

1994 KAPPLAR LAWSUIT

**WOLFE CLARK & HENDERSON, L.L.P.**

*ATTORNEYS & COUNSELORS*

123 N. CROCKETT STREET, SUITE 100

SHERMAN, TEXAS 75090

(903) 868-1933

(903) 892-2397 (FAX)

January 25, 1994

JAMES E. HENDERSON (1908-1991)  
WILLIAM R. BRYANT (1919-1979)

JOSEPH W. WOLFE  
RONALD H. CLARK  
JAMES CORLEY HENDERSON  
JAMES C. TIDWELL

Ms. Cheryl Milam  
Administrative Secretary-Finance  
Town of Addison  
P. O. Box 144  
Addison, TX 75001

Re: Kezoh, et al v. Multivest Real Estate Fund, LTD, et al  
Cause No. 93-3827-E

Dear Ms. Milam:

Judgment has been entered in favor of the Town in this case. Enclosed is a copy of the Judgment. The Judgment disposes of all of Plaintiffs' claims against the Town of Addison.

I have appreciated the opportunity of representing the Town in this matter.

Very truly yours,



Ronald H. Clark

RHC/smw

Enclosure: Agreed Judgment as to Defendant, Town of Addison

cc: Ron Whitehead  
Kenneth Dippel  
Robin Jones  
John Baumgartner ✓

CAUSE NO. 93-3827-E

PAUL B. KEZOH, ET AL	*	
	*	
V.	*	IN THE DISTRICT COURT OF
	*	
MULTIVEST REAL ESTATE FUND, LTD., and	*	DALLAS COUNTY, TEXAS
	*	
BROOKLAKE LTD., ET AL and	*	101ST JUDICIAL DISTRICT
	*	
THE TOWN OF ADDISON	*	

AGREED JUDGMENT AS TO DEFENDANT, TOWN OF ADDISON

On this day came on to be considered the Motion for Summary Judgment of Defendant, Town of Addison. The Court, having considered the Motion, the "Agreed Motion to Waive Hearing, Enter Judgment, and To Sever," and the pleadings and papers on file in the case is of the opinion that the Motion should be granted.

It is therefore ORDERED that the Motion for Summary Judgment of Defendant, Town of Addison, is granted, and that Plaintiffs shall take nothing of and from Defendant, Town of Addison. The Town of Addison shall not be liable for any costs in this case, and all costs shall abide a final decision by the Court as to the remaining parties in the case.

The Court, finding that this Judgment disposes of all issues between Plaintiffs and Defendant, Town of Addison, and that no purpose would be served by continuing the Town of Addison as a party to this suit, except to impose costs and expenses on the Town of Addison in having to monitor the case, hereby orders that Plaintiffs' claim against the Town of Addison shall be severed from the present cause of action so that this Judgment, as to the Town of Addison only, is a Final Judgment. Any further proceedings

against the Town of Addison by Plaintiffs shall be in the form of a separately styled and docketed suit.


Signed this 20 day of Jan, 1996.



Judge Presiding

APPROVED AND AGREED TO:

  
F. Steven Kessler  
Attorney for Plaintiffs

  
Ronald H. Clark  
Attorney for Defendant,  
Town of Addison

PAUL B. KEZOH AND JOSEPHINE KEZOH, \*  
INDIVIDUALLY AND ON BEHALF OF \*  
THE ESTATE OF PAUL B. KEZOHMAN, \*  
JR., DECEASED \*

V. \*

MULTIVEST REAL ESTATE FUND, \*  
LTD., SERIES V., DOING BUSINESS \*  
AS GREENHAVEN VILLAGE APARTMENTS, \*  
AND \*

BROOKLAKE LTD., DOING BUSINESS \*  
AS BROOKTREE APARTMENTS and \*  
PAUL E. THOMAS, INDIVIDUALLY AND \*  
AS A PARTNER OF BROOKLAKE LTD., \*  
and JERRY D. SHIPLEY, INDIVIDUALLY \*  
AND AS A PARTNER OF BROOKLAKE LTD. \*  
AND \*

THE TOWN OF ADDISON \*

IN THE DISTRICT COURT OF  
  
DALLAS COUNTY, TEXAS  
  
101ST JUDICIAL DISTRICT

AFFIDAVIT OF JOHN BAUMGARTNER

STATE OF TEXAS \*  
\*  
COUNTY OF DALLAS \*

On this day came before me, the undersigned authority, JOHN BAUMGARTNER, who being duly cautioned and sworn testified as follows:

"My name is John Baumgartner, I am over 21 years of age, I have never been convicted of a felony or a crime of moral turpitude, I am competent to testify, and I have personal knowledge of the facts set out herein, each of which is true and correct.

I received a Bachelor of Science degree in Civil Engineering from the University of Idaho in 1983. I am a registered professional engineer, registered in the State of Texas.

I was employed as City Engineer with the Town of Addison from November 1990 through October 1992. Since October 1992, I have been employed as Director of Public Works for the Town of Addison. As part of my duties and responsibilities I am familiar with public works located in the Town of Addison, namely those public improvements built by the Town for public use, or built by private contractors and developers and turned over to the Town for public use.

It is the regular course of business for the Town of Addison to keep and preserve plans of all public works in the Town of Addison. This is done so that if repairs or improvements are needed, or if there is some need to verify some aspect of the public work, the plans will be available. As part of my duties and responsibilities I am a custodian of these records. I have had a careful search made of the public works plans of the Town of Addison and have found no plan or record of the culvert located between the Brooktree Apartments (formerly known as the Millcreek Apartments), 4020 Brookhaven Club Drive, Addison, Texas, and the Greenhaven Apartments, 3950 Brookhaven Club Drive, Addison, Texas, which discharges into Farmers Branch Creek. This culvert was not constructed, repaired, or improved by the Town of Addison at any time after I became City Engineer in November 1990. The absence of any plan or record in the Town's files concerning this culvert indicates to me that the Town never built, constructed, repaired, or improved this culvert.

When plans for construction are submitted to the Town of Addison for approval, or to obtain building permits, they are

reviewed by various officials of the Town of Addison. Storm drainage on and across the property is the responsibility of the landowner, and the contractor or developer who is building the project. The engineer working for the contractor or developer is responsible for calculating the amount of water flowing on and across the property, and for designing drainage facilities which will handle the expected flow of water. During the review process, Town engineers may check the drainage calculations, and check whether the designed drainage facilities can handle the calculated amount of water. However, there is no policy, procedure, or ordinance, which requires, or involves the City's engineers or other staff in checking for fencing or safety measures around drainage facilities. While the building inspectors generally inspect buildings to be sure that water will flow away from buildings, employees of the Town do not generally inspect culverts and other drainage facilities. The contractor or builder's engineer is required to certify that the drainage facilities are built in accordance with the plans. I am not aware of any Town ordinance or policy which places any type of safety standard or requirement concerning fencing or barricades around drainage facilities or culverts so as to prevent falls or other accidents.

The Town does not have a policy of inspecting culverts on private property. The only time the Town might become involved in looking at or examining a culvert on private property is when that culvert has become clogged or backed up, resulting in a back flow of water or flooding of other property.

Attached to this Affidavit is a copy of a plat approved by the Mayor of the Town of Addison on December 6, 1976. It is the revised final plat for the Millcreek Apartments, now known as the Brooktree Apartments. As part of my duties and responsibilities as an engineer and as Director of Public Works for the Town of Addison, I review such plats to determine the location of easements which may be used for, or considered as, public works of the Town.

The plat shows that there is a drainage easement located in the approximate location of the culvert in question in this suit. However, the dedication language on the plat dedicates only the sewer and fire lane easements. The water easement is expressly not dedicated to the Town, and there is no dedication of the drainage easement.

The Town of Addison does not regularly accept responsibility for dedicated drainage easements. In fact, Town of Addison ordinance places the responsibility for drainage and floodway dedications and easements on the property owners.

Attached is a certified copy of Sections 10-16 through 10-26 of the Code of Ordinances of the Town of Addison. Section 10-24 gives the Town the authority, but not the obligation, to enter upon easements. However, the section specifically makes maintenance of any easements the responsibility of the landowners."

Signed this 8th day of October, 1993.

  
John Baumgartner



STATE OF TEXAS \*

COUNTY OF DALLAS \*

Subscribed and sworn to before me, the undersigned authority,  
by JOHN BAUMGARTNER, who is personally known to me, on this 8  
day of October, 1993.

Marilyn B. LeBlanc  
Notary Public - State of Texas

My Commission Expires:

2-24-96



the enjoyment of life or property uncomfortable or interferes with public peace and comfort, nor shall make or cause to be made any unreasonably loud, disturbing or unnecessary noise in the city. This section shall not apply to noise associated with special events taking place within the city. The term "special events" shall mean events which are authorized by, approved by, or sponsored in whole or in part by the city and which events may result in noise from fireworks, bands or sound systems, exhibiting aircraft, race cars or other noise-producing mechanisms. (Ord. No. 088-021, § 1, 5-10-88; Ord. No. 088-051, § 1, 11-8-88)

**Sec. 10-8. Same—Loading or unloading vehicles.**

The creation of unreasonably loud, disturbing or unnecessary noises in connection with the loading or unloading of any vehicle is prohibited on any premises in a residential district or within a five hundred (500) foot radius from any area or property which is zoned for residential use except during the following days and times only:

Monday through Friday—7:00 a.m.—7:00 p.m.

Saturdays, Sundays and Holidays—10:00 a.m.—5:00 p.m.  
(Ord. No. 088-021, § 1, 5-10-88; Ord. No. 090-024, § 1, 5-8-90)

**Secs. 10-9—10-15. Reserved.**

**ARTICLE II. MAINTAINING NUISANCE\***

**Sec. 10-16. Penalties generally.**

The penalty provided for a violation of this Code shall be in addition to and cumulative of the provisions in this article for the abatement of nuisances and charging the cost of same against the owner of the premises by the city. (Ord. No. 206, § 12, 4-21-75)

\*Cross references—Animals and fowl, Ch. 4; housing, Ch. 7; solid waste, Ch. 15.

State law reference—Sanitation and health protection, V.T.C.S., Art. 1477 et seq.

**Sec. 10-17. Definitions.**

For the purpose of this article, the terms used herein shall be interpreted as follows:

*General.* Any words not defined in this section shall be construed in the context used and by ordinary interpretation and not as a word of art.

*Animal or animals other than dogs* shall mean any animal, other than dogs, which creates a health hazard or definite danger to the surrounding neighborhood.

*Brush* shall mean scrub vegetation or dense undergrowth.

*Business zoning district* means any zoning district designated by the comprehensive zoning ordinance of the Town of Addison as LR, C. I-1, I-2, I-3. Any PD district is also included in this list, unless specifically excluded by its provisions.

*Carrion* shall mean the dead and putrifying flesh of an animal, fowl or fish.

*Filth* shall mean any matter in a putrescent state.

*Impure or unwholesome matter* shall mean any putrescible or nonputrescible condition, object or matter which tends to, may or could produce injury, death or disease to human beings.

*Matter* shall mean that of which any physical object is composed.

*Nonbusiness zoning district* means any zoning district not designated as a business zoning district.

*Nuisance* shall include stagnant or unwholesome water, sinks, privies, filth, carrion, weeds, rubbish, brush and refuse, impure or unwholesome matter of any kind, objectionable, unsightly or unsanitary matter of whatever nature, litter or animal or animals other than dogs, as defined elsewhere in this section.

*Objectionable, unsightly or unsanitary matter* shall mean any matter, condition or object which is or should be objectionable, unsightly or unsanitary to a person of ordinary sensitivities.

*Refuse* shall mean heterogeneous accumulation of worn out, used up, broken, rejected or worthless materials.

*Rubbish* shall mean trash, debris, rubble, stone, useless fragments of building material and other miscellaneous useless wastes or rejected matter.

*Weeds* shall mean grass, weeds or brush of a height in excess of twelve (12) inches, but not cultivated vegetation. (Ord. No. 206, § 1(a-1), 4-21-75; Ord. No. 088-027, § 1, 6-28-88)

State law reference—Definitions relating to minimum standards of sanitation and health protection, V.T.C.S., Art. 4477-1, § 1.

**Sec. 10-18. Unsightly weeds and vegetation—prohibited.**

It shall be unlawful for any person owning, claiming, occupying or having supervision or control over any real property located in a business zoning district, occupied or unoccupied, within the corporate limits of the city, to permit grass, weeds or brush to grow to a greater height than twelve (12) inches upon any real property. Furthermore, it shall be unlawful for any person owning, claiming, occupying or having supervision or control over any real property located in a nonbusiness zoning district, occupied or unoccupied, within the corporate limits of the city, to permit grass, weeds or brush to grow to a greater height than six (6) inches. In no event shall any person owning, claiming, occupying or having supervision or control over any real property located in any district, occupied or unoccupied, within the corporate limits of the city, permit objectionable or unsightly matter to remain upon said property. (Ord. No. 63, 6-9-64; Ord. No. 155, § 1, 5-21-73; Ord. No. 206, § 2, 4-21-75; Ord. No. 088-027, § 2, 6-28-88)

State law reference—Authority for above section, V.T.C.S., Art. 4436.

