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DIRECT TESTIMONY OF KATHRYN E. ALLEN

**WITNESS FOR RATEPAYERS REPRESENTATIVES OF THE
WINDERMERE OAKS WATER SUPPLY CORPORATION**

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Windermere Oaks Water Supply Corporation v. The Honorable Ken Paxton, Attorney General of Texas

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PUC DOCKET NO. 50788
SOAH DOCKET NO. NO. 73-20-4071.WS

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TESTIMONY OF KATHRYN E. ALLEN

I. INTRODUCTION, POSITION, AND QUALIFICATIONS

1 Q Please state your name and address.

2 A. Kathryn E. Allen

3 The Law Office of Kathryn E. Allen, PLLC

4 114 W. 7th Street, Suite 1100

5 Austin, Texas 78701

6 Q Please describe your education and professional background.

7 A. I am an attorney licensed to practice law in the State of Texas. I am Board Certified in

8 the area of Civil Trial Law and that is the focus of my practice. I am a member of the

9 American Board of Trial Advocates. I am admitted to practice before the United States

10 Court of Appeals for the Fifth Circuit and the federal district courts in the Northern,

11 Western and Southern Districts of Texas. I have also been admitted to practice in

12 connection with matters in Colorado and Oklahoma.

13 I graduated with honors from the University of Texas in 1984. I received a B.A.

14 degree through the University's Plan II program. I graduated with honors from the

1 University of Texas School of Law in 1984. I was licensed to practice in Texas that
2 same year and have been licensed continuously since that time.

3 Q Please describe your involvement with this rate appeal case.

4 A. I have been asked to provide information concerning three litigation matters involving
5 the Windermere Oaks Water Supply Corporation.

6 Q Please describe your history with the Windermere Oaks Water Supply Corporation.

7 A. I have been counsel of record for the intervenor plaintiffs in Cause No. 48292, *Ffrench*
8 *et al v. Friendship Homes & Hangars, LLC et al.* and for the intervenor in Cause No.
9 D-1-GN-19-006219, *Windermere Oaks Water Supply Corporation v. The Hon. Ken*
10 *Paxton*.

11 II. PURPOSE OF TESTIMONY

12 Q Please describe the purpose of your testimony?

13 A. It is my understanding that the Commission has been called upon to determine whether the
14 Corporation acted lawfully when it included certain legal fees for ratemaking purposes. In
15 connection with such determination, the Commission requires additional information
16 concerning three litigation matters to which the Windermere Oaks Water Supply
17 Corporation has been a party.

18 Q What have you done to prepare for your testimony?

19 A. I have reviewed the docket sheets to confirm the dates of various filings and decisions in
20 the litigation matters discussed below. I have assembled the materials referred to in this
21 testimony.

22 III. DIRECT TESTIMONY

23 TOMA Integrity, - v. WOWSC, Cause No. 47531, in the 33rd District

Court, Burnet County, Texas

Q Please state your involvement in the above-mentioned lawsuit?

A. I was not counsel of record in this lawsuit, however I reviewed the pleadings, orders and opinions in this case as part of my due diligence when I was engaged as counsel of record for the plaintiffs-intervenors in Cause No. 48292.

Q What are the events which led to this lawsuit?

A. In late 2015 and early 2016, the Corporation's Board approved and consummated a real estate transaction with then-director Dana Martin and her entity Friendship Homes & Hangars. In connection with such transaction, the Corporation transferred land worth \$700,000 for \$200,000, encumbered other land with a preferential purchase right in favor of Martin for no consideration and damaged the remainder of its airport property by failing to reserve adequate taxiway access. The Board violated the Texas Open Meetings Act in connection with its approval and authorization of the transaction. A group of members organized to exercise statutory rights to seek relief in connection with such violations.

Q What is this lawsuit about?

A. The case presented essentially 2 issues. The first was whether the Board violated TOMA. The violations arising from the failure to post proper notice for the Board's meetings on December 19, 2015 and February 22, 2016 were fairly cut and dried. The court entered partial summary judgment in favor of the *TOMA* plaintiff on that issue on July 23, 2018. A copy of the court's order is attached.

