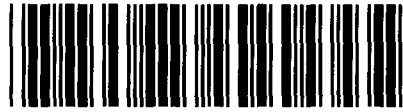


Control Number: 46923



Item Number: 51

Addendum StartPage: 0

**SOAH DOCKET NO. 473-17-5770.WS**  
**DOCKET NO. 46923**

2018 APR 29 AM 9:37

<b>APPLICATION OF WOLFE</b> <b>AIRPARK CIVIC CLUB, INC. TO</b> <b>OBTAIN A WATER</b> <b>CERTIFICATE OF</b> <b>CONVENIENCE AND NECESSITY</b> <b>IN BRAZORIA COUNTY</b>	§ § § § § §	<b>PUBLIC UTILITY COMMISSION</b> <b>OF TEXAS</b>
--	----------------------------	---

**APPLICANT'S OBJECTION AND REBUTTAL TESTIMONY**

Initially, for the reasons set forth in SOAH Order No. 5, Applicant objects to Walker introducing any evidence, either documents, written testimony, or through cross examination.

For further objection, on September 29, 2017, the PUC issued its Preliminary Order controlling these proceedings setting forth the issues to be addressed before this Court (Item 25). Walker's Request for Hearing and the documents produced by Walker do not address the statement of issues set forth by the Public Utility Commission (PUC), and therefore, they are not relevant to Applicant's request for issuance of a Certificate of Convenience and Necessity (CCN).

Subject to these objections, Applicant submits this rebuttal to Walker's Request for Hearing dated August 11, 2017 (Item 13), to documents produced on December 14, 2017 (Item 41), and Walker's April 19, 2018 motion.

**SWORN TESTIMONY OF JOHN HEITZ FOR APPLICANT**  
**IN REBUTTAL TO JOE WALKER**

STATE OF TEXAS  
COUNTY OF BRAZORIA

Before me, the undersigned Notary Public, on this day personally appeared John Heitz, who after being duly sworn, stated under oath as follows:

"I am over 18 years of age, of sound mind, have never been convicted of a felony or a crime involving moral turpitude, am competent to make this affidavit, and have personal knowledge of the facts stated herein.

I am on the board of directors of the Wolfe Airport Civic Club, Inc., and have been since 2009. My wife and I own our home in Wolfe Airpark, as well as a hangar on lot 155.

I currently serve as president of the board of directors of the Wolfe Airpark Civic Club, Inc.

I am designated as the operator of the Wolfe Airpark water system with the Texas Commission on Environmental Quality. I am familiar with the current status of the water system for the residential homes and hangars in Wolfe Airpark, and the history of Wolfe Airpark as it relates to this affidavit.

**Response to Walker's August 2017 Objection to Applicant's Request for CCN**

1. With regard to Walker's complaint that the Deed Restrictions prohibit the Civic Club's ability to charge Wolfe Airpark landowners for the costs associated with the maintenance and operation of the water system, Applicant refers to Exhibits 6 and 7 attached to the Original Sworn Testimony filed on October 6, 2017 (Item 29). An excerpt of the Amended Deed Restrictions is attached as Exhibit 1 which states

**"The Deed Restrictions shall be amended by adding the following item to the Deed Restrictions:**

**The Wolfe Airpark landowners, to clarify any ambiguity in the current Deed Restrictions, ratify the prior actions and affirm the present and future right of the Board of Directors of Wolfe Airpark Civic Club, Inc. to make annual assessments of Wolfe Airpark landowners for the maintenance and operation of the Wolfe Airpark water system.**

**The Wolfe Airpark landowners ratify the prior actions and affirm the present and future right of the Board of Directors of Wolfe Airpark Civic Club, Inc. to take actions to collect said assessments for the maintenance and operation of the Wolfe Airpark water system from land owners, which land owners are obligated to pay said assessments when made by the Board of Directors.**

**The Wolfe Airpark landowners ratify the prior actions and affirm the present and future right of the Board of Directors of Wolfe Airpark Civic Club, Inc. to exercise the rights of enforcement set forth in the Deed Restrictions to collect assessments for the maintenance and operation of the**

**Wolfe Airpark water system, including but not limited to those powers set forth in Vol. 1552, pages 526-529, and any other rights and powers of enforcement granted by law.”**

2. With regard to Walker’s complaint that Applicant is “engaging in false billing for water services at Wolfe Airpark”, applicant refers to the December 13, 2004 letter from the TCEQ (see Exhibit 2) produced by Walker bated and stamped Priddy Et Al 00755, where the TCEQ determined that “no violations were documented during the [November 2, 2004] investigation of the Wolfe Airpark water system”.

For further response, see our response in paragraph 3.

3. In support of paragraph 3, Walker attaches a TCEQ Complaint for incident no. 68737. A copy of this is attached as Exhibit 3a. However, as shown on Applicant’s Exhibit 3b (previously attached as Exhibit 11 to Applicant’s Direct Testimony). This complaint was withdrawn by the TCEQ in its subsequent investigation as shown in Exhibit 3c. The withdrawal specifically addresses Applicant’s requirement to:
  - have a CCN,
  - provide metering devices,
  - request the tariff under the TCEQ regulatory oversight.
4. Regarding paragraph 4, although Walker has been suing the Applicant since 2002 in Cause No. 23769, even in his Tenth Amended Complaint on page 16, Walker specifically affirms that “Plaintiff does not seek to terminate water service to current users within the Holland Estates Subdivision” (see Exhibit 4).