**Sec. 10-19. Same—Removal and cutting of weeds, grass or plants.**

It shall be the duty of any person, owner, agent, occupant or anyone having supervision or control of any lot, tract, parcel of land, or a portion thereof, occupied or unoccupied, within the city to take whatever action is necessary to remove, cut, eliminate, eradicate, control or cause to be removed, cut, eliminated, eradicated or controlled, all such grass, weeds or plants as often as may be necessary to comply with this article. (Ord. No. 821, § 1, 8-10-82; Ord. No. 088-027, § 3, 6-28-88)

**Sec. 10-20. Same—Removal or deposit of dirt, gravel, etc.**

It shall be unlawful for any person to remove or deposit dirt, gravel, earth or topsoil from any land situated within the city unless such person provides for proper drainage following the removal or deposit of such dirt, gravel, earth or topsoil. By the term "proper drainage," it is meant that the water drainage off such land shall not disturb the natural drainage so as to adversely affect city streets or adjoining property owners. It shall be unlawful for any person to remove or deposit any such material unless he first secures a permit for such from the city. The owners of any private property where fill material is placed shall cause the same to be graded and leveled within thirty (30) days from the placement thereof. (Ord. No. 821, § 2, 8-10-82)

**Sec. 10-21. Zoning.**

In areas zoned commercial or industrial under the zoning ordinance of the city, the requirements in sections 10-17—10-20 shall be applicable to areas within two hundred (200) feet from buildings and areas within two hundred (200) feet from property lines adjacent to the building on adjoining property owned by other persons, and within two hundred (200) feet of property zoned other than commercial or industrial under the zoning ordinance of the city. (Ord. No. 206, § 4, 4-21-75)

**Sec. 10-22. Railroad rights-of-way.**

The provisions of this article shall be applicable to all railroad rights-of-way. (Ord. No. 206, § 5, 4-21-75)

*Cross reference*—Motor vehicles and traffic, Ch. 9.

**Sec. 10-23. Accumulation of lumber, boxes, junk, wrecked automobiles, machinery, etc.**

It is unlawful and declared a nuisance for any owner or occupant, tenant or lessee of any premises improved or unimproved on which evidence of rat infestation is found, or any lots or alleys adjacent to such property, to permit accumulation of any lumber, boxes, barrels, bricks, stones or any other character of materials

that may be used as a harborage for rats, rodents or other vermin, unless same shall be placed on open racks and elevated not less than eighteen (18) inches above the ground, with a clear intervening space underneath; or any and all waste matter, whether reusable or not, which is offensive to the public health, safety or to the esthetics of the neighborhood, and is specifically intended to include, but not be limited to, worn out, wrecked and/or abandoned automobiles, trucks, tractors, machinery or any parts thereof, brick, stones, old iceboxes, refrigerators and stoves, to accumulate or remain on such lot or premises. (Ord. No. 206, § 6, 4-21-75; Ord. No. 821, § 1, 8-10-82)

**State law reference**—Authority for above section, V.T.C.S., Art. 4436.

**Sec. 10-24. Nuisance located upon easements; duties of abutting property owners and occupants.**

For purposes of this section, the term "easement" shall mean a right, vested in the public generally or in the community as a whole, to use and enjoy the land of another person for a special purpose. Such term shall include, but not be limited to, all drainage and floodway dedications or easements located within the corporate limits of the Town of Addison. In the event that a nuisance, as defined hereinabove at section 10-17, is found to exist upon any easement within the city, or in the event that any person, firm or corporation whose property is burdened by any easement within the city limits, fails to comply with the foregoing provision of this article, the city manager or his duly appointed representative may give a ten (10) day official notice to such person, firm or corporation which is creating such nuisance or is violating the terms of this article. If such person, firm or corporation fails or refuses to comply with the provision of sections 10-18 through 10-20 within the ten (10) days following notification, they shall be considered to be in violation and subject to a fine as provided in Chapter 1 of this Code. The provisions of this section shall apply only to the owner of the servient estate or the property burdened by the easement and shall not apply to the grantee or holder of such easement.

Property owners and occupants shall be jointly responsible for nuisances and abatement thereof under this article up to the curb or sidewalk, and between the curb and sidewalk, of the

streets and to the pavement of alleys on abutting property they own or occupy. Existing drainage areas and creeks traversing drainage and floodway easements within the city shall remain as open channels (unless required to be enclosed by other ordinances) at all times and shall be maintained by the individual owners of the lot or lots that are traversed by or adjacent to the drainage and floodway easements. The city shall not be responsible for maintenance or operation of said creeks or drainage or for any damage or injury to private property or person that results from the flow of water along said creek or drainage, or for the control of erosion. Each property owner shall keep the natural drainage area channel and creek traversing the drainage and floodway easements adjacent to his property clean and free of debris, silt, growth, vegetation, weeds, rubbish, refuse, matter and any substance which would result in unsightly or unsanitary conditions or obstruct the flow of water. The city shall have the right, but not the obligation, to enter upon the easements at any point or points with all rights of ingress and egress for the purpose of inspection and supervision of maintenance work by the property owner to alleviate any undesirable conditions which may occur. (Ord. No. 155, § 3, 5-21-73; Ord. No. 206, § 7, 4-21-75; Ord. No. 821, § 4, 8-10-82; Ord. No. 087-068, § 1, 10-13-87)

#### **Sec. 10-25. Other properties.**

The provisions of the preceding section shall apply to all other real properties occupied or unoccupied, except that the requirement of a ten (10) day official notification is met and fulfilled when the mayor or an authorized agent of the city has given ten (10) days' notice in writing at least one time in any calendar year to the person who is creating the nuisance by letter addressed to such person at his post office address, or by publication two (2) times within ten (10) consecutive days in the city's official paper. (Ord. No. 155, § 3, 5-21-73; Ord. No. 206, § 7, 4-21-75)

State law reference—Authority for above section, V.T.C.S., Art. 4436.

#### **Sec. 10-26. Authority of city to abate nuisances.**

a) If the owner of property in the city does not comply with each of the applicable requirements of the preceding sections 10-18 through 10-24 of this article within ten (10) days of notice of a violation, the city shall have the right, but not the obligation, to:

- (1) Do the work or make the improvements required; and
- (2) Pay for the work done or improvements made and charge the expenses to the owner of the property.

(b) The notice referred to in subsection (a) of this section must be given:

- (1) Personally to the owner in writing;
- (2) By letter addressed to the owner at the owner's post office address; or
- (3) By publication at least twice within ten (10) consecutive days if personal service cannot be obtained or the owner's post office address is unknown.

(c) Nothing herein shall be construed to place the burden of maintenance of any property or easements, as "easement" is defined in these provisions, including, but not limited to, drainage and floodway easements on the city.

(d) This section shall be construed to conform to the requirements and provisions of the State Health and Safety Code, section 342.006.

(e) The expenses to be charged to the owner of the property, as authorized by subsection (a)(2) of this section, shall include:

- (1) The amount paid by the city for the work done or improvements made;
- (2) The costs of inspection;
- (3) The costs of publishing notice in the newspaper; and
- (4) An administrative fee of fifty dollars (\$50.00) to cover the costs of identifying and notifying the owner of the property, and incidental expenses.

(f) In the event that the owner of the property fails or refuses or for any other reason does not pay the expenses specified in subsection (e) of this section within thirty (30) days after the first day of the month following the month in which the work was done or improvements were made by the city, the governing body of the city may assess expenses incurred, those expenses defined in sub-



section (e) of this section, against the real estate on which the work was done or improvements made by the city.

(g) To obtain a lien against the property, the governing body, the city health authority, the city manager, or city tax authority shall file a statement of expenses, those expenses defined in subsection (e) of this section, with the county clerk.

(h) The lien obtained by the city is security for the expenditures made and interest accruing at the rate of ten (10) percent on the amount due from the date of payment by the city.

(i) The lien is inferior only to:

- (1) Tax liens; and
- (2) Liens for street improvements.

(j) The city may bring a suit for foreclosure in the name of the city to recover the expenditures and interest due.

(k) The statement of expenses or a certified copy of the statement is prima facie proof of the expenses incurred by the city in doing the work or making the improvements.

(l) The remedies provided by this section shall be in addition to all other remedies available to the city. (Ord. No. 092-009, § 2, 1-28-92)

*Editor's note*—Section 1 of Ord. No. 092-009, adopted Jan. 28, 1992, repealed former § 10-26 and § 2 of the ordinance enacted a new § 10-26 in lieu thereof. The repealed provisions pertained to the authority of the city to abate nuisances and derived from Ord. No. 155, § 3, adopted May 21, 1973; Ord. No. 206, § 7, adopted April 21, 1975; Ord. No. 084-023, § 1, adopted April 10, 1984; and Ord. No. 087-68, § 2, adopted Oct. 13, 1987.

#### **Sec. 10-27. Reserved.**

*Editor's note*—Ord. No. 087-068, § 3, adopted Oct. 13, 1987, repealed § 10-27, relative to the duties of abutting property owners and occupants concerning the abatement of nuisances. The provisions of former § 10-27 derived from Ord. No. 206, § 8, adopted April 21, 1975.

#### **Sec. 10-28. Reserved.**

*Editor's note*—Section 1 of Ord. No. 092-009, adopted Jan. 28, 1992, repealed former § 10-28, which pertained to expenses incurred pursuant to former § 10-26 in abating nuisances, and derived from Ord. No. 155, § 4, adopted May 21, 1973; Ord. No. 206, § 9, adopted April 21, 1975; Ord. No. 084-023, § 2, adopted April 10, 1984; and Ord. No. 087-068, § 4, adopted Oct. 13, 1987.

**WOLFE CLARK & HENDERSON, L.L.P.**

ATTORNEYS & COUNSELORS

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JAMES E. HENDERSON (1908-1991)

WILLIAM R. BRYANT (1919-1979)

JOSEPH W. WOLFE

RONALD H. CLARK

JAMES CORLEY HENDERSON

JAMES C. TIDWELL

AMOS L. MAZZANT

October 4, 1993

Mr. John Baumgartner, P.E.  
Director of Public Works  
Town of Addison  
P. O. Box 144  
Addison, TX 75001

Re: Kappler, et al v. Addison, et al, Cause No. 93-3831-A  
Kezoh, et al v. Addison, et al, Cause No. 93-3827-E

Dear John:

Enclosed are two revised original Affidavits for your review and signature. One is for the Kappler case and one is for the Kezoh case. Please remove the copies of the plats attached to the first Affidavits and attach them to these Affidavits.

I would appreciate it if you would review these Affidavits. If any changes are needed, or any blanks need to be filled in to make them absolutely correct, please call me. If they are correct, please sign them before a Notary and, where indicated, ask Carmen Moran to sign them.

Please let me know if you have any questions or suggestions concerning this matter.

Very truly yours,



Ronald H. Clark

RHC/smw

Enclosures: Affidavit of John Baumgartner (2)

SHANDRA KAPPLER, INDIVIDUALLY  
AND ON BEHALF OF THE ESTATE  
OF MATTHEW B. RODEN, DECEASED

V.

MULTIVEST REAL ESTATE FUND,  
LTD., SERIES V., DOING BUSINESS  
AS GREENHAVEN VILLAGE APARTMENTS,  
AND

NEW YORK LIFE INSURANCE COMPANY,  
DOING BUSINESS AS BROOKTREE  
APARTMENTS, AND

THE CITY OF ADDISON

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IN THE DISTRICT COURT OF

DALLAS COUNTY, TEXAS

14TH JUDICIAL DISTRICT

AFFIDAVIT OF JOHN BAUMGARTNER

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I was employed as City Engineer with the Town of Addison from November 1990 through October 1992. Since October 1992, I have been employed as Director of Public Works for the Town of Addison. As part of my duties and responsibilities I am familiar with public

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The plat shows that there is a drainage easement located in the approximate location of the culvert in question in this suit. However, the dedication language on the plat dedicates only the sewer and fire lane easements. The water easement is expressly not dedicated to the Town, and there is no dedication of the drainage easement.

The Town of Addison does not regularly accept responsibility for dedicated drainage easements. In fact, Town of Addison ordinance places the responsibility for drainage and floodway dedications and easements on the property owners.

Attached is a certified copy of Sections 10-16 through 10-26 of the Code of Ordinances of the Town of Addison. Section 10-24 gives the Town the authority, but not the obligation, to enter upon easements. However, the section specifically makes maintenance of any easements the responsibility of the landowners."

Signed this 8th day of October, 1993.