The second issue was what, if anything, the court should do about the violations.

The *TOMA* plaintiff sought an order voiding the approval and authorization for the land

1 sale. In an effort to persuade the court not to void the transaction, the Corporation
2 falsely portrayed that it could not afford to return the purchase money if the sale were
3 voided. A copy of the affidavit of David Bertino, then President of the Board, and an
4 excerpt from the hearing are attached. The court's final judgment in the case confirmed
5 the TOMA violations but did not void the approval or authorization. The Corporation's
6 designated representative later confirmed in sworn testimony given in Cause No. 48292
7 that the Corporation *did* have the wherewithal to restore the consideration paid if that
8 had been ordered by the *TOMA* court.

9 Q What is the current status of this lawsuit?

10 A. The lawsuit is over. There was an appeal from the trial court's judgment. The
11 Corporation did not challenge the trial court's finding that it violated TOMA. In an
12 opinion issued June 21, 2019, the court of appeals held that declaratory relief that the
13 Board's past actions were void was not available under TOMA. The *TOMA* plaintiff,
14 however, had sought an order voiding the approval and authorization and not
15 declaratory relief that the transaction was void. Based on its erroneous belief that relief
16 was not available, the appellate court concluded that a decision that merely addressed
17 past violations would have "no practical effect on the parties." The Supreme Court
18 declined to review the case, and it was concluded on February 14, 2020.

19 Q Any additional comments related to this lawsuit?

20 A. None of the Corporation's governing persons has been able to articulate a credible
21 explanation for the Corporation's "defense" of the *TOMA* litigation. The Corporation
22 was well aware its agents had violated TOMA. The notice violations, and numerous
23 other TOMA violations that were concealed at the time, had been brought to the

1 Corporation's attention by its own general counsel years earlier. (See attached
2 December 2016 memorandum from Mark Zeppa to Bob Mebane) The Corporation
3 had also been advised by its own general counsel that the land sale was voidable as a
4 result of the violations.

5 The Corporation's subsequent counsel later concluded that it was in the
6 Corporation's best interests to recover the property. (See attached January 25, 2019
7 correspondence by Jose de la Fuente of Lloyd Gosselink). Voiding the approval and
8 authorization for the transfers was precisely the relief, and the only relief, sought in the
9 *TOMA* litigation.

10 The suggestion that the Board reasonably believed the Corporation would face
11 significant exposure from Martin and Friendship if the transaction were rescinded is
12 simply not credible. In her capacities as Corporation director and as agent for
13 Friendship, Martin personally participated in every TOMA violation. Neither Martin
14 nor Friendship was, or is, in a position to assert any claim at all against the Corporation.

15 **Rene Ffrench , John Richard Dial , Stuart Bruce Sorgen , and as**
16 **Representatives for Windermere Oaks Water Supply Corporation v.**
17 **Friendship Homes & Hangars, LLC, WOWSC, and its Directors**

18 Q Please state your involvement in the above-mentioned lawsuit?

19 A. I was engaged in August 2019 to represent Rene Ffrench, Dick Dial and Bruce Sorgen
20 in this matter.

21 Q What are the events which led to this lawsuit?

22 A. I was not counsel of record when this lawsuit was filed, however I reviewed the filings
23 in connection with my engagement. They reflect that the lawsuit was precipitated by

1 the efforts of Friendship Homes & Hangars to obtain approval of a subdivision plat to
2 create hangar lots within a portion of the property that had been sold to
3 Martin/Friendship. The original plaintiffs were Double F Hangar Operations, LLC,
4 Lawrence R. Ffrench, Jr., Patricia Flunker and Mark A. McDonald. The original
5 defendants were Friendship Homes & Hangars and the Burnet County Commissioners'
6 Court. In July 2018, the Burnet County Commissioners' Court entered into a Rule 11
7 agreement not to take action on Friendship's plat application pending the outcome of
8 the litigation and the plaintiffs nonsuited their claims against the Commissioners'
9 Court.

