

CAUSE NO. 48292

RENE FFRENCH, JOHN RICHARD	§	IN THE DISTRICT COURT
DIAL, AND STUART BRUCE SORGEN,	§	
INDIVIDUALLY AND AS	§	
REPRESENTATIVES FOR	§	
WINDERMERE OAKS WATER SUPPLY	§	
CORPORATION	§	
INTERVENOR PLAINTIFFS	§	
	§	
v.	§	33RD JUDICIAL DISTRICT
	§	
FRIENDSHIP HOMES & HANGARS,	§	
LLC, WINDERMERE OAKS WATER	§	
SUPPLY CORPORATION, AND ITS	§	
DIRECTORS WILLIAM EARNEST,	§	
THOMAS MICHAEL MADDEN, DANA	§	
MARTIN, ROBERT MEBANE, PATRICK	§	
MULLIGAN, JOE GIMENEZ, DAVID	§	
BERTINO, MIKE NELSON, AND	§	
DOROTHY TAYLOR,	§	
DEFENDANTS	§	BURNET COUNTY, TEXAS

**DEFENDANTS WINDERMERE OAKS WATER SUPPLY CORPORATION  
DIRECTORS WILLIAM EARNEST, THOMAS MICHAEL MADDEN, DANA MARTIN,  
ROBERT MEBANE, PATRICK MULLIGAN, JOE GIMENEZ, DAVID BERTINO,  
MIKE NELSON, AND DOROTHY TAYLOR’S MOTION FOR PROTECTIVE ORDER**

Under Texas Rule of Civil Procedure 192.6, Defendants Windermere Oaks Water Supply Corporation Directors William Earnest, Thomas Michael Madden, Dana Martin, Robert Mebane, Patrick Mulligan, Joe Gimenez, David Bertino, Mike Nelson, and Dorothy Taylor (“Directors”) file this Motion for Protective Order and respectfully request the Court to enter the attached order to govern the use of videotaped depositions in this matter. *See* Exhibit A. Additionally, the Directors ask this Court to order Plaintiffs Rene Ffrench, John Richard Dial, and Stuart Bruce Sorgen (“Plaintiffs”) to remove internet postings of deposition testimony as set forth in the attached order. *Id.* In this litigation, Plaintiffs have used the deposition process as a weapon for harassing and abusing the Directors. More disturbing, one Director recently received a threat of

bodily harm because of the Plaintiffs' posting of his video deposition on YouTube. A protective order is necessary to govern depositions in this case going forward to prevent further abuse and harassment. In the alternative, at a minimum, this Court should enter a protective order authorizing only the posting of full, unaltered video depositions on specified, private websites with commenting functions disabled to at least mitigate the harassment the Directors are enduring.

## **I. BACKGROUND**

This lawsuit, at its core, is about the Plaintiffs' grievance over a land sale. The Plaintiffs complain that the non-profit, 254-member Windermere Oaks Water Supply Corporation ("WOWSC") sold land to an entity, Friendship Homes and Hangars ("Friendship"), owned by then-Director Dana Martin for less money than they believe it was worth. This is not the first suit challenging this land sale. The Plaintiffs' litigation entity, TOMA Integrity, previously sued under the Texas Open Meetings Act to invalidate the transaction, which this Court denied.

Dissatisfied with this Court's judgment in the TOMA suit, the Plaintiffs and their allies (Mark McDonald, Patricia Flunker, and Danny Flunker—two of whom were previous plaintiffs in this case) decided to try their luck with a new lawsuit. At first, when the current Plaintiffs intervened in this suit, they sued WOWSC and five of the Directors (those who served on the WOWSC board in 2015) simply to void the transaction. Later, with their Second Amended Petition, the Plaintiffs turned up the heat substantially by adding claims to recover damages from these volunteer Directors' own pockets and adding as defendants most other Directors who served on the WOWSC board between 2015 and 2019. Notably, the Plaintiffs and their allies strategically exempted their friends and family members who also served on the board during this same time period, particularly Bill Billingsley and William Stein.

The Directors are volunteers who served on the WOWSC board in this small community without compensation. They are regular people, not public or political figures. Additionally, the Plaintiffs and their allies are a minority of the members of WOWSC. The majority of WOWSC members want the litigation to end so that there might be some semblance of peace in this community that has been torn apart by the Plaintiffs' serial litigation.

The Plaintiffs' claims against the Directors are not only meritless, but also frivolous and intended for harassment, as will be demonstrated in this litigation. Likely recognizing the weakness of their claims, the Plaintiffs have resorted to a pattern of abuse—both within and outside this case's discovery process—in an apparent effort to force WOWSC, Friendship Homes, and the Directors to accede to their unreasonable demands. In November and December 2019, Plaintiffs took the video depositions of three of the Directors—Joe Gimenez, Robert Mebane, and Dana Martin. They then proceeded to post misleading clips of these depositions online, including on YouTube and the Plaintiffs' personal website, Integrity Now, replete with harassing, abusive commentary. Some of the clips were even altered. The Plaintiffs have since agreed to remove altered versions of the video depositions and replace them with the complete video depositions, which is a step in the right direction.<sup>1</sup>