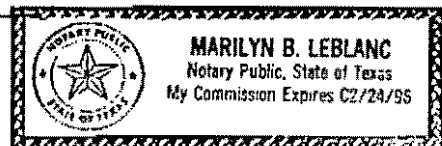
*[Handwritten Signature]*  
\_\_\_\_\_  
John Baumgartner

STATE OF TEXAS \*  
COUNTY OF DALLAS \*

Subscribed and sworn to before me, the undersigned authority, by JOHN BAUMGARTNER, who is personally known to me, on this 8 day of October, 1993.

*[Handwritten Signature]*  
\_\_\_\_\_  
Notary Public - State of Texas

My Commission Expires: 2-24-96



the enjoyment of life or property uncomfortable or interferes with public peace and comfort, nor shall make or cause to be made any unreasonably loud, disturbing or unnecessary noise in the city. This section shall not apply to noise associated with special events taking place within the city. The term "special events" shall mean events which are authorized by, approved by, or sponsored in whole or in part by the city and which events may result in noise from fireworks, bands or sound systems, exhibiting aircraft, race cars or other noise-producing mechanisms. (Ord. No. 088-021, § 1, 5-10-88; Ord. No. 088-051, § 1, 11-8-88)

**Sec. 10-8. Same—Loading or unloading vehicles.**

The creation of unreasonably loud, disturbing or unnecessary noises in connection with the loading or unloading of any vehicle is prohibited on any premises in a residential district or within a five hundred (500) foot radius from any area or property which is zoned for residential use except during the following days and times only:

Monday through Friday—7:00 a.m.—7:00 p.m.

Saturdays, Sundays and Holidays—10:00 a.m.—5:00 p.m.  
(Ord. No. 088-021, § 1, 5-10-88; Ord. No. 090-024, § 1, 5-8-90)

**Secs. 10-9—10-15. Reserved.**

**ARTICLE II. MAINTAINING NUISANCE\***

**Sec. 10-16. Penalties generally.**

The penalty provided for a violation of this Code shall be in addition to and cumulative of the provisions in this article for the abatement of nuisances and charging the cost of same against the owner of the premises by the city. (Ord. No. 206, § 12, 4-21-75)

\*Cross references—Animals and fowl, Ch. 4; housing, Ch. 7; solid waste, Ch. 15.

State law reference—Sanitation and health protection, V.T.C.S., Art. 1477 I et seq.

**Sec. 10-17. Definitions.**

For the purpose of this article, the terms used herein shall be interpreted as follows:

*General.* Any words not defined in this section shall be construed in the context used and by ordinary interpretation and not as a word of art.

*Animal or animals other than dogs* shall mean any animal, other than dogs, which creates a health hazard or definite danger to the surrounding neighborhood.

*Brush* shall mean scrub vegetation or dense undergrowth.

*Business zoning district* means any zoning district designated by the comprehensive zoning ordinance of the Town of Addison as LR, C, I-1, I-2, I-3. Any PD district is also included in this list, unless specifically excluded by its provisions.

*Carriion* shall mean the dead and putrifying flesh of an animal, fowl or fish.

*Filth* shall mean any matter in a putrescent state.

*Impure or unwholesome matter* shall mean any putrescible or nonputrescible condition, object or matter which tends to, may or could produce injury, death or disease to human beings.

*Matter* shall mean that of which any physical object is composed.

*Nonbusiness zoning district* means any zoning district not designated as a business zoning district.

*Nuisance* shall include stagnant or unwholesome water, sinks, privies, filth, carriion, weeds, rubbish, brush and refuse, impure or unwholesome matter of any kind, objectionable, unsightly or unsanitary matter of whatever nature, litter or animal or animals other than dogs, as defined elsewhere in this section.

*Objectionable, unsightly or unsanitary matter* shall mean any matter, condition or object which is or should be objectionable, unsightly or unsanitary to a person of ordinary sensitivities.

*Refuse* shall mean heterogeneous accumulation of worn out, used up, broken, rejected or worthless materials.



*Rubbish* shall mean trash, debris, rubble, stone, useless fragments of building material and other miscellaneous useless wastes or rejected matter.

*Weeds* shall mean grass, weeds or brush of a height in excess of twelve (12) inches, but not cultivated vegetation. (Ord. No. 206, § 1(a-1), 4-21-75; Ord. No. 088-027, § 1, 6-28-88)

State law reference—Definitions relating to minimum standards of sanitation and health protection. V.T.C.S., Art. 4477-1, § 1.

**Sec. 10-18. Unsightly weeds and vegetation—prohibited.**

It shall be unlawful for any person owning, claiming, occupying or having supervision or control over any real property located in a business zoning district, occupied or unoccupied, within the corporate limits of the city, to permit grass, weeds or brush to grow to a greater height than twelve (12) inches upon any real property. Furthermore, it shall be unlawful for any person owning, claiming, occupying or having supervision or control over any real property located in a nonbusiness zoning district, occupied or unoccupied, within the corporate limits of the city, to permit grass, weeds or brush to grow to a greater height than six (6) inches. In no event shall any person owning, claiming, occupying or having supervision or control over any real property located in any district, occupied or unoccupied, within the corporate limits of the city, permit objectionable or unsightly matter to remain upon said property. (Ord. No. 63, 6-9-64; Ord. No. 155, § 1, 5-21-73; Ord. No. 206, § 2, 4-21-75; Ord. No. 088-027, § 2, 6-28-88)

State law reference—Authority for above section. V.T.C.S., Art. 4436.

**Sec. 10-19. Same—Removal and cutting of weeds, grass or plants.**

It shall be the duty of any person, owner, agent, occupant or anyone having supervision or control of any lot, tract, parcel of land, or a portion thereof, occupied or unoccupied, within the city to take whatever action is necessary to remove, cut, eliminate, eradicate, control or cause to be removed, cut, eliminated, eradicated or controlled, all such grass, weeds or plants as often as may be necessary to comply with this article. (Ord. No. 821, § 1, 8-10-82; Ord. No. 088-027, § 3, 6-28-88)

**Sec. 10-20. Same—Removal or deposit of dirt, gravel, etc.**

It shall be unlawful for any person to remove or deposit dirt, gravel, earth or topsoil from any land situated within the city unless such person provides for proper drainage following the removal or deposit of such dirt, gravel, earth or topsoil. By the term "proper drainage," it is meant that the water drainage off such land shall not disturb the natural drainage so as to adversely affect city streets or adjoining property owners. It shall be unlawful for any person to remove or deposit any such material unless he first secures a permit for such from the city. The owners of any private property where fill material is placed shall cause the same to be graded and leveled within thirty (30) days from the placement thereof. (Ord. No. 821, § 2, 8-10-82)

**Sec. 10-21. Zoning.**

In areas zoned commercial or industrial under the zoning ordinance of the city, the requirements in sections 10-17—10-20 shall be applicable to areas within two hundred (200) feet from buildings and areas within two hundred (200) feet from property lines adjacent to the building on adjoining property owned by other persons, and within two hundred (200) feet of property zoned other than commercial or industrial under the zoning ordinance of the city. (Ord. No. 206, § 4, 4-21-75)

**Sec. 10-22. Railroad rights-of-way.**

The provisions of this article shall be applicable to all railroad rights-of-way. (Ord. No. 206, § 5, 4-21-75)

**Cross reference—**Motor vehicles and traffic, Ch. 9.

**Sec. 10-23. Accumulation of lumber, boxes, junk, wrecked automobiles, machinery, etc.**

It is unlawful and declared a nuisance for any owner or occupant, tenant or lessee of any premises improved or unimproved on which evidence of rat infestation is found, or any lots or alleys adjacent to such property, to permit accumulation of any lumber, boxes, barrels, bricks, stones or any other character of materials

that may be used as a harborage for rats, rodents or other vermin, unless same shall be placed on open racks and elevated not less than eighteen (18) inches above the ground, with a clear intervening space underneath; or any and all waste matter, whether reusable or not, which is offensive to the public health, safety or to the esthetics of the neighborhood, and is specifically intended to include, but not be limited to, worn out, wrecked and/or abandoned automobiles, trucks, tractors, machinery or any parts thereof, brick, stones, old iceboxes, refrigerators and stoves, to accumulate or remain on such lot or premises. (Ord. No. 206, § 6, 4-21-75; Ord. No. 821, § 1, 8-10-82)

**State law reference**—Authority for above section, V.T.C.S., Art. 4436.

**Sec. 10-24. Nuisance located upon easements; duties of abutting property owners and occupants.**

For purposes of this section, the term "easement" shall mean a right, vested in the public generally or in the community as a whole, to use and enjoy the land of another person for a special purpose. Such term shall include, but not be limited to, all drainage and floodway dedications or easements located within the corporate limits of the Town of Addison. In the event that a nuisance, as defined hereinabove at section 10-17, is found to exist upon any easement within the city, or in the event that any person, firm or corporation whose property is burdened by any easement within the city limits, fails to comply with the foregoing provision of this article, the city manager or his duly appointed representative may give a ten (10) day official notice to such person, firm or corporation which is creating such nuisance or is violating the terms of this article. If such person, firm or corporation fails or refuses to comply with the provision of sections 10-18 through 10-20 within the ten (10) days following notification, they shall be considered to be in violation and subject to a fine as provided in Chapter 1 of this Code. The provisions of this section shall apply only to the owner of the servient estate or the property burdened by the easement and shall not apply to the grantee or holder of such easement.

Property owners and occupants shall be jointly responsible for nuisances and abatement thereof under this article up to the curb or sidewalk, and between the curb and sidewalk, of the

streets and to the pavement of alleys on abutting property they own or occupy. Existing drainage areas and creeks traversing drainage and floodway easements within the city shall remain as open channels (unless required to be enclosed by other ordinances) at all times and shall be maintained by the individual owners of the lot or lots that are traversed by or adjacent to the drainage and floodway easements. The city shall not be responsible for maintenance or operation of said creeks or drainage or for any damage or injury to private property or person that results from the flow of water along said creek or drainage, or for the control of erosion. Each property owner shall keep the natural drainage area channel and creek traversing the drainage and floodway easements adjacent to his property clean and free of debris, silt, growth, vegetation, weeds, rubbish, refuse, matter and any substance which would result in unsightly or unsanitary conditions or obstruct the flow of water. The city shall have the right, but not the obligation, to enter upon the easements at any point or points with all rights of ingress and egress for the purpose of inspection and supervision of maintenance work by the property owner to alleviate any undesirable conditions which may occur. (Ord. No. 155, § 3, 5-21-73; Ord. No. 206, § 7, 4-21-75; Ord. No. 821, § 4, 8-10-82; Ord. No. 087-068, § 1, 10-13-87)

#### **Sec. 10-25. Other properties.**

The provisions of the preceding section shall apply to all other real properties occupied or unoccupied, except that the requirement of a ten (10) day official notification is met and fulfilled when the mayor or an authorized agent of the city has given ten (10) days' notice in writing at least one time in any calendar year to the person who is creating the nuisance by letter addressed to such person at his post office address, or by publication two (2) times within ten (10) consecutive days in the city's official paper. (Ord. No. 155, § 3, 5-21-73; Ord. No. 206, § 7, 4-21-75)

State law reference—Authority for above section, V.T.C.S., Art. 4436.

#### **Sec. 10-26. Authority of city to abate nuisances.**

a) If the owner of property in the city does not comply with each of the applicable requirements of the preceding sections 10-18 through 10-24 of this article within ten (10) days of notice of a violation, the city shall have the right, but not the obligation, to:

**WOLFE CLARK & HENDERSON, L.L.P.**

ATTORNEYS & COUNSELORS  
123 N. CROCKETT STREET, SUITE 100  
SHERMAN, TEXAS 75090  
(903) 868-1933  
(903) 892-2397 (FAX)

JAMES E. HENDERSON (1908-1991)  
WILLIAM R. BRYANT (1919-1979)  
JOSEPH W. WOLFE  
RONALD H. CLARK

JAMES CORLEY HENDERSON  
JAMES C. TIDWELL  
AMOS L. MAZZANT

September 23, 1993

Mr. John Baumgartner, P.E.  
Director of Public Works  
Town of Addison  
P. O. Box 144  
Addison, TX 75001

Re: Kappler, et al v. Addison, et al, Cause No. 93-3831-A  
Kezoh, et al v. Addison, et al, Cause No. 93-3827-E

Dear John:

Enclosed are two original Affidavits for you, Lynn, and Robin. One is for the Kappler case and one is for the Kezoh case. I would appreciate it if you, Lynn, and Robin would review these Affidavits. If any changes are needed, or any blanks need to be filled in to make them absolutely correct, please call me. If they are correct, please sign them before a Notary and, where indicated, ask Carmen Moran to sign them.

Please let me know if you have any questions or suggestions concerning this matter.

