



Control Number: 47457



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Complaint of Clay Morehead Against Corey Abel, Trustee of the Castlecomb Trust	Docket No. 47457	<div style="text-align: center;">RECEIVED</div> <div style="text-align: center;">2019 DEC 20 PM 1:52</div> <div style="text-align: center;">PUBLIC UTILITY COMMISSION FILING CLERK of the State of Texas</div>
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Comes Now, Corey Abel, Trustee of Castlecomb Trust, ***in Response*** to Chairman DeAnn T. Walker's Memorandum and Associated Staff Request for Information, dated October 14, 2019, concerning Investigation No. 2016060022, ***and in reply*** to Mr. Clay Morehead's "Reply to Chairman Walker's Memo";

and Motioning to deny Mr. Morehead's request for relief and dismiss his complaint:

INTRODUCTION

I would like to begin by saying I appreciate the chance to answer Ms. DeAnn T. Walker's and the Public Utility Commission's (PUC) requests for information. Facts are vital to understanding the issues before us all. I received a copy of Mr. Morehead's "Reply" to Ms. Walker's Memo, so I will be referencing it, because there are a number of inaccuracies that need to be clarified. I have also provided a list of point-by-point corrections of Mr. Morehead's numerous misstatements (EXHIBIT A).

All evidence responsive to staff requests for information and relevant to this reply and motion are contained in Exhibits A-U, attached and listed by contents in the "List of Exhibits." Additional information can be furnished, provided sufficient time is allowed for same.

Please be aware that Mr. Morehead's complaint is not an ordinary complaint. It stems from decades of anger towards my father that carries on even though my father died in 2007. In order to understand Mr. Morehead's complaint, it is necessary to understand the history of his relationship with my father. Mr. Morehead himself, in his "Reply" also sees the necessity of situating the present complaint in a lengthy history, of which he gives a distorted account.

In 2004, Mr. Morehead wanted to purchase the lot on Oxford Pl. behind his house on Dover Dr. in the Castlecomb Subdivision. His offer was about half or less of the market price, as based on a recent sale at the time. When my father countered that Mr. Morehead's offer was based on 1986 pricing and it was then 2004, Mr. Morehead became infuriated – “selfish rich bastard” (words to that effect), he called my father (see EXHIBIT C). This was a sentiment often repeated by Mr. Morehead and his friends who in 2004, formed a ‘Castlecomb HOA’, which I will discuss below.

Mr. Morehead and a few of his friends in the neighborhood have made a habit over the years of complaining to Kerr County officials, some of whom are personal friends and acquaintances. For example, Mr. Morehead uses Kerr County Commissioner Tom Moser's home email in some of his diatribes against me (see EXHIBIT D). Mr. Morehead's hostility toward my family, along with long standing whispers that we are Jewish, have filtered into the thinking of Kerr County officials, and even, I fear, State of Texas agencies. A former attorney remarked, for example, that the attitude of officials in the Kerr County Environmental Health Department (KCEHD) and the Texas Commission on Environmental Quality (TCEQ) with whom he was meeting was, “they think you're rich and spoiled and figure why don't you just pay and get this done” – referring to potentially hundreds of thousands of dollars of work. Such personal attacks do no good in finding solutions to a problem that is hardly unique to Castlecomb and that I firmly believe is best approached outside the context of litigation and enforcement actions.

As I have written to the homeowners of Castlecomb and a number of public officials, in preparing tariffs to submit to the PUC, I found rates would have to be over \$500 per month per home if the demands that the PUC and TCEQ are currently making were met (combined water and sewer, but no per gallon figure in that number, which includes new septic system costs). Chairman DeAnn Walker asks a great question: why isn't the City of Kerrville providing these services? It is not because Castlecomb Trust has blocked them. They simply refuse to do it, or even discuss it. The City of Kerrville has been well aware, as have Kerr County and Texas state agencies about the nature of and operation of the Castlecomb systems, and their original permitting by a number of local, county, regional, and state agencies, as I have pointed out in a previous replies to the PUC and Complainant Clay Morehead. All agencies and homeowners have been aware of, and have accepted the foundation of maintenance operations on deed restriction fees (see EXHIBIT F). No one objected to this structure until Mr. Morehead and several of his friends filed complaints. Even the TCEQ joining the Agreed Final Settlement of the County's 2007 lawsuit in 2013 made no mention of CCN or tariffs, despite everyone being aware of the system and how it was funded.

The relief Mr. Morehead seeks and that is called for by the PUC, to have Castlecomb Trust get a CCN, to establish PUC-approved water and sewer rates, and place myself at the head of a new utility corporation providing services to Castlecomb and Kensington Subdivisions, indefinitely, is an outcome Mr. Morehead himself would vociferously oppose. The complaint was filed in a spirit of harassment, to cause more problems, as part of Mr. Morehead and his friends' campaign, to get the system "out of Abel's hands" and use negotiations over a felony charge to extort 24.43 acres of land from defendant's separate company, Tobusch LLC, as well as assets from Castlecomb Trust. To "get the system out of Abel's hands" was a phrase that was used by the homeowner's group Mr. Morehead refers to, in their 2017 discussion with TCEQ. A similar phrase was also used years earlier by Ilse Bailey, during discussion of a settlement of Kerr County's 2007 lawsuit against the Trust concerning modular homes.

Mr. Morehead's aim of preventing Castlecomb Trust from collecting deed restriction fees has already been achieved, as he is well aware. Under these circumstances, the best course legally, prudentially, and in equity is to dismiss this complaint and the request for judgment in Complainant's favor. Granting Mr. Morehead relief solves no current problems at Castlecomb, and sets back the process of making an orderly transition to homeowner control and eventual City of Kerrville annexation.

Background

Early Development and Aims

1986-1987

The development of Castlecomb Subdivision began as a neighborhood of futuristic, non-traditional, MODULAR houses. (There is no subdivision by the name of "Castlecomb Estates"). Honeycomb panel system homes were assembled from pre-fabricated pieces, with plumbing and electric pre-installed, windows pre-cut, and assembled off the backs of trucks. I believe Mr. Morehead's house in Castlecomb is one of these. This fact was referred to during Mr. Morehead's deposed testimony under oath in Castlecomb Trusts' counter suit against the fraudulent 'HOA' that Mr. Morehead and his friends established, as I will touch on below.

The honeycomb-panel construction system received nationwide building approval, through The Council of American Building Officials (CABO). The aim behind the Castlecomb development was to provide low-cost housing that would allow people to enjoy real homes and not have to live in mobile homes, or rent. My father grew up in severe poverty. For example, his older sister, Donna, died due to the family's financial inability to get her medical attention for her infected appendix, which finally burst. My

father, then a young boy, and recovering from a year of paralysis due to Guillain-Barré syndrome, watched his sister die in the family home. He resolved at that young age, that he could never tolerate growing up to live in that same degree of poverty. My father passionately cared for the well-being of everyone he encountered in life. He was generous and loyal to a fault.

My father also had an overwhelming desire to provide great affordable housing to middle and lower-income families, as soon as he realized that his corporation's product could be adapted to building complete structures (and not just partitions and other applications within buildings). He had lived in mobile homes during earlier stages of his life, and did not like the experience at all. He did not want others to have to live in mobile homes. He dreamt the idea of modular housing, which would be superior from an engineering standpoint and less expensive to build, would take hold nationwide and even internationally.

Unfortunately, the credit crash associated with the 1988-1989 S&L crisis brought a premature end to the Castlecomb development. Thirteen houses had been constructed. Remaining lots were slowly sold over the years to buyers who hired their own contractors and built homes. There is currently one owner (Brian McDowell) of two lots on Cardiff Street who, I believe, is planning to build two houses. Tobusch LLC owns one lot on Oxford Pl.

Nota bene: A word about houses and septic capacity, with more details below: The original plat for Castlecomb Subdivision included thirty-five (35) lots. The septic system was designed by B.L. Carlisle, one of the foremost engineers in Texas in the field of septic engineering. He literally 'wrote the book' that Texas state wastewater regulations are still based on. The septic system was designed at a time when water usage was higher than it is at present, because water-saving devices were not compulsory nor widely used. Mr. Carlisle's estimates included approximately thirty percent (30%) additional capacity above what was strictly needed, to allow for the unpredictability of family size, etc. Therefore, the permitted design of 8,971 GPD was and still is ample to provide for all the houses in Castlecomb AND Kensington Subdivisions. Five (5) lots have been removed from the plat by homes built across lot lines – all along Oxford Street. Therefore, the maximum number of homes cannot ever exceed 33 houses, which includes the three homes owned by Tobusch LLC in what is known as the Kensington Subdivision. Currently, there are thirty homes connected to the Castlecomb OSSF and water system, not twenty-eight as stated by Mr. Morehead. There are currently three empty lots, two of which are soon to be built upon, as far as I understand. These numbers can be verified in the aerial photo attached in the Exhibits (EXHIBIT T). Kensington Subdivision shares the water and septic system with Castlecomb, as agreed in the Agreed Final Settlement of

2013. The reasons for the creation of a new subdivision, Kensington, will be discussed below.

Modular Homes and 'HOA' Lawsuit 2003-2005

In 2003, Castlecomb Trust planned to build homes on the three lots still owned at that time by Castlecomb Trust. (There were actually four lots, but two small ones on Oxford Pl. were replatted into one.) There were great difficulties finding local builders to take on a small project of just three homes. Smaller builders were unable to commit to a reasonable time-frame for construction. Research revealed that modular housing had been developed that was code-compliant, and real property. Modular homes are legally indistinguishable from site-built and in terms of design and engineering, superior in most cases to site-built. This comes from the fact that modular homes have to meet the strictest code requirements anywhere they are sold, and therefore end up meeting a collection of all the highest requirements across numerous jurisdictions. They are eco-friendly, and efficient, since factory construction lessens waste. In addition, they are protected from the elements while under construction. The Texas Industrialized Housing and Building Act forbids any political subdivision of the State of Texas from discriminating against modular homes. These homes were to be built and sold to owner-occupiers. Had those houses been built as planned, there would be families living in them now, pruning mature trees and watching their kids prepare for college, military service, or careers. However, that did not happen.

Instead, a legal battle broke out. When the modular homes arrived, Mr. Morehead and his friends were upset. Several of the homeowners in the subdivision, however, were not concerned and did not join the lawsuit that followed.

One or more of a group of three men, Mr. Morehead, Mr. Larry Dove (deceased), and local realtor Robert Harder, contacted Kerr County Commissioner Bill Williams. Mr. Williams advised them to sue, and referred them to attorney Rex Emerson (later Kerr County Attorney), who in turn referred them to his then partner Patrick Maguire. Years later, the Assistant County Attorney Ilse Bailey revealed to me that she was very close personal friends with Mr. Maguire. Mr. Maguire advised his clients to form an 'HOA', the sole object of which was to avoid personal liability and collect legal fees to pay him for his work suing my father (see EXHIBIT B). More on this below, from deposed testimony. This fraudulent 'HOA' filed suit to stop the modulars from being built in Castlecomb. The suit ended up revolving around whether a change to the deed

restrictions permitting modular homes while at the same time continuing the long standing (but not original) ban on mobile homes had been 'reasonable'.

The original deed restrictions for Castlecomb Subdivision did not mention any ban on mobile homes. The Original and Five Amended Deed Restrictions have been supplied to the PUC in earlier replies. The lack of a prohibition of mobile homes was a minor oversight; but no mobiles would have been built according the original planning. That oversight was corrected as soon as my father heard from potential buyers who wanted to move mobile homes onto lots. My father was adamantly against mobile homes, and did not allow that to happen. He did not accept those purchase offers for lots. Instead, he amended the deed restrictions for Castlecomb Subdivision in the First Amended DRs to include a strict prohibition against mobile homes. That prohibition stood through every later set of amended deed restrictions and still stands today.

Modular homes that are real property were an innovation in the housing industry that had emerged since the deed restrictions were written and amended. In order to clarify that homes that are compliant with the Texas IHB could be allowed, my father filed Amended deed restrictions. As I mentioned above, my father disliked mobile homes and was interested in creating housing opportunities for people to avoid having to live in them. So, the earlier (but not original) strict prohibition against mobile homes remained in the deed restrictions and remained in force. It remains in force to this day.

Mr. Morehead and his friends hired attorney Patrick Macguire. This group never had a conversation with my father. Rather, they harassed workers on the site to the point that some of them refused to continue working there. The Kerr County Attorney and Kerr County Commissioner did not advise any sort of meeting between the parties, but instead immediately advised a lawsuit, one lead by a personal friend of Kerr County officials. Under Mr. Maguire's direction, this group formed a fraudulent 'HOA' and sued over an alleged violation of the deed restrictions, a suit in which they prevailed. Mr. Morehead's characterization of their victory in his "Reply" is, however, inaccurate.

The 'Castlecomb HOA' was a corporate entity filed with the State of Texas as an HOA. However, it was not an 'HOA'. It was formed solely for the purpose of protecting its members from counter-suits or judgments in the event of a loss in court. Having no assets, the 'HOA' would not be able to pay any judgment. This is attested by the members of the 'HOA' (see EXHIBIT B). In sworn, deposed testimony, both the leaders of the 'HOA' and the homeowners who joined it as 'members' admitted that the 'HOA' never took any actions to maintain anything in the subdivision, never had managerial control, and collected fees for the sole purpose of paying their attorney. In addition, the 'HOA' did not adhere to legally required procedures for meetings and election of

officers, but accomplished this by a simple agreement among these three gentlemen that they would make themselves “Directors.” Karen Dove, the wife of Larry Dove (deceased), still lives in Castlecomb subdivision. She became Treasurer, although no such office was ever created. Robert Harder, whose name appeared in the State filing as a Director, claimed to have very little direct knowledge of the HOA group’s actions, and admitted to attending only one of their meetings, but, like the others, affirmed that the ‘HOA’ performed no HOA activities.

It is perhaps worthy of note that one other purpose of the ‘HOA’ was articulated by realtor Robert Harder, namely, vigilantism. In his deposed testimony, he stated: “It’s – It’s like Clay [Mr. Morehead] said earlier, if there is a disturbance, rather than calling the sheriff’s department, it’s sometimes easier to take care of it there than having the enforcement officer come out and do so. If – If it can’t be rectified, then do what you need to do.” This occurs at p. 87 of the supplied excerpts of Mr. Harder’s deposed testimony in EXHIBIT D, after saying, like the others who were deposed, that the HOA’s sole function was to have enforceability of fees for the sole purpose of paying Mr. Maguire.

The 2004 ‘HOA’ leaders harassed and threatened owners in the neighborhood who did not want to join. They even placed liens on several property owners’ homes for the purpose of paying their legal fees (see Kerr County Property Records). Among their targets was Mrs. Viola Gifford, an elderly lady who did not join the ‘HOA’. My father defended Ms. Gifford against this ‘HOA’s’ predatory conduct. Rather than let their fraud be exposed in court, the ‘HOA’, represented by Mr. Maguire, agreed to settle out of court and remove the lien from Mrs. Gifford’s house. Kerr County property records reveal several other liens placed by this rogue organization in an effort to force its ‘members’ to pay the legal fees of Mr. Maguire. Again, forcing people to pay legal fees, along with protecting its members from liability (and occasional vigilantism) were the sole functions of the ‘HOA’. I believe this is outright fraud. I strongly believe it should be investigated by the State of Texas. If the evidence I am providing here is insufficient to justify initiating an investigation, I can supply much more. The individuals who perpetrated this fraud should be prosecuted if that is warranted, and held fully accountable for their actions, and the harms caused by their actions.

During the lawsuit about the deed restrictions and modular homes, the ‘HOA’ was offered the chance to acquire the well and septic systems, and run them, and, in fact, take over all maintenance in the subdivision – to be a real HOA. They refused. They never exercised any management or control over these assets, or any aspect of maintenance in the subdivision, including landscaping, trash collection, or miscellaneous repairs, in spite of claiming to be, and registering with the State of Texas as, an ‘HOA’.

During the lawsuit over modular homes, Mr. Morehead sent a water sample to the city for purposes of harassment. It was a fraudulent sample, which he implied had come from the water system, but which, under deposition, he admitted had come from his own house. The first result, from Mr. Morehead's house, showed coliform bacteria present. This 'finding' was used in an attempt to say that the Castlecomb water system was not being maintained, that the water was dangerous, and that homeowners needed to boil water – it was used, in other words, to frighten neighbors and convince them to join in opposition to my father. Mr. Morehead and Mr. Larry Dove, advised residents to “keep quiet” about this sampling, which is shown in the deposed testimony of several individuals. When a properly taken sample from the well site was submitted, it turned up with no contaminants, as every sample in Castlecomb's history has.

In the 'HOA's' case against Castlecomb Trust, the Trust's right to effective counsel was denied. One judge in that case was forced to step down due to misconduct. Another (retired) judge came on board and refused to allow Castlecomb's attorneys to enter into evidence materially relevant facts about modular homes, about the Texas IHB, and about the particular homes' compliance with the IHB. Castlecomb was not accorded its rights to a fair defense.

