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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

Daniel Hall, Circuit Court Judge

Case No. 2019-CP-46-00310
Appellate Case No: 2019-000979

Ex Parte, Ryan Powell, ... Appellant,

In re LB PARK, LLC, ... Respondent,

v.

San Juan Holdings, Brett Osborne, the trustee; Brett Osborne as Trustee of San Juan Holdings; and John Doe and Mary Roe, representing all unknown persons having or claiming to have any right, title, or interest in or to, or lien upon, the real estate described as 25056 Timberlake Drive, York County, South Carolina, TMS 643-10-001-023, their heirs and assigns, and all other persons, firms, or corporations entitled to claim under, by or through the above named Defendant(s), and all other persons or entities unknown claiming any right, title, interest, estate in, or lien upon the real estate described as 25056 Timberlake Drive, York County, South Carolina, TMS 643-10-01-023, ... Respondents.

RECORD ON APPEAL

Ryan Powell, Appellant
c/o 25056 Timberlake Drive
Fort Mill, SC 29708
(919) 400-6339

Sarah P. Spruill
P.O. Box 2048 (29602)
Greenville, SC 29601
(864) 240-3220
Attorney for Respondent LB PARK, LLC

RECORD ON APPEAL - INDEX

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CASE NO. 2019CP4600310

LB Park LLC
PLAINTIFF(S)

San Juan Holdings et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (CHECK REASON): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

After consideration, the Court denies the Motion to Dismiss that was filed on April 8, 2019, it is so ordered.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 05/31/2019 .

Karen Marie Powell
Brett Osborne for Brett Osborne
Brett Osborne Trustee
Brett Osborne for Brett Osborne
John Doe
Mary Roe
Ryan Powell
San Juan Holdings

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



York Common Pleas

Case Caption: LB Park LLC VS San Juan Holdings , defendant, et al

Case Number: 2019CP4600310

Type: Order/Electronic Form 4

So Ordered

s/Daniel D. Hall 2753

CASE NO. 2019CP4600310

LB Park LLC
PLAINTIFF(S)

San Juan Holdings et al
DEFENDANT(S)

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- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
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☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

After consideration, the Court grants Plaintiff's Motion to Refer to the Master, it is so ordered. This case is referred to the Master in Equity to hear all matters until a resolution or disposition is reached.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 05/31/2019 .

Karen Marie Powell
Brett Osborne for Brett Osborne
Brett Osborne Trustee
Brett Osborne for Brett Osborne
John Doe
Mary Roe
Ryan Powell
San Juan Holdings

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York Common Pleas

Case Caption: LB Park LLC VS San Juan Holdings , defendant, et al

Case Number: 2019CP4600310

Type: Order/Electronic Form 4

So Ordered

s/Daniel D. Hall 2753

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF YORK

Case No. 2019-CP-_____

LB PARK, LLC,

Plaintiff,

vs.

**COMPLAINT
(Non-Jury)**

San Juan Holdings, Brett Osborne, the trustee; Brett Osborne as Trustee of San Juan Holdings; and John Doe and Mary Roe, representing all unknown persons having or claiming to have any right, title, or interest in or to, or lien upon, the real estate described as 25056 Timberlake Drive, York County, South Carolina, TMS 643-10-01-023, their heirs and assigns, and all other persons, firms, or corporations entitled to claim under, by or through the above-named Defendant(s), and all other persons or entities unknown claiming any right, title, interest, estate in, or lien upon, the real estate described as 25056 Timberlake Drive, York County, South Carolina, TMS 643-10-01-023,

Defendants.

Plaintiff LB PARK, LLC ("Plaintiff"), complaining of the defendants herein, would respectfully allege and show unto this Court as follows:

1. Pursuant to S.C. Code Ann. §§ 12-61-10 to -60, Plaintiff asserts its Complaint against the defendants for the purpose of clearing title to real property known as 25056 Timberlake Drive, York County, South Carolina, tax map number 643-10-01-023 (the "Property"), which is herein below more specifically described and identified. Plaintiff's title to the Property derives from a tax deed resulting from a tax sale conducted by York County pursuant to statute and a subsequent quitclaim deed from the tax sale purchaser.

The Property

2. The Property conveyed by the tax deed is more particularly described as follows:

All that certain piece or lot of land situated, lying or being in the County of York, State of South Carolina, being known and designated as Lot 56 of Tega Cay Section 25 as shown on plat recorded in the Office of the Clerk of Court for York County in Plat Book 85 at Page 129, and on plat recorded in Plat Book 73 at Pages 23-26, and being more recently shown and more particularly described in Plat Book 131 at Page 306, reference to which is hereby made for a more complete description.

Derivation: This being property conveyed to San Juan Holdings, Brett Osborne, the trustee, by Deed from Paramount Properties, Mark Muccl, the trustee, dated June 1, 2000 (probate says June 15, 2000), recorded June 27, 2000 in Book 3173, Page 343, Office of the Clerk of Court for York County, SC; being the same property conveyed to SB MUNI CUST % LBSC-11 LLC by Tax Title dated and recorded on December 26, 2018, in the Office of the Register of Deeds for York County in Deed Book 17337 at Page 73; and being the same property conveyed to LB Park, LLC by quitclaim deed dated January 7, 2019, and recorded in the York County Register of Deeds Office on January 10, 2019, in Book 17361, page 145.

TMS# 643-10-01-023.

Parties

3. Defendant San Juan Holdings, Brett Osborne, the trustee ("San Juan") obtained title to the Property by deed dated June 1, 2000, and recorded on June 27, 2000, in the York County Register of Deeds Office (the "ROD") in Book 3173, page 343.

4. By virtue of the foregoing deed, Plaintiff is informed and believes that San Juan owned 100% of fee simple title to the Property prior to the tax sale. Accordingly, Plaintiff has named San Juan as a party to extinguish and eliminate any and all interests that San Juan has or may claim to have in, to, or upon the Property.

5. Plaintiff named Defendant Brett Osborne as Trustee of San Juan Holdings ("Osborne") as a party due to the Notice of Sale, Transfer or Exchange dated December 20, 2012, and recorded on December 26, 2012, in the ROD in Book 13103, page 241 (the "Osborne Notice").

6. Plaintiff is informed and believes that the Osborne Notice did not convey title or any other interest in the Property and that, after the Osborne Notice was recorded, title to the Property

remained vested in San Juan. However, Plaintiff has named Osborne as a party to extinguish and eliminate the Osborne Notice as a cloud, impediment, or encumbrance upon the title to the Property.

7. Defendants John Doe and Defendant Mary Roe and the other unknown defendants (collectively the “Unknown Defendants”) represent and include all unknown persons or entities having or claiming any right, title, or interest in or to, or lien upon, the Property.

8. The parties hereto, and the subject matter hereof, are within the jurisdiction of this Court.

**FIRST CAUSE OF ACTION
(Action to Quiet Tax Title)**

9. Plaintiff re-alleges and incorporates herein by reference all of the above allegations.

10. SB MUNI CUST % LBSC-11 LLC (“SB MUNI”) purchased the Property at the York County tax sale held on November 6, 2017, with a bid of \$171,000.00. York County conveyed tax title to SB MUNI by tax deed dated and recorded on December 26, 2018, in the ROD in Book 17337, page 73 (the “Tax Deed”).

11. SB MUNI subsequently conveyed the Property to Plaintiff by quitclaim deed dated January 7, 2019, and recorded in the ROD on January 10, 2019, in Book 17361, page 145.

12. This Complaint is made for the purpose of clearing title to the Property against any and all claims, if any, as have been or may be raised by any of the defendants adverse to the title and ownership interests of Plaintiff acquired by the referenced tax sale proceedings, Tax Deed, and quitclaim deed.

13. In support of the status of Plaintiff’s title and in support of this action to clear title by determination of Plaintiff’s interests superior to other interests, specifically including any and all interests of the defendants, Plaintiff alleges as follows:

a. On or about November 6, 2017, the Property was sold to SB MUNI at a tax sale conducted by the taxing authorities for York County for unpaid ad valorem taxes.

b. Upon information and belief, the tax sale conducted by the taxing authorities for York County was prosecuted pursuant to the controlling tax sale statutes, S.C. Code Ann. §§ 12-51-40 to -170, including all requisite notices to the owner of record and any other parties in interest to the Property.

c. SB MUNI was the successful purchaser of the Property at the referenced tax sale, and the tax sale bid was paid in full pursuant to the notice of tax sale and was otherwise in accordance with the statutory proceedings.

d. None of the defendants or any other person or entity took any action in response to the notices or otherwise to redeem the Property, and the Property was conveyed by York County to SB MUNI through the Tax Deed.

e. SB MUNI subsequently conveyed the Property to Plaintiff by quitclaim deed dated January 7, 2019, and recorded in the ROD on January 10, 2019, in Book 17361, page 145.

14. Plaintiff is informed and believes that by reason of the Tax Deed conveyed to SB MUNI by York County in strict compliance with the controlling tax sale statutes and the subsequent quitclaim deed to Plaintiff, Plaintiff is the owner of marketable fee simple title to the Property without regard to any outstanding or adverse claims of interest of any of the defendants, and that Plaintiff is entitled to an order of this Court declaring and confirming that its title is free and clear of such adverse lien interests and encumbrances or other claims to the Property, if any, as are or may be claimed or asserted by any of the defendants.

15. Plaintiff is further informed and believes that upon the Court's issuance of its order declaring and confirming that Plaintiff's title is free and clear of such adverse interests and

encumbrances or other claims to the Property, if any, as are or may be claimed or asserted by any of the defendants, Plaintiff is entitled to immediate possession of the Property, and that any tenants or parties in possession of the Property, must be evicted from and vacate the Property within a reasonable time to be determined by this Court.

**FIRST ALTERNATIVE CAUSE OF ACTION
(Action to Recover Amounts Due)**

16. Plaintiff re-alleges and incorporates herein by reference all prior paragraphs of its Complaint.

17. Only in the event that the tax sale of the Property is set aside or declared void, Plaintiff seeks to recover the amounts that the controlling authority requires be refunded and tendered to the Plaintiff, which includes a refund of the tax sale bid, a refund of all Property taxes paid, a refund of all costs justly chargeable against the Property, and interest at the statutory rate of 12% on the tax sale bid from the date of the tax sale until paid, as provided in S.C. Code Ann. §§ 12-51-90, -100, together with pre-judgment interest.

18. South Carolina law provides that, when a tax sale is set aside through litigation, the courts must treat it as the ultimate redemption and that the provisions of S.C. Code Ann. § 12-51-100 apply.

19. Pursuant to S.C. Code Ann. § 12-51-100, Plaintiff is statutorily entitled to a refund of the tax sale bid and the interest required by S.C. Code Ann. § 12-51-90. As the redemption period expired on November 6, 2018, Plaintiff is entitled to interest on the tax sale bid at the statutory rate of 12% from the date of tax sale as provided in S.C. Code Ann. § 12-51-90.

20. Plaintiff is also entitled to a refund of all property taxes that it has paid and all costs that they have paid that are justly chargeable against the Property.

21. As the amount of the tax sale bid, paid property taxes, costs justly chargeable against the Property, and legal interest are sums that are certain or are capable of being reduced to certainty, Plaintiff is further entitled to receive and seeks to recover pre-judgment interest.

22. Therefore, if the Court sets aside the tax sale of the Property, Plaintiff seeks judgment against the party challenging the tax sale of the Property for the amount of the tax sale bid, paid property taxes, costs justly chargeable against the Property, and legal interest at the rate of 12% on the tax sale bid from the date of the tax sale until paid, together with pre-judgment interest.

**SECOND CAUSE OF ACTION
(Reformation of Tax Deed)**

23. Plaintiff reincorporates and re-alleges each of the foregoing allegations as fully as if repeated herein verbatim.

24. In relevant part, the legal description in the Tax Deed refers to a “. . . plat recorded in the Office of the Clerk of Court for York County in Plat Book 85 at Page 129, and on Plat Book 73 at Pages 22-26 . . . ” (the “Plat”). (Emphasis added.)

25. According to the applicable records for the Property maintained in the ROD, the Plat was actually recorded in the ROD in Plat Book 73 at Pages 23-26, not Pages 22-26. (Emphasis added.) A copy of the Plat is attached as Exhibit A.

26. Throughout the chain of title for the Property, the Plat is incorrectly referenced as being recorded in Plat Book 73 at Pages 22-26.

27. Therefore, Plaintiff seeks an Order of the Court reforming the Tax Deed, the quitclaim deed to Plaintiff, and all previous deeds in the chain of title to reflect the correct recording information for the Plat, which was actually recorded in Plat Book 73 at Pages 23-26.

WHEREFORE, for the reasons set forth above, Plaintiff prays for the following relief:

1. With respect to Plaintiff's First Cause of Action, Plaintiff prays that judgment be entered in its favor against the defendants with a finding by the Court that any right, title, claim, interest, or lien in or to the Property arising from the interests of any of the defendants in the Property that they now claim or may claim in the future, be found to be junior or subsequent to Plaintiff's title, and that Plaintiff be provided a final and complete adjudication of the nature and extent of its title to the Property so that it may own, possess, and transfer clear title to the Property; and that judgment be entered in Plaintiff's favor against the defendants and any other tenants or parties in possession of the Property with a finding by the Court that Plaintiff is entitled to immediate possession of the Property and ordering the York County Sheriff to evict and remove any tenants or parties in possession of the Property from the Property within a reasonable time as determined by the Court.

2. With respect to Plaintiff's First Alternative Cause of Action, and only in the event that the tax sale of the Property is set aside or declared void, Plaintiff prays that judgment be entered in its favor against the party challenging the tax sale with a finding by the Court that Plaintiff is entitled to a refund of the tax sale bid, all Property taxes paid, all costs justly chargeable against the Property, and legal interest on the tax sale bid at the rate of 12% from the date of the tax sale on November 6, 2017, until paid, as provided in S.C. Code Ann. §§ 12-51-90, -100, together with pre-judgment interest, and that the Court order the party challenging the tax sale of the Property to refund these amounts to Plaintiff.

3. With respect to Plaintiff's Second Cause of Action, Plaintiff prays that judgment be entered declaring and reforming the Tax Deed, the quitclaim deed to Plaintiff, and all

previous deeds in the chain of title to reflect the correct recording information for the Plat, which is Plat Book 73 at Pages 23-26.

4. Plaintiff also prays that the Court award it such other and further relief as the Court may deem just and proper.

s/ A. Parker Barnes III

A. Parker Barnes III

SC Bar No. 68359

Haynsworth Sinkler Boyd, P.A.