Very truly yours,



Ronald H. Clark

RHC/smw

Enclosures: Affidavit of John Baumgartner  
Affidavit of Lynn Chandler  
Affidavit of Robin Jones

cc: Kenneth Dippel

**WOLFE CLARK & HENDERSON, L.L.P.**

ATTORNEYS & COUNSELORS

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SHERMAN, TEXAS 75090

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JOSEPH W. WOLFE

RONALD H. CLARK

JAMES CORLEY HENDERSON

JAMES C. TIDWELL

AMOS L. MAZZANT

September 9, 1993

Mr. John Baumgartner, P.E. ✓  
Director of Public Works/  
City Engineer  
Town of Addison  
P. O. Box 144  
Addison, TX 75001

Mr. Lynn Chandler  
Building Inspector  
Town of Addison  
P. O. Box 144  
Addison, TX 75001

Mr. Robin Jones  
Director of Streets  
Town of Addison  
P. O. Box 144  
Addison, TX 75001

Re: Kappler, et al v. Addison, et al, Cause No. 93-3831-A  
Kezoh, et al v. Addison, et al, Cause No. 93-3827-E

Gentlemen:

This will confirm that we will be meeting with Plaintiff's attorney at the Service Center in Addison, at 1:30 p.m. on September 17, 1993. Lynn has told me that he will reserve the conference room for that time.

I would like to meet with you at 1:00 p.m., before our meeting with Mr. Walls, to go over what will be discussed in the meeting.

Please let me know if you have any questions or suggestions concerning this matter.

Very truly yours,



Ronald H. Clark

RHC/smw

cc: Mr. Ron Whitehead  
Mr. Ken Dippel

**WOLFE CLARK & HENDERSON, L.L.P.**

*ATTORNEYS & COUNSELORS*

123 N. CROCKETT STREET, SUITE 100  
SHERMAN, TEXAS 75090  
(903) 868-1933  
(903) 892-2397 (FAX)

JAMES E. HENDERSON (1908-1991)  
WILLIAM R. BRYANT (1919-1979)  
JOSEPH W. WOLFE  
RONALD H. CLARK

JAMES CORLEY HENDERSON  
JAMES C. TIDWELL  
AMOS L. MAZZANT

September 3, 1993

Mr. Ron Whitehead  
City Manager  
Town of Addison  
P. O. Box 144  
Addison, TX 75001

Mr. Robin Jones  
Director of Streets  
Town of Addison  
P. O. Box 144  
Addison, TX 75001

Mr. John Baumgartner, P.E. ✓  
Director of Public Works/  
City Engineer  
Town of Addison  
P. O. Box 144  
Addison, TX 75001

Re: Kappler, et al v. Addison, et al, Cause No. 93-3831-A  
Kezoh, et al v. Addison, et al, Cause No. 93-3827-E

Gentlemen:

I have spoken with Mr. William Walls who is Plaintiffs' trial attorney in both of these cases. He and Mr. Kessler have told me that they may be willing to dismiss the case if they can determine that the Town has no ownership or interest in the case. Mr. Walls suggested a meeting with Town representatives familiar with the property, the Town's records concerning the property, and what the Town's duties and responsibilities are.

I suggest that Mr. Baumgartner and Mr. Jones attend the meeting. Additionally, if there is any Town employee who was with the Town at the time these projects were constructed, and who can say that the culvert in question was not built by the Town, that would be helpful. When I met with Mr. Jones and Mr. Baumgartner, they indicated that the supervisors who were employed by the Town at that time had left. Perhaps there is someone who was not a supervisor.

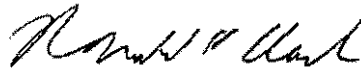
If the only people available with first hand knowledge are ex-employees, then we need to ask one of them to attend the meeting.

I would like to set up the meeting on September 9 or during the week of September 13. Trial in the Kapper case is set for November 29 and I would like to avoid the time and expense of preparing for trial.

Mr. Ron Whitehead  
Mr. John Baumgartner  
Mr. Robin Jones  
September 3, 1993  
Page 2

I would appreciate it if you would let me know as soon as possible whether you will be available for such a meeting, and who you suggest attend it in order to convince Plaintiffs that the Town has no ownership interest in the property, and was not involved in constructing the culvert.

Very truly yours,



Ronald H. Clark

RHC/smw

cc: Mr. Kenneth Dippel



FILE

WOLFE CLARK & HENDERSON, L.L.P.

ATTORNEYS & COUNSELORS

123 N. CROCKETT STREET, SUITE 100

SHERMAN, TEXAS 75090

(903) 868-1933

(903) 892-2397 (FAX)

JAMES E. HENDERSON (1908-1991)

WILLIAM R. BRYANT (1919-1979)

JOSEPH W. WOLFE

RONALD H. CLARK

JAMES CORLEY HENDERSON

JAMES C. TIDWELL

AMOS L. MAZZANT

August 18, 1993

Mr. Ron Whitehead  
City Manager  
Town of Addison  
P. O. Box 144  
Addison, TX 75001

Re: Shandra Kappler, et al v. Town of Addison, et al  
Cause No. 93-3831-A


Dear Ron:

This case has been set for jury trial in the 14th District Court, Dallas, Texas, on November 29, 1993. All discovery is to be completed by October 4, 1993.

While we are trying to have the case dismissed, if it is not, it will be necessary for the Town to have a representative at the trial.

Please let me know if you have any questions or suggestions concerning the case. I will keep you informed of further developments.

Very truly yours,



Ronald H. Clark

RHC/smw

cc: Kenneth Dippel  
John Baumgartner ✓

HENDERSON BRYANT & WOLFE, L.L.P.

ATTORNEYS & COUNSELORS  
123 NORTH CROCKETT STREET

P. O. BOX 340

SHERMAN, TEXAS 75091-0340

(903) 893-9421

FAX (903) 892-2397

JAMES E. HENDERSON (1908-1991)  
WILLIAM R. BRYANT (1919-1979)  
JOSEPH W. WOLFE  
CURRY H. VOGELSONG  
RICHARD E. HARRISON  
RONALD H. CLARK  
T. SCOTT SMITH  
NANCY O. WILLIAMS

STACI S. JOHNSON  
JAMES CORLEY HENDERSON  
DEBORAH S. BURLESON  
DEBORAH L. MCGREGORY  
JAMES C. TIDWELL  
AMOS L. MAZZANT

July 26, 1993

Mr. John Baumgartner, P.E.  
Director of Public Works  
Town of Addison  
P. O. Box 144  
Addison, TX 75001

Re: Kappler, et al v. Addison, et al, Cause No. 93-3831-A

Dear John:

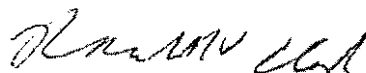
Enclosed is a copy of Plaintiff's First Request for Production and a draft of answers and objections. I have listed the maps you provided me in response to Request No. 5.

I understand that you will be obtaining information from the tax records and from the utility department for us to include with this response. If there are any other documents the Town has, which you believe would be responsive to any of the questions, please let me know.

In order to meet the deadline for responding to this request, I plan to file the response August 13, 1993.

Please let me know if you have any questions or suggestions concerning the case. I will keep you informed of further developments.

Very truly yours,



Ronald H. Clark

RHC/smw

Enclosures: Plaintiffs First Request for Production of Defendant,  
City of Addison  
Answers and Objections to Plaintiffs' First Request  
for Production of Defendant, City of Addison  
(DRAFT)

cc: Ron Whitehead  
Kenneth Dippel

NO. 93-3831-A

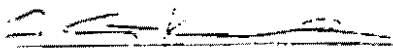
SHANDRA KAPPLER, INDIVIDUALLY	( )	IN THE DISTRICT COURT
AND ON BEHALF OF THE ESTATE	( )	
OF MATTHEW B. RODEN, DECEASED	( )	
Plaintiffs	( )	
VS.	( )	
MULTIVEST REAL ESTATE FUND, LTD.,	( )	
SERIES V., DOING BUSINESS AS	( )	14th JUDICIAL DISTRICT
GREENHAVEN VILLAGE APARTMENTS, AND	( )	
	( )	
NEW YORK LIFE INSURANCE COMPANY,	( )	
DOING BUSINESS AS BROOKTREE	( )	
APARTMENTS, AND	( )	
	( )	
THE CITY OF ADDISON,	( )	
Defendants	( )	DALLAS COUNTY, TEXAS

PLAINTIFFS FIRST REQUEST FOR  
PRODUCTION OF DEFENDANT, CITY OF ADDISON

TO: The City of Addison, Defendant, by and through its attorney of record, Ronald H. Clark, Henderson Bryant & Wolfe, L.L.P., 123 Crockett, P.O. Box 340, Sherman, Texas 75091.


Plaintiffs, Shandra Kappler, individually, and on behalf of the estate of Matthew B. Roden, deceased, request Defendant, Town of Addison, to produce and permit inspection and copying of the documents described on the attached list of documents requested. Pursuant to T.R.C.P. 166(b), if Defendant does not have these records in their actual possession now, they are requested to obtain production of them from any governmental agency or third party from whom they have a right to compel production of said documents. Further, pursuant to T.R.C.P. 167, Plaintiff, Shandra Kappler, requests that the end named documents or copies thereof be made available at the offices of attorney for Plaintiff, Shandra Kappler, within thirty-one (31) days of the date of service of this request.

RESPECTFULLY SUBMITTED:

By:   
F. Steven Kessler  
Kessler & Korby, P.C.  
3300 Douglas, #800  
Dallas, Texas 75225  
Texas Bar No. 11358150  
(214) 369-5278  
(214) 361-5157 (Fax)

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above and foregoing was mailed by Certified Mail to Ronald H. Clark, attorney for Defendant, on this 19<sup>th</sup> day of July, 1993.

  
\_\_\_\_\_  
F. Steven Kessler

## DEFINITIONS & INSTRUCTIONS

1. As used herein, the terms "you", "yours", and "your" shall mean and include the Defendant, City of Addison.

2. As used herein, the words "and" and "or" shall be construed either conjunctively or disjunctively as required by the context to bring within the scope of this Request for Production any information that might be deemed outside their scope by another construction.

3. As used herein, all words used in their singular forms shall be deemed to include the words in their plural form.

4. As to any information which you refuse to provide on grounds of privilege, please state:

- a. The subject matter of the information you claim is privileged;
- b. By whom the information was generated or communicated;
- c. The circumstances under which the information was generated or communicated;
- d. To whom the information was generated or communicated;
- e. Each and every other fact upon which you rely to support your claim of privilege.

5. As used herein, the term "documents" shall mean and include any method or means of saving, recording, transmitting or exchanging information, other than orally, and including without limitation, any letter, note, memorandum, drawing, map, plat, telegraph, telex, telecopies, cable, computer disc, photograph, film, movie, audio tape, video tape, or other electronic medium.

6. This Request For Production shall be deemed continuing in nature pursuant to Rule 166b of the Texas Rules of Civil Procedure so as to require you to make supplemental responses under the provision of those rules.

## REQUEST FOR PRODUCTION

1. Copies of any written or electronically recorded statement and transcription of any oral statement given by or taken from Plaintiffs which mentions, discusses, describes or relates to any of the events or claims described in Plaintiffs' Original Petition.

2. Copies of all models, movies, videotapes, charts, photographs, maps, drawings, and electronic recordings depicting or purporting to depict the scene of the death in question or any reconstruction of the death in question or any of the events leading up to the death in question.

3. Copies of any and all documents pertaining to, or connected with, the installation, maintenance, repair or replacement of the culvert described in Paragraph IV of Plaintiffs' Original Petition or the fence described in Paragraph V of Plaintiffs' Original Petition.

4. Copies of any and all documents pertaining to the ownership, right to possession of, or duty to maintain, of the property on which the accident in question occurred, described in Plaintiffs' Original Petition, including, but not limited to, deeds, contracts of sale, lease agreements, maps, plats, building plans, appraisals, and surveys.

5. Copies of all maps, plats, charts, surveys, and drawings showing all or any part of the property on which the accident occurred as described in Plaintiffs' Original Petition.

6. Copy of any and all photographs, videotapes, movies, models, written reports, statements, transcriptions, electronically recorded statements, charts, maps, drawings, notes, calculations, computer printouts, and other documents, read or reviewed by any expert witness you may call as a witness at trial, or provided to any expert witness you may call at trial, in connection with, or in preparation for, this case.

7. Copies of any and all photographs, videotapes, movies, models, written reports, statements, transcriptions, electronically recorded statements, charts, maps, drawings, notes, calculations, and computer printouts, and other documents sent to you or your attorney by any expert you may call as an expert witness at trial, in connection with, or in preparation for, this case.

8. Copies of any and all photographs, videotapes, movies, models, written reports, statements, transcriptions, electronically recorded statements, charts, maps, drawings, notes, calculations, computer printouts, and other documents sent by you or your attorney to any expert you may call as an expert witness at trial, in connection with, or in preparation for, this case.

