and at some point I was able to determine which  
 16 specific house it was. I actually know it more by its  
 17 location on Rocky Top than the address. I'm guessing that  
 18 address is about right.  
 19 Q. And how long has that group home been in the  
 20 Highlands of McKamy?  
 21 A. I'm not actually sure of the length of time that  
 22 it's been there. My understanding from looking at deed  
 23 records at the Collin County website is that they had  
 24 moved there or acquired the possession of the house  
 25 perhaps two years ago.

1 Q. And to your knowledge, has the HOA ever taken  
2 any enforcement action against that -- against 6806 Rocky  
3 Top?

4 A. According to Ted Day, the decision was made not  
5 to take any enforcement action because it was believed  
6 that there was a statutory exception for group homes in  
7 Texas.

8 Q. And was any enforcement action taken by the HOA  
9 during the time that you were on the board?

10 A. No.

11 Q. And what do you know about 7038 Lattimore?

12 A. To my understanding, also from Ted Day, that  
13 home has been there for a number of years. I don't really  
14 have a good idea of how long it's been there, but let's  
15 say five or more years. And that house was of -- when it  
16 moved in was of grave concern to a number of residents,  
17 including what was then a board member of the HOA whose  
18 house backed up to the house, as I understood it. And I'm  
19 sorry. I don't know his name or his exact address, but he  
20 is no longer alive, to my understanding, according to Ted.  
21 And it was determined at that time that there was a  
22 statutory exception for a group home of that type and that  
23 it would not be possible to enforce the residential-only  
24 deed restrictions due to that statutory exception.

25 Q. When you say it was determined, who are you

1 and payments of expenses.

2 Q. Do they provide any services other than dues  
3 issues and recordkeeping?

4 A. Minimal above that.

5 Q. And what would those minimal services be?

6 A. I'm not sure of specific things. I'm sorry. I  
7 can think of a couple of things. They assist -- when a  
8 home is sold, there's some documentation that needs to be  
9 provided by the HOA, and they handle making sure that  
10 that's provided to title companies.

11 Q. To the extent you've reviewed the documents that  
12 the HOA has produced, do you have any reason to think that  
13 they would be inaccurate?

14 A. No.

15 Q. So you've mentioned the synagogue, 6806 Rocky  
16 Top, and 7038 Lattimore as nonresidential uses that you're  
17 aware of. Are there any other than those three?

18 A. No.

19 Q. Are you aware of any home-based businesses in  
20 the neighborhood?

21 A. I've heard people mention that there's some  
22 home-based businesses in the neighborhood.

23 Q. Which ones have you heard mentioned?

24 A. I've heard that Hervey Levin maintains a law  
25 practice at his house, and I've heard from Rabbi Rich that

1 talking about that made that determination?

2 A. Ted said that it had been looked into, and I got  
3 the impression that perhaps legal counsel had been  
4 consulted, but honestly, I'm not sure I understood that  
5 either correctly or that that, in fact, was done. I don't  
6 know.

7 Q. And have you received a copy of all the  
8 documents that Mr. Surratt has produced in this litigation  
9 on behalf of the HOA?

10 A. I believe so.

11 Q. And did you -- have you reviewed those  
12 documents?

13 A. Not all of them, no.

14 Q. And then, to your knowledge, who keeps the HOA's  
15 documents? Like what's -- is there a particular person  
16 that's the repository of the HOA's records?

17 A. I believe most of those records are at the --  
18 under the control of our management company.

19 Q. And who is that?

20 A. It's Principal Management Group. And Principal  
21 is spelled with an A-L at the end.

22 Q. What does Principal Management Group do?

23 A. They're a management company for homeowners  
24 associations, and for the Highlands of McKamy they  
25 primarily are involved in handling the collections of dues

1 there is a swim instructor who operates some kind of a  
2 swimming school near his house on Bremerton.

3 Q. During the time you were on the board, did the  
4 board take any steps to look into either of these two you  
5 just mentioned?

6 A. No, although I will say that one of the board  
7 members, Marilyn Frey, was the one that had discovered  
8 that Hervey was operating a home-based business.

9 Q. And prior to the time that you were on the  
10 board, are you aware of any -- any action the board took  
11 against either of these two?

12 A. No.

13 Q. And I can't remember if I asked you this, so if  
14 I'm repeating, I apologize, but on 7038 Lattimore, are you  
15 aware of any action that has ever been taken?

16 A. I'm not.

17 Q. So other than the swim instructor and the law  
18 practice that you mentioned, are you aware of any other  
19 home-based businesses in the neighborhood?

20 A. I'm not.

21 Q. And have you heard anyone mention home-based  
22 businesses other than those two?

23 A. Not that I recall.

24 Q. And where are you employed, Mr. Schneider?

25 A. I work for Hallmark Financial Services out of

1 their Addison office.  
2 Q. And what do you do for -- I'll refer to them as  
3 Hallmark if that's okay.  
4 A. Sure.  
5 Q. What do you do for Hallmark?  
6 A. I'm an IT director. I'm sorry. IT manager. I  
7 don't want to give myself a promotion.  
8 Q. Well, I think IT manager sounds like a higher  
9 position than IT director, but what -- so what do you do  
10 as an IT manager?  
11 A. Mostly I do a lot of computer programming, and I  
12 also manage projects and sometimes manage one of the other  
13 developers.  
14 Q. And where is your office?  
15 A. It's at Addison at the corner of Addison Road  
16 and Arapaho. And the specific division I work for is  
17 called Aerospace Insurance Managers.  
18 Q. And is that a division or subsidiary of Hallmark  
19 Financial Services?  
20 A. It is.  
21 Q. And what kind of insurance do they provide?  
22 A. Aviation insurance mostly for small airplanes  
23 that are privately owned and some very small airports.  
24 Q. And what hours are you regularly at the office  
25 there at Addison and Arapaho?

1 mean other than these that you listed?  
2 A. Well, I would point out that the only one that  
3 actually is enforceable is the congregation's use of  
4 7103 Mumford and perhaps the usage, had the board known  
5 about it, that there was a synagogue operating out of  
6 Rabbi Rich's home.  
7 Q. And what's your basis for concluding that the  
8 others are not enforceable?  
9 A. Because there's statutory exemptions for group  
10 homes, and Texas law generally provides that there are  
11 certain types of things that are -- activities that are  
12 normal within a home, and in my opinion, as best I  
13 understand and as best as I think most other people  
14 understand, those cannot be enforced as nonresidential  
15 uses.  
16 Q. And what's your basis for thinking that the HOA  
17 could not enforce Mr. Levin's law practice?  
18 A. I mean, at this point we're getting into some  
19 issues of law that certainly there would be different  
20 interpretations by different people, perhaps yourself, but  
21 the short version would be that Texas courts have ruled  
22 any number of times regarding certain types of usage as  
23 being consistent with residential usage and certain other  
24 type of uses as being inconsistent with residential uses.  
25 So I would state categorically that Mr. Levin's use of his

1 A. 8:30 to 5:30.  
2 Q. And that's Monday through Friday?  
3 A. Yes.  
4 Q. Do you have an office at your house?  
5 A. I don't.  
6 Q. Did you do any work from home?  
7 A. I don't.  
8 Q. We've talked about businesses. What about  
9 other -- are you aware of other nonresidential gatherings  
10 in the neighborhood of any kind, whether they're  
11 commercial or not?  
12 A. I'm not aware of any such.  
13 Q. Any kind of Bible studies?  
14 A. I'm not aware of any such.  
15 Q. While you were on the board, did the board do --  
16 take any enforcement steps against anyone other than the  
17 congregation regarding nonresidential usage?  
18 A. No.  
19 Q. And other than the congregation, are you aware  
20 of any enforcement efforts about nonresidential usage that  
21 the board has ever done?  
22 A. Since there's never been a case previous to this  
23 that I'm aware of where there was a nonresidential use,  
24 the answer would be no.  
25 Q. And when you say there's never been a case, you

1 house to practice law from would be considered consistent  
2 with residential use.  
3 Q. And what about the swim instruction business?  
4 A. I would say that, as best as I know from the  
5 facts that are available to me, it would be consistent  
6 with residential use.  
7 Q. So you've named the nonresidential uses that you  
8 are aware of, and to the extent that the documents that  
9 the HOA has produced reflect other nonresidential uses  
10 prior to when you moved into the neighborhood, do you have  
11 any reason to question the accuracy of those documents?  
12 A. I don't -- not aware of any of these and  
13 couldn't make a statement either way.  
14 Q. But you have no reason to think those documents  
15 would be inaccurate?  
16 A. There's nothing that would lead me to think that  
17 they're inaccurate. Certainly not.  
18 Q. What harms do you contend result from the  
19 congregation's activity in the Highlands of McKamy?  
20 A. It's inherently nonresidential and that, in my  
21 opinion, is the beginning and the end of it.  
22 Q. And what harms result from an inherently -- from  
23 in your view an inherently nonresidential presence in the  
24 neighborhood?  
25 A. It's nonresidential and it's a residential

1 neighborhood.  
 2 Q. And I'm trying to get at specifically like  
 3 what -- other than it being allegedly nonresidential, what  
 4 harms does that cause the neighborhood?  
 5 A. Well, I guess --  
 6 Q. Harms or what negative effects come from --  
 7 A. Different individuals would cite different  
 8 things. Certainly there are people that object to  
 9 parking. There are people that object to the traffic and  
 10 so forth. I object to every aspect of there being a  
 11 church in a residential neighborhood, and I don't know how  
 12 I can make it any other -- any more clear than that.  
 13 Q. And why do you object to that?  
 14 A. Because it's a residential neighborhood and I  
 15 want to have residents across the street from me and not a  
 16 church.  
 17 Q. And what negative effects come from the  
 18 congregation being across the street?  
 19 A. It's a church in a residential neighborhood and  
 20 everything that flows from that.  
 21 Q. And what flows from that?  
 22 A. Anything that might flow from that that's a  
 23 derivative of the fact that there's a church there instead  
 24 of a residence.  
 25 Q. And what are those things that flow from that?

1 A. Uh-huh.  
 2 Q. Anything else?  
 3 A. And as I said, for myself the No. 1 thing is  
 4 it's a church and not a residence, and I don't believe  
 5 that I need to elaborate further for there to be -- to  
 6 provide a list of things. Certainly there are times when  
 7 parking is an issue to me. Certainly there are times when  
 8 traffic is a little bit of an issue to me. But as it's on  
 9 the other side of the street from me, it's relatively  
 10 limited from the inconvenience to myself. However, it's a  
 11 church across the street from me. I don't want a church.  
 12 I expected there to be a house there that's being lived in  
 13 by a single family, and it's my intention that that will  
 14 be the final result.  
 15 Q. And I understand that you don't believe you need  
 16 to elaborate further, but I'm just trying to get a full  
 17 picture of what are the alleged harms that come from  
 18 having a church in a residential neighborhood. And so I  
 19 want to get a full list of every harm that you contend  
 20 flows from having a church in a residential neighborhood.  
 21 A. Well, I think having a church in a  
 22 neighborhood -- residential neighborhood is harm enough.  
 23 Q. And what harms -- what harms are caused by  
 24 having a church in a residential neighborhood that you  
 25 have not already mentioned?

1 A. I don't think I can be any more specific than  
 2 that. I think I've --  
 3 Q. You've mentioned -- the two things you've  
 4 mentioned are parking and traffic. Are there any harms  
 5 other than those two?  
 6 A. I said there are other people who objected to  
 7 parking and traffic.  
 8 Q. And other than those two things, what harms come  
 9 from the congregation's presence?  
 10 A. Well, there's noise and disturbance to others in  
 11 the neighborhood. It's a -- what I would consider,  
 12 according to my neighbors, is a general nuisance.  
 13 Q. So parking, traffic, noise, disturbance, general  
 14 nuisance. Any -- anything other than those?  
 15 A. Well, sure. I mean, there are other -- people  
 16 have objections to a variety things. For me, in addition,  
 17 I feel it's caused damages to the value of my house. But  
 18 in terms of -- yeah. So that's a negative consequence.  
 19 Q. You mentioned other people may have other  
 20 issues. Have you heard of any of those?  
 21 A. Yes. The ones that -- items that I mentioned  
 22 are all items that have been mentioned by a number of  
 23 neighbors.  
 24 Q. So any -- my list now is parking, traffic,  
 25 noise, disturbance, general nuisance, and home values.

1 A. Other than it being a church in a residential  
 2 neighborhood and all the things associated with that --  
 3 Q. When you say "all the things associated with  
 4 that," what is included in that phrase?  
 5 A. Well, all the things that a church could do now  
 6 and in the future are things that I might have to concern  
 7 myself with. I don't know if one day the front of the  
 8 house, for example, might be changed to a different  
 9 exterior. I don't know if the size of the building might  
 10 one day be expanded. Perhaps a parking lot would be put  
 11 on the lot. Anything else that would be things that a  
 12 church might do. Maybe the number of services per week  
 13 would increase or maybe the size of the church would  
 14 increase. I can't say what might happen in the future,  
 15 but all of those are things that -- are things that would  
 16 be ongoing and continuing harm to me.  
 17 Q. Anything else?  
 18 A. I think that covers it pretty well.  
 19 Q. I'm marking Exhibit 15.  
 20 (Exhibit 15 marked.)  
 21 Q. Mr. Schneider, have you had a chance to look at  
 22 Exhibit 15?  
 23 A. Yes.  
 24 Q. And what is Exhibit 15?  
 25 A. It's an e-mail from myself to Ben Nise.

1 Q. And did you produce this e-mail --  
 2 A. I did.  
 3 Q. -- in this litigation?  
 4 And who is Ben Nise?  
 5 A. He is a member of the congregation and I believe  
 6 is involved in the management or direction of the  
 7 congregation.  
 8 Q. And in the paragraph about the fourth or fifth  
 9 one down that starts "with please be assured," would you  
 10 please read that paragraph for the record?  
 11 A. "Please be assured that generally I see the  
 12 congregation as a positive for our neighborhood, yet at  
 13 the same time I would prefer not to reside by something  
 14 which would be operated under City of Dallas guidelines as  
 15 a church. Membership parking on the street is not as much  
 16 of an issue for our family. My primary concern is that it  
 17 would lose the exterior character as a residence. I  
 18 wouldn't want a physician's clinic there either, something  
 19 that serves a good community purpose as well."  
 20 Q. So you say here that your primary concern is  
 21 with the home losing its exterior character as a  
 22 residence?  
 23 A. That was one of my concerns at that particular  
 24 time and at that time it probably was more my concern.  
 25 Q. And there -- has your primary concern been

1 contend has ever said anything to you that you think is  
 2 misleading.  
 3 A. Well, subsequent to that point in time I've  
 4 received e-mails that I was not privy to at the time that  
 5 this was written on August 19th that support that are  
 6 exactly the same, and that was from -- I think his name is  
 7 Avi Bloomenstiel. I may be not be pronouncing it  
 8 correctly, but he was at the time the president of the  
 9 congregation. And it had substantially similar commentary  
 10 as to what Hershel, Ben, and the rabbi himself had  
 11 indicated to myself and other individuals at homeowner  
 12 meetings.  
 13 Q. So there's the rabbi, Ben Nise, Hershel Krycer,  
 14 and Avi Bloomenstiel. Is there any other congregation  
 15 member that has said something that you contend is  
 16 misleading?  
 17 A. Not that I recall.  
 18 Q. What has Rabbi Rich said that you contend is  
 19 misleading?  
 20 A. The substance of all of the commentary was the  
 21 same, was that an individual from New York was relocating  
 22 to 7103 Mumford and was planning to host some meetings at  
 23 7103 that were of a religious nature.  
 24 Q. And what about that do you contend is  
 25 misleading?

1 realized? Has there been any change to the house that  
 2 would, you know, modify its exterior character as a  
 3 residence?  
 4 A. Perhaps a small amount, but not substantial  
 5 enough to be of concern. On the other hand, I would say  
 6 that that paragraph is no longer reflective of my position  
 7 on the matter.  
 8 Q. What caused your position to change?  
 9 A. As the true facts of the situation came to  
 10 light.  
 11 And let me say that -- on the record that I  
 12 believe that a number of members of the congregation said  
 13 in various ways things to mislead myself and other  
 14 individuals as to the true nature of the activities that  
 15 were going on there.  
 16 Q. Which members of the congregation said things  
 17 that you contend are misleading?  
 18 A. The rabbi, Rabbi Rich, Ben Nise, Hershel Krycer.  
 19 Q. Is that all? Anyone else?  
 20 A. Well, that was as of the time that this was  
 21 written. In other words, I had relied upon statements  
 22 that were being made by members of the congregation which  
 23 I subsequently found out were not accurate.  
 24 Q. And I'm asking a broader question, like any -- I  
 25 want to know for any member of the congregation that you

1 A. There was never a plan for the gentleman from  
 2 New York, Mark Gothelf, to actually live at that location.  
 3 Q. And what has Ben Nise said that you contend is  
 4 misleading?  
 5 A. Substantially the same thing.  
 6 Q. And for Hershel Krycer and Avi Bloomenstiel,  
 7 would it be the same thing?  
 8 A. Substantially the same words to the effect.  
 9 Q. Has any member of the congregation said anything  
 10 that you contend is misleading that you have not  
 11 mentioned?  
 12 A. Not that I can recall at this time, although I  
 13 do want to point out another person I talked to, and  
 14 unfortunately I do not know his name, but sometime  
 15 approximately the end of June of 2013 a gentleman and his  
 16 son got out of a car parked in front of 7103 Mumford and  
 17 began mowing the lawn, and I walked over and introduced  
 18 myself under the thinking that he was the person that was  
 19 moving in there. He indicated to me that he was not, that  
 20 he was simply mowing the yard as a favor, that the  
 21 congregation was doing a favor for the gentleman that was  
 22 moving down from New York to live in the house.  
 23 Q. Do you know if that person you talked to in  
 24 June 2013 is a member of the congregation?  
 25 A. He said he was.

1 Q. But you don't know his name?  
 2 A. He said at the time -- and please understand  
 3 that I'm not sure I understood it to be a congregation.  
 4 Hearing people talk about a congregation was not something  
 5 that happened until later. I had been led to believe that  
 6 it was just a group of individuals that were planning to  
 7 meet at this -- what I thought to be an elderly gentleman  
 8 that was relocating from New York and had purchased this  
 9 house and that they would be meeting at his house.  
 10 Q. So have you now told me everything that any  
 11 member of the congregation has said to you that you  
 12 contend is misleading or untrue?  
 13 A. As best as I can recall, yes.  
 14 Q. I'm going to mark Exhibit 16 and hand it to you,  
 15 Mr. Schneider.  
 16 (Exhibit 16 marked.)  
 17 A. I've had a chance to review it.  
 18 Q. And do you recognize Exhibit 16?  
 19 A. I do.  
 20 Q. And have you produced this in this litigation?  
 21 A. I believe I did.  
 22 Q. Well, I'll represent to you that this was an  
 23 attachment to one of the e-mails that you produced. Do  
 24 you have any reason to question that?  
 25 A. Not at all. Very likely.

1 A. I've interchanged e-mails with a number of  
 2 individuals. I've provided some comments to some  
 3 reporters and TV -- members of TV stations regarding my  
 4 position on the lawsuit. And I can't remember their  
 5 names, but one was with the Dallas Observer. One was with  
 6 The Dallas Morning News. One was with Fox 4 News. I  
 7 believe there was one with NBC 5, and maybe a couple more.  
 8 Q. Any of your friends that don't reside in the  
 9 Highlands of McKamy that you've talked to?  
 10 A. Yes. The best man at my wedding, Grant  
 11 Sandground.  
 12 Q. Okay. And could you spell his name, please?  
 13 A. G-r-a-n-t. Last name Sandground,  
 14 S-a-n-d-g-r-o-u-n-d. He resides in the San Diego area and  
 15 he used to live in the neighborhood.  
 16 Got an e-mail, I think, from a gentleman up in  
 17 New York that follows religious land use cases. And I'm  
 18 sorry. I don't recall his name, but I suspect that that  
 19 correspondence should have been included in the production  
 20 that I provided.  
 21 There's been a few of my friends and  
 22 acquaintances that I've spoken to about the litigation.  
 23 Q. And who are they?  
 24 A. Let's see. Kurt Webb. K-u-r-t, W-e-b-b.  
 25 Q. Where does he live?

1 Q. And what is Exhibit 16?  
 2 A. This is a letter from the Liberty Institute to  
 3 Mr. Surratt regarding activities of the congregation at  
 4 7103 Mumford.  
 5 Q. And when did you first see this?  
 6 A. On February 2nd, 2014.  
 7 Q. If you see here the last full paragraph on the  
 8 first page, kind of close to the end of that there's a  
 9 sentence. It says, "The Gothelfs have no intention of  
 10 modifying the structure of the house, which is and will  
 11 remain a single family dwelling." Do you agree with the  
 12 part of that sentence -- well, let me rephrase that.  
 13 In that sentence Mr. Butterfield represented  
 14 that the Gothelfs had no intention of modifying the home  
 15 structure. Have you -- have there been any changes to the  
 16 home structure since the time of this letter?  
 17 A. No.  
 18 Q. And earlier we went through a list of people  
 19 that you've talked about this litigation with since  
 20 July 20th. I'd just like to back up a little and get a  
 21 different list that would overlap, but just individuals  
 22 that you've talked about just at any time the litigation.  
 23 And let's start with if there are people that are not  
 24 congregation members and not Highlands of McKamy residents  
 25 that you may have talked to.

1 A. He lives in Plano.  
 2 Glenn Breyerscheker. And I can't give you a  
 3 very good --  
 4 Q. You said Breyerscheker is the last name?  
 5 A. It's B-r-e-y-e-r-s-c-h-e-k-e-r. Something very  
 6 similar to that. I'm sorry.  
 7 Q. Is that a hyphenated name or --  
 8 A. It's one name. Glenn is his first name, and  
 9 it's spelled G-l-e-n-n.  
 10 Q. And the last name is Breyerscheker? I'm  
 11 probably not pronouncing that right. And where does he  
 12 live?  
 13 A. He lives in Murphy, I believe.  
 14 Let's see. I've mentioned it to my boss at  
 15 Hallmark Financial.  
 16 Q. What is his name?  
 17 A. Gregg, G-r-e-g-g, Birdsall, B-i-r-d-s-a-l-l.  
 18 And also my other boss there is named James  
 19 Damonte, D-a-m-o-n-t-e.  
 20 Q. Is that everyone?  
 21 A. You know, it seems like I've spoken about it to  
 22 a number of people besides that group, but I can't recall  
 23 any specific individuals at this time. I take that back.  
 24 I've spoken with my brother and sister-in-law, which is  
 25 Garron, G-a-r-r-o-n, and Lynn, L-y-n-n, Ross, R-o-s-s, who

1 live in Baton Rouge.

2 I've spoken about it with my stepdaughter and  
3 her husband, which is Emily and Kevin Riche, spelled  
4 R-i-c-h-e. And they live in Metairie, Louisiana. And if  
5 you don't know how to spell Metairie, it's  
6 M-e-t-a-i-r-i-e.

7 Q. Is there anyone else that you can remember right  
8 now?

9 A. I can't recall anybody else. I'm sure there  
10 must have been others, but I'm sorry, I can't remember any  
11 specific examples.

12 Q. And then as far as residents of the Highlands of  
13 McKamy, I assume that both in your capacity as a board  
14 member and just as a resident of the neighborhood that  
15 this has probably come up with lots of people.

16 A. Many people, sure.

17 Q. Are there -- you know, are there any individuals  
18 that would stand out to you as people that you've had,  
19 like, more lengthy discussions with in the neighborhood,  
20 like more than just a minute or two just updating?

21 A. The -- certainly the other board members.  
22 Please keep in mind that early on we made a decision to  
23 keep my involvement with the lawsuit segregated between  
24 two different hats that I wear, a member of the board of  
25 directors and when I was -- when I was a member of the

1 conversation you had with Mr. Frederick?

2 A. Certainly. He asked me why I filed the lawsuit,  
3 and I gave him the explanation and made sure he had an  
4 understanding of some of the relevant law that was  
5 involved. And he also had, separately, questions for me  
6 as president of the HOA that he asked me about. I can't  
7 recall any specific ones, but just trying to understand a  
8 little of the recent history and so forth. He's a  
9 longtime resident of the Highlands of McKamy, but I had  
10 not spent much time with him before he came over.

11 Q. And what about Mr. Sandground, what have you and  
12 he discussed?

13 A. Just that I've filed a lawsuit and my reasons  
14 for the lawsuit.

15 Q. And Mr. Webb?

16 A. Same thing.

17 Q. And Mr. Breyerschecker?

18 A. Yeah, same thing.

19 Q. And how about your bosses at Hallmark,  
20 Mr. Birdsall and Mr. Damonte?

21 A. The same thing, just that I'd filed a lawsuit,  
22 basic reasoning for the lawsuit and overview of the law  
23 involved.

24 Q. And they're fine with you missing work to attend  
25 to the lawsuit?

1 board of directors and when I was president. We made a  
2 decision for me not to be involved in the lawsuit itself.  
3 I recused myself from involvement in it, and they made  
4 sure not to bring anything to me or have any discussions  
5 with me about the lawsuit as board member, me being a  
6 board member. On the other hand, I was in a position to  
7 be able to talk freely with them as the plaintiff in this  
8 suit as I so desired. So I'm sure there's been many  
9 occasions where I've mentioned to them my intentions and  
10 my goals for the lawsuit.

11 Q. So other than the four board members, are there  
12 other residents of the neighborhood that you've had, you  
13 know, significant discussions with about the lawsuit?

14 A. There's a gentleman named Gordon Frederick who  
15 came over to my house one time and wanted to ask me a  
16 bunch of questions about it, which he came over to my  
17 house and I did answer them. And again, that was in my  
18 role as plaintiff in the lawsuit.

19 Q. And I'm sorry. I didn't hear you. Did you say  
20 you did answer them?

21 A. I answered his questions to the best of my  
22 ability.

23 Q. Is there anyone else?

24 A. I don't believe so.

25 Q. What -- could you just maybe walk me through the

1 A. I'm sure they would be -- would be happy if I  
2 was there any time of the day. No. They know that I'll  
3 be called away from time to time.

4 Q. Do you use vacation days, like, for example,  
5 when you have to come to a deposition like today?

6 A. I either -- if I don't make it up, then I use  
7 vacation time. So it sort of depends on how long it goes.  
8 Depending on how long it goes today depends on -- you're  
9 controlling my PTO balance.

10 Q. What do you do to make it up when you mentioned  
11 making it up?

12 A. Sometimes I'll come in on a Saturday, work extra  
13 on a Saturday. Sometimes come in early, sometimes stay  
14 late.

15 Q. And earlier you mentioned -- and I'm not sure if  
16 I'm getting your testimony right, so if I'm not, please  
17 correct me, but that you generally have discussed this  
18 suit and/or the congregation with your wife every week or  
19 two.

20 A. Sure.

21 Q. And what's generally included in those  
22 discussions?

23 A. Well, I like to give her an update on what's  
24 going on with motions, documentation, any trends or  
25 whatever in the suit.

1 Q. Is she interested in the suit?  
 2 A. Oh, yes. Absolutely.  
 3 Q. And I assume her views are the same as yours?  
 4 A. If not more so in terms of being very unhappy  
 5 with the presence of the congregation across the street.  
 6 Q. And has she mentioned anything to you about why  
 7 she's unhappy with the congregation?  
 8 A. Yes. She's unhappy with the foot traffic.  
 9 She's unhappy with the car traffic. There have been a  
 10 couple of incidences where members of the congregation  
 11 have exited the front of the building what I would call  
 12 something en masse, I guess, for lack of a better term,  
 13 and have grouped across the street under the lamp in a  
 14 rather unusual grouping. I really don't have any  
 15 counterpart for describing except to say that there's a  
 16 group of men kind of going around in a circle across the  
 17 street from the congregation, and that kind of surprised  
 18 us one evening when we were leaving the house to go out  
 19 for dinner. It seemed very odd and very unusual.  
 20 Q. And how many times you have seen that happen?  
 21 A. Twice.  
 22 Q. And how many people were involved?  
 23 A. Maybe a dozen.  
 24 Q. Does your wife have any documents that would be  
 25 related to the congregation or to this litigation?

1 version of what she does is she oversees nursing staff and  
 2 practices at about 15 or so surgical centers around Texas  
 3 and Oklahoma primarily.  
 4 Q. Did she ever consider joining you as a plaintiff  
 5 in the suit?  
 6 A. We never discussed it.  
 7 Q. Did you discuss -- prior to when you first filed  
 8 your suit, did you discuss with her that you were going to  
 9 be doing this?  
 10 A. Yes, I did.  
 11 Q. In the Highlands of McKamy, when there is --  
 12 when voting occurs for board members or just any vote of  
 13 the membership, how does -- what entitles an individual to  
 14 be able to vote?  
 15 A. They should be one of the homeowners listed in  
 16 the property records.  
 17 Q. And does each homeowner get a vote or does each  
 18 home get one vote collectively?  
 19 A. One vote per home or one vote per lot.  
 20 Q. So just to make sure I have that right, like if  
 21 I had a home in the Highlands of McKamy and I jointly hold  
 22 title with nine other people, we would just get -- we get  
 23 one vote, not -- we would not get 10 votes?  
 24 A. That's correct, one vote.  
 25 Q. And when a home is titled to more than one

1 A. I can't imagine -- as far as I know, no, and I  
 2 can't imagine her possibly having any document.  
 3 Q. What about e-mails?  
 4 A. I don't think so. I just tell her.  
 5 Q. How is the title to your home held?  
 6 A. It's in our names jointly. And because of the  
 7 fact that we were not married at the time, it's marked as  
 8 being in her maiden name. I take that back. It's not her  
 9 maiden name. It was her name before we got married, which  
 10 is not her maiden name.  
 11 Q. And what was that name?  
 12 A. Laura Strohmeyer, S-t-r-o-h-m-e-y-e-r.  
 13 Q. And is your wife employed?  
 14 A. Yes.  
 15 Q. Where is she employed?  
 16 A. She's employed at a company called Amsurg,  
 17 A-m-s-u-r-g.  
 18 Q. And is that some kind of medical business?  
 19 A. It is. They're based out of Nashville,  
 20 Tennessee, and her office is quite near mine. It probably  
 21 is in the city of Addison, but it might be in the city of  
 22 Dallas, but it's the corner of Keller Springs and the  
 23 Dallas Parkway.  
 24 Q. And what does she do at Amsurg?  
 25 A. She is senior clinical director. And the short

1 person, how is it determined how the vote is cast?  
 2 A. The normal rule is that whatever the latest  
 3 presented for that house is considered the one that  
 4 controls. So if a person of two -- two people attempted  
 5 to vote, I'm not sure if they were both present at a --  
 6 physically at a -- how you would tell one from the other,  
 7 pick one over the other if they were different votes,  
 8 although that would seem rather hard to imagine, but I  
 9 guess it could happen. But generally what happens is it's  
 10 set up in such a way that the most recent one is presented  
 11 and the case where there's, let's say, a proxy and a  
 12 person showing up. So one vote per house, whatever the  
 13 most recent is.  
 14 Q. And how do you and Mrs. Schneider determine  
 15 who's going to be casting a vote?  
 16 A. Oh, I'm going to be casting that vote.  
 17 Q. Why is that?  
 18 A. Because I'm going to be there at whatever it is  
 19 without any question. Sometimes she may come and  
 20 sometimes she may not, but I'm going to be there.  
 21 MR. McGEE: I'd just like to state for the  
 22 record, Mr. Schneider and Mr. Surratt, that we've -- today  
 23 Mr. Schneider has identified several people that we have  
 24 not heard about previously that, you know, we see as  
 25 potential witnesses and we're going to be looking into



1 possibly deposing some of them between now and  
 2 December 18th.  
 3 And I don't have a whole lot left, so I think we  
 4 can wrap up pretty quickly. Just a few more things. I'm  
 5 going to mark Exhibit 17.  
 6 (Exhibit 17 marked.)  
 7 Q. This is a longer e-mail chain, so take your time  
 8 if you want to look through it.  
 9 A. Okay.  
 10 Q. And do you recognize this document?  
 11 A. I do.  
 12 Q. And what is it?  
 13 A. It's an e-mail to Andy Jacobs, who at the time  
 14 was a member of the board of directors of the HOA, from  
 15 myself.  
 16 Q. And have you produced this in this litigation?  
 17 A. Yes.  
 18 Q. And I see at the top it looks like there's a cc  
 19 to HOM president and HOA board. So who else would have --  
 20 who would have received under those addresses?  
 21 A. That would have been Carolyn -- she goes by  
 22 Cookie -- Peadon, P-e-a-d-o-n. And the other members of  
 23 the HO board -- HOA board at that time was Viva Hershberg,  
 24 I believe is her last name, and Jim McQuagge, spelled  
 25 M-c-q-u-a-g-g-e. And I believe that's everybody who

1 the amount of work that was involved for another party  
 2 that was tagging along. On the other hand, it is clear  
 3 once Mr. Surratt got involved and I saw the nature of the  
 4 work that he was doing that that was wildly untenable as a  
 5 concept.  
 6 Q. So do you view yourself as lead counsel for the  
 7 HOA?  
 8 A. No. Of course not. Absolutely I'm not -- don't  
 9 have anything to do with the HOA's side of the lawsuit.  
 10 Q. Do you view yourself as lead counsel for your  
 11 own side of --  
 12 A. Oh, sure.  
 13 Q. -- the lawsuit?  
 14 A. Absolutely.  
 15 Q. What have you done that has helped keep HOA  
 16 legal costs to a minimum?  
 17 A. At this point I'm not sure I could point to  
 18 anything that have kept legal costs to a minimum. First  
 19 of all, I'm not privy to what legal costs are being  
 20 incurred on the part of the HOA; but, honestly, in  
 21 retrospect, I don't see that there's anything in  
 22 particular that I've done that has reduced HOA legal  
 23 costs.  
 24 Q. Do you think the HOA was relying on your  
 25 representations here when they decided to intervene in the

1 received this.  
 2 Q. And so this e-mail was sent at a time after the  
 3 time when you filed your original suit but before the HOA  
 4 had intervened; is that right?  
 5 A. That's correct.  
 6 Q. And you tell Mr. Jacobs here in the second  
 7 paragraph "The HOA can join my suit and I can continue as  
 8 lead counsel. I will do the majority of the work,  
 9 including discovery, depositions, interrogatories,  
 10 et cetera. That will keep HOA legal costs to a minimum."  
 11 Is that an accurate description of what has happened since  
 12 the HOA joined the suit?  
 13 A. No. That never worked like that and, honestly,  
 14 it never could have. I realize that now but I was being a  
 15 little bit optimistic and idealistic in my view of how it  
 16 would work were there to be different plaintiffs involved.  
 17 Q. And why did you tell Mr. Jacobs that you would  
 18 continue as lead counsel?  
 19 A. Well, I could never actually be truly lead  
 20 counsel when there are different plaintiffs, so that's  
 21 just wrong.  
 22 Q. And why did you say that to him?  
 23 A. I imagined a scenario where I would be able to  
 24 do the things that I'm going to do anyway, which I've done  
 25 all along, but imagined in my mind that that would reduce

1 suit?  
 2 A. Not in the least, no.  
 3 Q. And what do you base that on?  
 4 A. Well, for one thing, the members of the board  
 5 did not include Andy Jacobs or any of the previous members  
 6 of the board, which were the people that received this  
 7 document. I never provided anything like this, as far as  
 8 I can recall, to the other members of the board that were  
 9 in place at the time the HOA made the decision to move  
 10 forward with the lawsuit. Instead, they separately made  
 11 the arrangements with Mr. Surratt outside of my purview,  
 12 and so I didn't have anything to do with -- in leading  
 13 them to the decision to initiate litigation other than  
 14 perhaps that they saw by example that I started a lawsuit  
 15 myself.  
 16 Q. At the time you sent this e-mail to Andy Jacobs  
 17 and the rest of the HOA board, were you hopeful that this  
 18 e-mail would persuade them to join the suit?  
 19 A. I don't know that I had any hope of that. I was  
 20 just trying to find some way to get the HOA more involved.  
 21 But beyond that --  
 22 Q. By telling them, for example, that it would be  
 23 in their best interest to be a part of the suit?  
 24 A. I definitely tried to indicate to the board  
 25 members, Cookie, Andy and so forth, that it was in the

1 best -- HOA's best interest to join the suit, but I -- as  
 2 to the second paragraph, that really probably -- other  
 3 than it appearing in this particular document, I'm not  
 4 sure that I ever repeated that logic to anybody else.  
 5 Q. Have you received any payments from anyone in  
 6 connection with this suit?  
 7 A. It's not that I don't know the answer. Just  
 8 give me a moment --  
 9 Q. That's fine. Take your time.  
 10 A. -- to compose my thoughts here. Yes. The  
 11 answer is yes.  
 12 Q. And who have you received payments from?  
 13 A. Ted Day for \$300, Jan Sullivan for \$300.  
 14 Q. Let's take them one by one. How did you come to  
 15 receive \$300 from Ted Day?  
 16 A. He offered to give me some money to contribute  
 17 to the expenses of the lawsuit and he brought by a check  
 18 and gave it to me.  
 19 Q. And did you accept that check?  
 20 A. I did.  
 21 Q. What about Ms. Sullivan?  
 22 A. Same thing. Same exact. She offered to give me  
 23 some money and she gave me a check.  
 24 Q. For \$300?  
 25 A. \$300.

1 help defray expenses.  
 2 Q. I'm marking Exhibit 18.  
 3 (Exhibit 18 marked.)  
 4 A. Okay.  
 5 Q. And what is Exhibit 18?  
 6 A. This is an e-mail from myself to Aaron  
 7 Orshalick, Marilyn Frey, and Jan Sullivan.  
 8 Q. And have you produced this e-mail --  
 9 A. Yes.  
 10 Q. -- in this litigation?  
 11 And kind of what's the substance of your e-mail,  
 12 just this top one on the chain? Like what's the back  
 13 story to it?  
 14 A. Well, there had been some requests from a Dallas  
 15 Morning News reporter, Julissa Treviño, to talk to some  
 16 people and get some background for a story she was writing  
 17 for The Dallas Morning News, and I gave her a couple of  
 18 names of some people that I thought might be willing to  
 19 talk to her.  
 20 Q. And what's -- what do you mean when you tell  
 21 them to skip past questions about religious freedom, it's  
 22 a property issue, plain and simple?  
 23 A. I guess that most of us see this as a property  
 24 issue, contract law, and not a question of religious  
 25 freedom. I'm sure all the individuals that I'm familiar

1 Q. And is it your understanding that that money was  
 2 for the legal work that you're doing in the lawsuit?  
 3 A. To defray expenses.  
 4 Q. So is it your understanding that both of these  
 5 individuals, Mr. Day and Ms. Sullivan, that their views  
 6 would be generally aligned with your own?  
 7 A. That's accurate.  
 8 Q. And they were -- they're appreciative of the  
 9 legal work that you're doing to try to --  
 10 A. Yes. And Ms. Sullivan no longer resides in  
 11 Highlands of McKamy. She has sold her house and left.  
 12 Q. And where does she live now?  
 13 A. She lives over in the Bonaventure townhomes over  
 14 on Keller Springs.  
 15 Q. Have you solicited any payments from anyone?  
 16 A. No, I have not.  
 17 Q. When these were offered to you, did you consider  
 18 not accepting the money?  
 19 A. No.  
 20 Q. And why not?  
 21 A. I did not feel there's anything wrong with  
 22 somebody contributing to my expenses.  
 23 Q. So if additional neighbors were to offer you  
 24 money for your legal work, would you accept it?  
 25 A. I wouldn't use the word "for legal work," but to

1 with are very much supportive of religious freedom.  
 2 Q. So you're advising them about what they should  
 3 say to the press about the law?  
 4 A. Not really.  
 5 Q. And what do you mean by skip past questions  
 6 about religious freedom, it's a property issue?  
 7 A. It's not -- I mean, it's -- I don't know what  
 8 you mean by not telling them what to talk about the law.  
 9 There's no discussion of really the law so much as I  
 10 really think that the existence of the synagogue at 7103  
 11 is an issue that involves -- revolves around  
 12 nonresidential use in a residentially restricted area, and  
 13 I believe that's the tenor of almost everybody I talked to  
 14 that feels in the same general way as I do is that we're  
 15 not -- we don't have anything against somebody because of  
 16 their religion or anything related to religion. We just  
 17 want a residential single family to live in the house at  
 18 7103, plain and simple. I don't know any other way to say  
 19 it.  
 20 Q. But are you -- in this e-mail you are  
 21 anticipating that they might get questions from the press  
 22 about religious freedom issues?  
 23 A. Certainly.  
 24 Q. And your advice to them is that they should skip  
 25 past those questions?

1 A. I guess. I guess it's advice.  
 2 Q. Because your understanding of the law is that  
 3 this is not a religious freedom issue?  
 4 A. Yes. Certainly. And since -- I guess to  
 5 clarify your point, there had been a lot of focus in the  
 6 articles that had come out about the religious issue. For  
 7 example, a number of the television and media coverage  
 8 mentioned that -- had a title something to the effect of  
 9 neighbor sues rabbi. And, in fact, I did not sue Rabbi  
 10 Rich, I sued the congregation of which he is a member of,  
 11 and the headline of "neighbor sues rabbi" sounds a lot  
 12 more -- I guess it's a better sound bite or whatever.  
 13 So there had been a lot of focus on whether or  
 14 not my lawsuit somehow violated the first amendment rights  
 15 that people have, and so I was trying to -- I believe  
 16 today the same thing I would tell everybody that would  
 17 listen, that this is a contract issue, it's a property law  
 18 issue and has little or nothing to do with religious  
 19 freedom.  
 20 Q. So essentially you -- you researched the law and  
 21 based on that advised -- advised these recipients that  
 22 they should skip past questions about religious freedom?  
 23 A. I wouldn't say there is anything about, again,  
 24 the law side of it. I mean, think of it any way you want  
 25 to. I choose to think of it in terms of trying to focus

1 1:05 p.m.  
 2 Q. Mr. Schneider, I've just got a couple more  
 3 questions and then I'm done.  
 4 Earlier you testified about how you had -- since  
 5 July 20th you had discussed the case with your son, your  
 6 daughter, your mom and dad and your sister and her  
 7 boyfriend, and for those individuals I'd just like to get  
 8 their names and where they live.  
 9 A. Sure. My sister is Susan White of Boulder,  
 10 Colorado. Her boyfriend is Bobby Carlton, C-a-r-l-t-o-n,  
 11 of Loveland -- I'm sorry. I think it's Fort Collins,  
 12 Colorado. And my parents live in Highland Park, and  
 13 that's Hal and Mary Jo, M-a-r-y, separate word, J-o,  
 14 Schneider, S-c-h-n-e-i-d-e-r. Well, you know that.  
 15 Let's see. My daughter is Amanda Schneider. My  
 16 sons are Flint Schneider of -- he lives in Corpus Christi.  
 17 Eric Schneider and Steven Strohmeier.  
 18 Q. And where do Amanda, Eric and Steven live?  
 19 A. Steven lives with me and Amanda lives in  
 20 Grapevine with her mother, and Eric is a student and lives  
 21 in Denton.  
 22 Q. A student at UNT?  
 23 A. He is.  
 24 MR. McGEE: That's all I have. Thank you,  
 25 Mr. Schneider.