Outside the discovery process, the Plaintiffs and their allies have sent emails out to the WOWSC community and posted commentary on Nextdoor and Facebook, going so far as to accuse the Directors of engaging in criminal activities and a conspiracy. Recently, the Plaintiffs and their allies, including the McDonalds and the Flunkers, sent a letter to Texas law enforcement, Texas elected officials, the media, and apparently most members of the Windermere Oaks community

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<sup>1</sup> The YouTube videos are available at <https://www.youtube.com/channel/UC72wOtVmSuCHRTRQeWliTTw>. The Plaintiffs' website, Integrity Now, previously contained videos of the depositions, but those have now been disabled. See <https://integritynow1.net/wowsc-videos>.

making outlandish, false, defamatory statements about the Directors, accusing them of rigging WOWSC elections and engaging in organized crime. *See* Exhibit B. The Plaintiffs published the defamatory letter on their website as well. <https://integritynow1.net/letter-to-sheriff-boyd>. It is not an overstatement to say the accusations in Plaintiffs' letter are lies.

More recently—and triggering the need for this protective order—one of the Directors, Joe Gimenez, received a threat of bodily harm from an anonymous viewer of his deposition video on YouTube. *See* Exhibit D.<sup>2</sup> The Directors will ultimately be vindicated on the merits in this case. In the meantime, they need protection from this Court in the deposition process. Several more depositions are scheduled or in the process of being scheduled in the coming months. Currently, Pat Mulligan's deposition is scheduled for July 22, 2020 and Bill Earnest's deposition is scheduled for July 21, 2020. Though not formally noticed yet, Dorothy Taylor's deposition will likely be held in August. These Directors are ready, willing, and able for their depositions to go forward. They have done nothing wrong and have nothing to hide. To protect these Directors from further cyberbullying, though, the Directors request that this Court enter the attached protective order to ensure the abusive internet postings cease.

The Directors' counsel has conferred with counsel for the Plaintiffs, WOWSC, and Friendship Homes regarding entry of the attached protective order. WOWSC and Friendship Homes agree that the attached protective order should be entered. Counsel for the Directors has tried to work with counsel for the Plaintiffs to find a solution to the videotape dilemma, and the Directors the Plaintiffs did remove the altered versions of the depositions. The parties were working on a formal agreed protective order in this vein. But because Directors are now receiving threats of violence due to their videos being on the internet, this is no longer sufficient protection.

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<sup>2</sup> Available at <https://www.youtube.com/watch?v=VFH7oqgvml> by clicking on comments.

To be clear, the Directors are not attempting to prevent the Plaintiffs from circulating deposition transcripts or videos to members of the WOWSC. The issue is the posting of the videos on the internet and social media, which is leading to threats and harassment.

## II. ARGUMENT

The Directors, as persons from whom discovery is sought and persons affected by Plaintiffs' discovery requests, respectfully request the Court to enter the attached Protective Order to govern the Parties' discovery in this case and to protect the results of discovery. *See* TEX. R. CIV. P. 192.6; *see also id.* R. 176.6(e). Trial courts have broad discretion to enter a protective order to protect a movant from harassment, annoyance, or invasion of personal, constitutional, or property rights. *Eurecat US, Inc. v. Marklund*, 527 S.W.3d 367, 376 (Tex. App.—Houston [14th Dist.] 2017, no pet.); TEX. R. CIV. P. 192.6. Likewise, a person noticed for deposition has the right to protection from harassment, annoyance, or invasion of personal, constitutional, or property rights. *Crown Central Petroleum Corp. v. Garcia*, 904 S.W.2d 125, 127 (Tex. 1995). Parties are encouraged to work out discovery disputes among themselves. *McKinney v. Nat'l Union Fire Ins. Co. of Pittsburg, Pa.*, 772 S.W.2d 72, 75 (Tex. 1989). But when disputes cannot be resolved, courts may enter a protective order.

A protective order is justified here. "All or part of a deposition may be used for any purpose ***in the same proceeding in which it was taken.***" TEX. R. CIV. P. 203.6(b) (emphasis added). This rule does not authorize the public display of deposition testimony outside of the proceeding in which it was taken. *See id.* Additionally, deposition videos are not public court records as they do not meet any of the definitions of court records in Texas Rule of Civil Procedure 76a(2). The various publicized video deposition testimony is not on file with the Court in this matter or any other matter. *See id.* R. 76a(2)(a) (court records include "all documents of any nature *filed* in

connection with any matter before any civil court”) (emphasis added); *Biederman v. Brown*, 563 S.W.3d 291, 303 (Tex. App.—Houston [1st Dist.] 2018, no pet.) (holding “there is no evidence that the Budd Deposition was ever filed with the trial court, as required to be a ‘court record’ under Rule 76a(2)(a)”). Based on these rules, trial courts in at least Harris County, Collin County, and Henderson County have held that video depositions posted online had to be removed and have entered orders proscribing the opposing parties’ abilities to publicize deposition videos taken in those matters. See Kathy A. Lauer, Jennifer L. Barry, & L. David Russell, *Was That a Yes or a No? Depositions in the YouTube Era*, 21 No. 6 PRAC. LITIGATOR 9 (Nov. 2010), also available at <https://www.lexology.com/library/detail.aspx?g=cdb1805d-9aca-4ac2-9808-98897995854a>. The proposed Protective Order here does the same. See Exhibit A.