10 In 2019, the Corporation (acting through directors who were not involved in the
11 original land transaction) made demand on Martin/Friendship for return of the property
12 and prepared to pursue "all available avenues of relief, including litigation against Ms.
13 Martin and Friendship Homes." After Bill Earnest became a director again later in
14 2019, the Corporation reversed its position. Dial and Sorgen intervened in this lawsuit
15 and joined Ffrench to bring suit under Section 20.002, Tex. Bus. Orgs. Code, to set
16 aside the transaction and to assert the Corporation's claims against the directors
17 involved. The Corporation and the directors involved were made parties at that time.
18 Mark McDonald nonsuited his claims. Patricia Flunker was dropped as a plaintiff.

19 In October 2019, the Board entered into a settlement with Martin and Friendship
20 which, among other things, left the original land transfers intact and transferred
21 additional Corporation property for little or no consideration. The Board did not take
22 the steps required to authorize a transaction approved in violation of the Texas Open

1 Meetings Act. Thereafter, the directors who approved that settlement were joined in
2 the lawsuit.

3 Q What is this lawsuit about?

4 A. Vis-à-vis the Corporation, this lawsuit seeks to set aside the land transaction on the
5 grounds that it is ultra vires. This is not the same relief that was sought in the *TOMA*
6 litigation. Plaintiffs have not sought any other relief as against the Corporation.

7 The lawsuit arises from a transaction that the Corporation's own counsel has opined
8 resulted from fiduciary and other misconduct and was not fair to the Corporation.
9 Discovery in the case has revealed that for many years the Corporation's Board
10 acknowledged its fiduciary duties to the membership in connection with the disposition
11 of surplus Corporate property and assured the membership that it would not sell the
12 Corporation's airport property without taking the steps required to get the best price
13 obtainable. When the wastewater treatment plant was moved in 2014, the Board made
14 the judgment that a sale of the entire 11-acre parcel would be more advantageous than
15 a piecemeal disposition. They acknowledged publicly and among themselves that they
16 should not go forward without reliable information concerning the property they
17 proposed to sell, and they agreed to get it. They affirmed to the membership that when
18 they were ready to sell the property, they would advertise it for sale to multiple buyers
19 and pick the best offer in an open and transparent process.

20 Dana Martin had wanted to acquire the Corporation's airport property for years
21 before she became a director in the spring of 2015. She and her partner Malcolm Bailey
22 had tried to buy it in a closed-door deal in 2011. Less than eight months after Martin
23 got on the Board, the Board voted behind closed doors to give Martin the deal she had

1 been angling for – but had been unable to secure -- since 2011. The Board all did
2 virtually everything these very same directors had consistently stated the Corporation
3 should not, and would not, do. They also violated the law and the requirements of the
4 Corporation's governing documents in the process. The audio recordings of their
5 executive sessions make clear these directors knew at the time that they were
6 disregarding the commitments they had made to the membership and that this likely
7 would not sit well with the community. When it didn't, these directors tried to blame
8 the very members they had taken advantage of. The Board has been doing that ever
9 since.

10 As a result, the Corporation made an unauthorized disposition of valuable airport
11 real estate worth more than \$700,000 to a sitting director for only \$200,000 and
12 rendered its remaining land virtually unmarketable. Had the land been sold for market
13 value, the Corporation could have paid off its entire debt and had money left over.
14 Instead, the Corporation stayed in debt that it has had to refinance at least twice and
15 has not paid off even now.

16 In October 2019, the Board approved a settlement with Martin that left the original
17 land transfers intact and required the Corporation to convey additional land to Martin
18 for little or no consideration. They now claim they thought this would prompt the
19 Plaintiffs to dismiss their claims. Although the Board voted on the settlement in an
20 open meeting, it did not take the steps required to validate a transaction made in
21 violation of TOMA. None of the newer directors wanted to take responsibility for the
22 original transaction.