The Trust's loss of this lawsuit is what led to the three modular homes being built where they still stand today. There was no other available land to place them on. This lawsuit and its claims are the reason that a new subdivision had to be formed to bring Kerr County's 2007 civil lawsuit against the Trust to a close in 2013. Mr. Morehead and his friends were angry that the modular homes might be considered part of “Castlecomb.” Thus, the modulars had to be defined as something else, and a three-home subdivision, Kensington, was established.

The Agreed Final Judgment finalized in 2013 defined the septic and water system boundary to include the three modular houses, and guaranteed they would be served by water and septic on an equal basis with the homes in Castlecomb Subdivision. That Agreed Final Judgment established clearly that the homes are legally connected to the existing water and septic systems, contrary to the claim Mr. Morehead makes in his “Reply.” Mr. Morehead's misstatements on this point shows that he is continuing a fourteen year long campaign to force the removal of these homes, and seeks the aid of local and state agencies in this campaign. That is the nature of his complaint.

In 2004-05, three lot lines, all on Oxford Place, had already been either built across (Ms. Stella Herrera, Mr. Stacey Ellis), or replatted (Castlecomb Trust). Since 2015, two additional lot lines have been crossed, and thus two lots eliminated, also on Oxford Pl.,

by Barrett Guzardo. Two houses Mr. Guzardo built at the end of Oxford St. occupy four lots without further room for building. I do not know if Mr. Guzardo had these lots properly replatted and received Kerr County and City of Kerrville approvals. Kerr County property records still show two lots as being in Mr. Guzardo's possession, but aerial photography with lot lines shows this is not possible. The county records may be inaccurate.

Given the above facts relating to septic system capacity (*Nota bene*, p. 3), the Trust consulted with the TCEQ in 2004-2005 and received confirmation that adding three homes to the existing water and septic systems under these circumstances would in no way violate state regulations. Miguel Arreola, at the time employed in the KCEHD, was aware of this and agreed with the position that the TCEQ's concern was septic system capacity, not location of homes. The TCEQ were aware that plats are often revised after the start of construction, or even many years later, and that state water and wastewater regulations are not meant to be used to define where a home may be built.

Mr. Morehead, in his "Reply" also mischaracterizes the final order of the court in the 2004-05 'HOA' suit. The only finding of the Court was that the deed restriction amendment to allow modular was unreasonable and against the scheme of development. This 2005 Judgment did not, as Morehead maintains, prohibit the connection of modular homes to the septic and water systems. That is a specious argument he is using to try to renew his effort to get them disconnected. Also, the 2013 Agreed Final Judgment, as mentioned already, makes absolutely clear the homes are legally connected.

Given that the original scheme of development in Castlecomb was for 100% modular homes, it is hard to see how the Court reached such a conclusion, except that the Court denied the Defendant's right to present materially relevant evidence. Given that the homes in question are not mobile homes, it is hard to see why such a judgment was applied against them.

Kerr County's Attack on Modulares 2006-2013

In 2006, Kerr County filed a misdemeanor charge concerning the connection of the modular homes to the existing septic and water systems. They had been connected for approximately two years, and there had been no problems with the systems and no complaints about them. My father paid a fine and was told by Asst. County Attorney Ilse Bailey that this settled the matter. But that is not the full story. He had agreed to meet with Ms. Bailey in person, upon his return from a long trip. He provided her with his

arrival information and promised to meet her after his return. Instead of holding this meeting, Ms. Bailey used the information he had provided about his return, and ordered the Sheriff (or Constable) to go to his home at midnight on the night he returned, arrest him, force him to spend a night in jail, and extract a payment he had already promised to make. My father was held without being allowed access to life-saving heart medications that he needed to have available at all times; and he died just months later. This unnecessary, abusive arrest and jailing might well have accelerated his death.

However, the payment of a fine did not settle the matter as Ms. Bailey had promised. My father passed away, and Kerr County then used the *nolo contendere* plea of a dead man in a misdemeanor case to justify its 2007 lawsuit against the Trust and myself. Kerr County Asst. Attorney Ilse Bailey initiated a civil lawsuit in early June 2007, approximately one and a half months after my father passed away.

In 2007, I took on the very great responsibility of maintaining the Castlecomb neighborhood, based on deed restrictions, as had been done since 1987. I was teaching Political Science at the United States Air Force Academy at the time; and still trying to maintain an academic career. ‘Castlecomb’ was not a responsibility or occupation I ever sought. But I took it on with utmost seriousness and good will, trying to maintain the historic commitment to keep costs low for the sake of homeowners. I wrote a letter mailed in hard copy to all the owners in Castlecomb at the time, indicated that management of the neighborhood would proceed without interruption, invited them to discuss any concerns they might have. I provided them with my home address, and personal contact information. I included a picture of my family with my wife and children. Only a few homeowners responded to my letter introducing myself to them (or other letters I have sent at various times), but most of those who did were cordial. One however, Karen Dove, called me to say she didn’t believe my father was dead – and began spreading around town the offensive and insulting rumor that he had faked his death and gone to live with his girlfriend.

Over the years from 2007-2018, I wrote several major update letters to help homeowners understand issues that were causing a lot of concern and not being explained fairly by Kerr County. I also sent timely notices regarding deed restriction maintenance fee increases *and decreases*. The deed restriction fees have been steady since 2009. I have provided evidence on this point elsewhere.

In respect to deed restriction payments, every homeowner has acknowledged their legitimacy, even those who have fallen into arrears (EXHIBIT F). The issue of deed restriction maintenance fees was not raised in the ‘HOA’ lawsuit of 2004-2005; nor was it raised in Kerr County’s 2007-2013 lawsuit, nor was it raised during the chaotic period

of 2015-2016, nor afterward, until Mr. Morehead and his friends coordinated a series of complaints in 2017. The timing of these complaints corresponds to the attempted settlement of a felony charge by means of a property and water rights transfer to Mr. Morehead and his friends.

The PUC itself has affirmed in writing that it has no authority over deed restrictions; and it has informed Bruce Kryzer and Barrett Guzzardo, in writing, that they should pay these deed restriction fees. Those letters were shared with the entire subdivision, to no effect, as residents recklessly but intentionally starved the Trust of funds.

As one of several examples of the personal hostility that has motivated the community activists, Dick Howell (who owns two homes on Oxford Pl.) boasted to me in the Fall of 2015, during a phone call in which I was appealing to him to voluntarily pay his arrears, that he was refusing to pay deed restriction fees because, I quote: “that’s a typical liberal idea.” Irrational hostility has been a norm, not from all or even a majority of homeowners, but from Mr. Morehead and his friends and associates, and a few people he has swayed into joining his attempts to harm both the Trust and the defendant personally.

Being in charge of Castlecomb maintenance has been an occupation that has brought me neither profit nor pleasure. I have never been paid or made any profits. In fact, as I have reported repeatedly, I have suffered direct personal losses of between \$40,000 – \$50,000. These ‘owner equity’ provisions were not treated as loans, and have not been paid back. They have not been made part of the maintenance fees. The time commitments to maintain the systems and neighborhood maintenance have been generally manageable. But to combine these hours with constant lawsuits and harassment from Mr. Morehead and his friends, and from Kerr County officials, gradually destroyed my ability to pursue an academic career. I have never sought to “hold on” to these operations, but have tried repeatedly to find some party to take them over.

For example, I met with City of Kerrville planning officials in late October 2007. In November 5, 2007, Mike Hayes, conveyed to my then attorney that the City simply did not see this as a worthwhile project:

From: Mike Hayes [mailto:mike.hayes@kerrvilletx.gov]
Sent: Monday, November 05, 2007 4:07 PM
To: djackson@ktc.com
Subject: RE: Abel - Castlecomb

I'm not sure how or why the City is involved in this issue. If there is a request to annex, then I suggest that your client submit a petition for annexation with as much detail

(description, etc.) as possible. **Based upon what I know about the area, I'm not sure this will be an attractive proposal to either staff or Council.**

MCH

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Mr. Hayes' last remark, "based on what I know about the area..." reflects the fact that prior to my meeting with City of Kerrville officials, Assistant Kerr County Attorney Ilse Bailey had told city officials the systems were in complete failure and under litigation. That was false, as Ilse Bailey knew. She had in her possession a recently completed report from Lane Wolters R.S., stating that the system was functioning normally. What if we suppose the system was in trouble: Is it not in just that circumstance that one expects conscientious city officials to begin acting to resolve such problems, instead of backing away?

I repeatedly tried to engage homeowners with offers to discuss any issues they wished. No one expressed any desire to take over responsibilities in Castlecomb. I sought out private water/septic companies for possible sale. I simply could find no one willing to step in and bear the responsibilities I bore. Private utilities saw the deed restriction maintenance fees as unprofitable. The City of Kerrville, in spite of their mission statement and normal obligations, has done nothing to help these two subdivisions, as noted already. Kerr County, the TCEQ, the OAG, and the PUC have spent significant public resources in lawsuits but have never attempted a constructive engagement with me. In addition, with litigation pending and maliciously false and damaging rumors being spread for 2007 to the present, no one would want to step in. Nor could I simply transfer assets subject to litigation. Hostility to my father was simply transferred over to me after his death. The TCEQ's expenses for emergency repairs in 2016 would have been totally unnecessary if not for the interference of KCEHD, Kerr County and Texas State officials, and Mr. Morehead and his friends (EXHIBIT R). These parties made concerted efforts to interfere in the Trust's business. Their interference was successful, and the Trust's ability to function was destroyed, with no forethought of the environmental and public health risks of getting the system "out of Abel's hands" without adequately planning the transition I had in fact long sought. More on this below (and see EXHIBITS D, R).

In spite of repeated claims by Kerr County officials and by Mr. Morehead and his friends, the Castlecomb well and septic systems have in fact been very well maintained. Both Greg Howard of Kerr Country Pump and Ken Munson of In and Out Water have reported to me recently that both systems are running very well (notwithstanding that Mr. Munson

is no longer on the job, as he stated in our October 30, 2019 phone call). State records show that there have never been serious problems at Castlecomb. This was even acknowledged to me by Emily Sears, in one of our several conversations. Any minor problems have been addressed quickly and efficiently. In addition, Castlecomb Trust has never engaged solely in water and septic maintenance, but has provided general repairs, landscaping, trash collection, and even helped a new owner track down her mailbox keys which the previous owner forgot to turn over at the time of sale. As late as 2017, Castlecomb Trust received an estimate for work on the 'entryway guard house' but, due to homeowners' mass refusal to pay deed restriction maintenance fees, that job could not be completed at that time.

In the early days of my involvement with Castlecomb I learned everything I could about the operations and required maintenance, and worked closely with a series of maintenance providers, RS/Engineers, and my attorneys, from April 2007 going. I also looked for opportunities to learn about County and State regulations and policies. To that end, I attended a public meeting that included county commissioners from several Hill Country counties. The discussions revolved around the ways County Commissioners' Courts were blocking developments. Their primary technique was to intentionally and knowingly misapply state regulations concerning water wells. The rules at the time (and now, too, I believe) required a five (5) acre lot for a water well. No such rule existed for septic systems. But Commissioners in several counties, including Kerr, openly admitted that they used the five acre "well rule" to block septic permits, thereby stopping any construction or development they wished to stop, based not on legal issues of land use or platting, but according to their own preferences of where they would like to see or not see building take place. Even if their interest was in keeping sewage from leaking into rivers in the future, this is an abuse of office and an abuse of power. A Commissioner from a nearby county, somewhat incredulous, asked (to paraphrase): "how can you do that? it's against the law, that's not what the law says is it?" Other Commissioners present laughed and said words to the effect of: "so what, are they gonna sue us? They can't afford to sue us, and if they do, and they actually win, we'll just deny them for some other reason."

The solution to Kerr County's concerns in its 2007 lawsuit about connections of the three homes to the septic system was simple. It involved observing (see *Nota bene*, p. 3, above) that three lot lines had been joined (reducing six lots on the plat to three), and that three houses were added. Thus, there was no change respecting the design or function of the septic system, which is still today functioning well, according to Ken Munson of In and Out septic, with whom I spoke on October 30, 2019. No change in the septic had been made according to the legal definition of 'change', 'alter', 'repair' in 'Ch. 285'.

Kerr County is known for invoking the “no repairs” doctrine abusively. According to their frequently stated view of the law, owners of septic systems are actually legally obligated to put them into or allow them to fall into states of disrepair. That, of course, is not what the law says. But it is how Kerr County uses it, in order to force their policy or other goals on the public.

When I first got word of a lawsuit that was about to be filed after my father’s death in 2007, I went in person to the Kerr County Courthouse to meet Ms. Ilse Bailey, then Kerr County’s Asst. County Attorney. I went without an attorney and spoke with Ms. Bailey very openly for well over an hour. Among the things we discussed was my desire to arrange a transition to some other owner or provider, be that City service, an HOA, or a private utility company. I made clear that while I would work conscientiously on behalf of the community, I did not have any long term plan or desire to stay in this position. Being sued, and having that suit drag for six years, posed a very large obstacle to ever transitioning to another owner.

Instead of a simple, quick settlement, Kerr County dragged the proceedings out (2007-2013) to the point of nearly having the case dismissed for want of prosecution – in spite of filing four amended petitions to keep it going. Along the way, there were several striking instances of official misconduct.

Ms. Bailey decided to consult privately with Larry Dove, one of the fraudulent ‘HOA’ founders, who was then still alive, to see if he agreed to a simple replat. Larry Dove was still representing himself as the head of ‘Castlecomb HOA’ which no one belonged to, which performed no maintenance functions of any kind, and which had been formed and operated fraudulently as described above. But Mr. Dove, according to statements he made to me as well as statements made to me by Ms. Bailey, was a close acquaintance of Ms. Bailey’s and had worked for Kerr County as an investigator. He was well known to Kerr County officials, and he was given a unilateral veto over the case’s settlement. At that time, Mr. Dove did not like the idea of a replat. A few years later, though, he agreed it would be best, and supported the idea in 2011.

Ms. Bailey also wanted to use the settlement of the 2007 case to assist her very good friend, Patrick Maguire, who as mentioned above, had been the attorney for the fraudulent ‘HOA’. Mr. Maguire held a judgment against the Trust. I was attempting to negotiate that with him separately, but Ms. Bailey intervened as a friend of Maguire, seeing the opportunity to get him paid by leveraging Kerr County’s lawsuit. She was in touch with Mr. Maguire and updating him on the settlement discussions that were underway. She suggested that the Trust add two housing lots to the row of houses along Kensington, and give the lots to Mr. Maguire to satisfy his judgment from the 2004-2005

‘HOA’ lawsuit. Adding two lots, she said, would allow settlement of Kerr County’s lawsuit against the Trust. This is astounding, because adding houses along Kensington Blvd. would add to the very set of homes that Kerr County’s lawsuit alleged could not be legally connected (see Exhibit U).

In effect, Kerr County’s official position was: If your father connected homes, *that is not allowed*; but if you give lots to Patrick Maguire, *that is allowed*.

Kerr County’s further position was: It is perfectly okay to add homes in excess of the capacity of this septic system if it serves the financial interests of a friend of the Asst. Kerr County Attorney.

Ms. Bailey also filed a ‘*lis pendens*’ against the entire Castlecomb subdivision. I learned of it when a homeowner contacted me very upset about learning she may not be able to sell her home. I had no idea what the issue was, since home sales had taken place all during the period from 2003-the present. This *lis pendens* did not affect the three Kensington homes, nor the Castlecomb septic system. It affected the people who lived in the Castlecomb neighborhood. This act by Kerr County seriously impaired homeowners’ rights to enjoy their property, for which Ms. Bailey repeatedly tried to blame Castlecomb Trust.

Ms. Bailey was also in possession at the time of an inspection performed by Lane Wolters, R.S., and former head of the UGRA that showed the Castlecomb septic system was operating normally. In other words, Ms. Bailey knew the system was not failing but attached a *lis pendens* to all the homes in Castlecomb Subdivision anyway.

Kerr County expressed a willingness to work toward an amicable settlement of its 2007 lawsuit. However, Kerr County repeatedly made settlement difficult. Kerr County approved, then reversed its agreements to settle the case on several occasions. Castlecomb Trust even agreed at one point to build either one or three septic systems for the Kensington homes, and began collecting estimates and plans to do so. This would have given Kerr County the relief it sought. But even this idea was rejected before new septic tanks could be built. Kerr County has repeatedly tried to force the homes to be disconnected, so that the Trust (or, later, Tobusch LLC), would be forced to re-apply for permits. The probability that such permits would be granted by a county that is clearly hostile to the defendant, is we are safe in assuming, roughly zero. Thus, Kerr County has in effect, used litigation to attempt to destroy hundreds of thousands of dollars of assets by rendering these modular homes uninhabitable. It is hard to understand how to deal with a government agency, the Kerr County Attorney’s Office, that is told it will get what it seeks in its lawsuit, and then refuses to allow that to be achieved.