Further, the posting of the deposition videos on YouTube without the Directors’ consent violates YouTube’s privacy policies. See Exhibit C (available at <https://support.google.com/youtube/answer/2801895?hl=en> and [https://support.google.com/youtube/answer/7671399?p=privacy\\_guidelines&hl=en&visit\\_id=636215053151010017-193019766\\_2&rd=1](https://support.google.com/youtube/answer/7671399?p=privacy_guidelines&hl=en&visit_id=636215053151010017-193019766_2&rd=1)). Specifically, it is a violation of YouTube’s privacy policies to post uniquely identifiable details about a person by image, voice, and full name without the person’s consent. *Id.* The Directors have not consented to their deposition testimony being posted on YouTube. Though the Directors can undertake the process for removal (which presumably the Plaintiffs will fight), the posting of deposition videos will invariably be an ongoing issue in this litigation, warranting a court order to address deposition videos currently on YouTube and limit these kinds of internet postings going forward. See TEX. R. CIV. P. 192.6

As described in the Background section above, the Directors who have been deposed to date previously suffered harassment, annoyance, and invasion of personal rights by the Plaintiffs

posting altered, misleading clips of their deposition videos online, replete with defamatory commentary. By way of example, on YouTube, a deposition clip entitled “WOWSC Legally Binding Minutes Devoid of Pertinent Land Sale Information” previously included untrue, harassing commentary accusing the Directors of a conspiracy. Also previously on YouTube, the deposition clip of Joe Gimenez entitled “The WOWSC Bolton Appraisal Showed a \$500,000 Loss to WOWSC, 2019 WOWSC Board Never Contacted Bolton!” included harassing commentary and even altered his voice. These misleading clips have since been removed and replaced with the full, unaltered testimony, as informally agreed to by the Plaintiffs.

Recently, though, it has become clear that merely posting unaltered video does not provide sufficient protection. As explained, Director Joe Gimenez recently received a threat of bodily harm due to his video deposition appearing on YouTube. *See* Exhibit D. The Directors should not have to face threats of violence related to their video depositions appearing on YouTube. The Directors (Mr. Mulligan and Mr. Earnest) whose upcoming depositions have been noticed—and those whose depositions may be noticed in the future, like Ms. Taylor—will very likely suffer harassment and annoyance and have their protected rights invaded by the unilateral publishing online of their non-public deposition testimony. This danger is very real given Plaintiffs’ escalating harassment, as demonstrated by their recently sending the defamatory letter attached as Exhibit B to law enforcement, elected officials, media outlets, and apparently most of the Windermere Oaks community, and the threats the Directors are receiving.

Critically, the Directors do not seek to limit discovery or preclude members of WOWSC from accessing the testimony. The attached protective order simply seeks to prevent internet and social media postings of deposition videos. Nothing in the protective order prevents Plaintiffs or any other party from sharing deposition videos or posting online complete deposition transcripts.

Additionally, while Plaintiffs have suggested this suit concerns matters of “considerable public interest” involving the “actions of elected officials,” this is a gross exaggeration. It is undisputed that WOWSC is a local, non-profit corporation in a small community with a volunteer board. The Directors are hardly public figures—they are volunteer non-profit board members—and the accusations in this lawsuit are of no concern to anyone outside the 254 members of the WOWSC. In any event, the Directors do not seek to suppress the ability of the Plaintiffs to share depositions with members of the WOWSC community. They simply do not want their deposition videos on YouTube and similar internet and social media sites without their consent.

The Directors attempted to reach agreement with the other parties in this case regarding a protective order, and Friendship Homes and WOWSC are in agreement. *See* TEX. R. CIV. P. 191.2. The Plaintiffs agreed to only post complete, unaltered deposition videos, but will not agree to remove the postings or refrain from posting in the future.

Thus, the Directors respectfully seek this Court’s relief to enter the attached protective order to govern discovery in this case, including the use of deposition testimony, and to further order Plaintiffs to remove all deposition testimony and harassing comments from YouTube and any other publicly available website where the information may have been posted. In the alternative, at a minimum, this Court should enter a protective order authorizing only the posting of full, unaltered video depositions on specified, private websites with commenting functions disabled to at least mitigate the harassment the Directors are enduring.

### **PRAYER**

For the reasons described above, Defendants Windermere Oaks Water Supply Corporation Directors William Earnest, Thomas Michael Madden, Dana Martin, Robert Mebane, Patrick Mulligan, Joe Gimenez, David Bertino, Mike Nelson, and Dorothy Taylor respectfully request the Court to grant their Motion for Protective Order and enter the attached Protective Order or,



alternatively, enter a Protective Order granting the alternative relief requested in this motion. The Directors further seek such other and further relief to which they may show themselves justly entitled.

Respectfully submitted,

By: /s/ Shelby O'Brien  
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WINDERMERE OAKS WATER SUPPLY  
CORPORATION DIRECTORS WILLIAM  
EARNEST, THOMAS MICHAEL MADDEN,  
DANA MARTIN, ROBERT MEBANE,  
PATRICK MULLIGAN, JOE GIMINEZ,  
DAVID BERTINO, MIKE NELSON, AND  
DOROTHY TAYLOR**

**CERTIFICATE OF CONFERENCE**

Counsel for the Directors conferred by email with counsel for the other parties on multiple occasions in June and July 2020. The Plaintiffs do not agree with the substance of this motion, but Defendants Friendship Homes and Hangars and Windermere Oaks Water Supply Corporation are in agreement with the substance of the motion. Because the parties cannot agree, the matter is presented to the Court for determination.