1 anybody who reads anything -- and again, I would say the  
 2 same thing to any reporter sitting here or anybody  
 3 anywhere that's a member of the HOA, that this is a  
 4 contract issue, property issue, and that's what the focus  
 5 of all this is and certainly there's no intention to in  
 6 any way restrict or abrogate somebody's religious freedom  
 7 or their rights to their religion.  
 8 Q. And those views are based on your research into  
 9 the law?  
 10 A. Certainly they're colored by that; but, again,  
 11 any way you look at it, I would say the same thing. I  
 12 somewhat object to the reference to the legal side of it  
 13 because there are more issues there than just pure legal  
 14 issues; it's public relations and so forth.  
 15 MR. McGEE: I think I may -- I may be  
 16 finished. If it's okay, I'd like to take a short break,  
 17 look over my notes, and then there will be a chance for  
 18 Mr. Butterfield and Mr. Surratt to ask questions if that's  
 19 okay.  
 20 THE VIDEOGRAPHER: We're off the record at  
 21 12:55 p.m.  
 22 MR. McGEE: I think we can go off the  
 23 record.  
 24 (Recess taken.)  
 25 THE VIDEOGRAPHER: We're on the record at

1 I'll pass the witness.  
 2 MR. BUTTERFIELD: I have no questions.  
 3 MR. SURRATT: The intervening plaintiff  
 4 will reserve their questions until time of hearing or  
 5 trial.  
 6 THE VIDEOGRAPHER: We're off the record at  
 7 1:07 p.m.  
 8 (Deposition concluded.)  
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Page 98

1 CHANGES AND SIGNATURE

2

3 WITNESS NAME: \_\_\_\_\_ DATE OF DEPOSITION: \_\_\_\_\_

4 PAGE LINE CHANGE REASON

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Page 100

1 CAUSE NO. 429-04998-2013

2 DAVID R. SCHNEIDER, § IN THE DISTRICT COURT

3 Plaintiff, §

4 v. §

5 JUDITH D. GOTHELF, MARK B. §

6 GOTHELF, AND CONGREGATION §

7 TORAS CHAIM, INC., §

8 Defendants. §

9 and § 429TH JUDICIAL DISTRICT

10 §

11 HIGHLANDS OF McKAMY IV AND §

12 V COMMUNITY IMPROVEMENT §

13 ASSOCIATION, §

14 Intervening Plaintiff, §

15 v. §

16 JUDITH D. GOTHELF AND §

17 MARK B. GOTHELF, §

18 Defendants. § OF COLLIN COUNTY, TEXAS

19

20 REPORTER'S CERTIFICATION

21 ORAL AND VIDEOTAPED DEPOSITION OF DAVID R. SCHNEIDER

22 AUGUST 5, 2014

23

24 I, Jamie Prince Hess, Certified Shorthand Reporter in

25 and for the State of Texas, hereby certify to the

following:

That the witness, DAVID R. SCHNEIDER, was duly sworn

and that the transcript of the deposition is a true record

of the testimony given by the witness;

That the deposition transcript was submitted on

\_\_\_\_\_ to the witness or to the attorney for the

witness for examination, signature, and return to me by

Page 99

1 I, DAVID R. SCHNEIDER, have read the foregoing

2 deposition and hereby affix my signature that same is true

3 and correct, except as noted above.

4

5 \_\_\_\_\_

6 DAVID R. SCHNEIDER

7 THE STATE OF \_\_\_\_\_)

8 COUNTY OF \_\_\_\_\_)

9

10 Before me, \_\_\_\_\_, on this day

11 personally appeared DAVID R. SCHNEIDER, known to me or

12 proved to me on the oath of \_\_\_\_\_ or through

13 \_\_\_\_\_ (description of identity card or

14 other document) to be the person whose name is subscribed

15 to the foregoing instrument and acknowledged to me that

16 he/she executed the same for the purpose and consideration

17 therein expressed.

18 Given under my hand and seal of office on this

19 \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

20

21

22 \_\_\_\_\_

23 NOTARY PUBLIC IN AND FOR

24 THE STATE OF \_\_\_\_\_

25 My Commission Expires \_\_\_\_\_

Page 101

1 \_\_\_\_\_

2 That the amount of time used by each party at the

3 time of the deposition is as follows:

4 MR. MATT McGEE - 02:52

5 MR. JUSTIN E. BUTTERFIELD - 00:00

6 MR. DAVID A. SURRATT - 00:00

7

8 That pursuant to information given to the deposition

9 officer at the time said testimony was taken, the

10 following includes counsel for all parties of record:

11 FOR THE PLAINTIFF:

12 Mr. David R. Schneider (Pro Se)

13 7035 Mumford

14 Dallas, Texas 75252

15 FOR THE DEFENDANT CONGREGATION TORAS CHAIM:

16 Mr. Matt McGee

17 Haynes and Boone, LLP

18 2323 Victory Avenue

19 Suite 700

20 Dallas, Texas 75219

21 FOR THE DEFENDANTS CONGREGATION TORAS CHAIM, JUDITH D.

22 GOTHELF AND MARK B. GOTHELF:

23 Mr. Justin E. Butterfield

24 Liberty Institute

25 2001 Plano Parkway

Suite 1600

Plano, Texas 75075

FOR THE INTERVENOR HIGHLANDS OF McKAMY IV AND V COMMUNITY

IMPROVEMENT ASSOCIATION:

Mr. David A. Surratt

Riddle & Williams, PC

3710 Rawlins Street

Suite 1400

Dallas, Texas 75219

1 I further certify that I am neither counsel for,  
2 related to, nor employed by any of the parties in the  
3 action in which this proceeding was taken, and further  
4 that I am not financially or otherwise interested in the  
5 outcome of this action.

6 Further certification requirements pursuant to  
7 Rule 203 of the Texas Code of Civil Procedure will be  
8 complied with after they have occurred.

9 Certified to by me on this \_\_\_\_\_ day of  
10 \_\_\_\_\_,  
11 \_\_\_\_\_.

13 JAMIE PRINCE HESS, TEXAS CSR #6761  
14 Expiration Date: 12/31/14  
15 CSI GLOBAL DEPOSITION SERVICES  
16 Firm Registration No. 526  
17 4950 N. O'Connor Road, Suite 152  
18 Irving, Texas 75062-2778  
19 972.719.5000  
20 972.650.0225 Fax  
21  
22  
23  
24  
25

1 FURTHER CERTIFICATION UNDER TRCP RULE 203

2  
3 The original deposition was/was not returned to the  
4 deposition officer on \_\_\_\_\_.

5 If returned, the attached Changes and Signature  
6 page(s) contain(s) any changes and the reasons therefor.

7 If returned, the original deposition was delivered to  
8 Mr. Mark McGee, Custodial Attorney.

9 \$ \_\_\_\_\_ is the deposition officer's charges to the  
10 Dependant Congregation Texas Chaim for preparing the  
11 original deposition and any copies of exhibits;

12 The deposition was delivered in accordance with Rule  
13 203.3, and a copy of this certificate, served on all  
14 parties shown herein, was filed with the Clerk.

15 Certified to by me on this \_\_\_\_\_ day of  
16 \_\_\_\_\_,  
17 \_\_\_\_\_.

18  
19  
20 JAMIE PRINCE HESS, TEXAS CSR #6761  
21 Expiration Date: 12/31/14  
22 CSI GLOBAL DEPOSITION SERVICES  
23 Firm Registration No. 526  
24 4950 N. O'Connor Road, Suite 152  
25 Irving, Texas 75062-2778  
972.719.5000  
972.650.0225 Fax

**DAVID R. SCHNEIDER**  
**August 5, 2014**

1 CAUSE NO. 429-04998-2013  
2 DAVID R. SCHNEIDER, § IN THE DISTRICT COURT  
3 Plaintiff, §  
4 v. §  
5 JUDITH D. GOTHELF, MARK B. §  
6 GOTHELF, AND CONGREGATION §  
7 TORAS CHAIM, INC., §  
8 Defendants. §  
9 and § 429TH JUDICIAL DISTRICT  
10 §  
11 HIGHLANDS OF MCKAMY IV AND §  
12 V COMMUNITY IMPROVEMENT §  
13 ASSOCIATION, §  
14 Intervening Plaintiff, §  
15 v. §  
16 JUDITH D. GOTHELF AND §  
17 MARK B. GOTHELF, §  
18 Defendants. § OF COLLIN COUNTY, TEXAS  
19

14 REPORTER'S CERTIFICATION  
15 ORAL AND VIDEOTAPED DEPOSITION OF DAVID R. SCHNEIDER  
16 AUGUST 5, 2014

17 I, Jamie Prince Hess, Certified Shorthand Reporter in  
18 and for the State of Texas, hereby certify to the  
19 following:

20 That the witness, DAVID R. SCHNEIDER, was duly sworn  
21 and that the transcript of the deposition is a true record  
22 of the testimony given by the witness;

23 That the deposition transcript was submitted on  
24 August 13, 2014 to the witness or to the attorney for the  
25 witness for examination, signature, and return to me by

**CSI GLOBAL DEPOSITION SERVICES**  
**972-719-5000**

**DAVID R. SCHNEIDER**  
**August 5, 2014**

1 September 8, 2014.

2 That the amount of time used by each party at the  
3 time of the deposition is as follows:

4 MR. MATT MCGEE - 02:52  
5 MR. JUSTIN E. BUTTERFIELD - 00:00  
6 MR. DAVID A. SURRATT - 00:00

7 That pursuant to information given to the deposition  
8 officer at the time said testimony was taken, the  
9 following includes counsel for all parties of record:

10 FOR THE PLAINTIFF:

11 Mr. David R. Schneider (Pro Se)  
12 7035 Mumford  
13 Dallas, Texas 75252

13 FOR THE DEFENDANT CONGREGATION TORAS CHAIM:

14 Mr. Matt McGee  
15 Haynes and Boone, LLP  
16 2323 Victory Avenue  
17 Suite 700  
18 Dallas, Texas 75219

17 FOR THE DEFENDANTS CONGREGATION TORAS CHAIM, JUDITH D.  
18 GOTHELF AND MARK B. GOTHELF:

19 Mr. Justin E. Butterfield  
20 Liberty Institute  
21 2001 Plano Parkway  
22 Suite 1600  
23 Plano, Texas 75075

22 FOR THE INTERVENOR HIGHLANDS OF MCKAMY IV AND V COMMUNITY  
23 IMPROVEMENT ASSOCIATION:

23 Mr. David A. Surratt  
24 Riddle & Williams, PC  
25 3710 Rawlins Street  
Suite 1400  
Dallas, Texas 75219

**CSI GLOBAL DEPOSITION SERVICES**  
**972-719-5000**

**DAVID R. SCHNEIDER**

**August 5, 2014**

1 I further certify that I am neither counsel for,  
2 related to, nor employed by any of the parties in the  
3 action in which this proceeding was taken, and further  
4 that I am not financially or otherwise interested in the  
5 outcome of this action.

6 Further certification requirements pursuant to  
7 Rule 203 of the Texas Code of Civil Procedure will be  
8 complied with after they have occurred.

9 Certified to by me on this 13<sup>th</sup> day of  
10 August, 2014.

11

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JAMIE PRINCE HESS, TEXAS CSI  
Expiration Date: 12/31/14  
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**CSI GLOBAL DEPOSITION SERVICES**  
972-719-5000



DAVID R. SCHNEIDER  
August 5, 2014

1 FURTHER CERTIFICATION UNDER TRCP RULE 203

2

3 The original deposition was/was not returned to the  
4 deposition officer on Sept 8, 2014.

5 If returned, the attached Changes and Signature  
6 page(s) contain(s) any changes and the reasons therefor.

7 If returned, the original deposition was delivered to  
8 Mr. Matt McGee, Custodial Attorney.

9 \$ 835<sup>00</sup> is the deposition officer's charges to the  
10 Defendant Congregation Toras Chaim for preparing the  
11 original deposition and any copies of exhibits;

12 The deposition was delivered in accordance with Rule  
13 203.3, and a copy of this certificate, served on all  
14 parties shown herein, was filed with the Clerk.

15 Certified to by me on this 9 day of  
16 Sept, 2014.

17

18

19

20

21

22

23

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25



JAMIE PRINCE HESS, TEXAS CSR #6761  
Expiration Date: 12/31/14  
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972.650.0225 Fax

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972-719-5000

**DAVID R. SCHNEIDER**  
**August 5, 2014**

1	CHANGES AND SIGNATURE		
2			
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**CSI GLOBAL DEPOSITION SERVICES**  
**972-719-5000**

**DAVID R. SCHNEIDER**

**August 5, 2014**

1 I, DAVID R. SCHNEIDER, have read the foregoing  
2 deposition and hereby affix my signature that same is true  
3 and correct, except as noted above.

4

5

\_\_\_\_\_  
DAVID R. SCHNEIDER

6

7 THE STATE OF \_\_\_\_\_)

8 COUNTY OF \_\_\_\_\_)

9

10 Before me, \_\_\_\_\_, on this day  
11 personally appeared DAVID R. SCHNEIDER, known to me or  
12 proved to me on the oath of \_\_\_\_\_ or through  
13 \_\_\_\_\_ (description of identity card or  
14 other document) to be the person whose name is subscribed  
15 to the foregoing instrument and acknowledged to me that  
16 he/she executed the same for the purpose and consideration  
17 therein expressed.

18 Given under my hand and seal of office on this  
19 \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

20

21

22

\_\_\_\_\_  
NOTARY PUBLIC IN AND FOR  
THE STATE OF \_\_\_\_\_  
My Commission Expires \_\_\_\_\_

23

24

25

**CSI GLOBAL DEPOSITION SERVICES**  
**972-719-5000**

# **EXHIBIT K**



January 31, 2014

Via E-Mail

David A. Surratt  
Riddle & Williams, P.C.  
3710 Rawlins Street, Suite 1400  
Dallas, Texas 75219  
dsurratt@riddleandwilliams.com

Re: 7103 Mumford Court, Dallas, Texas, in the Highlands of McKamy HOA

Dear Mr. Surratt:

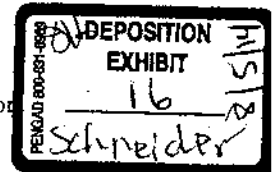
As you are aware, the Congregation Toras Chaim is a small Jewish congregation that holds meetings at several homes in the Dallas area, including at the home owned by Mark and Judith Gothelf at 7103 Mumford Court. Although the Gothelfs do not currently reside at 7103 Mumford Court, Avrohom Moshe Rich lives there and uses the home as his personal residence. Mr. Rich, with the Gothelfs' permission, has made the home available for Congregation meetings. On average, only 10 to 25 people attend a meeting.

In December 2013, a neighbor of the Gothelfs, David Schneider, filed a lawsuit against the Gothelfs and the Congregation seeking to enjoin them from using the home for Congregation meetings. The lawsuit claims that these meetings violate the restrictive covenants that are appurtenant to the home and that were established along with the Highlands of McKamy IV and V Community Improvement Association (the "HOA"). The Liberty Institute is representing the Congregation and the Gothelfs. The Congregation has retained the law firm of Haynes and Boone, LLP to defend itself in this action.

The Gothelfs believe that inviting members of the Congregation to the home for small meetings does not violate any restrictive covenant. The Gothelfs and Mr. Rich, moreover, have every intention of complying with the covenants and of being good neighbors, and have taken steps to remedy many of Mr. Schneider's concerns. For example, the pile of dirt that Mr. Schneider noted has been removed. Mr. Schneider claims that the Gothelfs have violated the single family dwelling restriction, but that concerns the architectural integrity of the home. And the Gothelfs have no intention of modifying the structure of the house, which is and will remain a single family dwelling. That covenant certainly does not prevent the Gothelfs or Mr. Rich from inviting guests to their homes for religious meetings.

The Gothelfs hope to avoid litigation with the HOA. They understand the concerns of the HOA in this matter, and they do not believe it would be constructive for the HOA to intervene in this limited dispute with Mr. Schneider. In the first place, the issue of whether the Gothelfs' use of the property violates the restrictive covenants will

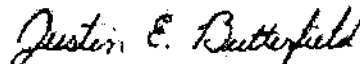
2001 West Plano Parkway, Suite 1600 • Plano, Texas 75075 • Phone: 972.941.4444 • LibertyInstitute.org



be resolved in the Schneider lawsuit whether or not the HOA intervenes. We do not, however, believe that the court need determine any issue beyond whether Mr. Schneider's cited provisions are architectural in nature. There are, however, dozens of properties in the community being used for non-residential purposes, and the HOA has made no attempt to enjoin these uses. Lastly, based on the HOA's history, status, and its refusal to enjoin other non-residential uses in the community, if the HOA decides to intervene, it may face liability under the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. §§ 2000cc, *et seq.* See, e.g., *Congregation Etz Chaim v. City of Los Angeles*, No. 10-1587 (C.D. Cal., May 15, 2013) (an Orthodox Jewish congregation received \$950,000 in attorneys fees and costs resulting from their RLUIPA lawsuit seeking to use a residential property as a synagogue).

If you would like to discuss further, please do not hesitate to contact me.

Sincerely,

  
Justin E. Butterfield  
Senior Counsel

# EXHIBIT L

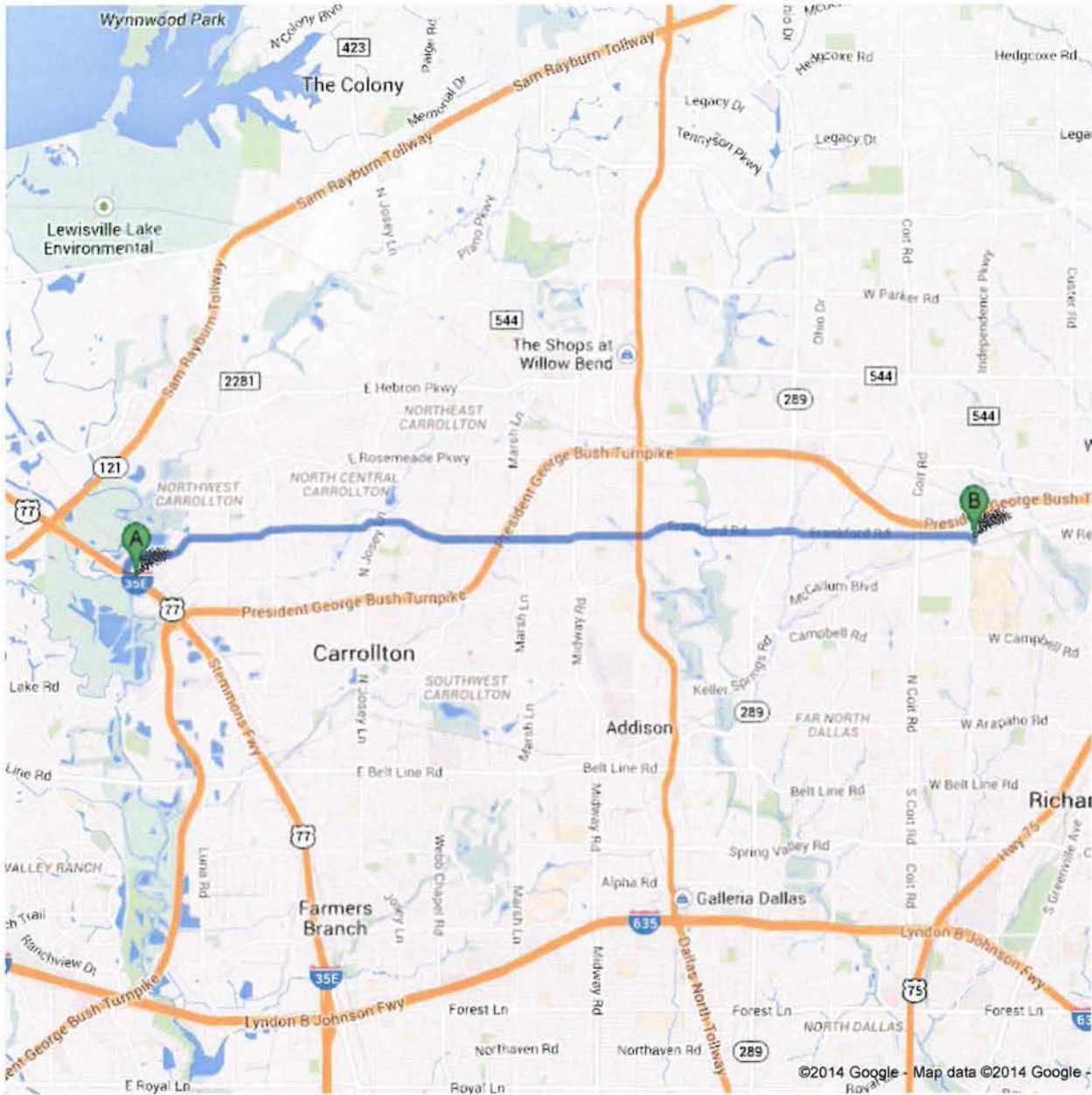





# EXHIBIT M



**Directions to Frankford Rd & Waterview Pkwy,  
Richardson, TX 75080**  
11.4 mi – about 23 mins




 Carrollton, TX 75007

---

1. Head **northwest** on **W Frankford Rd**  
About 23 mins

go 11.4 mi  
total 11.4 mi

 Frankford Rd & Waterview Pkwy, Richardson, TX 75080

---

These directions are for planning purposes only. You may find that construction projects, traffic, weather, or other events may cause conditions to differ from the map results, and you should plan your route accordingly. You must obey all signs or notices regarding your route.

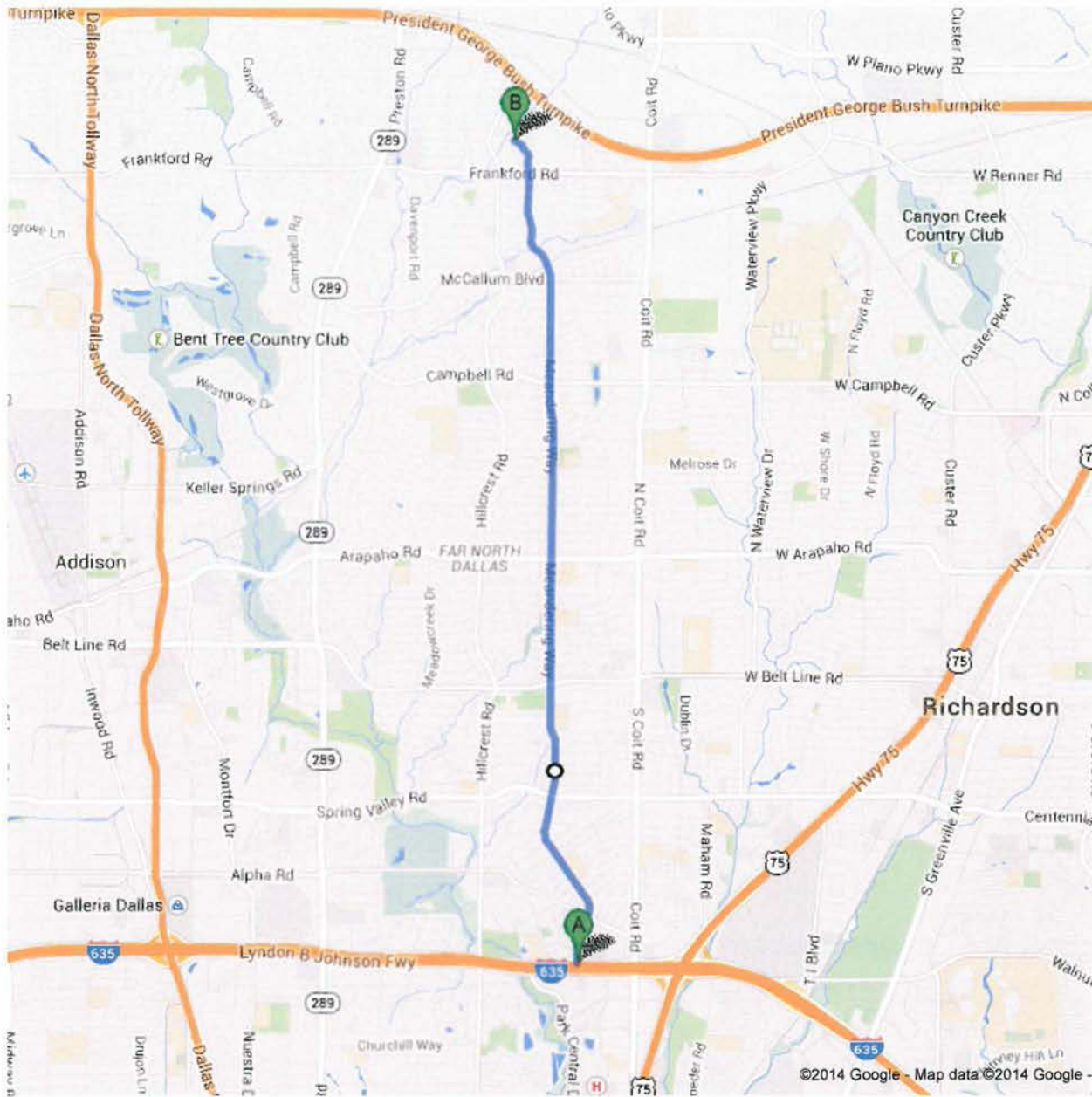
Map data ©2014 Google

Directions weren't right? Please find your route on [maps.google.com](http://maps.google.com) and click "Report a problem" at the bottom left.

# EXHIBIT N



**Directions to Meandering Way & Dogwood  
Creek Ln, Dallas, TX**  
5.5 mi – about 15 mins







Interstate 635 Service Rd & Meandering Way, Dallas, TX

- 1. Head **north** on **Meandering Way** toward **Thistle Ln**  
 Partial restricted usage road  
 About 15 mins

go 5.5 mi  
total 5.5 mi



Meandering Way & Dogwood Creek Ln, Dallas, TX

These directions are for planning purposes only. You may find that construction projects, traffic, weather, or other events may cause conditions to differ from the map results, and you should plan your route accordingly. You must obey all signs or notices regarding your route.

Map data ©2014 Google

Directions weren't right? Please find your route on [maps.google.com](http://maps.google.com) and click "Report a problem" at the bottom left.

# **EXHIBIT O**

1 CAUSE NO. 429-04998-2013  
2 DAVID R. SCHNEIDER, § IN THE DISTRICT COURT  
Plaintiff, §  
3 §  
v. §  
4 §  
JUDITH D. GOTHELF, MARK B. §  
5 GOTHELF, AND CONGREGATION §  
TORAS CHAIM, INC., §  
6 Defendants. §  
§  
7 and § 429TH JUDICIAL DISTRICT  
§  
8 HIGHLANDS OF MCKAMY IV AND §  
V COMMUNITY IMPROVEMENT §  
9 ASSOCIATION, §  
Intervening Plaintiff, §  
10 §  
v. §  
11 §  
JUDITH D. GOTHELF AND §  
12 MARK B. GOTHELF, §  
Defendants. § OF COLLIN COUNTY, TEXAS

13  
14  
15 -----  
16 ORAL AND VIDEOTAPED DEPOSITION OF  
17 THEODORE E. DAY  
18 AUGUST 8, 2014  
19 -----  
20  
21

22 ORAL AND VIDEOTAPED DEPOSITION OF THEODORE E.  
23 DAY, produced as a witness at the instance of the  
24 Defendant Congregation Toras Chaim and duly sworn, was  
25 taken in the above-styled and numbered cause on August 8,



Page 2

1 2014, from 10:07 a.m. to 12:29 p.m., before Jamie Prince  
 2 Hess, Certified Shorthand Reporter in and for the State of  
 3 Texas, reported by computerized stenotype machine at  
 4 Haynes and Boone, LLP, 2323 Victory Avenue, Suite 700,  
 5 Dallas, Texas 75219, pursuant to the Texas Rules of Civil  
 6 Procedure and the provisions stated on the record or  
 7 attached hereto.  
 8  
 9  
 10  
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A P P E A R A N C E S

1  
 2  
 3 FOR THE DEFENDANT CONGREGATION TORAS CHAIM:  
 4 Mr. Matt McGee  
 Haynes and Boone, LLP  
 5 2323 Victory Avenue  
 Suite 700  
 6 Dallas, Texas 75219  
 214.651.5000  
 7 matt.mcgee@haynesboone.com  
 8 FOR THE DEFENDANTS CONGREGATION TORAS CHAIM, JUDITH D.  
 GOTHELF AND MARK B. GOTHELF:  
 9  
 Mr. Justin E. Butterfield  
 10 Liberty Institute  
 2001 Plano Parkway  
 Suite 1600  
 11 Plano, Texas 75075  
 972.941.4444  
 jbutterfield@libertyinstitute.org  
 12  
 13 FOR THE INTERVENOR HIGHLANDS OF MCKAMY IV AND V COMMUNITY  
 IMPROVEMENT ASSOCIATION:  
 14 Mr. David A. Surratt  
 Riddle & Williams, PC  
 15 3710 Rawlins Street  
 Suite 1400  
 16 Dallas, Texas 75219  
 214.760.6766  
 17 dsurratt@riddleandwilliams.com  
 18 ALSO PRESENT:  
 19 Mr. Randy Johnson, the videographer  
 20  
 21  
 22  
 23  
 24  
 25

Page 5

1 THE VIDEOGRAPHER: We're now on the record  
 2 for the video deposition of Ted Day. The time is  
 3 10:07 a.m. It is August 8th, 2014.  
 4 Will the court reporter please administer the  
 5 oath?  
 6 (Witness sworn.)  
 7 MR. McGEE: I'm Matt McGee for the  
 8 Defendant Congregation Toras Chaim, Inc.  
 9 MR. BUTTERFIELD: I'm Justin Butterfield  
 10 for Defendant Congregation Toras Chaim, Inc. and for Mark  
 11 and Judith Gothef.  
 12 MR. SURRATT: David Surratt for Highlands  
 13 of McKamy IV and V Community Improvement Association.  
 14 THEODORE E. DAY,  
 15 having been first duly sworn, testified as follows:  
 16 EXAMINATION  
 17 BY MR. MCGEE:  
 18 Q. Good morning, Mr. Day. Will --  
 19 A. Good morning.  
 20 Q. -- you please let us know your full name?  
 21 A. My full name is Theodore Eugene Day.  
 22 Q. And you and I just met for the first time this  
 23 morning?  
 24 A. That's fair to say. I've seen you in court  
 25 before.

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1 Q. And do you understand that the oath you just  
2 took is made under penalty of perjury?  
3 A. Yes.  
4 Q. And that it's the same kind of oath as if you  
5 were testifying in court?  
6 A. Yes.  
7 Q. And that the oath requires you to answer my  
8 questions truthfully and completely to the best of your  
9 ability?  
10 A. Yes.  
11 Q. And do you agree to do that?  
12 A. Yes.  
13 Q. Have you ever been deposed before?  
14 A. Yes.  
15 Q. Okay. And what were the circumstances?  
16 A. On the occasion of my testifying as an expert  
17 witness in some lawsuits involving financial damages.  
18 Q. About how many times have you had your  
19 deposition taken, just your best estimate?  
20 A. My best estimate would be twice.  
21 Q. Have you ever testified in court before?  
22 A. Yes.  
23 Q. And how many times?  
24 A. Twice in court and once before a special master.  
25 Q. And what were those circumstances of those --

Page 7

1 the testimony in those instances?  
2 A. All of my testimony involved expert testimony  
3 regarding financial damages, or I should really say  
4 valuations would be probably a more appropriate word for a  
5 couple of the cases.  
6 Q. And what kinds of cases were these?  
7 A. One case involved a liquidation precipitated by  
8 the withdrawal of a line of credit. Another was a divorce  
9 proceeding that involved the valuation of a franchise for  
10 hearing aids. And the other one that I recall was a  
11 personal injury case that involved the value of lost  
12 earnings.  
13 Q. Okay. And we may circle back to some of those  
14 later, but first I'd just like to go through a few  
15 additional ground rules.  
16 So the court reporter here is going to be taking  
17 down everything we say, and so I'll just request that you  
18 answer all my questions verbally, not with nods or  
19 gestures.  
20 A. Sure. If I nod or gesture, just ask me to state  
21 it and I'll be pleased to do that.  
22 Q. Yes. Fair enough.  
23 And if I ever ask you a question that you don't  
24 understand, please ask me to rephrase or repeat it --  
25 A. Sure.

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1 Q. -- and I'll try to do that. And is it fair for  
2 me to assume that if you don't tell me that you don't  
3 understand a question, that you do understand it?  
4 A. I'm not sure that's necessarily true.  
5 Q. Well, I'm going to ask you if you -- anytime you  
6 don't understand a question to let me know that you don't  
7 understand it.  
8 A. And I'll try to do that, but occasionally there  
9 will be cases where I think I understand your question and  
10 you don't think I understand your question. So I'm glad  
11 to work with you on that.  
12 Q. Okay. Fair enough. As long as you're -- as  
13 long as you're willing to tell me anytime you think you  
14 don't understand a question. Will you agree to do that?  
15 A. Sure.  
16 Q. And if you need a break at any time, let me know  
17 and we'll accommodate that at the next available --  
18 A. Okay.  
19 Q. -- opportunity. And just while we're talking,  
20 please let's try not to talk over each other. Let me  
21 finish so that the transcript reads smoothly.  
22 Sometimes Mr. Surratt may state an objection to  
23 one of my questions, and that's an issue between the  
24 lawyers and for the judge to possibly decide later; but  
25 unless he instructs you not to answer, you can still

Page 9

1 answer my question even if he objects to it.  
2 Is there anything about your physical, mental or  
3 emotional condition that would prevent you from  
4 understanding my questions?  
5 A. No.  
6 Q. And if that changes, will you let me know?  
7 A. Yes.  
8 Q. And is there anything about your physical,  
9 mental or emotional condition that would prevent you from  
10 giving truthful and complete answers?  
11 A. No.  
12 Q. And if that changes, will you let me know?  
13 A. Yes.  
14 Q. And are you currently on any medications that  
15 might prevent you from understanding my questions or --  
16 A. No.  
17 Q. -- answering truthfully?  
18 Please wait for me to finish the questions.  
19 So would you repeat your answer?  
20 A. No.  
21 Q. And, Mr. Day, what is your address, your home  
22 address?  
23 A. 7016 Judi Street. That's spelled J-u-d-i. And  
24 that's Dallas, Texas. ZIP code 75252-6210.  
25 Q. And have you ever sued anyone before?

Page 10

1 A. No.  
2 Q. Have you ever been sued?  
3 A. No.  
4 Q. Have you ever been arrested?  
5 A. Yes.  
6 Q. And what were the circumstances?  
7 A. For shoplifting in my 20s.  
8 Q. And is that your only arrest?  
9 A. Yes. No. There was one other time. When I was  
10 18 I was picked up for drunk and disorderly at the Fair  
11 with some of my friends.  
12 Q. And I'm going to -- from time to time I'll be  
13 marking exhibits and showing them to you. And so now I'm  
14 going to mark what we're going to call Exhibit 19, and  
15 I'll just ask you to look at it and then let me know when  
16 you're ready for me to ask a question.  
17 (Exhibit 19 marked.)  
18 A. Okay.  
19 Q. And, Mr. Day, what is Exhibit 19?  
20 A. The notice to take the videotaped deposition of  
21 Ted Day.  
22 Q. And this is the notice of deposition pursuant to  
23 which you are here testifying today; is that right?  
24 A. That's correct.  
25 Q. What did you do to prepare for this deposition

Page 11

1 today?  
2 A. Read over the motions that had been filed. You  
3 know, I looked at a few of the minutes of past board  
4 meetings. You know, that's quite a bit of material. I  
5 don't know if there are any other materials that I might  
6 have looked at. I have a great deal of information in my  
7 files, but I would say primarily the motion to intervene,  
8 the motions for summary judgment, and a few selected  
9 minutes of the board meetings.  
10 Q. Did you meet with anyone to prepare for this  
11 deposition?  
12 A. I met with Mr. Surratt.  
13 Q. And did you meet or talk with anyone other than  
14 Mr. Surratt about this deposition?  
15 A. My neighbor Mike Donohue, the secretary of the  
16 association, was present for our discussions.  
17 Q. And that's the same discussion that you  
18 mentioned earlier where you met with Mr. Surratt?  
19 A. Yes.  
20 Q. Have you talked to -- other than that meeting  
21 between yourself, Mr. Surratt and Mr. Donohue, have you  
22 talked to anyone about this deposition?  
23 A. No.  
24 Q. You mentioned earlier that you had a great deal  
25 of information in your files. Could you elaborate on

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1 what's included in that?  
2 A. Basically homeowners association business of  
3 various natures. You know, past budget projections in my  
4 role as the treasurer of the association, engagement  
5 letters concerning audits, various correspondence. You  
6 know, a great deal of miscellaneous things that really  
7 don't pertain directly to the litigation.  
8 Q. So are these your -- are these your personal  
9 files or are these files that you just keep on behalf of  
10 the homeowners association?  
11 A. They would be primarily records of the  
12 association, such as bids for various projects; personal  
13 files of, you know, mine in doing financial analysis about  
14 the financial condition of the association over the years.  
15 Q. From time to time during the deposition I may  
16 refer to the HOA, and when I say that I'm referring to the  
17 Highlands of McKamy IV and V Community Improvement  
18 Association.  
19 A. Uh-huh.  
20 Q. And when I say "congregation," I'm referring to  
21 the Congregation Toras Chaim, Incorporated. And I may  
22 also refer to your neighborhood as the Highlands of  
23 McKamy.  
24 Are you aware that the defendants in this suit  
25 have served certain document requests on the HOA during

Page 13

1 the course of the litigation?  
2 A. Yes.  
3 Q. And the files you mentioned earlier, have you  
4 made those available to Mr. Surratt for producing  
5 documents from them to the extent they're responsive to  
6 our requests?  
7 A. Yes.  
8 Q. Did you do anything else to prepare for this  
9 deposition that you have not already mentioned?  
10 A. Nothing that I can think of.  
11 Q. Would you please list for me what the HOA wants  
12 from this suit, like everything that the HOA would like to  
13 happen as a result of this suit?  
14 A. Well, I think our goal is for all of the  
15 residents in the neighborhood to be in compliance with the  
16 requirement and the deed restrictions that the homes in  
17 our neighborhood be used as single-family dwellings and  
18 only as single-family dwellings.  
19 Q. And what specific relief would you like from the  
20 court to help reach that goal?  
21 A. I would like to see the Court, you know,  
22 basically grant our motion for summary judgment and to  
23 prevent the congregation from using the home at  
24 7103 Mumford Court as a synagogue.  
25 Q. Does the HOA want anything in this suit other

Page 14

1 than preventing the congregation from using the home as a  
2 synagogue?  
3 A. Well, I think we'd like our legal fees. That's  
4 been requested in our motion for summary judgment.  
5 Q. Anything else other than your legal fees and  
6 preventing the congregation from using the home as a  
7 synagogue?  
8 A. I can't think of what else we would want.  
9 Q. How long have you lived at 7016 Judi Street?  
10 A. Almost 20 years.  
11 Q. And where did you live before that?  
12 A. On Ohio Drive in an apartment complex.  
13 Q. And is that within the Highlands of McKamy, the  
14 apartment complex?  
15 A. No.  
16 Q. So when you moved to 7016 Judi Street about 20  
17 years ago, was that the first time you had ever lived  
18 within the Highlands of McKamy?  
19 A. Yes.  
20 Q. And where is your house in proximity to  
21 7103 Mumford?  
22 A. It's about five blocks to the south. I'm  
23 approximately in the middle of the neighborhood, I would  
24 say.  
25 Q. How much did you pay for your home when you

Page 15

1 bought it?  
2 A. I believe that the -- you know, the final price  
3 we agreed on was \$209,000. And then, of course, there  
4 would be some closing costs that I wouldn't be able to  
5 recall.  
6 Q. And do you know what your home is worth today?  
7 A. I believe that it's appraised by the Collin  
8 County Appraisal District at \$328,000.  
9 Q. And how often do they appraise your home?  
10 A. Once a year.  
11 Q. And is the -- \$328,000 is the most recent  
12 appraisal?  
13 A. Yes.  
14 Q. And was the appraisal prior to that one higher  
15 or lower than \$328,000?  
16 A. \$328,000 represented an increase over the prior  
17 year's appraisal.  
18 Q. And do you remember how much the increase was?  
19 A. It's difficult for me to recall the precise  
20 numbers because I have protested my property taxes a  
21 couple of times. I know that about three years ago they  
22 appraised it at I think \$324,000, and based on analysis  
23 that I was able to do from their appraisal data and  
24 collecting data from the Case-Shiller Home Price Indices,  
25 I went in and protested my appraisal. And very

Page 16

1 interesting meeting. We argued for a while and they told  
2 me I was wrong and then knocked it down to something like  
3 \$308,000.  
4 I thought about that for this year, but it's so  
5 much harder to get the information off of their website  
6 and I was just so very busy, I didn't go in to file a  
7 protest this year, although some of my neighbors did,  
8 apparently, and were successful.  
9 Q. And who lives with you at 7016 Judi Street?  
10 A. My wife, Laura; my 18-year-old son, Andrew; and  
11 my 15-year-old daughter, Erin.  
12 Q. And has anyone else lived there in the last 20  
13 years that doesn't live there currently?  
14 A. No.  
15 Q. And you're currently an HOA board member?  
16 A. Yes.  
17 Q. And how long have you been on the board?  
18 A. I served the association as the treasurer from  
19 2009 until -- I can't tell you the exact date when I quit  
20 being the treasurer and I became a board member, but  
21 probably in 2011 I agreed to become a board member rather  
22 than being the treasurer.  
23 The tradition in our association is that the  
24 treasurer is an officer of the association but is not a  
25 board member. And so I think I became a board member in

Page 17

1 2011.  
2 Q. And on -- 2011 or approximately 2011 was the  
3 first time you were on the board?  
4 A. Yes.  
5 Q. And have you been on the board continuously  
6 since then?  
7 A. I resigned my position on the board during  
8 August of 2013. I was elected to the board again in  
9 January -- or in February of -- did I say two thousand  
10 and -- I resigned in August 2013. I was elected to the  
11 board in February of 2014.  
12 Q. And why did you resign in August 2013?  
13 A. The use of 7103 Mumford Court had created a lot  
14 of controversy in our neighborhood, and I felt that the  
15 approach that was being followed by the board was going to  
16 be ineffective in dealing with the association's  
17 interests, and so I resigned.  
18 Q. And then why did you decide to run for election  
19 again a few months after that?  
20 A. Because I felt that the group of individuals who  
21 I was seeking to be elected with would propose an  
22 effective solution to dealing with the synagogue at  
23 7103 Mumford Court.  
24 Q. Any reasons other than the synagogue that you  
25 wanted to be on the board?

1 A. Just the general interest of serving the  
2 neighborhood. I've always had that interest. I've  
3 enjoyed being involved with my neighbors, meeting people.

4 Q. You mentioned the group of individuals that you  
5 were seeking to be elected to the board with. What  
6 happened with that group? What was the outcome of the  
7 election?

8 A. Oh. Our slate of directors was elected.

9 Q. And who was the leader of that slate?

10 A. I would say that David Schneider was fundamental  
11 in organizing the effort, but all of us did things like  
12 going door to door talking with our neighbors about our  
13 position on a variety of issues.

14 Q. And was the No. 1 concern of your slate of  
15 candidates to address the situation with the synagogue?

16 A. I think I would agree with that, that that was  
17 our No. 1 concern. We were also concerned about the  
18 decision of the previous board to increase our yearly  
19 homeowner dues to the maximum amount that was permitted  
20 under the -- I believe it's the deed restrictions that  
21 specify the maximum amount of dues that are permitted to  
22 charge the homeowners, and that represented a very -- you  
23 know, represented a 50 percent increase. So that was also  
24 somewhat of a concern to us.

25 Q. And how many people were in this slate of

1 candidates?

2 A. Five.

3 Q. And other than yourself and Mr. Schneider, who  
4 were they?

5 A. Doug Galbraith, Marilyn Frey, and Michael  
6 Donohue.

7 Q. And of the five of you, how many are Jewish?

8 A. I don't know that any of those individuals is  
9 Jewish, although oftentimes I don't know who is Jewish and  
10 who is not Jewish.

11 Q. Are you Jewish yourself?

12 A. No. At least not to any direct knowledge. I'm  
13 not particularly interested in genealogy. So, you know,  
14 if I am Jewish, that would go back several generations.

15 Q. Earlier you mentioned some of your files that  
16 represent HOA records. What else do you know about  
17 records of the HOA beyond your files? Do you know -- are  
18 you aware of any -- are you aware of any records belonging  
19 to the HOA other than the files that you maintain?