The Agreed Final Judgment of 2013 involved a replat – the third time that idea had been agreed to. The Agreed Final Judgment made clear that the Kensington homes are allowed to be connected; that doing so does not violate state law; and that more homes would not be added outside of these – which has never been my plan or intent.

The simplicity of a solution to this six-year and very costly lawsuit is shown by the comment of the mediator whom the parties were forced to engage in early 2012. He unrolled a map, and, having gone over the materials in preparation for the meeting, asked, in words to this effect: “if everyone agrees the system is functioning, and everyone agrees the homes here (on Kensington) do not put it over capacity (see *Nota bene*, p. 3), then why can’t we just draw a line like this (indicating with his finger)?” It took all day to argue for this idea, and nearly a year and half to finalize that simple agreement, a total of over six years from Kerr County’s original filing. The mediator was from a neighboring town. He asked a common sense question.

In 2011, Kerr County and Trust had agreed (for the second time) on a replat as the best way to settle the County’s lawsuit. Homeowners, including Larry Dove, supported the idea. Kerr County Commissioner Bill Williams (now deceased) required the Trust to canvas the opinion in the neighborhood. Everyone who could be reached wanted to move past the era of litigation and strife. Nevertheless, that era has stretched another eight years to the present, and still has not concluded.

After the 2013 settlement of the County’s 2007 lawsuit, the Trust had to hire a new maintenance provider, and was calling companies using a list KCEHD provided. There are few companies that can handle such a large system, and I was finding that they were already very busy. I also discovered some companies located outside of Kerr County, who refuse to do business in Kerr County because the Environmental Department is so chaotic and arbitrary. Mr. Robert Henneke, Kerr County Attorney at the time, was impatient with the progress I was making, so he recommended that the Trust hire Jose Barrientos.

For roughly two years, the Trust hired and paid Mr. Jose Barrientos (of Hill Country Septic) for maintaining the septic system. He regularly gave me good reports. For example, he said that he had rebuilt and repaired the electrical panel and controls, and they were working perfectly. He was cleaning septic fields one by one, and had detected a pump that needed to be replaced, which I had asked him to find and purchase. He did not do so however, so that job went unaddressed for some time, unfortunately. Barrientos gave me no reports about surfacing effluent, even after Kerr County’s complaint (Notice of Violation). As soon as I received a Notice of Violation from KCEHD, I insisted that

Mr. Barrientos immediately check on the fields. Mr. Barrientos' inaction lead to his replacement by Joe Stewart. Rob Henneke's 2013 assertion that he would do a good job proved false.

It was in October 2011 that the Trust took an entirely appropriate step in its winding down process. Tobusch LLC was formed for the rental homes, lots in Castlecomb, and neighboring land – for real estate activities. This move could have been made much earlier, and in ordinary circumstances would have been made earlier. I wanted to avoid any impropriety, or even appearance of impropriety, by restructuring assets during the civil litigation Kerr County initiated in 2007. Setting up Tobusch LLC was the right thing to do, since its real estate activity is distinct from subdivision maintenance. Also, the Trust should be wound down; that is normal.

Mr. Morehead writes in his "Reply" that, as Trustee I transferred "the valuable land" out of the Trust, as if this is some kind of nefarious scheme. By saying this, he betrays his real intent, which is to secure that land for his own use or the City of Kerrville's. But transferring real estate activities to Tobusch LLC was and is legitimate and correct. Even while the rental homes and land were part of Castlecomb Trust, they had been accounted for separately and funds from one were not used for the other. I did not know in October 2011 that Kerr County would, yet again, reverse it's agreement to support a replat, and that the ultimate settlement of the case would take almost another two years. So, the transfer to Tobusch LLC, which had been delayed for over four years based on my scruples, took place in October 2011.

In 2013, I issued a revised set of deed restrictions for Castlecomb Subdivision. Numerous lawyers had advised it, and my then attorney had provided a template from deed restrictions he had written. I sent a copy to every homeowner in the subdivision, along with a two-page letter explaining the changes. Mr. Morehead, who has stated publically that there was no notification of these new deed restrictions, was one of the only people to confirm he received them and make a comment about the matter. So when he has said he was not notified, his own words show he was making a false, defamatory claim. One of the changes that I made was to try to create a pathway for formation of a legitimate HOA.

The original and amended versions of the deed restrictions had only vaguely referred to deed restriction amendments being made by the developer/owner, or an HOA, "if one should come into existence." But no HOA was created from the start. The deed restrictions originally and as amended several times did not indicate what would be required for an HOA to "come into existence." Nor did the deed restrictions specify a future HOA's powers, offices, procedures, and etc. This somewhat odd arrangement had

been in effect since 1986. The deed restrictions, however, unambiguously and continuously gave the sole right of amendment to the ‘owner/developer’ for as long as no HOA had “come into existence.” Recall that in 2004, homeowners were offered the chance to make their ‘HOA’ real, and take over the subdivision and its water and septic systems, but refused. I do not know why the deed restrictions were drafted this way, or who drafted them. But between 2007 and 2013, I anticipated – even hoped – that there may be a desire for homeowner control in the future, and tried to provide a pathway for it. I explained this to homeowners in a detailed letter sent to all owners, with the latest amended deed restrictions attached.

In addition, the paragraph added in 2004, regarding modular homes, which had been the source of such intense controversy, as described above, had never been withdrawn. The Court had found this change “unreasonable,” but had made no specific order for its removal, and it had been forgotten about. I don’t believe any homeowners were even aware of the fact that the paragraph was still there. As an act of good will I deleted that paragraph on modulars and returned the deed restrictions to the simple prohibition against mobile homes that had first originated in the First Amended Deed Restrictions (March 1989), while making other lawyer-recommended changes, in 2013.

The original deed restrictions allowed mobile homes. If my father or I as Trustee of Castlecomb Trust lacked the authority to change them, then mobile homes must be allowed now, as only the original deed restrictions would be operative.

Based upon my own research into HOA law, I realized that creating an HOA after the fact would be difficult, and probably require 100% unanimity among homeowners. Because of an HOA’s substantial legal powers, it appeared to me, again, based on my own research, that they cannot be imposed against an owner’s will. The odd situation of Castlecomb lacking an HOA from its beginning was not of my making, but I expended considerable efforts to understanding and trying to resolve it. I refer here not to *amending* deed restrictions, which has been made easier by recent legislation in Texas, but to *forming* an HOA to begin with, after houses and lots have been purchased which do not include membership in any HOA. But I devoted a new section of the 2013 deed restriction amendments to this, in order to at least create a clear opening for HOA formation.

Given the traumas associated with the fraudulent ‘HOA’ and their liens against homeowners for legal fees, I only cared that any new HOA be legally formed and operate legally. I therefore specified that such a formation should be in accordance with Texas law. I did not think it would be permissible to impose a structure of offices, powers, and procedures without unanimous consent. At the time, no one expressed interest in forming

an HOA. I have even had homeowners write me thanking me for doing a good job and for my efforts, and never objecting to deed restriction fees.

While I always acted conscientiously and responsibly, I was seeking an exit from Castlecomb. My overarching concern was that whenever an exit could be arranged it should be undertaken in an orderly way so that ongoing maintenance of the septic and water systems, as well as other maintenance in the neighborhood could carry on. Numerous times from 2007 to the present, people I know have asked me, “why don’t you just walk away?” or “why can’t you just drop it?” I have always answered that this seems to me highly irresponsible. Not one single person in the neighborhood or the entire State of Texas ever stepped up to give help or take responsibility. It was my efforts, or immediate system collapse. I did not seek this; it fell on my shoulders. I held up for a decade against incredible and constant abuse from Kerr County and from Mr. Morehead and his friends.

As an additional note on complying with the terms of the 2013 Agreed Final Judgment, and performing required maintenance: Mr. Morehead, in his “Reply” implies that the Trust ignored this requirement. It did not. The tortious interference the Trust has suffered has been repeatedly pointed out and commented upon (EXHIBIT D, H, I, J, K, O, R, and in other communications with state and county officials). The Trust complied with every requirement of this Agreed Final Judgment until such time as KCEHD’s interference in the work of Joseph Stewart made this impossible.

But what is relevant to this current proceeding and Mr. Morehead’s complaint is that the 2013 Agreed Final Judgment accepted the financial arrangement of deed restriction fees for maintenance, and did not require the acquisition of a CCN or utility tariffs. Since the TCEQ and State of Texas were joined as parties, it would appear that this arrangement was seen in the eyes of the State of Texas as acceptable and legal. The TCEQ at the time controlled CCNs. To be compelled under an Agreed Final Judgment and Permanent Injunction to carry on an illegal operation is absurd.

Kerr County’s ‘Take-Down’ of the System 2015-2017

Trouble started when Kerr County Environmental Health Department claimed in August 2015 that there was surfacing effluent and a septic system failure. I immediately demanded that Mr. Barrientos find the problem and fix it. He repeatedly said he could find no surfacing effluent. I instructed him to meet with KCEHD. Mr. Barrientos very slowly and reluctantly came up with a work plan, then refused to arrange a payment plan

to get it taken care of. The plan Mr. Barrientos drew up cost more than twice the amount Castlecomb Trust had available at the time. The Trust was trying to collect arrears, but Kerr County officials were telling residents that the system was failing, and because of that Kerr County input, homeowners were already ceasing payments of their deed restrictions fees as early as Fall of 2015. For example, Chris Lee, former Fire Marshall of the City of Kerrville, was in communication with county officials, and said they were telling him the system was not being maintained (EXHIBIT R). But even the PUC has written to complainants that, while other issues are being worked out, homeowners should pay deed restriction fees for maintenance to be done. That is common sense. But, due to the hostility to me personally, homeowners refused, and put their own system at risk of failure. Payments dwindled during 2016, 2017, to next to nothing in 2018. Homeowners have reported to me that local and state officials encouraged them not to pay their deed restriction fees. Rachel Maxson, Clay Moorhead, and others have stated that various government officials told them the deed restrictions were no longer valid, and that they should stop paying their deed restriction fees (EXHIBIT R). I have reported all this repeatedly to local and state officials.

KCEHD began issuing an endless stream of misdemeanor citations in fall of 2015. Their piling up of hundreds of misdemeanor counts, while they knew maintenance was being performed, is unprecedented, abusive, and counter-productive. I do not believe that any regulatory or enforcement rationale can be offered for this spectacular assault.

In the fall of 2015, Mr. Barrett Guzardo was constructing homes in Castlecomb on lots he acquired in a tax sale. It appears that KCEHD told him that they planned to revoke the Castlecomb septic system's original UGRA permit, according to statements he made to me in lengthy phone conversations. This suggests premeditation on the part of KCEHD, since the revocation did not occur until months later. The TCEQ has admitted that the revocation is not valid. No general public acknowledgement of that fact has been made.

The Trust searched for a replacement for Mr. Barrientos in early fall of 2015 because of his foot dragging and non-responsiveness to the Trust's and KCEHD's concerns. A few companies, including Hardin plumbing, whose owner/manager boasted of his close personal relationship to State Rep. Andrew Murr, was one of the companies the Trust contacted. I asked several companies to visit the site to see if they wanted to take over, and asked them each explicitly to inform me of any problems they found.

Hardin Plumbing was a company that replied that they would like to provide service, but said nothing about any problems. This was true of Mr. Joe Stewart as well, who made several site visits, and never located any surfacing effluent. He described the needed maintenance as "no big deal" and said the work to be done should take just a few days.

Mr. Stewart (All American Septic) was hired because he was faster to reply than Hardin Plumbing.

KCEHD was fully aware that the Trust was taking every available measure to perform maintenance on the system. KCEHD actually intervened to block the work of Mr. Stewart, the Trust's licensed maintenance provider. Mr. Stewart reported to me on several occasions that Ms. Patricia "Tish" Hulett threatened to revoke his license if he touched anything. She took that position on the basis of a "no repairs allowed" doctrine applied in a nonsensical manner.

KCEHD and Patricia "Tish" Hulett forced Mr. Stewart to cease work after learning from Mr. Stewart that there were open lines for flushing and work started in the septic fields. In other words, she and they knew that effluent could and would soon begin surfacing if Mr. Stewart bowed to her and their pressure. Eventually, the situation became so acute that I called the TCEQ to beg them for help, requesting them to get the KCEHD off Mr. Stewart's back, and let him work.

The TCEQ became involved, and through my attorney I provided the TCEQ, primarily Asma Vahora, Amber Ahmed, and Kelly Crunk with frequent updates. It was during these communications that the TCEQ reported a 4" end cap in one drainfield was off. I was in touch by phone and through my then attorney with numerous TCEQ officials at that time. I explained to the TCEQ that Joe Stewart was refusing to perform even the simple job of replacing the end cap. Kelly Crunk had to meet with Mr. Stewart and order him to replace the cap. Mr. Stewart, still reluctant out of fear for his license, finally went and made this simple fix (EXHIBIT P).

KCEHD's blocking of Mr. Stewart's work while they had knowledge of the system being "opened up" amounts to a felonious action – knowingly or intentionally allowing or causing a discharge of sewage into or near a waterway of the State of Texas.

During my years managing the systems, no one, including Mr. Morehead himself, objected to the deed restrictions as the basis of payments for maintenance at Castlecomb. In fact, for many years, Mr. Morehead was a remarkably consistent, regular payer, who always kept his account from falling into arrears. This objection was raised only in 2017, when Mr. Morehead and several of his friends complained in a series of clearly coordinated complaints to the PUC. The complaints used very similar language as if someone was coaching this group to cut and paste the same claims and the same terminology. The complainants were mostly made by the same people who were involved in the fraudulent 'HOA' of 2004, and the ones most involved in tortiously interfering,

with Kerr County and the State of Texas' assistance, in the Trust's operations in 2015-2017.

Also, the payments being collected by the current 'HOA/WSC' group happen to be equal to what Castlecomb deed restriction maintenance fees were. So if Castlecomb Trust has no legal authority to charge for water or septic, then the Castlecomb Water Supply Corp or HOA can not legally do so either, and for the same reasons. Yet the PUC maintains its causes against Castlecomb Trust, and allows a renegade group to operate with impunity. The Trust has a legal basis for deed restriction fees, over which PUC has no authority. The Trust never was nor pretended to be a utility corporation. The Castlecomb 'WSC' has claimed to have the "right" and the "authority" legally to charge *utility* fees, and the "authority" to deny service. They have engaged in intimidation and threat of wary and frightened homeowners. Several Exhibits clearly show this (see esp. EXHIBIT N).

Homeowner, former 'HOA' officer (and Sheriff, I believe) Josh Gilbreath currently has his property listed for sale, and the listing mentions \$135 per month for an 'HOA fee'. Mr. Morehead, in his "Reply" states that homeowners are making "voluntary donations" to the "water supply corporation," however. I have no explanation for this discrepancy.

After all the turmoil of the years 2015-2017, and during the time I was actively pursuing a plan to create a retail utility company for Castlecomb, I also got in touch with the City of Kerrville about annexation and about their CCN, which covers the Castlecomb area. This was during the time negotiations between the 'WSC' lawyer, William Spencer Hart, were developing, and I sought to get information on the City of Kerrville's plans and intentions. I was told the City of Kerrville does not intend to annex the area, but they would not allow Castlecomb to be released from their CCN. That is an absurd position. I spoke with officials at PUC and at TCEQ about forcing Kerrville to allow decertification, under TCEQ rules for expedited release of a CCN. I have shared information about this issue with numerous public officials. (EXHIBIT E).

As I have already noted elsewhere, the City of Kerrville and every other relevant state and regional agency was aware of the construction of Castlecomb and the fact that its water and septic were a private system, funded by deed restriction fees. They have knowingly tolerated the Trust's operations and shown no willingness to provide these services for many years.

Mr. Morehead, in his "Reply" says he is in conversation with City officials about getting decertification. As mentioned above, the City has told me it will not allow Castlecomb to be released. So it remains to be seen whether the City will allow that for Mr. Morehead

and his friends. It is another opportunity to see if the rules of “not for Abel, but okay for our local friends” apply.

Mr. Morehead, in his “Reply” says, the costs for City annexation are \$3 million dollars. This is a wildly inflated figure. In the past, the City has said that annexation might run as high as \$1-1.2 million dollars. Even that figure is inflated. Experts say a lift station is about \$200,000 dollars. Many years ago, in foresight of future City annexation, an easement was provided along the edge of Dan Abel’s property, on a straight path from the septic system to the City sewage line along HWY 27. It is, based on a Google map measurement tool, a straight 1225 foot shot. City water service literally almost touches the subdivision’s distribution lines.

Morehead’s Personal Attacks

Mr. Morehead wants to make an issue of my legal entanglements. He is a convicted felon. By contrast, I have never had so much as a misdemeanor charge filed against me for anything – aside from a few speeding tickets. I have never had a felony charge. I have never been involved in civil litigation as a plaintiff or a defendant.