Therefore, for the last fifteen (15) years and continuing through today, Walker’s position in the State Court proceeding is consistent with Applicant’s request to provide water services as set forth in its Application for CCN.

5. There is a pending lawsuit in the 239<sup>th</sup> District Court of Brazoria County, Cause No. 23769, which has been pending since April 2, 2002. However, regarding Walker’s complaint that Applicant’s system is not a “State Approved Water System”, Applicant would refer the Court to copies of the original complaint filed on December 31, 1984 in the 149<sup>th</sup> District Court of Brazoria County regarding Applicant’s water system (see Exhibit 5).

In paragraph XI, the Plaintiff alleged that Wolfe Airpark Inc. “breached its real estate contract in not providing lot owners with a **state approved water system** for the use of the lot owners” (emphasis added). Walker intervened in this lawsuit, and after a jury rejected Walker’s complaints, the Court rendered Judgment against Joe Walker on October 10, 1988 (see Exhibit 6).

This Judgment was affirmed by the Court of Appeals on March 25, 1991, establishing by res judicata that Joe Walker is precluded from contesting that the Applicant’s water system is not a “State Approved Water System” (see Exhibit 7). The documents produced by Walker on Item 41 are, in large part, evidence that was rejected by the jury, presiding Judge and Court of Appeals in that case.

6. Applicant is not trying to circumvent the State District Court in this matter. Applicant’s request for a CCN is consistent with the legislature’s change in jurisdiction over the regulatory agencies as set forth in the statute that became effective in September 2014.
7. Walker is not being damaged by being charged his pro rata share of the expense for the maintenance and operation of the water system.

The opposite is true. Walker is benefitting from use of water from the Wolfe Airpark water system from the beginning of his residence in the subdivision.

8. As shown by the Wolfe Airpark application and related documents on file in this case, Applicant is endeavoring to operate the water system in accordance with applicable laws and regulations.

#### **Applicant’s Response to Direct Testimony for PUC Witnesses**

As stated previously, Applicant accepts, affirms and adopts the testimony of Emily Sears and Jolie Mathis and submits no rebuttal to this testimony.

### **Conclusions**

The operation of the water system provides safe drinking water in adequate quantities.

The assessments for the maintenance and operation of the water system for landowners are extremely low compared to the value received.

It is impossible to maintain and operate the water system unless the associated costs are paid.

If the Civic Club cannot collect fees to operate and maintain the water system, it will not be able to provide water to the landowners.

If water is not provided, there is no alternative source and therefore, the residents will be without water.

I respectfully request that the Administrative Law Judge and the Public Utility Commission of Texas issue a Certificate of Convenience and Necessity to Wolfe Airpark Civic Club, Inc.

#### **Authentication of Exhibits Attached to My Affidavit**

As a board member of the civic club, I am a custodian of records of Wolfe Airpark Civic Club, Inc., and am familiar with the manner in which its records are created and maintained by virtue of my duties and responsibilities. Attached are documents and records referred to in my affidavit. These are exact duplicates of the original records. These records were made at or near the time of each act, event, condition, opinion set forth.

These records were made by, or from information transmitted by persons with knowledge of the matters for this type of record to be made by or from information transmitted by persons with knowledge of the matters set forth in them. The records were kept in the course of regularly conducted business activity. It is the regular practice of the business activity to make these records.

Therefore, based on the factual disputes between Walker and the practices of the owners of Wolfe Airpark, for the reasons set forth above, I request that the Administrative Law Judge enter an Order approving Applicant's request for a Certificate of Convenience and Necessity and rejecting Walker's complaint as invalid."

Affirmation of Sworn Statement

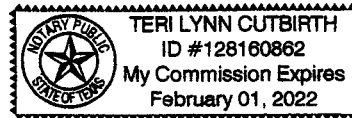
I have read this affidavit and reviewed the exhibits (attached or incorporated by reference), and the statements made in this affidavit and the exhibits are true and correct based upon my personal knowledge.”

Signed and sworn on April 19, 2018.

John Heitz 

SUBSCRIBED AND SWORN TO BEFORE ME on April 19, 2018.

Teri Lynn Cutbirth  
Notary Public in and for the State of Texas  
My commission expires \_\_\_\_\_.



Respectfully submitted,

*/s/John C. Hampton*

---

BY:

John C. Hampton  
Texas Bar No. 08873200  
17918 Western Pass Lane  
Houston, Texas 77095  
Tel. (281) 386-9959  
Fax (281) 858-6781  
jhampton@johnhamptonlaw.net

**CERTIFICATE OF SERVICE**

I certify that a true copy of this document, together with any attachments, has been served on April 19, 2018 on the Legal Division of the Texas PUC by serving Rachelle Robles via email [rachelle.robles@puc.texas.gov](mailto:rachelle.robles@puc.texas.gov), and on Joe Walker via email to [joewalk@hal-pc.org](mailto:joewalk@hal-pc.org) and [joewalkerpe@gmail.com](mailto:joewalkerpe@gmail.com).