Post Office Box 11889

Columbia, South Carolina 29211-1889

(803) 779-3080

January 25, 2019

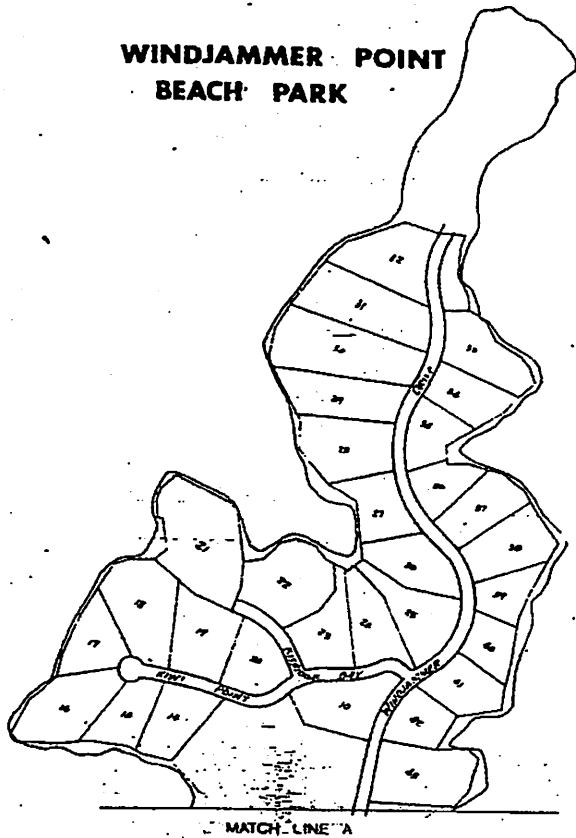
Attorneys for Plaintiff

EXHIBIT
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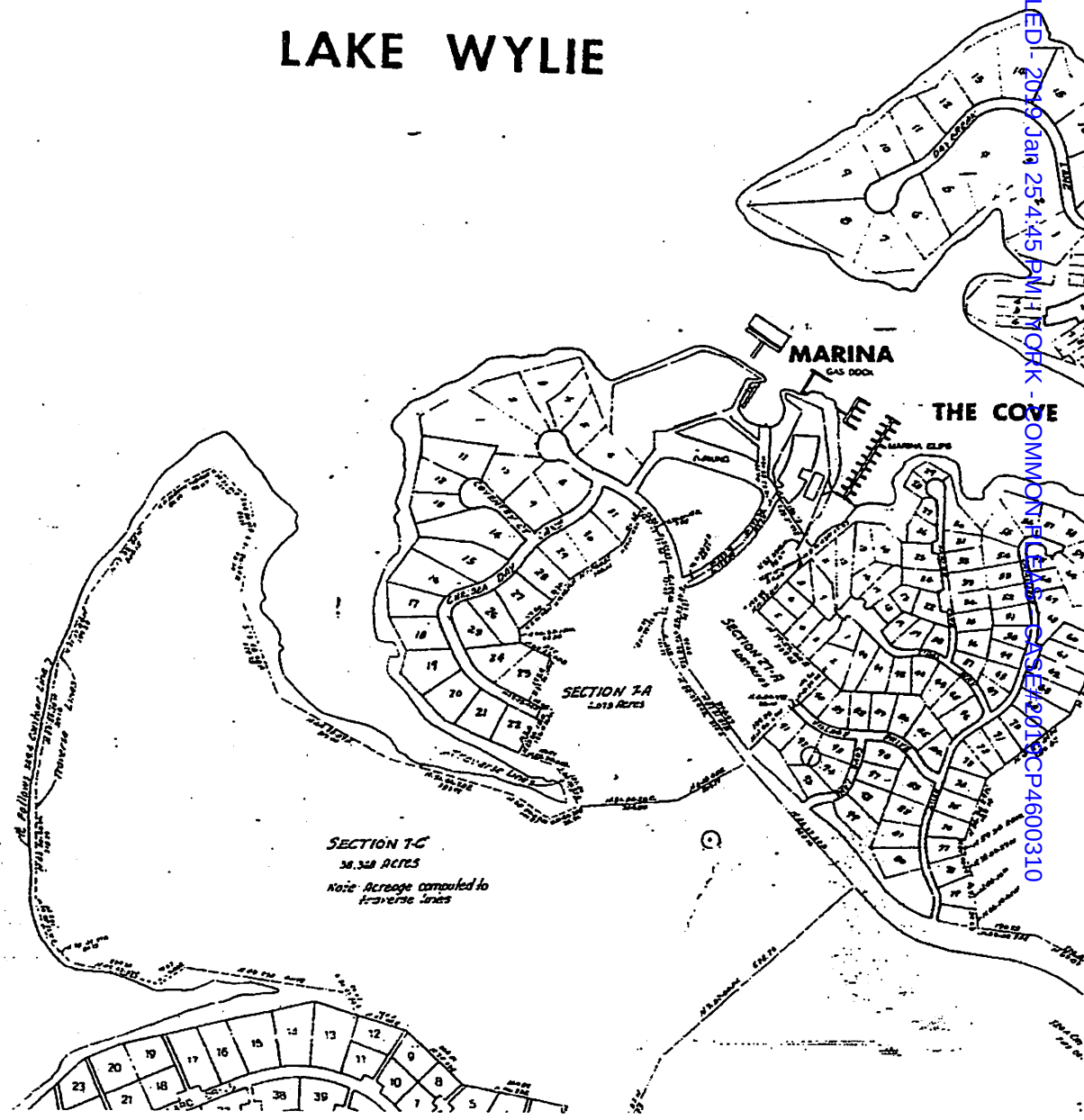
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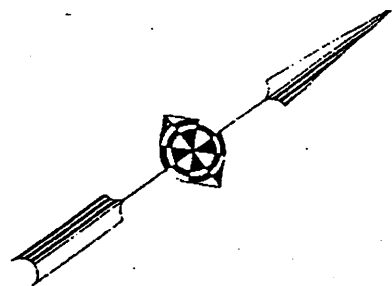
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WINDJAMMER POINT BEACH PARK



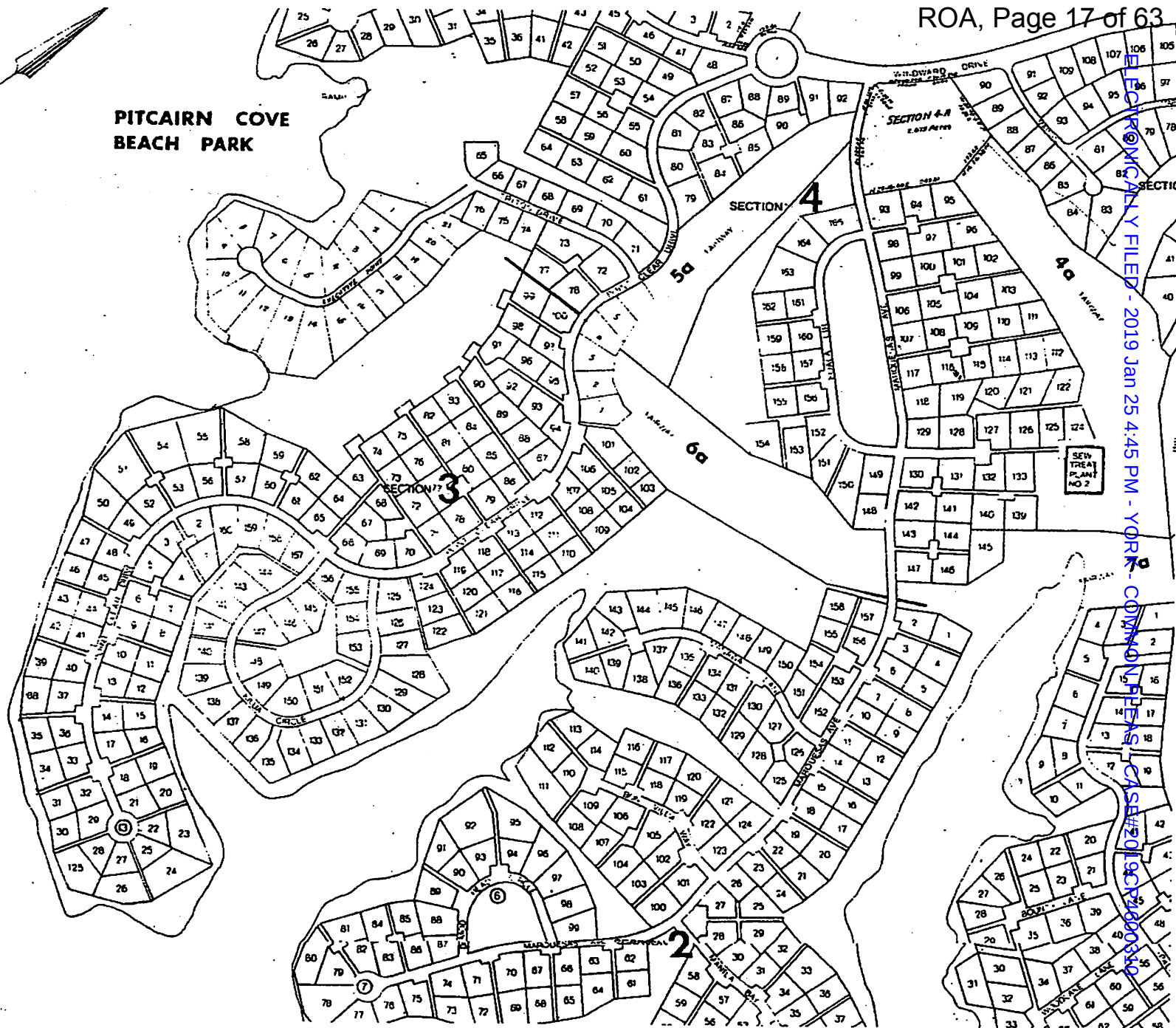
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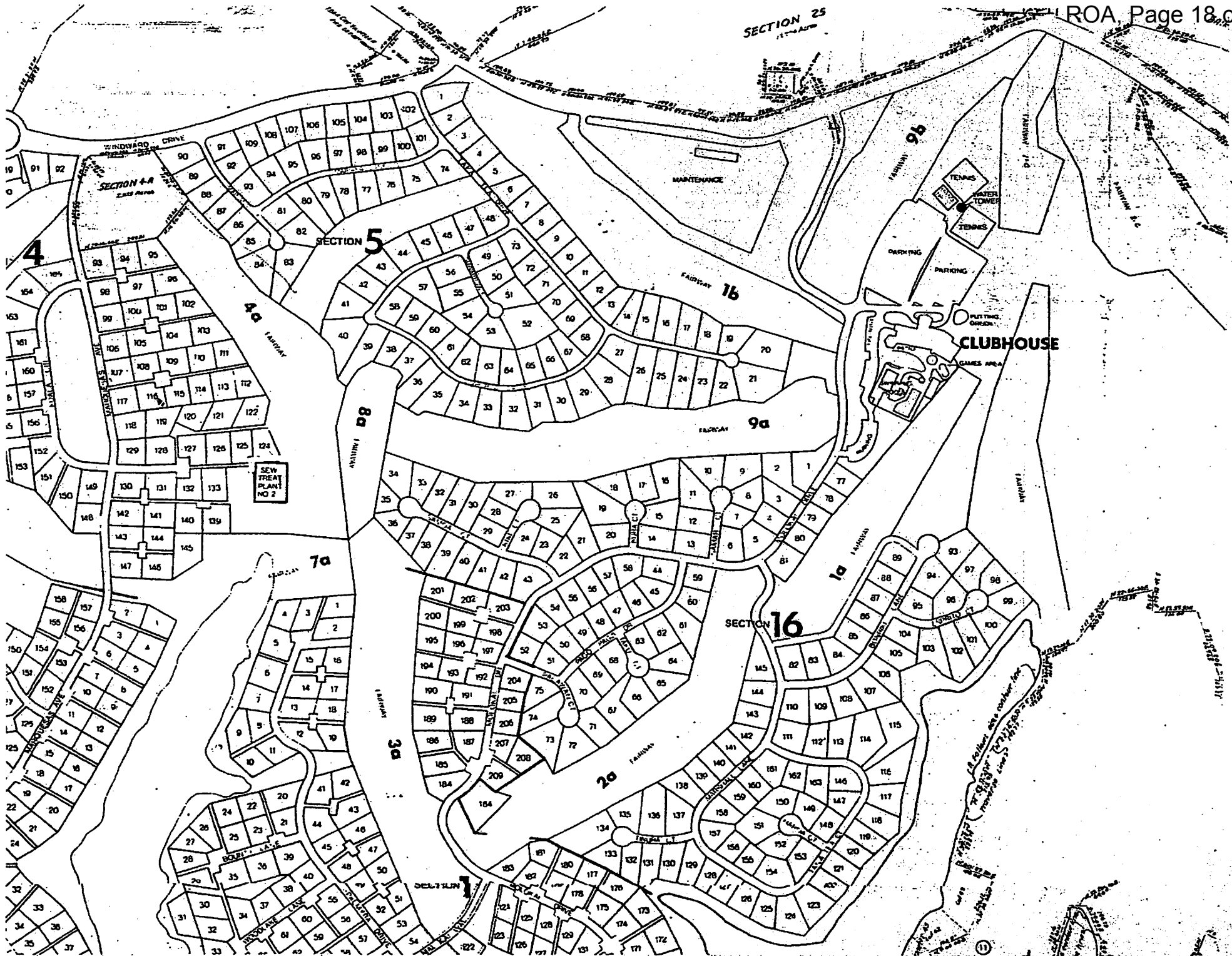