Never, that is, until after my father died. From 2007, and solely in Kerr County (and now Travis), I have a rather unusual and extensive set of legal issues. I hold what is likely a state-wide record for the number of consecutive misdemeanor charges. I have an indictment for a felony that lawyers with decades of experience in this area of law say is totally unprecedented. I have civil suits, brought by a County and State where the whisper is that I am a rich Jew. Mr. Morehead defames me again and again, and he does so because of his passionate hatred of my father. He has never even met me.

The fact has to be faced that outside of Kerr County and even inside Kerr County prior to 2007, in my entire life, I have no legal entanglements at all. So the Kerr County part of my life after 2007 seems highly anomalous.

Anyone with a legal background or experience in city and county politics or development who has looked at this matter immediately says: (1) they obviously hate you — it’s clearly personal, and (2) they’ve never seen anything like this, and they’ve seen lots of crazy cases. In interviewing attorneys and seeking the advice of many people with experience in this field, I can report many, many conversations of this sort. Multiple Exhibits show a stream of abuse from the Complainant and his friends, several of whom have personal connections to various officials.

As far back as the formation of the fraudulent 2004 'HOA' its members stated that one of their main interests was in seeking City annexation (EXHIBIT B). Kerr County Commissioner Tom Moser (Mr. Morehead uses his personal email account) has stated publically numerous times that the ultimate solution to the issues at Castlecomb Subdivision is for the City of Kerrville to provide service. Thus, there is a remarkable alignment between Mr. Morehead's stated aims, the County's barrage of attacks on myself and my family, the attempts to seize Tobusch LLC's property, and the Commissioner's plans for the future.

The Political Scene

In February of 2016 Tobsuch LLC's rental tenant Lynzi (Aguirre) Curry, wrote to me very alarmed and fearful, because a Constable (probably Constable Lang, with KCEHD) ordered her to evacuate the home. Despite my efforts to calm her she did leave not long afterward. Tobusch LLC lost several months rent as a result, and a good tenant to boot.

On Feb 15, 2016, at 08:00, Lynzi Curry <lynzicurry@yahoo.com> wrote:

Hi, just wanted to shoot you an email and let you know **the Kerr County Constable showed up to the house** this weekend and told us what was going on in Castle Comb regarding the septic and water system and how it's failing. **He also told us we need to start looking for another place to live.** Being this was completely unexpected we will need you to work with us on the rent now that we are having to save for another deposit plus rent to move. ...

Kerr County's revocation of the UGRA permit under which Castlecomb septic had been operated was illegal. In a letter dated 6 October 2016 TCEQ Director Mr. Richard Hyde stated to Kerr County and Kerrville City officials that the Castlecomb subdivision septic system permit should not be revoked. Despite this position, the TCEQ has failed to order Kerr County to reinstate the permit, making operation of the system legally impossible. In addition, Asst. Attorney General Doug Brown confirmed the illegality of the revocation in a phone call with me in October of 2018. The system should be classed as grandfathered, and since it is functioning, it should not be forced to undergo a massive, and hugely expensive upgrade. But that expensive upgrade is what the TCEQ seeks, despite admissions from its Executive Director Mr. Hyde, and Staff Attorney Douglas Brown that the original UGRA permit is still valid. ***The TCEQ knowingly allows a renegade 'WSC' to operate the systems under its original permit, or without permit.***

Of course, Kerr County's control of the UGRA permit for a system originally designed for 8971 GPD was also illegal – an *ultra vires* exercise of unlawful authority. In 1989 changes to state law and regulations should have caused the original permit from UGRA to migrate to State control through the TCEQ's predecessor agency. But Kerr County retained control of this permit. Kelly Crunk was at that time (1989) the head of Kerr County's environmental department. Mr. Crunk later became employed by the TCEQ and has recently retired. He continues to live in Kerrville and is well known there. Mr. Crunk's investigative reports have been relied upon by the TCEQ in its civil action against the Trust, filed through the Office of the Attorney General. In that petition, TCEQ fails to acknowledge that exculpatory evidence exists, of which Mr. Crunk was directly aware, regarding Mr. Joe Stewart's refusal to work (EXHIBIT P).

To summarize:

*The **City of Kerrville** says it will 'dual certify' a CCN for residents of Castlecomb, but not for someone named Abel. **Kerr County** argued that adding houses to the Castlecomb OSSF was allowable for the benefit of a friend of the Kerr County Asst. Attorney, but not acceptable for someone named Abel. Now we see the **TCEQ** issuing a private letter ruling that Kerr County's permit revocation was invalid, but maintaining a public stance, in litigation, in Cause No. D-1-GN-16-004648 through the **Texas Office of the Attorney General**, that said permit has been revoked and Castlecomb Trust must make massively expensive investments in an unnecessary municipal septic system, while excluding exculpatory evidence. So we see, at all jurisdictional levels, **local, county and state**, the application of a dual standard of law and enforcement. There is one standard if your name is Abel, and another if you are a local, especially one with connections to public officials.*

In respect to the felony charge against me, it was dismissed in June 2019 because the State admitted that it had become aware of new information and could not prove its case:

“Now comes the State, by the District Attorney, and moves the Court to dismiss the above entitled and numbered cause for the following reason: The State has a good faith belief that it cannot prove that the Defendant committed the offense intentionally or knowingly based on evidence that was brought to the State's attention after the Defendant was indicted.” June 11, 2019, in Cause A16128.

It is simply not possible to have secured an indictment against me based upon a full, fair knowledge of the facts of this case.

**Abandonment July 2016
and
Negotiations with Wm. Spencer Hart's Group 2017**

I persisted, on the advice of lawyers, in trying to maintain the deed restriction based neighborhood maintenance and well and septic systems – even in the face of receiving hundreds of misdemeanor citations, dealing with KCEHD's interference in the Trust's maintenance provider's work, declining compliance with deed restriction maintenance fees, and tortious interference from the county and state in telling people not to pay, and a false felony charge. As described in my letters to homeowners, managing the septic became simply impossible. I have Cc'd numerous public officials on many of these letters and updates (EXHIBIT O). In early to mid-2016, I was also in touch regularly with numerous TCEQ officials, who pressed upon me very strongly the undesirability of abandonment. So, with the water system still operational, I did not abandon it. (I did not then know how badly Nadine (Dede) Terry (Terry Water) was performing, or what a problem she would soon become.)

In 2017 I began the process of applying for a CCN, utility tariffs, and etc. However, at the end of July/first of August, I paused in my efforts in filing a CCN (and much else), because I was approached by William Spencer Hart, who represented a group of homeowners interested in taking over the Castlecomb systems (EXHIBITS H, I, J). I have advised and informed Kerr County officials, State officials, the District Attorney's office, and the Office of the Attorney General about the effort to hammer out an agreement to transfer the 'systems' into homeowner control. I have repeatedly asked the State of Texas to confirm whether a simple transfer would be legal. The State itself, in particular Ms. Amy Davis (OAG) and Ms. Mary Smith (TCEQ) have advocated for an immediate deed transfer of the well and septic system assets. It was understood that these assets would include deed restriction receivables, which again suggests these fees are: (a) based upon deed restrictions, and (b) entirely legitimate. I simply want confirmation that a simple transfer is possible and will not create further legal jeopardy for myself. I have waited nearly two years for a reply (EXHIBIT K).

In addition, Mr. Hart and his clients Chris Lee, Jerry Weaver, and Brandon Miller (the 'WSC' founders) as well as Barrett Guzardo (the representation of whom was a conflict of interest for Mr. Hart), Mr. Morehead, and Rick Phipps (the 2017 'HOA' founders) were in contact with Asst. D.A. John Hoover. A deal was made that if Castlecomb Trust formed an agreement with Mr. Hart's group to transfer assets to them, Mr. Hoover would dismiss the felony charge against me. The nature of that agreement was to transfer the well and septic system to the control of the Castlecomb 'WSC'. That agreement has been

made in principle, although it was done fairly awkwardly. It was never finalized because the 'WSC' and 'HOA' groups would not communicate openly; would not provide information, and would not cooperate in my efforts to bring the transfer about. It was also never signed because of the State's refusal to answer my queries about whether this "solution" would also be legal and resolve the various complaints and litigation against the Trust. As mentioned above, I have waited over two years for answers to some basic questions. Asst. D.A. John Hoover stated, in writing, that when this agreement was reached, he would request the TCEQ through the OAG to dismiss or non-suit its case against the Trust. That request to the TCEQ, however, has apparently not happened (EXHIBIT G).

Practically speaking, in Fall 2017, the 'homeowner group' took over. Deed restriction fee payments had dwindled to almost zero; several homeowners were openly very hostile; and the 'WSC' group announced to the neighborhood in a letter that they had secured ***the authority*** to operate the system ***to charge for utility services*** and ***to deny service*** (EXHIBIT N). They made a unilateral announcement, which they did not share with me, and not the joint announcement we had agreed on. At the same time, they tried to back out of paying for maintenance, until I called them out publically (copying numerous local, county and state officials), saying, in effect, either pay the Trust or pay for it yourselves. Merchants like Kerr County Pump must be paid for their services. While this transition was done in an awkward way, I adopted the common sense approach that someone has to conduct maintenance and it may as well be homeowners. I contacted my maintenance providers and told them to begin dealing with the 'WSC'. Since that time, I have gradually been less and less involved. Now, I am basically kept totally in the dark about what is being done (or not). I have reported all this to the State of Texas and Kerr County numerous times (EXHIBIT I, O, and other communications).

The transfer has not been finalized because I have concerns about legal proprieties. This matter is under investigation, enforcement, and litigation, as everyone knows. In a phone call in February 2018, Amy Davis (OAG) and Mary Smith (TCEQ) urged me to make a quick transfer of the well and septic systems to the 'WSC'. I said, I think that is a good practical solution, if it resolves my civil case as proposed. However, I do not believe I can do that while this is under litigation, unless I receive something in writing from you (Ms. Davis, Ms. Smith) saying so. In addition, with the PUC's position that the Castlecomb systems are a "retail utility" I believe a "Sale Transfer Merger" application is required to transfer. This, I believe, makes things unfortunately complicated and will take a great deal of time. If an STM is required, and Amy Davis and Mary Smith urged the transfer of a "retail utility" without it, then it follows they urged an act that would be against the law. I have asked by phone and email to Ms. Davis and Ms. Smith for some type of written confirmation, on State of Texas letterhead that an immediate transfer is

acceptable and is not illegal, and I will make that transfer. I have been waiting for their reply (EXHIBIT K).

In 2017, I could not predict whether the ‘homeowner’s group’ as it was being called (‘WSC’ plus ‘HOA’), would amount to a serious entity able to take over, or not. Therefore I continued invoicing people in Castlecomb for deed restriction maintenance fees. I let the entire community know, in one of my several letters (EXHIBIT O), that I had absolutely no intention of double charging – but that they needed to pay *either the Trust or the ‘WSC’ and that someone had to do maintenance*. For this reason, I kept paying some bills through Spring of 2019, and there are still a few loose ends the ‘WSC’ has not paid. As of Dec 2018, I stopped all invoices for deed restriction maintenance fees because the ‘WSC’ group did appear to be finally taking nearly full responsibility and managing things.

Recent Happenings

2017 – My actions to move forward: Began to set up Osprey LLC and find local registered agent; began study of utility rates, submitted same to Emily Sears; started CCN; talked to City about decertification; got quote from SW Wastewater on new system, (35K admin work and engineering, plus approx 256K for system [EXHIBIT S]); hired engineer (Doug Carvel); talked to banks about financing (they will not go near a project with this level of investment and so little income); had multiple conversations with TWDB and TWIC about funding; contacted Glen Baxter of RGB for costs of adding individual meters to homes; and various other actions.

I also used my time in Kerrville during one of my trips to collect UGRA water samples, but faced the opposition and obstruction of homeowners who advised others not to cooperate – with legally required sampling. I have repeatedly brought this interference to the attention of public officials (EXHIBIT Q).

I “hit pause” in LLC formation, and etc., when approached by William Spencer Hart and his “homeowners” group, as I have already indicated. It was very clear this group absolutely did not want me to continue on the path to forming and operating a licensed “retail utility corporation” which will certainly result in much higher rates than they ever paid for deed restriction maintenance fees, and ensure my permanent involvement in the neighborhood (EXHIBITS H, I, J).

Mr. Morehead, again, chooses to defame me, claiming I’ve done nothing. It is disingenuous for Mr. Morehead to spearhead the tortious interference in Castlecomb’s

operations, and then allege the Trust is not doing enough. The homeowners collectively, encouraged by county and state officials, are engaged in what may be a theft of service to the tune of \$103,000.

As of this month, the total owed in deed restriction fee arrears (if they were to be pursued) is just over \$103,000. (The political climate has made pursuit of these arrears impossible.) If Castlecomb Trust had been left unmolested, and a civil, reasonable conversation were to have been started about the system, permitting, upgrades, as well as neighborhood maintenance, transition of ownership, annexation, etc., then the systems would be in great condition now, and the State of Texas would never have had to spend money on repairs. Recall I have never been paid or taken any profits – that entire sum of arrears would be either already spent or available to spend on maintenance of these vital systems. If the same tolerance and leniency now being shown to the renegade ‘Castlecomb WSC’ had been shown to Castlecomb Trust, the Trust could have done necessary maintenance and avoided any environmental problems while other discussions took place.

As yet another indication of the disingenuousness of Mr. Morehead’s complaint. In negotiations on transferring the well and septic systems, Mr. Hart’s ‘WSC’/‘HOA’ group sought to acquire Castlecomb Trust’s deed restriction based arrears as an asset to bolster the finances of the new ‘water corporation’. Thus, Mr. Morehead, through his attorney at the time, fully accepted the legitimacy of these deed restriction fees. It is those same fees, which in one discussion he admitted were legitimate assets based in deed restrictions, from which he now requests relief. This is a relief I believe the PUC has no authority to give, unless it asserts control over deed restrictions in the State of Texas.

The PUC is knowingly allowing the operation of the system by a ‘WSC’ that is, as of this writing, in forfeiture; that does not own the systems; that does not have any relevant permitting. I have informed numerous officials about this group and their activity, including Taylor Kilgore (EXHIBIT O, and K, I).

Why is this allowed? For the practical reason that things need to get done? Then that same reasoning should apply to Castlecomb’s efforts.

Fully aware of the pressure I was under to resolve a felony charge by making a deal with them, Clay Morehead, Chris Lee, Brandon Miller, Jerry Weaver, Rick Phipps, and Barrett Guzardo, represented by William Spencer Hart, escalated their demand for all of the 24.43 acres of land held by Tobusch LLC, and its lot on Oxford Pl., and placing the modular homes under the Castlecomb deed restrictions (EXHIBIT G, H).

It is in this context that Mr. Morehead's complaint needs to be evaluated, because it was at this time, and at no previous time that he filed it.

This homeowner group's demand to place the modular homes under the deed restrictions of Castlecomb is also incredible, since a lawsuit had been fought specifically to exclude these modular homes from Castlecomb, and homeowners' pressure had lead to a new Subdivision having to be created in the 2013 settlement in order to avoid any suggestion that modulars would ever be part of Castlecomb. To include the homes under the Castlecomb deed restrictions would violate the very Court judgment Mr. Morehead boasts of having won. This is just one piece of evidence among many that Mr. Morehead's appeals to authority and law are but hollow pretexts for on-going harassment of Castlecomb Trust, and Corey Abel, Trustee.

Mr. Morehead's 2017 wish to include the modular homes on Kensington Blvd. under the very deed restrictions that he holds up as anti-modular is transparently an excuse to put Tobusch LLC's property under Mr. Morehead's 'HOA' control – this being his second fraudulent 'HOA'. He has already shown a willingness to use a fraudulent 'HOA' to lien other homeowners' property unjustly and probably illegally. The evidence is presented here and stands in black and white in Kerr County property records.

WSC formation – 2017 – Brandon Miller, Chris Lee, Jerry Weaver. This group presented itself to homeowners as a 'water supply corporation', with full authority to charge retail utility rates, and cut off service (despite there being no individual meters on homes in the neighborhood). This occurred at around early May 2017. This group also harassed some members of the neighborhood to start paying them fees, threatening them with loss of water service if they did not. Brandon Miller has moved out. Chris Lee has moved out. Is Jerry Weaver the only one left? I do not know.

HOA formation – 2017 – Clay Morehead, Rick Phipps, and Barrett Guzardo. In 2017 Mr. Morehead, working with the attorney William Spencer Hart, formed another (new) 'Castlecomb HOA'. The statue on which he and the other members of the 'HOA' (Mr. Rick Phipps and Mr. Guzardo), drew authority for issuing new deed restrictions (see DR filing in Kerr County Property Records) actually concerns, according to a plain reading of the text, *amendments* to deed restrictions when there is an *already existing association*. It does not, as far as I can tell, cover *new formation*. In addition, in defining the property over which the deed restrictions would be applicable, *Mr. Morehead et. al., included the well site and septic fields owned by (then and still) Castlecomb Trust*. I do not think it can be legal to extend deed restrictions over another party's property, even if you are discussing eventual acquisition of that property.