/s/ Shelby O'Brien  
Shelby O'Brien

**CERTIFICATE OF SERVICE**

I hereby certify that on July 17, 2020, a true and correct copy of the foregoing was served electronically, via e-file Texas, on all counsel of record:

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*/s/ Shelby O'Brien* \_\_\_\_\_  
Shelby O'Brien

# Exhibit A

**CAUSE NO. 48292**

RENE FFRENCH, JOHN RICHARD	§	IN THE DISTRICT COURT
DIAL, AND STUART BRUCE SORGEN,	§	
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REPRESENTATIVES FOR	§	
WINDERMERE OAKS WATER SUPPLY	§	
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LLC, WINDERMERE OAKS WATER	§	
SUPPLY CORPORATION, AND ITS	§	
DIRECTORS WILLIAM EARNEST,	§	
THOMAS MICHAEL MADDEN, DANA	§	
MARTIN, ROBERT MEBANE, PATRICK	§	
MULLIGAN, JOE GIMENEZ, DAVID	§	
BERTINO, MIKE NELSON, AND	§	
DOROTHY TAYLOR,	§	
DEFENDANTS	§	BURNET COUNTY, TEXAS

**PROTECTIVE ORDER**

Having come before the Court by motion of Defendants Windermere Oaks Water Supply Corporation Directors William Earnest, Thomas Michael Madden, Dana Martin, Robert Mebane, Patrick Mulligan, Joe Gimenez, David Bertino, Mike Nelson, and Dorothy Taylor (“Director Defendants”), the Court finds that good cause exists for the entry of this Protective Order governing the use of deposition videos in this case. Plaintiffs Rene Ffrench, John Richard Dial, and Stuart Bruce Sorgen (collectively, “Plaintiffs”), either directly or by proxy, have posted deposition videos of the Director Defendants on the internet in this case, without their consent. These postings have led to the Director Defendants being harassed and even threatened with bodily harm. This Protective Order strikes an appropriate balance between, on the one hand, the Defendant Directors’ need for protection from abuse and harassment in the discovery process, and,

on the other hand, the need of the Plaintiffs to share discovery materials with members of the Windermere Oaks Water Supply Corporation.

Accordingly, **IT IS HEREBY ORDERED** that all Parties in this case are proscribed from posting on the internet or social media, including on YouTube, any video of a party's deposition testimony. If any portion of a video of deposition testimony of a Party to this case is posted on the internet or social media, including on YouTube, it shall be presumed that the opposing Party posted the information. For instance, if video of deposition testimony of a Defendant is posted on the internet, it shall be presumed that the Plaintiffs posted the video. Likewise, if video of deposition testimony of a Plaintiff is posted on the internet, it shall be presumed that a Defendant posted the video. Additionally, if any Party distributes deposition testimony (including video) to a non-Party in this case, the Party may only distribute the testimony unaltered and in full. Any videotape of a deposition of a Party in this case that is currently posted on the internet or social media must be removed.

The Court retains the right to determine the admissibility of and the classification of any item covered by this Protective Order and to modify this Protective Order on its own accord or on Motion of a Party. Further, the Parties may agree, under Rule 11, Texas Rules of Civil Procedure, to modify the terms of this Protective Order.

Signed this \_\_\_\_ day of \_\_\_\_\_, 2020.

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THE HONORABLE MARGARET MIRABAL  
DISTRICT COURT JUDGE PRESIDING

# Exhibit B

May 26, 2020

Windermere Oaks Ratepayers  
12400 Highway 71 West, #350-203  
Austin, Texas 78738

Sheriff Calvin Boyd  
Burnet County Sheriff's Department  
1601 E. Polk Street  
Burnet, Texas 78611

Dear Sheriff Calvin Boyd,

We are writing to you on behalf of dozens of very concerned citizens and members of Windermere Oaks Water Supply Corp. (WOWSC). We all firmly believe that serious crimes have been committed by former and now current directors against the corporation and the ratepayers. We believe this criminal activity is ongoing and has the earmarks of organized criminal activity due to the nature of events along a lengthy timeline and unbelievable anomalies that extend from 2013 to today's date. These crimes include fraud, theft by a fiduciary, and electioneering just to name a few of the illegal acts. We realize these are serious allegations, however WE strongly believe they merit an investigation by law enforcement.

We are attaching what we are calling "Anomalies Regarding the Insider Land Sale of 2016." The insider land deal is a land sale transaction from 2016 where a sitting WOWSC Director and Vice President (Dana Martin) acquired very valuable WOWSC airport land in connection with a lengthy conspiracy, in absolute secrecy, at an incredible discount through multiple violations of Texas law. When an organization called TOMA Integrity filed suit for violations of the Texas Open Meetings Act, the WOWSC insurance carrier refused to defend the WOWSC due to its directors' violations of state law. The Burnet County District Court found that multiple TOMA violations had been committed in connection with the insider land deal.