9. Copies of any and all photographs, videotapes, movies, models, written reports, statements, transcriptions, electronically

recorded statements, charts, maps, drawings, notes, calculations, computer printouts, and other documents, any expert witness you may call at trial, has prepared, or has had prepared by another individual or computer, in connection with forming any theory, opinion, or conclusion in this case, or in connection with rejecting any theory, opinion, or conclusion in this case.

10. Copies of all photographs, videotapes, movies, models, written reports, statements, transcriptions, electronically recorded statements, charts, maps, drawings, notes, calculations, computer printouts, and other documents prepared by any expert witness who may not be called as a witness at trial, but whose opinions or impressions have been reviewed by any testifying expert you may call at trial.

11. Copy of each chart, table and graph contained in any publication of the United States Government or any of its subdivisions, reviewed by any expert you may call as an expert witness, in formulating or rejecting any opinion conclusion or theory concerning this case, and for each such chart, table or graph, a copy of the title page giving the date of publication of each such Government publication.

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13. Copy of the current resume or curriculum vitae, of each expert witness you may call at trial, including a list of all publications authored or co-authored by each expert witness you may call at trial.

14. Copies of photographs, videotapes, movies, written reports, statements, transcriptions, electronically recorded statements, charts, maps, drawings, notes, calculations, computer printouts, and models, used by any expert witnesses you may call at trial, or any of their associates or employees, to explain the cause of the accident in question or any of the events leading up to the cause of accident in question or any of their opinions as to what any person involved in the accident did that contributed to the accident or could have done to avoid the accident.

15. Copies of all memoranda, notes, letters and other documents received from any expert you may call at trial, or sent to any expert you may call at trial concerning the employment of the expert, questions asked of the expert, opinions held by the expert, the rates to be charged by the expert, billing by the expert, requests for payment or invoices from the expert and/or payments made to the expert in connection with this case.

SHANDRA KAPPLER, INDIVIDUALLY	*	
AND ON BEHALF OF THE ESTATE	*	
MATHEW B. RODEN, DECEASED	*	
	*	
V.	*	IN THE DISTRICT COURT OF
	*	
MULTIVEST REAL ESTATE FUND,	*	
LTD., SERIES V., DOING BUSINESS	*	DALLAS COUNTY, TEXAS
AS GREENHAVEN VILLAGE APARTMENTS,	*	
AND	*	
	*	14TH JUDICIAL DISTRICT
NEW YORK LIFE INSURANCE COMPANY,	*	
DOING BUSINESS AS BROOKTREE	*	
APARTMENTS, AND	*	
	*	
THE TOWN OF ADDISON	*	

ANSWERS AND OBJECTIONS TO  
PLAINTIFFS' FIRST REQUEST FOR PRODUCTION OF  
DEFENDANT, CITY OF ADDISON

TO: SHANDRA KAPPLER, INDIVIDUALLY, AND ON BEHALF OF THE ESTATE OF  
MATHEW B. RODEN, DECEASED, by and through their attorney 6  
record, F. Steven Kessler, Kessler & Korby, 8300 Douglas,  
#800, Dallas, TX 75225.

TOWN OF ADDISON, TEXAS, Defendant in the above entitled and  
numbered cause, hereby answers Plaintiffs' First Request for  
Production of Defendant, City of Addison served on its attorney of  
record, Ronald H. Clark, by Plaintiffs, as set forth on the Request  
for Production attached and incorporated herein. You are requested  
to notify Defendant's attorney if you intend to contest any  
objection.

Respectfully submitted,

HENDERSON BRYANT & WOLFE  
123 N. Crockett  
P.O. Box 340  
Sherman, TX 75091  
(903) 893-9421  
(903) 892-2397 (FAX)

By: \_\_\_\_\_  
Ronald H. Clark  
SBN 04298100

**Draft**



**CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of the attached Answers and Objections to Request for Production of Defendant, City of Addison was mailed, certified, return receipt requested, to Mr. F. Steven Kessler, attorney for Plaintiffs, on this \_\_\_\_ day of \_\_\_\_\_, 1993.

---

Ronald H. Clark

ATTACHED SHEET TO ANSWERS AND OBJECTIONS  
TO REQUEST FOR PRODUCTION

RESPONSE TO REQUEST FOR PRODUCTION NO. 1:

Notes were taken concerning three statements made by Shandra Kappler to police. See attached.

Defendant objects to providing the entire police investigation report because it would require the release of documents protected under the Texas Open Records Act. The release of such documents to any person would make them public records which must be released to all. Additionally, the rights of any informants under the "informer's privilege" would be violated and the release of such information would serve to deter other citizens from cooperating with police. Any release should be under a protective order limiting their disclosure.

RESPONSE TO REQUEST FOR PRODUCTION NO. 2:

Defendant is in possession of approximately 201 photographs of the scene. Counsel may view the photographs upon request or Defendant will provide copies of the photographs at Plaintiff's expense. A representative sampling of photocopied photographs is attached.

RESPONSE TO REQUEST FOR PRODUCTION NO. 3:

Defendant is not currently in possession of any such documents. Defendant knows of no ownership or other interest it has in the property in question other than its being in the city limits.

RESPONSE TO REQUEST FOR PRODUCTION NO. 4:

See Defendant's response to Request for Production No. 3.

RESPONSE TO REQUEST FOR PRODUCTION NO. 5:

Defendant provides:

- a. Copy of portion of zoning map.
- b. Copy of drainage map with rain calculations.
- c. Copy of apartment complex maps.
- d. Copy of maps 13 and 14, which represent detail map sections of Farmer's Branch, Dallas, and Addison.

RESPONSE TO REQUEST FOR PRODUCTION NO. 6:

No decision has been made to call any expert witness. Until Defendant, the Town of Addison, has had an opportunity to depose Plaintiffs and determine the theories of their experts, it will not be able to determine what testimony will be relevant or needed to rebut such claims.

RESPONSE TO REQUEST FOR PRODUCTION NO. 7:

See Defendant's response to Request for Production No. 6.

RESPONSE TO REQUEST FOR PRODUCTION NO. 8:

See Defendant's response to Request for Production No. 6.

RESPONSE TO REQUEST FOR PRODUCTION NO. 9:

See Defendant's response to Request for Production No. 6.

RESPONSE TO REQUEST FOR PRODUCTION NO. 10:

See Defendant's response to Request for Production No. 6.

RESPONSE TO REQUEST FOR PRODUCTION NO. 11:

See Defendant's response to Request for Production No. 6.

RESPONSE TO REQUEST FOR PRODUCTION NO. 12:

See Defendant's response to Request for Production No. 6.

RESPONSE TO REQUEST FOR PRODUCTION NO. 13:

See Defendant's response to Request for Production No. 6.

RESPONSE TO REQUEST FOR PRODUCTION NO. 14:

See Defendant's response to Request for Production No. 6.

RESPONSE TO REQUEST FOR PRODUCTION NO. 15:

See Defendant's response to Request for Production No. 6.

RESPONSE TO REQUEST FOR PRODUCTION NO. 1:

R/S WAS ADVISED BY THE COMP'S MOTHER THAT THE COMP HAD BEEN IN THE COMPANY OF A SMALL W/M CHILD PRIOR TO THE DROWNING. COMP'S MOTHER RECORDED THE LOCATION OF THE APT.

9:00 P.M.

MET WITH THE MOTHER OF THE VICTIM. SHE ADVISED THAT SHE LAST SAW THE VICTIM AT 6:30 P.M. AS HE LEFT THEIR RESIDENCE WITH A LITTLE BOY THAT HE ALWAYS PLAYS WITH AND A LITTLE BLACK GIRL KNOWN TO HER AS SHAUNA.

INVEST. COLLINS MET WITH SANDRA DENISE KAPPLER W/F 03/10/71 OF 3902 BROOKHAVEN CLUB DRIVE, ADDISON, TEXAS, THE MOTHER OF THE VICTIM. SANDRA KAPPLER STATED THAT AT 6:30 P.M., MATHEW LEFT THEIR RESIDENCE WITH SOME FRIENDS, ONE LITTLE BOY THAT HE ALWAYS PLAYS WITH AND A LITTLE BLACK GIRL, SHAUNA. KAPPLER STATED THAT MATHEW ALWAYS GOES TO THE CREEK TO PLAY WITH THE DUCKS. KAPPLER STATED THAT AT 7:30 P.M., MATHEW HAD NOT RETURNED HOME SO SHE WALKED OUT BY THE CREEK TO LOOK FOR MATHEW AND SHE SAW THE AMBULANCE PARKED BY THE CREEK.

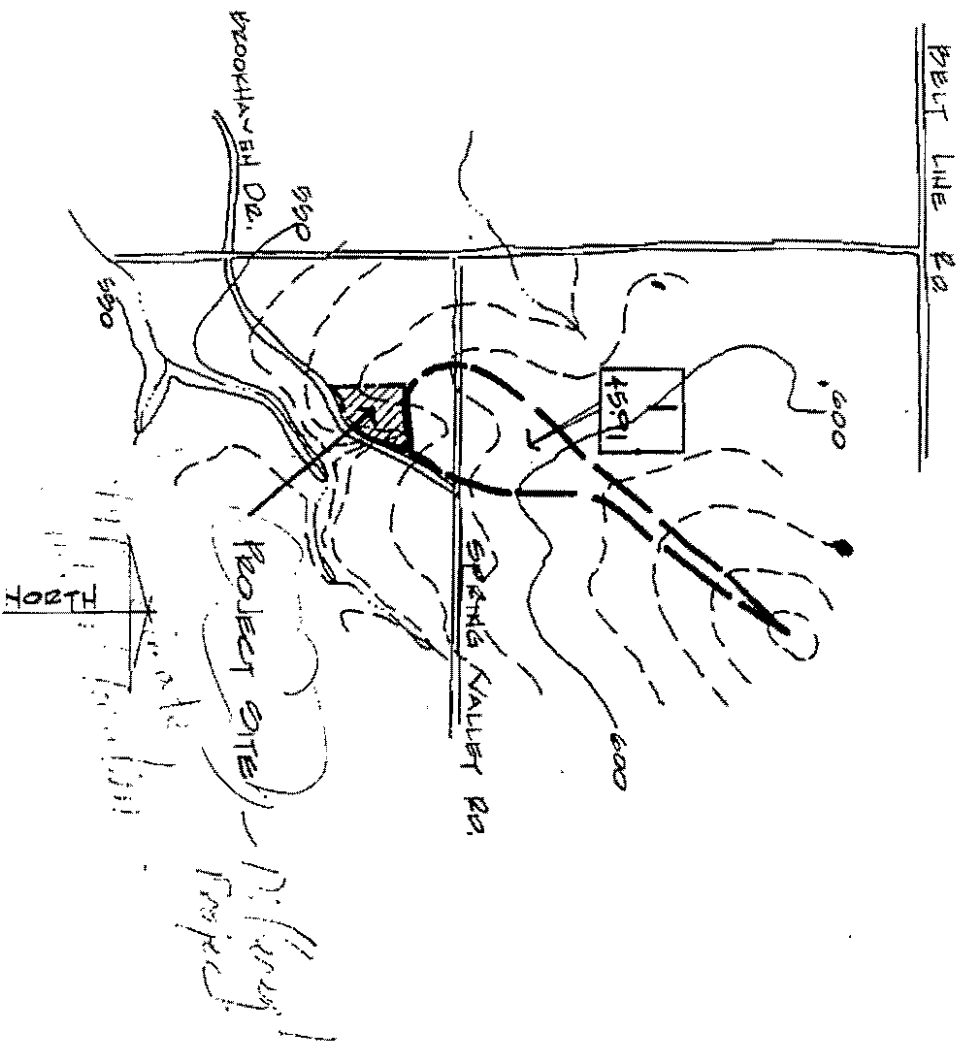












OFFSITE DRAINAGE MAP  
 SCALE 1" = 2000'