Barrett Guzardo has moved out. He claims, according to Kerr County property records, to still own property in the subdivision, giving him eligibility to be on its 'HOA'. However, both a physical examination of the site and aerial photography show that further lots are not useable at the site of the two homes he built at the end of Oxford Pl.

Sheriff Josh Gilbraith also participated in the HOA leadership, but is currently listing his property for sale.

2018 – Castlecomb Trust was still paying KPUB and minor expenses, still 1-2 payers of deed restriction maintenance fees.

2019 – No invoices sent, no payments received; except for small amt from Tobusch LLC renters. There has been one mysteriously returned payment from Dede (Nadine) Terry (Terry Water). This is a March 2017 payment, returned a few weeks ago. I have left multiple emails and a phone message with Terry Water about this, with no response. I have no idea why this payment was returned. Tobusch LLC's property manager cannot reach 'WSC'/'HOA' members in order to have Tobusch renters make payments to the group for maintenance. She and I have found that their numbers have changed, been cancelled, or that they simply do not respond, etc. It turns out, as I very recently discovered, that several of these community organizers have sold their homes and moved out of the neighborhood and are no longer involved.

June 2019 – felony dismissed – inability to prove core claim. The State stated in its filing to dismiss, that due to information that had become available after indictment, it knew it could not prove its claim in court. Mr. Morehead, in his "Reply," refers to "corollary matters." He is talking about the extortionate demands that the Trust make a deal of some kind with himself and other homeowners on the transfer of well and septic and potentially other assets including deed restriction fee arrears in order to have the felony charge dismissed. That happened as well (EXHIBIT G). But ultimately, the case was dismissed because the State simply had no way to prove a false case. Presumably, the "deal" that has been much discussed is meant to include water rights worth approx. \$75,000 – (see research on Edward's Plateau as proxy price index). This appears to be a taking without compensation.

2017 to present: Waiting to hear from the State of Texas on the permissibility of a simple transfer that would be legal and resolve the civil and enforcement actions against me.

Phone conversation with Asst. AG Douglas Brown in October 2018 – there was to be a meeting within a couple weeks concerning these matters, and he was going to return my call and let me know what settlement prospects might look like. He still hasn't called

back, in thirteen months. The judge in the TCEQ case nearly dismissed the case for want of prosecution, but Mr. Brown then filed a proposed scheduling order to keep the case alive.

Jerry Weaver's affidavit, submitted by Mr. Morehead in his "Reply" suggests that the 'WSC' has been reduced to him and his wife. SOS record search shows that the 'WSC' was forfeited involuntarily. So it is unclear if it exists, who are its members if it does exist, or whether it is simply Jerry Weaver, d/b/a "Castlecomb Water Supply Corp". If the 'WSC' is forfeit, and now consists only of Jerry Weaver, then his affidavit may be false, and Clay Morehead may have submitted a false affidavit to the Public Utility Commission.

Mr. Morehead states that the 'WSC' has Ken Munson of In and Out Septic under contract. I spoke with Mr. Munson on October 30, 2019 to verify this and discovered that Munson quit working for the 'WSC' several months ago due to a lack of payments. I was not informed about this and there is no indication I would have been informed had I not called. Mr. Munson had no knowledge as to whether the 'WSC' has hired anyone else.

If there are legal deficiencies in the formation and/or operation of the new Castlecomb 'HOA' and the Castlecomb 'WSC', I believe it would be in everyone's interest to remedy this issue of legal status *before* applications are made for funding, grants, and the like. Kerr County Commissioner Tom Moser has stated to the Defendant that the 'long-term' aim is to apply for funds to support city annexation. These applications for funding may well depend on the proper legal standing of the organizations receiving funds. Filing applications for funding upon a false legal basis would, I suppose, be a massive fraud.

My efforts to inquire about the relationship between these two organizations ('WSC' and 'HOA'), and which one would acquire the Castlecomb assets, or, if both would, have been completely ignored.

REQUEST TO DISMISS Mr. CLAY MOREHAD'S REQUWSR FOR RELIEF AND HIS COMPLAINT

Given all the above is a true and correct account of the matters at hand, to the best of my knowledge and the best of my ability to assemble in the requested time frame;

and given that the evidence provided in Exhibits A-U provide ample documentation;

and given further, that I, Corey Abel, Trustee of Castlecomb Trust, am willing to provide additional information as needed:

I THEREFORE MOTION THE COMMISSION: That the Public Utility Commission of the State of Texas DENY Mr. Clay Morehead's request for relief. The fees that he has paid have been *continuously acknowledged by him to be valid under the Castlecomb Deed Restrictions*, until he ceased to pay based on the letter and statements of State Representative Andrew Murr and other public officials. Mr. Morehead has paid the deed restriction fees voluntarily and regularly. Granting Mr. Morehead his requested relief falls outside the PUCs authority since said relief would invalidate deed restrictions. Mr. Morehead is already not being charged those fees, nor is anyone else.

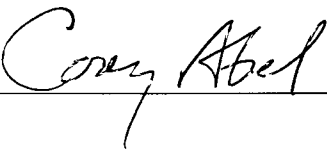
Mr. Morehead's decision to protest by making this complaint reflects a long-standing bitterness toward my family. In addition, it was a coordinated attack made with several of his close friends and acquaintances, at a time of strife, in order to apply pressure to Castlecomb Trust and its Trustee Corey Abel, to turn over land to the 'WSC' and 'HOA' groups in which he is active. Mr. Morehead and others stood to benefit from the transfer of acreage as a condition of dismissal of a felony charge. Mr. Morehead's past fraudulent actions should give any agency in the State of Texas pause when evaluating his current claims. In addition, Castlecomb Trust has suspended charging deed restriction maintenance fees because the 'WSC' – whatever its actual legal status — has taken over operations. The relief Mr. Morehead pretends to seek has already been achieved, as he knows.

Castlecomb Trust used past fees responsibly and only for the benefit of the Castlecomb and Kensington Subdivisions, and has never hoped for anything but good for this neighborhood and its residents and owners. Finally, a PUC decision to grant Mr. Morehead relief from deed restriction fees would be an exercise of power beyond its jurisdiction. It would set a precedent that would severely upset the deed restriction regime under the laws of Texas.

A decision to reject Mr. Morehead's request for relief and dismiss his complaint would be equitably just because the instant complaint is not made in good faith with a view to seeing Castlecomb Trust become licensed and converted into a retail utility company. The campaign Mr. Morehead has lead for fifteen years has caused immense damage to Castlecomb Trust, and to me, personally, to my reputation, to my career, and finances. In addition, Mr. Morehead and his friends' actions over the past fifteen years have harmed his neighbors, causing them to suffer the constant legal turmoil that has been the fallout from Mr. Morehead's fraudulent 'HOA' organization's unethical lawsuit in 2004. He has not been harmed by the Trust. Allowing him this 'relief' merely enables his on-going

campaign of harassment. He has already secured the relief he seeks, by virtue of the Trusts' voluntary decision not to contest the takeover of the well and septic systems, but to voluntarily and in good faith seek such transition in cooperation with a self-appointed homeowners group, State agencies and the Attorney General's Office, and not to request deed restriction fees once that transition was made, in spite of the chaotic and still unfinished manner in which this has been undertaken.

Signed,



Corey Abel
Trustee
Castlecomb Trust
November 22, 2019

LIST OF EXHIBITS

A DEFENDANT COREY ABEL'S REPLY AND REBUTTAL OF MR. MOREHEAD'S REPLY TO CHAIRMAN WALKER'S MEMO

B DEPOSITION TESTIMONY (EXCERPTS) OF THE FOUNDERS AND MEMEBERS OF THE FRAUDULENT 2004 'CASTLEBOMB HOA'

C CLAY MOREHEAD LETTER OF INTEREST IN PROPERTY AT 100 OXFORD PL.

D EVIDENCE OF PERSONAL VITRIOL TOWARD DEFENDANT, AND PERSONAL CONNECTIONS OF HOMEOWNERS TO GOVERNMENT OFFICIALS

E CITY OF KERRVILLE POLITICS, SPENDING AND REFUSAL TO DECERTIFY

F EVIDENCE THAT COMPLAINANT, CLAY MOREHEAD, AND OTHER COMPLAINANTS AND OTHER RESIDENTS HAVE LONG ACCEPTED DEED RESTRICTIONS AS THE BASIS OF THEIR FEES

ALSO, PUC's ACCEPTANCE OF THE NECESSITY OF DEED RESTRICTIONS FEES TO BE PAID, AND ADVICE TO BRUCE DRYZER AND BARRET GUZARDO TO PAY DEED RESTRICTION FEES

G ASST. D.A. JOHN HOOVER'S PROPOSALS, UNDER THREAT OF DOUBLE JEOPARDY PROSECUTION TO REQUIRE CASTLECOMB TRUST TO TRANSFER WELL, SEPTIC, AND LAND ASSETS TO THE CITY OF KERRVILLE AND/OR RESIDENTS OF CASTLECOMB ('WSC') IN EXCHANGE FOR DISMISSAL OF FELONY CHARGE, AND PLEDGE TO REQUEST TCEQ NON-SUIT OR DISMISS ITS ACTION

H 'WSC'/'HOA' NEGOTIATIONS

I 'WSC'/'HOA' AND GENERAL UPDATES

J CHRONOLOGY OF CONTACTS WITH 'WSC'/'HOA'

K SETTLEMENT COMMUNICATIONS WITH TCEQ AND PUC

L TCEQ COMPLAINTS AGAINST SEPTIC PROVIDERS

M BRANSCOMB LAW FIRM ATTEMPT TO FORCE TRANSFER OF LAND

N 'WSC' CLAIMS AUTHORITY TO CHARGE FOR AND DENY UTILITY
SERVICE; AND HOMEOWNER CONCERNS REGARDING SAME

O COMMUNITY UPDATES ON TRANSITION TO 'WSC'

P STEWART'S REFUSAL TO WORK UNTIL ORDERED BY TCEQ

Q COMMUNITY INTERFERENCE WITH WATER SAMPLE COLLECTION
FOR UGRA

R GOVERNMENT INTERFERENCE

S SEPTIC ESTIMATE

T AERIAL PHOTO OF CASTLEBOMB AND KENSINGTON SUBDIVISIONS

U KERR COUNTY ATTORNEY ILSE BAILEY'S PLAN TO ADD FIVE
HOUSES ALONG KENSINGTON IN ORDER TO PAY PATRICK MAGUIRE'S
JUDGMENT AND SETTLE COUNTY LAWSUIT

EXHIBIT A

**DEFENDANT COREY ABEL'S REPLY AND REBUTTAL OF MR. MOREHEAD'S
REPLY TO CHAIRMAN WALKER'S MEMO**

Regarding Mr. Morehead's complaint, I am providing clear information specific to areas where he is unclear or mistaken.

The following information refers to the 1st page of Mr. Morehead's complaint:

On page 1, line 4 of the 1st paragraph in section II. BACKGROUND, Mr. Morehead states that "For reasons that are unclear, DeJuan did not obtain licenses..." Please be aware that in 1986, all appropriate government agencies approved the systems.

On line 7 of the same paragraph, Mr. Morehead states that the deed restrictions "purportedly" allowed charges to homeowners. In fact, the deed restrictions do allow said charge.

The following information refers to the 2nd page of Mr. Morehead's complaint:

On the 1st line of page 2, Mr. Morehead points out that "the valuable land" was removed as an asset of the Trust. It is normal and legal to separate out assets that have represent distinct business activities. The land is distinct and in no way corresponds with the water and septic systems.

In the 1st full paragraph, Mr. Morehead asserts that the Castlecomb water and OSSF service 28 homes. In fact, 30 homes are serviced by the systems.

On line 1 of the 2nd full paragraph, Mr. Morehead refers to "Castlecomb Estates created a Water Supply Corporation". In this matter, there is no entity called "Castlecomb Estates." Mr. Morehead is referring to the Castlecomb subdivision.

On line 2 of the 2nd full paragraph, Mr. Morehead states that residents were "forced" to take over. In fact, many of Mr. Morehead's friends were no longer paying their maintenance fees and provoked a hostile take-over of the systems.

Further, in the sentence referenced above, Mr. Morehead states that the system was "abandoned". Please be aware that the Trust sought to abandon the OSSF through the offices of the TCEQ. The water system has never been a focus of abandonment.

On line 4 of the 2nd full paragraph on page 2, Mr. Morehead contends that the Trust has not maintained the systems "in years". Please be aware that the Castlecomb subdivision WSC took over operations of the system in Fall 2017 as part of a negotiated settlement proposed by the District Attorney, and supported by Asst. Attorney General Amy Davis, and TCEQ counsel Mary Smith.

On that same line, Mr. Morehead goes on to say that that repairs and upgrades were not made as "legally obligated." Until the 'WSC' took over operations in 2017, the systems were maintained correctly by the Trust.

On line 5 of the 2nd full paragraph, Mr. Morehead states that the Trust has “not in any way” contributed to the operation or maintenance of its assets. However, in fact, even after the ‘WSC’ maintained operations of the systems, the Trust continues to make payments to KPUB and regulatory agencies, etc. Also, the Trust was notified by Kerr Country Pump regarding a lack of payment by the ‘WSC’ in November 2017, and was involved in insuring said payment was rendered.

On line 8 of the 2nd full paragraph, Mr. Morehead reports that the ‘WSC’ “contracted with In and Out Services” to operate the sewer system. Please be aware that In and Out services quit and not longer provides said service.

On line 9 of the same paragraph, Mr. Morehead refers to monthly “donations” by neighborhood residents for the operation of the systems. Please be aware that these “donations” are exactly the same as the maintenance fees that had been collected for maintenance of the neighborhood, including water and sewer service. Also be aware that Mr. Morehead and his friends have threatened residents who have not submitted “donations.”

On line 11 of the same paragraph, Mr. Morehead refers to “manufactured homes.” The homes he is referring to are actually Modular Homes.

On line 12 of the same paragraph, Mr. Morehead states that homes owned by Corey Abel receives water and sewer service for which they do not pay the WSC. The homes are not owned by Corey Abel individually. Of note, the ‘WSC’ has not responded to me, or my realtor, regarding payment of this “donation.” And, as noted above, the Trust continues to make various payments regarding the systems and uses the payment of these homes in order to continue doing so.

On line 2 of the 3rd full paragraph on page 2, Mr. Morehead states that the WSC has created “GIS mapping and draft tariffs” in anticipation of filing for CCNs. Please be aware that the Trust was in this same process when the ‘WSC’ took over operations of the systems per the negotiated settlement of the District Attorney.

On line 8 of the 3rd full paragraph, Mr. Morehead points out that the ‘WSC’ has been in contact with city officials in order “to obtain consent for dual certification.” Please be aware that the Trust contacted the City for dual certification and it was denied.

The following information refers to the 3rd page of Mr. Morehead’s complaint:

On line 6 of page 3, Mr. Morehead postulates a sum of “\$3 million dollars” needed for a lift station to be installed. In actuality, a lift station costs around \$200,000.00 and the city has estimated 1-1.2 million dollars for the cost of connecting to city services.

On the last line of the 1st full paragraph, Mr. Morehead points out that a “non-jury trial” is set in June of 2020. Please be aware that the case was going to be dismissed for “want

of prosecution". However, mediation is set to occur in the Spring of 2020 with the expectation that it will not go to trial.

On lines 2 and 3 under section III. ARGUMENT, Mr. Morehead urges the commissioners to prevent the Trust from "charging or collecting any past, present, or future compensation" regarding water and sewer service. Please be aware that the Trust is not and has not attempted to charge or collect payment of any sort since December of 2018. The Trust has not received payment from a number of homeowners since 2015. The Trust intends for the transfer of the water and sewer systems to the 'WSC' to include finances as they stand.

On lines 5-7 of the same paragraph, Mr. Morehead points out that the Trust does not "contribute to the maintenance or operation" of the systems. Please be aware that the Trust voluntarily gave operation of the systems to the 'WSC' and does not want or expect and has not asked for compensation of any sort. Mr. Morehead's complaint is unfounded as it is already satisfied. Therefore, Mr. Morehead's complaint needs no ruling by the commission and should be dismissed.

The following information refers to the 4th page of Mr. Morehead's complaint:

On lines 2 and 3 of the 4th page of Mr. Morehead's complaint, he states that "compensation should go to the Castlecomb 'WSC' and not the Castlecomb Trust and Corey Abel". I believe this too. I have publically supported payment to the 'WSC' as long as they are responsible for the upkeep of the systems. In the past, issues have arisen when residents have not paid maintenance fees to the Trust, yet, the Trust was obligated to maintain the systems without adequate funds to do so. I have always strongly advocated payment for maintaining the systems should go to the entity maintaining the systems.

On line 4 of the same paragraph, Mr. Morehead describes himself as "a big supporter of the 'WSC'." He goes on to encourage the Commission to grant the 'WSC's' CCN applications. Please note that, upon this writing, the 'WSC's' corporation is under "Involuntary Forfeiture."