When the WOWSC nonetheless continued to expend scarce member resources to defend the unlawful acts of its directors, individual members filed suit to require that the WOWSC be made whole or that its errant directors be held accountable for the loss, which is at least \$500,000 - \$1 million dollars for the ratepayers of the WOWSC. That suit is currently pending in Burnet County District Court.

In 2018 a new WOWSC board hired a forensic appraiser to establish the approximate dollar amount that the WOWSC lost on the insider land deal. They estimated the immediate loss at over \$1 million. In January of 2019, after having a WOWSC town hall meeting and having received a legal analysis that highlighted the wrongful conduct and the unfairness of the transaction, that board made demand on Martin. A copy of the demand letter written by the WOWSC's outside counsel is attached hereto.

Although immediate action was warranted based on the conclusions of the WOWSC's independent legal and valuation experts, none was taken. Instead, the annual meeting and election of directors was abruptly and inexplicably moved up by six weeks. Martin, the director that reaped the rewards of this insider land deal, campaigned vigorously for former director Bill Earnest (who was involved in the 2016 insider land deal) and another crony, Joe Gimenez. Earnest stated at the time he had one thing left to accomplish as WOWSC director, then he would be done. It was at this time we found out the WOWSC headquarters was broken into during the ballot collection period but could get no information from the WOWSC board

about what was taken or disturbed. In March, Earnest and Gimenez were elected to the board. Gimenez was appointed President and Earnest was appointed Vice President. Under their leadership, the board did a complete 180. They completely disregarded the forensic appraisal and outside counsel's legal analysis as set forth in the demand letter. They removed director Norm Morse and replaced him with another former director (Dorothy Taylor) with ties to some of the anomalies and who was the original whistle blower to the insider land deal. We still have no answers as to why Morse stopped coming to meetings, another strange coincidence? Later, the former WOWSC president abruptly resigned. His statement said in part he did not like the direction the board was going in.

In August of 2019 a member requested attorney fee bills in a public information request. The WOWSC board asked the Attorney General for a decision. The Attorney general decision was for the WOWSC to make most of the information available. The board caused the WOWSC to file a lawsuit against Attorney General Ken Paxton in an effort to conceal the information.

The Board continued to take no action to recover the members' loss from the 2016 insider land transaction. In September, more than 26% of members signed a petition to remove Gimenez from the Board. The directors spent over \$15,000 of the members' resources to retain Gimenez as the Board President.

In October 2019 the board inexplicably gave away even more valuable WOWSC property (the 0.5151 acre Piper Lane taxiway) for no consideration and left the original insider land deal intact with nominal changes. Martin claimed the additional land was omitted by mistake, but the contemporaneous documentation strongly suggests otherwise. Moreover, in sworn deposition testimony the WOWSC president at the time of the insider land deal stated that Piper Lane was never mentioned as part of the deal. Martin, an experienced and sophisticated real estate professional in charge of every aspect of the 2016 transaction, did not make a "mistake." Now, however, she owns the entire taxiway and the WOWSC has still lost more than \$1 million!

In November Bill Earnest recommended Patricia Gerino, a dear friend, former business partner and airport board director with Martin, into taking David Bertino's position on the Board. The board voted unanimously in favor.

The October "settlement" that purported to solidify the 2016 insider land deal and to give away even more valuable WOWSC property for Martin's benefit must have been Earnest's "one thing left to accomplish," as he submitted his resignation shortly thereafter. Almost immediately, Earnest became the owner of a hangar lot adjacent to the WOWSC property Martin acquired in 2016 and claimed the benefit of a 2015 easement that was never approved by the WOWSC Board. Earnest's handpicked successor on the Board was Rich Schaefer, a good friend of Martin and fellow pilot association director with both Martin and Patricia Gerino.

During 2019, the directors spent a grotesque amount of the members' money (roughly \$210,000) trying to prevent the members from recovering their property or its value and to avoid being held accountable themselves for the loss. The directors have spent nothing to look out for the interests of the members-rate payers.

As a result, the 2020 WOWSC board, now loaded up with Martin's cronies, raised the water and sewer rates an amazing 71%. This increase was purportedly to cover the massive legal fees spent to defend the malfeasance and nonfeasance of current and former directors. This may very well be the largest single rate increase in the history of water supply corporations.



Once again, the members took a stand: they filed a petition, signed by 30 percent of the ratepayers/members, with the Public Utility Commission to appeal the astounding rate increase. It is important to note that WOWSC director Patricia Gerino filed a PUC rate appeal where she resides for a paltry 50% rate increase by Corix. More anomalies! The directors have stated they are prepared to spend another six figures fighting the rate appeal.

The WOWSC Board acknowledged long ago its fiduciary duty to the member/ratepayers to sell the WOWSC's surplus airport property for the highest price obtainable. Had they done so, today the WOWSC would be debt free with money left over. Because the 2016 Board broke the law and disregarded their duties, the member/ratepayers lost more than \$1 million when the insider land deal closed. Later Boards received hard evidence of the wrongful conduct and the financial loss, but those directors did nothing to correct it. To the contrary, they spent WOWSC resources to protect Martin and the directors who caused the loss and to prevent the member/ratepayers from recovering their property or its value. The October 2019 Board had a golden opportunity to make the member/ratepayers whole, but instead those directors gave away even more valuable WOWSC property with absolutely nothing to show for it. All the while, these directors have been defending their wrongful conduct with the member/ratepayers' resources. These actions are illegal, fraudulent, criminal and in derogation of the directors' duties under applicable law. The recent rate increase is just the tip of the very costly and harmful iceberg these directors have created.