*/s/John C. Hampton*

---

JOHN C. HAMPTON



### Index of Exhibits

1. Excerpt of Amended Deed Restrictions of Wolfe Airpark Subdivision
2. TCEQ Letter dated 12/13/04
- 3a. TCEQ Field Report for incident no. 68737
- 3b. TCEQ Complaint No. 68737 dated 12/05/05
- 3c. TCEQ Withdrawal of Complaint No. 68737 dated 8/20/08
4. Walker's Petition page 16 **"Plaintiff does not seek to terminate water service to current users within the Holland Estates Subdivision."**
5. Original Complaint filed in 1984 Lawsuit regarding "State Approved Water System"
6. Judgment Against Joe Walker dated 10/10/88
7. Court of Appeals Mandate rejecting Joe Walker's Appeal

**The airport has been properly designated and shall continue to be designated as a "private airport - open to the public", pursuant to FAA regulations.**

**Amendment No. Three**

**The Deed Restrictions shall be amended by adding the following item to the Deed Restrictions:**

**All lot owners shall have the right to invite any guest, associate or invitee to use the common areas of Wolfe Airpark, and such use by said guest, associate or invitee shall not be considered an encumbrance as defined at Vol. 1552, page 524 or any other reference prohibiting such rights in the Deed Restrictions.**

**Amendment No. Four**

**The Deed Restrictions shall be amended by adding the following item to the Deed Restrictions:**

**The Wolfe Airpark landowners, to clarify any ambiguity in the current Deed Restrictions, ratify the prior actions and affirm the present and future right of the Board of Directors of Wolfe Airpark Civic Club, Inc. to make annual assessments of Wolfe Airpark landowners for the maintenance and operation of the Wolfe Airpark water system.**

**The Wolfe Airpark landowners ratify the prior actions and affirm the present and future right of the Board of Directors of Wolfe Airpark Civic Club, Inc. to take actions to collect said assessments for the maintenance and operation of the Wolfe Airpark water system from land owners, which land owners are obligated to pay said assessments when made by the Board of Directors.**

**The Wolfe Airpark landowners ratify the prior actions and affirm the present and future right of the Board of Directors of Wolfe Airpark**

Civic Club, Inc. to exercise the rights of enforcement set forth in the Deed Restrictions to collect assessments for the maintenance and operation of the Wolfe Airpark water system, including but not limited to those powers set forth in Vol. 1552, pages 526-529, and any other rights and powers of enforcement granted by law.

**Amendment No. Five**

The Deed Restrictions shall be amended by adding the following item to the Deed Restrictions:

Wolfe Airpark Civic Club, Inc. is the duly constituted civic club as described in the Deed Restrictions, Vol. 1552, page 523. Wolfe Airpark Civic Club, Inc. is the successor in interest and owner of the grant of common areas granted by Wolfe Airpark Inc. by Correction Deed filed in Vol. 86275, page 862 of the deed records of Brazoria County, Texas.

Wolfe Airpark Civic Club, Inc. is not bound by the Constitution of Bylaws of the defunct corporation known as WAP Civic Club, Inc.

**Amendment No. Six**

The Deed Restrictions shall be amended by adding the following item to the Deed Restrictions:

Manvel Aviation, Inc. was the Declarant and the successor in interest of all prior Declarants, as defined in Vol. 1552, page 523, Article 1, Section 6 of the Deed Restrictions.

Kathleen Hartnett White, *Chairman*  
R. B. "Ralph" Marquez, *Commissioner*  
Larry R. Soward, *Commissioner*  
Glen Shankle, *Executive Director*



## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

December 13, 2004

Mr. Scott Van Dusen  
Wolfe Air Park  
1015 Wolfe  
Manvel, Texas 77578

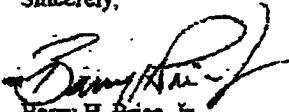
Re: Compliance Evaluation Investigation at:  
Wolfe Air Park, 1015 Wolfe Air Park, Manvel, Brazoria, Co., Texas  
TCEQ ID No. 0200409

Dear Mr. Elridge:

On November 02, 2004, Mr. David W. Livings Sr. R.S. and Ms. Elaine Jackson of the Texas Commission on Environmental Quality (TCEQ), Houston Region Office conducted an investigation of the above-referenced facility to evaluate compliance with applicable requirements for public water supply systems. No violations were documented during the investigation.

The TCEQ appreciates your assistance in this matter and your compliance efforts to ensure protection of the State's environment. If you or members of your staff have any questions regarding these matters, please feel free to contact Mr. David W. Livings Sr., R.S. in the Houston Region Office at (713)767-3650.

Sincerely,

  
Barry H. Price, Jr.  
PWS Work Leader  
Houston Region Office

BHP/dwl

cc: Brazoria Co. Health Dept.