In the 1st paragraph of section a., Mr. Morehead contends that the Trust is providing and charging for water and sewer services without CCNs or tariffs. The Trust has never charged for water and sewer services or utility tariffs. Deed restriction maintenance fees are legitimate and have always been so. The Trust has already willingly relinquished all fees.

The following information refers to the 5th page of Mr. Morehead's complaint:

On the last line of page 5, Mr. Morehead again requests an order to prevent the Trust from collecting fees from him. The Trust is not now and will not attempt to collect fees as long as it is not financially responsible for maintaining the systems. Of note, all fees

collected in the past have been spent entirely on maintenance of the neighborhood as well as the water and septic systems.

The following information refers to the 6th page of Mr. Morehead's complaint:

In the 1st paragraph of section b., Mr. Morehead postulates that the Trust has "resisted" compliance with regulations. In fact, the Trust has diligently worked to insure compliance with regulations. However, attempts remain futile as Mr. Morehead and his friends continually present civil actions and change their positions regarding the systems. Without clear legal standing, it has been impossible for the Trust to move forward. The Trust expects to legally transfer all assets related to the Trust to the 'WSC'. It is my understanding that this legal transfer cannot occur while subject to civil litigation. Also, if Castlecomb Trust is considered a "utility", the transfer cannot be done by simple deed transfer, but must go through a Sale Transfer Merger. The Trust has repeatedly asked the TCEQ and PUC regarding clarification and permission for the legal transfer to the 'WSC'.

In the 2nd full paragraph on page 6, Mr. Morehead puts forward that DeJuan Abel violated deed restrictions by connecting three modular homes to the Castlecomb water and sewer systems. Please be aware that the final Judgment in 2013 agreed with the TCEQ's finding that connection of the homes in no way constituted a "change" to the systems and was legitimate. The three homes were replatted as a separate neighborhood for clarification, and guaranteed provision of water and septic on the same basis as the homes in Castlecomb.

The following information refers to the 7th page of Mr. Morehead's complaint:

On the 1st line of page 7, Mr. Morehead points out that DeJuan Abel was convicted of "charged offenses." Please be aware that DeJuan Abel paid a fine for a misdemeanor offense under exceptional circumstances when his health was at risk. He did so in order to resume needed care for himself, and to quickly resolve issues related to Castlecomb, not because of guilt.

In the 1st full paragraph on page 7, Mr. Morehead relates that the final judgment in 2013 required the Trust to "maintain and continue to maintain the Castlecomb OSSF System in good working order and prevent any discharge of sewage into or adjacent to any water". The Trust has complied with that Judgment. However, in November 2015, Tish Hulett, of the Kerr County Environmental Health Department, ordered the Trust's septic maintenance provider, Joe Stewart, to halt all work on the system under threat of revoking his license. At that time, Mr. Stewart was in the middle of maintaining a septic line. Mr. Stewart was ordered to stop work immediately without capping the line or powering off the pump to that field. As a result of Ms. Hulett's order to immediately stop maintenance work on the line, effluent surfaced from that line. In early 2016, Kelly Crunk of the TCEQ, investigated the situation and allowed the line to be capped. The TCEQ is aware that Mr. Crunk had to intervene and order Joe Stewart to work. There have been no effluent issues since that time.

In the 2nd full paragraph, Mr. Morehead points out that in February 2016, that I was charged with intentional or knowing unauthorized discharge of sewage. That charge was solely related to Tish Hulett stopping Joe Stewart in the middle of line maintenance. Mr. Morehead states that "The District Attorney dropped the charge due to collateral issues unrelated to the merits of the case..." However, the case was dismissed, according to Cause Number A16128, because "The State has a good faith belief that it cannot prove that the Defendant committed the offense intentionally or knowingly based on evidence that was brought to the State's attention after the Defendant was indicted."

On line 4 of the 3rd full paragraph, Mr. Morehead reports that "the Castlecomb Trust is discharging sewage into or adjacent to any water in the state without TCEQ authorization..." No effluent issues have been reported since the TCEQ allowed the line to be capped. At that time, Ken Munson in a few days work completed maintenance that Tish Hulett had blocked.

On line 6 of the same paragraph, Mr. Morehead states "the Castlecomb Trust failed to obtain a CCN prior to providing retail water service to the public..." The Trust was not the original owner of the system. I inherited the systems and continued their operation, without pause, with all authorities' full knowledge and homeowners consent and agreement on the legitimacy of deed restriction maintenance fees.

On line 8 of the same paragraph, Mr. Morehead writes that "Corey Abel has done nothing to mitigate or remediate..." Please know that I have worked diligently to ensure that the systems have remained in good working order and to follow all applicable regulations. However, in the absence of coordinated cooperation with the city, county, homeowners and regulatory agencies, along with continued legal challenges, I have been unable to successfully move forward. It is my sincerest hope that all involved will agree to a legal transfer of the Trusts assets to the 'WSC' as soon as possible.

The following information refers to the 8th page of Mr. Morehead's complaint:

In line 4 following Mr. Morehead's quotation of mine, Mr. Morehead states that "despite their promises, Castlecomb Trust and Corey Abel have not filed for CCNs nor have they updated the OSSF system." The TCEQ, despite the official stance it maintains in its civil action against me, has agreed to allow homeowners to operate the system "as-is" with no upgrades, until city service can be provided. It is incompatible with this position to demand that the Trust build a municipal system. Mr. Morehead presented a quote from me regarding actions I was pursuing prior to the 'WSC' taking over operations of the systems in 2017. Since then, the 'WSC' is operating the systems and plans to do so forever. Therefore, it is strange to demand that the Trust execute a plan to become the licensed retail utility company serving these neighborhoods. The Trust is no longer the operator of the systems.

On line 3 of the 1st full paragraph, Mr. Morehead reports that I sent him a letter stating that I "was working with the Commission to acquire CCNs and tariffs for the systems."

At the time of that letter, July 2017, I was involved with said actions. However, in September of that year, I relinquished all control of the systems to the 'WSC'. As a result, I no longer pursued CCNs or tariffs. The agreement to transfer operations to the 'WSC' included a commitment on their part to undertake the pursuit of all necessary permits, licenses, and etc.

The following information refers to the 9th page of Mr. Morehead's complaint:

In section IV, CONSLUSION, Mr. Morehead requests that the Commissioners adopt the ALJ's Proposal for Decision. There simply is no need for a settlement regarding this complaint. Castlecomb Trust is not receiving maintenance fees and does not intend to receive fees of any kind. My hope is that all assets are legally transferred to the 'WSC' as soon as possible. I am dedicated to assisting that end.

EXHIBIT B

**DEPOSITION TESTIMONY OF THE FOUNDERS AND MEMBERS OF THE
FRAUDULENT 'CASTLECOMB HOA'**

NO. 04-255-B

CASTLECOMB HOMEOWNERS	)	IN THE DISTRICT COURT
ASSOCIATION,)	
)	
Plaintiff,)	
VS.	)	198TH JUDICIAL DISTRICT
)	
HEXAGON HONEYCOMB CORP;)	
L. DE JUAN ABEL, AS)	
TRUSTEE OF HEXAGON)	
HONEYCOMB CORPORATION)	
PROFIT SHARING PLAN;)	
L. DE JUAN ABEL,)	
INDIVIDUALLY; and, L.)	
DE JUAN ABEL, AS TRUSTEE)	
OF CASTLECOMB TRUST,)	
)	
Defendants.	)	KERR COUNTY, TEXAS

ORAL DEPOSITION OF CLAY MOREHEAD

April 7, 2005

COPY

A. No.

Q. Other than the homes are to be site-built what other scheme of development or general plan do you believe encompasses Castlecomb subdivision?

A. I don't.

Q. I want to talk about the homeowners association. When did you first learn that there was going to be an association?

A. At our first meeting that we had as homeowners, we gathered at my house, and as a group of owners decided we'd start one.

Q. How did the people come to your house? How did they know to come there?

A. I invited them.

Q. How did you invite them?

A. A -- A letter.

Q. And who did the letter go out to?

A. I just went up and down the street and handed them to the owners, individual homes.

Q. Did all the homeowners get letters?

A. No, because at the time I didn't know who all they were.

Q. How did you decide who to include in your little association that you were thinking about --

A. It was --

1 Q. -- of the 21 homes?

2 A. Uh-huh.

3 Q. Of the 21 homes, how many homes are
4 represented? Because I know some of the homes are
5 owned by two people or more.

6 A. Let's see. I would say 12 -- 12 homes.

7 Q. About 12 homes?

8 A. Uh-huh.

9 Q. And what was the reason behind forming the
10 HOA?

11 A. Several. First of all, it was a -- it was
12 under the advice of -- of Pat Maguire to form an
13 association.

14 But before we even had made a decision
15 as a group of homeowners -- homeowners to hire Pat, we
16 wanted an association anyway for several reasons.

17 There's a -- a zoning issue. We're
18 kind of sandwiched in between City and County, and as
19 an association, we wanted to be able to -- if any
20 zoning issues came up, to have a voice.

21 Also, several people had concerns
22 about water, so we wanted to raise that issue as well
23 if we needed to as an association.

24 We were concerned about what had
25 happened with the covenants, and we wanted to make

1 A. Uh-huh.

2 Q. -- home?

3 Was she in agreement with you that a
4 homeowners association should be put together?

5 A. Yes.

6 Q. Did she participate in the meeting?

7 A. Yes.

8 Q. Was there anyone else that you spoke to
9 about putting together an association prior to
10 handing out the letters in the neighborhood?

11 A. No.

12 Q. You had not spoken to a single person --

13 A. Huh-uh.

14 Q. -- prior to handing out the letters?

15 Now, you had spoken to Mr. Maguire,
16 because your testimony was that you were putting the
17 association together based on Mr. Maguire's advice.

18 A. Uh-huh.

19 Q. When did you first go talk to Mr. Maguire?

20 A. It was after our first meeting.

21 Collectively as a group, we decided, did we want to
22 make an association, did we want to -- to react to
23 this, and collectively we did.

24 At that point, I said, "Well, I was
25 advised by Bill Williams, the county commissioner, I

1 Miller even said he would check around.

2 Q. (BY MS. ARLITT): Did any of these people
3 come back with recommendations from their attorneys
4 that they talked to?

5 A. I believe they did, but I honestly can't
6 remember who all they said.

7 Q. Well, when was all of this taking place?

8 A. About a month after the -- the -- the
9 first home rolled in.

10 Q. Would that have been sometime around April
11 of 2004?

12 A. (Reviews documents.) Yes, it would.
13 That's pretty good.

14 Q. So you hired Mr. Maguire. Who actually
15 hired Mr. Maguire?

16 A. I did, on behalf of the homeowners.

17 Q. And did you pay Mr. Maguire a fee?

18 A. At some point we did, yes.

19 Q. Did you pay it?

20 A. Me personally, I don't believe so.

21 Q. Who paid it?

22 A. Well, I may have, now that I think about
23 it. God, that was so long ago. (Reviews
24 documents.)

25 Q. It was just April of last year.

1 A. Well, I have a very poor memory.

2 Q. Okay.

3 A. I'm kind of like Reagan, except I'm alive
4 (Reviews documents.) I -- I honestly
5 don't remember. I may have written a check and then
6 everybody else gave me their part.

7 Q. So people were -- They reimbursed you for
8 paying Mr. Maguire?

9 A. Yes.

10 Q. So have you been completely reimbursed?

11 A. Oh, no. No, I'm -- I'm deep in it.

12 Q. Deep in it in the attorney's fees?

13 A. Yeah.

14 Q. Anybody else deep into it in the attorney's
15 fees?

16 A. Oh, yeah.

17 Q. Who else is deep into it?

18 A. Everybody. Everybody that's been sending
19 in checks.

20 Q. Does the Association keep a bank account?

21 A. Yes, they do. And the bookkeeper is Kare:
22 Dove -- or treasurer, whatever you want -- term you
23 would like to use.

24 Q. I'd like to talk to you about these other
25 issues. I know we've talked a lot today -- because

1 the topic of our lawsuit is really to two homes that
2 Mr. Abel was putting on his property.

3 But you mentioned that there was a
4 zoning issue, and that one of the reasons that y'all
5 decided to form the HOA was because of the zoning
6 issue.

7 Can you tell me what the zoning issue
8 is?

9 A. Well, some of us feel like pursuing the --
10 pursuing the City to annex the subdivision is one of
11 them.

12 In addition to that -- and
13 unfortunately my terminology is poor when it comes to
14 this, because again, my termin- -- terminology is
15 limited to beer, sorry to say --

16 Q. That's okay.

17 A. -- but there is a -- we're in some kind of
18 a zone that -- and I'm sure that when Mr. Harder
19 comes up he'll be able to explain that a little bit
20 more in detail, but apparently we're in a flux zone
21 of some sort where -- we're county, but we're not.

22 I -- I had a County guy drive by just
23 last month saying that, "Oh, you're in the city now,"
24 because I was telling him, "Hey, if you don't mind,
25 please -- please drive up and down our streets. Make

owners. We discussed that briefly.

Q. What would be --

A. The --

Q. -- an expense?

A. The -- The water and sewer is the main one.

Q. Okay. Well, let me ask you -- Let's --

Let's stay with the zoning issue and then we're going to move to water and sewer.

What would be the expense you're talking about with the zoning issue?

A. If the City decided they wanted to annex the subdivision, one of the first things that -- according to this gentleman I was talking to, the biggest hurdle is the water and sewer, and that that would be our responsibility.

So he actually went into specifics as to how much it would cost per foot for the water and the sewer lines, etcetera, etcetera.

Q. Okay.

A. So it was -- it was more than anything, just in -- inquiring and -- to see what the steps are. And he said, "Before you can even go before the city council, you have to have an estimate of what it would cost, and that's for you to have to find out, all right." And I'm like, "Oh, okay."

1 A. Yes.

2 Q. And what was the date of organization of
3 the HOA?

4 A. (Reviews documents.) March 30th.

5 Q. Of '04?

6 A. Yes.

7 Q. Okay. Let me ask you: If -- I'm -- I'm
8 confused on your dates here.

9 You say that the HOA was organized on
10 March 30th of '04, and the meeting to elect the three
11 directors, Clay Morehead, Robert L. Harder, and Larry
12 Dove is listed in the Articles of Incorporation that
13 meeting and election were held in July -- on July
14 11th of '04.

15 How could you have already been
16 elected back in March when the meeting wasn't until
17 July and the election wasn't until July?

18 A. (Reviews documents.)

19 MR. MAGUIRE: Just for purposes of
20 clarification, the article states the names and
21 addresses of the persons who are to serve as
22 directors until the first annual meeting or until
23 successors are elected and qualified. So...

24 MS. ARLITT: Well, my question had
25 been was how --

1 MR. MAGUIRE: I thought that --

2 MS. ARLITT: -- how did he get the --
3 elected or on the Article 3 - Management, and he said
4 he -- the three names were here.

5 Q. (BY MS. ARLITT): As I understand your
6 testimony, the three names are listed on the Articles
7 of Incorporation under Article 3, you said, based
8 upon an election.

9 My -- My question is: How could you
10 have been listed on March 30th on here based on the
11 an election that was held in July?

12 A. I believe that was at the recommendation of
13 the attorney.

14 Q. Of Mr. Maguire?

15 A. Uh-huh.

16 Q. How was it that the three of you,
17 Mr. Morehead, Mr. Harder and Mr. Dove, are the three
18 people who are listed in the articles of
19 incorporation?

20 Is your testimony different now,
21 you're saying it wasn't because of an election?

22 A. The election came afterwards.

23 Q. The election came afterwards?

24 A. Uh-huh.

25 Q. So Mr. Maguire recommended that yourself,

1 Mr. Harder, and Mr. Dove --

2 A. Uh-huh.

3 Q. -- be listed under the Article 3?

4 A. Yes.

5 Q. How was it that it was the three of you?

6 Why was it not Roddick or Liesmann or some of the
7 others? How did it come to be the three of you?

8 A. I guess because we were standing there at
9 the time that we were talking about it.

10 Q. Where were y'all standing at that time?

11 A. I -- Actually, I was standing in my home,
12 and I believe it was a phone call.

13 Q. With whom?

14 A. Mr. Maguire.

15 Q. Is it not true that actually yourself,
16 Mr. Harder, and Mr. Dove were the driving force to
17 put together the Association?

18 MR. MAGUIRE: Objection, form.

19 A. "Driving force" is not the term I would
20 use. I would say that we initiated the association,
21 but as far as driving force? Can you define that?

22 Q. (BY MS. ARLITT): Well, let me ask you
23 this: Before the three of you put yourselves down on
24 Article 3 of the Articles of Incorporation, did you
25 discuss with any of the other homeowners or -- in the

1 subdivision or members of the association who should
2 be listed on Article 3?