We are requesting, in fact begging OUR Sheriff Calvin Boyd, OUR District Attorney Sonny McAfee, the Texas Rangers and the Criminal Investigations Division of the Texas Attorney General to take a long hard serious look into what appears to us to be FRAUD and Organized Crime and the continued victimization of the good people of our little community by a handful of self-serving people that have shown zero regard for the very people they got themselves elected to serve.

Sincerely,

WOWSC Members and Concerned Citizens

Rene Ffrench	Allen Hicks
Dick Dial	Judy Carmichael
Danny Flunker	James Murdoch
Bruce Sorgen	Mark McDonald
Bill Billingsley	Michele Christenson
William Stein	John Otwell

cc: U.S. Congressman, Roger Williams  
Texas State Senator, Dr. Dawn Buckingham  
Burnet County District Attorney's Office c/o Sonny McAfee  
Texas Attorney General - Criminal Investigation Division  
Texas -Department of Public Safety - Texas Rangers Public Corruption Unit  
KXAN News Erin Cargile  
KVUE News - Defenders  
Austin American Statesman c/o Andrea Ball

attachment

## List of Anomalies Regarding the 2016 Insider Land Deal

### 2013

- **2013 A dispute arises over a Windermere Oaks Water Supply Corporation (WOWSC) own easement in the Spicewood Airport between a property owner in the airport, Clay Johnson and WOWSC Board after it was discovered Dana Martin sold Mr. Johnson a hangar lot guaranteeing access to this WOWSC easement . Worth noting - Clay Johnson's attorney is now Dana Martins attorney and Bill Earnest now owns Mr. Johnson's airport lot using Dana Martin as the listing real estate agent in 2020.**
- **2013 WOWSC board, through the insistence of Bill Earnest, bought a taxiway easement for \$25,000 to make the insider land more valuable. The easement now benefits Bill Earnest.**

### 2014

- **2014 WOWSC Board voted to sell all WOWSC property in the airport as one parcel to get most money. Also, said they would list the property and market it. Never happened.**

### 2015

- **2015 Dana Martin vigorously campaigned for her and Bob Mebane to get on the WOWSC board to save the water supply corp. She was instrumental in having the ratepayers not reelect Dorothy Taylor to the WOWSC board. As soon as the insider land deal was finished Dorothy Taylor was picked to replace Bill Earnest.**
- **WOWSC attorney NOT involved at all in the sale of the land to a sitting director, VP. He never laid his eyes on anything!**
- **2015 WOWSC Board never put getting the Hinton appraisal on agenda, not in the minutes. (violation of Texas law)**
- **Dana Martin signed check for Hinton Appraisal for \$600**
- **Hinton appraisal appraised airport land as farm land, no mention of airport in appraisal.**
- **WOWSC Director Pat Mulligan called out Hinton appraisal as lacking in correct comps and proposed use of land.**
- **12/2015 Sale of airport land to Dana Martin not put on the agenda. (violation of Texas law) Done in secret.**

### 2016

- **2/22/16 resolution to sell Dana Martin land not on agenda not in minutes. (violation of Texas law)**
- **Dana Martins recent deposition says resolution not done at 2/22/16 meeting however there is a physical resolution from 2/22/16 (fraud?)**
- **A 2006 WOWSC appraisal surfaced showing land value at \$50k an acre in 2006 (that's what Ms. Martin paid for it in 2016).**
- **Dana Martin did not share the 2006 appraisal with 2015 WOWSC board.**
- **Dana Martin did not share any recent airport comps with 2015/2016 WOWSC board or appraiser Hinton.**
- **Dana Martin DID share one large acreage tract as a comp with appraiser Hinton that was NOT located in the airport. BAD COMP!**

- **Bill Earnest resigns right after the insider land deal**

## 2017

- **2017 WOWSC board hired an attorney with a long criminal history** to fight the Texas Open Meeting Act violations. How did this man come to represent the WOWSC (ask Dorothy Taylor and Jeff Hagar)?

## 2018

- **May 2018 after losing the WOWSC election Joe Gimenez sends a certified letter to WOWSC attorney Les Romo** scolding Director Norm Morse. Mr. Gimenez points out what he sees as Mr. Morse's conflict of interest. Mr. Gimenez claims he wants to prevent future litigation. <https://integritynow1.net/certified-letter%2Fgimenez>
- **Les Romo was fired in 2018** when his extensive criminal history surfaced and after throwing tantrums in meetings.
- **2018 WOWSC Bolton Appraisal** showed an immediate loss of \$500,000 to WOWSC.
- **2018 WOWSC board**, after having a town hall meeting in January of 2019, voted to have attorneys send a 30-day demand letter to Dana Martin regarding her wrongful conduct.
- **2018 Board** asked for a legal opinion from TRWA as to whether Bill Earnest was eligible to run due to his deed being in a defunct corporation and his name not appearing on it as his WOWSC membership showed. His deed was changed just days before the election.