PITCAIRN COVE
BEACH PARK

LAKE WYLIE

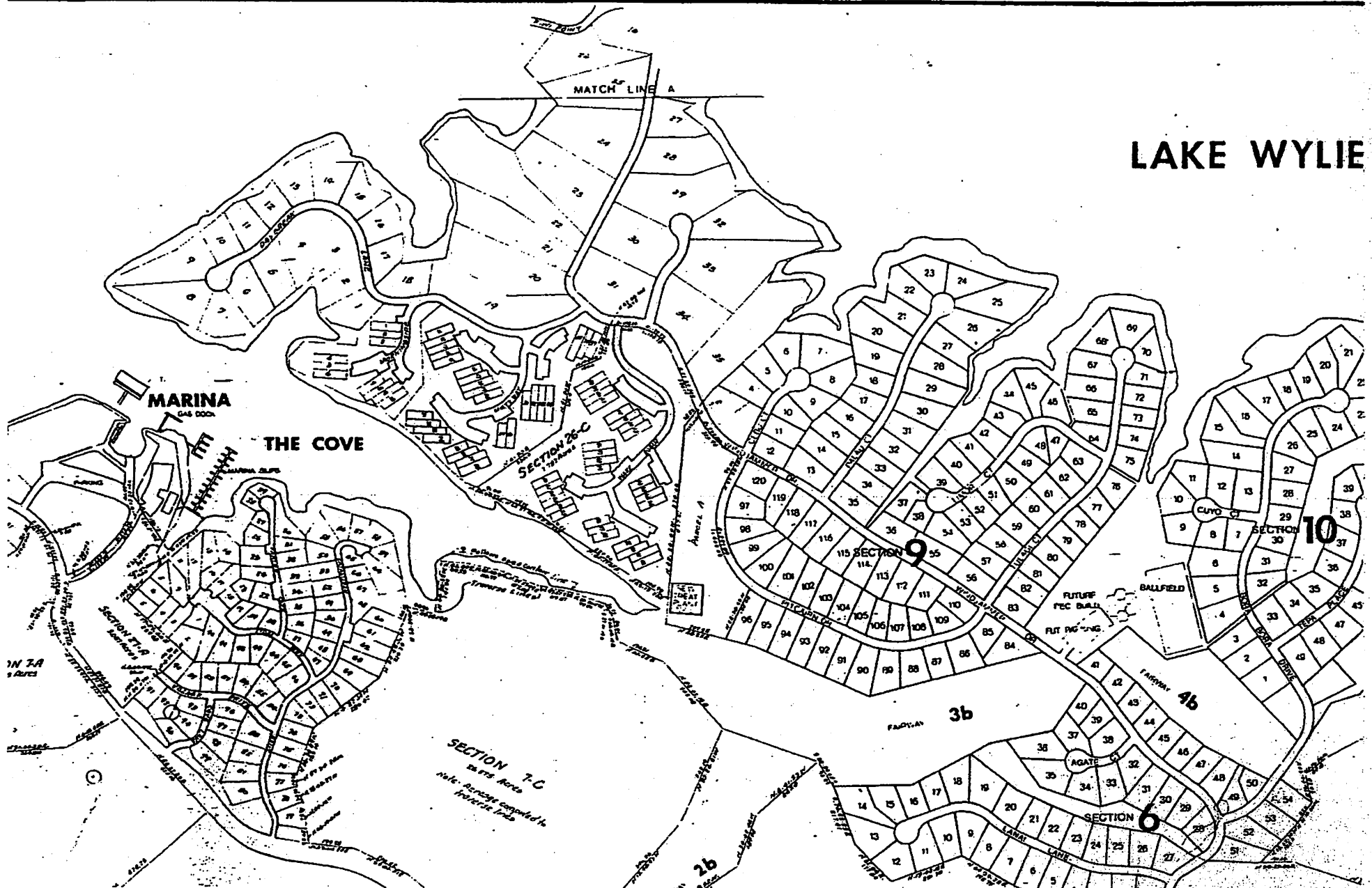


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Plat Bk. 73 Pg. 23

LAKE WYLIE

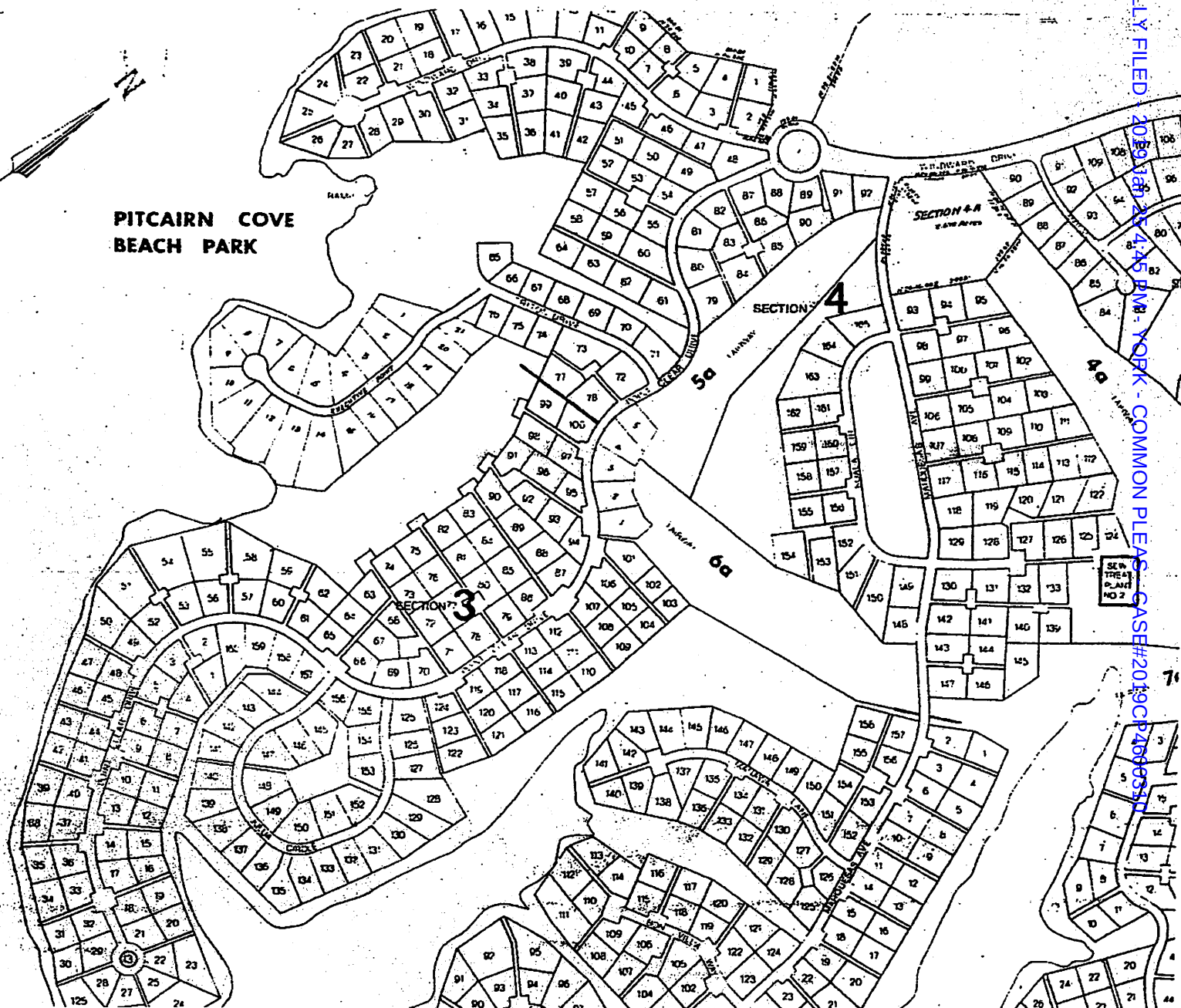


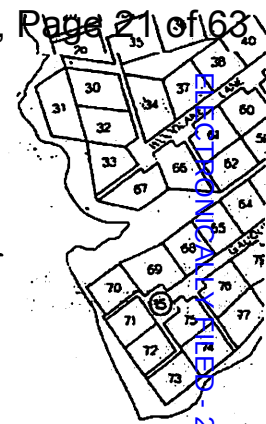
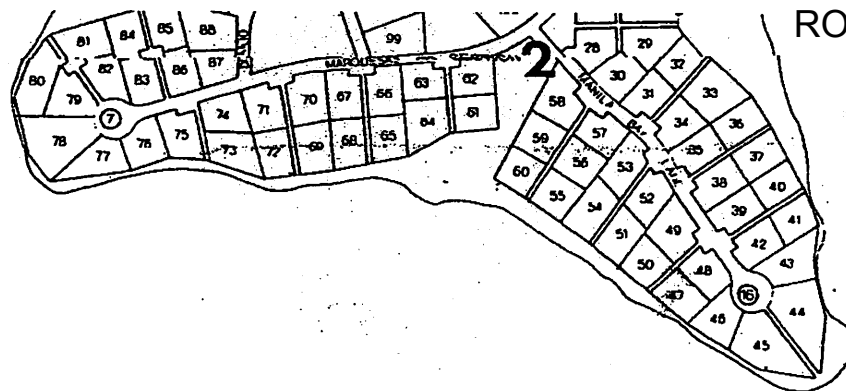
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LAKE WYLIE

PITCAIRN COVE
BEACH PARK

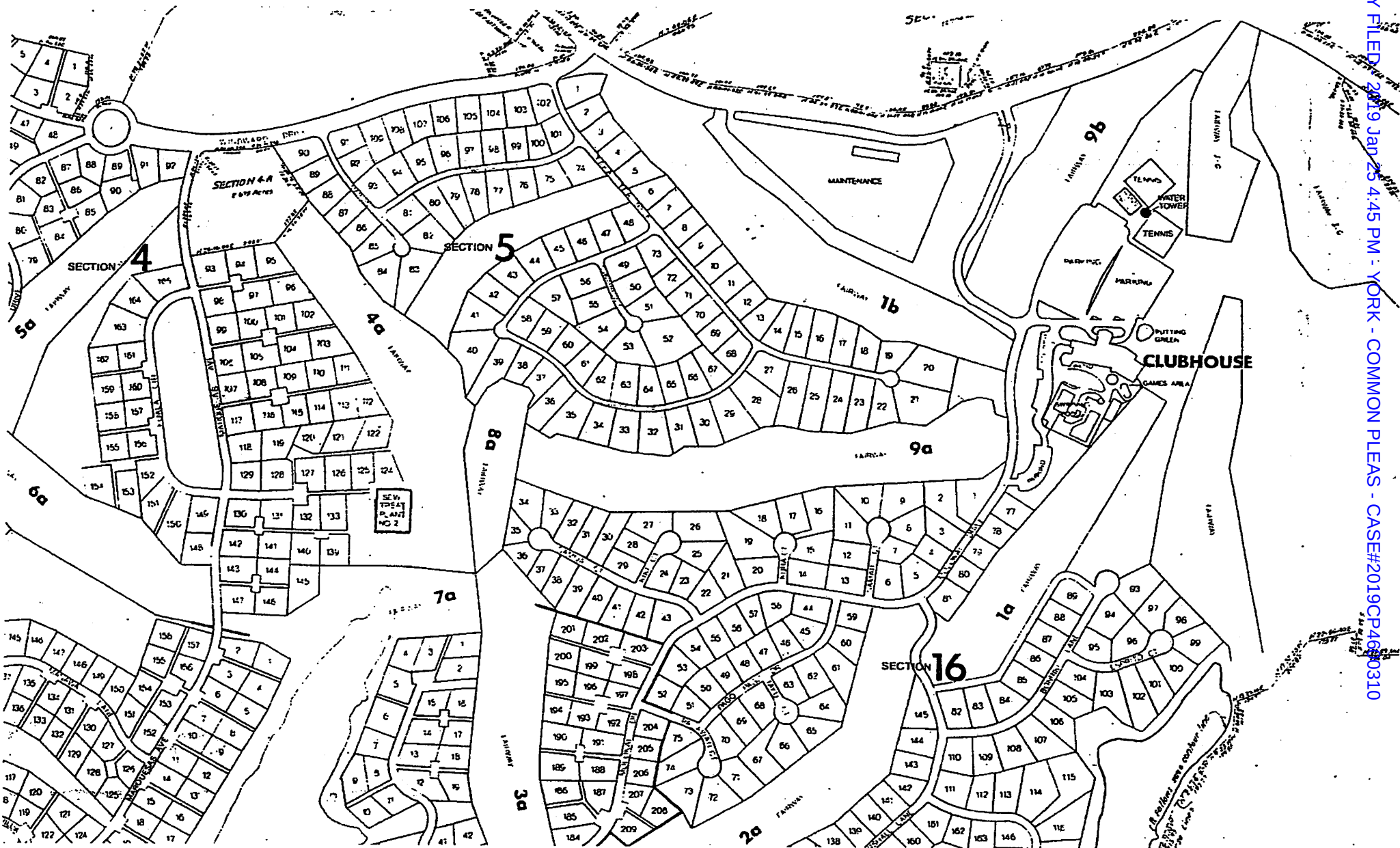


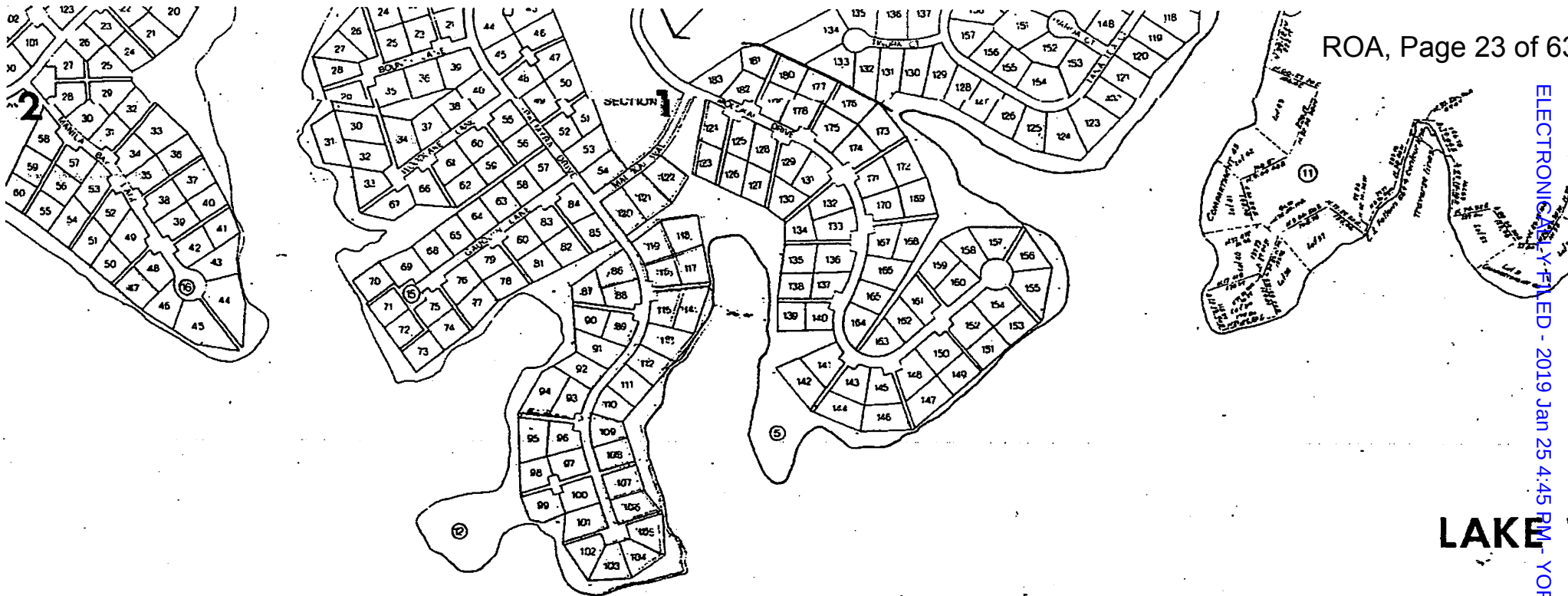


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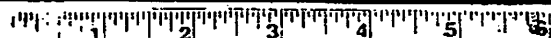
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-  PAVED (ROADS, PARKING)
-  BUILDINGS
-  LAKES, PONDS