REPLY TO: REGION 12 • 5425 POLK AVE., STE. H • HOUSTON, TEXAS 77023-1486 • 713/767-3500 • FAX 713/767-3520

P.O. Box 13067 • Austin, Texas 78711-3067 • 512/239-1000 • Internet address: [www.tceq.state.tx.us](http://www.tceq.state.tx.us)

printed on recycled paper using soy-based ink

PRIDDY ET AL 00755

Exhibit 2

## TCEQ Complaint Report

01/10/2006  
8:07:13AM

Incident No: 68737  
Media Type: Water  
Start Date: November 21 05  
Received Date: 11/21/2005  
Method : PHONE

Staff Member: BAPRICE  
Status: Closed  
Status Date: 01/09/2006  
Priority: Within 60 Calendar Days

Regulated Entity: Wolfe Air Park  
RN101230720

Address:  
Brazoria County  
Physical Location: Wolf Lane  
KEY MAP 654T

Responsible Party: Wolfe Air Park  
Address: 1015 Wolfe Air Park, Manvel, TX 77578  
Work Phone: (281)226-6483

Title: President

Number Complaining: 1  
Frequency: Current  
Alleged Source: Wolfe Air Park

Program Group: Public Water  
System/Supply

Nature: Wss  
Effect: General

### Initial Problem:

Complainant claims that the system is falsifying connection information to the agency. Complainant also claims that the water supply corporation is not a legal entity.

### Additional Comments:

Mr. Barry Price met with the complainant on December 1, 2005 at 9:30 AM. The complainant showed Mr. Price the well site and told Mr. Price that he felt that the home owners association officers were elected by people who were not legally eligible to vote in the election. Therefore the Water Supply Corporation that they set up was not legal.

Mr. Price told the complainant that the issue of the home owners association vote was not a matter for the TCEQ. If he felt there was election fraud, he needed to contact the appropriate state agency. Mr. Price counted the number of connections and it appears there are 16 connections in the subdivision and 8 connections at the air craft hangers at the end of the run way, plus 5 homes connected to the system off site.

An owner of one of the hangers told the investigator that he paid Wolfe Air Park for water service. One of the off site home owners told the investigator that the five home at the front of the park paid Wolfe Air Park for their water service.

The last investigation of the system shows on 11/02/2005 the system claimed 11 connections being served.

Mr. Van Dusen, an officer with Wolfe Air Park WSC, send an email on 12/7/05 to Mr. Price in response to a request to clarify the number of connections being served by the system. Mr. Van Dusen stated in the email that the system has 36 connections being billed, 19 connections are residences and 17 are only air craft hangers.

Mr. Price than requested an copy of the system distribution map. Mr. Van Dusen pro. Mr. Price with a copy of the map, it was received on 12/27/05. Mr. Price than Called Mr. Jeff Brennan, the system operator, and made an appointment to meet with him on 1/6/06 at the system to check the well rating.

Exhibit 3a 12

01/10/2006  
8:07:13AM

Mr. Price met with Mr. Brennan at 9:30 AM on 1/6/06 at the well site of Wolfe Air Park. Mr. Price checked the well flow and at that time found the well producing 45 GPM. The 45 GPM meets the requirement of 1 GPM per air craft hanger and 1.5 GPM per regular connection.

The system does not individually meter the connections and does not have a CCN. Now that the water supply corporation has more than 15 connections it will have to have a CCN, individual meters at all service connections, and an approved rate structure for the payment of water service.

A notice of violation will be sent to the water supply corporation for these issues.

**Closure Comments:**

The system does not individually meter the connections and does not have a CCN. Now that the water supply corporation has more than 15 connection it will have to have a CCN, will have to individually meter all service connections, and have an approved rate structure for the payment of water service.

A notice of violation will be sent to the water supply corporation for these issues and a compliance schedule will be set for these issues.

Investigation #: 451666

CCN Certificate of Convenience  
and Necessity

HW



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- [Emergency Response](#)
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## Complaint Status

**Complaint Tracking #:** 68737

**Complaint Received Date:** 12/05/2005

**Number Complaining:** 1

**Status:** CLOSED

**Status Date:** 01/09/2006

**Nature:** WATER SUPPLY SERVICE

**Frequency:** CURRENT

**Duration:** ESTIMATED

**Media:** WATER

**Program:** PUBLIC WATER SYSTEM/SUPPLY

**Priority:** Within 60 Calendar Days

**Effect:** GENERAL

**Receiving Water Body:**

**Regulated Entity:** WOLFE AIR PARK

**County:** BRAZORIA

**Description:**

Complainant claims that the system is falsifying connection information to the agency. Complainant also claims that the water supply corporation is not a legal entity.

**Comment:**

The system does not individually meter the connections and does not have a CCN. Now that the water supply corporation was more than 15 connection it will have to have a CCN, will have to individually meter all service connections, and have an approved rate structure for the payment of water service.

A notice of violation will be sent to the water supply corporation for these issues and a compliance shedule will be set for these issues.

**Action Taken:**

Mr. Barry Price met with the complainant on December 1, 2005 at 9:30 AM. The complainant showed Mr. Price the well site and told Mr. Price that he felt that the home owners association officers were elected by people who were not legally eligible to vote in the election. Therefore the Water Supply Corporation that they set up was not legal.

Mr. Price told the complainant that the issue of the home owners association vote was not a matter for the TCEQ. If he felt there was election fraud, he

Exhibit 36

needed to contact the appropriate state agency. Mr. Price counted the number of connections and it appears there are 16 connections in the subdivision and 8 connections at the air craft hangers at the end of the run way, plus 5 homes connected to the system off site.

An owner of one of the hangers told the investigator that he paid Wolfe Air Park for water service. One of the off site home owners told the investigator that the five home at the front of the park paid Wolfe Air Park for their water service.

The last investigation of the system shows on 11/02/2005 the system claimed 11 connections being served.