## 2019

- **January 2019 Joe Gimenez submits his application to run for the WOWSC board.** His application states the board needs balance and nonconflicted members. This as he ran with Bill Earnest (2016 insider land deal player) then proceeded to load the board with cronies of Dana Martin.
- **February 2019 Days after Mr. Gimenez was elected** he made it his priority to post to Yelp and Google comments defending the former WOWSC attorney.
- **2019 Board did a one-eighty** after Dana Martin got Bill Earnest and Joe Gimenez on the board. The board ignored the WOWSC Bolton appraisal and the 30-day demand letter.
- **Norm Morse was removed** from WOWSC board.
- **Dorothy Taylor installed as replacement for Norm Morse (It was Dorothy Taylor that alerted the members in 2016** to the insider land deal stating something had to be done about it-then did a 180.

**To Note - Piper Lane was NEVER mentioned as part of the original sale** until 2019 after Dana Martin was instrumental in canvassing for Bill Earnest and Joe Gimenez to become directors on the WOWSC board.

**Shortly after Earnest and Gimenez elected to board**, Dana Martin claimed an error in her deed FOUR plus years earlier. **The mercurial drawing of the original contract showing all of the land to be sold to Dana Martin magically disappeared.**

- **David Bertino resigned in late 2019** stating in part that he did not like the direction the board was going in.
- **2019 WOWSC Board Deeded Piper Lane to Dana Martin for no consideration** and ratified the original sale.
- **Bill Earnest** convinced Patricia Gerino, a dear friend, former business partner and fellow airport board director with Dana Martin, into filling the David Bertino's vacant position. **Patricia Gerino was installed.**
- **Joe Gimenez** (without a board vote and a violation of law) had the WOWSC attorneys file a lawsuit against the Texas Attorney General to conceal attorney bills after the Texas Attorney General ruled attorney invoices are not protected under this Public Information Request.
- **11/2019 Former and current WOWSC directors sign IOU's for their defense cost** because WOWSC insurance carrier denied the claim due to violations of law by the 2016 board. David Bertino is the only director that did not sign an IOU.
- **12/2019 A meeting was held to remove the president, Joe Gimenez,** after a petition was received calling for his removal, it was signed by 26% of the members.
- **Joe Gimenez authorized the expenditure of \$15,000** of the members resources to assure he could NOT be removed. A majority of members who voted, voted to remove Mr. Gimenez.
- **12/2019 Rich Schaefer** sent email requesting to be removed from a member mailer that had information about Dana Martins deposition. It was NOT known at that time that he was being groomed to take over for Bill Earnest when he resigned his position.
- **Bill Earnest resigned yet AGAIN** right after ratifying the insider land deal and giving away Piper Lane.
- **2019 WOWSC board let Bill Earnest pick his replacement,** a friend of Dana Martin and fellow pilot association director Rich Schaefer.
- **12/2019 Rich Schaefer installed.**
- **The 2019/2020 board has spent roughly \$210,000** defending current and former directors when the WOWSC insurance carrier refused to pay due to violations of law.

## 2020

- **The 2020 WOWSC board votes to raise water and sewer rates for a combine 71% increase** to cover legal fees.
- **2019 Board appointed director Patricia Gerino opts not to submit her application for the February 2020 WOWSC election.** She is reappointed to the board in February 2020 at the annual meeting after no one submits their name to the 2020 WOWSC board election. She is now secured into a position for the next two years, with never being elected by the ratepayers.
- **Vice President, Patricia Gerino files a rate appeal against her community water system, Corix Utilities at the PUC rate while voting to increase WOWSC by 71%** as the vice president of the WOWSC.



Mr. de la Fuente's Direct Line: (512) 322-5849  
Email: [jdelafuente@lglawfirm.com](mailto:jdelafuente@lglawfirm.com)

January 25, 2019

*Via Email: [mollym@abdmlaw.com](mailto:mollym@abdmlaw.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 33<sup>rd</sup> 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

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.

January 25, 2019

Page 4

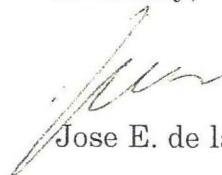
Finally, pursuant to the Unimproved Property Contract and as consideration for the transactions, Friendship Homes agreed to grant a 50-foot easement to run from Piper Lane to the west property line of the 3.86 acres that Friendship Homes acquired in fee simple. An inspection of the Burnet County property 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 C

# Protecting your identity

We want you to feel safe when you're on YouTube, which is why we encourage you to let us know if videos or comments on the site violate your privacy or sense of safety.

If someone has posted your personal information or uploaded a video of you without your consent, you should [contact the uploader](#) and ask them to remove the content. If you can't reach an agreement with the uploader, or if you're uncomfortable contacting them, you can [request to have the content removed](#) based on our [Privacy Guidelines](#).

## Criteria for removing content

Our [Privacy Guidelines](#) provide a detailed explanation of our privacy complaint process and the factors we take into account when evaluating privacy claims.

For content to be considered for removal, an individual must be uniquely identifiable. If you want to use the [privacy complaint process](#), make sure that you are uniquely identifiable within the content you seek to report before proceeding. When assessing if an individual is uniquely identifiable, we consider the following factors:

- Image or voice
- Full name
- Financial information
- Contact information
- Other personally identifiable information

When you report a privacy complaint, we consider public interest, newsworthiness, and consent as factors in our final decision.