# RAINAGE CALCULATIONS

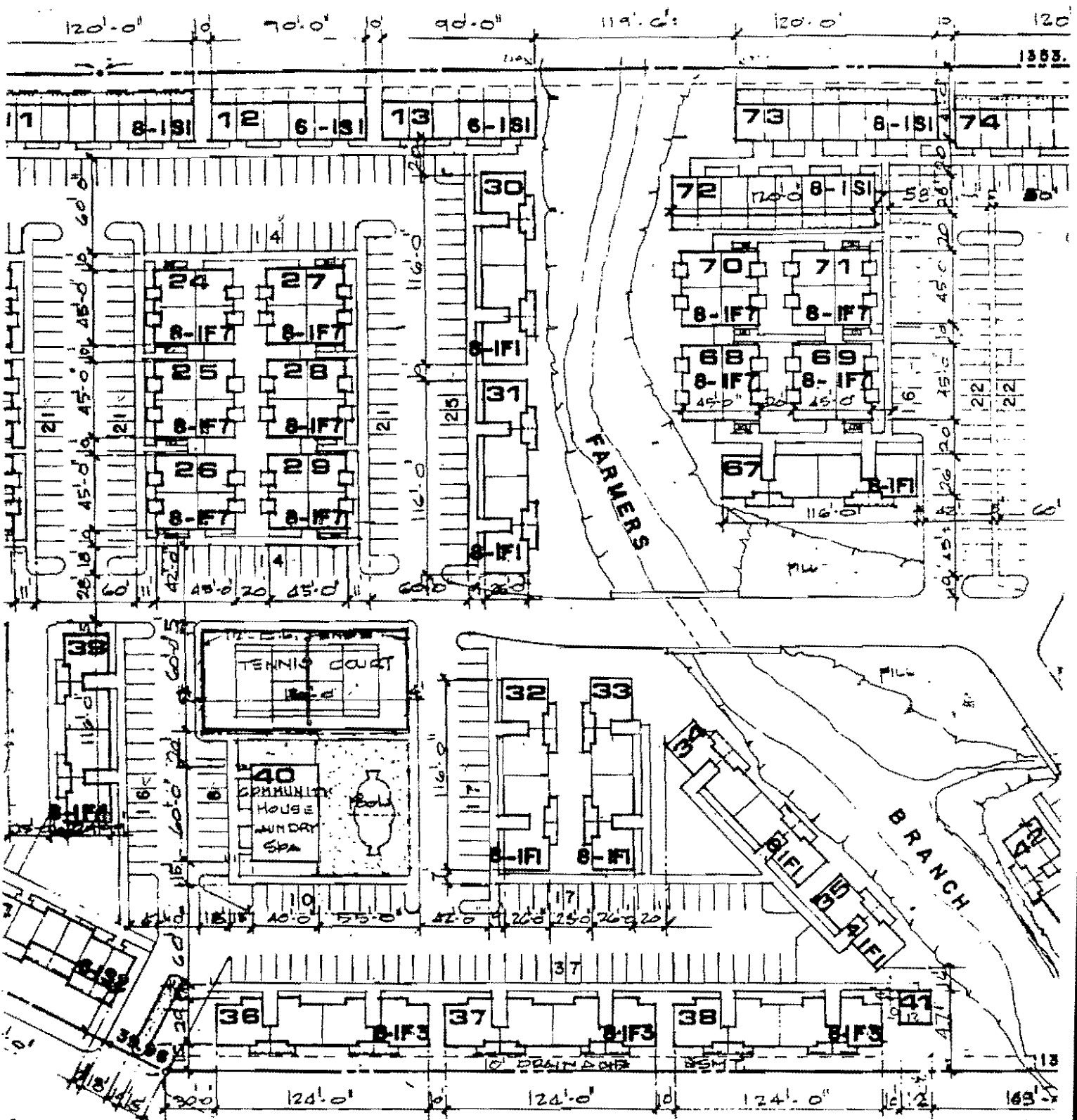
LINE NO.	AGE NO.	$t_c$ (MIN)	C	$I_{100}$	A (ACRES)	$Q_{100}$ (CFS)
1		24	0.85	5.8	45.91	226.34
2	10	0.80	7.8	2.00	12.48	
3	"	"	"	1.03	6.43	
4	"	"	"	1.94	12.11	
5	"	"	"	0.95	5.93	
6	"	"	"	1.27	7.92	
7	"	"	"	1.05	6.55	

MIN. OF  
60 ACRES

NORTH  
scale: 1" = 50'



LEGEND:



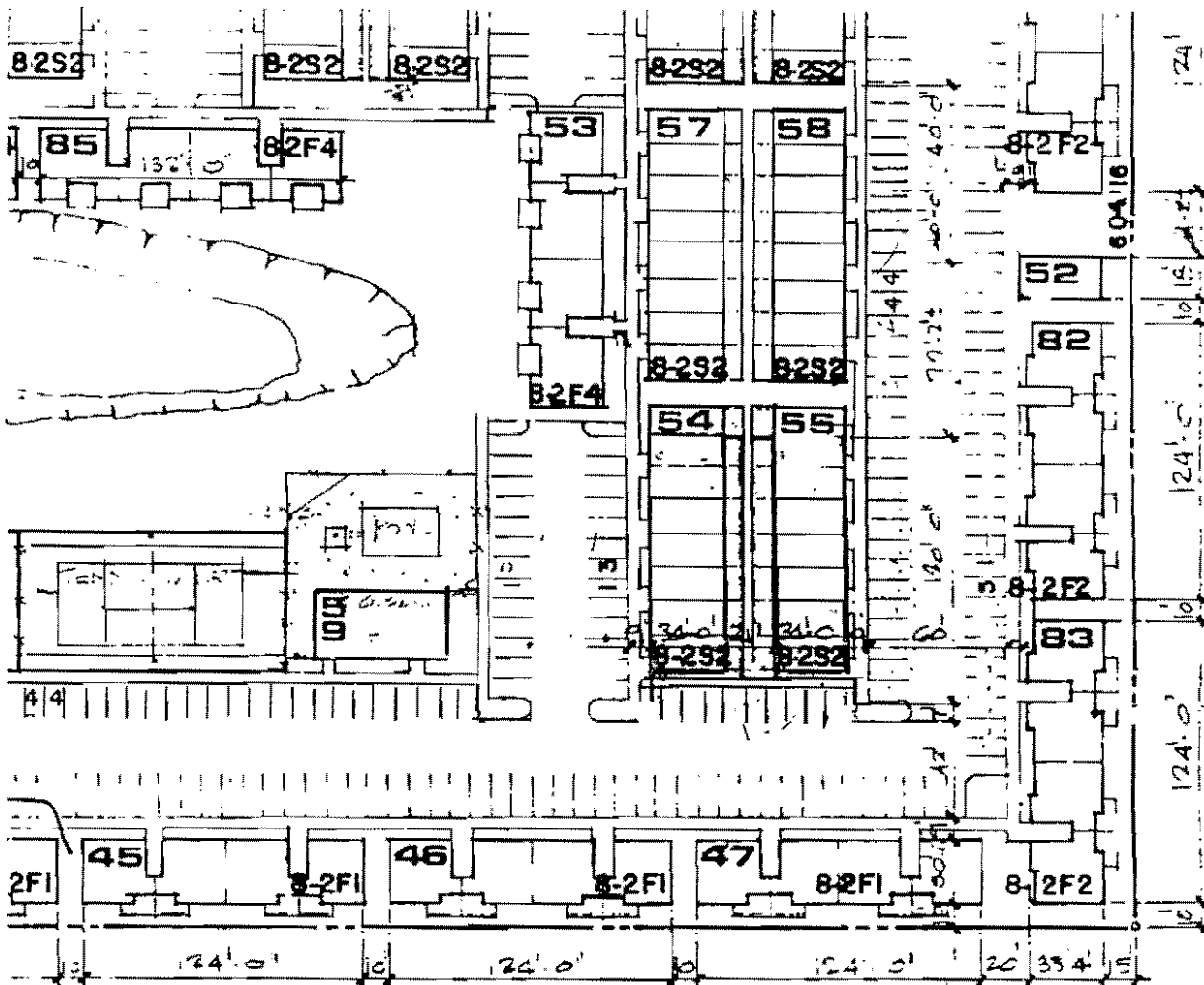
**PARKING**

S I

TOTAL NO. CAR SPACES	(9'-0")
NO. REQUIRED ZONING	
RESERVE	
RATIO	

**LAND**

S



### SUMMARY

TYPE			SC. FT. EA.	NO.	EA.
EFFICIENCY			432		48
1-B.R.	1 -B.	FLAT	476		128
1-B.R.	1 -B.	FLAT	673		68
1-B.R.	1 -B.	FLAT W/R.P. STUDY	788		24
1-B.R.	1 -B.	FLAT W/R.P.	740		8
1-B.R.	1 -B.	STUDIO	690		90
1-B.R.	1 -B.	STUDIO W/R.P.&BAL.	720		26
2-B.R.	1 -B.	FLAT	862		72
2-B.R.	1 -B.	FLAT	902		32
2-B.R.	2 -B.	FLAT	921		32
2-B.R.	1 1/2-B	STUDIO	1,020		100
<b>TOTAL NO. UNITS</b>					<b>628</b>