Mr. Van Dusen, an officer with Wolfe Air Park WSC, send an email on 12/7/05 to Mr. Price in response to a request to clarify the number of connections being served by the system. Mr. Van Dusen stated in the email that the system has 36 connections being billed, 19 connections are residences and 17 are only air craft hangers.

Mr. Price than requested an copy of the system distribution map. Mr. Van Dusen provided Mr. Price with a copy of the map, it was received on 12/27/05. Mr. Price than Called Mr. Jeff Brennan, the system operator, and made an appointment to meet with him on 1/6/06 at the system to check the well rating.

Mr. Price met with Mr. Brennan at 9:30 AM on 1/6/06 at the well site of Wolfe Air Park. Mr. Price checked the well flow and at that time found the well producing 45 GPM. The 45 GPM meets the requirement of 1 GPM per air craft hanger and 1.5 GPM per regular connection.

The system does not individually meter the connections and does not have a CCN. Now that the water supply corporation has more than 15 connections it will have to have a CCN, individual meters at all service connections, and an approved rate structure for the payment of water service.

A notice of violation will be sent to the water supply corporation for these issues.

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oce@tceq.texas.gov

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## Complaint Investigation Details

Complaint Tracking #: 68737

Investigation #: 451666

Regulated Entity: WOLFE AIR PARK

Regulated Entity #: RN101230720

County: BRAZORIA

Street Address: Not available

City: Not available

Zip: Not available

Date of Investigation: 12/01/2005

Media:

Program:

WATER

PUBLIC WATER SYSTEM/SUPPLY

Notice of Violation Date: 01/09/2006

## Violations:

Status	Date	Abbreviated Description	Regulation	Specific Citation
WITHDRAWN	08/20/08	Failure to possess a Certificate of Convenience and Necessity.	30 TAC Chapter 291, SubChapter G	291.101 (a)
WITHDRAWN	08/20/08	Failure by a community water system to provide accurate metering devices at each service connection to provide water usage data.	30 TAC Chapter 290, SubChapter D	290.44 (d)(4)
WITHDRAWN	08/20/08	Failure to file Tariffs.	30 TAC Chapter 291, SubChapter B	291.21 (a)

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Last modified November 29, 2016

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Exhibit 3c

should be ordered to stop all access to the subdivision which is in violation of the Deed Restrictions. The Civic Club should be ordered to stop any current or former Board member from tying property adjacent to the subdivision into the water system, and stop such current water usage of by such persons or entities. The Civic Club should be ordered to allow no future persons to tie into the water system unless it is to supply water to a lot within the subdivision. **Plaintiff does not seek to terminate water service to current users within the Holland Estates Subdivision.**

### **Count 2—Trespass**

22. The Civic Club and its employee or agent, intentionally trespassed on Plaintiff's lot described above, and during the trespass intentionally, or, in the alternative, negligently, damaged his property. In the alternative, the Civic Club and its employee or agent, intentionally, or, in the alternative, negligently damaged Plaintiff's property. Such actions were a proximate cause of damages suffered by Plaintiff, which amount of damages exceed the jurisdictional limits of the Court. Because the actions of said Defendants was done wilfully, with gross negligence, and with conscious disregard for the rights of Plaintiff, or with malice, Plaintiff, in addition to actual damages, seeks punitive damages within the jurisdictional limits of the Court. Plaintiff seeks prejudgment and post judgment interest as allowed by law.

### **Attorney Fees**

23. Plaintiff hired the undersigned law firm to represent him in this cause. He seeks judgment against the Defendants, jointly and severally, for his attorneys fees and costs as allowed by law for pretrial, trial, and for any appeals. Said attorney's fees are sought under Section 37.009, Texas Civil Practice & Remedies Code, Section 5.006, Texas Property Code, and as a part of punitive damages under common law.

### **Prayer**

24. Wherefore, premises considered, Plaintiff prays for judgment for his actual damages, judgment for punitive damages, prejudgment and postjudgment interest as allowed by law, declaratory judgment as requested, writs of injunction as requested, costs and attorney's fees as requested, the other relief requested herein, and for such other and further relief to which he may show himself justly entitled.

NO. 84F3452

DEC 31 1984

PATRICK K. REINHARDT, FOR HIMSELF AND ON  
BEHALF OF ALL OTHERS SIMILARLY SITUATED

IN THE DISTRICT COURT OF  
CLARK COUNTY, TEXAS  
BY Patrick K. Reinhardt DEPUTY

VS.

§

BRAZORIA COUNTY, TEXAS

WOLFE AIRPARK, INC., FRANK A. WOLFE,  
JR. AND DONALD KELLEY

§

149H JUDICIAL DISTRICT

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Patrick K. Reinhardt, Plaintiff, individually and on behalf of all other persons similarly situated, brings this class action complaining of Wolfe Airpark, Inc., Frank H. Wolfe, Jr., and Donald Kelley, Defendants, and shows the court the following:

I.