1 In the interim, the Corporation has spent hundreds of thousands of dollars to
2 “defend” a transaction its own lawyers and its own valuation experts have confirmed
3 was grossly unfair to the Corporation and to prevent any Court from restoring the
4 Corporation’s misappropriated property.

5 The Corporation has now denied any duty to the membership to dispose of surplus
6 property for the highest obtainable price. It alleges that the Board was free to sell the
7 Corporation’s airport property at any price and on any terms it saw fit, without regard
8 to the consequences for the Corporation or its members.

9 The Director Defendants involved in the original transaction now do not recall, or
10 outright deny, the Board’s many public acknowledgements of its fiduciary duty and its
11 many commitments to properly inform itself and to advertise the Corporation’s
12 property for sale to multiple bidders before selling it to obtain the best price possible.
13 The Director Defendants allege that, at worst, they were negligent. They claim that
14 they cannot be held personally accountable for their carelessness.

15 Q What is the current status of this lawsuit?

16 A. The Corporation and the Director Defendants filed pleas to the jurisdiction challenging
17 intervenor-plaintiffs’ standing/capacity to bring suit under Section 20.002. Those pleas
18 were denied. The defendants sought summary judgment, *inter alia*, that intervenor-
19 plaintiffs’ claims are barred by the final judgment in the *TOMA* case under principles
20 of res judicata/collateral estoppel. Those motions were denied. Friendship sought
21 summary judgment that an order setting aside the land sale and/or the later transfer of
22 additional Corporation property is not available under Section 20.002. That motion

1 was denied. The Director Defendants' motion seeking summary judgment that they
2 cannot be held personally liable is under submission.

3 Discovery in the case is ongoing. The case is set for trial (subject to COVID-related
4 procedures) in August 2021.

5 **Windermere Oaks Water Supply Corporation v. The Honorable Ken**

6 **Paxton, Attorney General of Texas**

7 Q Please state your involvement in the above-mentioned lawsuit.

8 A. I am lead counsel for intervenor Danny Flunker, who was the requestor for the PIA
9 request that gave rise to this case.

10 Q What are the events which led to this lawsuit?

11 A. At the conclusion of the trial court proceedings in the *TOMA* case, Danny Flunker made
12 a PIA request for attorney fee invoices for the period of time covered by the *TOMA*
13 litigation. The Corporation sought an AG opinion that it was not required to turn over
14 the invoices. The Corporation was not satisfied with the AG's determination and it
15 filed suit against the AG.

16 Q What is this lawsuit about?

17 A. Information in a bill for attorneys' fees is specifically categorized as "public
18 information" in Section 552.022(a)(16), Tex. Govt. Code. The Corporation filed this
19 lawsuit to avoid having to turn over the invoices that contain such information. The
20 Corporation alleged, among other things, that disclosure of the invoices would have a
21 devastating effect on its litigation position in Cause No. 48292. Danny Flunker had a
22 statutory right to intervene in the lawsuit from the outset. He did not exercise that right
23 until he learned the Corporation and the AG had made a deal that would enable the

1 Corporation to redact most of the information on the invoices. At that point, he
2 intervened to learn more about the deal and to determine whether he believed it should
3 be approved by the Court. After Danny spent his own time and money on that effort,
4 the Corporation withdrew its objections to disclosure and decided to publish the
5 invoices on its website.

6 Q What is the current status of this lawsuit(s)?

7 A. The Corporation recently filed a Notice of Non-Suit in the case.

8 Q Any additional comments related to this lawsuit?

9 A. Every dollar spent on this litigation was wasted. Nothing changed between the time
10 the Board authorized the Corporation's lawyers to oppose public disclosure and the
11 time the Board voted to put the invoices on the Corporation's website. It appears that
12 substantial Corporate resources were spent in connection with the request for an AG
13 opinion and the prosecution of the appeal from the AG's decision. There was never
14 any justification for this.