BROOKLAKE

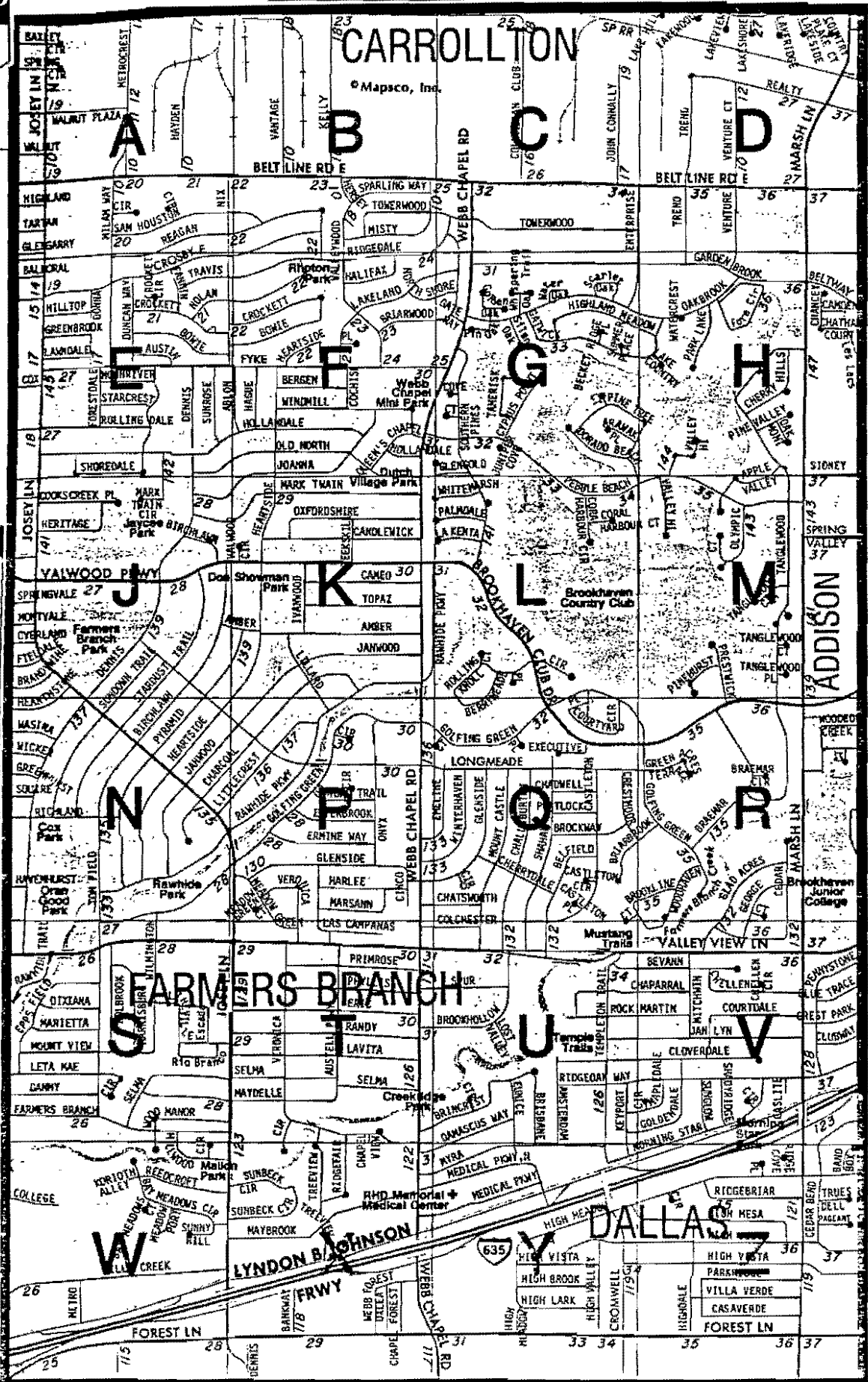
**FABRACUS**  
PLANNING CONSULTANTS



1111 W. ...  
DALLAS, TX

MAP

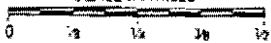
13



CONTINUED ON MAP 12

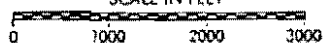
CONTINUED ON MAP 14

SCALE IN MILES

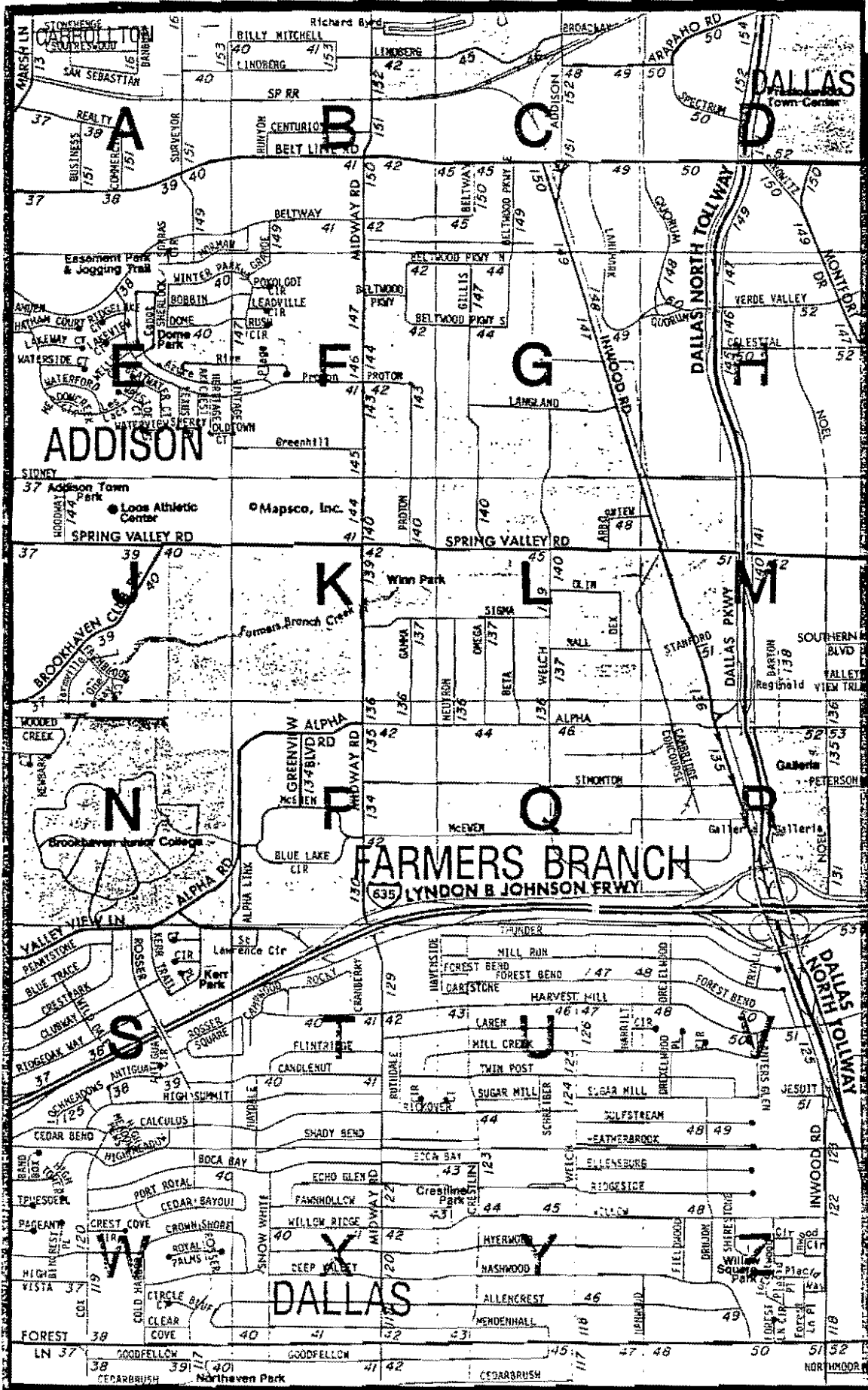


CONTINUED ON MAP 23

SCALE IN FEET

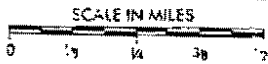


DETAIL MAP SECTION  
STARTS ON INDEX PAGE 187



CONTINUED ON MAP 13

CONTINUED ON MAP 15



HENDERSON BRYANT & WOLFE, L.L.P.

ATTORNEYS & COUNSELORS  
123 NORTH CROCKETT STREET

P. O. BOX 340

SHERMAN, TEXAS 75091-0340

(903) 893-8421

FAX (903) 892-2397

JAMES E. HENDERSON (1908-1991)  
WILLIAM R. BRYANT (1919-1979)  
JOSEPH W. WOLFE  
CURRY H. VOGELSANG  
RICHARD E. HARRISON  
RONALD H. CLARK  
T. SCOTT SMITH  
NANCY O. WILLIAMS

STACI S. JOHNSON  
JAMES CORLEY HENDERSON  
DEBORAH S. BURLESON  
DEBORAH L. MCGREGORY  
JAMES C. TIDWELL  
AMOS L. MAZZANT

July 26, 1993

Mr. John Baumgartner, P.E.  
Director of Public Works  
Town of Addison  
P. O. Box 144  
Addison, TX 75001

Kezoh, et al v. Addison, et al, Cause No. 93-3827-E

Dear John:

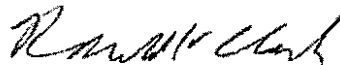
Enclosed is a copy of Plaintiff's First Request for Production and a draft of answers and objections. I have listed the maps you provided me in response to Request No. 5.

I understand that you will be obtaining information from the tax records and from the utility department for us to include with this response. If there are any other documents the Town has, which you believe would be responsive to any of the questions, please let me know.

In order to meet the deadline for responding to this request, I plan to file the response August 13, 1993.

Please let me know if you have any questions or suggestions concerning the case. I will keep you informed of further developments.

Very truly yours,



Ronald H. Clark

RHC/smw

Enclosures: Plaintiffs First Request for Production of Defendant,  
City of Addison  
Answers and Objections to Plaintiffs' First Request  
for Production of Defendant, City of Addison  
(DRAFT)

cc: Ron Whitehead  
Kenneth Dippel

NO. 93-03827-E

PAUL B. KEZOH AND JOSEPHINE KEZOH, ( )	IN THE DISTRICT COURT
INDIVIDUALLY AND ON BEHALF OF THE ( )	
ESTATE OF PAUL B. KEZOZHMAN, JR., ( )	
DECEASED ( )	
Plaintiffs ( )	
VS. ( )	
MULTIVEST REAL ESTATE FUND, LTD., ( )	
SERIES V., DOING BUSINESS AS ( )	101st DISTRICT COURT
GREENHAVEN VILLAGE APARTMENTS, AND ( )	
( )	
BROOKLAKE LTD., DOING BUSINESS ( )	
AS BROOKTREE APARTMENTS, AND ( )	
PAUL E. THOMAS, INDIVIDUALLY ( )	
AND AS A PARTNER OF BROOKLAKE ( )	
LTD., AND JERRY D. SHIPLEY, ( )	
INDIVIDUALLY AND AS A PARTNER ( )	
OF BROOKLAKE LTD., AND ( )	
( )	
THE CITY OF ADDISON, ( )	
Defendants ( )	DALLAS COUNTY, TEXAS

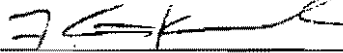
PLAINTIFFS' FIRST REQUEST FOR  
PRODUCTION OF DEFENDANT, CITY OF ADDISON

TO: The City of Addison, Defendant, by and through its attorney of record, Ronald H. Clark, Henderson Bryant & Wolfe, L.L.P., 123 Crockett, P.O. Box 340, Sherman, Texas 75091.

Plaintiffs', Paul B. Kezoh and Josephine Kezoh, individually, and on behalf of the estate of Paul B. Kezohman, Jr., deceased, request Defendant, City of Addison, to produce and permit inspection and copying of the documents described on the attached list of documents requested. Pursuant to T.R.C.P. 166(b), if Defendant does not have these records in their actual possession now, they are requested to obtain production of them from any governmental agency or third party from whom they have a right to compel production of said documents. Further, pursuant to T.R.C.P. 167, Plaintiffs, Paul B. Kezoh and Josephine Kezoh, request that the end named documents or copies thereof be made available at the offices of attorney for Plaintiffs, Paul B. Kezoh and Josephine Kezoh, within thirty-one (31) days of the date of service of this request.

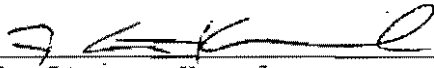


RESPECTFULLY SUBMITTED:

By:   
F. Steven Kessler  
Kessler & Korby, P.C.  
8300 Douglas, #800  
Dallas, Texas 75225  
Texas Bar No. 11358150  
(214) 369-5278  
(214) 361-5157 (Fax)

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above and foregoing was mailed by Certified Mail to Ronald H. Clark, attorney for Defendant, on this 19<sup>th</sup> day of July, 1993.

  
F. Steven Kessler

## DEFINITIONS & INSTRUCTIONS

1. As used herein, the terms "you", "yours", and "your" shall mean and include the Defendant, City of Addison.

2. As used herein, the words "and" and "or" shall be construed either conjunctively or disjunctively as required by the context to bring within the scope of this Request for Production any information that might be deemed outside their scope by another construction.

3. As used herein, all words used in their singular forms shall be deemed to include the words in their plural form.

4. As to any information which you refuse to provide on grounds of privilege, please state:

- a. The subject matter of the information you claim is privileged;
- b. By whom the information was generated or communicated;
- c. The circumstances under which the information was generated or communicated;
- d. To whom the information was generated or communicated;
- e. Each and every other fact upon which you rely to support your claim of privilege.

5. As used herein, the term "documents" shall mean and include any method or means of saving, recording, transmitting or exchanging information, other than orally, and including without limitation, any letter, note, memorandum, drawing, map, plat, telegraph, telex, telecopies, cable, computer disc, photograph, film, movie, audio tape, video tape, or other electronic medium.

6. This Request For Production shall be deemed continuing in nature pursuant to Rule 166b of the Texas Rules of Civil Procedure so as to require you to make supplemental responses under the provision of those rules.

## REQUEST FOR PRODUCTION

1. Copies of any written or electronically recorded statement and transcription of any oral statement given by or taken from Plaintiffs which mentions, discusses, describes or relates to any of the events or claims described in Plaintiffs' Original Petition.

2. Copies of all models, movies, videotapes, charts, photographs, maps, drawings, and electronic recordings depicting or purporting to depict the scene of the death in question or any reconstruction of the death in question or any of the events leading up to the death in question.

3. Copies of any and all documents pertaining to, or connected with, the installation, maintenance, repair or replacement of the culvert described in Paragraph IV of Plaintiffs' Original Petition or the fence described in Paragraph V of Plaintiffs' Original Petition.

4. Copies of any and all documents pertaining to the ownership, right to possession of, or duty to maintain, of the property on which the accident in question occurred, described in Plaintiffs' Original Petition, including, but not limited to, deeds, contracts of sale, lease agreements, maps, plats, building plans, appraisals, and surveys.

5. Copies of all maps, plats, charts, surveys, and drawings showing all or any part of the property on which the accident occurred as described in Plaintiffs' Original Petition.

6. Copy of any and all photographs, videotapes, movies, models, written reports, statements, transcriptions, electronically recorded statements, charts, maps, drawings, notes, calculations, computer printouts, and other documents, read or reviewed by any expert witness you may call as a witness at trial, or provided to any expert witness you may call at trial, in connection with, or in preparation for, this case.

7. Copies of any and all photographs, videotapes, movies, models, written reports, statements, transcriptions, electronically recorded statements, charts, maps, drawings, notes, calculations, and computer printouts, and other documents sent to you or your attorney by any expert you may call as an expert witness at trial, in connection with, or in preparation for, this case.

8. Copies of any and all photographs, videotapes, movies, models, written reports, statements, transcriptions, electronically recorded statements, charts, maps, drawings, notes, calculations, computer printouts, and other documents sent by you or your attorney to any expert you may call as an expert witness at trial, in connection with, or in preparation for, this case.

9. Copies of any and all photographs, videotapes, movies, models, written reports, statements, transcriptions, electronically

recorded statements, charts, maps, drawings, notes, calculations, computer printouts, and other documents, any expert witness you may call at trial, has prepared, or has had prepared by another individual or computer, in connection with forming any theory, opinion, or conclusion in this case, or in connection with rejecting any theory, opinion, or conclusion in this case.

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11. Copy of each chart, table and graph contained in any publication of the United States Government or any of its subdivisions, reviewed by any expert you may call as an expert witness, in formulating or rejecting any opinion conclusion or theory concerning this case, and for each such chart, table or graph, a copy of the title page giving the date of publication of each such Government publication.

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13. Copy of the current resume or curriculum vitae, of each expert witness you may call at trial, including a list of all publications authored or co-authored by each expert witness you may call at trial.

14. Copies of photographs, videotapes, movies, written reports, statements, transcriptions, electronically recorded statements, charts, maps, drawings, notes, calculations, computer printouts, and models, used by any expert witnesses you may call at trial, or any of their associates or employees, to explain the cause of the accident in question or any of the events leading up to the cause of accident in question or any of their opinions as to what any person involved in the accident did that contributed to the accident or could have done to avoid the accident.

15. Copies of all memoranda, notes, letters and other documents received from any expert you may call at trial, or sent to any expert you may call at trial concerning the employment of the expert, questions asked of the expert, opinions held by the expert, the rates to be charged by the expert, billing by the expert, requests for payment or invoices from the expert and/or payments made to the expert in connection with this case.