③ WELLS AND WELL NUMBERS



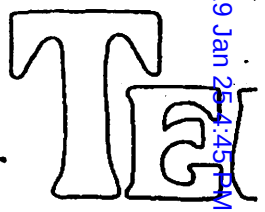


LAKE



Business Records Corporation

1032 East Liberty Street • Greensboro, N.C. 27405

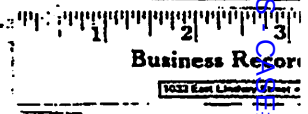
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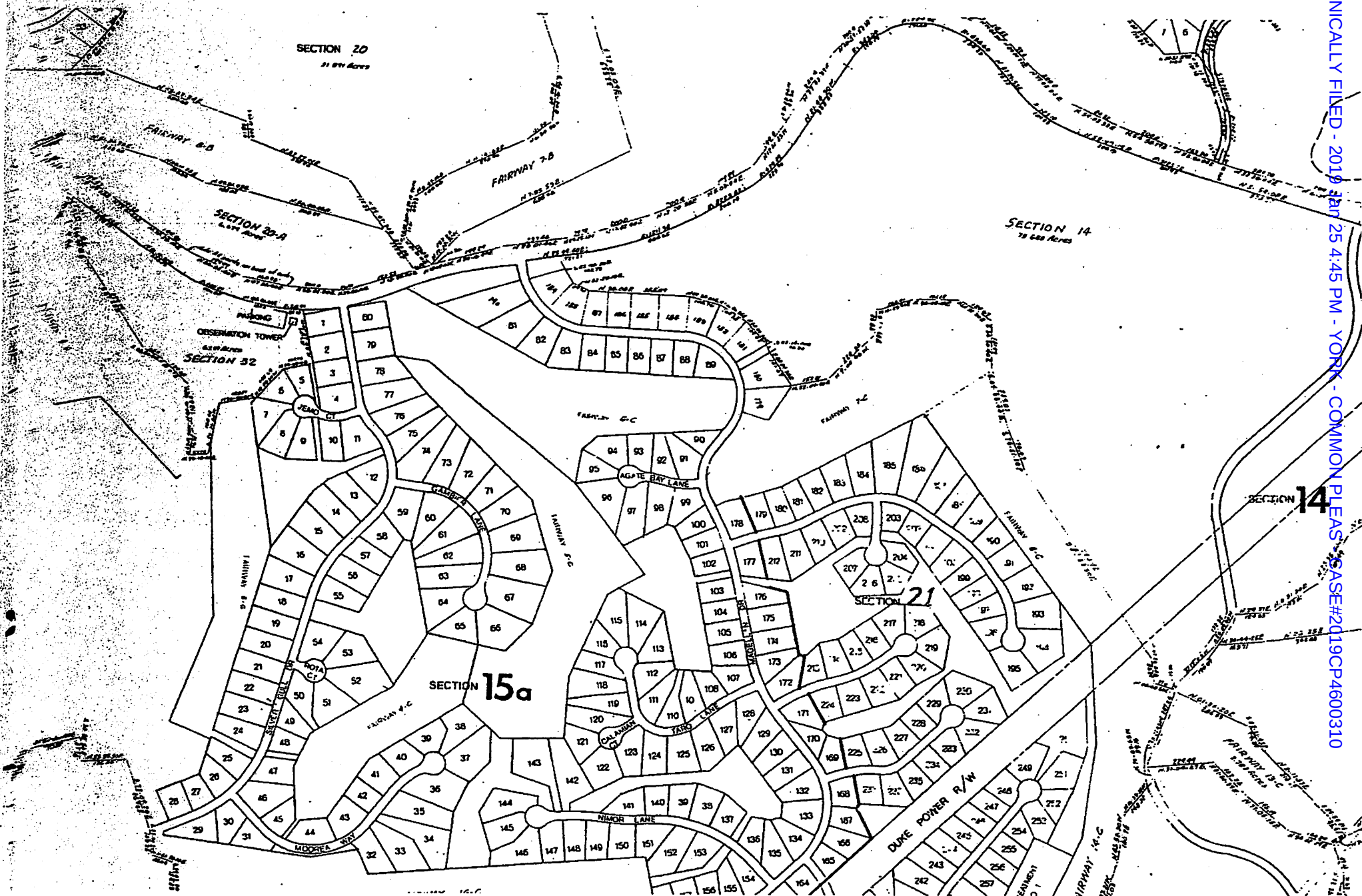
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Note - Acreage computed to
Proverbs lands

Note: Actual boundary surveys made of sections 4-A, 7A, 7B, 7-C, 11, 13, 14, 17, 18, 20, 20-A, 22, 25, 26-C, 27A, 32 and transferred to aerial map made Oct 1, 1971

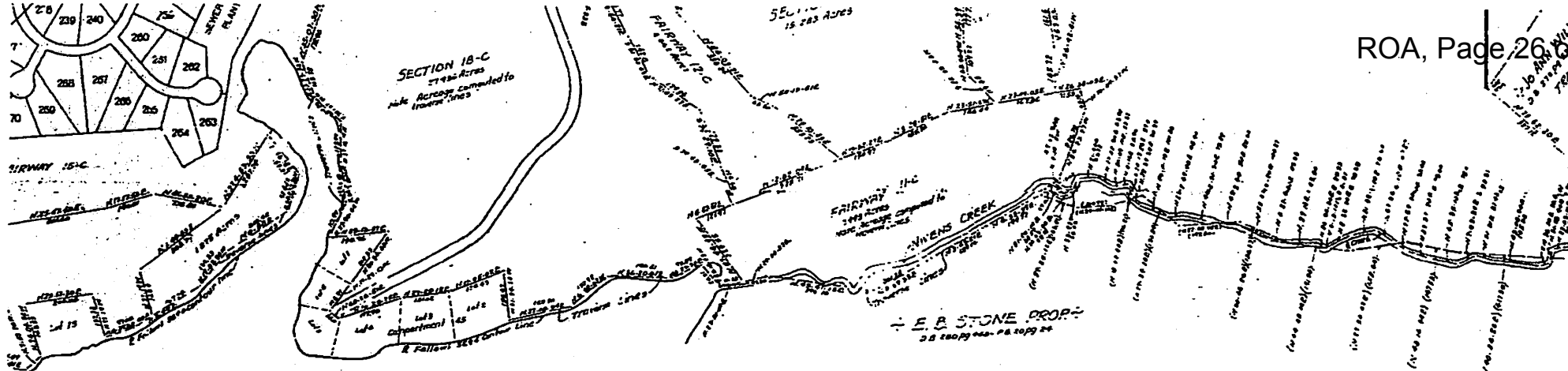
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December 23 1900

LAKE WYLIE





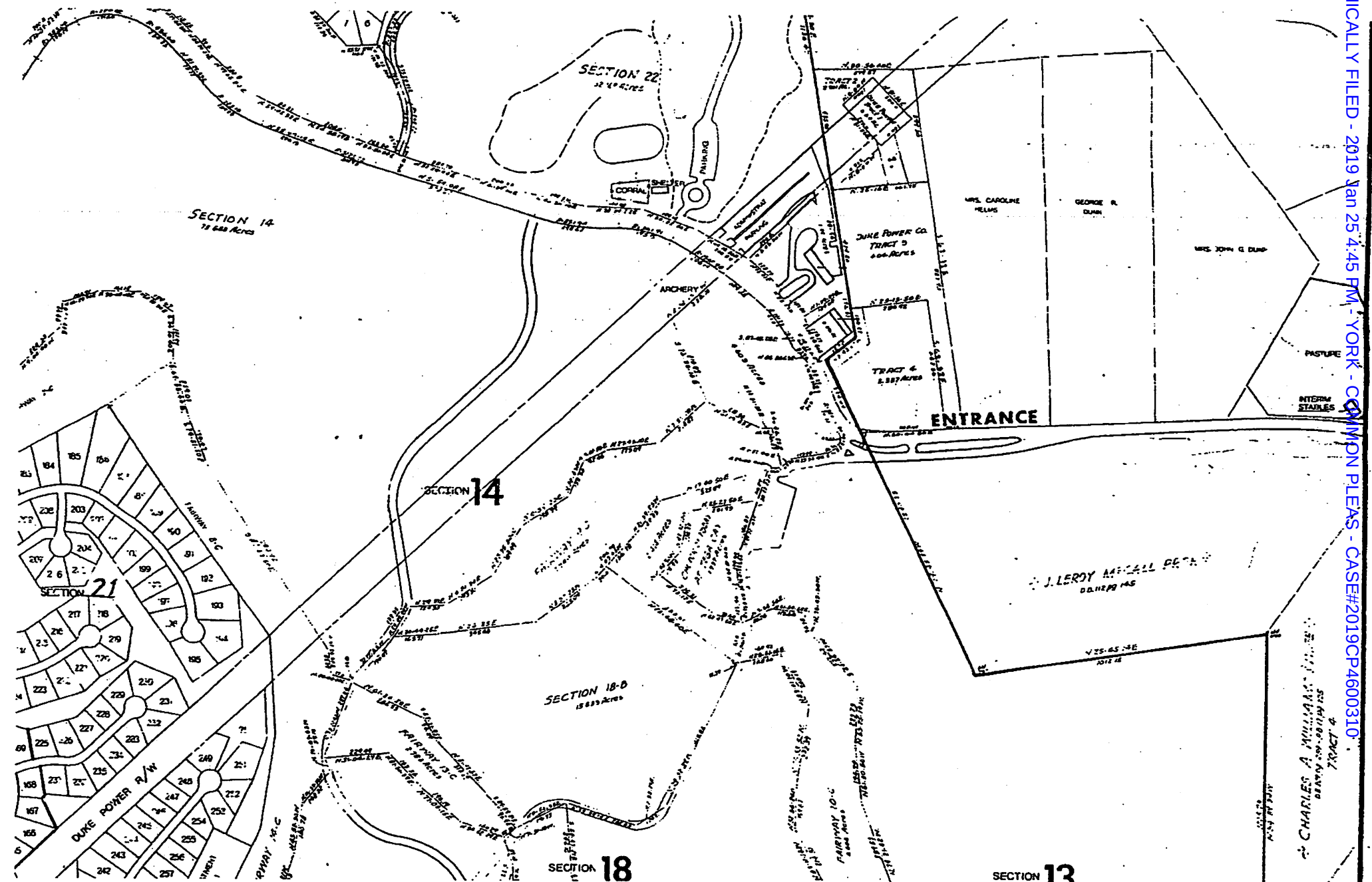
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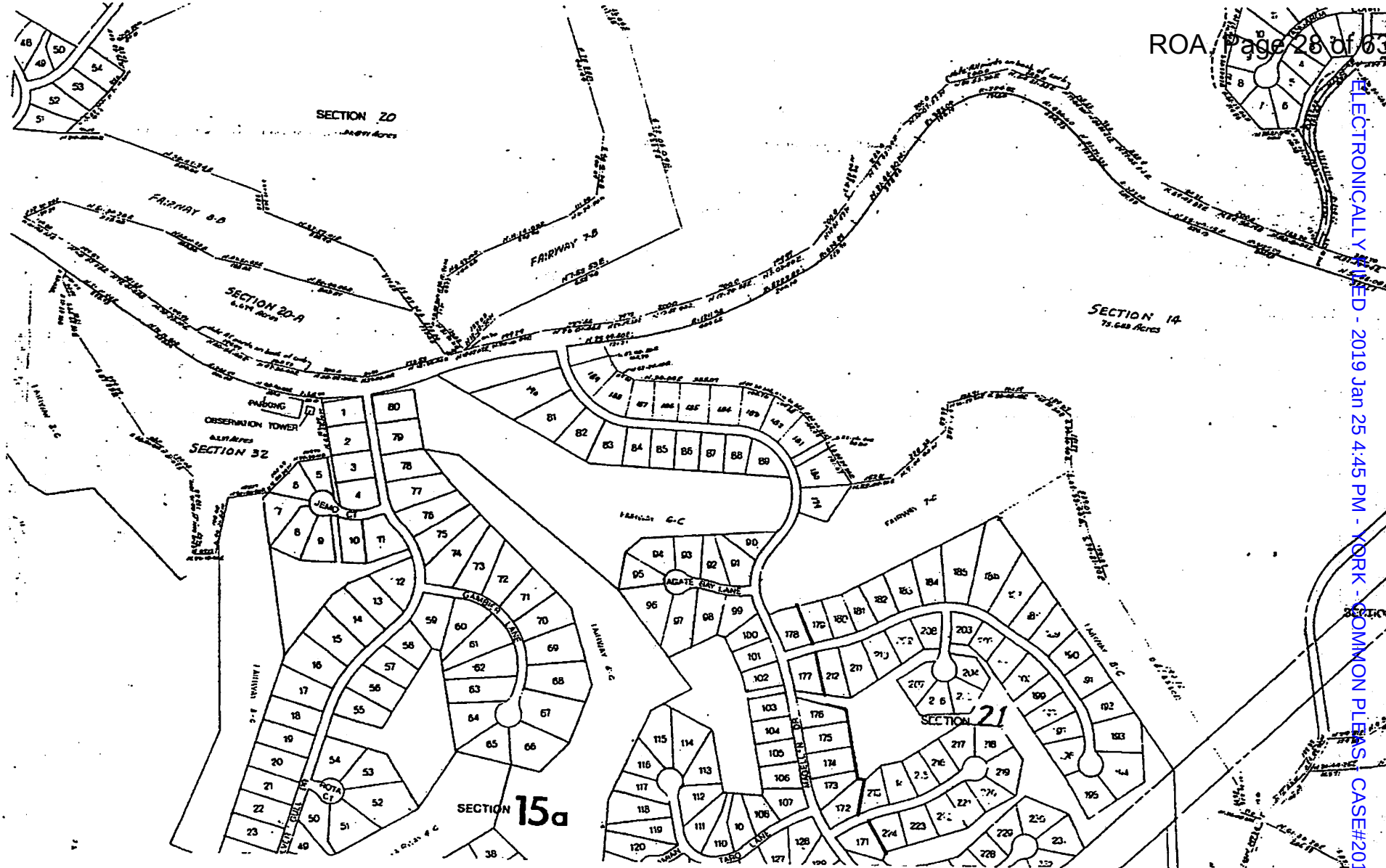