15 The suggestion that disclosure of invoices pertaining to the *TOMA* litigation would
16 somehow disadvantage the Corporation in the *Ffrench* litigation was never credible.
17 The *TOMA* case centered on 2 TOMA violations that were undisputed. Issues
18 concerning the adequacy of the consideration and other substantive and procedural
19 improprieties in the approval process were neither raised nor addressed. The *Ffrench*
20 litigation focuses on those issues.

21 **IV. OBSERVATIONS OF WOWSC TESTIMONY**

22 Q Have your reviewed testimony of Joe Gimenez III regarding these lawsuits?

23 A. Yes, briefly.

1 Q Do you have any observations about that testimony?

2 A. At the time of his deposition in late 2019, Mr. Gimenez professed to have very little
3 understanding concerning the allegations, relief sought or procedural posture in the
4 *TOMA* case or the *Ffrench* case. His testimony indicates that is still the case.

5 The Corporation has spent an astonishing amount of resources to preserve a land
6 transaction the Corporation's own lawyers have opined was grossly unfair to the
7 Corporation and the director defendants themselves know should not have been done.
8 Members have stepped up, taken the laboring oar and invested their personal resources
9 in the effort to make the Corporation whole. The Board's knee-jerk reaction has been
10 to put every conceivable obstacle in their path. Like the commencement of the AG
11 lawsuit, however, that approach was very short-sighted. Those obstacles have
12 culminated in a procedural conundrum that left Plaintiffs no choice but to sue the
13 directors individually.

14 The Corporation continues to insist it needs to "defend itself." The Plaintiffs have
15 never sought any relief vis-à-vis the Corporation other than to restore the Corporation's
16 property. The Corporation admits it had the wherewithal to return the original
17 consideration had the court ordered that at the time of the *TOMA* judgment. The
18 Corporation does not take the position in the *Ffrench* litigation that it no longer has that
19 ability. Section 20.002, pursuant to which this lawsuit is brought, does not authorize
20 an award of anticipated profits or other amounts to anyone. Moreover, the Corporation
21 cannot claim that it fears a lawsuit by Martin and/or Friendship. Neither Martin nor
22 Friendship has ever made a claim against the Corporation. Martin's knowing
23 participation in the events that authorize the court to set the transaction aside would

1 preclude any claim by her or Friendship. Further, Martin and Friendship fully and
2 finally released their claims against the Corporation in October 2019. Finally, their
3 time for asserting any claim against the Corporation in the *Ffrench* litigation has
4 passed.

5 The only parties who benefit from the “defense” of the *TOMA* litigation or the
6 *Ffrench* litigation are the director defendants who caused the Corporation’s loss and
7 Martin’s alter ego Friendship, which benefitted from the loss.

8 **V. CONCLUSION**

9 Q Does this conclude your testimony?

10 A. Yes.

VI. EXHIBITS

NO. 47531

TOMA INTEGRITY, INC,

Petitioners,

v.

WINDERMERE OAKS WATER
SUPPLY CORPORATION,

Respondent.

§ IN THE DISTRICT COURT

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§ 33RD JUDICIAL DISTRICT

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§ BURNET COUNTY, TEXAS

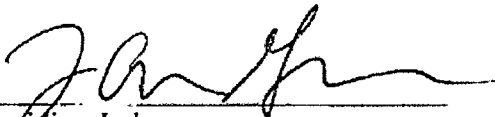
ORDER GRANTING PETITIONERS' MOTION FOR SUMMARY JUDGMENT
& DENYING RESPONDENT'S MOTION TO DISMISS

On the 15th day of June, 2018, the Court heard Petitioners' Motion for Summary Judgment and Respondent's Motion to Dismiss. Having considered the motions, the summary judgment evidence and the arguments of counsel, the Court finds and concludes that Petitioners' Motion for Summary Judgment be, and it hereby is, GRANTED, in that the Court only finds that a violation of the Open Meetings Act occurred.

Respondent's Motion To Dismiss is hereby DENIED.

All other prayers for relief are hereby DENIED.