PAUL B. KEZOH AND JOSEPHINE KEZOH, \*  
INDIVIDUALLY AND ON BEHALF OF \*  
THE ESTATE OF PAUL B. KEZOZHMAN, \*  
JR., DECEASED \*

V. \*

MULTIVEST REAL ESTATE FUND, \*  
LTD., SERIES V., DOING BUSINESS \*  
AS GREENHAVEN VILLAGE APARTMENTS, \*  
AND \*

BROOKLAKE LTD., DOING BUSINESS \*  
AS BROOKTREE APARTMENTS and \*  
PAUL E. THOMAS, INDIVIDUALLY AND \*  
AS A PARTNER OF BROOKLAKE LTD., \*  
and JERRY D. SHIPLEY, INDIVIDUALLY \*  
AND AS A PARTNER OF BROOKLAKE LTD. \*  
AND \*

THE TOWN OF ADDISON \*

IN THE DISTRICT COURT OF

DALLAS COUNTY, TEXAS

101ST JUDICIAL DISTRICT

**ANSWERS AND OBJECTIONS TO**  
**PLAINTIFFS' FIRST REQUEST FOR PRODUCTION OF**  
**DEFENDANT, CITY OF ADDISON**

TO: PAUL B. KEZOH, INDIVIDUALLY, AND ON BEHALF OF THE ESTATE OF  
PAUL B.KEZOZHMAN, JR., DECEASED, by and through their attorney  
of record, F. Steven Kessler, Kessler & Korby, 8300 Douglas,  
#800, Dallas, TX 75225.

TOWN OF ADDISON, TEXAS, Defendant in the above entitled and  
numbered cause, hereby answers Plaintiffs' First Request for  
Production of Defendant, City of Addison served on its attorney of  
record, Ronald H. Clark, by Plaintiffs, as set forth on the Request  
for Production attached and incorporated herein. You are requested  
to notify Defendant's attorney if you intend to contest any  
objection.

Respectfully submitted,

HENDERSON BRYANT & WOLFE  
123 N. Crockett  
P.O. Box 340  
Sherman, TX 75091  
(903) 893-9421  
(903) 892-2397 (FAX)

**Draft**

By: \_\_\_\_\_  
Ronald H. Clark  
SBN 04298100

**CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of the attached Answers and Objections to Request for Production of Defendant, City of Addison was mailed, certified, return receipt requested, to Mr. F. Steven Kessler, attorney for Plaintiffs, on this \_\_\_\_ day of \_\_\_\_\_, 1993.

---

Ronald H. Clark

ATTACHED SHEET TO ANSWERS AND OBJECTIONS  
TO REQUEST FOR PRODUCTION

RESPONSE TO REQUEST FOR PRODUCTION NO. 1:

Notes were taken concerning statements made by Paul Kezoh and Josephine Kezoh to police. See attached.

Defendant objects to providing the entire police investigation report because it would require the release of documents protected under the Texas Open Records Act. The release of such documents to any person would make them public records which must be released to all. Additionally, the rights of any informants under the "informer's privilege" would be violated and the release of such information would serve to deter other citizens from cooperating with police. Any release should be under a protective order limiting their disclosure.

RESPONSE TO REQUEST FOR PRODUCTION NO. 2:

Defendant is in possession of approximately 201 photographs of the scene. Counsel may view the photographs upon request or Defendant will provide copies of the photographs at Plaintiff's expense. A representative sampling of photocopied photographs is attached.

RESPONSE TO REQUEST FOR PRODUCTION NO. 3:

Defendant is not currently in possession of any such documents. Defendant knows of no ownership or other interest it has in the property in question other than its being in the city limits.

RESPONSE TO REQUEST FOR PRODUCTION NO. 4:

See Defendant's response to Request for Production No. 3.

RESPONSE TO REQUEST FOR PRODUCTION NO. 5:

Defendant provides:

- a. Copy of portion of zoning map.
- b. Copy of drainage map with rain calculations.
- c. Copy of apartment complex maps.
- d. Copy of maps 13 and 14, which represent detail map sections of Farmer's Branch, Dallas, and Addison.

RESPONSE TO REQUEST FOR PRODUCTION NO. 6:

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See Defendant's response to Request for Production No. 6.

RESPONSE TO REQUEST FOR PRODUCTION NO. 8:

See Defendant's response to Request for Production No. 6.

RESPONSE TO REQUEST FOR PRODUCTION NO. 9:

See Defendant's response to Request for Production No. 6.

RESPONSE TO REQUEST FOR PRODUCTION NO. 10:

See Defendant's response to Request for Production No. 6.

RESPONSE TO REQUEST FOR PRODUCTION NO. 11:

See Defendant's response to Request for Production No. 6.

RESPONSE TO REQUEST FOR PRODUCTION NO. 12:

See Defendant's response to Request for Production No. 6.

RESPONSE TO REQUEST FOR PRODUCTION NO. 13:

See Defendant's response to Request for Production No. 6.

RESPONSE TO REQUEST FOR PRODUCTION NO. 14:

See Defendant's response to Request for Production No. 6.



RESPONSE TO REQUEST FOR PRODUCTION No. 15:

See Defendant's response to Request for Production No. 6.

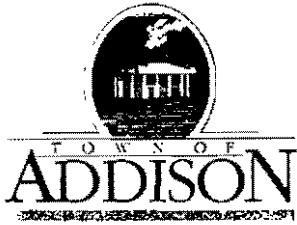
RESPONSE TO REQUEST FOR PRODUCTION NO. 1:

10:00 A.M.

MET WITH PAUL KEZOH, THE FATHER OF THE DROWNING VICTIM OF LAST YEAR. KEZOH STATED THAT HE HAD BEEN ADVISED OF SHAUNA PUSHING HIS SON INTO THE CREEK, AND HE DID CONTACT ADDISON POLICE DEPT. AND ASKED THEM TO INVESTIGATE THIS CLAIM. HOWEVER, HE HAD NOT FOUND ANY EVIDENCE OF THIS CLAIM ON HIS OWN. INVEST. COLLINS HAD ALSO BEEN CONTACTED BY KEZOH'S ATTORNEY AND LEARNED THAT THERE WAS A LAW SUIT IN PROGRESS FILED AGAINST GREENHAVEN VILLAGE APARTMENTS.

INVEST. COLLINS MET WITH PAUL KEZOH IN THE C.I.D. OFFICES. INVEST. COLLINS FOUND THAT MR. KEZOH DID NOT HAVE AN OLDER SON THAN PAUL KEZOH JR. HE DOES HAVE A DAUGHTER FROM A PREVIOUS MARRIAGE THAT IS PRESENTLY TEN YEARS OLD AND LIVES WITH HER MOTHER. KEZOH ADVISED THAT HE DID HEAR IT RUMORED THAT THE LITTLE BLACK GIRL NAMED SHAUNA HAD PUSHED HIS SON INTO THE CREEK BUT WAS NEVER ABLE TO FIND ANY PROOF THAT THIS WAS A FACT.

JOSEPHINE KEZOH ADVISED HER SON WAS ALWAYS AT THE CREEK AND THAT THEY  
HAD TO WARN THEIR SON ON MANY OCCASIONS ABOUT PLAYING AT THE CREEK.



**CITY ENGINEER'S OFFICE**

Post Office Box 144 Addison, Texas 75001

(214) 450-2886

16801 Westgrove

July 15, 1993

Ronald H. Clark  
Henderson Bryant & Wolfe, L.L.P.  
P.O. Box 340  
Sherman, Tx 75091-0340

RE: Kappler, et al v. Addison, et al, Cause No. 93-3831-A  
Kezoh, et al v. Addison, et al, Cause No. 93-3827-E

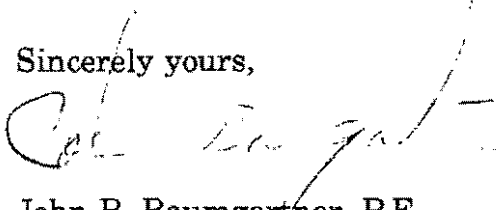
Dear Ron:

I have researched the City's building/subdivision records and find them inconclusive regarding this case. The following summarizes the information I have been able to obtain:

1. The property is not currently platted.
2. I was not able to locate construction plans detailing the installation of the storm sewer in question. There are not any records to indicate that this was a public improvement.
3. The plans on file indicate a drainage easement was dedicated but there is no recording information and it was not processed through the Council.
4. Current ordinances require the property owner to maintain drainage easements on their property.
5. A copy of the building permit does not exist in our files. The plans we have indicate that this project was constructed in 1974 or 1975.

If you have any questions or need additional information, please call me.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "John R. Baumgartner".

John R. Baumgartner, P.E.  
Director of Public Works

JRB/jas

attachments

cc: Ken Dippel (no attachments)  
Ron Whitehead (no attachments)

Sandy

FILE

HENDERSON BRYANT & WOLFE, L.L.P.  
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RONALD H. CLARK  
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STACI S. JOHNSON  
JAMES CORLEY HENDERSON  
DEBORAH S. BURLESON  
DEBORAH L. MCGREGORY  
JAMES C. TIDWELL  
AMOS L. MAZZANT

June 22, 1993

Mr. John Baumgartner, P.E.  
Director of Public Works  
Town of Addison  
P. O. Box 144  
Addison, TX 75001

Re: Kappler, et al v. Addison, et al, Cause No. 93-3831-A  
Kezoh, et al v. Addison, et al, Cause No. 93-3827-E

Dear John:

When we met on May 4, 1993, we discussed the need to obtain all possible plats, maps, construction plans, permits, and other documents establishing when the apartment complex was built, who built it, and when the culvert was installed. If we can demonstrate to Plaintiffs' satisfaction that the City does not own the property in question, and is not legally responsible for maintaining or safeguarding the property, it may be possible to have the City dismissed before the City uses up its deductible on each case in costs and legal fees.

If no such documents exist in the City files, and cannot be located, please let me know. Otherwise, I would appreciate receiving copies at your earliest convenience.

Please let me know if you have any questions or suggestions concerning the case.

Very truly yours,



Ronald H. Clark

RHC/smw

cc: Mr. Kenneth Dippel  
Mr. Ron Whitehead

NEW FILE:

HENDERSON BRYANT & WOLFE, L.L.P.

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DEBORAH L. MCGREGORY  
JAMES C. TIDWELL  
AMOS L. MAZZANT

June 7, 1993

Mr. Ron Whitehead  
City Manager  
Town of Addison  
P. O. Box 144  
Addison, TX 75001

Re: Shandra Kappler, et al v. Town of Addison, et al  
Cause No. 93-3831-A

Dear Ron:

The Judge has entered a Scheduling Order in this case requiring completion of discovery by October 4, 1993, mediation no later than November 15, 1993, and a jury trial on November 29, 1993.

I am working to have the Town of Addison dismissed without the necessity of extensive discovery, mediation, and trial. Mr. Baumgartner is working to locate all City documents, maps, and plats concerning the property so that we can show that the City has no ownership interest or other responsibility for the property.

In the event that we cannot have the case dismissed, it will be necessary for a representative of the City to attend the trial beginning November 29, 1993. It will also be necessary for Mr. Baumgartner, other City staff, and police investigators to testify.

Please let me know if you have any questions or suggestions concerning the case. I will keep you informed of further developments.

Very truly yours,



Ronald H. Clark

RHC/smw

cc: Kenneth Dippel  
John Baumgartner ✓

FILE

HENDERSON BRYANT & WOLFE, L.L.P.

ATTORNEYS & COUNSELORS

123 NORTH CROCKETT STREET

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JAMES C. TIDWELL  
AMOS L. MAZZANT

May 25, 1993

Mr. John Baumgartner, P.E.  
Director of Public Works  
Town of Addison  
P. O. Box 144  
Addison, TX 75001

Re: Kappler, et al v. Addison, et al, Cause No. 93-3831-A  
Kezoh, et al v. Addison, et al, Cause No. 93-3827-E

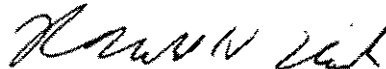
Dear John:

Have you been able to locate any City plats, maps, building permits, or other documents establishing when the apartment complex was built, who built it, and when the culvert was installed? Are there any documents indicating that the City has anything to do with the fence, or, even better, that the City is not responsible for the failure to erect a fence? Finally, any documents which establish that the property is not owned by the City, or is owned by private parties would be helpful.

If we can clearly establish that the City has no ownership or responsibility for this property, Plaintiffs may be willing to let us out of the suits before we spend a great deal of time and expense defending them. If they do not, the Courts may be willing to grant summary judgment if we can establish our position clearly enough.

Please let me know if you have any questions or suggestions concerning the case.

Very truly yours,



Ronald H. Clark

RHC/smw

cc: Mr. Kenneth Dippel  
Mr. Ron Whitehead