20 A. In my role as the treasurer I kept minutes of  
21 the association because oftentimes an auditor will ask to  
22 review the minutes of the association. There are minutes  
23 from -- I can't tell you what minutes exist in the  
24 personal files of my neighbors from prior to 2001. There  
25 may be some minutes that would exist in files of other

1 board members from the time during 2001 and 2002, and even  
2 2003 when I was the treasurer of the association before I  
3 started keeping copies of the minutes of every meeting as  
4 a record for the auditors.

5 There might be some minutes from years when I  
6 was not the treasurer of the association but was a board  
7 member where I did not retain the minutes because I didn't  
8 feel I would have to use those records to supply to the  
9 auditor for the association. So it's possible that Bill  
10 Purdon, who was the secretary during 2001, two thousand --  
11 well, Bill Purdon was secretary for a long time. It's  
12 possible that he would have copies of some minutes that I  
13 don't have. It's possible that Gloria Gilpin, who was  
14 secretary of the association for a time, would have some  
15 minutes that I do not have.

16 You know, apart from suggesting that there might  
17 be minutes that I don't have in my files, I couldn't tell  
18 you exactly what other association records might exist in  
19 files of my neighbors.

20 Q. But is it your understanding that the records  
21 would all just exist with various neighbors and there's  
22 not some kind of central repository of documents?

23 A. To my knowledge, the minutes aren't supplied  
24 directly to Principal. Now, I can't tell you whether the  
25 process of putting minutes online somehow creates a

1 repository of files. I don't know enough about the  
2 information systems and that process to tell you whether  
3 there's any kind of central repository for records such as  
4 minutes or other documents.

5 Q. And who would be the best person for me to talk  
6 to that might know more about that online system?

7 A. I can't tell you exactly who would be the expert  
8 on that. Perhaps someone at Principal Management would be  
9 able to comment on how their website works and what is  
10 maintained.

11 Many of these websites are intended for people  
12 who are not sophisticated users to be able to upload and  
13 download materials, and I think it's not common for the  
14 users to be able to actually sort of look behind the  
15 curtain and see the file structure of materials. But, you  
16 know, again, I'm speculating. I tend not to go -- I'm not  
17 the person in the association that deals with the website.

18 Q. And who are the members of the HOA board today?

19 A. Myself, Mike Donohue, Marilyn Frey, Doug  
20 Galbraith. And the treasurer, who is not a director but  
21 who is an officer appointed by the board is Aaron  
22 Orshalick.

23 Q. And why is Mr. Schneider not on the board?

24 A. Mr. Schneider was removed from the board in a  
25 special meeting of the homeowners on July 20th, although

1 he had announced that he would be resigning from the board  
2 later that week.

3 Q. And why was Mr. Schneider removed from the  
4 board?

5 A. There was no cause specified for Mr. Schneider's  
6 removal in the petition from the homeowners seeking to  
7 remove him. So directors are -- as stated in our bylaws,  
8 directors may be removed without cause.

9 I suspect that each of the individuals who voted  
10 to remove Mr. Schneider had their own reasons, but I can't  
11 tell you specifically why each individual voted to remove  
12 Mr. Schneider.

13 Q. What reasons have you heard from neighbors as to  
14 why they were unhappy with Mr. Schneider's leadership?

15 A. A lot of the neighbors who were unhappy with  
16 Mr. Schneider's leadership are unhappy with me, and so  
17 they've not chosen to come talk to me directly about that.  
18 So I can't really specify precisely why any one individual  
19 is unhappy with Mr. Schneider, and anything I would say  
20 about that would be speculation.

21 Q. At the meeting on July 20th, did anyone speak in  
22 favor of removing Mr. Schneider or any other person from  
23 the board?

24 A. Yes. Someone -- the way the meeting was  
25 structured in negotiations between Mr. Levine, who was one

1 know, I have an overall feeling of why they were  
2 dissatisfied, but I can't give you the precise reasons.

3 Q. And what is your overall feeling?

4 A. Well, there were a lot of people who were -- you  
5 know, there are a lot of people who believe that the rabbi  
6 should be allowed to use 7103 Mumford Court as a  
7 synagogue. There are other people who don't want to spend  
8 money for legal expenditures; they don't want to spend  
9 money for community improvements. I think there were some  
10 people who don't like Mr. Schneider personally for various  
11 reasons. And I would suspect that there were some  
12 additional reasons that, you know, might have been given  
13 during the meeting, but I don't recall those. So that's  
14 my overall feeling of the -- you know, the general tone of  
15 the meeting.

16 Q. Do you remember who spoke in favor of removing  
17 you from the board?

18 A. No, I don't. She was a lady who lives on Rocky  
19 Top. If I thought long enough about it, I might be able  
20 to drag her name out of my memory. You know, I remember  
21 that her comments -- we went in alphabetical order and I  
22 was the first up, and I think that a lot of her comments  
23 were really directed more at Mr. Schneider than me  
24 specifically. In fact, I would say probably that it's  
25 fair to say that going down the list of the five people

1 of the leaders of the petition drive to remove the board,  
2 was that there would be with regard to each director a  
3 speaker speaking in favor of removing that director and a  
4 speaker speaking against removing that director. All of  
5 the directors chose to speak for themselves other than  
6 Marilyn Frey, whose husband spoke in favor of retaining  
7 Marilyn. I can only name one of the speakers who spoke in  
8 favor of removing directors. I just don't recall and I  
9 can't tell you which speaker spoke about removing which  
10 director.

11 Q. What's the one name you do remember?

12 A. Robin Caldwell.

13 Q. And do you remember which director she spoke  
14 about?

15 A. Robin Caldwell is a man. He's one of my  
16 neighbors on Judi Street. I can't tell you precisely his  
17 address. And I'm sorry, but I can't tell you exactly  
18 which director he spoke about removing. And, you know,  
19 there were stated causes that people stated for removing  
20 the directors, but, as you can imagine, that was a very  
21 stressful meeting for those of us who were being discussed  
22 and I just don't recall specific individuals and exactly  
23 what each one of them said and I don't think it would be  
24 fair for me to comment on precisely what their reasons  
25 were. I mean, we could speculate on all of that and, you

1 who spoke, all of them tended to express some disagreement  
2 with Mr. Schneider's views on a great many things. But I  
3 can't remember her name specifically.

4 Q. Would it be fair to say that they had a general  
5 view that Mr. Schneider was the leader of the board's  
6 pursuit of this litigation?

7 A. I don't think everyone views it that way, but  
8 many of them probably did.

9 Q. Do you remember anything that was said by the  
10 person that spoke in favor of removing Mr. Schneider?

11 A. No, I don't. That came -- Mr. Schneider I  
12 believe would have been last in alphabetical order, and so  
13 by that time in the meeting many people had spoken. There  
14 were a few side conversations beginning to erupt, and so I  
15 just don't have any real recollection of precisely what  
16 was said by the individual speaking in favor of removing  
17 Mr. Schneider.

18 Q. Have there been any discussions about filling  
19 the vacancy for Mr. Schneider's former board seat?

20 A. There have been some discussions of that. A  
21 great many of the people who would bring expertise to the  
22 board are very, very busy people and travel a lot. And  
23 so, you know, we've had some general discussions about  
24 that, but we have not really been successful in  
25 identifying someone to serve who we feel would bring some

1 expertise and good ideas to the board yet.  
2 Q. And how would the vacancy be filled if you  
3 decided to fill it?  
4 A. The bylaws specify that if the director is  
5 removed that a vacancy would be filled by the remaining  
6 directors or director if there were multiple vacancies  
7 potentially.  
8 Q. So the four remaining board members could  
9 appoint a fifth person to fill that spot?  
10 A. Yes.  
11 Q. Have you had any discussions about filling that  
12 spot with a member of the congregation?  
13 A. No.  
14 Q. I'm marking Exhibit 20 and I'll ask you to look  
15 at it and then let me know once you're ready.  
16 (Exhibit 20 marked.)  
17 A. Okay. I'm ready.  
18 Q. And have you seen this document before?  
19 A. Yes.  
20 Q. And what is this document?  
21 A. It is a -- the minutes of the initial board  
22 meeting of the newly elected board of directors on  
23 February 3rd, 2014.  
24 Q. And I'll direct your attention to close to the  
25 bottom of Page 1. There's a header. It says Official

1 Q. So you would characterize this as adopting a  
2 policy that was unchanged from the existing policy?  
3 A. Yes.  
4 Q. And what was the purpose of adopting this  
5 policy?  
6 A. Well, the way I would view the motion is that we  
7 believe that legal action needed to be taken to enforce  
8 the deed restrictions in the case of the usage of the  
9 property at 7103 Mumford Court.  
10 Q. Did you believe legal action needed to be taken  
11 regarding any other property in the Highlands of McKamy?  
12 A. Not at that time.  
13 Q. At the very bottom of Page 1 there's a header  
14 that says Creation and Appointment of Legal Committee.  
15 A. Yes.  
16 Q. And then there's more content on Page 2 there.  
17 What is the legal committee?  
18 A. The intent, I think, of the creation of the  
19 legal committee was to review what our legal options were  
20 in enforcing the deed restrictions.  
21 Q. And who's on the legal committee?  
22 A. Myself and Michael Donohue, and David Schneider  
23 was on the legal committee, but more as an ex officio  
24 member of the committee, more as the president of the  
25 association to keep in touch with what Mike and I were

1 Policy of HOA Board to Enforce Deed-Use Restriction of  
2 Residential Only, and it then mentions that you made a  
3 motion to adopt a policy to enforce deed-use restrictions.  
4 Is that right?  
5 A. Yes.  
6 Q. And why did you make that motion?  
7 A. Because I believe that if we have deed  
8 restrictions, that they need to be enforced when a home is  
9 not being used as a single-family residence.  
10 Q. And you saw the need to adopt a new policy of  
11 the board to enforce the deed restrictions?  
12 A. I wouldn't characterize it as a new policy. I  
13 think the board has always been charged with enforcing the  
14 deed restrictions. So it does say that the policy of the  
15 board should be to enforce the deed restrictions. You  
16 know, I think that's a stylistic use of language in the  
17 minutes. My opinion is that we've always had the deed  
18 restrictions and we've always been concerned about  
19 enforcing them.  
20 Q. What was the policy of the board prior to  
21 February 3rd?  
22 A. I think the policy of the board was the same,  
23 but I think that I would say that the approach that they  
24 were using to enforce the deed restrictions was considered  
25 by most of us to be ineffective in doing that.

1 doing.  
2 Q. And does the legal committee still exist?  
3 A. We've done nothing to disband the legal  
4 committee, although it would exist in a different form  
5 because David Schneider has been removed from the board,  
6 so he's not an ex officio member of the committee any  
7 longer and it would consist of Mike Schneider and  
8 myself -- or Mike Donohue and myself. I'm sorry.  
9 Q. Does the legal committee have its own meetings  
10 that are separate from meetings of the full board?  
11 A. We in the past have had a couple of meetings  
12 that were separate from the full board. Perhaps we've had  
13 only one. So for the most part not, but I suppose that  
14 there would have been a meeting between Mike Donohue,  
15 myself and Mr. Schneider that would be considered an  
16 official meeting of the legal committee. There have been  
17 a couple of in the front yard discussions between myself  
18 and Mr. Donohue that I suppose technically could be  
19 considered a meeting of the legal committee; but apart  
20 from that, not really regularly scheduled meetings.  
21 Q. Has Mr. Surratt been present at any of those  
22 meetings of the legal committee?  
23 A. No.  
24 Q. And what do you -- what all can you remember  
25 that was said at any of those meetings?

1 A. I don't remember precisely what we said. We --  
2 MR. SURRATT: Let me -- just maybe frame  
3 your question from the standpoint -- obviously, we're  
4 getting into if they're discussing potential litigation in  
5 matters as board members, that would be confidential  
6 information so -- and privileged info. So maybe kind of  
7 proceed but sort of frame your questions accordingly.

8 MR. McGEE: Fair enough. We may have a  
9 different view of what's privileged, but I think we can  
10 defer that beyond today. And feel free to jump in as  
11 necessary.

12 Q. So the first meeting that you talked about as an  
13 official meeting that's maybe at a high level, what topics  
14 were discussed at that meeting, without going into the  
15 substance of exactly what was said?

16 A. Well, we believe that the deed restrictions  
17 needed to be enforced and that legal action was required,  
18 and so the meeting that I recall discussed Mr. Donohue's  
19 impressions of our attorney, David Surratt. He discussed  
20 the situation and had discussed legal remedies for the  
21 situation with Mr. Surratt and --

22 MR. SURRATT: Let me caution you right  
23 here. Can I meet with the witness just a few minutes,  
24 give him some guidance so he can better respond maybe to  
25 your questions without getting too detailed? Let's take a

1 break and let me visit with him.

2 MR. McGEE: Yeah. We can go off the  
3 record.

4 THE VIDEOGRAPHER: We're off the record at  
5 10:59 a.m.

6 (Off the record.)

7 THE VIDEOGRAPHER: We're on the record at  
8 11:02 a.m.

9 Q. Before the break, Mr. Day, I believe you had  
10 mentioned that there's been one more formal meeting of the  
11 legal committee and then several like, you know, informal  
12 yard-type discussions. Is that accurate?

13 A. Yes.

14 Q. And at this formal meeting, was there anyone  
15 present that was not a member of the board?

16 A. No, there was not.

17 Q. And you were -- before the break you were just  
18 mentioning some of the topics that were discussed at that  
19 meeting and had mentioned the situation with the  
20 synagogue. At that meeting were -- was anything that does  
21 not pertain -- that does not pertain to the synagogue  
22 discussed?

23 A. It's possible there could have been something.  
24 I don't recall the meeting, all that precisely other than  
25 the general focus.

1 Q. At any time since the creation of the legal  
2 committee, has the committee considered any enforcement  
3 action other than the one against the synagogue?

4 A. I can't recollect on any enforcement actions  
5 that we've discussed. More -- I guess I would say that  
6 we've discussed some code compliance issues that needed to  
7 be addressed, but those are matters for the city really to  
8 enforce, even though some code compliance issues overlap  
9 with issues that are violations of the deed restrictions,  
10 but those are things we usually rely on the city to  
11 enforce when possible.

12 Q. And what are the code compliance issues that you  
13 can remember discussing?

14 A. I don't remember precisely what those issues  
15 would be. You know, sometimes overgrown bushes are an  
16 issue and those are something the city will take care of  
17 for us. I can't remember the precise code compliance  
18 issue that came up.

19 Q. At the more informal yard gatherings where you  
20 mentioned speaking with Mr. Donohue, about how many of  
21 those have there been?

22 A. There might have been -- I might have stopped by  
23 Mike Donohue's house twice.

24 Q. And in either of those conversations, was there  
25 anyone present other than yourself and Mr. Donohue?

1 A. No. Just myself and Mr. Donohue.

2 Q. This is Exhibit 21.

3 (Exhibit 21 marked.)

4 Q. Once you've had a chance to look at it and are  
5 ready for me to ask a question about it, please let me  
6 know.

7 A. Sure. Okay. I'm ready.

8 Q. And have you seen this document before?

9 A. Yes, I have.

10 Q. And what is it?

11 A. It is the minutes of the homeowners association  
12 board meeting for March 2nd, 2014.

13 Q. And does this document have an accurate  
14 description of what happened at that board meeting?

15 A. To the best of my knowledge.

16 Q. Who would have prepared this document?

17 A. Michael Donohue, the secretary for the  
18 association, or the secretary of the board of directors.

19 Q. And what are the duties of the secretary?

20 A. They're listed in the bylaws and there are a  
21 number of them, but one of them is to keep the minutes of  
22 the meetings.

23 Q. So looking on Page 4, about halfway down there's  
24 a new header in all caps that says Executive Session?

25 A. Yes.



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1 Q. Why was an executive session called?  
2 A. To discuss the recommendations of the legal  
3 committee and talk about enforcement action.  
4 Q. And why was the decision made to do that in  
5 executive session?  
6 A. Well, because I think that, you know, because  
7 it's an enforcement action, because it would involve legal  
8 action that we felt it was appropriate that that meeting  
9 be conducted in executive session.  
10 Q. And you didn't want other homeowners to be able  
11 to participate in that?  
12 A. Because it's an enforcement action, no.  
13 Q. So is it your view that only the members of the  
14 board should have input into enforcement decisions?  
15 A. The deed restrictions specify that it is the  
16 duty -- or it says that the board may enforce the deed  
17 restrictions, so I take that to mean that's the  
18 responsibility of the board of directors.  
19 Q. I'm going to hand you Exhibit 22. And as with  
20 the previous exhibits, just please let me know once you've  
21 had a chance to look at it.  
22 (Exhibit 22 marked.)  
23 A. Okay. I'm ready.  
24 Q. And what is Exhibit 22?  
25 A. Exhibit 22 represents the minutes of the board

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1 of directors meeting for May 4th of 2014.  
2 Q. And have you seen these minutes before?  
3 A. Yes.  
4 Q. And these also would have been prepared by  
5 Mr. Donohue?  
6 A. Yes.  
7 Q. And at the bottom of Page 4 and top of Page 5  
8 there's a reference to another executive session that  
9 appears to be about the congregation. Is that accurate?  
10 A. Well, I would say it's about the enforcement  
11 action of the deed restrictions.  
12 Q. And you mentioned earlier that you -- that these  
13 meetings are held in executive session without the  
14 participation of other homeowners because it's the board's  
15 responsibility to enforce deed restrictions?  
16 A. Well, the reason they're held in executive  
17 sessions, really, you're talking about confidential  
18 information. So any enforcement action will involve  
19 confidential information; it will involve privileged  
20 information from our attorney. It could involve any  
21 number of things that wouldn't be appropriate for a  
22 general discussion with the homeowners.  
23 Q. Kind of here in the middle of Page 4 is a header  
24 that says Discussion Between Board and Present Homeowners  
25 About May 17th Special Meeting.

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1 A. Yes.  
2 Q. And this reflects that, as president of the  
3 board, Mr. Schneider scheduled a special meeting on the  
4 Jewish Sabbath. Is that accurate?  
5 A. Yes.  
6 Q. And that the board declined to move the special  
7 meeting date to accommodate Jewish homeowners?  
8 A. Well, in choosing between a somewhat limited  
9 number of dates where the police station community room  
10 was available, there was a choice between Saturdays and  
11 Sundays. Mr. Schneider offered the leaders of the  
12 recall -- or excuse me. This was regarding a special  
13 meeting, but Mr. Schneider offered input to those that had  
14 circulated the petition and they didn't participate. He  
15 could have picked the Jewish Sabbath or he could have  
16 picked my Sabbath. He picked Saturday.  
17 Q. Does your religion prohibit you from attending  
18 meetings on a Sunday?  
19 A. Not per se, but, you know, my Sabbath is the day  
20 where we go to church and I may have to work on occasion,  
21 but we prefer that to be more of a family day devoted  
22 towards family activities. So that's important to me too.  
23 So, you know, I don't think Mr. Schneider meant any malice  
24 by picking the Saturday. It was one of the days that was  
25 available in a fairly limited number of days that the

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1 community room was available.  
2 Q. And on the last page of these minutes -- again,  
3 this is part of the executive session. I'm looking at the  
4 third bullet down. It looks like Mr. Donohue made a  
5 motion to disclose to HOA members at the next board  
6 meeting the amount of attorneys' fees extended to that  
7 point. Did -- is that an accurate statement about what  
8 happened in the executive session?  
9 A. To the best of my recollection.  
10 Q. And it looks like this motion unanimously  
11 passed; is that right?  
12 A. Yes.  
13 Q. And at the next HOA meeting, was this disclosed  
14 to the members?  
15 A. I believe it was, but I can't remember the  
16 specific moment of disclosure.  
17 Q. And what was the amount of attorneys' fees  
18 expended that was disclosed to the full membership?  
19 A. I can't remember the number. I could tell you  
20 if Mr. Schneider would -- or excuse me. I would want  
21 Mr. Surratt to -- what I can tell you is I know the amount  
22 of the legal fees to this point. I can't tell you the  
23 chronology of legal fees over time and I don't remember  
24 the specific announcement or the specific amount that  
25 might have been announced to the homeowners at that time.

1 Q. Have the amount of the legal fees to this point  
2 been disclosed to the homeowners?  
3 A. I would anticipate that at our next homeowners  
4 meeting there would be a disclosure, and I believe that  
5 there was a disclosure -- I don't precisely recall the  
6 minutes of the July board meeting, but I believe that the  
7 legal fees to that point were known to the homeowners at  
8 the time of the meeting to recall the board of directors,  
9 because I believe that that information was part of the  
10 discussion to remove at least one of the directors. I  
11 can't remember which director or the moment, but I believe  
12 that the amount of the legal fees at that point were  
13 disclosed.  
14 Q. And what was that amount?  
15 A. You know, again, I'll just have to tell you that  
16 I know what they are as of right now approximately, but I  
17 can't tell you precisely what the legal fees had run to at  
18 that point.  
19 Q. Has a litigation budget through trial been  
20 disclosed to the homeowners?  
21 A. No.  
22 Q. Does the board intend to let the homeowners know  
23 how much they might need to spend on this litigation?  
24 A. That's part of legal strategy, as far as I'm  
25 concerned, and that's something that I think shouldn't be

1 published.  
2 Q. Other than your fellow board members, I'd like  
3 to just make a list of everyone that you've talked to  
4 about the situation with the congregation or this lawsuit.  
5 So who have you discussed this suit or the congregation  
6 with?  
7 A. Gosh. You know, I can't tell you everyone I've  
8 discussed that with. I mean, you know, we were in a  
9 special meeting to recall the board of directors. I've  
10 talked with lots of individuals about various aspects of  
11 the litigation, both people who agree with me and don't  
12 agree with me.  
13 So, you know, I can tell you I've talked  
14 specifically with the board members. I've had, you know,  
15 numerous conversations about this issue with, you know,  
16 people who agree with me and people that don't agree with  
17 me, but I'm going to decline to list every individual I  
18 may have spoken with.  
19 Q. I'd like you to list the ones that you remember.  
20 THE WITNESS: Do I need to do that, David?  
21 MR. SURRATT: If you can recall. We're  
22 talking about non-board members of the homeowners. So to  
23 the best of your knowledge. I think the records produced  
24 substantiate that you probably communicated with a lot of  
25 people, so the ones that you can recall off the top of

1 your head.  
2 THE WITNESS: Wow.  
3 Q. Maybe let's --  
4 A. I'm about to give you your list.  
5 MR. SURRATT: And just for formality, I'm  
6 just going to assert an objection just to form, being  
7 overbroad. But go ahead.  
8 A. Okay. I have talked with Kevin Marshall. I  
9 have talked with Bill North. I've talked with Aaron  
10 Orshalick, who of course is an officer but not a board  
11 member. I've talked with Ken Halterman. I've talked with  
12 Don Coats. I've talked with Robert Palmeri. I've talked  
13 with Cookie Peadon. I've talked with Jamie Keeling.  
14 Q. And how does she spell her last name?  
15 A. Jamie Keeling is a male. K-e-e-l-i-n-g.  
16 I've talked with Javier. I can't spell Javier's  
17 last name. It starts with a G. He lives on Rocky Top  
18 Circle. I have communicated by e-mail with Robert Nelson.  
19 I've talked with Mary Kay Adams. I've talked with Bruce  
20 French. And there are more, but I can't remember all of  
21 them.  
22 Q. Are all of these people that you mentioned  
23 residents of the Highlands of McKamy?  
24 A. Yes. They're all residents of the Highlands of  
25 McKamy.

1 Q. And have you discussed this with any family  
2 members?  
3 A. My wife, who's also a resident of the Highlands  
4 of McKamy.  
5 Q. What about any non-residents of the Highlands of  
6 McKamy, like friends or acquaintances?  
7 A. Yes. I've discussed it with two individuals who  
8 are not residents of the Highlands of McKamy, but I  
9 decline to give their names because that's privileged  
10 information.  
11 Q. Are they attorneys?  
12 A. Yes.  
13 Q. And are they -- is one Mr. Surratt?  
14 A. No.  
15 Q. And who are these two individuals?  
16 A. I decline to name them.  
17 Q. Have you retained them in connection with this  
18 litigation?  
19 A. I decline to give that information.  
20 MR. BUTTERFIELD: Objection, nonresponsive.  
21 Q. What's your basis for claiming that this  
22 information is privileged?  
23 A. They're personal discussions.  
24 Q. What is your basis for claiming that a personal  
25 discussion is legally privileged?

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1 A. I don't have any basis. They're just private  
2 conversations with people that I know who happen to be  
3 attorneys.  
4 MR. McGEE: In just a minute I'm going to  
5 ask to take a break and go off the record and I'd just  
6 like to state on the record that during the break I'd  
7 appreciate it, Mr. Surratt, if you would talk to your  
8 client about his obligation to answer the question as to  
9 the identity of these two individuals, and then after the  
10 break I'll ask him the question again and we'll go from  
11 there.  
12 MR. Surratt: I'll agree to visit with him.  
13 I'm not agreeing he has an obligation. Let me visit with  
14 him here at this break or one of the future breaks and we  
15 can come back. You want to break now or do it later?  
16 MR. McGEE: Yes. We'll break now.  
17 THE VIDEOGRAPHER: We're off the record at  
18 11:30 a.m.  
19 (Recess taken.)  
20 THE VIDEOGRAPHER: We're on the record at  
21 11:36 a.m.  
22 Q. Okay. Mr. Day, before the break I asked you who  
23 you had spoken with and you mentioned you spoke with two  
24 people that were not residents of the Highlands of McKamy.  
25 Who are those people?

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1 A. I've retained Robert Solomon of Eldridge,  
2 Robertson & Holman I think is the firm's name.  
3 Q. Robert Solomon of Edridge, Roberts & Holman?  
4 A. Robertson.  
5 Q. Robertson & Holman?  
6 A. I believe that's the third name.  
7 Q. And what do you mean when you say you have  
8 retained him?  
9 A. I've sought personal legal advice from him  
10 related to my role on the board of the Highlands of  
11 McKamy.  
12 Q. Did you pay any kind of retainer to Mr. Soloman  
13 or his firm?  
14 A. I haven't seen a bill from him.  
15 MR. BUTTERFIELD: Objection, nonresponsive.  
16 Q. Did you pay anything to him?  
17 A. I've paid nothing. I may pay something, but I  
18 don't know what amount that might be.  
19 Q. Have you signed an engagement letter with  
20 Eldridge, Robertson & Holman?  
21 A. No.  
22 Q. What have you said to Mr. Soloman about this  
23 litigation?  
24 MR. Surratt: I'm going to object on behalf  
25 of Mr. Soloman since he's not here and present. From my

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1 understanding from conversation with the witness, it does  
2 go into legal advice.  
3 So, Mr. Day, is that your understanding, that  
4 you sought legal counsel from Mr. Soloman?  
5 THE WITNESS: Yes.  
6 MR. Surratt: And do you understand that  
7 you have a right to assert privilege not to disclose that  
8 discussion?  
9 THE WITNESS: Yes, and I'd like to assert  
10 that.  
11 MR. McGEE: Are you instructing the witness  
12 not to answer my question?  
13 MR. Surratt: Yes, on behalf of Mr. Soloman  
14 I am, and as the witness indicated he wants to assert his  
15 privilege.  
16 MR. McGEE: And we may be seeking to depose  
17 Mr. Soloman. I'd just like to state that on the record.  
18 Q. Who is the other individual you've spoken to?  
19 A. A friend in Oklahoma named Rusty Brown, who is  
20 an attorney.  
21 Q. He is an attorney?  
22 A. Yes, he is an attorney, although he's not an HOA  
23 attorney.  
24 Q. Do you --  
25 A. I've not received legal advice from Rusty Brown.

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1 Q. And do you claim to have retained Rusty Brown?  
2 A. No.  
3 Q. And what --  
4 A. He's simply a friend who I might discuss what is  
5 happening in my life, as he would discuss what's happening  
6 in his life.  
7 Q. And what have you and Mr. Brown discussed about  
8 this case or the congregation?  
9 A. I don't recall precisely. The discussions would  
10 be more what my time is being spent on and what his time  
11 is being spent on.  
12 Q. What do you mean by what your time is being  
13 spent on?  
14 A. We discuss various activities that we are  
15 involved in. So by spending time, I mean, what I'm  
16 working at in terms of what activities are using my time.  
17 Q. And what have you told him about the impact of  
18 this case on your time?  
19 A. I don't really recall.  
20 Q. Do you recall anything at all about what you've  
21 spoken to Mr. Brown about?  
22 A. I don't recall.  
23 Q. So is that no?  
24 A. Just very general discussions about things that  
25 are on my mind, things that are on his mind.

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1 Q. And where does he live in Oklahoma?  
2 A. Tulsa.  
3 Q. How long have you known Mr. Brown?  
4 A. 40 years or so.  
5 Q. Have you shared with Mr. Brown anything that  
6 Mr. Surratt has said to you?  
7 A. No.  
8 Q. What harms do you contend come from the  
9 congregation's presence in the Highlands of McKamy?  
10 A. I think that there are potential traffic and  
11 parking problems. If I were living next door or on that  
12 street, I would be disturbed by the large number of people  
13 coming and going, the potential growth in the traffic of  
14 people coming and going. There would be a concern to  
15 me -- and it -- even though I live five blocks away, I  
16 think it's of general concern to the neighborhood -- that  
17 people might be less interested in buying a home next to a  
18 facility like a synagogue, or even next to the group homes  
19 that are permitted by the act of the Texas Legislature. I  
20 worry that if there's a synagogue operating at  
21 7103 Mumford Street that there would be other religious  
22 groups that might want to acquire homes in the  
23 neighborhood and I worry about expansion of the use of  
24 homes for things other than single-family residences. I  
25 can't imagine what all those uses might potentially be,

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1 but, you know, I think there potentially could be an  
2 expansion of the use of homes in the neighborhood as  
3 single-family residences if they continue to operate a  
4 synagogue at 7103 Mumford Court.  
5 Q. Are there any harms, you know, that you can --  
6 are there any harms that you have not mentioned?  
7 A. There may be. I'm not pretending to list all of  
8 the consequences of having a home used as other than a  
9 single-family residence.  
10 Q. But have you told me every harm that you're  
11 aware of?  
12 A. Every one that I can think of at the present  
13 time.  
14 Q. And I'd like to go into some of those a little  
15 bit and, first, maybe try to -- I want to try to separate  
16 them into a couple of categories to the extent we can. It  
17 seems like several of the ones you mentioned are concerns  
18 about things that could happen in the future. So first,  
19 like what are the harms that you contend have actually  
20 happened or are happening now, like setting aside, you  
21 know, harms that you think could happen later?  
22 A. Well, I really don't know how to phrase it any  
23 better than I already have. I think there have been some  
24 parking issues in the neighborhood. You know, apparently  
25 some of my neighbors are bothered by comings and goings at

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1 early hours of the morning.  
2 I don't really know how to say it any better  
3 than the fact that if I lived next door, it would bother  
4 me to have a large number of people coming and going from  
5 a neighboring home every day.  
6 Q. So other than parking and the large number of  
7 people coming and going, is there anything that has  
8 actually happened so far that you would contend is a harm?  
9 A. I think that those are the principal things that  
10 I can think of, but I think that once that's happening, I  
11 think that when people try to sell those homes, I think  
12 that there's going to be a reluctance to purchase the  
13 homes that are proximitas to the synagogue.  
14 Q. Do you think there might be some people that  
15 would be more interested in a home because it's close to  
16 the synagogue?  
17 A. It's possible.  
18 Q. Have you personally paid any money in connection  
19 with this litigation?  
20 A. I'm assuming that you're referring to -- could  
21 you rephrase your question for me?  
22 MR. Surratt: Let me object as to form. I  
23 know what you're asking. Be a little bit more specific.  
24 MR. McGEE: Sure.  
25 MR. Surratt: Or try to if you can. Pay

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1 any money could include him driving down here today, that  
2 kind of thing, so it kind of...  
3 Q. Have you paid any money to Mr. Schneider in  
4 connection with this litigation?  
5 A. What do you mean by "this litigation"?  
6 Q. This lawsuit that is pending before Judge Willis  
7 in Collin County.  
8 MR. Surratt: I think -- bear with me. We  
9 went through this. I think I know your question. There  
10 was a timing issue as to maybe when the suit was filed,  
11 the HOA intervening, that kind of thing maybe.  
12 Q. Viewing the -- this entire matter as one lawsuit  
13 that began when Mr. Schneider filed his first petition and  
14 in which the HOA later intervened, viewing that entire  
15 matter as one case, have you paid any money to  
16 Mr. Schneider in connection with the litigation?  
17 A. After Mr. Schneider filed his lawsuit, I made a  
18 contribution to him to finance the incidental legal fees  
19 associated with his pro se lawsuit.  
20 Q. And why did you decide to make this payment to  
21 finance the legal fees associated with the pro se lawsuit?  
22 A. Because I believe that the synagogue would have  
23 a detrimental effect to the neighborhood and I supported  
24 my neighbor, Mr. Schneider, and so I felt that it was  
25 unfair for him as an individual homeowner to be forced to

1 bear the burden of enforcing the deed restrictions by  
2 himself.  
3 Q. So you were appreciative of the legal work he  
4 was doing and wanted to contribute to that?  
5 A. Like I said, I felt that it was unfair for  
6 Mr. Schneider to bear the burden of enforcing what was a  
7 deed restriction on his own behalf when the homeowners  
8 association needed to step in and enforce the deed  
9 restrictions.  
10 Q. And how much did you pay Mr. Schneider?  
11 A. My contribution to his legal effort was \$300.  
12 Q. And have you paid anything other than that \$300  
13 to Mr. Schneider?  
14 A. No.  
15 Q. Did you consider joining his suit as a  
16 plaintiff?  
17 A. I wasn't invited to join his lawsuit as a  
18 plaintiff. I don't know what my decision might have been  
19 had I been invited to join the lawsuit as a plaintiff.  
20 Q. How did you come up with the \$300 amount?  
21 A. Oh, I don't recall. My budget is tight, like  
22 everybody else's. You know, that's -- I could spare that.  
23 I thought that that might help with his legal fees.  
24 That's about all I know to say about that.  
25 Q. Do you plan to contribute any additional money

1 to Mr. Schneider?  
2 A. Not at this time.  
3 Q. Other than the congregation, what other  
4 nonresidential uses of property are you aware of within  
5 the Highlands of McKamy?  
6 A. Primarily the two group homes that are located  
7 in the Highlands of McKamy.  
8 Q. And what do you know about those?  
9 A. That there are two group homes located in the  
10 Highlands of McKamy, one on the corner of Lattimore and  
11 Meandering Way and another one -- I don't know if it's  
12 Rocky Top or Rocky Top Circle.  
13 Q. So other than the congregation's alleged use and  
14 these two group homes, are you aware of any other  
15 nonresidential uses within the Highlands of McKamy?  
16 A. I'm aware of the assertion that somebody has  
17 been giving some swimming lessons, but that's not really a  
18 case where one of the homes in the neighborhood is being  
19 used exclusively for purposes other than as a family home.  
20 I'm trying to think of other instances. I guess  
21 there was a fella who lived in the neighborhood at one  
22 time who was giving some seminars out of his home. That  
23 was pointed out to me recently. At that time I wasn't all  
24 that aware of what was going on or what was done about  
25 that, but that's about -- that's about all that I can

1 think of that's gone on in the neighborhood over the last  
2 15 years.  
3 Q. What about home-based businesses?  
4 A. I don't really know of too many individuals that  
5 are running home-based businesses. I -- you know, people  
6 have said there are some. Mr. Schneider's pointed out  
7 that Mr. Levine purports to have his law offices in his  
8 home, but I'm not really aware of anybody other than that  
9 who might be running a home-based business. There may be  
10 some, but I'm not aware of it.  
11 Q. What about any religious gatherings or Bible  
12 studies other than the congregation?  
13 A. I don't have any knowledge of anybody who's  
14 having Bible studies in their home.  
15 Q. As an HOA board member, are you aware that  
16 Mr. Surratt has produced certain documents to us in the  
17 course of this litigation to respond to our document  
18 requests?  
19 A. Yes.  
20 Q. And to the extent those documents reflect other  
21 nonresidential uses, do you have any reason to question  
22 the accuracy of the documents that Mr. Surratt has  
23 produced?  
24 A. I don't know that I need to express an opinion  
25 on documents I haven't seen. I can't imagine that he

1 would submit documents that are not accurate; but I  
2 haven't seen the documents that he has submitted, so I  
3 can't really express an opinion on them.  
4 Q. I'm marking Exhibit 23.  
5 (Exhibit 23 marked.)  
6 Q. Please let me know when you've had a chance to  
7 look at it.  
8 A. Okay.  
9 Q. And what is this document?  
10 A. These are the minutes from the meeting of the  
11 board of directors for November 19th of 2002.  
12 Q. And it looks like you were present at this  
13 meeting; is that right?  
14 A. Yes. That's what the document states.  
15 Q. And this is a document that the HOA has produced  
16 to us in this litigation. Do you recall this meeting?  
17 A. No, I don't.  
18 Q. And under the president's report bullet, there's  
19 a third sub-bullet down about someone wanting to move into  
20 the neighborhood and operate a daycare. Do you recall  
21 that situation at all?  
22 A. I do recall, you know, discussions about  
23 somebody who wanted to have a daycare center, yes.  
24 Q. And what do you recall about those discussions?  
25 A. Simply the report that somebody wanted to have a

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1 daycare center and that that individual was told that we  
2 had a deed restriction that prohibited that use of the  
3 property.  
4 Q. And do you know if a daycare center was ever  
5 operated in the Highlands of McKamy?  
6 A. To my knowledge, no daycare center was ever  
7 operated.  
8 Q. Are you aware of any enforcement action that the  
9 HOA ever brought against any daycare center?  
10 A. No, I'm not.  
11 Q. Are you aware of any enforcement action that the  
12 HOA has brought against either of the group homes you  
13 mentioned earlier?  
14 A. No.  
15 Q. Are you aware of any enforcement action that has  
16 been brought in regard to the swimming lessons you  
17 mentioned earlier?  
18 A. No.  
19 Q. What about for Mr. Levin's law practice? Are  
20 you aware of any enforcement action?  
21 A. No.  
22 Q. And earlier you mentioned someone that was  
23 conducting business seminars from a home. Are you aware  
24 of any enforcement action that was brought there?  
25 A. I have a recollection about the president of the

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1 association contacting that individual to discontinue the  
2 activity in his home. But that was a period where I  
3 missed a great many board meetings because of obligations  
4 with my kids, and since I wasn't a voting member of the  
5 board, I don't think my colleagues would have, you know  
6 probably informed me as if I'd have been a board member,  
7 but I'm -- you know, I don't really know what was  
8 happening with that effort to get him to quit having the  
9 seminars.  
10 Q. Do you have any knowledge of any enforcement  
11 action the HOA has ever brought other than against the  
12 congregation?  
13 A. No.  
14 Q. During the time that you've been on the board,  
15 either now or in the past, has the board considered  
16 bringing an enforcement action against anyone other than  
17 the congregation?  
18 A. We discussed what our options might be with both  
19 of the group homes.  
20 Q. And did you conclude not to bring an enforcement  
21 action against them?  
22 A. Because -- with the first group home, because it  
23 was exempted from our deed restrictions by the act of the  
24 Texas Legislature, we didn't feel that there was much we  
25 could do from a legal perspective. I believe Joe Darby,

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1 who was -- I don't recall whether Mr. Darby was attending  
2 the meeting as a member of the board or whether he had  
3 left the board and was attending as a homeowner, but he  
4 had talked to an attorney about it. I don't believe those  
5 were legal fees that the association incurred. But he  
6 felt that we had no legal recourse with regard to the  
7 group homes because of the act of the legislature.  
8 Again, we discussed -- when the second group  
9 home came in, we discussed whether we had any options. We  
10 were all surprised because we thought that the law  
11 prohibited a second group home within 5,000 feet, but we  
12 then found out that the law had been changed so that they  
13 only had to be 1,000 feet apart. And we asked for help  
14 from our city council person regarding that, but to my  
15 knowledge, no help was other forthcoming. And again,  
16 because they were exempted by the Texas Legislature, you  
17 know, we didn't feel any legal action would result in  
18 preventing them from having the second group home.  
19 Q. What's your understanding of how long the  
20 congregation has been holding meetings at 7103 Mumford?  
21 A. My understanding is that they've been having  
22 meetings there since early August of 2013.  
23 Q. And do you know where they were meeting before  
24 that?  
25 A. Apparently they were meeting in Rabbi Rich's

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1 home.  
2 Q. And where is his home?  
3 A. I don't know. I think he lives on Bremerton,  
4 but I don't really know where Rabbi Rich lives. I've  
5 never driven by his home and I can't recall his precise  
6 address.  
7 Q. Does he live in the Highlands of McKamy?  
8 A. Yes, he does.  
9 Q. And do you know how long they were meeting in  
10 Rabbi Rich's home?  
11 A. No, I don't.  
12 Q. When did you first become aware that the  
13 congregation existed?  
14 A. In June of 2013.  
15 Q. And how did you become aware of that?  
16 A. One of the residents on Mumford Court expressed  
17 concern about the fact that the home had been purchased  
18 for use as a synagogue at 7103 Mumford Court.  
19 Q. This will be Exhibit 24.  
20 (Exhibit 24 marked.)  
21 Q. Please let me know once you've had a chance to  
22 look at it, Mr. Day.  
23 A. Okay.  
24 Q. And what is Exhibit 24?  
25 A. Exhibit 22 --

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1 Q. 24. Sorry.  
2 A. Oh, I'm sorry. Exhibit 24 is an e-mail message  
3 that I sent to Michael and Mary Carrier in response to  
4 their concerns about the establishment of the synagogue at  
5 7103 Mumford Court. Part of the message includes my  
6 communication with another board member regarding, you  
7 know, the way I felt about the particular issue and our  
8 responsibilities as a board of directors.  
9 Q. And do Michael and Mary live in Highlands of  
10 McKamy?  
11 A. Yes, they do, or did.  
12 Q. They don't today?  
13 A. No. They've moved.  
14 Q. So your e-mail address is utdallas.edu. Is that  
15 your employer?  
16 A. Yes.  
17 Q. And what do you do there?  
18 A. I'm a professor in the School of Management.  
19 Q. So does your job consist of, like, teaching  
20 classes and publishing articles?  
21 A. Yes.  
22 Q. And how long have you had that job?  
23 A. Since 1990.  
24 Q. And what hours are you normally at work?  
25 A. It depends on what my obligations are for that

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1 day. It's not uncommon for me to be working late in the  
2 evening if I've taught a class. I may be there early in  
3 the morning if I'm teaching a morning class.  
4 Q. So it just kind of varies depending on the  
5 particular day?  
6 A. Yes.  
7 Q. How often do you work from your home?  
8 A. Fairly often.  
9 Q. And when you work from your home, what do you  
10 do?  
11 A. Oftentimes I teach courses online, so it will be  
12 common for me to be on the computer sending e-mail  
13 messages to my students from home. I may be working at my  
14 desk preparing lectures, but -- so I would say that I  
15 work, you know, a little bit from home on a fairly regular  
16 basis, although I prefer to be in my office to be able to  
17 concentrate on things.  
18 Q. And is your wife employed?  
19 A. Yes, she's employed.  
20 Q. And what is her job?  
21 A. My wife is employed by the University of Texas  
22 Southwestern Medical Center, and she also teaches  
23 part-time for the University of Texas at Dallas.  
24 Q. And what is her position at each of those  
25 places?