TEGA CAY

MASTER DEVELOPMENT PLAN YORK COUNTY, SOUTH CAROLINA

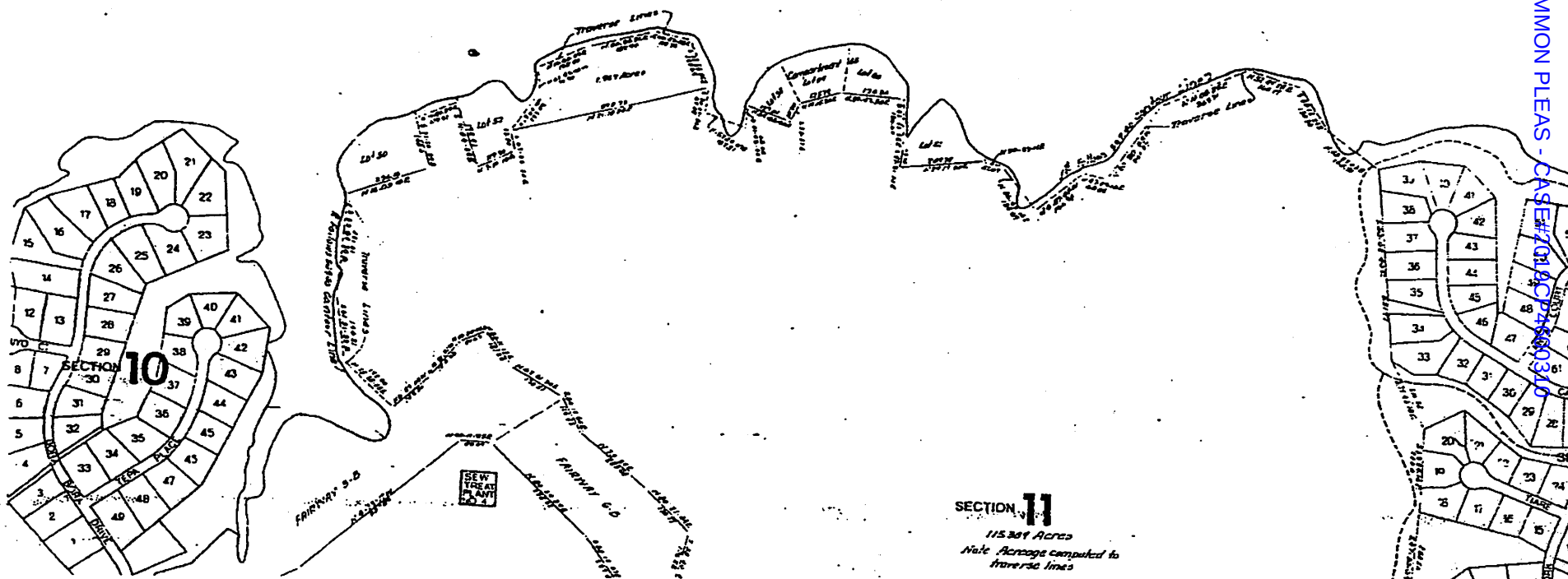
Note: Actual boundary surveys made of sections 4-A, 14, 18, 22, 24, 26, 28, 30, 32, 34, 36, 38, 40, 42, 44, 46, 48, 50, 52, 54, 56, 58, 60, 62, 64, 66, 68, 70, 72, 74, 76, 78, 80, 82, 84, 86, 88, 90, 92, 94, 96, 98, 100, 102, 104, 106, 108, 110, 112, 114, 116, 118, 120, 122, 124, 126, 128, 130, 132, 134, 136, 138, 140, 142, 144, 146, 148, 150, 152, 154, 156, 158, 160, 162, 164, 166, 168, 170, 172, 174, 176, 178, 180, 182, 184, 186, 188, 190, 192, 194, 196, 198, 200, 202, 204, 206, 208, 210, 212, 214, 216, 218, 220, 222, 224, 226, 228, 230, 232, 234, 236, 238, 240, 242, 244, 246, 248, 250, 252, 254, 256, 258, 260, 262, 264, 266, 268, 270, 272, 274, 276, 278, 280, 282, 284, 286, 288, 290, 292, 294, 296, 298, 300, 302, 304, 306, 308, 310, 312, 314, 316, 318, 320, 322, 324, 326, 328, 330, 332, 334, 336, 338, 340, 342, 344, 346, 348, 350, 352, 354, 356, 358, 360, 362, 364, 366, 368, 370, 372, 374, 376, 378, 380, 382, 384, 386, 388, 390, 392, 394, 396, 398, 400, 402, 404, 406, 408, 410, 412, 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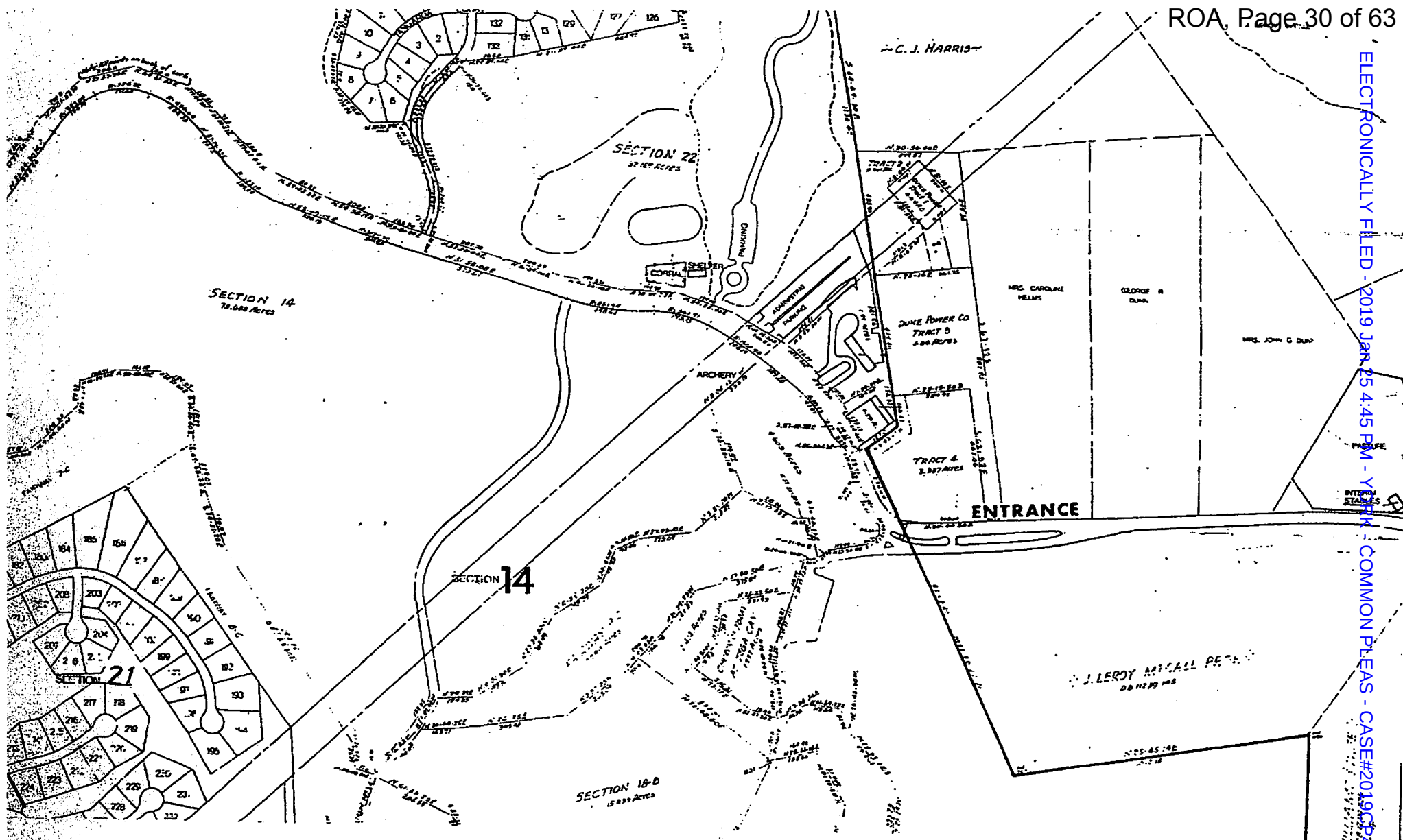




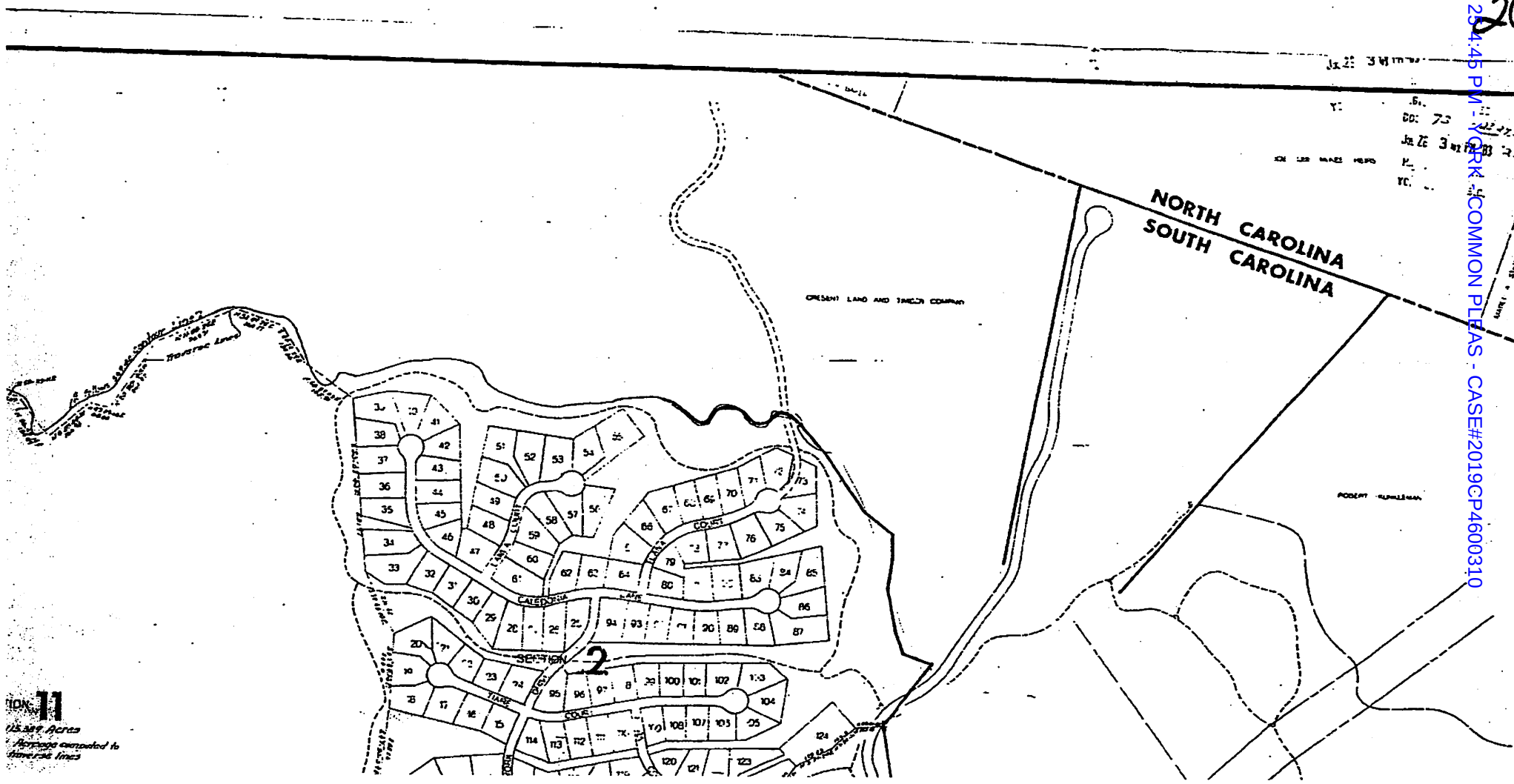
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1 (COURT IN SESSION WEDNESDAY, MAY 30, 2019 AT 09:47
2 A.M., IN THE MATTER OF *LB PARK LLC, VERSUS SAN JUAN*
3 *HOLDINGS, ET AL,*)

4 THE COURT: All right, it appears that the next matter
5 we have is *LB Park, LLC, versus San Juan Holdings*.

6 Who is here for that matter?

7 A. Your Honor, I'm Andrew Rawl here for LB Park.

8 THE COURT: And you are?

9 A. I'm here as the true owner to defend my property.

10 THE COURT: All right. Y'all come on up.

11 All right, this is the matter in 2019-CP-46-00310, *LB*
12 *Park, LLC., versus San Juan Holdings*. It appears that Mr.
13 Parker Barnes is here as an attorney on behalf of LB Park.

14 And, I'm sorry, your name? Sir, your name?

15 A. One second please.

16 MR. RAWL: Your Honor, if I could just clarify real
17 quick. It's Andrew Rawl; Parker Barnes is an attorney at
18 our firm.

19 THE COURT: I'm sorry. All right. Thank you, Mr.
20 Rawl.

21 Yes, sir, and your name?

22 A. Under your Uniform Commercial Code applicable to
23 this commercial consent whenever any person gives their
24 name when requested that is considered consent to be under
25 the authority of the person requesting the name. I do not

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1 wish to be under your authority therefore I will not be
2 giving you my name.

3 THE COURT: All right. Therefore we will not go
4 forward. If you do not wish to be under the court's
5 authority then I won't hear anything on your behalf.

6 Then Mr. Barnes, is this your motion? I'm sorry, Mr.
7 Rawl, is this your motion?

8 MR. RAWL: So Mr. Powell filed a Motion to Dismiss and
9 then we filed a motion --

10 THE COURT: Well we don't know who Mr. Powell is.

11 MR. RAWL: Okay. Initially --.

12 THE COURT: The person -- somebody signs something
13 saying by Powell?

14 MR. RAWL: Correct.

15 THE COURT: Okay. Go ahead.

16 MR. RAWL: And so and then we also filed a motion for
17 reference under Rule 53 to refer this to a Master in Equity
18 so that motion under Rule 53 was our motion.

19 THE COURT: All right. So the motion that I need to
20 decide today is what?

21 MR. RAWL: There was a Motion to Dismiss that we're
22 here in opposition to, and then there is a Rule 53 Motion
23 to refer this to the Master in Equity.

24 THE COURT: So someone filed a Motion to Dismiss on
25 behalf of the other party?

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1 MR. RAWL: Yes.

2 A. So like --

3 THE COURT: I'm not gonna listen to you. If you're
4 not gonna identify yourself -- and I don't know who you are
5 -- you have no standing to speak to the Court.

6 A. Okay. All right.

7 THE COURT: Will you tell me your name?

8 A. Yes.

9 THE COURT: All right. What is your name?

10 A. I object but I am Ryan Powell.

11 THE COURT: All right, Mr. Powell, tell me what brings
12 you here today.

13 MR. POWELL: This hearing today which I had to request
14 will be the only opportunity that I get to defend my
15 property therefore in order for me to get a meaningful
16 hearing which is required for my right to due process of
17 law, I ask that you do not interrupt me and that you hold
18 your questions until I finish my presentation.

19 Do you agree to that?

20 THE COURT: Well here's the thing. You know you've
21 got to answer my questions before we can make any progress.

22 Do you --

23 MR. POWELL: I will answer your questions but if you
24 wouldn't mind holding them until the end of my
25 presentation.

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1 THE COURT: All right. Somebody filed a motion to
2 Dismiss. I'll be glad to hear from you.

3 MR. POWELL: I filed the motion. I brought my
4 property or I bought my property as a man. My deed grants
5 me my property as a man. I am here today to defend my
6 property as a man. I'm not any kind of artificial person,
7 nor am I here pro se representing or speaking for any
8 artificial person.

9 Men have unalienable God given rights which can never
10 be transferred, waived, or taken from them meaning that my
11 unalienable right to own my property can never be taken
12 from me legally. Jurisdiction over anything always derives
13 from ownership of that thing. If I own some property then
14 I am the only one who has the right to dictate what happens
15 to my property including but not limited to when and how it
16 is disposed of.