SIGNED this 23rd day of July, 2018.

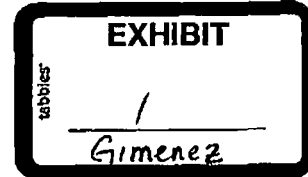


Presiding Judge



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January 25, 2019

*Via Email: mollym@abdmllaw.com
and Via USPS Regular Mail*

Molly Mitchell
ALMANZA, BLACKBURN, DICKIE & MITCHELL, LLP
2301 S. Capital of Texas Highway, Bldg. H
Austin, Texas 78746

Re: Friendship Homes & Hangars, LLC purchase of real property interests
from Windermere Oaks Water Supply Corporation

Dear Molly,

I am writing to you on behalf of my client, the Windermere Oaks Water Supply Corporation ("WOWSC") in connection with real property transactions by Friendship Homes & Hangars, LLC ("Friendship Homes") relating to approximately 10.85 acres of property located on Piper Lane in Spicewood, Texas ("the property"). This letter is sent to you as counsel for Dana Martin and Friendship Homes as a matter of professional courtesy; if you contend that it should be addressed directly to Ms. Martin and/or Friendship Homes, please let me know and we will re-send it as instructed.

As you know, by a contract for sale dated January 19, 2015, closing in early 2016, and continuing until final addendum on February 16, 2017, Friendship Homes purportedly acquired two separate real property interests from WOWSC: 1) title in fee simple to approximately 3.86 acres along the west side of Piper Lane, in Spicewood, Texas, and 2) a "right of first refusal" to purchase an additional approximately 7.01 acres immediately to the west of the purchased property (collectively, "the transactions"). The total price paid by Friendship Homes to WOWSC for both interests was \$203,000.

The circumstances surrounding the transactions are problematic for several reasons.

Self-interested transaction: First and foremost, the managing member of Friendship Homes is Dana Martin. At all times relevant to the transactions, Ms. Martin also was a member of the board of the seller, WOWSC. While she purportedly recused herself from the ultimate vote on a portion of the transaction on December 19, 2015, at all times she remained a member of the board, and by virtue of that office had a fiduciary duty and a duty of loyalty to WOWSC, which requires that there be no conflict between duty and self-interest.

Actions taken in violation of the Texas Open Meetings Act: As a WOWSC Board member, Ms. Martin is charged with knowledge of the requirements of the Texas Open Meetings Act, and knowing that the meeting notice for the December 19, 2015 meeting was legally insufficient, did not speak up or note for the remainder of the Board that the meeting notice did not meet the requisite legal standard. Instead, she allowed her self-interest to be paramount, so that the meeting could go forward and she could enter into a contract for sale of the property. Further, Ms. Martin was surely aware that the purported "right of first refusal" was not mentioned in the meeting notice, and thus could not be considered or acted upon by the WOWSC Board at that meeting without violating the Texas Open Meetings Act. Again, Ms. Martin allowed her self-interest to be paramount, so that the meeting could go forward and she could obtain that right of first refusal, paying no additional consideration for that real property interest. These matters have been litigated, and are the subject of a final judgment in Cause No. 47531, *TOMA Integrity, Inc. v. Windermere Oaks Water Supply Corporation*, in the 33rd District Court of Burnet County, Texas.

Actions regarding improper appraisal: Prior to the transactions, on information and belief, Ms. Martin worked with Jim Hinton to present what was purported to be an objective appraisal of the property to the WOWSC Board ("the Hinton appraisal") on or about September 1, 2015. This was done so that the WOWSC Board could consider the market value of the property and determine whether to sell the property, and under what price and other terms such transaction should be conducted.

The Hinton appraisal represented that it was intended to comply with all applicable rules and standards, and that its conclusion as to value was to be based on the "Highest and Best Use." The Hinton appraisal concluded that the present use of the property was "vacant land," and further concluded that remained the "highest and best use" for the property. The three comparable properties that were analyzed to determine the open market valuation were likewise "vacant land" properties.