Plaintiff is an individual owning property in Brazoria County, Texas. Plaintiff sues not only for himself, but also on behalf of all persons who have purchased residential and commercial lots in Defendants' residential and commercial airpark in Brazoria County, Texas, since February 14, 1982. Plaintiff would show that: (1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims of Plaintiff are typical of the claims of the class; and (4) Plaintiff, as a representative party, will fairly and adequately protect the interest of the class. Further, Plaintiff shows that this class action is maintainable pursuant to Texas Rules of Civil Procedure, 42(2)b(4) for the reason that the common questions of law or fact concerning the ownership of the common area of the subdivision; the construction of a water system in the subdivision; the construction quality of the roads in the subdivision; and, the individual waiver of certain deed restrictions pertaining to the subdivision, predominate over any questions affecting only individual members and affect the class of members owning the property in the subdivision as a whole and the class action is superior to other methods available for the fair and efficient adjudication of the controversy.

II.

Defendant, Wolfe Airpark, Inc., is a Texas corporation having its principal place of business in Brazoria County, Texas, who may be served with citation by serving its registered agent for service, Frank H. Wolfe, Jr., at 4828 Old Spanish Trail, Houston, Harris County, Texas 77021.

Exhibit 5

Defendant, Frank H. Wolfe, Jr. is an individual who may be served with citation by serving him at 4828 Old Spanish Trail, Houston, Harris County, Texas 77021.

Defendant, Donald Kelley, is an individual who may be served with citation by serving him at 4828 Old Spanish Trail, Houston, Harris County, Texas.

### III.

On or about February 14, 1982, Plaintiff entered into a real estate contract with Defendant, Wolfe Airpark, Inc. for the purchase and sale of a certain track of land situated in Brazoria County, Texas, being more particularly described as follows:

Lot 43W, Block 1, of Wolfe Airpark, a subdivision of a 99.091 acre track being the James Scopel Tract No. 17, (Vol. 22, P.364, Dead Records) in the Thomas Spraggins Survey, Abstract 366, according to the map or plat thereof recorded in the Platt Records of Brazoria County, Texas.

An executed copy of said contract is attached as Exhibit "A" and incorporated by reference the same as if fully copied and set forth at length.

### IV.

On or about March 31, 1982, the day set for closing title by agreement of the parties, Plaintiff appeared at the hour and place for the completion of the transaction and tendered performance on his part by offering the balance on the purchase price due under the contract and demanded that Wolfe Airpark, Inc., perform its obligations under the contract which required said Defendant to convey marketable title to the property in question.

### V.

Plaintiff had fulfilled all of his obligations, and all occurrences precedent to Plaintiff's right to have the performance of Wolfe Airpark, Inc., had occurred or been performed at the time Plaintiff demanded the performance of Wolfe Airpark, Inc.

### VI.

Notwithstanding the fact that Plaintiff had performed all of his obligations under the contract and all conditions precedent had been fulfilled or had occurred as aforesaid, Wolfe Airpark, Inc., has failed and refused to perform its obligations under the said contract.

### VII.

At all times relevant, Plaintiff was ready, willing and able to perform his obligations under said contract.

VIII.

On or about the date that Plaintiff entered into the purchase and sale contract, being Exhibit "A" attached hereto, Plaintiff was given a Declaration of Covenants, Conditions and Restrictions which would affect said residential and commercial subdivision. A copy of said Declaration of Covenants, Conditions, and Restrictions is attached as Exhibit "B" and incorporated by reference the same as if fully copied and set forth at length herein. At the date of closing, Plaintiff obtained a copy of the Declaration of Covenants, Conditions, and Restrictions, being attached hereto as Exhibit "C" and incorporated by reference the same as if fully copied and set forth at length herein. Said Declaration of Covenants, Conditions, and Restrictions, being Exhibit "C" attached hereto is distinct and different from the Declaration of Covenants, Conditions and Restrictions being Exhibit "B" attached hereto.

IX.

Plaintiff would show that Defendant, Wolfe Airpark, Inc. by and through its president, Frank Wolfe, Jr., has amended, modified, and changed the Declaration of Covenants, Conditions and Restrictions on its own accord without any reference to or consulting with the lot owners in the Wolfe Airpark Subdivision as provided for in either document entitled "Declaration of Covenants, Conditions, and Restrictions".

X.

Further, Plaintiff would show that Defendant, Wolfe Airpark, Inc., has not deeded the common area of the subdivision to the Homeowners Association as provided for in the Declaration of Covenants, Conditions and Restrictions.

XI.

Plaintiff would show that Defendant, Wolfe Airpark, Inc., has breached its real estate contract in not providing lot owners with a state approved water system for the use of the lot owners.

XII.

Plaintiff would show that Defendant, Wolfe Airpark, Inc., has not provided the road system to the subdivision as provided by for in the real estate contract to the specifications as provided for in the contract.

KIII.

