1)

Q1= 80
Q2= 80

A covenant is a promise between two or more parties that creates a burden and a benefit in relation to real property interests. Here, we have a group of parcels that are all subject to a declaration of covenants. First, we will look at the original parties to the covenants. The covenants were initially agreed upon between "Big Guy Development Co." (BG), and the original purchasers of the parcels. The covenants have been recorded, and each original purchaser of each parcel was on notice to the covenants as they were included in the deeds. Since the time the covenants were agreed upon, BG no longer has any ownership interest in the development. Because he no longer has any ownership in the development, we must analyze the covenants to see if the purchasers of the parcels are still bound by them. To begin this analysis, we ask ourselves "do the covenants run with the land"? There is a specific way to analyze both the burden and the benefit of the covenant to determine if they do in fact "run with the land". First, we identify both the burden and the benefit. The burden of these covenants falls on the original purchasers of the parcels. Their burden is to adhere to the Declaration of Covenants, which are not stated in the facts, but can be a wide range of agreements. Luckily, these covenants have been recorded and are not simply inferred by the development's common plan (however, they would still be valid if they were implied by the common plan). The benefit of the covenants originally belonged to BG. Next, we look to see what interest in property are tied to the benefits and burdens. As for the burdens, they are tied to the original purchaser's specific variations of fee simple (assuming that is what they were conveyed). The benefit of the covenants, however, is tied to BG's interest in GRIPE as a whole - the ten parcel subdivision. Now that the benefits and burdens have been identified along with their corresponding property interests, we look to see if those interests have been transferred. The facts do not state whether or not the original purchasers of the parcels ever transferred their interest, so we will assume that they still own their property interests, thus not having transferred their burdens. We do know that BG has transferred his entire ownership interest, and maybe his corresponding benefit, in the development. Next, we will analyze whether or not BG's benefits of the covenants have transferred with that interest, or "run with the land".

Typically, for a covenant (both burden and benefit) to run with the land, certain factors must be met. First, the covenant must be in writing. Second, there must have been intent by the parties to have the benefits and burdens be transferrable. Third, the covenant must have "touch and concerned" the land. An interpretation of this element is that the party who holds the burden in their legal interest has a diminution of value to that interest, while the holder of the benefit has an increase in the value of their legal interest. Lastly, there must be privity - both horizontal and vertical. Horizontal privity pertains to the legal relationship between the original parties, BG and the original purchasers in this case. Vertical privity pertains to the legal relationship outside of the original agreement, the new owner of BG's property interest.

In the present set of facts, it seems that only the benefit of the covenants has been transferred. This requires a bit less than the aforementioned elements. In order for a benefit of a covenant to "run with the land", there must be vertical privity, intent to have the benefit transferrable, and it must touch and concern the land. Here, there is vertical privity between the original purchasers and the new holder of BG's property interest. We may need additional facts to determine if there was intent for the benefit to run with the land. In a situation like this, where a development company completes their job and sells their interest, it would be natural to assume that they intended the benefit to transfer. We will assume such here. Lastly, the element of "touch and concern" has been met, as both the benefit and the burden directly affect the value of each property interest. BG's benefit does run with the land, and the original purchasers (and likely subsequent purchasers) will be bound by the covenants.

Now that we have determined that the original purchasers are still bound by the declaration of covenants, we will analyze the proposals that they would like to enforce, and whether or not a court is likely to enforce them.

A) Change from "one parcel - one vote", to votes weighted according to the square footage of each parcel.

A court may find this difficult to enforce. According to the current rules of the covenant, there must be a 60 percent majority vote to amend or repeal any existing covenant, or to adopt a new covenant. When trying to amend, repeal, or adopt

something new to a covenant, we must look to what the covenant designates as the proper way to go about such changes. The distinct method described in the covenant for making these changes must be strictly adhered to. Assuming that all members of KARRP voted in favor of this change, they would still be short of the majority vote. They would need another vote from another member of the HOA, but that may not be likely, as those members have considerably smaller parcels. Without a majority vote, this change will likely not be enforceable.