Importantly, the property was (and still is) located amidst multiple hangar facilities at a private airport, Spicewood Airport, and had significant frontage on a taxiway for Spicewood Airport. In such circumstances, and considering the factors of legal permissibility, physical possibility, financial feasibility, and maximum

January 25, 2019

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productivity, the actual highest and best use of the property is for division into multiple airport hangar lots, not simply to be used as "vacant land." Notably, the Hinton appraisal did not take into account any comparable sales of hangar lots in the area. Its improper characterization of the highest and best use of the property, and selection of comparable properties consistent with that improper characterization, resulted in a significant under-valuation of the property. Upon information and belief, these defects violate applicable USPAP standards and render the Hinton appraisal fraudulent, and it was presented to fraudulently induce the WOWSC Board into taking action contrary to the best interests of WOWSC.

The WOWSC Board received the Hinton appraisal for the purpose of evaluating and conducting a potential sale of the property. On information and belief, Ms. Martin was aware of this purpose and intended use when the Hinton appraisal was provided to WOWSC. Also on information and belief, Ms. Martin conferred with Mr. Hinton regarding the appraisal before it was submitted to the WOWSC Board, knew that the actual market value of the property was well above the value presented in the Hinton appraisal, and failed to disclose that information to the WOWSC Board. Upon further information and belief, she was aware that the most likely buyer of the property was an enterprise that she had yet to form, Friendship Homes.

The resulting improper and unfair transactions: In reliance on the appraisal, the WOWSC Board elected to sell approximately 3.86 acres of the property for a price of \$203,000 to Ms. Martin's enterprise, Friendship Homes, realizing a value of just over \$52,000 per acre. In reality, based on the proper highest and best use of airport hangar lots, the value of the 3.86 acres of the property sold was \$700,000, yielding a true value of approximately \$181,000 per acre. In addition, in further reliance on the under-valuation of the property contained in the appraisal, the WOWSC Board also transferred a "right of first refusal" to Ms. Martin's enterprise for the remaining 7.01 acres of the property for no additional consideration, with that transaction being completed on February 16, 2017.

Thus, as a result, the WOWSC Board at the very least sold property with a proper market value of \$700,000 for a price of \$203,000, a difference of \$497,000. As a result of the actions related to the Hinton appraisal, material facts as to the transaction were not disclosed to, and upon information and belief, purposefully concealed from, the WOWSC Board. The resulting transaction, being for a price significantly lower than the proper market value at the time, was not fair to WOWSC. The circumstances above would constitute a breach of Ms. Martin's fiduciary duty to WOWSC as a member of the WOWSC Board. Further, to the extent that the actions of Ms. Martin and Friendship Homes relating to the Hinton appraisal were committed in concert with and with the knowledge of Mr. Hinton, they may give rise to an action for civil conspiracy.

EXHIBIT IP - 1

January 25, 2019

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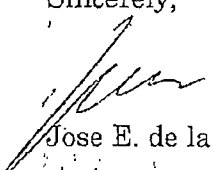
Finally, pursuant to the Unimproved Property Contract and as consideration for the transactions, Friendship Homes agreed to grant a 50-foot easement to run from Piper Lane to the west property line of the 3.86 acres that Friendship Homes acquired in fee simple. An inspection of the Burnet County property records finds no such valid and enforceable easement that has been created or granted to WOWSC, indicating that Friendship Homes has failed to perform this contract obligation. The absence of such easement significantly reduces the value of the remaining property. This works to Friendship Homes' significant advantage; absent an easement, the current market value of the remaining property is quite low, and if WOWSC attempts to sell it for its current reduced market value, Friendship Homes can execute its right of first refusal and acquire that portion of the property for a fraction of its potential value. Friendship Homes can then extend an easement through the property it currently owns, which will dramatically increase the value of the remaining property. Thus, by virtue of actions solely within Ms. Martin's and Friendship Homes' control, they will realize a significant appreciation in value on the property which value properly belongs to WOWSC.