Plaintiff alleges that Defendant, Frank H. Wolfe, Jr. and Donald Kelley, have breached their fiduciary duty as officers of Defendant, Wolfe Airpark, Inc., a corporation, in the following manners:

1. Either jointly or individually, Defendants, Frank H. Wolfe, Jr. and Donald Kelley, have allowed the local power company to run electrical power lines over the property of all lot owners in a manner which is inconsistent to the quiet and peaceful use and enjoyment of the subdivision property as an airstrip.
2. That Defendants Frank H. Wolfe, Jr. and Donald Kelley, either individually or jointly have used and diverted Civic Club funds in an amount exceeding FOUR THOUSAND DOLLARS (\$4,000.00) for the use and the benefit of the commercial property in the subdivision. Said use of Civic Club funds for the benefit of commercial property is in direct violation of the Declaration of Covenants, Conditions, and Restrictions.
3. That Defendants Frank H. Wolfe, Jr. or Donald Kelley, either individually or jointly, have sent notices for money owed to all lot owners for Civic Club Dues owing at a date prior to the existence of the Civic Club.
4. That Frank H. Wolfe, Jr. or Donald Kelley, either individually or jointly, have executed letter contracts whereby the the right to use the common property has been granted to individuals unknown to the Plaintiff who are not lot owners in the residential or commercial subdivision, said right to use such common area being in direct violation of the Declaration of Covenants, Conditions and Restrictions, and infringing upon the quiet use and enjoyment of the property by the lot owners of Wolfe Airpark Subdivision.
5. That the Defendants Frank H. Wolfe, Jr. or Donald Kelley, either individually or jointly, have on their own authority granted waivers to the deed restrictions as set forth in the Declaration of Covenants, Conditions and Restrictions to various commercial and residential lot owners, particularly in the construction and use of hanger facilities.

SUIT FOR VIOLATION OF THE DECEPTION TRADE PRACTICES ACT

I.

At the time of the transaction described above, being a purchase and sale of real property in Brazoria County, Texas, Defendant represented that the residential subdivision was a new concept incapable of being a model subdivision for the rest of the nation to follow; that a state approved watering system would be provided to all lot owners; that proper roads and methods of ingress and egress would be provided to the subdivision for the use and benefit of all lot owners; that the common area of the subdivision, being the airstrip, the roadways, and other areas of enjoyment would be deeded to a Homeowners Association for the benefit of all lot owners; that the use and enjoyment of the common area of the property would be exclusive to the lot owners and their guests, invitees, or leasees; and, that the subdivision would have the professional look and feel of a subdivision devoted entirely to the use and enjoyment of the aviation enthusiast lot owners, were false, misleading and deceptive in that

none of the items so representative are true and correct or in existence at the time of the filing of this petition. The foregoing representations violation Sections 17.46(b) of the Deceptive Trade Practices Act - Consumer Protection Act in that they constitute representations that affected the real property which was known by the Defendant at the time of the sale of the property and failed to disclose such information to the purchaser and consequently induce the Plaintiff into a transaction into which he would not have enter had the information been disclosed. In the sale of the property, Defendant, Wolfe Airpark, Inc. by and through its president, Frank H. Wolfe, Jr., engaged in an unconsciencionable action or course of action, taking advantage of the lack of knowledge, ability, experience and capacity of the Plaintiff to a grossly unfair degree by presenting a residential and commercial subdivision development proposal which is wholly inconsistent to that which has in fact been developed. The conduct of Defendants resulted in a gross of disparity between the value received of being associated with such community and of consideration actually paid.

#### II.

Defendants' conduct as described above was the producing cause of Plaintiff's actual damages. As a result, Plaintiff sustained actual damages in that the value of Plaintiff's residential lot in a subdivision of such inferiority quality is not that value for which the Plaintiff has paid. Consequently, Plaintiff has been damaged in the actual amount of a sum of not less than FIVE THOUSAND DOLLARS (\$5,000.00) per lot.

#### III.

Plaintiff has not given written notice to Defendants advising of Plaintiff's specific complaints and the amount of actual damages and expenses, including attorney's fees, reasonably incurred by Plaintiff in asserting this claim against the Defendant. Pursuant to Section 1750a(b) which states that rendering of notice is impracticable by the reason of the necessity of filing suit in order to prevent the expiration of the Statute of Limitations.

#### IV.

Plaintiff will further show that the conduct of Defendant as described in this petition was committed knowingly, that is, that Defendants were actually aware of the falsity, deception and unfairness of the conduct about which Plaintiff complains and

were actual causes of the acts constituting the breach of contract described above. Accordingly, Defendants are liable to Plaintiffs for additional damages as provided by the Deceptive Trade Practices - Consumer Protection Act.

V.

Defendants' conduct as described in this petition and the resulting damage and loss to Plaintiff has necessitated Plaintiff's retaining the attorneys whose names are subscribed to this petition. Plaintiff is, therefore, entitled to recover from Defendants an additional sum to compensate Plaintiff for a reasonable fee for such attorneys' services in the preparation and prosecution of this action as well as a reasonable fee for any and all appeals to other courts.

WHEREFORE, PREMISES CONSIDERED, Plaintiff requests that Defendants be cited to appear and answer and that on final trial, Plaintiff have:

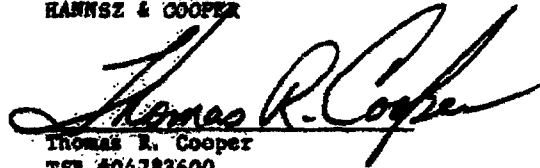
1. Judgment against Defendants for actual damages in an amount in excess of the minimum jurisdictional limits of the court, with interest at the lawful rate from the date of judgment.
2. Further damages in accordance with the provisions of Section 17.50b(1) of the Business and Commerce Code.
3. A court order revoking all contracts with individuals who are not lot owners which effect the common area of the subdivision property.
4. A court order providing that the Defendants will provide a state approved water system for the use and enjoyment of the lot owners.
5. A court order providing that the Defendants deed the common area to the Homeowners Association.
6. That a receiver be appointed to run the business of the Defendants' corporation, Wolfe Airpark, Inc., during the pendency of this suit to insure the proper utilization of Civic Club Funds.
7. That Defendants Frank H. Wolfe, Jr. and Donald Kelley contribute, either individually or jointly, the sum of at least FOUR THOUSAND DOLLARS (\$4,00.00) to the Civic Club Association being the diverted and misused funds of the Homeowners Association.
8. That the Defendant, Wolfe Airpark, Inc., provide roads and methods of ingress and egress to the subdivision in accordance with their contract to all lot owners.
9. Cost of suit.
10. Reasonable attorney's fees.



and further relief to which Plaintiff may be justly entitled, both at law and in equity.