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1 A. At UT Dallas I would say that her position would  
2 be that of a part-time lecturer.  
3 Q. In management as well?  
4 A. No. My wife is a certified critical care  
5 dietitian. And so I think her position at UT Southwestern  
6 would be as a part-time lecturer as well, although it's of  
7 greater scope than her position at UT Dallas.  
8 Q. And does she ever work from home?  
9 A. Yes.  
10 Q. And how frequently would you say she works from  
11 home?  
12 A. You know, she'll work in the evenings two or  
13 three times a week preparing lectures.  
14 Q. Looking back at Exhibit 24, in the second  
15 paragraph here on the first page. And I'm looking at the  
16 second sentence where you state that "religious freedom  
17 has nothing to do with this issue, although it is possible  
18 that a court may not be willing to grant us relief,  
19 particularly given the erosion in our rights due to the  
20 laws about the establishment of hospices."  
21 Would -- would you please elaborate on what you  
22 mean by the erosion in your rights that had occurred at  
23 the time you wrote this e-mail?  
24 A. Well, I think that the act of the Texas  
25 Legislature, you know, they essentially granted the right

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1 of people to conduct -- you know, to use the homes in our  
2 neighborhood primarily as a business and, you know, it was  
3 my concern that a court might be willing to use that as a  
4 precedent to extend that right to other organizations.  
5 Q. And then looking at the -- kind of the end of  
6 the first sentence of that same paragraph, so the sentence  
7 before the one we were just looking at, it sounds like you  
8 were talking about the synagogue and you say, "I don't  
9 think that there is an acceptable negotiated solution."  
10 What do you mean by that?  
11 A. I think that either you have a synagogue in the  
12 neighborhood, which to my mind is a violation of the deed  
13 restriction on single-family use, or you don't. I don't  
14 know how there's a middle ground between those two points.  
15 Q. So are you willing to negotiate in good faith at  
16 any mediation that may occur in this case?  
17 A. Oh, absolutely.  
18 Q. So you haven't already concluded that there  
19 could be an acceptable negotiated solution?  
20 A. No, I haven't concluded that at all. What I'm  
21 stating here is I don't see what it is; but I'm certainly  
22 willing to engage in mediation with an open mind about  
23 what a solution might be, although, you know, I think the  
24 position I've stated here is, you know, fairly clear about  
25 what my prior belief might be about that.

1 MR. McGEE: I think I might be done. If we  
 2 can just take a short break to let me look over my notes,  
 3 and then I'll see if there's anything else. We can go off  
 4 the record.  
 5 THE VIDEOGRAPHER: We're off the record at  
 6 12:17 p.m.  
 7 (Recess taken.)  
 8 THE VIDEOGRAPHER: We're on the record at  
 9 12:29 p.m.  
 10 MR. McGEE: Thank you, Dr. Day. I have no  
 11 additional questions for you and I'll pass the witness.  
 12 MR. BUTTERFIELD: I have no questions at  
 13 this time.  
 14 MR. SURRATT: Intervenor has no questions  
 15 at this time.  
 16 THE VIDEOGRAPHER: We're off the record at  
 17 12:29 p.m.  
 18 (Deposition concluded.)  
 19  
 20  
 21  
 22  
 23  
 24  
 25

1 I, THEODORE E. DAY, have read the foregoing  
 2 deposition and hereby affix my signature that same is true  
 3 and correct, except as noted above.  
 4  
 5 \_\_\_\_\_  
 6 THEODORE E. DAY  
 7 THE STATE OF \_\_\_\_\_ )  
 8 COUNTY OF \_\_\_\_\_ )  
 9  
 10 Before me, \_\_\_\_\_, on this day  
 11 personally appeared THEODORE E. DAY, known to me or proved  
 12 to me on the oath of \_\_\_\_\_ or through  
 13 \_\_\_\_\_ (description of identity card or  
 14 other document) to be the person whose name is subscribed  
 15 to the foregoing instrument and acknowledged to me that  
 16 he/she executed the same for the purpose and consideration  
 17 therein expressed.  
 18 Given under my hand and seal of office on this  
 19 \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.  
 20  
 21  
 22 \_\_\_\_\_  
 23 NOTARY PUBLIC IN AND FOR  
 24 THE STATE OF \_\_\_\_\_  
 25 My Commission Expires \_\_\_\_\_

1 CHANGES AND SIGNATURE  
 2  
 3 WITNESS NAME: \_\_\_\_\_ DATE OF DEPOSITION: \_\_\_\_\_  
 4 PAGE LINE CHANGE REASON  
 5 \_\_\_\_\_  
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1 CAUSE NO. 429-04998-2013  
 2 DAVID R. SCHNEIDER, § IN THE DISTRICT COURT  
 3 Plaintiff, §  
 4 v. §  
 5 §  
 6 JUDITH D. GOTHELF, MARK B. §  
 7 GOTHELF, AND CONGREGATION §  
 8 TORAS CHAIM, INC., §  
 9 Defendants, §  
 10 and § 429TH JUDICIAL DISTRICT  
 11 §  
 12 HIGHLANDS OF MCKAMY IV AND §  
 13 V COMMUNITY IMPROVEMENT §  
 14 ASSOCIATION, §  
 15 Intervening Plaintiff, §  
 16 §  
 17 v. §  
 18 §  
 19 JUDITH D. GOTHELF AND §  
 20 MARK B. GOTHELF, §  
 21 Defendants, § OF COLLIN COUNTY, TEXAS  
 22  
 23 REPORTER'S CERTIFICATION  
 24 ORAL AND VIDEOTAPED DEPOSITION OF THEODORE E. DAY  
 25 AUGUST 8, 2014  
 I, Jamie Prince Hess, Certified Shorthand Reporter in  
 and for the State of Texas, hereby certify to the  
 following:  
 That the witness, THEODORE E. DAY, was duly sworn and  
 that the transcript of the deposition is a true record of  
 the testimony given by the witness;  
 That the deposition transcript was submitted on  
 to the witness or to the attorney for the  
 witness for examination, signature, and return to me by



1 \_\_\_\_\_  
 2 That the amount of time used by each party at the  
 3 time of the deposition is as follows:  
 4 MR. MATT McGEE - 02:01  
 5 MR. JUSTIN E. BUTTERFIELD - 00:00  
 6 MR. DAVID A. SURRATT - 00:00  
 7  
 8 That pursuant to information given to the deposition  
 9 officer at the time said testimony was taken, the  
 10 following includes counsel for all parties of record:  
 11 FOR THE PLAINTIFF:  
 12 Mr. David R. Schneider (Pro Se)  
 13 7035 Mumford  
 14 Dallas, Texas 75252  
 15 FOR THE DEFENDANT CONGREGATION TORAS CHAIM:  
 16 Mr. Matt McGee  
 17 Haynes and Boone, LLP  
 18 2323 Victory Avenue  
 19 Suite 700  
 20 Dallas, Texas 75219  
 21 FOR THE DEFENDANTS CONGREGATION TORAS CHAIM, JUDITH D.  
 22 GOTHELF AND MARK B. GOTHELF:  
 23 Mr. Justin E. Butterfield  
 24 Liberty Institute  
 25 2001 Plano Parkway  
 Suite 1600  
 Plano, Texas 75075  
 FOR THE INTERVENOR HIGHLANDS OF McKAMY IV AND V COMMUNITY  
 IMPROVEMENT ASSOCIATION:  
 Mr. David A. Surratt  
 Riddle & Williams, PC  
 3710 Rawlins Street  
 Suite 1400  
 Dallas, Texas 75219

1 FURTHER CERTIFICATION UNDER TRCP RULE 203  
 2  
 3 The original deposition was/was not returned to the  
 4 deposition officer on \_\_\_\_\_.  
 5 If returned, the attached Changes and Signature  
 6 page(s) contain(s) any changes and the reasons therefor.  
 7 If returned, the original deposition was delivered to  
 8 Mr. Matt McGee, Custodial Attorney.  
 9 \$ \_\_\_\_\_ is the deposition officer's charges to the  
 10 Defendant Congregation Toras Chaim for preparing the  
 11 original deposition and any copies of exhibits;  
 12 The deposition was delivered in accordance with Rule  
 13 203.3, and a copy of this certificate, served on all  
 14 parties shown herein, was filed with the Clerk.  
 15 Certified to be true on this \_\_\_\_\_ day of  
 16 \_\_\_\_\_  
 17  
 18  
 19  
 20 JAMIE PRINCE HESS, TEXAS CSR #6761  
 21 Expiration Date: 12/31/14  
 22 CSI GLOBAL DEPOSITION SERVICES  
 23 Firm Registration No. 526  
 24 4950 N. O'Connor Road, Suite 152  
 25 Irving, Texas 75062-2778  
 972.719.5000  
 972.650.0225 Fax

1 I further certify that I am neither counsel for,  
 2 related to, nor employed by any of the parties in the  
 3 action in which this proceeding was taken, and further  
 4 that I am not financially or otherwise interested in the  
 5 outcome of this action.  
 6 Further certification requirements pursuant to  
 7 Rule 203 of the Texas Code of Civil Procedure will be  
 8 complied with after they have occurred.  
 9 Certified to by me on this \_\_\_\_\_ day of  
 10 \_\_\_\_\_  
 11  
 12  
 13 JAMIE PRINCE HESS, TEXAS CSR #6761  
 14 Expiration Date: 12/31/14  
 15 CSI GLOBAL DEPOSITION SERVICES  
 16 Firm Registration No. 526  
 17 4950 N. O'Connor Road, Suite 152  
 18 Irving, Texas 75062-2778  
 19 972.719.5000  
 20 972.650.0225 Fax  
 21  
 22  
 23  
 24  
 25

**THEODORE E. DAY**  
**August 8, 2014**

1 CAUSE NO. 429-04998-2013  
2 DAVID R. SCHNEIDER, § IN THE DISTRICT COURT  
3 Plaintiff, §  
4 v. §  
5 JUDITH D. GOTHELF, MARK B. §  
6 GOTHELF, AND CONGREGATION §  
7 TORAS CHAIM, INC., §  
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19  
20 REPORTER'S CERTIFICATION  
21 ORAL AND VIDEOTAPED DEPOSITION OF THEODORE E. DAY  
22 AUGUST 8, 2014  
23  
24 I, Jamie Prince Hess, Certified Shorthand Reporter in  
25 and for the State of Texas, hereby certify to the  
following:  
That the witness, THEODORE E. DAY, was duly sworn and  
that the transcript of the deposition is a true record of  
the testimony given by the witness;  
That the deposition transcript was submitted on  
August 20, 2014 to the witness or to the attorney for the  
witness for examination, signature, and return to me by

**CSI GLOBAL DEPOSITION SERVICES**  
**972-719-5000**

**THEODORE E. DAY**  
**August 8, 2014**

1 September 15, 2014.

2 That the amount of time used by each party at the  
3 time of the deposition is as follows:

4 MR. MATT MCGEE - 02:01  
5 MR. JUSTIN E. BUTTERFIELD - 00:00  
6 MR. DAVID A. SURRATT - 00:00

7 That pursuant to information given to the deposition  
8 officer at the time said testimony was taken, the  
9 following includes counsel for all parties of record:

10 FOR THE PLAINTIFF:

11 Mr. David R. Schneider (Pro Se)  
12 7035 Mumford  
13 Dallas, Texas 75252

14 FOR THE DEFENDANT CONGREGATION TORAS CHAIM:

15 Mr. Matt McGee  
16 Haynes and Boone, LLP  
17 2323 Victory Avenue  
18 Suite 700  
19 Dallas, Texas 75219

20 FOR THE DEFENDANTS CONGREGATION TORAS CHAIM, JUDITH D.  
21 GOTHELF AND MARK B. GOTHELF:

22 Mr. Justin E. Butterfield  
23 Liberty Institute  
24 2001 Plano Parkway  
25 Suite 1600  
Plano, Texas 75075

FOR THE INTERVENOR HIGHLANDS OF MCKAMY IV AND V COMMUNITY  
IMPROVEMENT ASSOCIATION:

Mr. David A. Surratt  
Riddle & Williams, PC  
3710 Rawlins Street  
Suite 1400  
Dallas, Texas 75219



**CSI GLOBAL DEPOSITION SERVICES**  
**972-719-5000**

**THEODORE E. DAY**  
**August 8, 2014**

1 I further certify that I am neither counsel for,  
 2 related to, nor employed by any of the parties in the  
 3 action in which this proceeding was taken, and further  
 4 that I am not financially or otherwise interested in the  
 5 outcome of this action.

6 Further certification requirements pursuant to  
 7 Rule 203 of the Texas Code of Civil Procedure will be  
 8 complied with after they have occurred.

9 Certified to by me on this 20<sup>th</sup> day of  
 10 August, 2014.

11  
 12  
 13    
 14 JAMIE PRINCE HESS, TEXAS CSR #0700  
 15 Expiration Date: 12/31/14  
 16 CSI GLOBAL DEPOSITION SERVICES  
 17 Firm Registration No. 526  
 18 4950 N. O'Connor Road, Suite 152  
 19 Irving, Texas 75062-2778  
 20 972.719.5000  
 21 972.650.0225 Fax

22  
 23  
 24  
 25  
**CSI GLOBAL DEPOSITION SERVICES**  
**972-719-5000**

**THEODORE E. DAY**  
**August 8, 2014**

1 FURTHER CERTIFICATION UNDER TRCP RULE 203

2

3 The original deposition was/was not returned to the  
4 deposition officer on Sept 15, 2014.

5 If returned, the attached Changes and Signature  
6 page(s) contain(s) any changes and the reasons therefor.

7 If returned, the original deposition was delivered to  
8 Mr. Matt McGee, Custodial Attorney.

9 \$ 594.50 is the deposition officer's charges to the  
10 Defendant Congregation Toras Chaim for preparing the  
11 original deposition and any copies of exhibits;

12 The deposition was delivered in accordance with Rule  
13 203.3, and a copy of this certificate, served on all  
14 parties shown herein, was filed with the Clerk.

15 Certified to by me on this 17 day of  
16 Sept, 2014.

17

18

19

20

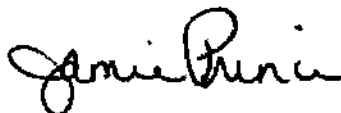
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JAMIE PRINCE HESS, TEXAS CSR #6761  
Expiration Date: 12/31/14  
CSI GLOBAL DEPOSITION SERVICES  
Firm Registration No. 526  
4950 N. O'Connor Road, Suite 152  
Irving, Texas 75062-2778  
972.719.5000  
972.650.0225 Fax

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**972-719-5000**

**THEODORE E. DAY**  
**August 8, 2014**

1	CHANGES AND SIGNATURE		
2			
3	WITNESS NAME: _____		DATE OF DEPOSITION: _____
4	PAGE LINE	CHANGE	REASON
5	_____		
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**CSI GLOBAL DEPOSITION SERVICES**  
**972-719-5000**

**THEODORE E. DAY**  
**August 8, 2014**

1 I, THEODORE E. DAY, have read the foregoing  
2 deposition and hereby affix my signature that same is true  
3 and correct, except as noted above.

4

5 THEODORE E. DAY

6

7 THE STATE OF \_\_\_\_\_ )

8 COUNTY OF \_\_\_\_\_ )

9

10 Before me, \_\_\_\_\_, on this day  
11 personally appeared THEODORE E. DAY, known to me or proved  
12 to me on the oath of \_\_\_\_\_ or through  
13 \_\_\_\_\_ (description of identity card or  
14 other document) to be the person whose name is subscribed  
15 to the foregoing instrument and acknowledged to me that  
16 he/she executed the same for the purpose and consideration  
17 therein expressed.

18 Given under my hand and seal of office on this  
19 \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

20

21

22 NOTARY PUBLIC IN AND FOR  
23 THE STATE OF \_\_\_\_\_  
24 My Commission Expires \_\_\_\_\_

24

25

**CSI GLOBAL DEPOSITION SERVICES**  
**972-719-5000**

# **EXHIBIT P**



1 CAUSE NO. 429-04998-2013  
2 DAVID R. SCHNEIDER, § IN THE DISTRICT COURT  
Plaintiff, §  
3 §  
v. §  
4 §  
JUDITH D. GOTHELF, MARK B. §  
5 GOTHELF, AND CONGREGATION §  
TORAS CHAIM, INC., §  
6 Defendants. §  
§  
7 and § 429TH JUDICIAL DISTRICT  
§  
8 HIGHLANDS OF MCKAMY IV AND §  
V COMMUNITY IMPROVEMENT §  
9 ASSOCIATION, §  
Intervening Plaintiff, §  
10 §  
v. §  
11 §  
JUDITH D. GOTHELF AND §  
12 MARK B. GOTHELF, §  
Defendants. § OF COLLIN COUNTY, TEXAS

13  
14  
15  
16 -----  
17 ORAL AND VIDEOTAPED DEPOSITION OF  
18 MICHAEL D. DONOHUE  
19 AUGUST 8, 2014  
20 -----

21  
22  
23 ORAL AND VIDEOTAPED DEPOSITION OF MICHAEL D.  
24 DONOHUE, produced as a witness at the instance of the  
25 Defendant Congregation Toras Chaim and duly sworn, was

1 taken in the above-styled and numbered cause on August 8,  
2 2014, from 2:23 p.m. to 3:36 p.m., before Jamie Prince  
3 Hess, Certified Shorthand Reporter in and for the State of  
4 Texas, reported by computerized stenotype machine at  
5 Haynes and Boone, LLP, 2323 Victory Avenue, Suite 700,  
6 Dallas, Texas 75219, pursuant to the Texas Rules of Civil  
7 Procedure and the provisions stated on the record or  
8 attached hereto.  
9  
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13		MARKED
14	Exhibit 25	Notice of Intention to Take Videotaped Deposition of Mike Donohue. .... 10
15	Exhibit 26	Minutes from 02/02/14 HOA board meeting (HOA 000277 through 000278) .. 21
16	Exhibit 27	Minutes from 03/02/14 HOA board meeting (HOA 000279 through 000283) .. 23
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APPEARANCES

1  
2  
3 FOR THE DEFENDANT CONGREGATION TORAS CHAIM:  
4 Mr. Matt McGee  
5 Haynes and Boone, LLP  
6 2323 Victory Avenue  
7 Suite 700  
8 Dallas, Texas 75219  
9 214.651.5000  
10 matt.mcgee@haynesboone.com  
11  
12 FOR THE DEFENDANT'S CONGREGATION TORAS CHAIM, JUDITH D.  
13 GOTHELF AND MARK B. GOTHELF:  
14  
15 Mr. Justin E. Butterfield  
16 Liberty Institute  
17 2001 Plano Parkway  
18 Suite 1600  
19 Plano, Texas 75075  
20 972.941.4444  
21 jbutterfield@libertyinstitute.org  
22  
23 FOR THE INTERVENOR HIGHLANDS OF MCKAMY IV AND V COMMUNITY  
24 IMPROVEMENT ASSOCIATION:  
25 Mr. David A. Surratt  
Riddle & Williams, PC  
3710 Rawlins Street  
Suite 1400  
Dallas, Texas 75219  
214.760.6766  
dsurratt@riddleandwilliams.com  
ALSO PRESENT:  
Mr. Randy Johnson, the videographer

1 THE VIDEOGRAPHER: We're now on the record  
2 for the video deposition of Mike Donohue. The time is  
3 2:23 p.m. The date is August 8th, 2014.  
4 Will the court reporter please administer the  
5 oath?  
6 (Witness sworn.)  
7 MR. MCGEE: I'm Matt McGee for the  
8 Congregation Toras Chaim, Inc.  
9 MR. BUTTERFIELD: Justin Butterfield for  
10 Congregation Toras Chaim and Mark and Judith Gothef.  
11 MR. SURRATT: David Surratt for Highlands  
12 of McKamy IV and V Community Improvement Association.  
13 MICHAEL D. DONAHUE,  
14 having been first duly sworn, testified as follows:  
15 EXAMINATION  
16 BY MR. MCGEE:  
17 Q. Good afternoon, Mr. Donahue.  
18 A. Good afternoon.  
19 Q. Would you please state your full name?  
20 A. Michael Daniel Donohue.  
21 Q. And you and I have just met for the first time a  
22 few minutes ago?  
23 A. Yes.  
24 Q. And, Mr. Donahue, do you understand that the  
25 oath you just took is made under a penalty of perjury?

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1 A. I do.  
2 Q. And that it's the same oath as if you were  
3 testifying in court?  
4 A. I do.  
5 Q. And that the oath requires you to answer my  
6 questions truthfully and completely to the best you can?  
7 A. I do.  
8 Q. And do you agree to do that?  
9 A. Yes.  
10 Q. And the court reporter here is taking down  
11 everything we say, so I'll ask you to answer my questions  
12 out loud instead of with nods or gestures. Do you agree  
13 to do that?  
14 A. Yes.  
15 Q. And if I ask you a question that you don't  
16 understand, please let me know that and I'll try to  
17 rephrase it or repeat it as appropriate.  
18 A. Yes.  
19 Q. And if you don't tell me that you don't  
20 understand, can I assume that you do understand my  
21 question?  
22 A. If I answer it, yes.  
23 Q. It's harder for the court reporter if we're  
24 talking over each other, so I'll ask you to wait for me to  
25 finish talking, and I'll do the same for you.

Page 7

1 A. Okay.  
2 Q. And if you need a break anytime, please let me  
3 know and we'll accommodate that at the next available  
4 opportunity.  
5 A. All right.  
6 Q. And sometimes Mr. Surratt may state an objection  
7 to one of my questions. But unless he instructs you not  
8 to answer it, you can go ahead and answer even if he  
9 objects.  
10 A. Okay.  
11 Q. Is there anything about your physical, mental or  
12 emotional condition that would prevent you from  
13 understanding my questions?  
14 A. No.  
15 Q. And if that changes, will you let me know?  
16 A. Sure.  
17 Q. And is there anything about your physical,  
18 mental or emotional condition that would prevent you from  
19 giving truthful and complete answers?  
20 A. No.  
21 Q. And will you let me know if that changes?  
22 A. Sure.  
23 Q. Are you on any medications that would prevent  
24 you from understanding my questions or answering  
25 truthfully?

Page 8

1 A. No.  
2 Q. Have you ever been deposed before?  
3 A. Yes.  
4 Q. How many times?  
5 A. Once that I can remember.  
6 Q. And when was that?  
7 A. Probably over 20 years ago.  
8 Q. And what kind of case was that?  
9 A. That's a challenge. I really don't remember. I  
10 was working at Baskin & Novikoff. I remember that. It  
11 was before 1992 when I left. So what the case was about,  
12 I can't even tell you. Don't remember.  
13 Q. In what capacity were you giving your testimony  
14 there?  
15 A. It wasn't as a party. It was a witness in some  
16 case that I had, some case that was over with and I guess  
17 there was a lawsuit that ensued afterwards is what I  
18 remember.  
19 Q. Have you ever testified in court?  
20 A. Yes.  
21 Q. And about how many times?  
22 A. I don't know. Maybe 10 or 15 times.  
23 Q. And what -- were those in connection with your  
24 employment or --  
25 A. Primarily on cases that I work on on attorneys'

Page 9

1 fees, that type of thing.  
2 Q. Can you recall any times you testified that were  
3 not on the issue of attorneys' fees?  
4 A. I testified in this case at the temporary  
5 restraining order hearing.  
6 Q. And is that the only time you've testified  
7 excluding about attorneys' fees?  
8 A. I testified -- I tell you what. I had a case on  
9 my own. I was trying to think of the cases I was party  
10 in, and I thought there was just one, but there's one that  
11 I filed about three or four years ago. Well, no. I take  
12 that back. Maybe six years ago. And I was Plaintiff and  
13 I was my witness, so I had to put myself on the stand and  
14 testify.  
15 Q. And is that the only time you've sued someone  
16 before as a party?  
17 A. As a party? I don't remember suing anybody  
18 else, but I remember that one.  
19 Q. And what was that case about?  
20 A. That was a case where I bought a new car. I  
21 forgot to switch the insurance over to my new car and got  
22 in a -- a tire came off a car coming the opposite  
23 direction on 35 and skipped over the median and nailed me  
24 right in the center of my car. So I ended up suing the  
25 other driver as well as Discount Tire that had just put

1 the fire on her car. And that -- that's the one lawsuit  
 2 that I can remember that I was a party to.  
 3 Q. So you've never been a defendant?  
 4 A. I've been a defendant in a lawsuit probably --  
 5 that was filed probably maybe nine or 10 years ago. It  
 6 was a suit in which I was the attorney. It was an  
 7 adversary proceeding in a bankruptcy court here in Dallas,  
 8 and the defendants ended up suing me and another attorney  
 9 with the firm claiming defamation; but they promptly  
 10 dropped it once we filed our response and our motion for  
 11 sanctions.  
 12 Q. And have you ever been arrested?  
 13 A. Have I ever been arrested. I've never been, I  
 14 guess, arrested. I spent a night in jail one time, but I  
 15 don't know that I was arrested. It was just -- I guess  
 16 they wanted me to sleep off a drinking situation, but --  
 17 Q. How long ago was that?  
 18 A. That was over 20, maybe 25 years ago.  
 19 Q. I'm going to mark Exhibit 25, which is the  
 20 notice of deposition.  
 21 (Exhibit 25 marked.)  
 22 Q. If you'd just please look at it briefly and let  
 23 me know once you've had a chance to look at it.  
 24 A. Uh-huh. I see it.  
 25 Q. And is this the notice of deposition pursuant to

1 which you're here testifying today?  
 2 A. Correct.  
 3 Q. And, Mr. Donahue, what is your address?  
 4 A. 7015 Mumford Street, Dallas 75252.  
 5 Q. Just to -- to save time as we go through this  
 6 deposition, when I mention the congregation or the  
 7 synagogue, I'm referring to Congregation Toras Chaim,  
 8 Inc., and when I mention the HOA, I'm referring to the  
 9 Highlands of McKamy IV and V Community Improvement  
 10 Association, and if I mention Highlands of McKamy, I'm  
 11 referring to the neighborhood as a whole.  
 12 A. Okay.  
 13 Q. Do you -- is your residence at 7015 Mumford in  
 14 the Highlands of McKamy?  
 15 A. It is.  
 16 Q. And how long have you lived at 7015 Mumford?  
 17 A. Since January of 1997.  
 18 Q. And where did you live before that?  
 19 A. I lived in a -- I guess it was an apartment. I  
 20 didn't own it. In Highland Park, on the edge of Highland  
 21 Park off -- Glenwick was the name of the street.  
 22 Q. So when you moved to your current residence in  
 23 1997, was that the first time you had lived in the  
 24 Highlands of McKamy?  
 25 A. Yes.

1 Q. And what did you pay for your home when you  
 2 purchased it in 1997?  
 3 A. That's a good question too. I want to say like  
 4 288,000, something like that. I could be wrong. That's a  
 5 guess.  
 6 Q. And do you know what your home is worth today?  
 7 A. What it's worth. I guess the tax rolls show it  
 8 at maybe north of 400,000, but I'm not sure. If I'm not  
 9 mistaken, I think that's about right. Whether that's the  
 10 actual worth, I think we could probably get more for it if  
 11 we actually sold it, so...  
 12 Q. Do you have an estimate for what you think you  
 13 could get for your house if you were to sell it?  
 14 A. I think we might be able to get 450-, 450,000.  
 15 Again, that's a guesstimate.  
 16 Q. Understood. Where is your home in -- with  
 17 respect to 7103 Mumford?  
 18 A. Well, if you're on Frankford and you take a  
 19 right -- say you're on Frankford headed east. I don't  
 20 know if you're familiar. You take a right on Meandering  
 21 Way. That's the entrance to Highlands of McKamy. Right  
 22 on the left corner is the congregation's house, if you  
 23 will, Mr. Gothelf's and his mother's house. You take a  
 24 right on Mumford Street and you come down and it makes a  
 25 horseshoe. Right where the horseshoe starts, right there

1 on the right is my house.  
 2 Q. So about -- about how many houses are there  
 3 between your house and Meandering Way?  
 4 A. Maybe eight or nine. Maybe seven. Seven to  
 5 nine.  
 6 Q. And are you on the same side of the street as  
 7 the Gothelf's home or the opposite side?  
 8 A. Same side of the street.  
 9 Q. What did you do to prepare for this deposition  
 10 today?  
 11 A. I met with Mr. Surratt. And the only thing I  
 12 looked at is I glanced through the petition in  
 13 intervention this morning.  
 14 Q. And did you review any documents other than that  
 15 petition?  
 16 A. No.  
 17 Q. Was anyone else present at your meeting with  
 18 Mr. Surratt?  
 19 A. Ted Day.  
 20 Q. Did you talk to anyone else about the fact that  
 21 you were coming here to be deposed?  
 22 A. Other than my wife and my secretary at work, no.  
 23 Q. So you're here today in your capacity as a board  
 24 member of the HOA; is that right?  
 25 A. I am a board member of the HOA. It does say --

1 it does say I'm a board member in the notice, but, I mean,  
2 I'm here. I am a board member, so I can speak in that  
3 capacity if that's what you want me to do. I am also a  
4 homeowner.

5 Q. Yes. Understood.

6 What does the HOA want out of this lawsuit?

7 A. Well, they want the congregation to leave and  
8 they want that address to be used as a single-family  
9 residence only and they want to be paid for their cost in  
10 attorneys' fees for having to file the petition in  
11 intervention and file the other pleadings in this case.  
12 They want to be made whole.

13 Q. Anything else the HOA wants other than the  
14 congregation to leave and attorneys' fees?

15 A. They want probably I would say some -- you know,  
16 there's a claim in the plea or petition in intervention  
17 for \$200 a day fine. I think that's discretionary. I  
18 could be mistaken. That's up to the Court, obviously.  
19 Since the date that demand was made on them by Mr. Surratt  
20 on behalf of the prior board and the -- on behalf of the  
21 association to leave back in November of last year.

22 Q. So do you believe every home within the  
23 Highlands of McKamy should be used solely as a  
24 single-family residence?

25 A. Primarily, yes. That's what the deed

1 restrictions are for.

2 Q. What do you mean when you say "primarily, yes"?

3 A. I mean, every home in the Highlands of McKamy is  
4 subject to the deed restrictions, and the deed  
5 restrictions call for all the structures to be used as  
6 single-family residences --

7 Q. And how would --

8 A. -- and for no other purpose.

9 Q. How would you define a single-family residence?

10 A. Just that, single-family residence used as a --  
11 for single family purposes.

12 Q. And for no other purpose?

13 A. Primarily for single-family residence. I mean,  
14 it's ridiculous to think that no home is ever used for  
15 anything else other than for single-family residence.

16 Q. And how do you define "primarily"?

17 A. However it's -- however it's defined. The plain  
18 meaning of the word.

19 Q. Who lives with you at 7015 Mumford?

20 A. My wife and two children.

21 Q. And what is your wife's name?

22 A. Kathy.

23 Q. And is her last name Donohue?

24 A. Yes.

25 Q. And what's the age of your children?

1 A. They're both 10. They're twins, boy and a girl.

2 Q. And since you moved in in 1997, has anyone else  
3 ever lived there that doesn't live there currently?

4 A. Not as part of our family, no.

5 Q. Has anyone else lived there not as part of your  
6 family?

7 A. I mean, there's been people stay for a week or  
8 two, in-laws, if that's what you mean. We have visitors.

9 Q. What harms do you contend come from the  
10 congregation's presence in the neighborhood?

11 A. The congregation's presence. Well, the fact  
12 that they're using the structure for other than single  
13 family purposes is a harm in and of itself. It harms the  
14 integrity of the neighborhood. This is a residential  
15 neighborhood for single families and the congregation  
16 wants to use it as a synagogue, or have used it as a  
17 synagogue, and that starts the ball rolling, so to speak.  
18 It's like a domino effect. They do it and everybody else  
19 thinks they have a right to do it. Who knows what else  
20 will come moving in and not only affect the integrity of  
21 the neighborhood, but the property values of each and  
22 everybody's home in the entire neighborhood.

23 Q. So do you contend there are any harms other than  
24 this starting the ball rolling towards others doing it and  
25 possible impact on property values?

1 A. Well, we've sued them also -- I believe we have.

2 Maybe it was Mr. Schneider -- for nuisance. You know,  
3 there's parking issues with too many cars parked out  
4 there. There's congregants, if you will, coming and going  
5 at all hours of the day at least six days a week. And I  
6 thought that Sunday was a -- was the day that they did not  
7 come and go, but they do on Sunday too. I could be wrong  
8 about that. Maybe that's Saturday.

9 So I think it's seven days a week. It's --  
10 obviously, it's more than normal foot traffic. I mean,  
11 that's what I've seen, but it's primarily -- this is about  
12 the enforcement of the deed restrictions.

13 Q. And so are there any harms that you think would  
14 come from not enforcing the deed restrictions other than  
15 the ones that you've mentioned?

16 A. That's -- the biggest one is allowing them to do  
17 this and not enforcing the restrictions sends a signal to  
18 everybody else, well, look you can buy in Highlands of  
19 McKamy and use it for business purposes, use it for --  
20 primarily for church purposes, you know, a Hindu temple,  
21 you name it. There's a neighborhood just to the west of  
22 us on the other side of Hillcrest where just that has  
23 happened. Apparently they don't have deed restrictions  
24 and it is a hodgepodge of -- I think there's a limousine  
25 service over there. It's -- you know, it's used for

1 commercial purposes too, those homes.  
 2 So that's what -- what happened to our  
 3 neighborhood were we to just permit someone like the  
 4 congregation to take over a structure and use it primarily  
 5 for their non-single-family residential purposes.  
 6 Q. How long have you been on the board of the HOA?  
 7 A. First week of February this year, February 2nd,  
 8 maybe February 4th, whatever date it was the annual  
 9 meeting was held.  
 10 Q. And had you ever been on the board in the past  
 11 before this year?  
 12 A. No.  
 13 Q. Were you involved with the HOA prior to your  
 14 election to the board?  
 15 A. I wasn't really involved. I mean, I went to, I  
 16 don't know, three or four, maybe five HOA meetings over  
 17 the course of the time, and so I really wasn't too  
 18 involved. I mean, I guess the answer really is, overall,  
 19 no.  
 20 Q. And I understand that you're currently the  
 21 secretary of the board?  
 22 A. That's correct.  
 23 Q. And what do you do as secretary?  
 24 A. I keep the minutes, and my understanding too is  
 25 I think I'm overseeing the records, but the records

1 primarily are held with Principal Management Group. And  
 2 then, obviously, the minutes I prepare I submit at the --  
 3 usually at the next month's board meeting for approval and  
 4 then that becomes the board -- the board's records, which  
 5 I understand Marilyn Frey sends to Principal to retain as  
 6 records, the minutes.  
 7 Q. And do you know if those records at Principal  
 8 Management Group have been made available to Mr. Surratt  
 9 for the production of potentially responsive documents?  
 10 A. They have.  
 11 Q. Do you have knowledge about what kind of records  
 12 are kept at Principal Management Group?  
 13 A. I know they keep financial records, budget  
 14 records. I'm assuming the minutes. They keep billing  
 15 statements, invoices from third parties. That's my  
 16 understanding.  
 17 Q. Why did you want to be on the board?  
 18 A. I was asked by David Schneider. He was -- I  
 19 don't know if it was before or after he filed his lawsuit,  
 20 but he was going to run and wanted me to be on the board.  
 21 Primarily the focus was enforcing the deed restrictions  
 22 against the occupants of 7103 Mumford Court, and so I told  
 23 him that yes, I would.  
 24 Q. So did Mr. Schneider lead a slate of candidates  
 25 for election to the board?

1 A. I think that's probably a good way to put it. I  
 2 mean, he's the one that I guess was most active in  
 3 garnering support to enforce the deed restrictions; and  
 4 that's the platform, if you will, that we ran on, if you  
 5 want to call it that. I mean, running -- to me, the  
 6 campaign consisted of showing up at the annual meeting and  
 7 just telling people who you were and that you, you know,  
 8 were asking to be on the board and what your stance was,  
 9 and I told people what mine was, so...  
 10 Q. And other than yourself and Mr. Schneider, who  
 11 were the other people that ran at the same time you did?  
 12 A. Marilyn Frey and Ted Day, and then Doug  
 13 Galbraith also, but I didn't know Doug was running until  
 14 the day of the -- of the annual meeting. And I don't know  
 15 if -- quite frankly, I don't know if David Schneider had  
 16 asked him to run also or not, but Doug Galbraith was also  
 17 there.  
 18 Q. And do you know if any of the -- those five  
 19 people, the three you just mentioned plus yourself and  
 20 Mr. Schneider, are Jewish?  
 21 A. Are Jewish. I don't know.  
 22 Q. Are you Jewish?  
 23 A. No.  
 24 Q. I'm marking Exhibit 26. Once you've had a  
 25 chance to look at it and are ready for me to ask you a

1 question, please let me know.  
 2 (Exhibit 26 marked.)  
 3 A. Okay. I know what this is.  
 4 Q. And what is this?  
 5 A. This is the minutes of the board meeting. It  
 6 says on February 3rd, 2014. That's a -- I remember  
 7 thinking later I put the wrong date because the meeting  
 8 was on February the 2nd, 2014, as shown in the subject.  
 9 But that's what this is, the minutes from that first  
 10 meeting.  
 11 Q. And did you prepare this document?  
 12 A. I did.  
 13 Q. Kind of towards the bottom of the first page  
 14 there on HOA 277 --  
 15 A. Correct.  
 16 Q. -- there's a header that says Official Policy of  
 17 HOA Board to Enforce Deed-Use Restriction of Residential  
 18 Only, and then it indicates that a new policy was adopted  
 19 to enforce deed-use restrictions; is that correct?  
 20 A. Correct.  
 21 Q. And prior to February 2nd, do you know what the  
 22 policy was?  
 23 A. I wasn't on the board, so I don't know.  
 24 Q. And then at the very bottom on 1 and top of  
 25 Page 2 there's a reference to the legal committee of which

1 you appear to be a member.  
 2 A. Correct.  
 3 Q. And who else is on the legal committee?  
 4 A. Ted Day.  
 5 Q. And why is Mr. Schneider not on that committee  
 6 anymore?  
 7 A. I don't think he ever was on the committee.  
 8 Q. So it's just yourself and Mr. Day?  
 9 A. Correct.  
 10 Q. How many times has the legal committee met?  
 11 A. I don't know how many times we've met. I mean,  
 12 we've talked. We meet at the board meetings. I mean, Ted  
 13 Day and I are there. If there's anything that needs to be  
 14 discussed, I mean, we talk with one another, if you want  
 15 to call that a meeting. I mean, that's how we  
 16 communicate.  
 17 Q. What subjects has the legal committee met about  
 18 excluding the congregation?  
 19 A. Well, we've met -- it's been primarily about the  
 20 congregation and there's been some issues that have come  
 21 up. I mean, there was a special meeting -- two special  
 22 meetings that I recall. I mean, one special meeting I  
 23 think took place in May on a petition by some homeowners,  
 24 and then another one took place on July the 20th. So he  
 25 and I have discussed those. And then we retained counsel.

1 I don't know with respect to the May -- I want to say it  
 2 was mid-May. Whether we retained Mr. Surratt on that  
 3 specifically I don't recall unless I was shown something  
 4 in writing, but I know we retained some counsel for the  
 5 May -- excuse me -- the July 20th special meeting.  
 6 Q. And was Mr. Surratt the counsel for that  
 7 meeting?  
 8 A. Not ultimately, no. We did talk with  
 9 Mr. Surratt about the meeting, communicated with him about  
 10 that; but then we also hired another attorney, David  
 11 Lubin, L-u-b-i-n, for his legal advice with respect to the  
 12 May -- excuse me -- the July 20th special meeting.  
 13 Q. And is Mr. Lubin still doing any legal work for  
 14 the HOA?  
 15 A. He's done some since just kind of on an ad hoc  
 16 basis.  
 17 Q. This will be Exhibit 27.  
 18 (Exhibit 27 marked.)  
 19 Q. Again, please let me know once you've had a  
 20 chance to look at it.  
 21 A. Okay. Yes, I read it.  
 22 Q. And what is Exhibit 27?  
 23 A. It is the minutes of the board meeting on March  
 24 the 2nd, 2014.  
 25 Q. And did you prepare these as well?

1 A. I did.  
 2 Q. And about halfway down on Page 4 there's an all  
 3 caps header called Executive Session.  
 4 A. I see it.  
 5 Q. And then is the information under that header  
 6 accurate, to the best of your knowledge?  
 7 A. It is.  
 8 Q. And why was an executive session called?  
 9 A. Because this was all in anticipation of  
 10 litigation, which is privileged and wasn't for the, I  
 11 guess, dissemination to homeowners, the board's  
 12 discussions about anticipating joining the litigation.  
 13 (Exhibit 28 marked.)  
 14 Q. And I'm handing you what I've marked as  
 15 Exhibit 28.  
 16 A. Yes. Okay.  
 17 Q. And these appear to be HOA minutes from May 4th  
 18 of this year; is that right?  
 19 A. Correct.  
 20 Q. And did you prepare these?  
 21 A. I did.  
 22 Q. On the fourth page, this is HOA 287. I'm  
 23 looking at the header about the discussion between the  
 24 board and present homeowners about the May 17th special  
 25 meeting. Is this the special meeting you were referring

1 to earlier, the non-July 20th special meeting?  
 2 A. Yes. It was May 17th, I believe, was the first  
 3 special meeting, if you will.  
 4 Q. And this indicates that that was scheduled for  
 5 the Jewish Sabbath; is that right?  
 6 A. Apparently so.  
 7 Q. And then the sub-bullets indicate that the board  
 8 declined to move the meeting to accommodate Jewish  
 9 homeowners that might want to attend?  
 10 A. Well, it indicates much more than that. It  
 11 indicates that David Schneider advised he'd been given --  
 12 or had given several available dates to the  
 13 representatives of the homeowners who had requested the  
 14 special meeting, some of which were dates on Saturday,  
 15 some of which were on Sunday, and that they did not reply  
 16 back to him, you know, not to have the special meeting on  
 17 a Saturday. So they'd been given a chance to determine  
 18 when they wanted the special meeting and now they were  
 19 coming up complaining about it.  
 20 Q. But the meeting was not moved, was it?  
 21 A. It was not.  
 22 Q. At the top of the same page there's a reference  
 23 to 27 boxes in storage since 1991?  
 24 A. Correct.  
 25 Q. What do you know about where those boxes are

Page 26

1 now?  
 2 A. Where they are now? I don't know. I don't know  
 3 what 27 boxes are being referred to. I mean, Marilyn Frey  
 4 is the one that reported on that.  
 5 Q. And there's -- it mentions you would research  
 6 and recommend at the next board meeting as to what records  
 7 should be retained by the HOA and for how long.  
 8 A. Right.  
 9 Q. Did you do that?  
 10 A. I did research, and the property code I think  
 11 says seven years. You have to keep records seven years  
 12 back in associations. So I believe, if I'm not mistaken,  
 13 we implemented a policy to keep records for seven years.  
 14 Because those records again -- you can see from my  
 15 notations what Marilyn Frey reported. They go back to  
 16 1991. So the association was paying for storage cost for  
 17 antiquated records that we had no obligation to keep.  
 18 Q. And what is Iron Mountain?  
 19 A. I think that's the recordkeeping firm, if you  
 20 will, that actually holds the records.  
 21 Q. Are they associated with Principal Management or  
 22 are they a different entity?  
 23 A. I think they contract with them. I think  
 24 they're a different entity. At least that's my  
 25 impression.

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1 Q. And do you know if these 27 boxes have been made  
 2 available to Mr. Surratt to search for documents that may  
 3 be in response to our discovery requests?  
 4 A. Again, I don't know what 27 boxes are being  
 5 referred to. I can speak to I was involved with --  
 6 coordinated with Marilyn Frey to make sure we got  
 7 documents responsive to what was being requested by, I  
 8 guess, the other side in this litigation, and there were a  
 9 number of boxes that -- I say boxes. I guess they were in  
 10 boxes -- records that Iron Mountain provided to Principal  
 11 who in turn provided those lists to us who we in turn  
 12 provided them to Mr. Surratt. So yes, I mean, the  
 13 question -- whether that is inclusive of these 27 boxes, I  
 14 have no idea.  
 15 Q. On Page 5 is HOA 288.  
 16 A. Yes.  
 17 Q. There's a header HOA Board to Disclose Attorney  
 18 Fee Expenditures to Date, and it looks like there was a  
 19 motion that at the next meeting some disclosure on legal  
 20 expenses was going to be made to the full group of  
 21 homeowners?  
 22 A. Yes.  
 23 Q. And was that disclosure made?  
 24 A. That disclosure was made as far as the amount of  
 25 attorneys' fees expended on the -- on this litigation,

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1 yes.  
 2 Q. And what disclosure was made to the full  
 3 homeowners?  
 4 A. Just the amounts that had been expended.  
 5 Q. And what amounts?  
 6 A. The monthly -- I think the monthly -- I think  
 7 they were monthly amounts.  
 8 Q. And what were those amounts that were disclosed?  
 9 A. I don't have them with me. I don't know.  
 10 Q. Do you have an estimate or a range for what may  
 11 have been disclosed to the homeowners?  
 12 A. At that point in time, I don't. I do know  
 13 that -- I don't know if it was at this point or soon  
 14 thereafter that there was a -- Mara Flemming, who's a  
 15 homeowner, secured copies of our attorney billing  
 16 statements from Mr. Surratt's firm that were privileged,  
 17 had privileged information in them, and we requested that  
 18 she return them and she never did. So that was of  
 19 concern.  
 20 So certainly we -- we reported the amounts that  
 21 had been expended in attorneys' fees in this litigation,  
 22 but it was never our intent to disclose what was  
 23 privileged.  
 24 Q. Have you disclosed a litigation budget through  
 25 trial to the homeowners?