B) Adopt a covenant investing any KARRP member with the power to veto any measure, regardless of how all other HOA members vote.

This is quite a reach, and will likely not be enforceable. KARRP is an "unofficial" coalition with 5 members, and does not outweigh the legitimacy of the HOA. Sure, the HOA does not seem to be very active, but they would have more importance than an unofficial coalition. KARRP will have to attempt to become an official coalition to even stand a chance for this change. According to the language of the covenant, a majority vote would be needed for this as well, and is very unlikely.

C) Prohibit all remodeling of residences without approval by a 51% majority of the total square footage in all parcels.

This will have to get a majority vote (60%) to be enforceable. The owners of the parcels will have to adhere to the proper channels of amending their covenants.

D) Prohibit all sales of parcels to families with children under age 18.

Due to the nature of the existing covenants, this will likely not be enforceable. These parcels are large enough for a family to reside in, and to expressly prohibit families with children under the age of 18 to live there may be against public policy.

E) Prohibit renting of any housing unit for more than 30 days, with no "grandfathering" allowed for existing rentals - of which there are currently 3, non of which is on a KARRP parcel.

Again, this will have to be agreed upon by majority vote, according to the stipulations of the covenant. If this amendment were to pass, those who are currently renting

would need sufficient notice regarding the nullity of their "grandfathering" status. 30 days may suffice.

I would suggest that KARRP become more involved in the HOA. The facts show that the current board of directors is not very active, and the KARRP is very active. They will have a more "official" coalition and legitimacy. They must also remain as a non-profit organization to have better standing.

2)

To: Town Council

Re: Regulatory Options Advisory Memo

Dear Council,

Please be advised of the following 3 part memo, which will provide more information regarding what may come in regards to Mega Church Inc (MCI).

PART 1

The federal Religious Land Use and Institutionalized Persons Act may come into play here. In basic terms, the RLUIPA prohibits land use regulations from substantially burdening the free exercise of religion. It also prohibits land use regulations that treat religious institutions differently than non-religious institutions, and prohibits land use regulations that explicitly deny any religious institutions for a given jurisdiction. If a land use regulation were to be adopted, it would be necessary that it would not violate the RLUIPA ("The Act"). The Act does define religious exercise broadly, and is inclusive of many things. On the other hand, the "substantially burden" element is not defined. Thus, courts are split on how the Act is applied. If a land use regulation is going to be made, MCI will likely challenge it on the grounds that it does substantially burden their right to exercise religion. The land use regulation cannot be overburdensome. It should not infringe on MCI's right to assemble and right to

exercise religion. However, by the sheer size of the proposed MCI compared to the town's population, that in itself creates a burden on the town. Just because a land use regulation does not fit a religious institution's requests perfectly, does not mean it will be invalidated. Even if MCI challenges the land use regulation based on RLUIPA, the magnitude of such a "mega" establishment in such a tiny town seems unreasonable.

PART 2

The parcel MCI plans to build on is currently zoned for "town business use", which is classified as "commercial enterprises compatible with the historical character of the town". MCI may believe that this zoning ordinance fits them well, but there is an argument that such a massive establishment is not compatible with the historical nature of such a small town.

Zoning is a valid exercise of a government entity's police powers to curtail significant public problems that would justify a restriction on one's property rights. This is not something to take lightly. A zoning ordinance can be deemed unconstitutional if it is clearly arbitrary and unreasonable, and does not significantly relate to the public health, safety, morals, and general welfare. Assuming a zoning ordinance is valid, there are three main exceptions to them. The exceptions are: Special Exception/Conditional Use, Variance, and Zoning Amendments. In drafting an ordinance, we would want to make sure that MCI could not use one of these exceptions. Special Exceptions/Conditional Use exceptions can be found directly in the ordinance itself. There are lists of regularly permitted uses, followed by special uses, and possible conditions that must be met. There should be no special uses for a "mega-establishment" included in the exceptions. If there were, MCI would have to apply for a permit. The Board of Zoning Adjustment (BZA) would conduct a balancing test to determine if this special exception or conditional use would harm the public. There is a great argument for how it would, due to the size of the establishment. The Variance exception would be the next exception to analyze. There are two types of variances, use and bulk. For a use variance, MCI would have to show that they have "special circumstances" and unnecessary hardship. Their circumstances may not