## Tips on how to protect your privacy on YouTube:

- **Think carefully before you post personal information.** This includes things like the town you live in, where you go to school, and your home address.
- **Protect your account data and don't share your password with others.** YouTube employees will never ask you for your password. Don't be fooled if someone contacts you pretending to be from YouTube.
- **Get permission first.** As a rule of thumb, you should get permission before filming other people or posting their personal information.
- **Visit our [Privacy and Safety Settings](#) page** for a list of tools that you can use to manage your content and experience on the site.
- **Check out best practices** for keeping your [Google account secure](#).
- **Stronger security for Google account:** Keep your accounts secured through [2-step verification](#). [↗](#)



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# YouTube Privacy Guidelines

## YouTube Privacy Guidelines

We're serious about protecting our users by addressing potential privacy concerns. Our privacy guidelines apply to all users across the world. In other words, while the video in question may not violate your country's privacy laws, it may still violate YouTube's privacy guidelines.

### How does YouTube determine if content should be removed for a privacy violation?

For content to be considered for removal, an individual must be uniquely identifiable by image, voice, full name, government identification number, bank account number, contact information (e.g. home address, email address), or other uniquely identifiable information. We also take public interest, newsworthiness, and consent into account when determining if content should be removed for a privacy violation. YouTube reserves the right to make the final determination of whether a violation of its privacy guidelines has occurred.

#### What does uniquely identifiable mean?

To be considered uniquely identifiable, there must be enough information in the video that allows others to recognize you. Please note that just because you can identify yourself within the video, it does not mean you are uniquely identifiable to others. A first name without additional context or a fleeting image, for example, would not likely qualify as uniquely identifiable.

### How YouTube's privacy process works

If a privacy complaint is filed, YouTube may provide the uploader an opportunity to remove or edit the private information within their video. We issue notification of the potential violation and provide the uploader 48 hours to take action on the complaint. If the uploader removes the video during these 48 hours, the complaint filed will be closed. If the potential privacy violation remains on the site after 48 hours, the YouTube Team will then review the complaint.

Our [Privacy Complaint Process](#) also accounts for cases that warrant urgent removal of contact or financial data.

### Reporting a privacy violation

To file a privacy complaint, start the [Privacy Complaint Process](#). As the complainant, your privacy is respected in this process. At no point will your identity or contact information be released to the uploader without your consent. Our communications to you about this process will be sent to the email address you provide to us. Add [support@youtube.com](mailto:support@youtube.com) to your spam filter to ensure you receive these messages.

First-party claims are required.

We do not accept claims made on behalf of third parties **except** in the following situations:

- the individual whose privacy is being violated does not have access to a computer
- the individual whose privacy is being violated is a vulnerable individual
- the claim is being made by the parent or legal guardian of the individual whose privacy is being violated
- the claim is being made by a legal representative for the individual whose privacy is being violated

We will not accept privacy complaints filed on behalf of:

- other family members (e.g., husband, wife, cousin, brother, sister)
- co-workers or employees (individuals must submit a report themselves)
- a company

Tips on filing a complete privacy complaint

- Please be clear and concise so that the YouTube Team can identify you within the video.
- Use time stamps to indicate only one or two places where you clearly appear in the video.
- In the description area, please specify what you are wearing or doing that differentiates you from others within the video.
- Make sure you've included the video URL in your report. You are not required to submit a URL if you are reporting an entire channel.
- If you are reporting a comment made in the comments section of a video, please note this in the description area. Include the commenter's username in the username field.

## Receiving notice of a privacy violation

YouTube may provide you, the uploader, an opportunity to remove or edit the private information within your video. In this case, we would email you about the potential violation and allow you 48 hours to take action on the complaint. If you remove the alleged violation from the site within the 48 hours, the complaint filed will then be closed. If the potential privacy violation remains on the site after 48 hours, the complaint will be reviewed by the YouTube Team.

If we remove your video for a privacy violation, please do not upload another version featuring the same people. These individuals will likely file another privacy complaint or report you for harassment. We are serious about protecting our users and suspend accounts that violate people's privacy.

### How can I address the complaint?

- You can remove the reported content completely from the site.
- If someone's full name or other personal information is listed within the title, description, or tags of your video, you can edit this by going to My Videos and clicking the Edit button on the reported video.
- You can blur the faces of individuals who appear in the videos.

Incomplete methods of removal are **not** acceptable, and include:

- Making a video private as the uploader can change the status from private to public at any time.



Give feedback about this article

# Exhibit D



### Goose Invasion - Thwarted

12 views • Apr 23, 2020

Like 1, Comment 0, SHARE, SAVE, ...



**joe gimenez**  
9 subscribers

**SUBSCRIBE**

When these labs were younger, they would a) not have waited for a command b) swam for hours chasing the geese and c) never have gotten close to the geese. They are more realistic now that they are eight years old, but the thrill of the chase is still there.

SHOW MORE

1 Comment SORT BY

**J** Add a public comment...

**Highlighted comment**  
RH RH 4 days ago

I just watched your deposition videos Joe and I must say you are the most idiotic piece of shit I have ever seen. I hope your stupid ass was fired from your scam job. You deserve nothing but a kick in your teeth after that display of lying. How can someone like you even hold a job with as stupid as you are? I feel sorry for your wife and kids.

Like, Dislike, REPLY