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1 A. No.  
 2 Q. Do you think the homeowners ought to know how  
 3 much they might be asked to spend for this litigation?  
 4 A. It probably would be something that should be  
 5 considered. Certainly when we were at the annual meeting  
 6 back on February 2nd, Mr. Surratt was in attendance and  
 7 was asked that very question by homeowners as far as what  
 8 did he foresee if we got into the litigation would be  
 9 anticipated costs, and he gave his -- you know, obviously  
 10 it was qualified, but he gave his estimate at that time to  
 11 whoever was there, the homeowners.  
 12 Q. Do you remember what that estimate was that he  
 13 gave?  
 14 A. I don't want to -- you know, I can't recall for  
 15 certain. I just remember him giving some numbers. It was  
 16 less than \$100,000, I know that; but what the numbers were  
 17 for sure, you'd have to ask him.  
 18 Q. Do you know if his estimate included possible  
 19 appeals?  
 20 A. It seems like that may have been discussed, but  
 21 I don't know for sure.  
 22 Q. What is the current composition of the board?  
 23 A. Ted Day is vice president acting as president  
 24 because Mr. Schneider's no longer a board member. The  
 25 treasurer is -- of course, he's not on the board -- Aaron



1 Orshalick. He's not on the board though. He's not a  
2 director.

3 I'm the secretary. Marilyn Frey is a director  
4 and Doug Galbraith, it seems like he's got an officer  
5 position too, but he's a director. So there's four  
6 directors.

7 Q. And why are there only four instead of five?

8 A. Because Mr. Schneider was recalled back on  
9 the -- the July 20th special meeting. And the board will  
10 be considering adding a fifth board member. In fact, I  
11 think -- speaking with Ted Day, he's already approached  
12 some people about that, so --

13 Q. And do you know who has been approached about  
14 being that possible fifth member?

15 A. You know, he gave me some names, but -- it  
16 doesn't speak well of me, but most of the names I didn't  
17 recognize.

18 Q. Do you remember any of those names?

19 A. I don't.

20 Q. Do you know if any members of the congregation  
21 have been considered as the fifth board member?

22 A. No, but if they stepped up and asked to be on  
23 the board, we certainly would consider it. Not a bad  
24 idea.

25 Q. And just please give me a general overview of

1 this July 20th meeting. Like how was it structured, how  
2 did it go?

3 A. Well, I mean, structured. It was -- there was a  
4 notice sent out by the president under the bylaws of the  
5 meeting for July 20th and it was -- the homeowners had  
6 petitioned for the meeting. It was a recall petition for  
7 the board, entire five-member board. They also had a  
8 petition to replace the board with certain named  
9 individuals, but that wasn't part of the agenda. And  
10 there was a meeting that took place on -- I think it was a  
11 Sunday, July 20th, at the police station off McCallum and  
12 Hillcrest, and there was quite a number of homeowners that  
13 showed up and Hervey Levine, I think, is kind of the -- I  
14 guess the -- the group that had petitioned, he was more or  
15 less their leader. I think he had a number of proxies  
16 there. But as secretary, that's another charge I have is  
17 to count the proxies, which I'd done on the May 17th  
18 meeting, but because of the conflict, I couldn't count the  
19 proxies at the July 20th meeting and we had to recruit  
20 non-board numbers to come in and count those proxies,  
21 including Hervey. He was part of the accounting process,  
22 if you will.

23 So those proxies were counted as well -- I'm  
24 assuming, as well as votes that were made at the meeting  
25 as far as recalling each of the five directors. Each of

1 the five directors in alphabetical order was given an  
2 opportunity for -- it was either three or five minutes to  
3 give a -- to stand up in front of the special meeting and  
4 say whatever they wanted. And in retort, if you will,  
5 Hervey Levine had somebody from their group, if you will,  
6 that spoke for each of the five also. You know, they were  
7 speaking to remove each of the five board members, and  
8 then each of the five board members spoke after that  
9 person. And that's how it was structured. And I thought  
10 it went off -- as far as being pretty well organized and  
11 non-chaotic, if you will, I thought it went off pretty  
12 good as far as that's concerned.

13 So after that occurred, then people cast their  
14 votes, either that had proxies or they were there in  
15 person and voted and those votes then were counted by a  
16 group that included Mr. Levin. And that process took  
17 quite a while.

18 While that process was underway, David Schneider  
19 got up and allowed whoever wanted to speak, gave them the  
20 floor and the microphone. There was a microphone with a  
21 pedestal at the front. So anybody that wanted to speak  
22 could, and there was a number of people that spoke, some  
23 pro, some con as far as, you know, the litigation, as far  
24 as the board, or as far as anything -- any other issue  
25 they had. It was just an open forum, if you will. So

1 that took place while the counting was underway.

2 Then there was the counting, and the counting  
3 came back and there was only one board member that was  
4 removed and that was the president, David Schneider. The  
5 other four, there was not a majority of votes cast to  
6 remove them -- to recall them, I should say.

7 Q. Now, the five people who spoke against each of  
8 the five board members, do you remember who any of those  
9 five people were?

10 A. I do. The guy that spoke against me, if you  
11 will, his name was Silver. I know his last name was  
12 Silver. Older gentleman, dark hair, kind of stooped --  
13 kind of stooped. And I'm sorry. I'm terrible with names.  
14 I could recognize his face in an instant, but I just am  
15 not good at names. His last name was Mr. Silver. Silver  
16 was his last name.

17 The other people that spoke, I think Hervey  
18 Levine gave a short speech. And actually, he was reading a  
19 speech from someone who wasn't there that had written it  
20 down, and he wrote her -- I mean he read her words at the  
21 end.

22 You know, I can remember faces, but I -- names,  
23 I just don't know them.

24 Q. Do you remember what Mr. Silver said in his  
25 speech to -- in favor of removing you from the board?

1 A. It wasn't -- well, I guess it was me and along  
 2 with the others that -- a lot of the gist of what I was  
 3 hearing was failure to communicate with the homeowners.  
 4 That was the gist of what he was saying for the most part.  
 5 There was a lot of it about what this litigation was  
 6 costing. Some people got up there and said what a loser  
 7 situation it was. I mean, it ran the gamut, but the gist  
 8 of a lot of it was a failure to communicate on behalf of  
 9 the board of what was going on, you know. That was what  
 10 they -- a lot of communicated that were, you know, pro  
 11 recall, if you will.

12 Q. And what -- what specifically do you remember  
 13 that was said -- what do you remember being said about  
 14 this litigation at that meeting?

15 A. Just about the cost of it is what I remember a  
 16 few people saying. And there was some people that got up  
 17 and said that they didn't think the congregation posed any  
 18 kind of a problem or a threat or anything of that nature,  
 19 that they were good people, which is not even in dispute.  
 20 But people had those type of things to say about -- and I  
 21 guess you could tie that to the litigation. But nothing  
 22 really about the -- that I heard about the litigation  
 23 itself did I hear about, you know, well, this person's  
 24 really educated about what's going on with the litigation.  
 25 I didn't hear any kind of talk in that nature.

1 A. Nonresidential uses. I mean, I've heard -- that  
 2 I have knowledge of, I don't know, but as far as -- I've  
 3 heard about, you know, some lady giving piano lessons;  
 4 another lady having swim lessons. The rabbi in this  
 5 litigation testified that he had -- I don't know if it was  
 6 worship services at his house on Bremerton before. I've  
 7 heard that. There's a group home -- or I guess two group  
 8 homes that I've heard are exempt under the law. I've  
 9 heard about those.

10 So I guess that's four or five that I've heard  
 11 about. Do I have personal knowledge of any of them? I  
 12 don't. That doesn't mean they didn't occur.

13 Q. During the time that you've been on the board,  
 14 did the board consider enforcement actions regarding any  
 15 of these others you've mentioned?

16 A. It may have been discussed, but certainly, you  
 17 know, unless it rises to the level of the -- obviously the  
 18 primary use of the structure is for nonresidential  
 19 purposes, as in the case of the congregation, Mr. Gothelf  
 20 and his mother, I haven't heard that that's the case other  
 21 than the group homes. I mean, the group homes are  
 22 obviously being used as group homes, but they are exempt.  
 23 They're exempt from our enforcement the deed restrictions.

24 Q. So is it your view that as long as the primary  
 25 use is residential, then other uses are acceptable?

1 Q. Were any numbers mentioned about the cost of the  
 2 litigation?

3 A. It may have been, but I don't remember.

4 Q. Other than the current action against the  
 5 Gothelfs and the congregation, are you aware of any other  
 6 enforcement actions that have ever been brought in the  
 7 Highlands of McKamy regarding nonresidential usage?

8 A. Ever?

9 Q. Yes.

10 A. I don't know about before I was a board member.  
 11 I can't --

12 Q. But any that you are aware of.

13 A. I'm not aware of any before I was a board  
 14 member.

15 Q. And what about since you've been a board member?

16 A. This one, obviously. We elected to intervene in  
 17 Mr. Schneider's lawsuit.

18 Q. So since you moved in in 1997, this is the only  
 19 instance you're aware of of an HOA enforcement effort for  
 20 nonresidential usage?

21 A. That I know of, but again, I wasn't involved  
 22 with the board before February of this year, so I don't  
 23 know.

24 Q. What nonresidential uses within the Highlands of  
 25 McKamy are you aware of, excluding the congregation?

1 A. It just depends on the case. You have to take  
 2 it case by case. You can't say, oh, here it is, it's  
 3 black and white. I think you have to look at the case.  
 4 Whatever board members are there have a fiduciary  
 5 obligation, in my estimation, to enforce the deed  
 6 restrictions as they're written. So whether that's -- you  
 7 know, it's just not as black and white as your question  
 8 seems to say it could be. It just depends on the  
 9 situation.

10 Q. Are you aware of any home-based businesses in  
 11 the Highlands of McKamy other than the ones you've already  
 12 mentioned?

13 A. I've heard Hervey Levin has his law office out  
 14 of his house. You know, again, there's an example that if  
 15 he's doing that yet he lives there and -- lives there with  
 16 his family -- and I don't know his circumstance. I mean,  
 17 if that's the case, then I don't think that's something  
 18 that the board has an obligation to enforce that. I mean,  
 19 he's using it primarily, I'm assuming, as his residence  
 20 and he also uses it as his business office.

21 So, you know, that's up to the board. Certainly  
 22 if that's the case, I as a board member would look at that  
 23 if that were the facts and probably say no, that's not  
 24 something where we would enforce the deed restrictions  
 25 because it's being used primarily by Mr. Levin as his

1 home.

2 Q. Are you aware of other home-based businesses

3 besides Mr. Levin's?

4 A. There's -- I'm sure there's a number them. I

5 mean, Jan Sullivan, she's moved since this occurred, and

6 she put up her house for sale because of this. She lived

7 on Mumford right around the horseshoe, if you will, and I

8 know she ran her sales business out of her house; but she

9 had the best house, most hospitable house in the

10 neighborhood, so, I mean, it's not something that

11 violated, I don't think, the spirit of the deed

12 restrictions.

13 Q. Any other home-based businesses that you're

14 aware of?

15 A. My wife had a court reporting -- has a court

16 reporting business and she worked out of the house. She

17 doesn't now, but she did. Again, we lived there and it's

18 our primary residence. You can't say that for the rabbi

19 or his son or the Gothelfs.

20 Q. So you contend that 7103 Mumford is not the

21 rabbi's son's primary residence?

22 A. I don't know. He may claim it as his primary

23 residence, but that's not the primary use of that house.

24 Q. Did you and your wife add a second door to your

25 home at any point?

1 A. Second door. We have a number of doors. We

2 have a lot more than just one door. What do you mean a

3 second door?

4 Q. Have you added a new door to the home at any

5 point since you purchased it?

6 A. We have a sliding gate, if you will, in the back

7 that slides and keeps our driveway segregated from the

8 alley, and we got that when we had our two kids. That's

9 the only door we've added.

10 Q. And that's in the driveway?

11 A. It's in the driveway. It's a -- I say sliding.

12 It's on wheels.

13 Q. And where are you employed, Mr. Donohue?

14 A. I'm employed with Friedman & Feiger law firm.

15 Q. And where is your office located?

16 A. It's on Spring Valley and Noel Road, North

17 Dallas.

18 Q. And how long have you been there?

19 A. I've been with Larry Friedman's firm since 1995.

20 Q. And are you a partner there?

21 A. Yes.

22 Q. And when did your wife stop operating her

23 business that you mentioned earlier?

24 A. She's not. I mean, she operates her business.

25 She just doesn't have her office, if you will, located at

1 the house. She's still in the court reporting business.

2 Q. Where is her office now?

3 A. I think -- and I could be wrong about this, and

4 it shows you how much I keep up with things -- it's off

5 Coit and Belt Line. There's a building. I think it says

6 like Tourneau University. It's a multistory building. I

7 think that's where her office is.

8 (Exhibit 29 marked.)

9 Q. I'm going to mark this as Exhibit 29. Please

10 let me know once you've had a chance to look at it.

11 A. Yeah.

12 Q. And I'll represent that this was, as you can see

13 from the date at the bottom, pulled from the Internet

14 yesterday.

15 A. Uh-huh.

16 Q. And this lists -- is this a website of your

17 wife's business?

18 A. It is.

19 Q. And does she still operate this business?

20 A. She does, just like I testified to.

21 Q. And this business lists your home address as the

22 address of the business?

23 A. It does, uh-huh. That's where she has

24 deliveries and she mails things out of the house. Sure.

25 Q. Are you aware of any other religious gatherings

1 within the neighborhood, like Bible studies, prayer

2 meetings, not counting the congregation?

3 A. Other than the rabbi's testimony about having,

4 you know, people of his faith over at his house, I'm not

5 aware of any. I've heard that there's some, but I'm not

6 aware of any.

7 Q. What are the ones you've heard of?

8 A. I've just heard people talking about

9 such-and-such has a Bible study every now and then, and

10 I'm thinking that's great.

11 Q. Do you remember who's mentioned Bible studies?

12 A. I don't. But I feel that same way about people

13 of any faith. If they get together, I think that's fine.

14 Q. What's your understanding of how long the

15 congregation has been meeting within the Highlands of

16 McKamy?

17 A. What's my understanding? You know, all I know

18 is -- all I can testify to is what I heard the rabbi

19 testify to. If he was telling the truth, he's been having

20 meetings on Bremerton Court. He tried to make a case that

21 the homeowners association and the board's known it all

22 this time, according to his testimony back in, I think,

23 April. That's all I've heard.

24 And then, of course, they bought the

25 7103 Mumford Court at the behest of the rabbi, Mr. Gothelf

1 did, I don't know, May or June of last year, and my  
2 impression is they started services not too long after  
3 that. But that's really all I know is what I've heard the  
4 rabbi testify to. But he also testified that they were  
5 looking -- that he told the then-president that they were  
6 looking at property off outside of the neighborhood to  
7 move to, and that's also what I heard, so...

8 MR. McGEE: Let's take a break and go off  
9 the record. I don't think I have too much more. I just  
10 want to look things over.

11 THE VIDEOGRAPHER: We're off the record at  
12 3:20 p.m.

13 (Recess taken.)

14 THE VIDEOGRAPHER: We're on the record at  
15 3:30 p.m.

16 Q. Just a few more questions, Mr. Donahue. You  
17 mentioned earlier that your wife had moved to a new office  
18 recently. When did that happen?

19 A. I say recent. I mean, it could have been four,  
20 five years ago. It's kind of -- it's another court  
21 reporting firm that I think offices there too named Alpha  
22 Reporting, and that's who she -- I don't know if it's -- I  
23 don't know what the arrangement is, but that's where her  
24 office is.

25 Q. Have you ever heard any residents of the

1 Highlands of McKamy make any antisemitic comments?

2 A. Have I ever heard any -- no, I haven't, and  
3 that's certainly not what this is about. So I've never --  
4 as a board member I've never heard anybody say anything  
5 antisemitic, either the board or, quite frankly, any of  
6 the homeowners, although I've seen -- before I was on the  
7 board there was somebody that I -- my impression is he's  
8 from the Jewish community come in and try to, I think,  
9 stir things up as if it was some type of a -- I don't know  
10 antisemitic, but some kind of religious issue. I did see  
11 that happen one time, yes.

12 Q. And what are -- what are you referring to?

13 A. I'm referring to an instance that David  
14 Schneider before he ran for president had a gathering, if  
15 you will, an invitation to come to his house to talk about  
16 what was happening at 7103 Mumford Street. And that was  
17 either in October or November of last year. And I  
18 attended that and so did quite a few other homeowners,  
19 including members of the then current board. I say  
20 members. I know of one in particular that was there that  
21 I later learned was on the board.

22 But at the start of that meeting in his house, a  
23 gentleman walked in, short, kind of chubby, white hair,  
24 and basically, I think, tried to -- my impression was he  
25 was trying to break up the meeting and trying to make it

1 sound like there was anti-Jewish sentiment either to David  
2 Schneider or to those that would want to enforce the deed  
3 restrictions against the congregation. That's the  
4 impression that I had.

5 Q. And then what --

6 A. And he was asked to leave by Mr. Schneider after  
7 just a couple of exchanges with Mr. Schneider. He was  
8 asked to leave.

9 Q. Do you remember what he said?

10 A. I don't remember in particular what he said, but  
11 that was the impression I got is, you know, why are you  
12 picking on us, us Jews, if you will, as opposed to you  
13 didn't enforce it with respect to -- and I think I  
14 remember him mentioning, you know, the -- I call it the  
15 group home now. There's another word for it. I want to  
16 say retirement home or whatever else he mentioned; you  
17 know, that we were selectively wanting to enforce the deed  
18 restrictions. I say "we." Whoever wanted to selectively  
19 enforce the deed restrictions against the congregation  
20 because they were Jewish. That's the impression that I  
21 got from that gentleman.

22 Q. And do you remember what Mr. Schneider said to  
23 him?

24 A. He said that no, that's not what this is about  
25 at all, you know. And then the guy continued and spoke

1 over David and was -- not that there was an order or  
2 anything to that meeting, but still it was -- you know, to  
3 David Schneider, the guy crossed the line -- and I don't  
4 blame him; it was in his home -- and he asked the guy to  
5 leave. He said, You're going to have to leave.

6 Q. And then did he leave --

7 A. He did.

8 Q. -- when Mr. Schneider asked him to?

9 A. He did.

10 Q. And do you remember this person's name?

11 A. I don't know his name. I saw him at the  
12 July 20th meeting. He was there. I don't know that he's  
13 been to all the -- I don't know if he was there at the  
14 annual meeting when the new board was put on or not, but I  
15 did see him at the July 20th meeting. I don't know his  
16 name though.

17 Q. And excluding residents of the Highlands of  
18 McKamy and Mr. Surratt, who are the people that you have  
19 talked to about either this litigation or the  
20 congregation?

21 A. Oh, I don't know. I mean, I've mentioned it in  
22 passing to people that I know as far as -- but nothing in  
23 depth. I mean, I haven't talked in depth about this  
24 lawsuit to anyone other than Mr. Surratt, the board  
25 members, and my wife.

1 Q. Is your wife involved with the HOA at all?  
 2 A. What do you mean "involved"?"  
 3 Q. Like does she attend meetings, cast votes?  
 4 A. She casts votes and, yeah, she's attended at  
 5 least two of the meetings since I've been on the board.  
 6 And she and I have attended meetings, again, maybe three  
 7 or four times before. She and I attended meetings.  
 8 Q. When you both attend, how do you decide who's  
 9 going to be casting the vote for your property?  
 10 A. It doesn't matter. I mean, both of us think  
 11 alike as far as the Highlands of McKamy are concerned. So  
 12 I guess I cast the vote when I was there; but if she had  
 13 been there, then she could have cast it. It doesn't  
 14 matter.  
 15 MR. McGEE: That's all I have. I'll pass  
 16 the witness.  
 17 MR. BUTTERFIELD: I have no questions at  
 18 this time.  
 19 MR. SURRETT: No questions at this time.  
 20 THE VIDEOGRAPHER: We're off the record at  
 21 3:36 p.m.  
 22 (Deposition concluded.)  
 23  
 24  
 25

1 I, MICHAEL D. DONOHUE, have read the foregoing  
 2 deposition and hereby affix my signature that same is true  
 3 and correct, except as noted above.  
 4  
 5 MICHAEL D. DONOHUE  
 6  
 7 THE STATE OF \_\_\_\_\_ )  
 8 COUNTY OF \_\_\_\_\_ )  
 9  
 10 Before me, \_\_\_\_\_, on this day  
 11 personally appeared MICHAEL D. DONOHUE, known to me or  
 12 proved to me on the oath of \_\_\_\_\_ or through  
 13 \_\_\_\_\_ (description of identity card or  
 14 other document) to be the person whose name is subscribed  
 15 to the foregoing instrument and acknowledged to me that  
 16 he/she executed the same for the purpose and consideration  
 17 therein expressed.  
 18 Given under my hand and seal of office on this  
 19 \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.  
 20  
 21  
 22 NOTARY PUBLIC IN AND FOR  
 23 THE STATE OF \_\_\_\_\_  
 24 My Commission Expires \_\_\_\_\_  
 25

1 CHANGES AND SIGNATURE  
 2  
 3 WITNESS NAME: \_\_\_\_\_ DATE OF DEPOSITION: \_\_\_\_\_  
 4 PAGE LINE CHANGE REASON  
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 25 \_\_\_\_\_

1 CAUSE NO. 429-04998-2013  
 2 DAVID R. SCHNEIDER, § IN THE DISTRICT COURT  
 3 Plaintiff, §  
 4 v. §  
 5 JUDITH D. GOTHELF, MARK B. §  
 6 GOTHELF, AND CONGREGATION §  
 7 TORAS CHAIM, INC., §  
 8 Defendants. §  
 9 and § 429TH JUDICIAL DISTRICT  
 10 §  
 11 HIGHLANDS OF MCKAMY IV AND §  
 12 V COMMUNITY IMPROVEMENT §  
 13 ASSOCIATION, §  
 14 Intervening Plaintiff, §  
 15 v. §  
 16 JUDITH D. GOTHELF AND §  
 17 MARK B. GOTHELF, §  
 18 Defendants. § OF COLLIN COUNTY, TEXAS  
 19  
 20 REPORTER'S CERTIFICATION  
 21 ORAL AND VIDEOTAPED DEPOSITION OF MICHAEL D. DONOHUE  
 22 AUGUST 8, 2014  
 23  
 24 I, Jamie Prince Hess, Certified Shorthand Reporter in  
 25 and for the State of Texas, hereby certify to the  
 following:  
 That the witness, MICHAEL D. DONOHUE, was duly sworn  
 and that the transcript of the deposition is a true record  
 of the testimony given by the witness;  
 That the deposition transcript was submitted on  
 \_\_\_\_\_ to the witness or to the attorney for the  
 witness for examination, signature, and return to me by

1 \_\_\_\_\_  
 2 That the amount of time used by each party at the  
 3 time of the deposition is as follows:  
 4 MR. MATT McGEE - 01:03  
 5 MR. JUSTIN E. BUTTERFIELD - 00:00  
 6 MR. DAVID A. SURRATT - 00:00  
 7  
 8 That pursuant to information given to the deposition  
 9 officer at the time said testimony was taken, the  
 10 following includes counsel for all parties of record:  
 11 FOR THE PLAINTIFF:  
 12 Mr. David R. Schneider (Pro Se)  
 13 7035 Mumford  
 14 Dallas, Texas 75252  
 15 FOR THE DEFENDANT CONGREGATION TORAS CHAIM:  
 16 Mr. Matt McGee  
 17 Haynes and Boone, LLP  
 18 2323 Victory Avenue  
 19 Suite 700  
 20 Dallas, Texas 75219  
 21 FOR THE DEFENDANTS CONGREGATION TORAS CHAIM, JUDITH D.  
 22 GOTHELF AND MARK B. GOTHELF:  
 23  
 24 Mr. Justin E. Butterfield  
 25 Liberty Institute  
 2001 Plano Parkway  
 Suite 1600  
 Plano, Texas 75075  
 FOR THE INTERVENOR HIGHLANDS OF McKAMY IV AND V COMMUNITY  
 IMPROVEMENT ASSOCIATION:  
 Mr. David A. Surratt  
 Riddle & Williams, PC  
 3710 Rawlins Street  
 Suite 1400  
 Dallas, Texas 75219

1 FURTHER CERTIFICATION UNDER TRCP RULE 203

2  
 3 The original deposition was/was not returned to the  
 4 deposition officer on \_\_\_\_\_  
 5 If returned, the attached Changes and Signature  
 6 page(s) contain(s) any changes and the reasons therefor.  
 7 If returned, the original deposition was delivered to  
 8 Mr. Matt McGee, Custodial Attorney.  
 9 S \_\_\_\_\_ is the deposition officer's charges to the  
 10 Defendant Congregation Toras Chaim for preparing the  
 11 original deposition and any copies of exhibits;  
 12 The deposition was delivered in accordance with Rule  
 13 203.3, and a copy of this certificate, served on all  
 14 parties shown herein, was filed with the Clerk.  
 15 Certified to have on this \_\_\_\_\_ day of  
 16 \_\_\_\_\_

17  
 18  
 19  
 20 JAMIE PRINCE HESS, TEXAS CSR #6761  
 21 Expiration Date: 12/31/14  
 22 CSI GLOBAL DEPOSITION SERVICES  
 23 Firm Registration No. 526  
 24 4950 N. O'Connor Road, Suite 152  
 25 Irving, Texas 75062-2778  
 972.719.5000  
 972.650.0225 Fax

1 I further certify that I am neither counsel for,  
 2 related to, nor employed by any of the parties in the  
 3 action in which this proceeding was taken, and further  
 4 that I am not financially or otherwise interested in the  
 5 outcome of this action.  
 6 Further certification requirements pursuant to  
 7 Rule 203 of the Texas Code of Civil Procedure will be  
 8 complied with after they have occurred.  
 9 Certified to by me on this \_\_\_\_\_ day of  
 10 \_\_\_\_\_,  
 11 \_\_\_\_\_  
 12 \_\_\_\_\_

13 JAMIE PRINCE HESS, TEXAS CSR #6761  
 14 Expiration Date: 12/31/14  
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 19 972.719.5000  
 20 972.650.0225 Fax  
 21  
 22  
 23  
 24  
 25

**MICHAEL D. DONOHUE**  
**August 8, 2014**

1 CAUSE NO. 429-04998-2013

2 DAVID R. SCHNEIDER, § IN THE DISTRICT COURT  
Plaintiff, §

3 v. §

4 JUDITH D. GOTHELF, MARK B. §  
GOTHELF, AND CONGREGATION §  
5 TORAS CHAIM, INC., §  
6 Defendants. §

7 and § 429TH JUDICIAL DISTRICT

8 HIGHLANDS OF MCKAMY IV AND §  
V COMMUNITY IMPROVEMENT §  
9 ASSOCIATION, §  
Intervening Plaintiff, §

10 v. §

11 JUDITH D. GOTHELF AND §  
12 MARK B. GOTHELF, §  
Defendants. § OF COLLIN COUNTY, TEXAS

13

14 REPORTER'S CERTIFICATION  
15 ORAL AND VIDEOTAPED DEPOSITION OF MICHAEL D. DONOHUE  
16 AUGUST 8, 2014

17 I, Jamie Prince Hess, Certified Shorthand Reporter in  
18 and for the State of Texas, hereby certify to the  
19 following:

20 That the witness, MICHAEL D. DONOHUE, was duly sworn  
21 and that the transcript of the deposition is a true record  
22 of the testimony given by the witness;

23 That the deposition transcript was submitted on  
24 August 20, 2014 to the witness or to the attorney for the  
25 witness for examination, signature, and return to me by

**CSI GLOBAL DEPOSITION SERVICES**  
**972-719-5000**

MICHAEL D. DONOHUE  
August 8, 2014

1 September 15, 2014.

2 That the amount of time used by each party at the  
3 time of the deposition is as follows:

4 MR. MATT MCGEE - 01:03  
5 MR. JUSTIN E. BUTTERFIELD - 00:00  
6 MR. DAVID A. SURRATT - 00:00

7 That pursuant to information given to the deposition  
8 officer at the time said testimony was taken, the  
9 following includes counsel for all parties of record:

10 FOR THE PLAINTIFF:

11 Mr. David R. Schneider (Pro Se)  
12 7035 Mumford  
13 Dallas, Texas 75252

14 FOR THE DEFENDANT CONGREGATION TORAS CHAIM:

15 Mr. Matt McGee  
16 Haynes and Boone, LLP  
17 2323 Victory Avenue  
18 Suite 700  
19 Dallas, Texas 75219

20 FOR THE DEFENDANTS CONGREGATION TORAS CHAIM, JUDITH D.  
21 GOTHELF AND MARK B. GOTHELF:

22 Mr. Justin E. Butterfield  
23 Liberty Institute  
24 2001 Plano Parkway  
25 Suite 1600  
Plano, Texas 75075

FOR THE INTERVENOR HIGHLANDS OF MCKAMY IV AND V COMMUNITY  
IMPROVEMENT ASSOCIATION:

Mr. David A. Surratt  
Riddle & Williams, PC  
3710 Rawlins Street  
Suite 1400  
Dallas, Texas 75219

CSI GLOBAL DEPOSITION SERVICES  
972-719-5000




**MICHAEL D. DONOHUE**  
**August 8, 2014**

1 I further certify that I am neither counsel for,  
2 related to, nor employed by any of the parties in the  
3 action in which this proceeding was taken, and further  
4 that I am not financially or otherwise interested in the  
5 outcome of this action.

6 Further certification requirements pursuant to  
7 Rule 203 of the Texas Code of Civil Procedure will be  
8 complied with after they have occurred.

9 Certified to by me on this 20th day of  
10 August, 2014.

  
13 JAMIE PRINCE HESS, TEXAS CSR #6762  
14 Expiration Date: 12/31/14  
15 CSI GLOBAL DEPOSITION SERVICES  
16 Firm Registration No. 526  
17 4950 N. O'Connor Road, Suite 152  
18 Irving, Texas 75062-2778  
19 972.719.5000  
20 972.650.0225 Fax  
21  
22  
23  
24  
25



**CSI GLOBAL DEPOSITION SERVICES**  
**972-719-5000**

MICHAEL D. DONOHUE  
August 8, 2014

1 FURTHER CERTIFICATION UNDER TRCP RULE 203

2

3 The original deposition was/was not returned to the  
4 deposition officer on Sept 15, 2014.

5 If returned, the attached Changes and Signature  
6 page(s) contain(s) any changes and the reasons therefor.

7 If returned, the original deposition was delivered to  
8 Mr. Matt McGee, Custodial Attorney.

9 \$ 465.15 is the deposition officer's charges to the  
10 Defendant Congregation Toras Chaim for preparing the  
11 original deposition and any copies of exhibits;

12 The deposition was delivered in accordance with Rule  
13 203.3, and a copy of this certificate, served on all  
14 parties shown herein, was filed with the Clerk.

15 Certified to by me on this 17 day of  
16 Sept, 2014.

17

18

19



20

JAMIE PRINCE HESS, TEXAS CSR #6761  
Expiration Date: 12/31/14  
CSI GLOBAL DEPOSITION SERVICES  
Firm Registration No. 526  
4950 N. O'Connor Road, Suite 152  
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972.719.5000  
972.650.0225 Fax

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22

23

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25

CSI GLOBAL DEPOSITION SERVICES  
972-719-5000

**MICHAEL D. DONOHUE**  
**August 8, 2014**

1	CHANGES AND SIGNATURE		
2			
3	WITNESS NAME: _____		DATE OF DEPOSITION: _____
4	PAGE LINE	CHANGE	REASON
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**CSI GLOBAL DEPOSITION SERVICES**  
**972-719-5000**

**MICHAEL D. DONOHUE**  
**August 8, 2014**

1           I, MICHAEL D. DONOHUE, have read the foregoing  
 2 deposition and hereby affix my signature that same is true  
 3 and correct, except as noted above.

4

5

\_\_\_\_\_  
 MICHAEL D. DONOHUE

6

7 THE STATE OF \_\_\_\_\_)

8 COUNTY OF \_\_\_\_\_)

9

10           Before me, \_\_\_\_\_, on this day  
 11 personally appeared MICHAEL D. DONOHUE, known to me or  
 12 proved to me on the oath of \_\_\_\_\_ or through  
 13 \_\_\_\_\_ (description of identity card or  
 14 other document) to be the person whose name is subscribed  
 15 to the foregoing instrument and acknowledged to me that  
 16 he/she executed the same for the purpose and consideration  
 17 therein expressed.

18           Given under my hand and seal of office on this  
 19 \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

20

21

22

\_\_\_\_\_  
 NOTARY PUBLIC IN AND FOR  
 THE STATE OF \_\_\_\_\_  
 My Commission Expires \_\_\_\_\_

23

24

25

**CSI GLOBAL DEPOSITION SERVICES**  
**972-719-5000**

# EXHIBIT Q

From: David Schneider  
To: Ben Bisc  
Subject: Deed / Covenants  
Date: Monday, August 19, 2013 2:52:30 PM

---

Hi Ben,

Hopefully this is your email. Wanted to pass on the relevant section of the Declaration of Restrictions per our discussion this morning:

Article VI, 1: RESIDENTIAL USAGE: No structure shall be erected placed, altered, used for or be permitted to remain on any residential building lot other than one detached single family private...

I didn't want your congregation to run afoul of this provision, as I am concerned that a "church certificate" might cause. This may satisfy the City of Dallas but not the deed restrictions. I believe that the Texas law regarding placing a church in an area deed restricted to residential is relatively more clear than the issue of when residential use becomes incidental to other (ie religious) activity.

See for instance:

[http://www.leagle.com/decision/19781039570SW2d469\\_1943.xml/CALVARY+BAPTIST+CHURCH+AT+TYLER+v.+ADAMS](http://www.leagle.com/decision/19781039570SW2d469_1943.xml/CALVARY+BAPTIST+CHURCH+AT+TYLER+v.+ADAMS) (1978) which I think is more or less representative. This deed restriction was almost verbatim the same as ours. I am not familiar with the specifics of Dallas municipal law so that might trump in this case.

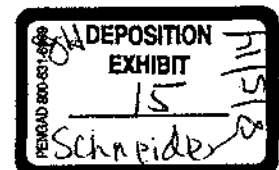
Please be assured that generally I see the congregation as a positive for our neighborhood; yet at the same time I would prefer not to reside by something which would be operated under City of Dallas guidelines as a church. Membership parking on the street is not as much an issue for our family. My primary concern is that it would lose the exterior character as a residence. I wouldn't want a physician's clinic there either (something that serves a good community purpose as well).

Or to put it another way: if I can voice these issues, I believe the HOA will be closely reviewing these legal issues too. I realize some of this puts neighbors on opposite sides of some issues. Hopefully those are not, of themselves, related to exercise of religion.

Please feel free to pass my sentiments on to others as you see fit.

Regards,

-David



# **EXHIBIT R**

From: Ben Nise  
To: David Schneider  
Subject: Re: Deed / Covenants  
Date: Tuesday, August 27, 2013 12:27:10 PM

Ben,

After further review of the related case law, it appears that Texas courts have consistently enforced deed restrictions prohibiting non-residential uses, including as a place of worship. Thus I believe Congregation Toras Chaim will be violating the Highlands of McKamy IV/V Declaration of Restrictions regarding 7103 Mumford if it obtains a church use certificate for that property. I am sure you are aware that any homeowner can initiate legal action to enforce, as well as the Homeowners Association itself. No damages need be demonstrated to prevail.

I have no grievance against worship at 7103 Mumford. That would be as a secondary use, the primary being residential (as I originally understood the intent). I have no grievance against street parking either, I have indicated the street in front of our house can be used for overflow (not that we own it). But the primary use as a church is inconsistent with our neighborhood - and more importantly violates a key provision of the restrictions. I consider it to be the law.

While most folks likely are not familiar with these restrictions in detail, I read them before I purchased my home. Although I am not an attorney, I am capable and experienced in reading and interpreting the relevant law. In fact, I have litigated regarding similar covenants to force a neighbor to comply (which he did after a day in court). See DAVID R. SCHNEIDER VS. JOHN A. VANN, Case 1990209300, 199th District Court, 2000. I acted pro se.

It is not my desire to bring this to the point of legal action, quite the contrary. To attempt to avoid such, I would like to invite someone from the Congregation to present - informally or otherwise - any counter-reasoning that might change my view. I would never pursue the legal avenue unless I felt success was very likely - so show me how I should see things in a manner amicable to the Congregation. If you would be so kind as to pass this on to an appropriate person, or even if you would like to discuss yourself, that would be good. If you decline, I will understand.

Please be advised that I am not acting on behalf of the HOA board or anyone else. But if I was placing a bet: this matter will be litigated if it cannot be resolved with me. Hopefully you will understand that I intend no malice at any level. I am confident we all believe we are acting in the best interest of the neighborhood.

Thanks,

-David

On Mon, Aug 19, 2013 at 3:14 PM, Benjamin Nise <[gatorswamp34@yahoo.com](mailto:gatorswamp34@yahoo.com)> wrote:  
Hi David --

Thank you very much for your email, and I appreciate your looking up the case, which I will pass on to the Rabbi and the synagogue board.

Best Regards,

Ben Nise

From: David Schneider <[droschinese@gmail.com](mailto:droschinese@gmail.com)>  
To: Ben Nise <[gatorswamp34@yahoo.com](mailto:gatorswamp34@yahoo.com)>  
Sent: Monday, August 19, 2013 2:52 PM  
Subject: Deed / Covenants

Hi Ben,

Hopefully this is your email. Wanted to pass on the relevant section of the Declaration of Restrictions per our discussion this morning:

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See for instance:

[http://www.lawls.com/decision/19781039570SW?djk69\\_1913.xml;CALVARY+BAPTIST+CHURCH+V+TYLER+Y+ADAMS](http://www.lawls.com/decision/19781039570SW?djk69_1913.xml;CALVARY+BAPTIST+CHURCH+V+TYLER+Y+ADAMS) (1978) which I think is more or less representative. This deed restriction was almost verbatim the same as ours. I am not



familiar with the specifics of Dallas municipal law so that might trump in this case.

Please be assured that generally I see the congregation as a positive for our neighborhood; yet at the same time I would prefer not to reside by something which would be operated under City of Dallas guidelines as a church. Membership parking on the street is not as much an issue for our family. My primary concern is that it would lose the exterior character as a residence. I wouldn't want a physician's clinic there either (something that serves a good community purpose as well).

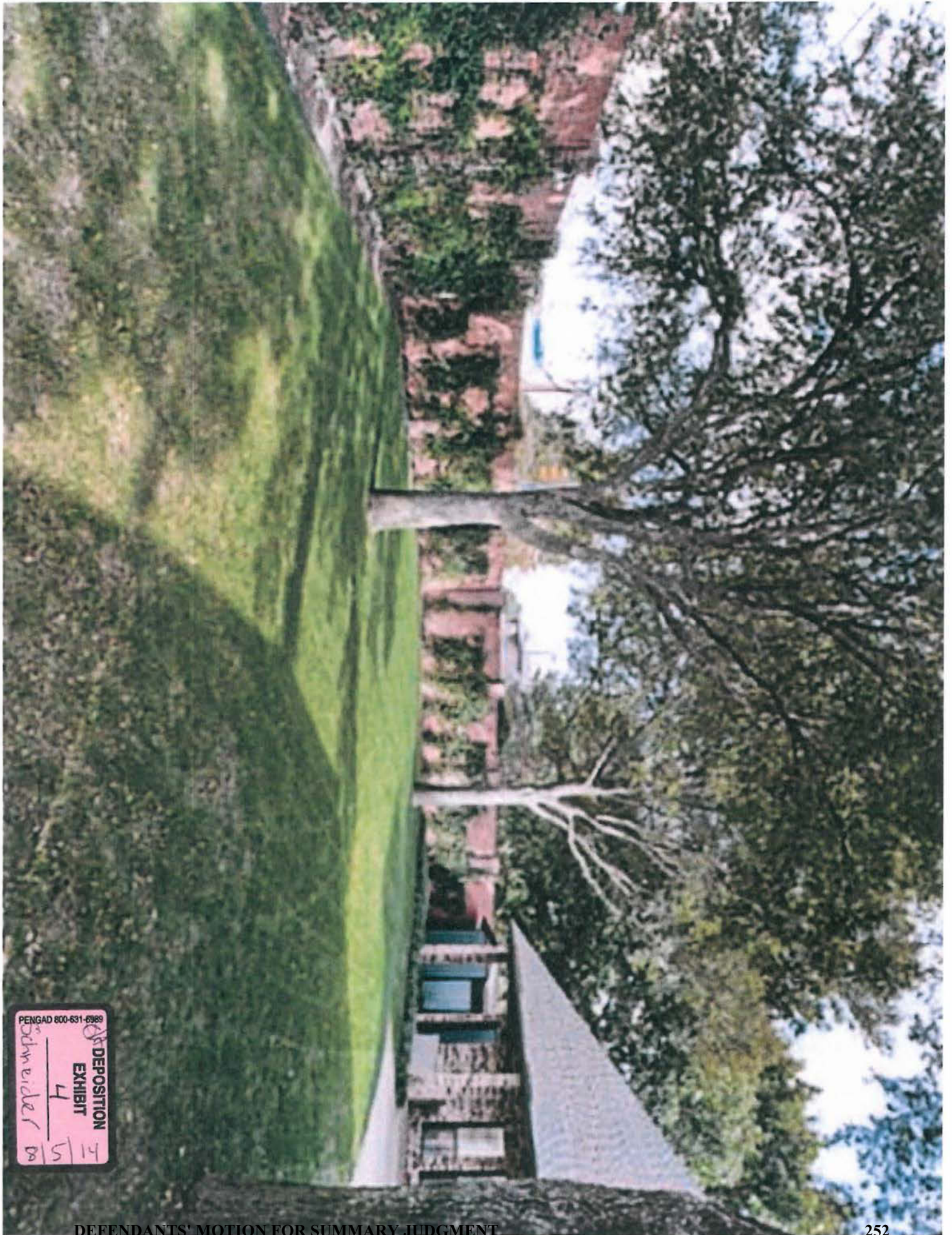
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Please feel free to pass my sentiments on to others as you see fit.

Regards.