reach the level of "special" in the eyes of the BZA, as it is just a large establishment. However, they may argue that their basis of religion grants them those circumstances. In order to satisfy the unnecessary hardship factor, MCI would have to show that they could not yield a reasonable return on their land, as well as that there wouldn't be a large change in the characterization of the locality, and that their hardship was not self-inflicted. Considering that the locality is currently surrounded by areas that are zoned as for "residential use", they will likely not meet the requirements for a use variance. In order to obtain a bulk variance, MCI would have to show special circumstances, and particular difficulties. If they are able to show special circumstances, showing particular difficulties may be difficult. This requires that MCI show the significance of the economic impact the ordinance would have on them, the magnitude of the variance, that there are no other feasible means of achieving their purpose, and that the particular difficulties are not self-inflicted. The magnitude of the variance element of a requested bulk variance by MCI would likely disqualify them from such a variance. Lastly, there is the zoning amendment exception. MCI could attempt to amend the ordinance. This can happen either by a change in text to the ordinance, or a change in the mapping of the ordinance. Spot zoning is a change in the mapping of the ordinance, and MCI would likely attempt to have their parcel "upzoned" meaning that it would be suitable for a more commercial purpose. Yes, they are a commercial enterprise as it relates to the "town business use" ordinance, however, as mentioned before, MCI likely does not fit into that category, as they are not compatible with the historical character of the town. Rezoning an area is much harder to achieve, as it infers "great deference", compared to the substantial evidence requirement used for special exceptions and variances. The BZA would take into account many different factors, including: the peculiar adaptability of MCI's establishment to fit the rezoning, what the surrounding areas are currently zoned as, the economic impact, as well as other factors. The fact that the surrounding areas are zoned for residential use would be a large factor in the determination. Residential zones are one of the lowest levels in terms of use, and MCI would be asking to "upzone" to a higher commercial use. This would be extremely hard to accomplish.

Please review the following proposed ordinance and how it relates to the aforementioned zoning exceptions.

No buildings or facilities located in Tiny Town may exceed an occupancy of 1,000 people. Any parcel of land containing a building or facility that has the ability to occupy 1,000 people may not be allowed to have another building on their parcel that can occupy more than 200 people at a time. Parcels of land that can occupy such numbers of people must have a maximum amount of parking spaces of 1,000.

This example of a new ordinance would likely be challenged by MCI. MCI may attempt to challenge via the RLUIPA, and argue that this substantially burdens their right to exercise religion. This argument will likely fail. Yes, MCI wouldn't be able to be as large as they initially wanted, but it would not stop them from exercising religion and coincide more with the nature of Tiny Town. Having an occupancy limit nearly the size of the population of Tiny Town should be seen as an exorbitant gift, rather than a substantial burden on their religious exercise. In a final draft, we will likely minimize that number to an extent, but not low enough to the point where MCI would argue that we are treating their religious organization any different from a non-religious organization.

PART 3

General Plan Amendment:

Tiny Town's "Town business use" zoning classification is hereby changed in the following ways:

"Town business use" shall be reclassified as to allow commercial enterprises that are compatible with the historical character of the town, and are limited to parcels of land not exceeding 5 acres.

MCI will have to attempt to "upzone" to a larger commercial zone in order to adhere to this general plan amendment. MCI may attempt to challenge the new definition based on an RLUIPA violation, in that such a size restriction substantially burdens their right to exercise religion. MCI has obtained a parcel of 50 acres in Tiny Town,

which may be a large portion of the town itself considering its population. We would defend against this challenge in that it is not specific to a religious enterprise, but coincides with the nature of the town and the size of it's population and the amount of land. We would argue 5 acres of land could be more than adequate to have a building and parking lot large enough to exercise religion freely, as well as any other institution for that matter. Considering the size of Tiny Town and the surrounding areas, this would not be close to being considered a substantial burden on exercising religion, even though the Act does not define "substantial burden".

END OF EXAM