3 A. Actually, we did.

4 Q. Who did you discuss it with?

5 A. Several members --

6 Q. Who are they?

7 A. -- at the house. (Reviews documents.)

8 Q. At your house?

9 A. Uh-huh. We -- We alternate meeting places.

10 Q. Uh-huh.

11 A. Mine was one. Ernie and Joyce was

12 another. Let's see. (Reviews documents.)

13 Q. And that was maybe the meeting that you
14 said you can't remember when it was held, that 18
15 people arrived? Is that that meeting, or is there
16 another meeting?

17 A. It could have been one of the other
18 meetings. (Reviews documents.)

19 MS. ARLITT: Let the record reflect
20 that the witness is going back to the three-ring
21 binder and reading through pages in the binder.

22 A. (Reviews documents.) I can't find that
23 list of names for that particular meeting.

24 Q. (BY MS. ARLITT): Do you know when that
25 meeting was held?

1 A. It was around the time that we hired Pat.

2 Q. And when did you hire Mr. Maguire?

3 A. (Reviews documents.) It was around June,
4 June of 2004. Is that right? Let me -- (Reviews
5 documents.)

6 Q. Well, if you -- Who -- Let me ask you
7 this: If we look at Exhibit 11 which is the Articles
8 of Incorporation, if we go to the third page, they're
9 signed by Mr. Maguire.

10 And you had said that the HOA was
11 incorporated on March 30th. So had you already hired
12 Mr. Maguire by March 30th?

13 A. Yes.

14 Q. So June 4th would -- That -- That's the
15 wrong date. It's going to be something prior to
16 March 30th?

17 A. Yeah. Yeah.

18 Q. Can --

19 A. He was -- He was hired prior to it.

20 Q. Did Mr. Maguire ever come to any of these
21 meetings in y'all's --

22 A. Yes, he did.

23 Q. -- individual homes?

24 A. Uh-huh.

25 Q. Which ones did he come to?

1 A. Came to one prior to us forming a
2 homeowners association.

3 Q. Is that the meeting with the 18 people?

4 A. I believe so.

5 Q. Was there another meeting that he came to?

6 A. I don't believe -- I don't believe.

7 Q. That's the only one he ever attended?

8 A. (Moves head up and down.)

9 Q. Has he attended any board meetings for the
10 HOA?

11 A. Not to my knowledge.

12 Q. How many homeowners are members of the
13 Association now?

14 A. I believe -- Now?

15 Q. Yes, sir.

16 A. As of today?

17 Q. Yes, sir.

18 A. 14.

19 Q. 14 members?

20 A. Uh-huh.

21 Q. And we discussed earlier that some of the
22 homes and lots are owned by two people who have
23 husband and wives or maybe more than one.

24 Of the roughly 21 homes that you said
25 were in --

1 A. I'm --

2 Q. -- the subdivision --

3 A. I'm not -- I'm actually referring to each
4 home. I'm not in- -- I'm not counting husband and
5 wife.

6 Q. So we're saying like --

7 A. I'm counting --

8 Q. -- 14 homes --

9 A. Correct.

10 Q. -- are members --

11 A. Right.

12 Q. -- of the Association? Okay.

13 And what about other homes? That's
14 roughly, what, two-thirds? What about the other
15 third of the homeowners? Are they not members of the
16 Association?

17 A. No, they're not.

18 Q. Okay.

19 A. Two are new homeowners.

20 Q. Did the developer ever deed any property
21 over to the Association?

22 A. No.

23 Q. Does the Association charge dues?

24 A. Yes.

25 Q. Is it mandatory dues if you're a member of

1 the Association, or is it voluntary?

2 A. It's voluntary. *see p 136 -*

3 Q. And how much are the dues?

4 A. \$10 a year.

5 Q. \$10 per year?

6 A. Uh-huh.

7 Q. Are there any other assessments given to
8 the members?

9 A. There is a \$25-a-month fee for all members
10 for now to support attorney fees.

11 Q. And how many of your members have paid
12 their \$10-per-year dues?

13 A. I honestly can't answer that. We do have a
14 ledger, and we do have a record of who's paid and
15 who's not and how much they owe and how much they've
16 paid up to.

17 Q. Have you produced that in response to our
18 discovery request?

19 A. We are going to.

20 MR. MAGUIRE: Yeah, because I was not
21 provided with financial records other than --

22 A. It's a separate binder.

23 Q. (BY MS. ARLITT): And who has that binder?

24 A. Karen Dove.

25 Q. Why does Ms. Dove have that binder?

1 A. (Reviews document.) Which one?

2 Q. At the very bottom of the first page it's
3 titled "Resignation," 2.05.

4 A. "Any member may resign from the CEHA by
5 submitting a written resignation to a Board member.
6 A members resignation will not relieve him or her of
7 any obligations to pay dues, assessments or other
8 charges."

9 Q. So your testimony was that we have at least
10 a third to a half of the landowners and homeowners
11 are not members of the Association.

12 Did you have any members of the
13 Association originally who are no longer members at
14 this time?

15 A. Yes.

16 Q. Who all is -- Did they resign?

17 A. I believe so. It was Mr. Kanady.

18 Q. Mr. Kanady is no longer a member?

19 A. Right. He sold his house.

20 Q. And who bought his home?

21 A. I don't recall their names.

22 Q. Have they joined?

23 A. No, but they, according to the sale, agreed
24 to take over the -- what Kanady was contributing to
25 the Association.

NO. 04-255-B

CASTLECOMB HOMEOWNERS	)	IN THE DISTRICT COURT
ASSOCIATION,)	
)	
Plaintiff,)	
VS.	)	198TH JUDICIAL DISTRICT
)	
HEXAGON HONEYCOMB CORP;)	
L. DE JUAN ABEL, AS)	
TRUSTEE OF HEXAGON)	
HONEYCOMB CORPORATION)	
PROFIT SHARING PLAN;)	
L. DE JUAN ABEL,)	
INDIVIDUALLY; and, L.)	
DE JUAN ABEL, AS TRUSTEE)	
OF CASTLECOMB TRUST,)	
)	
Defendants.	)	KERR COUNTY, TEXAS

ORAL DEPOSITION OF LARRY DOVE

April 7, 2005

ORIGINAL

Q. How about the board of directors? Now, I understand that you're on the board of directors; is that correct?

A. Yes.

Q. And does the board of directors have meetings?

A. No.

Q. Have you ever had a board of directors meeting?

A. No.

Q. To your knowledge, did the developer of the subdivision ever deed or transfer any rights to the Association?

A. What do you mean by "rights"?

Q. Well, did they ever give the Association the right to have any authority over the subdivision?

A. Just what it says in the deed restrictions.

Q. And the developer has never deeded any property to the Association, has it?

A. No, it hasn't.

Q. What are the dues that come in to the Association? How much?

A. Normally we charge -- The -- The dues are \$10 a year.

Q. Is there a special assessment that is --

A. Yes.

Q. And how much is that?

A. It's \$25 a month, if you can afford it.

Q. And how many members of the Association can afford it?

A. Over time, all of them have paid something.

Q. How many people actually pay \$25 a month every month?

A. That's a hard question. Ten maybe.

Q. And they've been paying every month?

A. Yes.

Q. How much money has the Homeowners Association collected since it's been in existence?

A. I don't know.

Q. Do you have any idea how much money the Homeowners Association has right now?

A. No.

Q. You don't know?

A. No.

Q. Well, you're a director. Is there someone that you think would know that information?

A. My wife.

Q. Your wife would know how much money --

A. Yes.

Q. -- has been collected?

A. I imagine she could figure that out.

Q. And would your wife know how much money the Homeowners Association actually has?

A. Yes.

Q. So your wife is really in charge of the money?

A. Yes.

Q. Is she the named treasurer?

A. No.

Q. How did she come to be the one that handles all the money?

A. Because she was the retired banker.

Q. Did the Association vote to have her handle the money?

A. No. It just was decided by Clay, Robert and I. And she volunteered to do it.

Q. Is there any resolution in the minutes appointing her to handle the money for the nonprofit organization?

A. I don't know if there is or not.

Q. Who all serves as directors?

A. Clay Morehead, myself, and Robert Harder.

Q. And there are no officers?

A. No.

Q. Was there a resolution passed by the Association to commence the litigation that we're involved in today?

A. Yes.

Q. And where would I find a copy of that resolution?

A. I'm sorry. A resolution by a formal "we're going to do this"?

Q. Yes, sir.

A. No, there was not.

Q. Well, how was the decision made to start the litigation and file the lawsuit?

A. Show of hands.

Q. And where were the show of hands --

A. At --

Q. -- taken?

A. At our first meeting at Clay Morehead's house.

Q. And what was the date of that first meeting?

A. I don't know.

Q. Can you give me an idea of when the date was?

A. Well, it's been over a year ago.

Q. Was a roster taken of who was in attendance

A. No.

Q. Well, the first time you met him, was it in regards to this lawsuit?

A. No.

Q. Was it in regards to another legal issue?

A. Yes, but not ours.

Q. Did you recommend to the HOA that they go to Mr. Maguire because of a prior relationship you had --

A. No --

Q. -- with him?

A. -- I did not.

Q. How was it that the Association happened to go to Mr. Maguire; do you know?

A. I --

Q. You're a director.

A. Yeah. The way I knew Mr. Maguire is because I'm an investigator, and he's in court. And I have dealt with him in court.

MR. MAGUIRE: I'm not the one being investigated, though.

THE WITNESS: Not the one being investigated. That's right.

MS. ARLITT: We won't go there.

MR. MAGUIRE: My clients, though.

1 A. He's -- He's -- He's been defending people
2 that we were investigating.

3 Q. (BY MS. ARLITT): Okay.

4 A. At the time, because I had dealt with --
5 I'm also a CASA.

6 Q. What's a "CASA"?

7 A. Court Appointed Special Advocate. I -- I
8 do child in- -- abuse investigations and -- and --
9 parents that are neglecting or abusing their
10 children, investigations for the district court.

11 Q. Yes.

12 A. And -- And that -- As an ad litem, I had
13 had opportunity to deal with Rex.

14 And I suggested to Clay that he go to
15 Rex, because I had dealt with Rex and thought he was
16 a very good attorney.

17 Q. And that's Mr. Maguire's partner?

18 A. Former partner, I believe.

19 Q. Former partner? Okay.

20 A. And I believe Rex recommended Pat.

21 Q. And what is Rex's last name?

22 A. Emerson.

23 Q. Emerson? Okay.

24 A. And he is now the county attorney, so he is
25 not -- no longer involved in that law firm.

NO. 04-255-B

CASTLECOMB HOMEOWNERS	)	IN THE DISTRICT COURT
ASSOCIATION,)	
)	
Plaintiff,)	
VS.	)	198TH JUDICIAL DISTRICT
)	
HEXAGON HONEYCOMB CORP;)	
L. DE JUAN ABEL, AS)	
TRUSTEE OF HEXAGON)	
HONEYCOMB CORPORATION)	
PROFIT SHARING PLAN;)	
L. DE JUAN ABEL,)	
INDIVIDUALLY; and, L.)	
DE JUAN ABEL, AS TRUSTEE)	
OF CASTLECOMB TRUST,)	
)	
Defendants.	)	KERR COUNTY, TEXAS

ORAL DEPOSITION OF ROBERT HARDER

April 7, 2005

ORIGINAL

Q. Is that an accurate statement?

A. I -- I don't know.

Q. So -- So you don't know if any meeting took place by -- or prior to the Articles of Incorporation for the Castlecomb Homeowners Association being filed with the Texas Secretary of State?

A. To my knowledge, we were elected directors prior to that being filed.

Q. And was -- When you say you were elected a director prior to the filing of the Articles of Incorporation --

And if I could, sir, I'm going to hand you what's been previously marked as Deposition Exhibit No. 11, which is the Articles of Incorporation for the Castlecomb Homeowners Association.

A. (Reviews document.)

Q. Do you recognize this document?

A. Yeah.

Q. And it's your contention that you were voted as a -- you were voted into office as a director of the association prior to the time that this document was filed with the Secretary of State?

A. I think so.

1 elected you, Mr. Morehead, and Mr. Dove to be
2 directors?

3 A. Yes.

4 Q. Since that time, you have not met -- you
5 have not attended one Homeowners Association meeting
6 other than to meet with your attorney to discuss this
7 lawsuit?

8 A. Yes.

9 Q. So would it be accurate to say, sir, that
10 your involvement with the Castlecomb Homeowners
11 Association as a board -- as a director has been
12 limited to this lawsuit?

13 MR. MAGUIRE: Objection, form.

14 A. Absolutely.

15 Q. (BY MR. CRIST): Prior to -- Prior to
16 becoming a director -- Ex- -- Excuse me. Let me
17 rephrase it.

18 Prior to or after becoming a director
19 did you ever review any materials or Texas state law
20 that would indicate to you what your duties and
21 obligations as a director of a nonprofit corporation
22 were?

23 A. No, I did not.

24 Q. And are -- are there any officers of the
25 Castlecomb Homeowners Association?

A. No.

Q. And because you've never been to any
meetings of the Homeowners Association outside of
your meetings with your attorney with regards to this
lawsuit, you've never been involved in any other
votes; is that correct?

A. That's correct.

Q. And because of that, you have no idea --
Ex- -- or -- Excuse me. Let me rephrase that.

Is it fair to say that you have no
idea whether or not the Association uses ballots when
they take votes?

A. No, I -- I -- I don't know.

Q. Do you know if the Association or any
individual members hold proxies?

A. No, I -- I -- I -- I don't know that.

Q. Do you -- Have you contributed any funds to
the Ho- -- to the Homeowners Association, sir?

A. Yes, I have.

Q. How much was that?

A. I don't have an accurate figure at this
time. I -- I would have to take a look at -- at my
account to see.

Q. Is it more than the \$25 a month?

A. No, it's not.

Q. When you initially -- When it was first --
Let me rephrase.

When you got the phone call that a
homeown- -- from one of the homeowners that a
homeowners association was going to be formed, were
you told why the association was being formed?

A. No.

Q. Did you inquire as to why the -- a
homeowners association was being formed?

A. No.

Q. Do you know if the Homeowners -- if the
Homeowners Association maintains any property within
the subdivision?

A. It does not.

Q. Do you know if the Association publishes a
newsletter?

A. No, it does not.

Q. Okay. I'm going to direct your attention
to some documents. Let me put my hands on them.
They're Exhibits No. 22 through 27. I'm going to
fish them out of the pile, if I could.

Mr. Harder, I'm going to hand you what
has been previously marked Deposition Exhibits No. 21
through 27, and I am going to represent to you, sir,
that they are letters sent by Mr. Morehead to the

Q. Sir, and just for the record, so we can be clear, when I talk about the "Association" or the "HOA" or "Castlecomb Homeowners Association," could we have an understanding that we're referring to the same entity?

A. Yes.

Q. Do you know if the defendants or the developers of the Castlecomb subdivision ever deeded or transferred any property or rights to the Association?

A. No, they did not.

Q. Is -- If memory serves, Mr. Dove said the Association dues were \$25 per month; is that correct?

A. Mr. Dove?

Q. I'm so- -- I'm sorry?

A. Mr. Dove said that?

Q. Mr. Morehead.

A. The dues are \$10 a year.

Q. And in addition to that \$10 a year, is there also an assess- -- a \$25-monthly assessment?

A. Yes.

Q. And what is that \$25-monthly assessment used for, sir?

A. It's to pay our attorney's fees.

Q. And, sir, how is that money collected?

1 MR. CRIST: I'm going to object to the
2 nonresponsiveness, and I'm -- I'm going to try to
3 rephrase the question for you.

4 Q. (BY MR. CRIST): Is it your contention that
5 you as an individual landowner within Castlecomb
6 subdivision could not have enforced the deed
7 restrictions without forming a nonprofit corporation?

8 A. In my opinion, we needed to form a
9 homeowners association in order to enforce them.

10 Q. And when you say "in order to enforce
11 them," do you mean to -- in order to enforce them
12 against and with regards to defendants?

13 A. No, I didn't -- No, I did not say that.

14 Q. Do you know of any other activities that
15 the HOA engages in other than -- Excuse me. Let me
16 rephrase that.

17 Do you know of any other activities
18 that the HOA engages in to benefit owners within the
19 subdivision, other than actively participating in
20 this lawsuit against defendants?

21 A. Yeah. It's -- It's an association of
22 the -- of the homeowners, and like I said, they do
23 have a -- a communication because of the group
24 amongst all the homeowners. It -- You know, it's --
25 it's a good networking organization.

1 It's -- It's -- Like Clay said
2 earlier, if there is a disturbance, rather than
3 calling the sheriff's department, it's sometimes
4 easier to take care of it there than having the law
5 enforcement officer come out and do so. If -- If it
6 can't be rectified, then do what you need to do.

7 Q. Has the board of directors of the
8 Association ever met to determine if there's any
9 other existing violations of the restrictions in the
10 subdivision?

11 A. They have not.

12 Q. So you've discussed any other -- the re- --
13 the restrictive covenants outside of their relation
14 of this lawsuit; is that correct?