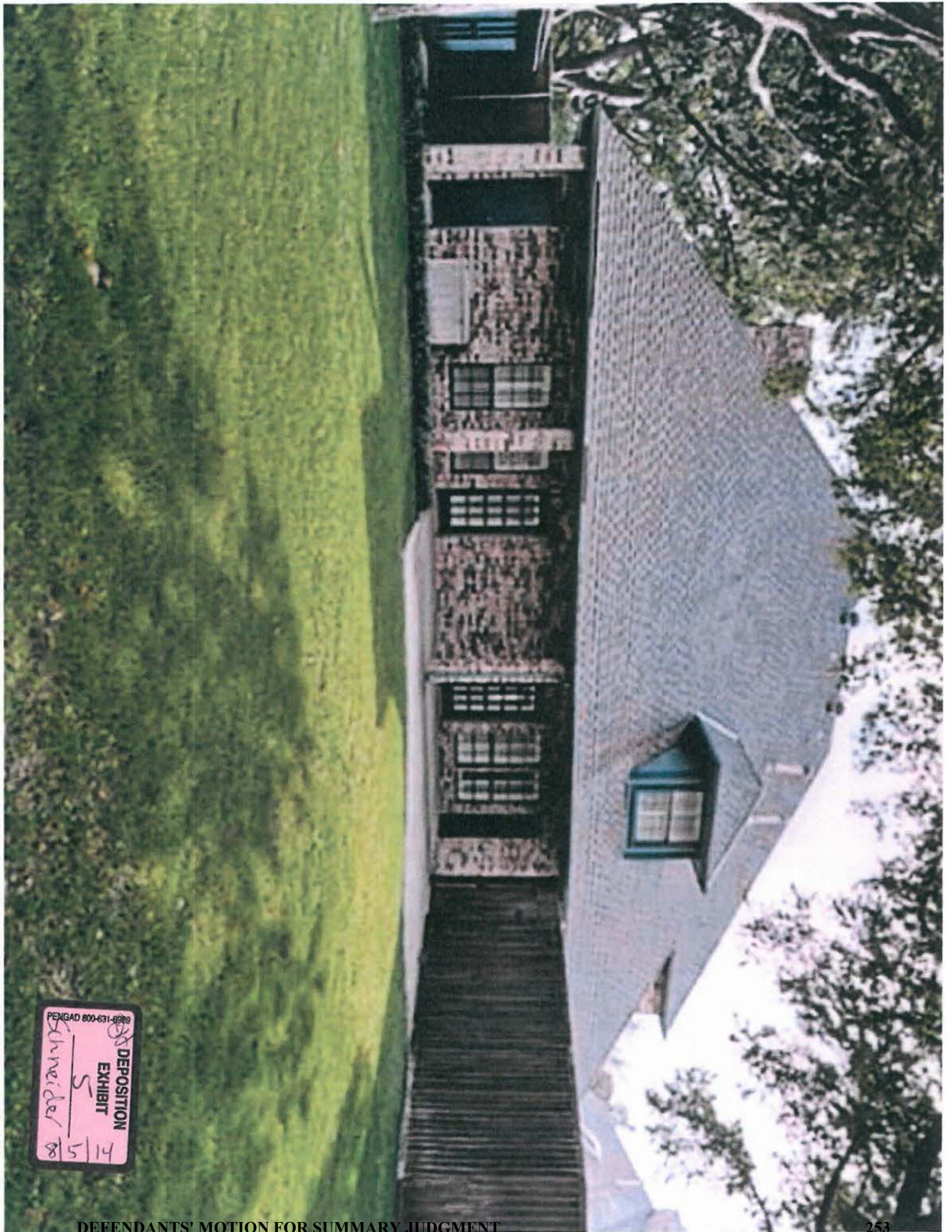
-David

# EXHIBIT S



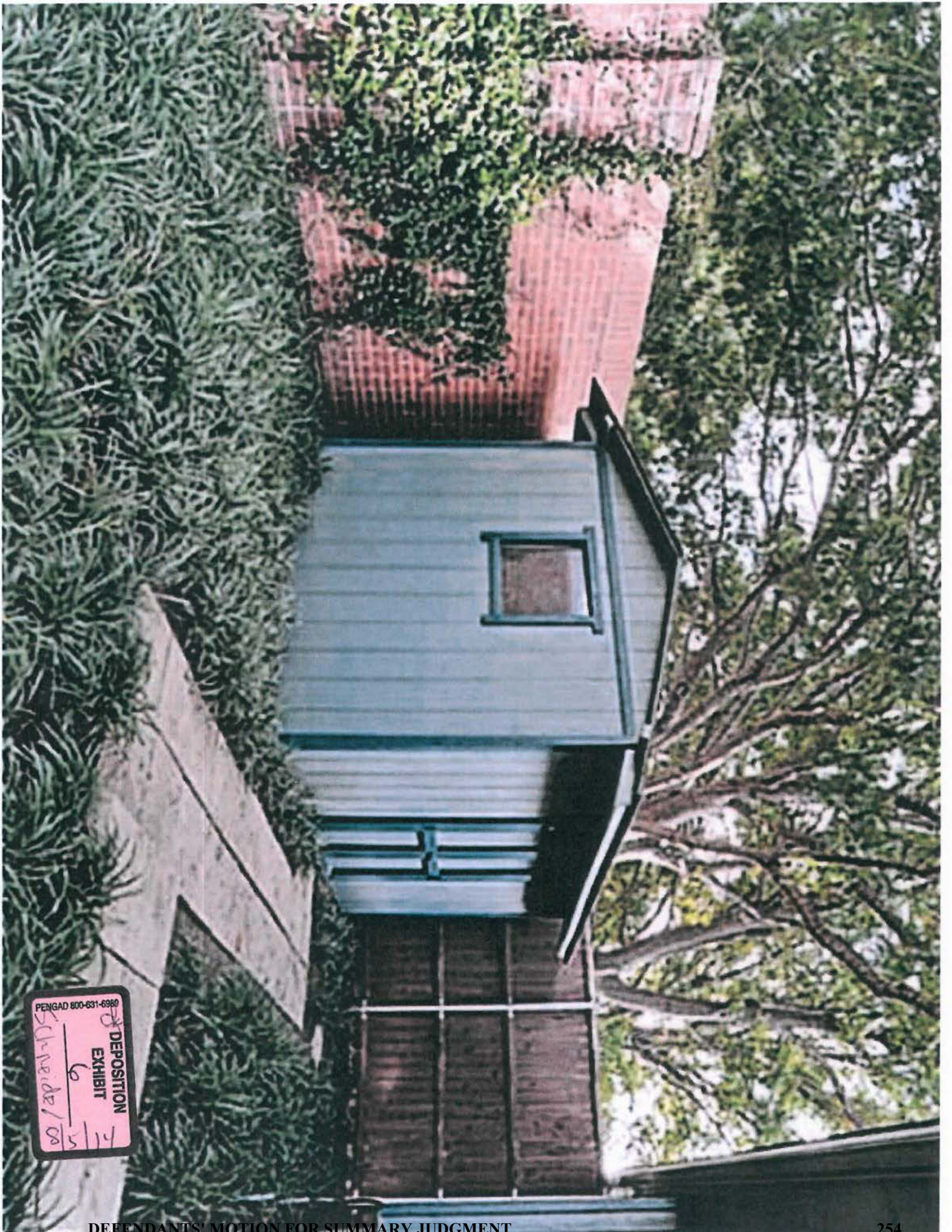
PENGAD 800-631-6989  
DEPOSITION  
EXHIBIT  
4  
Schneider  
08/15/14





PENGAD 800-631-8888  
DEPOSITION  
EXHIBIT  
5  
Schneider  
8/5/14





# **EXHIBIT T**

**From:** David Schneider  
**To:** Andy Jacobs HOA  
**Cc:** HOA President; HOA Board  
**Subject:** Re: Various Notices  
**Date:** Saturday, December 28, 2013 1:09:52 PM  
**Attachments:** OriginalPetition.Stamped.pdf

---

Andy,

I filed in Collin County. I have attached a copy of the Original Petition with the District Clerk's file stamp. You will be able to see all of the allegations and the related law. As cases go, I consider it fairly clear cut.

For your consideration: The HOA can join my suit and I can continue as lead counsel. I will do the majority of the work, including discovery (depositions, interrogatories, etc). That will keep HOA legal costs to a minimum. This offer does not accrue much (if anything) to me. I will not be dropping the suit regardless of the HOA's involvement.

However, it is in the HOA's best interests to be a part of this. I anticipate that this is not going to be the last time someone tries to set up shop in our neighborhood. The HOA needs to take a firm stand on this, you cannot expect individuals to pursue this every time. Once this process has been used by our HOA to keep us residential, it shouldn't be hard to keep other non-residential uses at bay. They will know we are not bluffing, and there will be a good precedent.

Thanks,

-David

On Sat, Dec 28, 2013 at 12:22 PM, Andy Jacobs HOA  
<[hofmck45.director1@gmail.com](mailto:hofmck45.director1@gmail.com)> wrote:

David:

Pursuant to #4 in your email dated December 26 to the Board of The Highlands of McKamy in which you state:

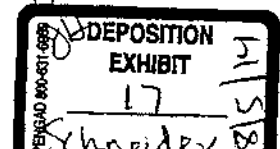
"I personally filed suit in this matter against Congregation Toras Chaim and the owners of the house. The case number is 429-04998-2013"

Thank you for giving us a "Head's up" regarding the filing of your lawsuit.

David-

Please clarify for me in which county (Dallas, or Collin county) you filed your lawsuit.

Moreover, I would greatly appreciate it if you would provide me and/or the Board of Directors of the Highlands of McKamy and its Officers a Certified copy of the





papers you filed with the court. This will allow the Board to better ascertain how we should proceed in addressing this issue.

Thank you for your assistance with this matter.

Andy Jacobs

**From:** David Schneider [mailto:[drchinese@gmail.com](mailto:drchinese@gmail.com)]  
**Sent:** Friday, December 27, 2013 10:16 AM

**To:** HOM President  
**Cc:** HOA Board  
**Subject:** Re: Various Notices

Cookie,

Thank you for the time for your response.

It is true that my perception is based on one's actions more than what that person says. A change in perception follows a change in actions. It is never too late for the right actions.

Regards,

-David

On Fri, Dec 27, 2013 at 10:06 AM, HOM President  
<[hofmck45.president@gmail.com](mailto:hofmck45.president@gmail.com)> wrote:

David,

You seem to have made up your mind regarding what you perceive as my ego and my unwillingness to take the interests of our neighborhood seriously; consequently, there is nothing I can say which will alter your perception.



Regarding your bullet 4:

My engagement with DART began and continues to be an effort to protect the rights of our neighborhood as well as the property values that impact us all. Regarding the possible application for an SUP, given your familiarity with Texas Statutes, I am sure you are aware that participating in any discussion or voting on any matter in which an individual has a personal or monetary interest is unethical. Andy Jacobs is aware of my ethical concerns and has stepped forward to serve as liaison with the City Attorney, the homeowners, etc.

Regards,

Cookie Peadon

**From:** David Schneider [mailto:drchinese@gmail.com]  
**Sent:** Friday, December 27, 2013 9:04 AM  
**To:** HOM President  
**Cc:** HOA Board  
**Subject:** Re: Various Notices

Cookie,

1. Thanks.
2. Thanks, either address is fine.
3. Announcing a future meeting at a previous meeting is not one of the prescribed methods of providing Board meeting notice under Texas law. Announcing via a public website is IF accompanied by an email to those you have on file. I get that it was an innocent oversight that the email did not go out. I don't really have an issue with that as I know you have a lot on your plate. However, our current website calendar really doesn't qualify as a public internet site as you must have a userid and password to see it (if you can find it - good luck with that). I would recommend that in the future, HOA board meetings be noticed on the public section of our site as a notice as well. (Of course, if I recommend it, I can be sure you will do anything but - your pride requires that.)
4. I take your comment about "following my conscience" in a favorable light. However, it is really more of a practical decision. You seem to have an interest in the future Dart rail nearby and actively lobby around that. You seem to have an interest in the City of Dallas Planning Commission, and regularly review and vote on property matters all over Dallas. And yet when you look at the words in the Deed Restrictions of the neighborhood where you are President, you suddenly have no interest in the rule of law. So I am doing what I am doing precisely

because I can count on you NOT doing what you should be doing. You have demonstrated that satisfactorily. I expect one of these days, the Congregation will be filing its specific use permit for a church at 7103 Mumford. And I expect you will vote to approve that as well. Or even more humorously, you will recuse yourself.

Regards,

-David

On Thu, Dec 26, 2013 at 11:05 PM, HOM President  
<[hofmck45.president@gmail.com](mailto:hofmck45.president@gmail.com)> wrote:

David,

1. The date of the annual meeting was set for February 2, 2014. Notices are required to be sent NOT EARLIER than 50 days in advance and no later than 10 days prior to the meeting. To optimize the mailing, we are waiting for the results from the Nominating Committee, so that we can include the official proxy form, etc. and avoid multiple mailings.
2. The email address I have on file for you is [drchinese@gmail.com](mailto:drchinese@gmail.com) That is the email source from which you transmitted the email below. Do you wish me to change that to the domain name you listed in point 2 below?
3. The board meeting was announced at the previous meeting and was posted to the calendar on the website for Highlands of McKamy. I was out and did not send an additional email reminder since all homeowners have access to the web site.
4. I am glad you have chosen to follow your conscience. I am sorry you feel I am placing other areas ahead of Highlands of McKamy as a priority. That is not the case.

Regards,

Cookie Peadon

**From:** David Schneider [mailto:[drchinese@gmail.com](mailto:drchinese@gmail.com)]  
**Sent:** Thursday, December 26, 2013 3:36 PM  
**To:** HOA Board  
**Subject:** Various Notices

Dear HOA Board Members,

1. I have not yet received written notice of the 2014 Annual Homeowners Meeting. I assume you are putting this together, but wanted to be sure. This must be mailed to all homeowners. See below.
2. I wanted to be sure my email address is registered for all HOA official email notices as: [Dave@DrChinese.com](mailto:Dave@DrChinese.com).
3. I do not know by what means you are announcing HOA Board Meetings, but this is required by Texas Law. I did not receive notice of the December board meeting, and I did not see an announcement on the HOA "web site". I did not receive written notice. I did not see an announcement posted prominently in the neighborhood either. (Newsletters do not constitute notice under Texas law.) Also: I have just learned that Cheryl resigned as Secretary and wonder if any HOA business was transacted at the December meeting. The circumstances cause me to question whether this omission was intentional, and whether any business conducted then can be considered valid without proper notice. See below.
4. This notice is a courtesy, regarding 7103 Mumford: Because of your ongoing failure to execute your duty to keep our neighborhood residential only, I personally filed suit in this matter against Congregation Toras Chaim and the owners of the house. The case number is 429-04998-2013. To Cookie: Apparently, your interests in other areas of Dallas supercede your interest in the neighborhood where you serve as President.

Regards,

-David

**Annual Meetings:**

(Texas Prop. Code 209.0056) HB 2761 Effective 1/1/12

HOAs must give owners notice of an HOA-wide election  
or vote.

Sec. 209.0056. NOTICE OF ELECTION OR ASSOCIATION VOTE.

(a) Not later than the 10th day or earlier than t  
he 60th day before the date of an  
election or vote, a property owners' association sh  
all give written notice of the  
election or vote to:

(1) each owner of property in the property owners' association, for purposes of an association-wide election or vote; or

(2) each owner of property in the property owners' association entitled under the dedicatory instruments to vote in a particular representative election, for purposes of a vote that involves election of representatives of the association who are vested under the dedicatory instruments of the property owners' association with the authority to elect or appoint board members of the property owners' association.

(b) This section supersedes any contrary requirement in a dedicatory instrument.

(c) This section does not apply to a property owners' association that is subject to Chapter 552, Government Code, by application of Section 552.0036, Government Code.

**Board Meetings:**

(e) Members shall be given notice of the date, hour, place, and general subject of a regular or special board meeting, including a gener

al description of any matter to  
be brought up for deliberation in executive session  
. The notice shall be:

- (1) mailed to each property owner not later than t  
he 10th day or earlier than  
the 60th day before the date of the meeting; or
- (2) provided at least 72 hours before the start of  
the meeting by:
  - (A) posting the notice in a conspicuous manner rea  
sonably designed  
to provide notice to property owners' association  
members:
    - (i) in a place located on the association's common  
property or,  
with the property owner's consent, on other conspic  
uously  
located privately owned property within the subdivi  
sion; or
    - (ii) on any Internet website maintained by the ass  
ociation or  
other Internet media; and
  - (B) sending the notice by e-mail to each owner who  
has registered an  
e-mail address with the association.

# EXHIBIT U

# Highlands of McKamy IV & V Community Improvement Association (aka HOA) | Agenda & Minutes (Approved)

June 23, 2013 3-5pm 7111 Debbie St.  
 Meeting called by Cookie Peardon  
 Secretary Cheryl Parker  
 Timekeeper James Vasil  
 BOD Attendees Cookie Peardon, Cheryl D. Parker, James A. Vasil, Jim McQuagge, Aviva Hirschberg (absent), Ted Day

Additional Attendees C. Jan Sullivan (7003 Mumford St.); Marilyn & Jim Frey (7116 Mumford Ct.) Moe Tavara (7115 Mumford Ct.); Anita & James Johnson (7035 Halprin St.) Aaron & Amanda Orsclick (7119 Mumford Ct.); David Schneider (7035 Mumford St) Mary & Michael Caniere (7120 Mumford Ct) Jean McIntosh (8915 Blue Mesa); Alan Prager (7111 Bremerton Ct.) Mike Scoggins (7035 Bremerton St.)

5 minutes YES YES with Revisions NO Ted Day was in attendance

10 minutes Cookie Peardon

Discussion

There had been concern that the BOD did not have a copy of our insurance policies and if the limits were high enough to cover common areas and south wall. We currently have a \$1M in liability insurance.

Requests have been made in the past for a playground by the Gazebo. This would need permission from City of Dall as it owns the property. We are allowed to use it as long as HOA maintains and pays utilities. Adding a playground would allow significantly increase need for insurance and would be used by others outside of the HOA area.

Conclusions

1. There was not a decision on if we are carrying enough insurance - tabled until next meeting
2. No playground will be construction in common area

Action Items	Person Responsible	Deadline
Provide copies of insurance policy to all board members	Cookie Peardon	7/21/2013

5 minutes Cookie Peardon

Discussion Revision to Neighborhood Directory is slow going due to neighborhood turnover. Cookie indicated block captains need to help

C. Jan Sullivan suggested that the current directory form should be included in the package of information provided by PMG management association along with Bylaws and Restrictions.

Cheryl noted that Christina Jacques of 7028 Mumford St. offered to assume position of Block Captain for Mumford St/Ct.

Conclusions

Adopt Jan's suggestion

Action Items	Person Responsible	Deadline
Work with PMG to get form into new owner packet	Cookie	7/21/2013
Enlist Block Captains to assist with getting information	Cookie	

10 minutes Cookie Peardon

# Highlands of McKamy IV & V Community Improvement Association (aka HOA) | Agenda & Minutes (Approved)

**Discussion**

The BOD discussed the need for a five year plan for landscaping repair and maintenance at the last BOD. Given more urgent situations, this has not moved forward.

NOTE: Jan Sullivan indicated she is not receiving emails from Cookie on matters of HOA interest. There was a review of the Nextdoor site and what the BOD hopes to accomplish with it (i.e. decrease cost, increase information flow). Cookie is the only one that has everyone's email address - she needs to send test messaging asking for reply.

**Conclusions**

Jean McIntosh, Lora Day, David Schneider have volunteered to serve on this committee; maybe the North family as well

Action Items	Person Responsible	Deadline
Establish committee	Cookie	9/1/2013
Test email distribution list	Cookie	7/21/2013

10 minutes                      Cookie Peardon

**Discussion**

Cookie thanked community for their activities to block establishment of special taxing for Cotton Belt without clear plans for development.

**Conclusions**

Action Items	Person Responsible	Deadline
Continue to monitor and report on situation to HOA	Cookie	

45 minutes                      Cookie Peardon & BOD members

**Discussion**                      Focus: Complete a second draft of Bylaw and Declaration of Restrictions to present to membership

Quick review of Bylaws and Restriction documents...these need to be revised, voted upon and refilled to reflect new Texas laws. See minutes from last BOD meeting. Bylaws are easier to pass than Declaration of Restrictions. May have to go door-to-door to get proxies.

Bylaws: need to clarify business office address and take out anything that dates the document i.e. listing State of Texas copying costs.

**Conclusions**

While the HOA wants to help maintain property values, it does not want to become the HOA police.

David Schneider offered to assist with development of Draft 2 that will be presented for vote. Items to be added include sleds, greenhouses, artificial turf, outdoor living areas, circular driveways, & storm shelters.

Jan Sullivan asked that we check for old wording about having to have a wood roof and remove it.

Action Items	Person Responsible	Deadline
Based on discussion - create a Draft 2 of Bylaws and Declaration of Restrictions	Cheryl	ASAP



# Highlands of McKamy IV & V Community Improvement Association (aka HOA) | Agenda & Minutes (Approved)

Work to get the required number of proxies/votes prior to special election on July 21 at 2pm Cheryl

15 minutes

Discussion Focus: Use of residential houses as places of worship with emphasis on the on-street parking

Review of information from Avi Bloomenstiel, President, Congregation Toras Chaim of Dallas

Review of information from City of Dallas Code Officer

Texas State Law

What the HOA can do and cannot do

Alan Prager 7111 Bremeron Ct. indicated that he didn't feel parking on Bremeron Ct. has been an issue. He indicated that not all the cars on the street belong to members of the Congregation Toras Chaim that have blocked access. Marilyn Frey indicated she had been unaware there had been worship meeting being held on Bremeron Ct. for the last 2.5 years nor of any parking issues on Bremeron until approximately two weeks ago.

Conclusions

The HOA cannot stop the building from being used for worship

Recommendations were made from the floor regarding consulting and/or retaining legal counsel prior to meeting with the BOD of Congregation Toras Chaim of Dallas - the BOD will take this under advisement.

Action Items

Person Responsible

Deadline

The BOD will schedule an open meeting with the BOD of Congregation Toras Chaim of Dallas ASAP and announce to members

Cookie

Sept 1, 2013

Cookie will discuss situation with Dave Surratt, of Riddle & Williams HOA attorney and see what he advises  
(<http://www.riddleandwilliams.com/bio.html>)

Cookie

Before meeting with Congregation Toras Chaim of Dallas BOD

Discussion

NONE

Conclusions

Action Items

Person Responsible

Deadline

Meeting adjourned at 5pm

# **EXHIBIT V**

**From:** Cheryl  
**To:** "David Schneider"  
**Subject:** FW: Highlands of McKamy / 7103 Mumford Court  
**Date:** Tuesday, September 03, 2013 6:06:39 PM  
**Sensitivity:** Confidential

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Last "official" communication from David before Cookie and Ted went to see him the last time. We never got any notes from that visit.

Cheryl

**From:** David A. Surratt [mailto:DSurratt@riddleandwilliams.com]  
**Sent:** Thursday, June 27, 2013 3:39 PM  
**To:** Carolyn Peadon  
**Cc:** Aviva Hirschberg; Ted Day; Cheryl Parker; Jim McQuagge  
**Subject:** Highlands of McKamy / 7103 Mumford Court  
**Sensitivity:** Confidential

**CONFIDENTIAL AND/OR PRIVILEGED ATTORNEY COMMUNICATION**  
**[ONLY FOR THE BOARD OF DIRECTORS]**

**Re: 7103 Mumford Court – Use as Synagogue**

Carolyn:

The following is in response to the issue of 7103 Mumford Court being used as a Jewish synagogue.

This email is lengthy because I wanted to provide sufficient explanation to assist the Board with its decision on how to proceed.

Let me know if there are questions or any disagreement with my analysis.

I encourage the Board to meet with the representatives of the synagogue to learn more about the plans for the property and to evaluate the temperament of the representatives with regard to possibly cooperating with the Board and neighbors to minimize any negative effects.

**IMPORTANT:** The new owner of record should be a primary participant in any meeting with the Board. The Association's enforcement options (if any) focus on the owner of the property, rather than the synagogue as a religious group/entity.

If legal action becomes necessary by the Association, it would involve filing a civil suit against the owner of 7103 Mumford Court by which the Association asks the court to review the Declaration and other factors to render a "declaratory" judgment as to whether or not the synagogue violates the deed restrictions. If the court says yes it does, then the second part of the relief requested by the Association would be for the court to issue a permanent injunction ordering the owner to stop using the residence as a synagogue or

ordering the owner to limit/restrict certain aspects of the activities. If the activities at the property create an issue about being a possible nuisance, then a civil suit would ask the court to rule that the activities in question constitute a nuisance and order the owner to stop the activities in question.

**Short Answer:**

Is the use of the property as a synagogue automatically authorized because it is a religious activity? Answer: No

Does the Declaration for Highlands of McKamy IV & V (the "restrictions") specifically:

AUTHORIZE using a residential dwelling as a synagogue? Answer: No

PROHIBIT using a residential dwelling as a synagogue? Answer: No

Does City of Dallas zoning or City Code specifically:

AUTHORIZE using this residential dwelling as a synagogue? Answer: No

PROHIBIT using this residential dwelling as a synagogue? Answer: No

Does City of Dallas zoning limit the type of residences for this property to single-family residences? Answer: Yes

Does City of Dallas zoning allow churches in the same Zoning District as 7103 Mumford Court? Answer: Yes

However, the Dallas Development Code defines "church" as "a facility principally used for people to gather for public worship, religious training, or other religious activities. This use does not include home meetings or other religious activities conducted in a privately occupied residence." The City Code for churches addresses such issues as parking requirements for a church.

Does the Association have an argument that using the property as a synagogue with a congregation and regularly scheduled activities is contrary to the general plan of development of Highlands of McKamy as a single-family residential subdivision? Answer: Yes

Is the Association's "argument" (above) a slam dunk win for the Association? Answer: No

I anticipate that the Board is not objecting to religious activities and is not objecting to a church or synagogue being located in the community but is objecting to a private residence being converted to use as a synagogue with a congregation.

**Explanation:**

The key provisions of the Association's governing documents are in the First Revised Declaration as follows (italicized boldface type added for emphasis):

### Introductory Recitals

WHEREAS, Declarant, desiring to establish *a uniform plan for the benefit of the present and future owners of residential lots*, has heretofore filed Articles of Incorporation for Highlands of McKamy IV & V Community Improvement Association ... and has filed that certain "Declaration ..." ... ;

### ARTICLE VI

#### CONSTRUCTION, USAGE, AND ARCHITECTURAL COVENANTS

The abovesaid properties are hereby made subject to the following restrictions, conditions, limitations and improvements (herein the covenants), to-wit:

1. RESIDENTIAL USAGE: No structure shall be erected, placed, altered, used for or permitted to remain on any *residential building lot* other than one detached *single family private dwelling* ...

15. NOXIOUS ACTIVITY. No activity shall be carried on upon any lot which may be or may become an annoyance or nuisance to the neighborhood. ...

The provisions of the Declaration cited above demonstrate that the community was intended to be a planned residential development comprised of privately-owned, single-family residences. However, when interpreting similar restriction language as contained in Paragraph 1 above without other related or clarifying language in the Declaration or other governing documents, Texas Courts tend to interpret provisions like Paragraph 1 as merely requiring that the "structure" (the actual residence) be limited to a single-family dwelling, as opposed to a multi-family structure, duplex, apartments, commercial buildings, etc. The restriction does not govern the actual "use" of that structure/dwelling so long as it is a residential structure consistent with structure requirements in the Declaration and consistent with the neighborhood. Such interpretations by the courts have also been influenced when the restriction is part of the restrictive language related to construction and architectural control matters, such as in The Highlands Declaration. The Highlands Declaration does not contain a specific section that addresses what can or cannot be done on an owner's lot or in the residence. I am also not aware of any amendments or rules/policies adopted by the Association that address "use" of the properties within the community.

Paragraph 15 above regarding nuisance type activity would come into play after the property has been used as a synagogue and issues have arisen for neighbors, such as traffic, parking, number of visitors, noise, hours of activity, etc. Each individual property owner has the legal right to the quiet and peaceful enjoyment of their property without undue interference from a neighboring property. Whether an owner's quiet and peaceful enjoyment of their property has been violated to the point that the owner has a legal claim against the offending owner(s) depends on the facts. Whether the individual homeowner affected by the interference must bring a claim or whether the Association could bring legal action on behalf of the affected homeowners would need to be evaluated based on the facts and circumstances at the time legal action is being contemplated.

Some of the general legal principles that Texas courts apply when interpreting an

Association's restrictive covenants are:

A property owner accepts the terms, conditions, and restrictions in the declaration and covenants by acceptance of the deed to his/her individual lot.

The declaration (the covenants, conditions and restrictions) is the instrument that subjects the lot to a set of restrictive covenants.

Courts will attempt to determine the objective intent of the covenant at the time the Declaration was drafted and whether that intent has been violated.

Restrictive covenants are liberally construed to give effect to the purpose and intent of the covenant.

"Construe" means to analyze and explain the meaning of a document or text.

"Liberal construction" is defined as not being a strict or literal interpretation, but a loose interpretation.

If a restrictive covenant is vague or ambiguous, the courts will generally rule in favor of the homeowner's free and unrestricted use of the property.

The party seeking to enforce a deed restriction has the burden to prove that the restriction is valid and enforceable.

When interpreting a "single-family residence" restriction, a distinction may be drawn between restrictions on the *use* of the lot **and the architectural restrictions on the buildings that may be constructed on the lot.**

If the single-family restriction is addressed not only to the **architectural character** of the buildings, but also to the *use* of the building, the restriction may be enforced to prohibit any *use* of the property inconsistent with the covenants.

There are a few published opinions from Texas appeal courts addressing the use of a property in a residential HOA. Whether or not the religious use violated the deed restrictions depends upon the particular facts and the specific language of the applicable deed restrictions. With the appropriate set of facts and the appropriate language in the deed restrictions, courts have ruled that use of a residence as a church did violate the deed restrictions. Unfortunately, The Highlands Declaration and other governing documents do not contain the preferred language.

At least one court opinion commented that enforcing the deed restrictions did not violate the owner's religious rights or equate to religious discrimination.

The challenge for The Highlands of McKamy is not that such religious use is automatically protected. Rather, the issue is the lack of specific or more definitive restrictions in The Highlands governing documents regarding the "use" of a property. For example, there is no specific restriction in the Declaration against the use of a property for business purposes (e.g. running a daycare facility). An argument can be made that the developer intended the homes to be used solely for residential use. See the introductory "whereas" paragraph

from the Declaration that I cited above. However, such an argument is subject to challenge. Therefore, it is difficult to predict how a local trial court might rule based on the facts and circumstances of this particular issue with 7103 Mumford Court.

With the understanding that such a position is subject to challenge, the Board could take the position in discussions with the owner of 7103 Mumford Court that modifying the interior and using the house as a functioning synagogue with a congregation and "sanctuary" is in violation of the restrictions governing The Highlands as a planned single-family residential development.

**Information Known to Date:**

The congregation appears to have plans:

- to conduct worship service on Jewish Sabbath
- to conduct Torah study daily
- to conduct other regular religious worship and congregation social activities

Rabbi Yaakov Rich is the head of the congregation and is a current resident of the neighborhood.

7103 Mumford Court was recently purchased by Michael Goheif, an apparent member of the congregation, who plans to reside at the property.

The congregation's webpage includes the following with regard to the purchase of 7103 Mumford Court:

**"Congregation** Toras Chaim An Intimate Space Grow at Your Pace"

**Building Dedication: \$100,000** - The *structure would be named* Beis \_\_\_\_\_ Kehillas Toras Chaim – would include *exterior wall plaque* and name in proximity to the front entrance. Plus donor would be honoree at first shul banquet following *dedication of the new building*. All learning and shiurim in the first year would as well be done in the merit of the donor or whoever the donor may designate.

[Attorney Comment: The property is characterized as a building to be named in honor of the donor. Not as a private residence.]

**Renovations Sponsor: \$40,000** – Would include dedication "Renovations donated by \_\_\_\_\_ in memory of \_\_\_\_\_" and would include entryway plaque.

[Attorney Comment: The solicitation of donations to renovate is not consistent with a private residence but is not in and of itself a violation of the Declaration.]

**Beis Medrash Dedication: \$25,000** – would include plaque and name over entryway.

**Sanctuary: \$25,000** – would include plaque and name over entryway.

[Attorney Comment: "Sanctuary" is not consistent with a private residence.]

**Children's Play Center & Yard:** \$20,000 – Dedication Plaque

**Bookcase:** \$1,000 – dedication plaque (we have MANY bookcases that need to be donated!).

**Table for Beis Medrash and Beis Tefillah** \$250 – Wood tables with solid frames for davening and learning. We need a lot!

**Chair Dedication (A lot of chairs!):** \$100 - Plush metal-frame *congregational* chairs with a pocket in the back for siddurim. Comfortable and made for *congregational* use!

DONATE TO CTC TO HELP US COMPLETE THE RENOVATIONS.

**Potential Issues:**

Issues that "might" influence action taken by the Board include the following:

Will the property be the primary residence of the owner of record or used solely as a synagogue (no permanent resident)?

I understand that Rabbi Rich apparently conducted some services in his home in the community for approximately the past 3 years. Therefore, there is an issue of whether the Association has allowed such activities without any objection or enforcement action.

Will the frequency of visitors, parking, traffic, noise, etc. be such as to constitute an invasion of the neighbors' private use and enjoyment of their property?

What specifically are the Board members' concerns or objections to the group's use of the property?

What specifically are the concerns or objections of neighboring homeowners regarding the use of the property?

Neighbors who object to the use of the property as a synagogue and/or who might have complaints about the effect of certain activity will need to be willing to sign an affidavit or publicly express their opposition. If the affected homeowners are unwilling to publicly state their opposition, the Association's options are limited. Any legal action that the Association might take would require supporting evidence.

The Declaration and governing documents do not appear to contain any restriction regarding: street parking; parking generally; and/or "use" of the properties.

**Final Comments:**

I hope my explanation and comments are helpful. I'm available to meet with the Board if needed.



After the Board meets with the representatives of the congregation and the new owner and if the situation appears to be one of concern for the Board about what will be occurring at the property, then a follow up meeting or discussion with the City of Dallas representative regarding any issues of zoning violations based on the additional facts that you've obtained should be considered. If the specific use of the property as a synagogue is not prohibited by City Code/Zoning, are there other issues, such as occupancy limits (number of people at a given time based on square footage and characterization of the property as a single-family residence)? Even if unsuccessful in obtaining any enforcement by the City, such action would be part of the Board's due diligence in addressing this issue and evaluating options and would help ensure that any concerned neighbors understand that the Board has evaluated all options.

Given the potential problem with the limitations of the Association's Declaration, achieving some form of agreement or agreed-upon controls with the owner concerning the activities to occur at the property and the potential impact on the neighborhood should be considered.

As a side note in case the issue arises, a new provision of the Texas Property Code concerning restrictive covenants became effective June 2011 regarding regulating the display of religious items. The new provision reads as follows:

#### Section 202.018 Regulation of Display of Certain Religious Items

(a) Except as otherwise provided by this section [below], a property owners' association may not enforce or adopt a restrictive covenant that prohibits a property owner or resident from displaying or affixing on the entry to the owner's or resident's dwelling one or more religious items the display of which is motivated by the owner's or resident's sincere religious belief.

(b) This section does not prohibit the enforcement or adoption of a covenant that, to the extent allowed by the constitution of this state and the United States, prohibits the display or affixing of a religious item on the entry to the owner's or resident's dwelling that:

- (1) threatens the public health or safety;
- (2) violates a law;
- (3) contains language, graphics, or any display that is patently offensive to a passerby;
- (4) is in a location other than the entry door or door frame or extends past the outer edge of the door frame of the owner's or resident's dwelling; or
- (5) individually or in combination with each other religious item displayed or affixed on the entry door or door frame has a total size of greater than 25 square inches.

(c) Except as otherwise provided by this section, this section does not authorize an owner or resident to use a material or color for an entry door or door frame of the owner's or resident's dwelling or make an alteration to the entry door or door frame that is

not authorized by the restrictive covenants governing the dwelling.

(d) A property owners' association may remove an item displayed in violation of a restrictive covenant permitted by this section.

**David A. Surratt**  
**Riddle & Williams, P.C.**  
3710 Rawlins Street  
Suite 1400 - Regency Plaza  
Dallas, Texas 75219  
**T: 214-760-6766**  
F: 214-760-6765  
[dsurratt@riddleandwilliams.com](mailto:dsurratt@riddleandwilliams.com)  
[www.riddleandwilliams.com](http://www.riddleandwilliams.com)

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**From:** Carolyn Peardon [<mailto:cspeardon@shcglobal.net>]  
**Sent:** Wednesday, June 26, 2013 7:43 AM  
**To:** David A. Surratt  
**Cc:** Aviva Hirschberg; Ted Day; Cheryl Parker; Jim McQuagge  
**Subject:** RE: Highlands of McKamy / 7103 Mumford Court

David,

The Board members who have responded want you to move forward with your research. The Board of Toras Chaim has asked for a meeting with our Board, but we wanted to know what our options are before we set a time for that meeting.

Per my initial discussions with Sandy Greyson, our City Council rep., Linda Koop, former District 11 rep., and our NPO contact at the local police station, there isn't much we can do except work on parking issues. Religious freedom is such a touchy subject! Neighboring residents take exception since their Board is claiming it is the full-time residence of Mr. Gothelf's family AND a place of worship.

Thanks for your assistance and clarification.  
Carolyn "Cookie" Peardon

# **EXHIBIT W**

To Highlands of McKamy Residents:

The Annual Homeowners Meeting of Highlands of McKamy IV and V Community Improvement Association is fast approaching – **Sunday, February 2, 2014 at 3:00pm**. Each Homeowner has a vote towards selecting Board of Directors members to represent you. While I appreciate the time and dedication of our existing Board members, frankly it is time for a change. I lead a group of concerned homeowners who are candidates to serve as your new Board of Directors. Here are our positions on some important issues facing us now:

- Your current HOA President, Cookie Peadon, raised dues 50% without the required 30 days advance notice, without required authorization from the Board of Directors, and without a capital plan. This is fiscal irresponsibility; we do not support a tax-and-spend approach. We intend to take immediate action to correct this. We will roll back dues to last's year's level for now. We already have about \$190,000 in the bank, and face no immediate cash flow issues.
- We have long-term needs that must be identified. These include the North and South entrances, including walls. We support a Town Hall meeting to get your input for a long-term capital plan. We will then earmark existing funds or a planned future dues increase to support that plan.
- The Board of Directors has not acted while a variety of non-residential organizations moved into homes on Rocky Top (2011) and Mumford (2013). These are not allowed by our deed restrictions, which limit usage to single family dwellings. We will act to reverse this trend and keep us residential only. If we don't, you can expect more traffic and parking issues.
- We will operate in accordance with the letter and spirit of the Texas Open Meetings act. There needs to be accountability. The Board must stop meeting behind closed doors.

---

Who we are:

- **David Schneider**, 60, 7035 Mumford St. (pictured below): IT Manager - 3 years prior experience on HOA boards, including 1 year as president of Stewart Creek Estates in Frisco.
- **Ted Day**, 61, 7016 Judi St.: College Professor (Finance) – 10 years experience as treasurer of Highlands of McKamy IV/V and 2 years on the Board.
- **Marilyn Frey**, 7116 Mumford Ct.: Retired – first time board member. Ask her age at your own risk. :)
- **Doug Galbraith**, 55, 7107 Bremerton Ct.: Architect – 20+ years experience on HOA boards including treasurer and president. Currently president of 2 HOAs where he has investment properties. He resides here.
- **Michael Donohue**, 57, 7019 7015 Mumford St.: Attorney (Civil practice) – first time board member.

The meeting is this Sunday, 3:00pm at the Dallas Police Station, Community Room. Please sign & return the attached proxy if you are unsure if you can attend the meeting.



## We Support Community Values

I need your help today to make Highlands of McKamy IV and V a better place to live. Thanks,

-David Schneider, 7035 Mumford



## ***Proxy Form - Please sign & return today***

I am the owner/co-owner of record for the property identified below with my signature. I hereby revoke any previous proxies and give to the person identified below (my "Proxy Holder") my revocable Proxy to consent and to vote, and in all other respects to act in my behalf, as a member of the Highlands of McKamy IV and V Community Improvement Association, at any meeting, and on absentee ballot, referendum, petition or similar. My Proxy holder is authorized to consent and to vote in the same manner and with the same effect as if I were at the meeting and voted.

---

I DESIGNATE AS MY PROXY HOLDER (I give my proxy to) (check one):

David Schneider

\_\_\_\_\_

---

If I attend the meeting and elect to act on my own behalf, my presence or action will supersede and suspend the effectiveness of the Proxy. This proxy shall expire 11 months from the effective date.

Executed \_\_\_\_/\_\_\_\_/2014.

Signed: \_\_\_\_\_ Print name: \_\_\_\_\_

Highlands of McKamy IV and V address:

---

Dallas, TX 75252



***Don't wait - if you act after February 2, it's too late!***

*Please return to:*

***7035 Mumford, Dallas TX 75252***

***This is the home of David Schneider. It's at the NW corner of Meandering & Mumford. There is a spot on the porch for you to put this form.***

It's Time for Your Voice to be Heard

# **EXHIBIT X**

**Minutes of HOA Board Meeting on March 2, 2014**

TO: HOA Board  
FROM: Michael Donohue  
DATE: March 11, 2014  
SUBJECT: Highlands of McKamy IV and V - Minutes of HOA Board meeting on March 2, 2014

A meeting of the HOA Board was called to order by the President, David Schneider, at 4:04 p.m., March 2, 2014, at the residence of David Schneider, at 7035 Mumford Street, Dallas, Texas 75252.

- Present at the meeting were all Board members: David Schneider, Ted Day, Marilyn Frey, Doug Galbraith and Michael Donohue

**Approval of Minutes from February 2, 2014 Board Meeting:**

- Michael Donohue presented for approval the minutes from the Board's February 2, 2014 meeting and made a motion to make the minutes part of the record. David Schneider seconded the motion, a vote was taken, all Board members voted "aye", and the motion passed.

**New Treasurer:**

- Doug Galbraith resigned as acting Treasurer
- Following Doug Galbraith's resignation, David Schneider made a motion to appoint Aaron Orshalick as Treasurer
  - o Ted Day seconded the motion, a vote was taken, all Board members voted "aye", and the motion passed
  - o A discussion ensued about the new Treasurer's attendance at any Executive Board Meeting, since the new Treasurer was not a Board member
    - David Schneider brought out that the Board had a right to call in third parties to attend Executive-session Board meetings, citing the example of a non-Board member homeowner in the HOA being called into an Executive session to discuss any non-compliance issues with the covenants and restrictions



--- 1 ---

HOA 000279

- Likewise, it was discussed that the Board had the right to call into an Executive session a non-Board member officer of the HOA, such as Aaron Orshalik, Treasurer, to discuss the finances of the HOA

**Preparation of 2014 Budget:**

- A financial report package for January 2014, and balance sheet reports as of January 31, 2014, apparently prepared by Jordan Hicks, were handed out to the Board
- Aaron Orshalik is preparing a budget for 2014, and that it is being updated from the prior Board's budget
  - o Discussion ensued that the sprinklers on the east side of the north side were not working (as they are on the west side of the north side)
  - o Discussion then ensued that VMC was the current landscaping vendor charging \$1,500 per month, and that there was a contract in place with VMC
  - o Discussion then ensued about the HOA's liability insurance, and Marilyn Frey said she had contacted the insurer, who had then sent her a declaration sheet
    - The question arose as to whether the insurance premiums were market rate
  - o David Schneider then asked that both a "status-quo" budget be prepared, as well as a "plan-to-take-action" budget be prepared

**South Wall:**

- Doug Galbraith said that he had gotten a price on the falling-down/tilting or damaged portions of the south wall, which consisted of two (2) sections that were each approximately 80 feet long
  - o The cost of removal of those two (2) sections was \$15,000 to \$20,000
- The issue was brought up that it was unknown what DART was going to do --- was DART going to eventually tear down the south wall? --- if so, the question arose as to why repair or replace the south wall at this point?
- Doug Galbraith also brought up that any replacement wall that the brick could not be matched up with the existing brick wall
- Doug Galbraith's recommendation was to tear down the damaged portions of the south wall and replace it with wooden fence



- Doug Galbraith will find out the difference between wooden fence and brick wall replacement costs

**Discussion of Other Houses in the Neighborhood, Other Than 7103 Mumford Court:**

- A resident is complaining of a house in a state of disrepair
  - House, formerly owned by Tracy Rowlett (per Marilyn Frey), at the south corner of Meandering Way and Rocky Top --- bricks separating and fence looks "lean-to" like

**Discussion of Management Company:**

- Principal Management Group provides financial services only (i.e., collecting homeowners' fees)
  - Doug Galbraith brought up that it would probably double the management fee if the management group were to also drive the neighborhood looking for non-compliance issues (like the aforementioned problem with the house on Rocky Top)
  - Short discussion that some residents were in arrears on paying their HOA dues

**Document Storage Expense:**

- Marilyn Frey is looking into and will make a presentation at the next HOA Board meeting

**Website Expense:**

- Marilyn Frey is looking into and will make a presentation at the next HOA Board meeting

**Social Committee Update:**

- David Schneider made a motion for Marilyn Frey to be the Board Coordinator for the Social Committee
  - Michael Donohue seconded the motion, a vote was taken, all Board members voted "aye", and the motion passed

**Revise Bank Account Signatory:**

- Ted Day will make a recommendation after consulting with Jordan Hicks at Principal Management
  - o David Schneider questioned whether the bank account is protected and secured
  - o James \_\_\_\_\_, with the prior Board, closed out the prior account
  - o The Premier Bank account has two (2) accounts: an operating account and a reserve account
  - o Ted Day noted that interest on dues collected is taxed at a 30% tax rate

**EXECUTIVE SESSION:**

- David Schneider called an Executive Session, closed to non-Board members other than officers
  - o At the beginning of the Executive Session, all 5 Board members were present (David Schneider, Ted Day, Marilyn Frey, Doug Galbraith and Michael Donohue) along with the Treasurer, Aaron Orshalick

**Retain David Surratt as Legal Counsel:**

- o A motion was brought by Michael Donohue, Chairman of the Legal Committee, to retain legal counsel for the HOA counsel to consult with the Board on pending legal issues, specifically to retain David Surratt of Riddle & Williams.
  - Discussion ensued amongst the Board
  - The motion was then seconded by Ted Day, then unanimously passed among the Board

**HOA to File Suit or Intervene in Pending Suit, Against Owners of 7103 Mumford Court**

- o A motion was brought by Michael Donohue to file suit (or intervene in the existing homeowner's suit) against the owners and possessors of 7103 Mumford Court to enforce the "residential-only" deed restrictions in the covenants
- o Before discussion was had, David Schneider abstained from the discussion or vote, excused himself and exited the Executive Session

- Discussion was had among the 4 remaining Board members, then the motion was seconded, and the remaining 4 Board members unanimously passed the motion.