Respectfully submitted,

HANNSZ & COOPER



Thomas R. Cooper  
TSB #04783600  
9000 Gulf Freeway, Suite #245  
Houston, Texas 77017  
713/946-5861

ATTORNEYS FOR PLAINTIFF

FILED  
11-35-88

11-21-88  
FRANCES J. [unclear]  
252/143 [unclear]

NO. 84F3452

PATRICK K. REINHARDT, ET AL  
VS.  
WOLFE AIRPARK, INC., ET AL

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IN THE DISTRICT COURT OF  
BRAZORIA COUNTY, TEXAS  
149TH JUDICIAL DISTRICT

JUDGMENT

On the 10th day of October, 1988, came on to be heard the above-entitled and numbered cause, and Patrick K. Reinhardt, Ronald Priddy, and Joe Walker, Plaintiffs, appeared in person and by attorney of record, and announced ready for trial, and Wolfe Airpark, Inc. and Frank Wolfe, Defendants, appeared in person and by attorney of record and announced ready for trial, and a jury of twelve (12) persons was duly accepted, impaneled and sworn.

After presentation of the testimony, evidence, argument of counsel, and instructions of the Court, the Court submitted the case to the jury on written questions on October 13, 1988, which on October 13, 1988, returned its verdict. The charge of the Court, including the questions and the verdict of the jury, are incorporated herein for all purposes by reference. On the basis of the unanimous verdict of the jury, the Court is of the opinion that, on the merits, judgment should be rendered in favor of Defendants, Wolfe Airpark, Inc. and Frank Wolfe.

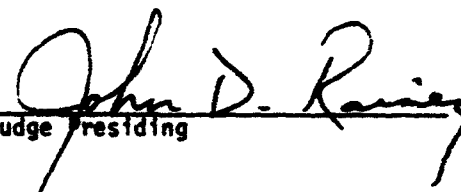
IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that the Plaintiffs, Patrick Reinhardt, Ronald Priddy, and Joe Walker, take nothing by this suit, and that the Defendants, Wolfe Airpark, Inc. and Frank Wolfe, be in all things

Exhibit 6 25


discharged and go hence without day. All costs of Court are taxed against the Plaintiffs for which let execution issue.


All other relief not expressly granted herein is denied.

SIGNED this 28th day of November, 1988.

  
Judge Presiding

APPROVED AS TO FORM:

  
Mark Sokolow  
P. O. Box 57057  
Webster, TX 77598  
(713) 944-9931  
Bar No.

  
A. G. Crouch  
Crouch, Crouch & DeWitt  
P. O. Box 759  
Alvin, TX 77512  
(713) 331-5288  
Bar No. 02900300



**MANDATE**

**FILED**  
at 10:30 o'clock *P* M

MAR 25 1991

FRANCES BENNETT  
Clerk of District Court, Brazoria Co., Texas  
BY *Frances Bennett* DEPUTY

335/636

**The Fourteenth Court of Appeals**

NO. A14-89-00163-CV

PATRICK REINHARDT AND ROBERT  
J. WALKER, Appellant

V.

WOLFE AIRPARK, INC. AND FRANK  
H. WOLFE, JR., Appellee

Appeal from the 149th District Court  
of Brazoria County. (Tr. Ct. No.  
84F3452). Opinion delivered by  
Justice Murphy. Chief Justice J.  
Curtiss Brown and Justice Cannon also  
participating.

**TO THE 149TH DISTRICT COURT OF BRAZORIA COUNTY, GREETINGS:**

Before our Court of Appeals, on the 24th day of January A.D. 1991, the cause upon appeal to revise or reverse your judgment was determined. Our Court of Appeals made its order in these words:

"This cause, an appeal from the judgment in favor of Wolfe Airpark, Inc. and Frank H. Wolfe, Jr. signed November 28, 1988, came on to be heard on the transcript of the record. We have inspected the record and find no error in the judgment. We order the judgment of the court below affirmed.

We order Patrick K. Reinhardt and Robert J. Walker and their surety, Universal Surety of America, jointly and severally, to pay all costs incurred by reason of this appeal. This decision is ordered certified below for observance."

**WHEREFORE, WE COMMAND YOU** to observe the order of our said Court in this behalf and in all things have it duly recognized, obeyed and executed.

**WITNESS**, the HON. J. CURTISS BROWN, Chief Justice of our Fourteenth Court of Appeals, with the Seal thereof affixed, at the City of Houston, this the 11th day of MARCH, A.D. 19 91.

MARY JANE SMART, CLERK

By *Mary Jane Smart*

27  
Exhibit 7