This letter is the WOWSC's Board's notice and demand that you 1) preserve all documents, correspondence, records, and communications (including emails, text messages, and phone records) that you have had with Mr. Hinton or with any past or current member of the WOWSC Board regarding the property, the Hinton appraisal, or the transactions, and 2) to meet and confer promptly with WOWSC through its legal counsel to discuss WOWSC's claims against Ms. Martin and Friendship Homes, and a proper resolution thereof.

Please reply in writing indicating that you understand WOWSC's demands and will preserve all information described above, and will agree to meet and confer with WOWSC through its legal counsel within the next thirty days. In the event that you fail to do so, WOWSC will have no choice but to pursue all available avenues of relief, including pursuing litigation against Ms. Martin and Friendship Homes.

We look forward to your prompt response to this correspondence.

Sincerely,



Jose E. de la Fuente

JEF:cad

EXHIBIT IP - 1

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REPORTER'S RECORD
VOLUME 1 of 1 VOLUMES
CAUSE NO. 47531
COURT OF APPEALS NO. 03-18-00827-CV

TOMA INTEGRITY, INC. * IN THE DISTRICT COURT
 *
VS. * BURNET COUNTY, TEXAS
 *
WINDERMERE OAKS WATER SUPPLY *
CORPORATION * 33RD JUDICIAL DISTRICT

MOTIONS HEARING

On the 15th day of June, 2018, the following
proceedings came on to be heard in the above-entitled and
numbered cause before the Honorable Allan Garrett, Judge
Presiding, held in Burnet, in Burnet County, Texas.

Proceedings reported by computerized stenotype
machine.

STEPHANIE A. LARSEN, CSR

APPEARANCESBILL ALESHIRE

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1 circumvent the Open Meetings Act. And if there was some
2 mistake on their part, it was inadvertent or mistake, it wasn't
3 by intent, which then leads to the fact that you, as the
4 district court judge, had not a legal authority but you have
5 equitable authority. Since they're asking for a mandamus which
6 is an equitable relief, you have the right, and the power, and
7 the authority, to say maybe there's a violation.

8 But the equities involved, such as this case, in
9 which you have a small water supply corporation that is
10 providing public water and sewer service to the community,
11 that -- as the affidavit of David Bertino, the current board
12 president shows, they do not have the financial ability to
13 purchase back the original 4-acre tract for the amount that it
14 was sold.

15 The warranty deed from Friendship Homes to
16 Johan Mair, that property was sold out of that 4-acre tract for
17 \$100,000. So now we're up to \$300,000. If they don't have
18 200,000, they sure don't have 300,000.

19 Now to me, Mr. Aleshire makes a fabulous admission.
20 He claims that the case law says that you have to void this
21 vote to, quote, "reverse the transaction." But your decision
22 to do so will not, in fact, reverse the transaction. The board
23 may just not take any action. The sellers who -- I mean the
24 purchasers who bought the property may not decide to take any
25 action either which leads to my motion to dismiss, the cases I

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& HANGERS, LLC. ("FRIENDSHIP HOMES") for the sum of \$203,000.00, and they claim that the votes to sell the real property were allegedly in violation of the Texas Open Meeting Act ("OMA").

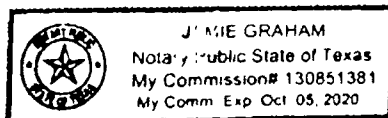
5. Upon information and belief, my understanding is FRIENDSHIP HOMES sold a portion of the property it bought from WINDERMERE OAKS to third persons, JOHANN MAIR and MICHAEL MAIR.

6. I have familiarized myself with the current finances of WINDERMERE OAKS and the company does not now have liquid funds in the amount of the original sales price of \$203,000.00.

Dated this 6 day of June, 2018.

DAVID BERTINO

SUBSCRIBED AND SWORN to before me the undersigned Notary Public on this 6 day of June, 2018 by DAVID BERTINO



Jamie Graham
Notary Public, in and for the
State of Texas