**Adjournment of Board Meeting:**

- Following the close of the Executive Session, Ted Day made a motion to adjourn the Board meeting
  - o Doug Galbraith seconded the motion and the motion passed

# **EXHIBIT Y**

**Minutes of HOA Board Meeting on February 3, 2014**

TO: HOA Board  
FROM: Michael Donohue  
DATE: February 3, 2014  
SUBJECT: Highlands of McKamy IV and V - Minutes of HOA Board meeting on February 2, 2014

A meeting of the newly-elected Board commenced immediately following the conclusion of HOA annual meeting and election of the Board:

- Present at meeting: David Schneider, Ted Day, Marilyn Frey, Doug Galbraith and Michael Donohue

**Election of Officers by the Board:**

- David Schneider elected President
- Ted Day elected Vice-President
- Doug Galbraith elected acting Treasurer
- Michael Donohue elected acting Secretary

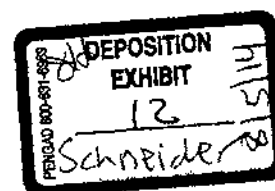
**Reversion of HOA Dues:**

- Following election of officers, David Schneider made a motion to move the recent HOA annual dues increase back to 2013 level of \$120 semi-annual, \$240 annual
  - o Ted Day seconded the motion and the motion passed

**Official Policy of HOA Board to Enforce Deed-Use Restriction of Residential-Only:**

- Ted Day made a motion that it be the policy of the Board to enforce the "deed-use" restrictions of residential-only
  - o David Schneider seconded the motion and the motion passed

**Creation and Appointment of Legal Committee:**



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HOA 000277

- David Schneider made a motion for the President to create and appoint a legal committee to make recommendations to the Board with regard to retaining legal counsel for the HOA Board with regard to any legal issues, with Michael Donohue being the Chairman and a voting member of the committee, and Ted Day being appointed to the committee as a voting member, and with Michael Donohue to act as liaison between any retained counsel and the Board
  - o Marilyn Frey seconded the motion and the motion passed

**Authorize President to Deal with Management Company:**

- David Schneider made a motion for the President to take control and deal with the HOA's management company
  - o Michael Donohue seconded the motion and the motion passed

**Adjournment of Board Meeting:**

- David Schneider made a motion to adjourn the Board meeting
  - o Doug Galbraith seconded the motion and the motion passed

# **EXHIBIT Z**

Minutes of HOA Board Meeting on May 4, 2014

TO: HOA Board  
FROM: Michael Donohue  
DATE: May 5, 2014  
SUBJECT: Highlands of McKamy IV and V - Minutes of HOA Board meeting on May 4, 2014

A meeting of the HOA Board was called to order by the President, David Schneider, at 3:10 p.m., May 4, 2014, at the residence of David Schneider, at 7035 Mumford Street, Dallas, Texas 75252.

- Present at the meeting were all Board members: David Schneider, Ted Day, Marilyn Frey, Doug Galbraith and Michael Donohue
- Absent from the meeting was the Treasurer, Aaron Orshalick

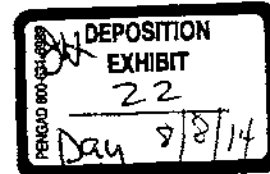
Approval of Minutes from March 2, 2014 Board Meeting:

- Michael Donohue presented for approval the minutes from the Board's March 2, 2014 meeting and made a motion to make the minutes part of the record. David Schneider seconded the motion, a vote was taken, all Board members voted "aye", and the motion passed.

South Wall Repairs:

- Doug Galbraith said that he had gotten a price on the falling-down/tilting or damaged portions of the south brick wall, which consisted of nine (9) sections, approximately 20 feet per section, for the total price of \$7,700
- Doug Galbraith obtained a "ballpark" estimate to replace the sections with like-kind brick of \$33,000, and a "ballpark" estimate to replace the sections with board-on-board wood of \$8,000
- Doug Galbraith made a motion to remove and haul off nine (9) sections of the south wall for \$7,700
  - o Ted Day seconded the motion, a vote was taken, all Board members voted "aye", and the motion passed

--- 1 ---



HOA 000284



- The Board considered whether to replace the sections, once removed, with brick or wood, and the Board decided to defer any decision on replacement until the next Board meeting

#### **June 8<sup>th</sup> Summer Kick-Off/Veterans:**

- Christie Barton and Jennifer Pierce, who assist Marilyn Frey on the Social Committee, announced that the June 8<sup>th</sup> Summer Kick Off will have food (BBQ), musical band, jump house, games and marketing, for the price of \$2,500 (similar price and items for last year's event)
  - o Christie Barton said she would contact the band for a copy of their contract
- Marilyn Frey advised that, according to the HOA's insurance agent, both the band and the jump house need to have insurance and list the HOA as an additional insured under their policies
- David Schneider made a motion to fund the Summer Kick-Off for \$2,500
  - o Michael Donohue seconded the motion, a vote was taken, all Board members voted "aye", and the motion passed

#### **Home Maintenance Standards:**

- David Schneider noted that there are a number of properties in the neighborhood whose improvements and grounds have not been properly maintained, in violation of the Deed Restrictions
  - o Further, it was noted by David Schneider that there is not currently a mechanism in place to bring before the Board any alleged violations of the maintenance requirements under the Deed Restrictions
  - o The Board then discussed putting in place a mechanism, including the initial step of sending a letter from the Board, signed by the President, to the homeowner of any property that is in violation of the maintenance requirements under the Deed Restrictions, notifying them of the violation(s) and requesting compliance
- David Schneider then made a motion to create a Home Maintenance Standards Committee, with Marilyn Frey as Chairman (with the authority to determine and select other committee members to assist [such additional committee members do not have to be in the Board]), to report and make recommendations to the Board of any violations of the maintenance requirements
  - o Michael Donohue seconded the motion, a vote was taken, all Board members voted "aye", and the motion passed

**Gazebo Property:**

- David Schneider noted that the original developer of the neighborhood, John Shelton, owns the Gazebo property, and never assigned the property to Highlands of McKamy IV and V, with Mr. Shelton claiming he did not know which of two (2) homeowners association to deed the property to
  - o David Schneider, Marilyn Frey and Doug Galbraith reported that they met with John Shelton to discuss Mr. Shelton's proposal to sell the Gazebo property to the HOA
    - It was discussed that apparently the Gazebo property is valued at \$1,000 on the tax rolls
  - o The Board then discussed making an offer to John Shelton to purchase the Gazebo property
- David Schneider then made a motion to offer \$500, plus reasonable costs for closing, to John Shelton to purchase the Gazebo property
  - o Ted Day seconded the motion, a vote was taken, all Board members voted "aye", and the motion passed

**Financial Review:**

- It was noted that the Treasurer, Aaron Orshalick, was not in attendance
- David Schneider advised that, as an action item, he would post the HOA's financial report
- It was further noted that, going forward, the Treasurer, once comfortable with the figures in the financial report, would post the financial report in the future

**HOA Bank Account:**

- Ted Day reported on the HOA's CD's, advising that the CD's were fully bonded to a minimum of \$150,000, that Jordan Hicks (at PMG) does not have the authority to access or transfer the CD funds, and that, based on his research, Ted Day was satisfied that the CD's are financially safe and secure
  - o Marilyn Frey noted that currently the Board could not go directly to the Bank to obtain financial information, without first going through PMG

**Document Storage Expense:**

- Marilyn Frey reported that there have been 27 boxes in storage since 1991, currently stored with Iron Mountain
- The issue of how far back the HOA should retain records was brought up
  - o Michael Donohue will research and make a recommendation at the next Board meeting as to what records should be retained by the HOA, and for how long

**Website Expense:**

- Discussion about the HOA's website expense is deferred until the next Board meeting

**Discussion Between Board and Present Homeowners about May 17<sup>th</sup> Special Meeting:**

- A question was asked of the President, David Schneider, by a homeowner present during the Board meeting as to whether the Special Meeting of Homeowners, scheduled on Saturday, May 17, 2014 by the President, could be moved to the following Sunday, to accommodate those of Jewish faith as Saturday was the Jewish Sabbath
  - o Ted Day moved that such question be put before the Board
  - o Discussion then ensued and, although the homeowner argued that those of Jewish faith would be disenfranchised by having the Special Meeting on Saturday, it was pointed out that such Jewish homeowners could participate by proxy, many of which proxies for the Special Meeting already having been submitted, so no one would be disenfranchised
  - o David Schneider then advised that he had given several available dates to the representatives of the homeowners who had requested the Special Meeting, some of which available dates were Saturday and some of which were Sunday, that such representatives had not replied back to him which of such available dates they preferred, so David Schneider, as President and under the authority of the By-Laws, picked one of those dates, which was May 17, 2014

**EXECUTIVE SESSION:**

- David Schneider called an Executive Session, closed to non-Board members other than officers

- At the beginning of the Executive Session, all 5 Board members were present (David Schneider, Ted Day, Marilyn Frey, Doug Galbraith and Michael Donohue)
- Before discussion was had, David Schneider abstained from any discussion or vote about the HOA's position or strategy in the current lawsuit with the property owners at 7103 Mumford Court, excused himself and exited the Executive Session

**HOA Board to Disclose Attorney Fee Expenditures to Date:**

- A motion was brought by Michael Donohue, Chairman of the Legal Committee, to disclose to HOA members at the next Board meeting the amount of attorney's fees expended by the HOA thus far in dealing with the issue of violations of the "residential-only" deed restriction by the owners and occupants of 7103 Mumford Court
  - Discussion ensued amongst the Board
  - The motion was then seconded by Ted Day, then unanimously passed among the Board members present

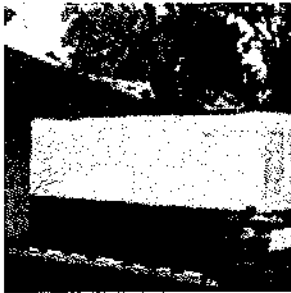
**Adjournment of Board Meeting:**

- Following the close of the Executive Session, David Schneider made a motion to adjourn the Board meeting
  - Doug Galbraith seconded the motion and the motion passed

# **EXHIBIT AA**

What's that strange-looking thing on Meandering Way near Frankford (7104 Mumford) ? 11 Oct

David Schneider from Highlands of McKamy IV and V



This past Sunday, the renters of a house on the corner of Meandering and Mumford built an unusual structure in their driveway. It would be hard not to notice this eyesore if you have driven by, it even has colored lights on it at night to attract attention. I have since learned that the structure is called a Sukkah. The past couple of nights, a number of men have been meeting inside. At night, it is common for people to sleep inside this type of structure and I assume that is being done here too.

This is a clear violation of the Highlands of McKamy IV/V binding deed restrictions, as temporary structures of any kind are prohibited - even for a few weeks a year. Per Highlands of McKamy IV/V covenants, Article VI, Section 1: "No temporary structure may be placed on lot except during construction." There is no exemption for religious purposes in Texas. Tuesday, I sent a letter to the absentee landlords in New York (as well as the occupants) instructing them to remove it immediately and refrain from future violations of the covenants. I made it clear I was open to compromise. But they chose not to respond.

I hope you are as disturbed and dismayed by the appearance of this

unusual structure as I am. I asked many of you several days ago whether unenforced deed restrictions are any better than none at all. If the only way to make our neighborhood better is to sue, then so be it. Yesterday I submitted an Original Petition to the District Clerk for the State of Texas, Collin County. Although it is always possible that the Sukkah will come down before a hearing can occur, a reasonable person would expect to see this structure again next year. Consequently, I am also asking for a temporary and a permanent injunction.

Many of you know that I also have a pending lawsuit against an Orthodox Jewish congregation across the street from this location (Congregation Toras Chaim, 7103 Mumford). While the deed restriction violations are different and the violators are different, it does raise a similar question: can contractual agreements (such as restrictive deed covenants) be ignored by those of some religious faiths? Texas courts have routinely ruled that they cannot. If this precedent were to be overturned, I question the value of any deed restriction anywhere in Texas.

Please note that I have no objection to the free exercise of religion that does NOT violate deed restrictions nor violates City of Dallas law. Nor do I have any prejudice against any religion. I welcome neighbors of any faith, but ask that contractual obligations be honored by all. If you don't like the terms of a contract, don't sign it.

Thanks,

-David Schneider

PS my personal email is dave@drchinese.com if you wish to privately express your support or disagreement on this issue.

Shared with Highlands of McKamy IV and V + 3 neighborhoods in  
General

Thank 1 Reply 6

- Add bookmark
- Change category
- Flag
- Mute discussion

Kate thanked David



Dean Willis from Highlands of McKamy IV and V 12 Oct

It's apparently a major international problem:

<http://www.jewishpress.com/blogs/guest-b...>

I'm planning to build an ice fishing hut over my pool this January. Bring vodka!

Thank Flag

Bill thanked Dean



# **EXHIBIT BB**

**Subject:** Comments made by D. Schneider on Next Door  
**Date:** Tuesday, October 21, 2014 11:32:49 PM Central Daylight Time  
**From:** Maura Schreier-Fleming (sent by maurasf@gmail.com <maurasf@gmail.com>)  
**To:** Justin Butterfield  
**CC:** gatorswamp34

Mr. Butterfield,  
Ben Nise gave me your email address. I wanted you to see what Mr. Schneider has been posting on NextDoor (before he was removed) from the main posting area. I highlighted the yellow comment which is offensive and contrary to the Constitution. I live in the Highlands of McKamy and am opposed to the HOA's involvement in this 1st Amendment case.  
Maura Schreier-Fleming  
7028 Judi St  
Dallas, TX 75252

----- Forwarded message -----

**From:** Nextdoor Highlands of McKamy IV and V <reply@r.email.nextdoor.com>  
**Date:** Thu, Oct 16, 2014 at 8:17 AM  
**Subject:** Re: What's that strange-looking thing on Meandering Way near Frankford (7104 Mumford) ?  
**To:** [maura@bestatselling.com](mailto:maura@bestatselling.com)

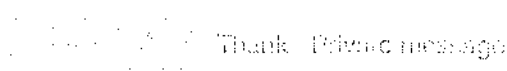


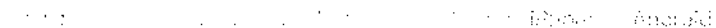
Cara: Are you saying that Biblical law supercedes Texas contract law? That would be a new interpretation in the United States. Is that what you want? Further, you can be an observant Jew without breaking HOA rules. Go outside the neighborhood to celebrate. Anyway, it would be grossly inaccurate to paint a picture that says Jews who do not celebrate Sukkat are not observant - because most don't celebrate it in the US (reform, conservative, and even most orthodox as far as I know). While you may have moved here because of the religious makeup of the community, that is not an issue to me either way. I would encourage anyone of any belief to move here and practice their religion. I would also recommend that anyone's practice of their religion follow the laws of the land. But if you cannot find a way to reconcile yourself to those laws, do not move here and expect not to be called out on it. There is no religion I am aware of that requires you to live in the Highlands of McKamy IV/V.



This post Sunday, the owners of a house on the corner of Meandering way, Mumford built an unusual structure for their driveway. It was to be sure not to bother this eye-catch if you have one of by, it...



 Thank - Private message



[How to Turn a Salesperson into a Client](#) [How to Turn a Client into a Salesperson](#) [How to Turn a Salesperson into a Client? Stop Selling](#)  
[Top 10 Sales Tips for 2014](#)  
[10 Ways to Grow Your Business in 2014](#)  
[Use Social Media to Grow Your Business](#)  
[How to Grow Your Business in 2014](#)

Regards,

**Maura Schreier-Fleming**

**Best@Selling** [Maura@Bestatselling.com](mailto:Maura@Bestatselling.com)

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Author of *Real-World Selling for Out-of-this-World Results* and *Monday Morning Sales Tips*

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"I would recommend your work to other sales organizations who  
want to get better results from improved selling strategies."

*Jamey Rootes*

President

Houston Texans (NFL Football Team)

Read [Maura's Expert Sales Advice](#) [Get Your Sales Advice](#)

# **EXHIBIT CC**

# RIDDLE & WILLIAMS, P.C.

ATTORNEYS & COUNSELORS

DEAN A. RIDDLE\*  
LANCE E. WILLIAMS  
DAVID A. SURRETT

3710 RAWLINS STREET  
SUITE 1400 - REGENCY PLAZA  
DALLAS, TEXAS 75219  
TELEPHONE (214) 760-6766  
FACSIMILE (214) 760-6765  
www.riddleandwilliams.com

CHAD E. ROBINSON  
JULIE L. DUPONT  
GRANT R. NEIDENFUEHR

\* Not admitted in NJ & GA

October 14, 2013

Mr. Mark B. Gothelf  
Ms. Judith D. Gothelf  
1 Wilder Road  
Monsey, New York 10952-1023

VIA CERTIFIED MAIL  
RETURN RECEIPT REQUESTED  
NO. 7009 3410 0001 2241 7889

Mr. Mark B. Gothelf  
Ms. Judith D. Gothelf  
7103 Mumford Court  
Dallas, Texas 75252

VIA CERTIFIED MAIL  
RETURN RECEIPT REQUESTED  
NO. 7009 3410 0001 2241 7896

Re: Highlands of McKamy IV & V Community Improvement Association  
7103 Mumford Court, Block 10/8758, Lot 45, Highlands of McKamy Phase V

Dear Mr. Gothelf and Ms. Gothelf:

This law firm represents the Highlands of McKamy IV & V Community Improvement Association ("HOA"). At the request of the HOA Board of Directors, I am writing with regard to the issue of the use of your property located at 7103 Mumford Court (the "Property") as an active synagogue. According to the Real Property Records of Collin County, Texas, you are both identified as the owners of record of the Property. As the owners, you are responsible to ensure that the Property and its use comply with the applicable restrictions set forth in the HOA's governing documents.

The Property is subject to restrictive covenants filed for record in the Real Property Records of Collin County, Texas, and is within the jurisdiction of a mandatory property owners' association. Restrictions on the use of the Property include, but are not necessarily limited to, the following provisions set forth in the instrument entitled "First Revised Declaration of Restrictions for Highlands of McKamy, Phase IV and Phase V, Dallas, Texas" (the "Restrictive Covenants") (emphasis added below):

### Introductory Recitals

WHEREAS, Declarant, desiring to establish a uniform plan for the benefit of the present and future owners of *residential* lots, has heretofore filed Articles of Incorporation for Highlands of McKamy IV and V

HOA 000124

Community Improvement Association (herein the Association) and has filed that certain Declaration of Restrictions ...

NOW, THEREFORE, Declarant, ... does hereby ... substitute this First Revised Declaration of Restrictions, imposing the following restrictions, reservations, covenants and conditions upon all residential lots in McKamy IV and McKamy V, *which shall constitute covenants running with the title of said residential lots and which shall be binding upon and inure to the benefit of ... each and every purchaser of any of said residential lots and their respective heirs, administrators, successors and assigns, ...* and further, the Highlands of McKamy IV and V Community Improvement Association shall have the right to enforce the restrictions, reservations, covenants and conditions herein set forth by any proceeding at law and/or in equity as may be deemed advisable or appropriate.

Article VI  
Construction, Usage, and Architectural Covenants

The above said properties are hereby made subject to the following restrictions, conditions, limitations and improvements (herein the covenants), to-wit:

1. RESIDENTIAL USAGE: No structure shall be ... used for ... other than ... *single family private dwelling* ...

15. NOXIOUS ACTIVITY: No activity shall be carried on upon a lot which may be or may become an annoyance ... to the neighborhood.  
...

By accepting the deed to the Property, you accepted the terms, conditions, and restrictions set forth above.

It is our understanding that the City of Dallas may have determined that the use of the Property does constitute use as a church or religious facility, as opposed to a private single-family residence.

The Board of Directors have been informed that at least one homeowner in the neighborhood has communicated to you in writing setting forth his/her objection to the use of the Property as an active synagogue and his/her intent to pursue enforcement of the restrictive covenants.

Mr. Mark B. Gotthelf  
Ms. Judith D. Gotthelf  
October 14, 2013  
Page 3

The purpose of this letter is to inform you that the use of the Property as a synagogue, rather than as a single-family private residence, is in violation of the restrictive covenants. Therefore, the HOA Board of Directors hereby demand that such activity cease. You are hereby demanded to bring the Property into compliance with the Restrictive Covenants within thirty (30) days from your receipt of this letter. Should you fail to take such action to correct this violation within the prescribed time period, the HOA may be forced to file suit against you. If suit is deemed necessary, the HOA will seek recovery of all costs incurred, including attorney's fees.

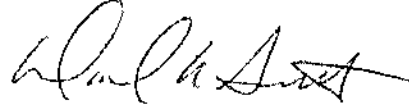
If you disagree with the HOA's position in this matter or if you are uncertain about your obligations under the HOA's Restrictive Covenants, you may submit a written request for a hearing with the HOA Board of Directors. Such request is to be directed to my attention and must be received within thirty (30) days from the date either one of you receive this letter.

If you do not request a hearing and fail to timely comply with this demand to correct the violation of the use of your Property, the HOA Board of Directors may take the action described above without further notice to you.

We understand the Property is/will be the primary residence of one or both of you and is identified in the Collin County Central Appraisal District's records as a residential homestead. Within ten (10) days of your receipt of this letter, please provide me with confirmation of who will be the primary resident of the Property so that the HOA may update its records. The HOA Board of Directors recently learned that the Property may currently be occupied by someone other than you. If neither one of you will be occupying the Property as your primary residence, please provide me with written notification.

Your prompt attention to this important matter is encouraged. Please direct any response or questions concerning this matter to my attention. If you are represented by an attorney, please forward a copy of this letter to your attorney.

Sincerely,



David A. Surratt

cc: Board of Directors  
Highlands of McKamy IV & V  
Community Improvement Association  
(Via electronic mail)

HOA 000126

# **EXHIBIT DD**



## Highlands of McKamy IV & V Community Improvement Association

### Minutes of the REGULAR BOARD MEETING October 17, 2006

The October 2006, regular board meeting of the Highlands of McKamy IV & V Community Improvement Association, referred to herein as the "Homeowners Association", or the "Association", was called to order at 7:20 PM by Board of Directors President Bill North. Also present were board members Bob Dodge, Linda Messer, and Bill Purdon, Treasurer Ted Day, and homeowner Bill Green.

The minutes for the August 15, 2006 regular board meeting, distributed previously via e-mail, were approved as amended. Due to the absence of a quorum, a formal meeting was not convened in September.

The following items of business were discussed at the meeting:

- Committees and Departments:
  - Beautification and Landscaping:
    - ▶ After discussion and review of proposals, the Board accepted a bid from VMC to perform common area landscape maintenance for the next year. The accepted proposal includes one additional (total of three annually) change of color (plantings). There was no increase in price (\$15,576.00) compared to the same scope last year, with an increase of \$1650.00 for the additional planning.
    - ▶ The new cast brass entry signs are fabricated and complete. We have received an insurance payment against our claim for theft of property.
    - ▶ A motion was made and approved selecting ArtOGraphx to install (fee \$1261.00) the new cast brass entry signs at the north entry.
    - ▶ Several of our small signs (bulk trash, alert, no soliciting, etc) that were showing age have been renewed. Thanks goes to Bill Green for his help in this project.
  - Crime Watch:
    - ▶ No report.
  - Directory:
    - ▶ Pat Dodge is proceeding with formatting the directory information.
  - Finance:
    - ▶ After discussion, a motion was made and approved to select Goldklang, Cavanaugh & Associates as our financial auditors for 2006. This change was influenced primarily by the significant delays experienced in the completion of audits in prior years.
    - ▶ Ted Day prepared the Association's tax filing for this year.
    - ▶ Ted presented a proposed budget for 2007. After a few very minor changes are made, the revised budget will be submitted for approval at the next regular meeting.
  - Newsletter:
    - ▶ No report.
  - Social:
    - ▶ The annual Halloween party will be held in front of the Worthen's home at 7312 Bremerton Court from 5-6:30 pm.

- DHA Public Housing:
  - No report.
  
- Non-committee Old Business:
  - Web-Site:
    - ▶ No report.
  - DART:
    - ▶ There was very strong and vocal participation at the DART public meeting in Addison. The report by those Association Board members present was that there was overwhelming opposition to the selection of diesel trains and an at-grade passage through the Dallas suburbs. The next DART public meeting will be to vote on this issue.
  - Deed Restriction/Covenant Compliance
    - ▶ There have been numerous complaints received about the home at the corner of Latimore and Meandering Way that is being operated as an eldercare facility.
  
- New Business:
  - The Association has been invited to send a representative to attend a community breakfast with City Councilmember Ron Natinski. Bill Green will attend.

There being no further business to conduct, the meeting was adjourned at 9:35 PM by Board President Bill North.

The next regular meeting is scheduled for Tuesday, November 21, 2006, at 7:00 PM.

Respectfully submitted,

*Bill Purdon*

# **EXHIBIT EE**

NO PHOTOCOPY/IMAGE AVAILABLE  
THE FOLLOWING IS A PRINTOUT OF AN ELECTRONIC FILE

[Riddle & Williams, P.C. Letterhead]

March 29, 2001

Mr. James W. Romberger and  
Mrs. Linda K. Romberger  
7605 Afton Villa Court  
Plano, Texas 75025-3600

Re: 7038 Lattimore Drive, Dallas, Collin County, Texas  
Highlands of McKamy IV and V Community  
Improvement Association  
(Our File No. 5111/5459)

Dear Mr. and Mrs. Romberger:

We represent Highlands of McKamy IV and V Community Improvement Association (the "Association"). We have been requested by the Board of Directors (the "Board") for the Association to write to you concerning your tenant, Ms. June Itani.

According to the Board, they have received numerous complaints from the homeowners concerning the conduct of your tenant and her operation of a home health care community center in your residence under the name business name of "Our Place".

Article VI. of the First Revised Declaration of Restrictions for Highlands of McKamy, Phase IV and Phase V (the "Declaration"), titled Construction, Usage, and Architectural Covenants, Paragraph 1 provides, in part, as follows:

1. Residential Usage: No structure shall be erected, placed, altered, used for or permitted to remain on any residential **building** lot other than one detached **single family private dwelling**...

The Board for the Association has received reports of debris and trash on the ground and the alley of the lot, as in medicine bottles, used needles and dirty diapers.

Article VI of the Declaration, Paragraph 13, provides as follows:

13. Rubbish: No rubbish, trash, garbage or waste shall be place, dumped or permitted to remain on any lot in this Addition.

Article VII of the Declaration, entitled Maintenance, Paragraph 1, provides as follows:

HOA 000117

Mr. James W. Romberger and  
Mrs. Linda K. Romberger  
March 29, 2001 - Page 2

1. Duty of Maintenance. Owners and occupants (including lessees) of any part of the above properties shall jointly and severally have the duty and responsibility, at their sole cost and expense, to keep that part of the Properties so owned or occupied, including buildings, improvements and grounds in connection therewith, in a well-maintained, safe, clean and attractive condition at all time. Such maintenance includes, but is not limited to, the following:

- a. Prompt removal of all litter, trash, refuse, and wastes.
- b. Lawn mowing.
- c. Tree and shrub pruning.
- d. Watering.
- e. Keeping law and garden areas alive, free of weeds, and attractive.
- f. Keeping parking areas, driveways, and roads in good repair.
- g. Complying with all government health and police requirements.
- h. Repainting of improvements.
- i. Repair of exterior damages to improvements.

Homeowners' complaints also consisted of hearse picking up bodies from your residence, also known as "Our Place" and continuous activity of people coming in and going and out of the house at all hours of the day and night.

Article VI, of the Declaration, Paragraph 15, provides in part, as follows:

15. Noxious Activity: No activity shall be carried on upon any lot which may be or may become an annoyance or nuisance to the neighborhood.

Mr. and Mrs. Romberger, as the owners of 7038 Latimore Drive in Highlands of McKamy, you are responsible for ensuring that your tenant abides by the Association Declaration.

Mr. James W. Romberger and  
Mrs. Linda K. Romberger  
March 29, 2001 - Page 3

Article VII of the Declaration, Paragraph 2, provides, in part, as follows:

2. Enforcement. If, in the opinion of the Association any such owner or occupant has failed in any of the foregoing duties or responsibilities, then the Association may give such person written notice of such failure and such person must within ten (10) days after receiving such notice, perform the care and maintenance required. Should any such person fail to fulfill this duty and responsibility within such period, then the Association through its authorized agent or agents shall have the right and power to enter onto the premises and perform such care and maintenance without any liability for damages or wrongful entry, trespass or otherwise to any person. The Owners and occupants (including lessees) of any part of the Properties on which such work is performed shall jointly and severally be liable for the cost of such work and shall promptly reimburse the Association for such cost. ....

Lastly, in regards to your tenant operating a home health care community center within a residential area has been questioned. Please have your tenant provide the Board of the Association a copy of Ms. Itani's business, "Our Place", certificate of occupancy issued by the City of Dallas, Collin County, Texas, and any other licenses to operate the business.

We suggest that you immediately bring this letter to the attention of your tenant and request her prompt compliance.

Sincerely,

Dean A. Riddle

DAR/db

cc:

C:\Demand\Highlands\McKamy

HOA 000119

# **EXHIBIT FF**

**RIDDLE & WILLIAMS, P.C.**  
ATTORNEYS & COUNSELORS

DEAN A. RIDDLE\*  
LANCE E. WILLIAMS  
DAVID A. SURRETT  
CLAYTON R. HEARN\*\*\*†

\* also admitted in NC & GA  
\*\* also admitted in MN  
\*\*\*also admitted in TN & MS  
† Board Certified  
Labor & Employment Law  
Texas Board of Legal Specialization

3710 RAWLINS STREET  
SUITE 1400 – REGENCY PLAZA  
DALLAS, TEXAS 75219  
TELEPHONE (214) 760-6766  
FACSIMILE (214) 760-6765  
[www.riddleandwilliams.com](http://www.riddleandwilliams.com)

CHAD E. ROBINSON  
JULIE L. DUPONT  
CAROLINE A. McCLIMON  
SHAWNA D. DALRYMPLE\*\*\*

March 3, 2011

Clayton and Joni Arhelger  
6806 Rocky Top Circle  
Dallas, TX 75252

VIA CERTIFIED MAIL  
RETURN RECEIPT REQUESTED  
NO. 7009 1680 0000 5012 0625

Re: Highlands of McKamy, Phase IV and Phase V Homeowners Association, Inc. (the  
“Association”)  
Potential Covenant Violations – 6806 Rocky Top Circle (the “Property”)

Dear Mr. and Ms. Arhelger:

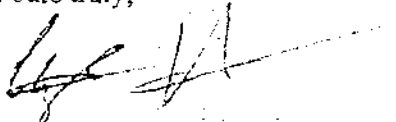
Our firm represents the Association and I have been asked to communicate with you about potential covenant violations at your Property.

It has been brought to the attention of the Board of the Association that construction has taken place at the above Property without a submission to the Architectural Committee of the proposed plans, as required by Article VI, Paragraph 18 of the First Revised Declaration of Restrictions for Highlands of McKamy, Phase IV and Phase V (the “Declaration”). Additionally, at least one concerned neighbor has alerted the Board that you intend to use the Property for other than single family, residential purposes, in violation of the Declaration.

Please contact me to discuss the need to submit a full set of plans to the Architectural Control Committee and your intended use of the Property.

Your prompt attention to this matter is encouraged.

Yours truly,



Clayton Hearn

HOA 000120



Mr. and Ms. Arhelger  
March 3, 2011  
Page 2

cc: client

Via Regular U.S. Mail  
Clayton and Joni Arhelger  
6806 Rocky Top Circle  
Dallas, TX 75252

Via Regular U.S. Mail  
Clayton and Joni Arhelger  
7304 Campbell Road  
Dallas, TX 75248

# **EXHIBIT GG**



# Highlands of McKamy IV & V Community Improvement Association (aka HOA) | Meeting Minutes July 21, 2013 (Approved)

Action Items	Person Responsible	Deadline
Establish committee first meeting is scheduled	Cookie	Done
Test email distribution list	Cookie	Done

10 minutes      Cookie Paddon  
 Discussion      Legislations did not go through - Cotton Belt Concerned Citizens Coalition continues to monitor situation  
 Conclusions      FB for them is <https://www.facebook.com/pages/Cotton-Belt-Concerned-Citizens-Coalition/299625016730747?fref=ts>

Action Items	Person Responsible	Deadline
Continue to monitor and report on situation to HOA	Cookie	

20 minutes      Cheryl D. Parker  
 Discussion      Focus: Complete a second draft of Bylaw and Declaration of Restrictions to present to membership  
 Conclusions      Need to do via amendments not rewrite; need to test amendments to see which would get support.

Action Items	Person Responsible	Deadline
Create a list of separate amendments based on feedback thus far and then create a Survey Monkey site so that homeowners could provide feedback and vote on each amendment separately Need to include reactivating ARC	Cheryl	By October

20 minutes      Cookie Paddon  
 Discussion      Cookie has talked with one of the two owners, Mark Gotheff who indicated he will be moving to Dallas toward the end of August. There were several complaints about the pile of dirt currently in the driveway. Concerns were voiced that this is "an end-run" around the rules that allow using a residence as a place of worship.  
 Deed shows that two people own the home Mark and Judith Gotheff (his mother?)  
 Homeowners from Bremerton Ct. shared examples of problems had occurred from parking issues during services at the Rabbi's home. Ben Nise promised to bring these stories to the Rabbi. Mention was also made of additional parking problems due to one of the neighbors conducting swimming lessons during the summer.

Action Items	Person Responsible	Deadline
Concerns about potential for parking issues will be discussed with homeowner		

# Highlands of McKamy IV & V Community Improvement Association (aka HOA) | Meeting Minutes July 21, 2013 (Approved)

Cookie will discuss situation with Dave Surratt, of Riddle & Williams HOA attorney and see what he advises

(<http://www.riddleandwilliams.com/locations/>)

The Board has been advised to meet with the property owner to discuss any concerns identified by HOA members by our attorney

Cookie

Done

5 minutes

Cheryl Parker

Discussion

The HOA needs a way to record issues from individual homeowners rather than phone calls to individuals

Conclusions

All concurred

Action Items

Person  
Responsible

Deadline

Create form and announce in newsletter and Nextdoor

Cheryl

8/18/13

NOTE: Put article in newsletter about how to request alley repair

Cheryl

5 minutes

- Cheryl Parker

Discussion

Need to have generic emails so that when BOD member change - emails do not have to be recreated.

Conclusions

All concurred

Action Items

Person  
Responsible

Deadline

Create emails, give information to BOD and announce in newsletter and Nextdoor

Cheryl

8/18/13

10 minutes

Cookie

Discussion

Discussion that we don't know how much to raise dues

Conclusions

Need plan from Landscaping Committee with budget

Action Items

Person  
Responsible

Deadline

Landscaping Committee needs to create plan and budget

ASAP

Determine last date we can notify PMG to raise Feb 2014 dues

Cookie

8/18/13

15 minutes

James Vasil

Discussion

Conclusions

Action Items

Person  
Responsible

Deadline

James to investigate why administration cost are higher than expected.

James Vasil

8/18/13

Investigate if/when we can drop website through PMG and make sure that cancelling website doesn't impact paying HOA dues online

Cookie

8/18/13

Copy all documents from PMG Site and put on Nextdoor

Cheryl

8/18/13

31

# Highlands of McKamy IV & V Community Improvement Association (aka HOA) | Meeting Minutes July 21, 2013 (Approved)

Notify homeowners via email that we are switching to using Nextdoor only	Cookie	8/18/13
Notify homeowners via next newsletter that we are switching to using Nextdoor only	Cheryl	8/18/13

Other New Business: NONE Meeting adjourned at: 4:58pm

# **EXHIBIT HH**

IN THE MATTER OF

DAVID R, SCHNEIDER,

Plaintiff,

vs.

JUDITH D. GOTHELF, MARK B. GOTHELF,  
AND CONGREGATION TORAS CHAIM,  
INC.

Defendants,

and

HIGHLANDS OF McKAMY IV and  
V COMMUNITY IMPROVEMENT  
ASSOCIATION,

Intervening Plaintiff,

vs.

JUDITH D. GOTHELF and  
MARK B. GOTHELF,

Defendants.

§ IN THE DISTRICT COURT  
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 § OF COLLIN COUNTY, TEXAS  
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 § 429<sup>th</sup> JUDICIAL DISTRICT  
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DECLARATION OF MICHAEL BENKLIFA

I, Michael Benklifa, hereby declare that the following facts are true and correct:

1. My name is Michael Benklifa. I am over 18 years of age and am fully competent in all respects to make this declaration. I have personal knowledge of the facts and statements contained in this Declaration, and each of them is true and correct.



2. I am a resident of the Highlands of McKamy IV and V Community Improvement Association. My address is 7019 Judi Street, Dallas, Texas 75252.

3. The home of Theodore Day is located at 7016 Judi Street. 7016 Judi Street is located next door to 7020 Judi Street.

4. The house at 7020 Judi Street is located across the street from my home. A music school operates seven days a week at 7020 Judi Street. Parents regularly sit in their cars in front of my home waiting for their children to finish music class at 7020 Judi Street. The music school at 7020 Judi Street has hosted a recital.

5. A used car business operates out of the house at 7043 Judi Street. There is a constant revolving inventory of cars parked on the street and in the driveway of 7043 Judi Street.

6. Attached hereto as Exhibit 1 to this Declaration is a true and correct copy of an email I sent to Benjamin Nise and Yaakov Rich on October 12, 2014.

  
Michael Benklifa

JURAT

My name is Michael Benklifa, my date of birth is September 9, 1987 and my address is 7019 Judi Street, Dallas, Texas, 75252, United States of America. I declare under penalty of perjury that the foregoing is true and correct.

Executed in Collin County, State of Texas on the 8 day of January, 2015.

  
Michael Benklifa

# **EXHIBIT 1**

**From:** Michael Benklifa <benklifa@gmail.com>  
**Date:** Sun, 12 Oct 2014 22:31:54 -0500  
**To:** Benjamin Nise<gatorswamp34@yahoo.com>; Yaakov Rich<rabbi@toraschaimdallas.org>  
**Subject:** Selective outrage

Across the street from us, ***next door to Bob Day (President of HOA) 7020 Judi st.*** there is music school that operates 7 days a week. Parents regularly sit in their car in front of our house waiting for their child to finish their music class. They recently even had a recital.

On 7041 Judi st., again ***on the corner of the same street as Bob Day (President of HOA)***, there is a used car business. There is a constant revolving inventory of cars that he buys at auction and parks them in the street and his driveway until they are sold. *Article 6 section 1 says that a residence is not allowed to have more than 4 cars and our esteemed president has turned a blind eye to this as well.*

Also....

According to the HOA Governing documents  
Article 6 section 7: "Wood fences shall be no higher than 6 feet and constructed of redwood, cedar or cyprus." Snyder, as well as everybody in the neighborhood, might be in violation of this.

Section 10: All houses are supposed to have lights that illuminate their alley.

Section 11: Only allows for one 5sqft sign for the purposes of "identifying the builder or advertising the property for sale or lease." A sign posted for other reasons, for instance, "Keep us Residential" is a violation.

# **EXHIBIT II**

### Bradford Court Reporting, LLC


7015 Mumford Street

Dallas, TX 75252

Phone: 972-931-2799 (888-733-2311) Fax: 972-931-1199

<a href="#">About us</a>	<a href="#">Contact us</a>	<a href="#">Email us</a>	<a href="#">Home</a>
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[Customer Logon](#)
[Reporter Logon](#)
[Schedule Now](#)
[Sign-Up](#)



**Customer Logon**  
Secure Customer Repository

Username	<input type="text"/>
Password	<input type="password"/>

**Click to Logon**

To view a full demonstration logon as  
**MASON** with the password 3333

Forgot your password? [Click here](#) to have your password emailed to you.



# **EXHIBIT JJ**

**Subject:** Congregation  
**From:** Ted Day <tday@utdallas.edu>  
**Date:** Thu, 27 Jun 2013 01:04:23 -0500  
**To:** mkc2@sbcglobal.net  
**Message-ID:** <51CBD5E7.2000002@utdallas.edu>  
**User-Agent:** Mozilla/5.0 (Macintosh; U; Intel Mac OS X 10.6; en-US; rv:1.9.2.28) Gecko/20120306 Thunderbird/3.1.20  
**MIME-Version:** 1.0  
**Content-Type:** text/plain; charset=ISO-8859-1; format=flowed  
**Content-Transfer-Encoding:** 7bit

Michael and Mary,

I'm very concerned about all of the issues related to the establishment of the synagogue near your home, both as a member of the board and as a neighbor. Unfortunately, at this point I don't believe that there is the unanimity on the board about this issue that I would like to see. I don't think that it would be right to forward copies of e-mail messages that have been shared by members of the board. However, below I copied in the opinions that I have expressed on the matter to the other members of the board and if you infer anything about the opinions of others from what I have said I don't see that any harm has been done.

I don't want to see litigation but I agree that deed restrictions limit usage to single family dwellings, and unfortunately, I don't think that there is an acceptable negotiated solution. Religious freedom has nothing to do with this issue, although it is possible that a court may not be willing to grant us relief, particularly given the erosion in our rights due to the laws about the establishment of hospices. In fact, right now I'm figuring out what to do about a garage near my home has been converted to a rental apartment. Anyway, I'm committed to getting good legal advice on the remedies we may have available to us. I know that both of you are very savvy about neighborhood issues and so I would appreciate sharing any ideas that you might have about how to proceed. Take care, Ted Day

What follows is the message that I sent:

Those are all good points---and rather than provide answers to those questions myself I would rather present the situation to an attorney, explain what we might view as the negative consequences to the neighborhood of what we perceive to be happening (parking problems, renovations that might not be consistent with a residential neighborhood, the potential for a non-profit day care business to take root in the neighborhood, and the possibility that this would potentially attract other seedling churches to our neighborhood or lead to an expansion of non-residential activity in our neighborhood), and then have the attorney tell us what the potential legal remedies would be, if any. At the risk of expressing an opinion on something that I'm not an expert on, I would say that there is in fact a definable difference between a church and a bible study. If I'm having a bible study in my home my guests would be sitting in chairs and on the couch and possibly the floor, making do with the living space that for the moment is not being used by my family. There would be no special reference library, there would not be a playground for significant numbers of children added to my backyard, and there would be no renovations to my home to either create or expand worship specific seating capacity. Also, my experience with bible studies is that they typically move to the home of another member of the group after a month or so.