17 This is why I believe you attempted to get my mother
18 to allow you to take my deed and record it because you know
19 that you do not have jurisdiction over this case, and you
20 know that jurisdiction over this case can only be obtained
21 by my deed being recorded. That you even attempted to do
22 so shows how utterly biased you are. If you were unbiased,
23 which you are supposed to be, then you would not have
24 attempted such a shady maneuver. I do not consent and will
25 never consent or allow you to record my deed.

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1 Once challenged the plaintiff carries the burden to
2 prove jurisdiction. Not only has the plaintiff failed to
3 prove jurisdiction the plaintiff has failed even to oppose
4 my jurisdictional challenge. Of course the plaintiff could
5 never prove jurisdiction because its own complaint admits
6 this court wants jurisdiction. It does so by averring the
7 existence of the recorded notice of sale and requesting
8 this court remove the cloud on that plaintiff's deed which
9 that notice of sale creates.

10 By requesting that cloud be removed the plaintiff has
11 admitted that the tax deed was illegally made. Since the
12 plaintiff has admitted this court wants jurisdiction there
13 is nothing that needs to be decided by this court.

14 Nonetheless my affidavit and the recorded Notice of
15 Sale that were attached as exhibits to my Motion to Dismiss
16 can be used by this court according to *Barred v. Charleston*
17 County -- which I will have in just a second -- to make a
18 filing that this court wants subject matter jurisdiction.

19 May I?

20 (DOCUMENTS RECEIVED UP BY THE COURT.)

21 MR. POWELL: The alleged tax deed to my property and
22 the plaintiff's quick claim deed derives -- the alleged tax
23 deed to my property that the plaintiff's quick claim deed
24 derives from is void. Void means it is a nullity and of no
25 legal effect. The tax deed is void, illegal, and

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1 unenforceable for many reasons. The most obvious one being
2 that it was not made in my name the true owner of my
3 property. Since the tax deed was made without any legal or
4 lawful authority it constitutes a sham legal process
5 according to Code 16-17-735.

6 Under that code section it is a crime for any person
7 to enforce a sham legal process. In this case the tax deed
8 that the plaintiff is trying to enforce which was unlawful
9 made is a sham legal process. That section applies to the
10 plaintiff, it's attorneys, and to you.

11 As shown by the legal opinion letter that I attached
12 to my memorandum of law, I am entitled to have my property
13 taken off of the tax rolls by the York County Assessor.

14 Unfortunately I did not know that she was the proper
15 person to make that request to. I thought it was the
16 county auditor's job so that is the person I requested take
17 my property off the tax rolls.

18 Regardless my property cannot be stolen from me simply
19 because I failed to figure out which of those employees of
20 the privately held company known as York County was given
21 the duty to take my property off their tax rolls.

22 To summarize, I am a man, I bought my property as a
23 man. There is no requirement for a man to record his deed
24 and therefore there can be no consequences. I am the only
25 one here today that has jurisdiction over me and my

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1 property. You only have authority to and therefore must
2 declare that fact and dismiss this case and the les pendens
3 with prejudice. If you refuse to do that you will be
4 knowingly stealing my private property on an illegal sham
5 legal process and clear absence of all jurisdiction which
6 carries hefty personal financial liability too.

7 THE COURT: Anything else?

8 MR. POWELL: That's all.

9 THE COURT: I'm curious, I do have a question.

10 If somebody builds a fence across the property that
11 you own as a man, how do you have that dispute resolved?

12 MR. POWELL: I don't understand the question.

13 THE COURT: Well you've indicated that this court has
14 no jurisdiction, and so what I'm asking is, what would you
15 do if your neighbor -- you got neighbors, I assume there's
16 neighbors -- and they run over there and they run a fence
17 fifty feet onto your property how would you -- where would
18 you go to resolve that?

19 MR. POWELL: Well that would be for me to decide.

20 THE COURT: I know, but how would you do that?

21 MR. POWELL: I mean we can just make up imaginary
22 scenarios but I can tell you right now that the court does
23 not have jurisdiction over my property.

24 THE COURT: All right. Anything else?

25 Mr. Rawl.

ORIGINAL

-11-

1 MR. RAWL: Thank you, your Honor. As I previously
2 mentioned my name is Andrew Rawl and I'm here today on
3 behalf of the plaintiff. I would like to kind of give a
4 quick background on sort of the history of this property.

5 THE COURT: Well I don't think we need to go any
6 further.

7 MR. RAWL: Okay.

8 THE COURT: He has indicated that he doesn't believe
9 this court has any jurisdiction so that's between him and
10 someone else. But I'm gonna grant -- I'm gonna deny the
11 motion to dismiss and then I'll grant the motion to refer
12 the remaining part to the Master.

13 MR. RAWL: Okay.

14 THE COURT: All right. Thank you.

15 MR. RAWL: Your Honor, do you want a Form 4 or do you
16 want us to --

17 THE COURT: We do it on a Form 4.

18 MR. RAUL: Okay.

19 THE COURT: You'll prepare the Form? I'll do the Form
20 4.

21 MR. RAUL: I can prepare an order for you if you would
22 like, your Honor.

23 THE COURT: We'll prepare a Form 4.

24 MR. RAUL: Okay.

25 THE COURT: Thank you.

ORIGINAL

-12-

1 MR. POWELL: Objection. You cannot move forward until
2 this issue of subject matter jurisdiction has been decided.
3 If you decide that you do have subject matter jurisdiction
4 then you must allow me to intervene so that I can -- so
5 that I have standing to be heard on this motion.

6 THE COURT: All right. I note your objection for the
7 record by denying any further motion. Thank you.

8 MR. POWELL: So are you denying me my right for
9 intervention motion?

10 THE COURT: Yes, sir, right. All right, that ends
11 this hearing. Thank you.

12 A. So you're going to allow them to take his property
13 without any due process of law without him owing a debt
14 without any notice ever being given to him without a
15 hearing?

16 THE COURT: Ma'am, would you tell us your name?

17 A. No.

18 THE COURT: Thank you.

19 MR. RAWL: If you want that was Karen.

20 THE COURT: I know who she is. She just wouldn't say
21 it today.. As far as this hearing we don't know who she is.
22 She wouldn't tell us. All right.

23 MR. RAWL: Thank you, your Honor.

24 (END OF TRANSCRIPT OF RECORD.)

25

ORIGINAL

CERTIFICATE OF REPORTER

State of South Carolina)
)
County of York)

I, Wanda Nelson, Official Court Reporter for the Sixteenth Judicial Circuit for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial/hearing of the captioned case, relative to appeal, in the Court of Common Pleas for York County, South Carolina, on the 30th day of May, 2019.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

Wanda S Nelson
Wanda S. Nelson, CVR-M
Certified Verbatim Reporter,
Official Court Reporter,
Notary Public, in and for
The State of South Carolina.

My Commission Expires: 1/21/2021

DATE: August 21 / 2019

ORIGINAL

STATE OF SOUTH CAROLINA

COUNTY OF YORK

LB PARK, LLC

v.

San Juan Holdings, Brett Osborne, the trustee;
 Brett Osborne as trustee of San Juan Holdings;
 John Doe and Mary Roe, representing all
 unknown persons having or claiming to have
 any right, title, or interest in or to, or lien upon,
 the real estate described as 25056 Timberlake
 Drive, York County, South Carolina

IN THE COURT OF COMMON PLEAS

Case # 2019-CP-46-00310

**SPECIAL APPEARANCE
 MOTION TO DISMISS
 OR INTERVENE**

DAVID HAMILTON
 C.C.P. & OS.
 YORK COUNTY, SC

2019 APR -8 AM 11:36

FILED-RECEIVED

COMES NOW your movant, Ryan Powell, a private person ("I", "Me", "My", or "Myself" hereinafter) who is making this special appearance motion to dismiss as an invited "John Doe". I hold absolute title to the property that is the subject of this action; however, I have neither been named as a party nor served with any process. My title is paramount to any title the plaintiff claims to have. This motion is being brought under Rule 12(b)(1) SCRPC, Rule 12(b)(2) SCRPC, and Rule 24(a)(2) SCRPC. My affidavit is attached as **Exhibit A** and is fully incorporated herein by reference. I allege the following in support of this motion and will testify to same if I am allowed to have any due process of law before My property is stolen from Me.

Jurisdictional Facts

A "private person" is a kind of a natural person that is not suffering any disability. I am neither under the disability of being a minor nor am I under the disability of being incapacitated as I am capable of understanding, handling, and taking care of Myself and My property¹. I have all the rights to which men are entitled to including the unalienable rights² to life, liberty, and property. I have the right to contract which includes the right to NOT contract if I so desire. Having NOT entered into any contract with COUNTY OF YORK pertaining to My property, I have NOT subjected My property to the jurisdiction of the Corporate STATE OF SOUTH CAROLINA, the Corporate COUNTY OF YORK, or any of their corporate agencies and corporate agents, which includes this Court.

On December 20, 2012, I witnessed the then authorized trustee, Brett Osborne, for San Juan Holdings ("SJH" hereinafter) seal a general warranty deed for the grantor. That deed transferred all

¹ See SC Code of Laws § 15-72-10 - "Jurisdiction of Circuit Court".

² unalienable rights are rights that can never be waived or taken away.

rights, title and interests in SJH's property to Me, in fee simple absolute. I then accepted and sealed My deed as the grantee. I saw two people that I did not know witness the sealing of My deed and then I saw each of them sign My deed as witnesses. I saw a notary public sign My deed and put her official stamp/impression on My deed and then I she handed My deed to Me³. My original deed has been in My care and possession ever since that date.

I then saw Brett Osborne sign another document titled "Notice of Sale, Transfer, or Exchange" ("SJH's Notice" hereinafter) that had been prepared in order to give notice to the world that SJH no longer owned My property that is the subject of this action and no longer existed as a legal entity after having sold the trust's corpus. I saw the same two witnesses and the same notary public sign and notarize that document and then I saw the notary public hand that document to Brett Osborne. I have attached a true and correct copy of SJH's Notice as **Exhibit B** which is incorporated fully herein by reference. That notice was recorded because I chose to exercise My recognized and protected human rights to own My property privately and untaxed⁴ which can only be accomplished by Me not recording My deed. An unrecorded deed is valid as between the parties and as to all those who have notice thereof, which includes the plaintiff, who admits to having received notice of the deed (see complaint #4, #5, #6).

Rule 12(b)(1) grounds for dismissal

Since I never subjected My property to the jurisdiction of this State, then My property can never be taxed (and it has not been) and it can never be taken from Me (and it has not been although it "appears" to have been taken from SJH). This is irrefutable evidence that this State has NO jurisdiction over My property. Accordingly, this Court does not have subject matter jurisdiction to hear or determine a quiet title action pertaining to property that has not been subjected to the jurisdiction of this State or to oust Me or My family from My property that is not under the jurisdiction of this State; especially without first giving Me due process of law which has never been provided to Me. Any due process of law must include providing Me with a meaningful opportunity to defend My property in a court having jurisdiction over both My person and My property. But this is an impossibility because this Court does not have subject matter jurisdiction over property that has neither been subjected to the jurisdiction of this State by its owner, nor that is owned by a man. Governments can control only legislatively created artificial persons; they cannot

³ My deed has all the attributes of a valid deed; it is in writing and signed, it has a grantor and a grantee, it was accepted by the grantee, it was delivered to the grantee, it was witnessed, and notarized.

⁴ "the individuals rights to live and own property are natural rights for the enjoyment of which an excise [tax] cannot be imposed.", *Redfield v. Fisher*, 292 P 813, at 819.

control the people who are the sovereigns in this country⁵. This Court has no lawful authority over a man unless and until he violates the rights of another man and then only under the common law. These concepts were demonstrated by Judge Hall on April 1, 2019 when he heard Karen Powell's motion to dismiss this action. During that hearing Judge Hall refused to allow Karen Powell, a lien holder on My property, into this case as he knew he had no jurisdiction over her or her unrecorded lien.

So either this Court can dismiss this case for lack of subject matter jurisdiction under Rule 12(h)(3) SCRC⁶ or this Court can take property that has never been subjected to the jurisdiction of this State and that is owned by a man without first providing him ANY due process of law. It should be clearly obvious which of those two alternatives is the correct one.

Rule 12(b)(2) grounds for dismissal

The file for this action is missing both an order of publication and an affidavit showing that the summons was published. Both are required in order for this Court to assert personal jurisdiction over the unnamed defendants, which includes Myself. Under the code that plaintiff brought its action (i.e. Title 12, chapter 61), paragraph 30 clearly states that the plaintiff was required to publish its summons against absent or unknown defendants, i.e. Me:

SC Code of Laws § 12-61-30. Laws applicable to proceedings.

The proceeding authorized in this chapter shall be subject to the rules and laws governing the procedure and conduct of similar proceedings, **including the laws governing service of process and the publication thereof against absent or unknown defendants.**

Since plaintiff never published its summons it has failed to serve the unknown parties; therefore, according to Whaley v. CSX Transp., Inc., 609 SE 2d 286 (SC Supreme Court 2005) - "Proper service of process on a defendant, therefore, confers personal jurisdiction over the defendant. *Moore v. Simpson*, 322 S.C. 518, 523, 473 S.E.2d 64, 66 (Ct.App.1996)". Wanting personal jurisdiction over Me, this Court can never enter any order that personally affects Me or My property which absolutely includes quieting My title or ousting any person from My property.

Conclusion

⁵ "Sovereignty itself is, of course, not subject to law, for it is the author and source of law; but in our system, while sovereign powers are delegated to the agencies of government, sovereignty itself remains with the people, by whom and for whom all government exists and acts." Yick Wo v. Hopkins, 118 U.S. 356; 6 S.Ct. 1064 (1886) [never been overruled].

⁶ SCRC⁶ 12(h) (3) "Whenever it appears by suggestion of the parties **or otherwise** that the court lacks jurisdiction of the subject matter, the court shall dismiss the action."

Any order issued in this case other than an order of dismissal will have been entered in total absence of all jurisdiction, which will strip the judge making such order of judicial immunity for all damages his void *ab initio* order does to Me⁷ and the lien holder.

VI. Relief Demanded

This Court must hold a hearing to give the Plaintiff an opportunity to fulfill its burden of proof showing that this Court has subject matter jurisdiction to quiet the paramount title of a man who has never subjected his property to the jurisdiction of this State. After failing that burden of proof, this Court must dismiss both the action and the *lis pendens* with prejudice for want of subject matter jurisdiction and personal jurisdiction. In the alternative, if this Court finds it does have subject matter jurisdiction and that I can be joined, then it must grant Me leave to intervene into this action under Rule 24(a)(2) SCRCF so that I can get My due process of law before My property is stolen from Me.

Respectfully submitted,

4/6/2019
Date


Ryan Powell
c/o 3459 Mill Run
Raleigh, North Carolina
RyanPowell@comporium.net

⁷ When a judge knows that he lacks jurisdiction, or acts in the face of clearly valid statutes expressly depriving him of jurisdiction, judicial immunity is lost. Rankin v. Howard, (1980) 633 F.2d 844; Zeller v. Rankin, 451 U.S. 939. See also O'Laughlin v. Windham, 498 SE 2d 689 (SC: Court of Appeals 1998) - "no judicial immunity exists if the judge acts in the "clear absence of all jurisdiction." Stump v. Sparkman, 435 U.S. 349, 357, 98 S.Ct. 1099, 1105, 55 L.Ed.2d 331 (1978)."