15 A. There has not -- There has not been a need
16 to.

17 Q. What do you mean that there hasn't been a
18 need to, sir? What do you mean by that?

19 A. Well, if there were a need to be, we
20 would. That's what I meant.

21 Q. Sir, do you know if the Association ever
22 held a meeting to determine whether or not to retain
23 Mr. Maguire's services as attorney for the
24 Association?

25 A. Yes, there was a meeting held for that.

NO. 04-255-B

CASTLECOMB HOMEOWNERS)	IN THE DISTRICT COURT
ASSOCIATION,)	
)	
Plaintiff,)	
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)	
HEXAGON HONEYCOMB CORP;)	
L. DE JUAN ABEL, AS)	
TRUSTEE OF HEXAGON)	
HONEYCOMB CORPORATION)	
PROFIT SHARING PLAN;)	
L. DE JUAN ABEL,)	
INDIVIDUALLY; and, L.)	
DE JUAN ABEL, AS TRUSTEE)	
OF CASTLECOMB TRUST,)	
)	
Defendants.	)	KERR COUNTY, TEXAS

ORAL DEPOSITION OF TARA LIESMANN TORRES

April 26, 2005

1 (FELITT): Have you ever gone onto
2 land?

3
4 how which pieces of land he owns in

5
6 But -- Well, I know he owns the
7 sure he owns the lots. But I've
8 another one.

9 ever been to his piece of land
10

11 I didn't even know that road
12 was

13 Have you ever been told that you
14 would ~~be~~ protected from personal liability by filing
15 the ~~suit~~ through the Association?

16 Yes
17 who told you that?

18 I was not protected, but I was under the
19 impression that you can only sue who sued you. But I
20 don't know if that's true or not.

21 Q. And where did you get that impression?

22 A. Larry Dove.

23 Q. Did anyone else tell you that?

24 A. No, ma'am.

25 Q. And did he tell you that before you filed

1 the lawsuit or after you filed the lawsuit?

2 He told me that that day that I called and
3 I was screaming out saying I didn't want -- I was all
4 upset because I didn't want a felony, I don't want to
5 be sued. I don't want to pay money, I don't have a --
6 you know. I don't have the money to pay for a
7 lawsuit. I don't have the money to pay for any of
8 this. and I don't want a felony on my record, and I
9 wanted -- I was just all upset. That was the day.

10 Okay.

11 MS. ARLITT: Can we take a short break
12 and go off the record for a few minutes?

13 (Recess from 2:46 to 2:50.)

14 MS. ARLITT: We're back on the
15 record.

16 Q. (BY MS. ARLITT): Besides the lawsuit, do
17 you know of any other activities that the Association
18 manages?

19 A. No.

20 Q. Do you know of any other activities that
21 the Association regulates?

22 A. No.

23 MS. ARLITT: At this time we're going
24 to pass the witness.

25 MR. MAGUIRE: Just a couple of

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L. DE JUAN ABEL, AS)	
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DE JUAN ABEL, AS TRUSTEE)	
OF CASTLECOMB TRUST,)	
)	
Defendants.)	KERR COUNTY, TEXAS

ORAL DEPOSITION OF ALVIN FRANCIS

June 24, 2005

1 existence?

2 A. No, I don't.

3 Q. Has the Association ever produced a budget
4 for the year?

5 A. I've never asked for one, no.

6 Q. Do you have any idea what happens to the
7 money that's collected?

8 A. Right now it's going into a fund to pay the
9 attorney.

10 Q. Does it go for anything else?

11 A. Not that I'm aware of.

12 Q. You stated earlier that the purpose of the
13 HOA was to keep -- let's see, I believe you said to
14 keep out other mobile or modular homes; is that
15 correct?

16 A. That's correct.

17 Q. Does it have any other -- Does the
18 Association have any other purpose?

19 A. Well, just to make sure that everything is
20 still done by what the covenants have said that we
21 have.

22 Q. What other action has the Association taken
23 besides filing this lawsuit?

24 A. That's the only one I'm aware of at the
25 time.

1 A. On the board of -- Yes.

2 Q. Is there anyone else you know to be an
3 officer or director?

4 A. Not -- Not that I am aware of. I know
5 there is one other, and that's probably the other man
6 that I don't know.

7 Q. Do you know of any activities that the
8 Association manages?

9 A. Not that I know of, no.

10 Q. Do you know of any activities that the
11 Association regulates?

12 A. No.

13 Q. Did you support the decision to file the
14 lawsuit against the defendants?

15 A. Yes, I did.

16 Q. Are you still supportive of it?

17 A. Yes, I am.

18 Q. And what was the purpose of filing the
19 lawsuit?

20 A. To keep out pre-manufactured homes.
21 They're out now, but if they -- if the suit doesn't
22 go through, he can move them right back in again and
23 we start all over again.

24 Q. So what is the -- If -- You -- You said
25 first the purpose was to keep these homes -- the

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)	
Defendants.)	KERR COUNTY, TEXAS

ORAL DEPOSITION OF KAREN DOVE

April 26, 2005

1 that are not.

2 Q. So that would -- say, 21 houses?

3 A. Right.

4 Q. Can you tell the jury who are the houses
5 that are not in the Association?

6 A. I don't know their names. There are two
7 houses on Cardiff and there's one on Dover.

8 Q. But every other home is a member of the
9 Association?

10 A. Yes.

11 Q. So we'd have 21 houses that are represente
12 in the Association?

13 A. (Moves head up and down.)

14 Q. Of the 21 houses, how many have paid their
15 \$10-a-year dues?

16 A. None of us have yet.

17 Q. So no one has paid the \$10 dues?

18 A. Right.

19 Q. Of the \$25, what is the purpose of the \$25
20 monthly charge?

21 A. To go to legal fees.

22 Q. And how many people pay that every month?

23 A. I don't remember.

24 Q. Can you estimate?

25 A. It varies.

Q. Well, let's say since the first of January. For the month of January, how many paid it?

A. All but four.

Q. So that would be 17 houses paid it?

A. Yes, I believe.

Q. If you had your documents in front of you, could you tell us precisely who paid?

A. Probably.

Q. How about in February? How many houses paid in?

A. I would say the same amount.

Q. And March?

A. Same.

Q. And in April?

A. Same.

Q. So you're saying that if we went to the records of the Association which you're saying that Mr. Maguire has, that 17 houses are paying the \$25 per month to pay for the lawsuit?

A. Yes.

Q. If we went into the records of the Association that you've given to Mr. Maguire, what would we find in way of a document that would show us how many houses are paying the \$25 for legal fees each month?

she produced it.

MR. MAGUIRE: Oh, okay. --

A. I can, but I haven't.

Q. (BY MS. ARLITT): You -- You have it --

A. Yes.

Q. -- but you have not yet produced it?

A. Right.

Q. Okay. If you look at the statement that's dated through May 31st of '04, if we go down anywhere on here, does it show that any money paid out that month?

A. (Reviews document.) Yes.

Q. And what is it showing was paid

A. \$15.32.

Q. And what did that go for?

A. I believe that was to or -- pay checks.

Q. So that was a check order?

A. Yes.

Q. If we move to the next page up which appears to be the statement for the period 6/1 of '04 through 6/30 of '04, does it show any monies paid out of the account?

A. Yes.

Q. And how much was paid out?

Q. 400.

Q. And who was that paid to?

A. Mr. Maguire.

Q. And was that for part of these legal fees discussed earlier?

A. Yes.

Q. And if we move up to the next statement dated July 1st of '04 through July 31st of '04, we show any money leaving the account?

A. Yes.

Q. And how much is that?

A. 400.

Q. And who did that go to?

A. Mr. Maguire.

Q. Is that for the legal fees that we --

A. Yes.

Q. -- discussed earlier?

And then the next statement is

dated August 1st through August 31st of '04. And, again, we show a \$400 debit to the account. And who did that go to?

A. Mr. Maguire.

Q. Again for legal fees?

A. Yes.

Q. The next sheet of paper up is for the

1 statement period 9/1 of '04 through 9/30 of '04 and
2 here we're showing check number 1003 for \$1,200. Can
3 you tell the jury what that \$1,200 was for?

4 A. Legal fees.

5 Q. Again to Mr. Maguire?

6 A. Yes.

7 Q. The next sheet up is the statement period
8 for 10/1 of '04 through 10/31 of '04, and we're
9 showing check number 1004 in the amount of 800. Can
10 you tell the jury what that was for?

11 A. Legal fees.

12 Q. The next sheet of paper up is statement
13 period 11/1 of '04 through 11/30 of '04. We're
14 showing check number 1005 for \$400. Can you tell the
15 jury what that was for?

16 A. Legal fees.

17 Q. And the next sheet of paper up is for the
18 period 12/1/04 through 12/31/04, and we're showing
19 two checks. The first one is check number 106 --
20 excuse me, 1006 in the amount of \$600. What was that
21 for?

22 A. (Reviews document.) I believe it was legal
23 fees.

24 Q. And then we're showing a second check,
25 check number 1007 in the amount of \$400. What was

1 Q. Can you give a rough idea?

2 A. No.

3 Q. Can you give the jury an idea of how much
4 money has come into the Association since January 1st
5 of this year?

6 A. Almost 5,000.

7 Q. And you testified a few minutes ago that
8 the balance of the account which you said you just
9 did --

10 A. Uh-huh.

11 Q. -- recently is now \$50. So where has the
12 roughly \$4,950 gone?

13 A. Mr. Maguire.

14 Q. The exhibits that are marked like this
15 we're going to give to the court reporter so that she
16 can add to our book, I guess, or come up with another
17 book?

18 MS. ARLITT: How are we going to do
19 this?

20 THE REPORTER: However you want.

21 MS. ARLITT: Should we start maybe a
22 second book starting with No. 70 forward --

23 THE REPORTER: We can do that.

24 MS. ARLITT: -- and you can get it
25 from the other gentleman to bring it up?

1 covenants.

2 Q. Does the HOA own any of the common
3 elements?

4 A. No.

5 Q. Do you know what common elements are?

6 A. The common grounds --

7 Q. Uh-huh.

8 A. -- and the well or septic.

9 Q. At the HOA meetings, have the membership --
10 has -- has the membership of the Association
11 discussed owning the common elements?

12 A. I don't believe it was discussed.

13 Q. It's never been discussed?

14 A. I don't remember if it was or not.

15 Q. At the HOA meetings, has it ever been
16 discussed, Mr. Abel's offers to sell the Association
17 the common elements?

18 A. I don't know that it was discussed. We all
19 got a letter where he offered to sell it to us, so we
20 were all aware that he was anxious to do that.

21 Q. And the HOA made what determination?

22 A. I don't believe we talked about it as a
23 homeowners group.

24 Q. Has the -- At the HOA meetings, has there
25 been discussion about Mr. Abel's recent offers to

1 enter into an arrangement to allow the Association to
2 buy all the common elements, to include the -- the
3 streets, the well, the sewer lines --

4 A. Not in a meeting, no.

5 Q. So it hasn't been discussed with the
6 membership?

7 A. No.

8 Q. Has the Association met to discuss and
9 review Mr. Abel's offers of settlement to settle this
10 case?

11 A. We haven't had a meeting recently, no.

12 MS. ARLITT: Objection, nonresponsive.

13 Q. (BY MS. ARLITT): Has the Association met
14 and discussed Mr. Offer -- Mr. Abel's various offers
15 to settle this case?

16 A. No.

17 Q. To your knowledge, has the Association been
18 informed of Mr. Abel's offers to settle this case?

19 A. I don't know.

20 Q. As a member of the Association, have you
21 been presented with Mr. Abel's various offers to
22 settle the case?

23 A. I was present at mediation when it was
4 discussed.

25 Q. What about the last few offers over the

1 last few weeks? Have you been presented with those
2 offers to settle the case?

3 A. No.

4 Q. Can you tell the jury what activities the
5 Association manages?

6 A. There are no activities.

7 Q. Can you tell the jury what activities the
8 Association regulates?

9 A. None.

10 Q. Are there any members of the Association
11 who are not owners of property in the subdivision?

12 A. No.

13 Q. Are any of the homes rented?

14 A. Yes.

15 Q. Are any of the tenants or the renters
16 members of the Association?

17 A. No.

18 Q. Are you familiar with any illegal
19 activity --

20 A. No.

21 Q. -- that has been alleged to have occurred
22 on Mr. Abel's land?

23 A. No.

24 Q. Have you ever told your attorney that the
25 judge needed to do something about the illegal

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)	
Defendants.)	KERR COUNTY, TEXAS

ORAL DEPOSITION OF DEBORAH CRAFT

June 1, 2005

Q. Do you know who are the officers and directors of the Association?

A. No.

Q. Do you know who handles the money for the Association?

A. No.

Q. Were you present at a meeting -- In your meeting--we don't know exactly when the date was--did you vote to -- for a resolution to start this litigation?

A. Are you talking -- Gosh, I don't remember that was so long ago. I don- -- I don't know.

Q. Do you know what the purpose of the HOA is?

A. No.

Q. Can you tell the jury the activities that the HOA manages?

A. No.

Q. Can you tell the jury the activity that the HOA regulates?

A. No.

Q. Can you tell the jury what activities the HOA does to benefit the homeowners in the subdivision?

A. We had one fundraiser. Is that -- Would that be one?

1 Q. What was that?

2 A. It was a big garage sale.

3 Q. Did you participate?

4 A. Yes.

5 Q. And was money raised?

6 A. Yes.

7 Q. And what happened to that money? What was
8 it used for?

9 A. To help pay for our attorney.

10 Q. Do you have any idea how much was raised?

11 A. No.

12 Q. Do you know if the Association has any
13 members that are not owners of property in the
14 subdivision?

15 A. No.

16 Q. Do you know how it came to be that the
17 membership of the Association decided to file this
18 lawsuit originally?

19 A. No.

20 Q. Did you vote to file the lawsuit?

21 A. I don't think there was any voting. I -- I
22 guess no. I mean, I didn't vote. So I guess that
23 answer would be no.

24 Q. So you don't know how it came that the
25 Association filed the lawsuit?

NO. 04-255-B

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Defendants.)	KERR COUNTY, TEXAS

ORAL DEPOSITION OF PATRICIA LABEDA

June 1, 2005

1 Q. (BY MS. ARLITT): The 7th. You have to
2 have your responses in under court order.

3 A. Uh-huh.

4 THE WITNESS: Is this that most recent
5 document --

6 MR. MAGUIRE: Uh-huh.

7 THE WITNESS: -- for this?

8 MR. MAGUIRE: Uh-huh.

9 A. Oh, okay. I have that. Yeah, I have that
10 at home.

11 Q. (BY MS. ARLITT): So you have documents in
12 your possession responsive to those requests?

13 A. I don't know. I didn't read that part of
14 it. I just read that I was supposed to come here for
15 this.

16 Q. Okay. And you have not read the other
17 requests for discovery that were previously served on
18 you?

19 A. Not to my knowledge, no.

20 Q. So you don't know whether or not you have
21 any documents responsive to the requests --

22 A. No, I don't.

23 Q. -- is that correct?

24 A. No.

25 Q. At any time were you ever told that you

1 were going to be protected from being sued --
2 the Association was actually the plaintiff in the
3 lawsuit?

4 A. I heard that. I heard that from the
5 neighbors.

6 Q. Who told you that?

7 A. I believe it was -- I believe it was Larry
8 Dove, but I'm not sure.

9 Q. And that wasn't true, was it?

10 A. I don't know.

11 Q. Well, you've been sued.

12 A. Well...

13 Q. You referred to the homes as prefabricated
14 homes.

15 A. Yes.

16 Q. Did you ever have anyone who had any
17 expertise in prefabricated homes go out and view the
18 homes that Mr. Abel was building on his property?

19 A. No.

20 Q. So that was simply you -- you yourself
21 determined that they were prefabricated --

22 A. Yes.

23 Q. -- homes?

24 A. Uh-huh.

25 Q. And did you determine that they were mobile



Texas Secretary of State
Geoffrey S. Connor

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BUSINESS ORGANIZATIONS INQUIRY - VIEW ENTITY

Filing Number: 800323985 **Entity Type:** Domestic Nonprofit Corporation

Original Date of Filing: March 30, 2004 **Entity Status:** In existence

Formation Date: N/A **Non-Profit** N/A

Type:

FEIN:

Tax ID:

Duration: Perpetual

Name: Castlecomb Homeowners Association

Address: [ADDRESS NOT PROVIDED]

<u>REGISTERED</u> AGENT	<u>FILING</u> HISTORY	<u>NAMES</u>	<u>MANAGEMENT</u>	<u>ASSUMED</u> NAMES	<u>ASSOCIATED</u> ENTITIES
Last Update	Name	Title	Address		
March 30, 2004	Clay Morehead	Director	101 Dover Drive Kerrville, TX 78028 USA		
March 30, 2004	Robert L Harder	Director	1327 Junction Highway Kerrville, TX 78028 USA		
March 30, 2004	Larry Dove	Director	108 Dover Drive Kerrville, TX 78028 USA		

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