HOA 000148

So to the extent that the home is being specifically modified to be a place of worship permitting significant numbers of people to gather on a regular basis I think that a church has definitely been established. I think that it's one thing for a group to meet for worship in a private residence as they form the nucleus for a congregation that will ultimately find a permanent place of worship in an appropriate location---Fellowship Bible Church of the Park Cities began in exactly that manner. That is very much how I would view the worship that has been occurring in the Rabbi's home up until now. However, it looks to me as if they have decided that the permanent home for the church/synagogue will be in our neighborhood. This can't be the first time something like this has happened and so I would be very surprised if there weren't legal precedent regarding a matter like this.

With regard to having our board meet with their board of directors (bible study groups usually don't have enough members to create a board of directors), I'm inclined to think that we should meet with them at some point, but whether we meet or not I'm very sure that they will continue to implement their plan. So my feeling is that we need to have a legal opinion on whether there are legal options or not. If our attorney tells us that we have no options, as has been the case with the hospices located in our neighborhood, then I agree that by all means we should not be spending money on litigation for the sake of harassing someone who is doing something that some of us just don't like.

With regard to whether this is a matter for the homeowner's association, I firmly believe that it is. I think that this is a situation where a group of people is doing something that may have an immediate negative impact on a small group of our neighbors, and in the long run this negative impact could potentially be transmitted to the entire neighborhood by gradually expanding the scope of the non-residential activities that are permitted to be conducted in structures that are intended to be used as single family dwellings. Apart from assuring that the gazebo is painted and the grass is cut, I think that one of the important reasons for having a homeowner's association is for the group to unite to take appropriate collective action through the homeowner's association rather than having a small group of affected homeowners bare the brunt of these actions and have to go it alone. So those are my thoughts on the matter. Take care, Ted



# **EXHIBIT KK**

## Highlands of McKamy IV & V Community Improvement Association

### Minutes of the REGULAR BOARD MEETING November 20, 2007

The November 2007, regular board meeting of the Highlands of McKamy IV & V Community Improvement Association, referred to here in as the "Homeowners Association", or the "Association", was called to order at 7:10 PM by Board of Directors President Bill North. Also present were board members Bill Purdon and Andy Zekany.

The minutes for the October 16, 2007 regular board meeting, distributed previously via e-mail, were reviewed and approved as presented.

The following items of business were discussed at the meeting:

- Committees and Departments:
  - Architecture:
    - ▶ No report.
  - Beautification and Landscaping:
    - ▶ North Entry Signs: Bill Purdon reported that the signs are ready but he has been unable to get Starlite Sign to return phone calls to schedule installation. Starlite has been paid half of the cost for the installation in advance.
    - ▶ Bill North corrected that he will talk with Linda Messer, not Candy Crawford, about the possibility of preparing a long term landscaping plan for the common areas.
  - Crime Watch:
    - It was noted some of the Board members have received comments that patrols by the VIP team are being noticed by neighbors. This is an excellent result.
  - Directory:
    - Bill Purdon noted that he has not received any update information for the directory since it was published in February. Bill North expressed the desire for the posting of updates to become electronic (post to website), or perhaps even the whole directory.
  - Finance:
    - ▶ Ted has prepared and submitted a draft of a FY2008 budget for review. This will be considered and a vote for approval will be taken at the new regular Board meeting.
  - Newsletter:
    - No activity to report.
  - Social:
    - ▶ The annual neighborhood Halloween party was hosted by Christie and John-Paul Font and was well attended. The Boards expressed appreciation to the Fonts.
    - ▶ The fall neighborhood garage sale was held October 25-27. Thanks to Pat Dodge.
- DHA Public Housing:
  - Andy reported that he is holding a check for unused funds released by our attorneys and will speak with Preston Highlands about a disbursement plan.

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- Non-committee Old Business:
  - Web-Site.
    - ▶ No report.
  - DART:
    - ▶ No new information or report.
  - Deed Restriction/Covenant Compliance
    - ▶ No discussion.
  
- New Business:
  - It was brought up that the property at 7031 Bremerton Drive is now owned by Mike Dossett and is being used as a business site for training purposes. This has been generating a number of complaints as the number of cars parked at seminar time is significant. Such use is against Association deed restrictions and is very likely a violation of city of Dallas ordinances. Bill North indicated that he will contact Dr. Dossett.

There being no further business to conduct, the meeting was adjourned at 8:01 PM by Board President Bill North.

The next regular meeting is scheduled for Tuesday, December 18, 2007, at 7:00 PM.

Respectfully submitted,

*Bill Pardon*

## Highlands of McKamy IV & V Community Improvement Association

### Minutes of the REGULAR BOARD MEETING December 18, 2007

The December 2007, regular board meeting of the Highlands of McKamy IV & V Community Improvement Association, referred to here in as the "Homeowners Association", or the "Association", was called to order at 7:15 PM by Board of Directors President Bill North. Also present were board members Bill Purdon and Andy Zekany, and Association Treasurer Ted Day.

The minutes for the November 20, 2007 regular board meeting, distributed previously via e-mail, were reviewed and approved as presented.

The following items of business were discussed at the meeting:

- Committees and Departments:
  - Architecture:  
No report.
  - Beautification and Landscaping:
    - ▶ North Entry Signs: Andy Zekany reported that he has contacted Starlite Signs and they are ready to install the signs, and just need coordination about a suitable date. Due to the holidays, the installation will probably not happen until January. Andy also confirmed that A&B Aluminum and Brass Foundry has been paid for the refurbishment of the recovered signs. Bill North has asked that we provide to him receipts for the sign repair expenses so that he can submit to our insurance company.
    - ▶ Linda Messer indicated that she will not be able to prepare a long term landscaping plan for the neighborhood common areas.
    - ▶ It was noted that there is a need to make some repairs on the gazebo. The scope is not known.
  - Crime Watch:  
No report.
  - Directory:  
No directory updates have been received since the printing and release in February.
  - Finance:
    - ▶ After further review and discussion, the proposed FY2008 budget prepared by Ted Day and submitted at the November regular meeting was approved by all Board members present.
  - Newsletter:  
No activity to report.
  - Social:  
No report.
- DHA Public Housing:
  - No report.

- Non-committee Old Business:
  - Web-Site:
    - ▶ No report.
  - DART:
    - ▶ No new information or report.
  - Deed Restriction/Covenant Compliance
    - ▶ Regarding the property at 7031 Bremerton Drive which is now owned by Mike Dossett and being used as a business site for training purposes, a number of complaints have been received due to the number of cars parked along the street – apparently at seminar time. Such use is against Association deed restrictions and is very likely a violation of city of Dallas ordinances. Bill North indicated that he will contact Dr. Dossett
  
- New Business:
  - ▶ No new business.

There being no further business to conduct, the meeting was adjourned at 7:58 PM by Board President Bill North.

The next regular meeting is scheduled for Tuesday, January 15, 2008, at 7:00 PM.

Respectfully submitted,

*Bill Pardon*

## Highlands of McKamy IV & V Community Improvement Association

### Minutes of the REGULAR BOARD MEETING January 15, 2008

The January 2008, regular board meeting of the Highlands of McKamy IV & V Community Improvement Association, referred to herein as the "Homeowners Association", or the "Association", was called to order at 7:12 PM by Board of Directors President Bill North. Also present were board members Bob Dodge, Bill Pudon and Andy Zekany.

The minutes for the December 18, 2007 regular board meeting, distributed previously via e-mail, were reviewed and approved as prepared and presented.

The following items of business were discussed at the meeting:

- Committees and Departments:
  - Architecture:  
No report.
  - Beautification and Landscaping:
    - ▶ North Entry Signs: Bill Pudon stated that the recovered and refurbished signs will be installed tomorrow (12/16). Receipts for the various expenses associated with the recovery, refurbishment and installation are being provided to Bill North for submission to our insurance company for claim recovery.
    - ▶ The gazebo needs to be examined as a need for repair has been reported.
  - Crime Watch:  
Billy Green and his wife have resigned from participation the VIP program.
  - Directory:  
No directory updates have been received since printing and release in February.
  - Finance:  
Ted Day is in the process of a preparing year end financial status summary for the annual meeting.
  - Newsletter:  
A newsletter is in preparation and is targeted for mailing along with the notice for the annual meeting.
  - Social:  
No report.
- DHA Public Housing:
  - No report.
- Non-committee Old Business:
  - Web-Site:
    - ▶ No report.

- DART:
  - ▶ No new information or report.
- Deed Restriction/Covenant Compliance
  - ▶ Regarding the property at 7031 Bremerton Drive which is now owned by Mike Dossett and apparently being used as a business site for training purposes, Bill North indicated that he has communicated with Dr. Dossett via e-mail regarding complaints and violation of deed restrictions, but has received no response.

- New Business:

The annual meeting of the Association has been tentatively set for Sunday, February 17. This is contingent upon finding a suitable location to hold the meeting.

There being no further business to conduct, the meeting was adjourned at 7:25 PM by Board President Bill North.

The next meeting will be the Annual Meeting, tentatively scheduled for Sunday, February 17, 2008, with the time and location to be determined.

The next regular Association meeting is scheduled for Tuesday, March 18, 2008, 7:00 PM.

Respectfully submitted,

*Bill Purdon*

## Highlands of McKamy IV & V Community Improvement Association

### Minutes of the REGULAR BOARD MEETING March 18, 2008

The March 2008, regular board meeting of the Highlands of McKamy IV & V Community Improvement Association, referred to herein as the "Homeowners Association", or the "Association", was called to order at 7:10 PM by Board of Directors President Bob Dodge. Also present were board members Bill Purdon and Vincent Button and homeowner Patrick Harrison.

The minutes for the January 15, 2008 regular board meeting, distributed previously via e-mail, were reviewed and approved after amendment to correct (type) the date for the installation of the north entry signs from 12/16/2008 to 1/16/2008.

The following items of business were discussed at the meeting:

- Committees and Departments:
  - Architecture:

There have been two inquiries from homeowners as to whether carports are a permitted structure in the neighborhood per the deed restrictions. The matter has been referred to Andy Zekany to research and he is reviewing this issue.
  - Beautification and Landscaping:
    - ▶ North Entry Signs: Bill Purdon stated that the recovered and refurbished signs were installed January 16th. Receipts for the various expenses associated with the recovery, refurbishment and installation are being collected by Bill North for submission to our insurance carrier for claim recovery.
    - ▶ The gazebo was inspected by Andy Zekany and Bill Purdon and they found that a sizable gap or "separation" now exists between the four pie segments of the slab under the gazebo structure. Bob Dodge will contact a contractor he has used to provide an estimate for repair.
    - ▶ Homeowner Patrick Harrison volunteered to help in the preparation of a long term landscaping plan for the neighborhood common areas.
  - Crime Watch:

It was reported that the VIP program patrols are doing a great job. Bill Purdon gave an example where he was notified one evening that he inadvertently had left his garage door open after dark.
  - Directory:

The Board voted to begin the process of collecting information for updating the neighborhood directory.
  - Finance:

No report.
  - Newsletter:

A newsletter was issued in February as part of the notification for the annual meeting.
  - Social:
    - ▶ A garage sale is scheduled for April 3, 4, and 5.



- ▶ The Board approved proceeding with planning for a repeat of the last year's very successful BBQ at the gazebo. Stacey North has generously volunteered to chair this activity once again. The BBQ is tentatively scheduled for May 3 at the gazebo area.
- DHA Public Housing:
  - No report.
- Non-committee Old Business:
  - Web-Site:
    - ▶ The board has been notified that the monthly fee for our website will increase from \$55 to \$60 effective May 1.
  - DART:
    - ▶ No new information or report.
  - Delinquent Homeowners Dues Accounts
    - Principal Management has notified us that there is one account that has now reached the outstanding balance due threshold that, per our instructions, the Board is to make a decision on the next action. Bob will attempt to contact the owner to arrange a resolution before legal action is authorized.
  - Deed Restriction/Covenant Compliance
    - Regarding the property at 7031 Bremeron Drive which is now owned by Mike Dossett and apparently being used as a site for conducting business/professional training, Bill North indicated that he has not received a response from Dr. Dossett regarding his notification of neighbor complaints and violation of deed restrictions.
  - Insurance:
    - A renewal proposal for our consolidated liability, property and D&O insurance policy has been received. The Board members will review the proposal and provide feedback in the next week or so.
- New Business:
  - Need to address our status with the Secretary of State's office.
  - Patrick Harrison will talk with the City of Dallas officials to determine why we are no longer allowed to use the North Central Police Station for our homeowner meetings Web-Site:

There being no further business to conduct, the meeting was adjourned at 8:55 PM by Board President Bob Dodge.

The next regular Association meeting is scheduled for Tuesday, April 15, 2008, at 7:00 PM.

Respectfully submitted,

*Bill Purdon*

## Highlands of McKamy IV & V Community Improvement Association

### Minutes of the REGULAR BOARD MEETING April 15, 2008

The April 2008, regular board meeting of the Highlands of McKamy IV & V Community Improvement Association, referred to herein as the "Homeowners Association", or the "Association", was called to order at 7:05 PM by Board of Directors President Bob Dodge. Also present were board members Vincent Button, Bill Purdon, Viki Seelig, and Andy Zekany.

The minutes for the March 18, 2008 regular board meeting, distributed previously via e-mail, were reviewed and approved as presented.

The following items of business were discussed at the meeting:

- Committees and Departments:
  - Architecture:
    - ▶ Andy Zekany has researched the issue of carports for the neighborhood and says that these structures are not permitted by both convention and deed restrictions.
  - Beautification and Landscaping:
    - ▶ North Entry Signs: Bill Purdon stated that he has provided our insurance carrier with additional detailing of the timeline and the expenses associated with the refurbishment and reinstallation of the recovered north entry signs in support of claim for loss recovery.
    - ▶ President Bob Dodge has contacted a contractor about how to address the sizable gap or "separation" that now exists between the four pie segments of the slab under the gazebo structure. The Board authorized that these repairs, estimated to be around \$400, proceed.
    - ▶ The utility pole that mounted the electric meter, service panel, and sprinkler controller at the south entry common area has fallen down. The meter and the sprinkler controller have been stolen. Bob has contacted one contractor so far who has proposed to replace the pole and restore power for \$1700. A motion was made and approved authorizing the acceptance of either of the two lowest bid after a total of three bids are received and nominalized.
    - ▶ No input has been received as yet from landscape chairperson Patrick Harrison regarding the preparation of a long term landscaping plan for the neighborhood common areas.
  - Crime Watch:
    - ▶ No report.
  - Directory:
    - ▶ Bill Purdon is preparing a questionnaire and a plan for updating the neighborhood directory.
  - Finance:
    - ▶ No report.
  - Newsletter:
    - ▶ No report.
  - Social:
    - ▶ The spring neighborhood garage sale was held April 3, 4, and 5. There is a general consensus that interest has fallen off during the past few sales and that some action needs to be taken to increase the flow and participation to rejuvenate this to its prior successful event.

- ▶ Spring BBQ: The annual neighborhood picnic-BBQ is scheduled for May 3 at the gazebo area. Stacey North and Kristy Font are coordinating this event.
- DHA Public Housing:
  - No report.
- Non-committee Old Business:
  - Web-Site:
    - ▶ Linda Messer is looking for a volunteer to take over the web-site liaison duties.
  - DART:
    - ▶ No new information or report.
  - Delinquent Homeowners Dues Accounts
 

Bob Dodge has left several messages for the homeowner with the outstanding dues balance above the threshold for Board action. Because no response was received, the Board authorized referral of this matter to our attorney for legal filings and collection actions.
  - Deed Restriction/Covenant Compliance
 

Regarding the property at 7031 Bremerton Drive which is now owned by Mike Dossett and apparently being used as a site for conducting business/professional training, no response has been received to the communication from former Association president, Bill North, notifying Dr. Dossett of neighbor complaints and violation of deed restrictions. It was reported, however, that the training sessions appear to have moved from Mondays to Tuesdays.
  - Insurance:
 

The renewal of the Association's consolidated liability, property and D&O insurance policy was approved via e-mail vote of the Board on March 25. There was no significant change in either coverage or premium fee.
  - Corporation Status:
 

Need to address our status with the Secretary of State's office. Bill Purdon will investigate this.
  - Association Governance Documents Updates:
 

The Board has begun the process of reviewing the Association governance and deed restriction documents for possible revision and updating.
- New Business:
  - No new business.

There being no further business to conduct, the meeting was adjourned at 8:30 PM by Board President Bob Dodge.

The next regular Association meeting is scheduled for Wednesday, May 21, 2008, at 7:00 PM.

Respectfully submitted,

*Bill Purdon*

## Highlands of McKamy IV & V Community Improvement Association

### Minutes of the REGULAR BOARD MEETING May 21, 2008

The May 2008, regular board meeting of the Highlands of McKamy IV & V Community Improvement Association, referred to herein as the "Homeowners' Association", or the "Association", was called to order at 7:05 PM by Board of Directors President Bob Dodge. Also present were board members Vincent Button, Bill Purdon, and Andy Zekany.

The minutes for the April 15, 2008 regular board meeting, distributed previously via e-mail, were reviewed and approved as presented.

The following items of business were discussed at the meeting:

- Committees and Departments:
  - Architecture:  
No report.
  - Beautification and Landscaping:
    - ▶ Bob Dodge arranged for a contractor to repair the gap or "separation" that developed between the four pie segments of the concrete slab under the gazebo structure. This was completed in advance of the spring picnic/bar-b-que. The cost was \$375.
    - ▶ Bob also arranged for a contractor to install a new utility pole that was the mounting for the electric meter, service panel, and sprinkler controller at the south entry common area after the pole came down. After hassles and bureaucratic delays, the city inspected and approved the installation and Oncor reconnected the service. Power at the south end has now been restored. The contractor charge was \$1305. The city fees and Oncor charges are yet to be accumulated. This was a considerable savings over original estimates.
    - ▶ Bob is trying to contact VMC about having a new sprinkler controller (stolen) installed so that the watering of the grass and shrubs can resume.
    - ▶ North Entry Signs: Bill Purdon stated that Principal Management notified him that our insurance carrier has denied our claim for reimbursement of the repair and reinstallation costs for the stolen and then recovered entry signs.
    - ▶ A draft of a long term landscaping plan for the neighborhood common areas was received via e-mail today from landscape chairperson Patrick Harrison. The plan proposes changes to the some of the plantings at the north end, replacing the photimas, changing from annuals to perennials, and replacement of the gazebo with a arbor for gatherings and performances. Patrick was not present at the meeting to discuss, so the matter will be tabled until the next meeting to allow consideration and questions.
  - Crime Watch:  
No report.
  - Directory:  
Bill Purdon presented the plan for updating the neighborhood directory. A questionnaire will go out in the August dues statement, with one follow-up repeat update appeal. Target to publish and distribute is in time for the next annual meeting.
  - Finance:  
No report.

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- Newsletter:
  - No report.
- Social:
  - ▶ Spring BBQ: The annual neighborhood picnic BBQ was held at the gazebo area on May 3. This was a very successful and fun event. Special thanks to Stacey North and Kristy Font for all their efforts in coordinating this event.
- DBA Public Housing:
  - No report.
- Non-committee Old Business:
  - Web-Site:
    - ▶ No report.
  - DART:
    - ▶ No new information or report.
  - Delinquent Homeowners Dues Accounts
    - No new information.
  - Deed Restriction/Covenant Compliance
    - No change in the status of the business/professional training being held at the property at 7031 Bremerton Drive which is now owned by Mike Dossett.
  - Corporation Status:
    - Bill Purdon will contact the Texas Secretary of State's office about our corporate status and any required actions.
  - Association Governance Documents Updates:
    - The Board has begun the process of reviewing the Association governance and deed restriction documents for possible revision and updating. Bill Purdon will coordinate working sessions.
- New Business:
  - No new business presented.

There being no further business to conduct, the meeting was adjourned at 8:20 PM by Board President Bob Dodge.

The next regular Association meeting is scheduled for Tuesday, June 17, 2008, at 7:00 PM.

Respectfully submitted,

*Bill Purdon*

## Highlands of McKamy IV & V Community Improvement Association

### Minutes of the REGULAR BOARD MEETING June 17, 2008

The June 2008, regular board meeting of the Highlands of McKamy IV & V Community Improvement Association, referred to herein as the "Homeowners' Association", or the "Association", was called to order at 7:10 PM by Board of Directors President Bob Dodge. Also present were board members Bill Purdon, Viki Seclig, and Andy Zekany.

The minutes for the May 21, 2008 regular board meeting, distributed previously via e-mail, were reviewed and approved as presented.

The following items of business were discussed at the meeting:

- Committees and Departments:
  - Architecture:  
No report.
  - Beautification and Landscaping:
    - ▶ The Board accepted the resignation of Patrick Harrison as chairperson of the Beautification and Landscape committee.
    - ▶ The sprinkler controller for the south common area has now been re-installed and is operational. Although originally thought to have been stolen when the power pole, to which the controller was attached, was downed in a storm, it turns out that it was retrieved by VMC for safekeeping. Unfortunately, this fact was never shared, and when VMC did not return several phone calls attempting to authorize them to install a new controller, due to the urgency of getting the grass irrigated, a different irrigation company was contracted. However, VMC, working from an undetermined authorization, proceeded to re-install the controller after replacement of the power pole and reactivation of power, but did not notify any Board member. As a result, charges were incurred when the other irrigation service company visited to install a new controller. In summary, the cost for reinstalling the controller by VMV was \$312, the fee for connecting power to the controller was \$85, and the fee for the aborted attempt by the other irrigation company was \$105.
    - ▶ North Entry Signs: Bill Purdon has been unable to get our agent at Principal management to return phone calls about why our insurance carrier has denied the claim for reimbursement of the repair and reinstallation costs for the stolen and then recovered entry signs.
    - ▶ The draft of a long term landscaping plan prepared by Patrick Harrison was discussed. There was no support on the Board for the suggestion of replacing the gazebo with an arbor/stage and then sponsoring concerts, as the expense and complication would be significant. The Board will be recruiting a new landscape chairperson to help in pricing the other ideas, and perhaps formulating additional ones.
    - ▶ The Board decided to solicit bids from other landscaping maintenance companies to determine if VMC is competitive. Of particular interest will be to see if a service company can be found that can offer professional landscaping advice in addition to maintenance services.
    - ▶ Gazebo Repair: The repair to the Gazebo slab, previously reported, included tie rods to try and prevent more separation movement, and the installation of an expansion joint.
  - Crime Watch:  
A meeting for the VIP program was held at the police station and additional patrol volunteers were recruited. Ava and Jeff Weinstein are the VIP program contacts for our neighborhood.
  - Directory:  
Bill Purdon will send the directory questionnaire to Principal for inclusion in the next dues statement mailing.

- Finance:
  - No report.
- Newsletter:
  - Will try to push for release of a newsletter this summer.
- Social:
  - ▶ The social committee is checking about holding the Fourth of July parade.
- DHA Public Housing:
  - No report.
- Non-committee Old Business:
  - Web-Site:
    - ▶ Bill Purdon urged that the Board engage in a drive for more content and neighborhood participation in our web site.
  - DART:
    - ▶ No new information or report.
  - Delinquent Homeowners Dues Accounts
    - A home on Halprin is now more that one year delinquent in payment.
    - Principal Management has been authorized to proceed with legal action against a delinquent account on Rocky Top.
  - Deed Restriction/Covenant Compliance
    - No change in the status of the business/professional training being held at the property at 7031 Bremerton Drive which is now owned by Mike Dossett.
  - Corporation Status:
    - Bill Purdon has prepared all of the documents for submission to the Texas Secretary of State's (SOS) office to reinstate or corporate status. The problem has been traced to a failure on the part of Principal Management Group, our registered agent, to submit to the SOS's office, in a timely manner, the statutorily required report 9.01 on a Non-Profit Corporation.
  - Association Governance Documents Updates:
    - The Board has begun the process of reviewing the Association governance and deed restriction documents for possible revision and updating. A preliminary list of suggested changes to the Declaration of Restrictions document was discussed. A working session will be scheduled where these and any others will be considered further.
- New Business:
  - No new business presented.

There being no further business to conduct, the meeting was adjourned at 8:20 PM by Board President Bob Dodge.

The next regular Association meeting is scheduled for Tuesday, July 15, 2008, at 7:00 PM.

Respectfully submitted,

*Bill Purdon*

## Highlands of McKamy IV & V Community Improvement Association

### Minutes of the REGULAR BOARD MEETING July 15, 2008

The July 2008, regular board meeting of the Highlands of McKamy IV & V Community Improvement Association, referred to herein as the "Homeowners' Association", or the "Association", was called to order at 7:06 PM by Board of Directors President Bob Dodge. Also present were board members Vincent Button, Bill Pardon, and Viki Seelig, Treasurer Ted Day, and homeowner/VIP chairperson Ava Weinstein.

The minutes for the June 17, 2008 regular board meeting, distributed previously via e-mail, were reviewed and approved as presented.

The following items of business were discussed at the meeting:

- Committees and Departments:
  - Architecture:

Andy Zekany has the action to review and suggest changes to the language in the deed restrictions regarding the responsibilities and makeup of the architecture committee.
  - Beautification and Landscaping:
    - ▶ Someone turned off two of the irrigation zones at the north entry (north-west side), which has resulted in some landscaping damage. These zones have been reactivated, and locks will be installed on the sprinkler controllers. VMC recommended that we wait to see if the grass and plants revive before taking any restorative action.
    - ▶ North Entry Signs: Kathy Parker of Principal Management says that the claim for reimbursement of the repair and reinstallation costs for the stolen and then recovered entry signs have been paid by our insurance carrier.
    - ▶ The Board expressed continued desire for having a long term landscaping plan before moving forward with any major changes. There are seeds of ideas in the draft landscaping plan prepared by Patrick Harrison, who has resigned. The Board is trying to recruit a new landscape chairperson to help in pricing these ideas, and formulating additional ones.
    - ▶ In preparation for the pending renewal of the landscape maintenance contract, bids are being solicited. Besides VMC, our current contractor, two other firms will be asked to provide quotations. Of particular interest will be to determine if a service company can be found that can offer professional landscaping design advice in addition to maintenance services.
  - Crime Watch:

Ava Weinstein, who, along with her husband Jeff, is chairing the "Volunteers In Patrol" program for our neighborhood gave an update on the status of this crime watch initiative. The Board members expressed appreciation for the dedication of the volunteers -- which currently numbers six people. It was noted that the "patrols" have been frequently seen and that the Board has received many positive comments from neighbors. Ava stated that there is very good interaction with the Dallas Police Department, and that this relationship is a real positive for our neighborhood in that it personalizes us to the local police officers. More volunteers are needed to be able to increase the frequency of patrols.
  - Directory:

The directory questionnaire missed the deadline for inclusion in the July dues statement mailing and so will be mailed separately.



- Finance:
  - ▶ Ted stated there are no remarkable items of note regarding our expenditures or revenues thus far in FY 2008 and that we are tracking to budget.
  - ▶ Ted is still pressing our retained CPA firm (Goldklang, Cavanaugh & Associates) to complete the financial audit for 2007. Their timeliness has been a disappointment after changing from our previous auditors (Swalm & Assec.) specifically because of their untimely execution.
- Newsletter:
  - ▶ Will try to push for release of a newsletter this summer.
- Social:
  - ▶ The Fourth of July parade/picnic/social was not held because the scheduling of all the events could not be worked out.
  - ▶ The traditional fall garage sale is planned, but there will be some discussion at the next Board meeting about the days of the week to hold this.
  - ▶ The next social event planned is the Halloween picnic.
- DHA Public Housing:
  - Although construction has taken a very long time, the public housing at Hillcrest and SH190 is just about complete and the ceremonial dedication was held today.
- Non-committee Old Business:
  - Web-Site:
    - ▶ The general consensus is that the Highlands of McKamy web site is not serving us well. With Linda Messer's resignation from doing any further updates, there is no one driving this now. The Board will try to find a new person to champion this resource, but failing that the web-site may be discontinued.
  - DART:
    - ▶ No new information or report.
  - Delinquent Homeowners Dues Accounts
    - ▶ Bob has had success in getting one delinquent account brought current. The house at 7031 Bremerton Drive being used for business/professional training is now delinquent on its Association dues.
  - Deed Restriction/Covenant Compliance
    - ▶ No change in the status of the business/professional training being held at the property at 7031 Bremerton Drive, which is now owned by Mike Dossett.
  - Corporation Status:
    - ▶ Bill Purdon reported that he has received notification from the office of the Texas Secretary of State that the Highlands of McKamy IV & V Community Improvement Association corporation has been reinstated and its status returned to "In Good Standing". The problem was traced to a failure on the part of Principal Management Group, our registered agent, to submit to the SOS's office, in a timely manner, the statutorily required report 9.01 on a Non-Profit Corporation.
  - Association Governance Documents Updates:
    - ▶ The Board continues the process of reviewing the Association governance and deed restriction documents for possible revision and updating. A preliminary list of suggested changes to the

Declaration of Restrictions document was discussed. A working session will be scheduled where these and any others will be considered further.

- **New Business:**  
No new business presented.

There being no further business to conduct, the meeting was adjourned at 8:45 PM by Board President Bob Dodge.

The next regular Association meeting is scheduled for Tuesday, August 19, 2008, at 7:00 PM.

Respectfully submitted,

*Bill Pardon*

## Highlands of McKamy IV & V Community Improvement Association

### Minutes of the REGULAR BOARD MEETING August 19, 2008

The August 2008, regular board meeting of the Highlands of McKamy IV & V Community Improvement Association, referred to herein as the "Homeowners' Association", or the "Association", was called to order at 7:13 PM by Board of Directors President Bob Dodge. Also present were board members Vincent Button, Bill Purdon, and Viki Seelig.

The minutes for the July 15, 2008 regular board meeting, distributed previously via e-mail, were reviewed and approved as prepared.

The following items of business were discussed at the meeting:

- Committees and Departments:
  - Architecture:
    - Andy Zekany has the action to review and suggest changes to the language in the deed restrictions regarding the responsibilities and makeup of the architecture committee.
  - Beautification and Landscaping:
    - ▶ The bedding plants and some of the grass at the NW north entry have recovered sufficiently from the sprinkler problem that no further restorative action will be taken at this time.
    - ▶ In anticipation of the pending renewal of the landscape maintenance contract, bids have been solicited and received from two other contractors. These bids are higher than we are currently paying VMC. We expect our current vendor (VMC) to communicate a renewal price in the next month.
    - ▶ Bob Dodge has had some discussions with VMC's representative about advising us on putting together a long term landscaping plan.
  - Crime Watch:
    - No report.
  - Directory:
    - The directory questionnaire has been mailed to the HOA members. A deadline for return of these was set for September 30.
  - Finance:
    - Bill reported that in an e-mail communication today with Ted, he indicated that he will once again press our CPA firm (Goldklang, Cavanaugh & Associates) to complete the financial audit for 2007.
  - Newsletter:
    - No report.
  - Social:
    - ▶ Vincent requested that the fall neighborhood garage sale be held Saturday and Sunday so that more residents can participate on day one. The majority of Board members present were in favor, with one dissention.
    - ▶ The next social event planned is the Halloween picnic. Bob Dodge will communicate with social chair Stacey North about planning for the event.

- DHA Public Housing:
  - Nothing to report.
- Non-committee Old Business:
  - Web-Site:
    - ▶ Bill stated that, in his opinion, the biggest problem with our web-site is that there is no one who champions it any longer. Separately, Vincent will examine options and alternatives for our web-site, with the understanding that if the effectiveness of our HOA web-site is not improved by the end of the year, it will be discontinued for failing to provide value.
  - DART:
    - ▶ No new information or report.
  - Delinquent Homeowners Dues Accounts
    - No new delinquencies reported.
  - Deed Restriction/Covenant Compliance
    - No change in the status of the business professional training being held at the property at 7031 Bremerton Drive, which is now owned by Mike Dossert.
  - Association Governance Documents Updates:
    - Discussions regarding revisions to the Association's governance and deed restriction documents continued. Vincent believes that the biggest issue is the enforceability of the covenants and he wants a lawyer to review, comment, and suggest changes. A motion to this effect was made. In discussion, Bill cautioned that it will be better to first concentrate on changes in content (covenants and restrictions) and that once a consensus on the Board is established, the suggested content changes as well as the enforceability issues should be reviewed and addressed as a whole by our lawyer in order to make the process efficient, timely, and to hold down costs. The Board decided to meet next Wednesday (August 27) in a working session to begin thrashing out content changes.
- New Business:
  - No new business presented.

There being no further business to conduct, the meeting was adjourned at 9:00 PM by Board President Bob Dodge.

The next regular Association meeting is scheduled for Tuesday, September 16, 2008, at 7:00 PM.

Respectfully submitted,

*Bill Purdon*

## Highlands of McKamy IV & V Community Improvement Association

### Minutes of the REGULAR BOARD MEETING September 16, 2008

The September 2008, regular board meeting of the Highlands of McKamy IV & V Community Improvement Association, referred to herein as the "Homeowners' Association", or the "Association", was called to order at 7:05 PM by Board of Directors President Bob Dodge. Also present were board members Bill Purdon and Viki Seelig, and Treasurer Ted Day.

The minutes for the August 19, 2008 regular board meeting, distributed previously via e-mail, were reviewed and approved as prepared.

The following items of business were discussed at the meeting:

- Committees and Departments:
  - Architecture:
    - ▶ Andy Zekany has the action to review and suggest changes to the language in the deed restrictions regarding the responsibilities and makeup of the architecture committee.
  - Beautification and Landscaping:
    - ▶ VMC has agreed to prepare a long term landscaping plan for our common areas.
    - ▶ VMC is preparing a renewal proposal for the landscape maintenance.
  - Crime Watch:
    - ▶ In response to Bob's e-mail about suspicious activity in the neighborhood, a neighbor reported a white van (with license plate number) cruising the streets, including the alleys. This was forwarded to Bob.
  - Directory:
    - ▶ The consensus of the Board was to send a reminder notice out about the deadline to return the directory information (Sept 30). Bill will prepare the notice, which will also include a note to seriously consider providing a home e-mail address to facilitate future communications. So far, about 90 questionnaires have been returned.
  - Finance:
    - ▶ Ted reported that he will begin preparation of a 2009 budget for Board consideration and approval.
    - ▶ No status on the audit report for 2007.
  - Newsletter:
    - ▶ Bob stated that Pat Dodge will prepare two more newsletters, including one in the next month. After that, he intends to shift to e-mail communications if no one steps forward to handle this activity.
  - Social:
    - ▶ The next social event planned is the Halloween picnic. Bob Dodge will communicate with social chair Stacey North about planning for the event.
- DHA Public Housing:
  - Nothing to report.

- Non-committee Old Business:
  - Web-Site:
    - ▶ No discussion.
  - DART:
    - ▶ No new information or report.
  - Delinquent Homeowners Dues Accounts
    - No discussion.
  - Deed Restriction/Covenant Compliance
    - No change in the status of the business/professional training being held at the property at 7031 Bremerton Drive, which is now owned by Mike Dosssett.
  - Association Governance Documents Updates:
    - Our deed restrictions and by-laws are in the hands of attorneys Riddle and Williams for review and suggested changes.
- New Business:
  - No new business presented.

There being no further business to conduct, the meeting was adjourned at 8:20 PM by Board President Bob Dodge.

The next regular Association meeting is scheduled for Tuesday, October 21, 2008, at 7:00 PM.

Respectfully submitted,

*Bill Purdon*

## Highlands of McKamy IV & V Community Improvement Association

### *1<sup>st</sup> Revised Minutes of the* **REGULAR BOARD MEETING** October 21, 2008

The October 2008, regular board meeting of the Highlands of McKamy IV & V Community Improvement Association, referred to herein as the "Homeowners' Association", or the "Association", was called to order at 7:09 PM by Board of Directors President Bob Dodge. Also present were board members Vincent Button, Bill Purdon, Vicki Seefig, and Andy Zekany, Treasurer Ted Day, and homeowners Ida and Johnnie Hill.

The minutes for the September 16, 2008 regular board meeting, distributed previously via e-mail, were reviewed and approved as prepared.

The following items of business were discussed at the meeting:

- Committees and Departments:
  - Architecture:  
Nothing to report.
  - Beautification and Landscaping:
    - ▶ The status of our landscape contract renewal with VMC is unknown.
    - ▶ Bob indicated that he asked VMC to hold off on preparing a long term landscaping plan for our common areas.
    - ▶ Vicki stated that she believes that our landscaping at both the north and south entry is unattractive and needs to be changed. Andy and Bill think the shrubs need trimming and that the annuals (changed three times per year) are in need of color rotation.
    - ▶ A motion was made and approved to authorize planting of four five oak trees (or equivalent), approximately 6" in caliper diameter, at the gazebo common area. The vendor will be VMC and the cost is estimated to be \$1000 per tree. These are to replace some of the seven trees that have fallen down over the past several years, and is a part of the forward looking planning to provide for the beautification of the common areas.
    - ▶ All lighting (trees, security pole, gazebo) is out at the south common area. Bob will contact an electrical contractor to investigate.
  - Crime Watch:  
No report.
  - Directory:  
The directory file is now closed to updates. Bill is working on soliciting advertisers. He stated that it looks like there will be fewer ads this time.
  - Finance:
    - ▶ Ted stated he is working on a budget for 2009. He also indicated that his preliminary look at our current numbers may indicate that we are operating in a deficit.
    - ▶ Per Ted, the current retained earnings (reserve account) is about \$145K. Bill stressed that we need to develop a prospective plan for how big this reserve account needs to be, so that we can determine if we have enough in reserve and the dues can be scaled back, or we need to continue to build the account balance. Vincent indicated that he is anxious to spend this down to about \$100K.
    - ▶ No status on the audit report for FY2007.

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- Newsletter:
  - A newsletter was prepared by Pat Dodge and mailed. There is no one to prepare future newsletters, so some on the Board want to send e-mail as notification about events. Bill read a letter from one homeowner urging that communications continue via mail, as she does not have a computer or e-mail. The Hits, who are a neighbor to the person who sent the letter, offered to print a copy of future communications and deliver same. Bob stated that he had received a number (10-12) of e-mails supporting a change to e-mail delivery. A majority of the Board affirmed a plan to move to e-mail communication as there is no support to expend the additional effort to prepare more formal documents for mailing.
- Social:
  - ▶ The next social event will be the Halloween picnic to be held at Stacey and Bill North's house.
  - ▶ Bob Dodge stated that 13 homes participated in the garage sale, that he received a number of positive comments about it only being on the weekend, and that there were no complaints.
- DHA Public Housing:
  - Andy reported that there is a proposal (from Preston Highlands) to divide the remaining awarded proceeds from the victory in the 5<sup>th</sup> Circuit District Court equally between our Association and Preston Highlands. This appears to amount to about \$28K in total. After discussion, this was tabled until the next meeting so that Andy can research the equity of this a bit more.
- Non-committee Old Business:
  - Web-Site:
    - ▶ There was a reminder that we will be canceling our web-site with Principal at the end of the year if we cannot improve its usefulness. Ted also noted that the fees we are being charged are more than double what we have expected them to be (about \$140 versus \$60 per month).
  - DART:
    - ▶ No new information or report.
  - Delinquent Homeowners Dues Accounts
    - Bob stated that he signed an authorization to Principal Management to have attorneys file a lien against the Highlands of McKamy property of Mr. Abraham Cohen. Bill repeated his objection that this was probably not necessary and just punitive as the resale certificate procedure essentially guarantees that the Association will be paid outstanding dues and interest.
  - Deed Restriction/Covenant Compliance
    - No change in the status of the business/professional training being held at the property at 7031 Bremeron Drive, which is now owned by Mike Dossett.
  - Association Governance Documents Updates:
    - A discussion including Bob, Vicki, Vincent, and Bill last Wednesday, October 15 was held to discuss changes to the Deed Restrictions/Covenant document. Bill has prepared drafts of the proposed changes and has sent them out for comment and correction from the Board.
- New Business:
  - No new business presented.

There being no further business to conduct, the meeting was adjourned at 9:10 PM by Board President Bob Dodge.



The next regular Association meeting is scheduled for Tuesday, November 18, 2008, at 7:00 PM.

Respectfully submitted,

*Bill Purdon*

# **EXHIBIT LL**

IN THE MATTER OF	§	IN THE DISTRICT COURT
	§	
DAVID R. SCHNEIDER,	§	
PLAINTIFF,	§	
	§	OF COLLIN COUNTY, TEXAS
V.	§	
	§	
JUDITH D. GOTHELF,	§	
MARK B. GOTHELF, AND	§	
CONGREGATION TORAS CHAIM, INC.	§	
DEFENDANTS.	§	429 <sup>TH</sup> JUDICIAL DISTRICT
	§	
	§	
AND	§	
	§	
HIGHLANDS OF MCKAMY IV AND V	§	
COMMUNITY IMPROVEMENT	§	
ASSOCIATION,	§	
INTERVENING PLAINTIFF	§	
	§	
V.	§	
	§	
JUDITH D. GOTHELF AND	§	
MARK B. GOTHELF,	§	
DEFENDANTS.	§	

PLAINTIFF'S RESPONSE TO DEFENDANT'S REQUEST FOR DISCLOSURE

TO JUDITH D. GOTHELF, MARK B. GOTHELF AND CONGREGATION TORAS CHAIM, INC. BY AND THROUGH THEIR ATTORNEYS OF RECORD:

Plaintiff David R. Schneider responds to Defendants' Request for Disclosure dated April 8, 2014 as follows:

I.

Disclose: "the method of calculating the \$50,000 in damages alleged in Count 4 of Plaintiff's Amended Petition."

Response: The method was for Plaintiff homeowner David R. Schneider to estimate the fair market value of his house at 7035 Mumford, Dallas (were it to be offered for sale)

with residential only usage at nearby houses (as most potential buyers would expect), less the fair market value of same house having Defendant Congregation Toras Chaim, Inc. operating an Orthodox Jewish synagogue directly across the street in violation of residential only deed restrictions. This difference represents damages caused by Defendants.

This takes into consideration the idea that although there could be a few buyers (perhaps members of the Congregation itself) that would be enticed to purchase such house with a synagogue across the street, there would be a great many more who, upon learning of the operation of the Orthodox Jewish synagogue, would cease to consider Mr. Schneider's house as a suitable potential home purchase.

The net effect would be an overall reduction in potential buyers. Such reduction would inevitably lead to less buyer interest, fewer offers, lower offers, and a longer length of time of the market before ultimate sale (if any). Given that Mr. Schneider's house is otherwise a valuable asset in a unique and desirable location, the actions of Defendants cause significant damages to the Plaintiff in loss of value in Plaintiff's property.

Respectfully submitted,

/s/ David R. Schneider  
David R. Schneider, Pro Se  
7035 Mumford  
Dallas, TX 75252  
Email: DavidRaySchneider@Gmail.com  
Cell: (214) 315-5531

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the following was this 8th day of May, 2014 served in accordance with the Texas Rules of Civil Procedure to the following:

Matt McGee, Haynes and Boone LLC , 2323 Victory Avenue,  
Suite 700, Dallas, TX 75219  
([Matt.McGee@haynesboone.com](mailto:Matt.McGee@haynesboone.com)).

Justin Butterfield, Liberty Institute, 2001 West Plano  
Parkway, Suite 1600, Plano, Texas 75075  
([jbutterfield@libertyinstitute.org](mailto:jbutterfield@libertyinstitute.org)).

David Surratt, Riddle and Williams, 3710 Rawlins Street,  
Suite 1400, Dallas, Texas 75219  
([dsurratt@riddleandwilliams.com](mailto:dsurratt@riddleandwilliams.com)).

/s/ David R. Schneider  
David R. Schneider