STATE OF SOUTH CAROLINA

COUNTY OF YORK

LB PARK, LLC

v.

San Juan Holdings, Brett Osborne,
the trustee;
Brett Osborne as trustee of San
Juan Holdings;
and John Doe and Mary Roe ...

IN THE COURT OF COMMON PLEAS

Case # 2019-CP-46-00310**AFFIDAVIT OF TRUE OWNER**

DAVID HAMILTON
C.C.P. & GS
YORK COUNTY, SC

2019 APR -8 AM 11:37

FILED-RECEIVED

Personally appeared before me the undersigned who, being first duly sworn, deposes and says:

1. I am over the age of 18 years, competent to make this testimony, and I will testify to these facts in open court if I am ever given an opportunity to do so.
2. On December 19, 2012 I did willingly sign a private lien agreement with Karen Powell which lien was to attach to the property that I was buying which has been identified in this action as 25056 Timberlake Drive, York County, South Carolina.
3. On December 20, 2012 I witnessed Brett Osborne, acting in the capacity of the trustee for SAN JUAN HOLDINGS, sign a general warranty deed, for the grantor, granting in fee simple all rights, title and interest that SAN JUAN HOLDINGS had previously enjoyed to me as the grantee on that deed. I then signed and accepted that deed. Two witnesses that I did not know then signed that deed as witnesses. Then a notary public notarized that deed.
4. That warranty deed was then handed to me by the notary and I have had the original copy of that deed in my possession since it was executed.

5. I witnessed Brett Osborne, acting in the capacity of the trustee for SAN JUAN HOLDINGS, sign a document titled "Notice of Sale, Transfer, or Exchange" that was prepared to give notice that SAN JUAN HOLDINGS no longer owned my property and no longer existed.
6. More or less 10 days after the closing of the sale of my property I received in the mail the original copy of the Notice of Sale, Transfer, or Exchange executed by Brett Osborne and recorded in the public records of County of York.
7. Since December 20, 2012 I have been seized and possessed of the property that is the subject of this action and which has been identified in this action as 25056 Timberlake Drive, York County, South Carolina.
8. I have not recorded my deed for my property as I have a right to do and I have no intentions of ever recording my deed because I want to own my property privately and without making myself liable to pay an excise tax [property tax].
9. I have never received any notice from any government or employee of any government informing me that **I am required** to record my deed for it to be valid and in fact I have receive notice from the published codes of the STATE OF SOUTH CAROLINA that say my deed does NOT have to be recorded to be valid.
10. I have never been given any notice that the action below was even filed. The only way I knew it had been file was after Karen Powell received a phone call from Brett Osborne telling her that he had been served with papers and telling her the case number that had been assigned to that case.
11. I looked up the case in the YORK COUNTY online case website and there was no order of publication or affidavit in the case file showing that a summons had been published.

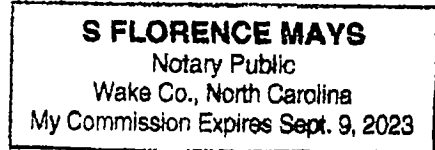
WITNESS my Hand and Seal this the 7th day of February in the year of our Lord Two Thousand and Nineteen.

Ryan Powell (Seal)
Ryan Powell

SWORN to before me this

7th day of February, 2019

S Florence Mays
Notary Public for State of North Carolina



My Commission Expires: Sept 9th 2023

FILED FOR RECORD IN
YORK COUNTY, SC
DAVID HAMILTON, CLERK OF COURTS
12-26-2012 At 02:40 pm.
NOTICE 10.00
OR Vol. 13103 Page 241 - 242

STATE OF SOUTH CAROLINA)
COUNTY OF YORK) Notice of Sale, Transfer or Exchange

WHEREAS, SAN JUAN HOLDINGS is a private contractual trust (hereinafter Trust); and

WHEREAS, Trust is the owner of record of the property recorded on June 28, 2000 in vol: 3173 page: 343 in the Office of the Clerk of the Court for York County, South Carolina; and

WHEREAS, Brett Osborne is trustee of Trust with power to convey title to the aforesaid property; said power recorded on June 28, 2000 in Vol 3173, page 344 in the Office of the Clerk of the Court for York County, South Carolina; and

WHEREAS, aforesaid recorded property of Trust has been assigned the tax map number of 643-10-01-023 by the York County Tax Assessor; and

WHEREAS, On December 20, 2012 Trust, by and through Brett Osborne trustee, in a private transaction did grant, bargain, sell, release, and convey the aforesaid private property to an unenfranchised living man; and

WHEREAS, the proceeds of the aforesaid transaction have been distributed as required by the law of the Trusts' indenture terminating the Trust; and

WHEREAS, giving this notice is the final duty of Brett Osborne trustee for Trust;

THEREFORE, YOU ARE TO TAKE NOTICE THAT: SAN JUAN HOLDINGS no longer owns the property in the records of the Office of the Clerk of the Court for York County, South Carolina and those records should be updated accordingly; that SAN JUAN HOLDINGS has been terminated and no longer exists by the aforesaid actions according to the law of the trusts' Indenture; and that Brett Osborn has completed his duties as trustee for SAN JUAN HOLDINGS.

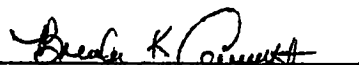
After Recording return this Notice to:
Brett Osborne
c/o 9127 Dalmeny House Lane
Charlotte, North Carolina

WITNESS our Hand and Seal this 20th day of December, 2012.

SAN JUAN HOLDINGS

By: 
Brett Osborne, trustee

Signed and Sealed in the presence of:



STATE OF SOUTH CAROLINA

COUNTY OF YORK

LB PARK, LLC

v.

San Juan Holdings, Brett Osborne, the trustee;
Brett Osborne as trustee of San Juan Holdings;
John Doe and Mary Roe, representing all
unknown persons having or claiming to have
any right, title, or interest in or to, or lien upon,
the real estate described as 25056 Timberlake
Drive, York County, South Carolina

IN THE COURT OF COMMON PLEAS

Case # 2019-CP-46-00310

**MEMORANDUM OF LAW
IN SUPPORT OF
MOTION TO DISMISS
OR INTERVENE**

DAVID HAMILTON
C.C.P. & GS
YORK COUNTY, SC

2019 MAY 13 AM 11:30

FILED-RECEIVED

Ryan Powell, a.k.a., John Doe ("I", "Me", or "My" hereinafter) makes this Memorandum of Law to support My Special Appearance Motion to Dismiss or Intervene.

I. Mandatory Judicial Notice

I request this Court take mandatory judicial notice under Rule 201(d) SCRE of the adjudicative fact that "County of York" also does business in the name of "York County Register of Deeds" and is a privately held company. See copy of MANTA listing for the privately held business named "County of York" attached as **Exhibit A** and fully incorporated herein by reference. This fact is capable of accurate and ready determination by resort to MANTA's website that is used by purchasers of bonds issued by those businesses listed on its website so this information must be credible and cannot reasonable be disputed.

II. What gives the Circuit Court subject matter jurisdiction over any case?

Jurisdiction is generally defined as "the authority to decide a given case one way or the other. Without jurisdiction, a court cannot proceed at all in any cause; jurisdiction is the power to declare law, and when it ceases to exist, the only function remaining to a court is that of announcing the fact and dismissing the cause." ... Specifically, "[j]urisdiction is composed of three elements: (1) personal jurisdiction; (2) subject matter jurisdiction; and (3) the court's power to render the particular judgment requested.", Limehouse v. Hulsey, 744 SE 2d 566 (SC Supreme Court 2013).

Although it is said that the Circuit Court has "general jurisdiction", in 1988 it appears the legislature limited the general jurisdiction of the Circuit Court by creating SC Code of

Laws § 15-72-10¹. That jurisdictional code limits the Circuit Court's *general jurisdiction* to only approving a settlement claim that had been reached between artificial persons who were involved in some contractual dispute. In other words, there can only be a settlement claim for the Circuit Court to approve if all the parties to that settlement claim were involved in some contractual/legal relationship with each other at the time the settlement claim was agreed to. SC Code of Laws § 15-72-10 clearly **PROVES** that this Court's jurisdiction is based on contract or agreement. Of course this must be true since no man (e.g., a judge) or group of men (e.g., a privately held company), can ever rule over, dictate the lives of, or take property from any man. Artificial entity can only rule over, dictate the actions of, or take property away from another ARTIFICIAL ENTITY!

If SC Code of Laws § 15-72-10 was intended by the legislature to be in addition to the *general jurisdiction* that the Circuit Court already had in 1988, that code would have been entirely redundant and unnecessary. Further, even though titles to code sections are not the "law", titles are used to describe what follows; the title to SC Code of Laws § 15-72-10 is - "Jurisdiction of Circuit Court". Further, neither any code nor the Constitution declares that the Circuit Court has the jurisdiction to only hear actions whose value is at least ten thousand dollars, so where would that jurisdictional monetary limitation come from if not from SC Code of Laws § 15-72-10? Finally, if SC Code of Laws § 15-72-10 is not the jurisdictional basis for the Circuit Court's *general jurisdiction*, then Judge Kimball made an error when he dismissed, for lack of subject matter jurisdiction, My tort action that I brought in 2014². Although it took Me many years to understand why My case was dismissed, I finally understood that My case was dismissed correctly because I did not have any contract or agreement with the defendants I named in My case and there was no settlement claim to be approved by the Circuit Court, i.e., no subject matter jurisdiction.

III. Does the Circuit Court have subject matter jurisdiction over this case?

In order for the Circuit Court to have subject matter jurisdiction there must have been a settlement claim made that needs approval. But it was impossible for employees of York

¹ SC Code of Laws § 15-72-10. "Jurisdiction of the Circuit Court. ... (1) exclusive jurisdiction to approve the settlement of any claim that exceeds ten thousand dollars in favor of or against any minor or incapacitated person; and (2) concurrent jurisdiction".

² And the Appeals Court must have also been in error when they affirmed that dismissal.

County (who act as agents for *York County Register of Deeds*) to have made a settlement claim on and after January 1, 2017 with San Juan Holdings ("SJH" hereinafter) since SJH ceased to exist over four (4) years prior to that date. Presuming that SJH did still exist at the time, there did not exist any contractual or similar legal relationship between SJH and *York County Register of Deeds* as will be shown in paragraph A., immediately below. Further, for employees of York County to have made a settlement claim with SJH pertaining My Property, SJH would not only have had to exist but it would have had to own My Property, and it did not. Accordingly, the alleged settlement claim this Court has been requested to approve is an entirely fraudulent, void, illegal, sham legal process³ that this Court does not have legal authority to approve.

A. How does a privately held company ever gain legal authority over property that it neither purchased nor is the grantee on any deed?

Under trust law whenever a person willingly gives any of their property over to another person to hold and protect, a trust relationship is automatically created by operation of law. Accordingly, an implied trust relationship is created whenever any owner of property (trustor) hands his deed over to the "X County Register of Deeds" (e.g., *York County Register of Deeds*) to be recorded. The "X County Register of Deeds", as the trustee in that trust relationship, has the legal duty to protect that deed (the "res" of the trust). Employees of an umbrella of privately held companies known collectively as "X County" (e.g., *York County*) have been delegated to act as agents for the trustee and have been given the legal duty to manage and administer that trust relationship. Those agents under the trust's indenture (multiple Chapters in Title 12 of SC Code of Laws) have the authority to sell the trust's res (the deed) if the trustor defaults on paying its contractual obligations (debts).

In this matter, on or about December 20, 2012 when SJH's trustee signed a new deed to transfer SJH's property to Me, their old recorded deed became obsolete and no longer needed to be protected by the *York County Register of Deeds* thereby fulfilling the purpose

³ According to SC Code of Laws section 16-17-735 it is illegal for any person to seize, dispossess, or infringe on the property rights of another or deny or impede another in the exercise or enjoyment of any right, power, or immunity using a sham legal process, the definition of which includes a tax deed made without lawful authority. The definition of a "sham legal process" (E (3)) also includes anyone who relies on a sham legal process "as lawful authority" which includes the plaintiff and its attorneys who brought and insists on maintaining this frivolous case after having received actual notice that the tax deed it purchased for \$5.00 was illegally made, i.e., a sham legal process.

of the trust created by SJH recording their deed. At that moment, by operation of law, that trust cease to exist⁴. That trust cease to exist five years prior to the settlement claim being made, and it terminated whether or not agents of York County actually knew of SJH's sale of their property to Me. However, those agents were given actual notice informing them of the sale of SJH's property in a recorded Notice of Sale, Transfer, or Exchange ("Notice" hereinafter).

Upon receiving the Notice, those employees of York County became bound to the facts testified to in the Notice whether My deed was recorded or not. *"one who already has notice of the existence of any instrument will be bound by such notice whether the instrument is recorded or not"*, Frierson v. Watson, 636 SE 2d 872 (SC Appeals Ct. 2006). But because of their refusal to act on the Notice, as they were legally required to do, those employees of York County perpetrated multiple crimes by selling My Property in the name of, and for the illegally assessed debt of, a person that no longer had any legal relationship with *York County Register of Deeds*, no longer owned the property sold in their name, and no longer even existed. Now the plaintiff and its attorneys are ignoring the Notice and have chosen instead to rely on the sham legal process (tax deed) to illegally dispossess Me of My Property and infringe on My property rights. All of these action were/are illegal, unlawful, and criminal⁵! Worst still, all this criminal activity has been perpetrated against Me simply because I chose to NOT purchase an optional service being offered for sale by a privately held company!

B. Can a settlement claim be made by one party to a dispute acting alone?

The "settlement claim" that is now before this Court for "approval" was made by and agreed to by only ONE party, i.e., York County, acting alone. A "settlement" is defined as - *"an official agreement between two sides who were involved in a conflict or argument"*⁶.

⁴ "The life insurance policy was the sole asset of the trust. Metcalf [the trustee], therefore, has fulfilled the requirements of Second Trust. Because the trust purposes have been accomplished, Second Trust has ceased to exist", Macaulay v. WACHOVIA BANK OF SC, 508 SE 2d 46 (1998)

⁵ According to the following SC Code of Laws Sections: the misdemeanor of issuing or relying upon a sham legal process under 16-17-735; the felony of obtaining property by false pretences under 16-13-240(1); the felony of conspiracy against civil rights under 16-5-10; and the misdemeanor of neglect or misconduct of county auditor or treasurer under 12-2-70; fraud, etc. As well as numerous federal crimes, the torts of deprivation of rights under color of law 42 USC § 1983, and slandering My title.

⁶ See Collins English Dictionary.

In the alleged "settlement claim" there was only one party involved because SJH did not exist at the time York County allegedly made their "settlement claim" with it. Further, had SJH still existed at that time there still could not have been a "*conflict or argument*" between those two legal entities since SJH did NOT own My Property so it did not owe York County any debt thus there was nothing for SJH to have a *conflict or argument* with York County about. The alleged "settlement claim" is nothing more than a fraudulent, illegal sham legal process created and sold to a person who failed to do his due diligence after being given notice by the York County Delinquent Tax Collector that there was no guarantee or warranty that the tax deed it was buying was legally made!

C. Can a person who does not own, have any interest in, or have a claim to some property make a settlement claim that pertains to that property?

The "settlement claim" before this Court for "approval" pertains to an agreement to sell property that did not belong to either party to that *conflict or argument*; *York County Register of Deeds* no longer had any trusteeship interests in My Property at that time and SJH no longer owned My Property at that time. For any person to make an agreement with any other person to sell some property, they had better **both** have an ownership interest in, trusteeship over, or claim to that property involved in such an agreement or else that agreement amounts to a conspiracy to illegally steal someone else's property through false pretences, which according to SC Code of Laws § 16-13-240(1) is a felony!

IV. Does there exists any *stare decisis* cases that prove this Court is wanting subject matter jurisdiction under facts similar to this case?

There are no *stare decisis* cases that directly fit the facts of this case i.e., where a settlement claim was made against the previous owner of some property after the actual owner of that property intentionally chose to not record his deed. However, there are many **binding** *stare decisis* cases where a settlement claim was made against, or in the name of, a person who was not the actual owner of the property which **fits exactly** with the facts in this case. In those *stare decisis* cases both appellate courts of South Carolina have steadfastly held that a tax sale and tax deed **must** be made in the name of the **true owner** and if not done in such a name then the tax deed is void and that such a defect is

jurisdictional⁷. Such an defect must be a jurisdictional because when any tax deed is not made in the name of the true owner, the Court no longer has "*the authority to decide a given case one way or the other*" (see Limehouse v. Hulsey, supra, pg. 1) since the case can **only** be decide ONE WAY -> in favor of the true owner of the property!

V. Who is required to prove subject matter jurisdiction to hear a case once the issue has been raised?

The Supreme Court of South Carolina has held that "*When challenged, the plaintiff has the burden of showing jurisdiction is properly asserted; however, the law is well-settled that at the pre-trial stage only a prima facie showing is required. Affidavits may be submitted to show jurisdiction; however, the allegations contained in the complaint are normally sufficient to warrant the exercise of jurisdiction. 'Courts will take as true the allegations of the nonmoving party and resolve all factual disputes in its favor.'*" This includes any factual disputes brought up by submitted affidavits.", Brown v. Inventory Mgmt. & Research, Inc., 323 S.C. 395 (SC Supreme Court 1996).

However, in this case there is no factual dispute because **the plaintiff has made a prima facia showing that this Court wants subject matter jurisdiction.** The plaintiff alleged in its complaint the existence of the Notice (complaint #5) which evidences, among other facts, that SJH was not the owner of My Property at the time the tax deed was made in their name. Then the plaintiff alleged it "*believes*" the Notice "*did not convey title*" and therefore "*title remained vested in SJH*" (complaint #6) which is a conclusion of law and not a fact. The Notice and My affidavit, showing I am the true owner of My Property, were both attached as **Exhibit B** and **Exhibit A** respectively to My Motion to Dismiss or Intervene so they are now in the record and can be considered by this Court⁸. The plaintiff neither objected to those two exhibits nor rebutted any of the facts testified to in those two exhibits, so the facts showing lack of subject matter jurisdiction are not in "dispute".

⁷ "Tax sale under an execution issued against one who is not the owner of the land is void... Because a tax execution is issued against the defaulting taxpayer, not the property, a sale of land under a tax execution issued on an assessment against one not the owner is void. ... **this defect is jurisdictional**", Donohue v. Ward, 378 SE 2d 261 (1989). This case was decided AFTER the Circuit Court's jurisdictional code 15-72-10 was created in 1988 and has never been overturned.

⁸ "*motion to dismiss may be supported by, and the court may consider, affidavits or other evidence proving lack of jurisdiction.*", Baird v. Charleston County, 511 SE 2d 69 (SC Supreme Court 1999).

The facts alleged by the plaintiff in its complaint, further supported by My exhibits, when applied to the well settled *stare decisis* case of Donohue v. Ward *supra* (see footnote #7, pg. 6) clearly **PROVES by a preponderance of the evidence**⁹ this Court wants subject matter jurisdiction. Since the plaintiff has already made a *prima facie* showing that this Court wants subject matter jurisdiction, there is nothing left for this Court to decide but to declare that fact and dismiss this case (see Limehouse v. Hulsey, *supra* pg. 1).

VI. Intervention of Right under Rule 24(a)(2) SCRCF

I OBJECT to having to become the only defendant in this action in order to have the standing needed to raise the issue that there is no action before this Court because there is no defendant.

I OBJECT to having to waive personal jurisdiction over Me in order to "apply" to intervene in a case where I have neither been named nor served with any process leaving this Court presently wanting personal jurisdiction over Me and My property.

I OBJECT to having to waive My status as a man if only artificial persons can intervene in this case, although that may not be required since Rule 24(a)(2) says that "**anyone**" can apply to intervene. The definition of "anyone" in ordinary language means any person (which could include a natural person), anybody, or any people.

Without waiving any of these three just stated objections, in order to be granted leave to intervene in this case I am only required to **claim** that I am the true owner of My Property and I have already made that claim in My affidavit¹⁰ (see **Exhibit A** attached to My Motion to Dismiss or Intervene). The facts that must be claimed or demonstrated in order to be granted leave to intervene include the following - "*A party moving to intervene under Rule 24(a)(2) SCRCF must: 1) establish timely application; 2) assert an interest relating to the property or transaction which is the subject of the action; 3) demonstrate that it is in a position such that without intervention, disposition of the action may impair or impede its ability to protect that interest; and 4) demonstrate that its interest is inadequately*

⁹ "Because the issue in the case sub judice is jurisdictional, this Court has the power and duty to review the record and decide the jurisdictional facts in accordance with the preponderance of the evidence." Lake v. Reeder Const. Co., 498 SE 2d 650 (SC Court of App 1998).

¹⁰ Ordinarily, ownership of property is a simple fact, to which a witness having the requisite knowledge can testify directly. 31 Am Jur 2d, Expert and Opinion Evidence §§ 70, 136 et seq.

represented by other parties.", Ex parte Reichlyn, 310 S.C. 495, 427 SE 2d 661 (SC Supreme Court 1993). Each of these four points will now be discussed and demonstrated.

As to #1 timely application: My Motion to Intervene was made two months after this case was served on the named, but non-existent, defendants. The summons in this case was never served on the unknown or unnamed defendants, which includes Me; under these circumstances two months can not even be considered a delay. Nothing has happened yet in this case apart from a Motion to Dismiss made by the holder of a lien on My Property where this Court refused to dismiss this action for want of subject matter jurisdiction even though the plaintiff has alleged this Court is wanting jurisdiction in its complaint. The only party to this action is the plaintiff and it will not suffer any prejudice from My intervention. On the contrary, the plaintiff will actually benefit because its action is a nullity for want of a defendant and if I am granted leave to intervene, that will create a case where no case now exists. *"a court must consider the following factors in determining whether a motion to intervene is timely: 1) the time that has passed since the applicant knew or should have known of his or her interest in the suit; 2) the reason for the delay; 3) the stage to which the litigation has progressed; and 4) the prejudice the original parties would suffer from granting intervention and the applicant would suffer from denying intervention."*, Ex parte Reichlyn *supra*.

As to #2 having an interest in this action: I have testified in My affidavit (**Exhibit A**) attached to My Motion to Dismiss or Intervene that I hold paramount title to My Property that the plaintiff is attempting to quiet My title to, and evict Me from, without even considering My deed. *"Intervention of right requires a direct, substantial, legally protectable interest in the proceedings."*, Ex parte Reichlyn *supra*.

As to #3 without intervention My interests in My property: I am the only person with a valid deed to My Property and therefore My claims **MUST** be considered and I **MUST BE GIVEN DUE PROCESS OF LAW before** My property is taken, although My property has already been illegally taken (stolen) from Me!

As to #4 the prejudice to the original parties: there **ARE NO DEFENDANTS TO THIS ACTION** so there can be **NO** prejudice to persons that do not exist and even if they did exist they have no standing so they can not be prejudiced by My intervention (see general denial answer made by Brett Osborne filed into case on March 1, 2019).

VII. Conclusion

I recently came into possession of a legal opinion letter issued by a Tax Counsel for the "STATE BOARD OF EQUILIZATION of the STATE OF CALIFORNIA" which explains the following: 1) a deed does not have to be recorded in order for it to be valid; and 2) anyone can take their unrecorded deed to the County Assessor and request that she remove from the tax rolls the property listed on an unrecorded deed¹¹. Granted, the STATE OF CALIFORNIA is NOT the same corporation as the STATE OF SOUTH CAROLINA, but both of their property tax codes are VERY similar since all property taxation is based on the same legal principles. Unfortunately for Me, I neither showed My deed to the York County Assessor nor requested that she take My property off the tax rolls because I had not discover that was My remedy. Nonetheless, I cannot lose My property simply because I did not discover My remedy in time to keep My property from being illegally sold.

Should this Court not immediately dismiss this case *sua sponte* for want of subject matter jurisdiction it will be acting in the "*clear absence of all jurisdiction*" which will strip any judge moving forward in this case of judicial immunity.

Relief Required

This Court has the authority and DUTY to dismiss this action for want of subject matter jurisdiction *sua sponte*¹², upon the suggestion of the parties, or otherwise (e.g., on the suggestion of a non-party)¹³. If this Court chooses to ignore the evidence that clearly shows it lacks subject matter jurisdiction then this Court must grant Me leave to join this action under Rule 24(a)(2) SCRCP so that I can get some due process of law before I am totally and illegally deprived of My Property.

5/11/19
Date


Ryan Powell
c/o 3459 Mill Run
Raleigh, North Carolina

¹¹ That legal opinion letter can be found at https://www.boe.ca.gov/proptaxes/pdf/220_0867.pdf which is also attached as Exhibit B and fully incorporated herein by reference.

¹² "*Lack of subject matter jurisdiction can be raised at any time, can be raised for the first time on appeal, and can be raised sua sponte by the court*", *Lake v. Reeder Const. Co.*, 498 SE 2d 650 (SC Court of App. 1998).

¹³ "*Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.*", Rule 12(h)(3) SCRCP.

STATE OF SOUTH CAROLINA

COUNTY OF YORK

LB PARK, LLC

v.

San Juan Holdings, Brett Osborne, the trustee;
Brett Osborne as trustee of San Juan Holdings;
John Doe and Mary Roe, representing all
unknown persons having or claiming to have
any right, title, or interest in or to, or lien upon,
the real estate described as 25056 Timberlake
Drive, York County, South Carolina

IN THE COURT OF COMMON PLEAS

Case # 2019-CP-46-00310

**OPPOSITION TO PLAINTIFF'S
MOTION FOR ORDER
OF REFERENCE**

DAVID HAMILTON
C.C.P. & C.S.
YORK COUNTY, SC

2019 MAY 13 AM 11:30

FILED-RECEIVED

Comes Now, Ryan Powell/John Doe ("I", "Me" or "My" hereinafter), who makes this
opposition to plaintiff's motion for an order of reference based on the following grounds:

1) I do not consent to having this case moved to a master in equity because although this case is presently an equity case, assuming this case is not outright dismissed as it should be, if I am added as a defendant I will answer and claim paramount title¹ which will then convert this equity case into a law case. I will then demand My right to a jury trial which will move this case back to this Court.

2) Interestingly the plaintiff did not leave the assignment of a particular Master to this Court, the plaintiff specifically named the Master that the plaintiff wants assigned to its case - Teasa Weaver. Judge Kimball is also a Master in Equity but plaintiff did NOT request him because plaintiff knows Judge Kimball is familiar with these issues raised in this case. Plaintiff must be requesting the move for the reason that it believes it will "get a better deal" from the Judge Weaver then from Judge Hall.

Respectfully submitted,

5/11/19

Date

Ryan Powell

Ryan Powell

c/o 3459 Mill Run

Raleigh, North Carolina

¹ "When the defendant's answer raises an issue of paramount title to the land, such as would, if established, defeat the plaintiff's action, it is an issue for the jury, unless jury trial is waived.", Estate of Tenney v. SOUTH CAROLINA DEPT. OF HEALTH, 712 SE 2d 395 (SC Supreme Court 2011).

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF YORK

Case No. 2019-CP-46-00310

LB PARK, LLC,

Plaintiff,

vs.

STIPULATION OF DISMISSAL

San Juan Holdings, Brett Osborne, the trustee; Brett Osborne as Trustee of San Juan Holdings; and John Doe and Mary Roe, representing all unknown persons having or claiming to have any right, title, or interest in or to, or lien upon, the real estate described as 25056 Timberlake Drive, York County, South Carolina, TMS 643-10-01-023, their heirs and assigns, and all other persons, firms, or corporations entitled to claim under, by or through the above-named Defendant(s), and all other persons or entities unknown claiming any right, title, interest, estate in, or lien upon, the real estate described as 25056 Timberlake Drive, York County, South Carolina, TMS 643-10-01-023,

Defendants.

NOTICE OF DISMISSAL WITHOUT PREJUDICE

Pursuant to Rule 41(a) of the South Carolina Rules of Civil Procedure, Plaintiff LB Park, LLC hereby provides notice that the above captioned action is dismissed without prejudice.

Andrew M. Rawl
A. Parker Barnes III, SC Bar No. 68359
pbarnes@hsblawfirm.com
Andrew M. Rawl, SC Bar No. 102807
drawl@hsblawfirm.com

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(803) 779-3080

February 12, 2020

Attorneys for Plaintiff

David Hamilton, Clerk of Court
P.O. Box 649
York, SC 29745
Phone: 803-628-3036

Brett Osborne
190 Aviation Lane
Gold Hill, NC 28071

February 27, 2019

Dear Mr. Hamilton,

I am returning the enclosed court papers to you that I believe were wrongly served on me on February 6, 2019. I don't intend to appear in court for this case as it pertains to property that I have not had any connection with nor have I had a duty to defend for over 6 years. Whoever currently owns (or claims to own) I think should be who these papers should be sent to. Maybe the judge assigned to the case or the plaintiff in this case might need to get these papers back so they can name the right parties. If you are the wrong person to whom these papers should be given back, would you be so kind as to forward them to the correct person.

Sincerely,


Brett Osborne

Enclosed:
Notice of Lis Pendens
Summons
Complaint

2019 MAR -1 AM 11:52
DAVID HAMILTON
C.L.P. & GS
YORK COUNTY, SC

FILED-RECEIVED

Rule 210 (g) SCACR Certification of Record on Appeal

I, Ryan Powell, Appellant, certify that this Record on Appeal contains all matter proposed by either party that is in accordance with Rule 210 (c) SCACR and not any other material.

April 3, 2023

/s Ryan Powell
Ryan Powell, Appellant

RECEIVED
Apr 03 2023
SC Court of Appeals